

12/84

IN THE PRIVY COUNCIL

No.23 of 1983

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

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B E T W E E N :

LAU SIK CHUN

Appellant  
Petitioner

and -

THE QUEEN

Respondent

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RECORD OF PROCEEDINGS

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Appellant

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Respondent

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

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B E T W E E N :

LAU SIK-CHUN Petitioner  
- and -  
THE QUEEN Respondent

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RECORD OF PROCEEDINGS

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P.1A-B	Photograph )	
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DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

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P.1A-E )	Three photographs	
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P.9A	Trnslation of Statement of Yeung Kwong-hung	3rd July 1980
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IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE COURT OF APPEAL OF HONG KONG

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B E T W E E N :

LAU SIK CHUN Petitioner

- and -

THE QUEEN Respondent

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RECORD OF PROCEEDINGS

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---

10

No.1

In the  
High Court

INDICTMENT

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IN THE HIGH COURT OF HONG KONG

No.1  
Indictment  
27th March  
1981

The Queen

against

YEUNG Kwong-hung (1st accused)

LAU Sik-chun (2nd accused)

charged as follows -

First Count

STATEMENT OF OFFENCE

20

Common Law, Murder, contrary to Common Law.  
Cap.212,  
Sec.2

PARTICULARS OF OFFENCE

YEUNG Kwong-hung and LAU Sik-chun, on the 26th day of June, 1980 at the Good World Billiard Room, 8th floor, 80, Sai Yeung Choi Street, Mongkok, Kowloon, in this Colony, together with LAU Sik-hung, LAU Hing-sang and other persons unknown, murdered NG Fuk-nam.

In the  
High Court

Second Count  
STATEMENT OF OFFENCE

No.1  
Indictment  
27th March  
1981

Cap.212,  
Sec.17(a) Wounding with intent, contrary  
to section 17(a) of the Offences  
against the Person Ordinance, Cap.212.

PARTICULARS OF OFFENCE

YEUNG Kwong-hung and LAU Sik-chun,  
on the 26th day of June, 1980, at the  
Good World Billiard Room, 8th floor,  
80, Sai Yeung Choi Street, Mongkok,  
Kowloon, in this Colony, together with  
LAU Sik-hung, LAU Hing-sang and other  
persons unknown, unlawfully and  
maliciously wounded YIP Kam-ping, with  
intent to do him grievous bodily harm.

10

(continued)

Third Count  
STATEMENT OF OFFENCE

Cap.212  
Sec.17(a) Wounding with intent, contrary to  
section 17(a) of the Offences against  
the Person Ordinance, Cap.212.

20

PARTICULARS OF OFFENCE

YEUNG Kwong-hung and LAU Sik-chun,  
on the 26th day of June, 1980, at the  
Good World Billiard Room, 8th floor,  
80, Sai Yeung Choi Street, Mongkok,  
Kowloon, in this Colony, together with  
LAU Sik-hung, LAU Hing-sang and other  
persons unknown, unlawfully and  
maliciously wounded TAM Man, with intent  
to do him grievous bodily harm.

30

Fourth Count  
STATEMENT OF OFFENCE

Cap.212  
Sec.17(a) Wounding with intent, contrary to  
section 17(a) of the Offences against  
the Person Ordinance, Cap.212.

PARTICULARS OF OFFENCE

YEUNG Kwong-hung and LAU Sik-chun,  
on the 26th day of June, 1980, at the  
Good World Billiard Room, 8th floor,  
80, Sai Yeung Choi Street, Mongkok,  
Kowloon, in this Colony, together with  
LAU Sik-hung, LAU Hing-sang and other  
persons unknown, unlawfully and  
maliciously wounded KWOK Shing-yip,

40



with intent to do him grievous  
bodily harm.

In the  
High Court

Fifth Count  
STATEMENT OF OFFENCE

No.1  
Indictment  
27th March  
1981

Cap.212,           Wounding with intent, contrary to  
Sec.17(a) section 17(a) of the Offences against  
the Person Ordinance, Cap.212.

(continued)

PARTICULARS OF OFFENCE

10                   YEUNG Kwong-hung and LAU Sik-chun,  
on the 26th day of June, 1980, at the  
Good World Billiard Room, 8th floor,  
80, Sai Yeung Choi Street, Mongkok,  
Kowloon, in this Colony, together  
with LAU Sik-hung, LAU Hing-sang and  
other persons unknown, unlawfully and  
maliciously wounded PANG Pui-yuen,  
with intent to do him grievous bodily  
harm.

20                                   Sd: C.W.Reid  
                                      (C.W.Reid)  
                                      Acting Deputy Crown  
                                      Prosecutor for  
                                      Attorney General

Date: 27th March, 1981.

To: YEUNG Kwong-hung (1st accused)  
      LAU Sik-chun       (2nd accused)

30                   Take Notice that you will answer to the  
Indictment whereof this is a true copy at the High  
Court, Battery Path, Victoria, on the 10th day of  
August 1981.

N.J. Barnett  
Acting Registrar  
18 APR 1981

In the  
High Court

No. 2

PROCEEDINGS

No.2  
Proceedings  
10th August  
1981

IN THE HIGH COURT OF JUSTICE  
CRIMINAL JURISDICTION

Case No. 168 of 1980  
and  
Case No. 49 of 1981

Transcript of the shorthand notes taken  
by the Court Reporters at the trial of  
Regina v. YEUNG Kwong-hung and LAU Sik-chun, 10  
charged with Murder, etc., before Mr.  
Commissioner Barnes

Date: 10th August, 1981 at 10.20 a.m.

Present: Mr. B. Van Buuren, (Y.T.Kan, DLA) for  
both accused  
Mr. M. Lunn, Acting Assistant Principal  
Crown Counsel, for the Crown  
-----

PLEAS TAKEN

BOTH ACCUSED PLEAD NOT GUILTY TO ALL FIVE COUNTS  
JURY EMPANELLED 20

Jurors sworn or affirmed

CLERK: Members of the jury, the accused YEUNG  
Kwong-hung, 1st accused, LAU Sik-chun, 2nd  
accused, stand indicted for the following  
offences.

First Count, Statement of Offence, Murder,  
contrary to Common Law. Particulars of  
Offence, YEUNG Kwong-hung and LAU Sik-chun,  
on the 26th day of June, 1980 at the Good  
World Billiard Room, 8th floor, 80, Sai 30  
Yeung Choi Street, Mongkok, Kowloon, in  
this Colony, together with LAU Sik-hung, LAU  
Hing-sang and other persons unknown, murdered  
NG Fuk-nam.

Second Count, Statement of Offence,  
Wounding with intent, contrary to section  
17(a) of the Offences against the Person  
Ordinance, Cap.212. Particulars of Offence,  
YEUNG Kwong-hung and LAU Sik-chun, on the  
26th day of June, 1980, at the Good World 40  
Billiard Room, 8th floor, 80, Sai Yeung  
Choi Street, Mongkok, Kowloon, in this  
Colony, together with LAU Sik-hung, LAU Hing-  
sang and other persons unknown, unlawfully

and maliciously wounded YIP Kam-ping, with intent to do him grievous bodily harm.

In the  
High Court

10 Third Count, Statement of Offence,  
Wounding with intent, contrary to section 17(a)  
of the Offences against the Person Ordinance,  
Cap.212. Particulars of Offence, YEUNG Kwong-  
hung and LAU Sik-chun, on the 26th day of June,  
1980, at the Good World Billiard Room, 8th  
floor, 80, Sai Yeung Choi Street, Mongkok,  
Kowloon, in this Colony, together with LAU  
Sik-hung, LAU Hing-sang and other persons  
unknown, unlawfully and maliciously wounded  
TAM Man, with intent to do him grievous  
bodily harm.

No.2  
Proceedings  
10th August  
1981

(continued)

20 Fourth Count, Statement of Offence,  
Wounding with intent, contrary to section 17(a)  
of the Offences against the Person Ordinance,  
Cap.212. Particulars of Offence, YEUNG Kwong-  
hung and LAU Sik-chun, on the 26th day of June,  
1980, at the Good World Billiard Room, 8th  
floor, 80, Sai Yeung Choi Street, Mongkok,  
Kowloon, in this Colony, together with LAU Sik-  
hung, LAU Hing-sang and other persons unknown,  
unlawfully and maliciously wounded KWOK Shing-  
yip, with intent to do him grievous bodily harm.

30 Fifth Count, Statement of Offence, Wounding  
with intent, contrary to section 17(a) of the  
Offences against the Person Ordinance, Cap.212.  
Particulars of Offence, YEUNG Kwong-hung and  
LAU Sik-chun, on the 26th day of June, 1980, at  
the Good World Billiard Room, 8th floor, 80,  
Sai Yeung Choi Street, Mongkok, Kowloon, in this  
Colony, together with LAU Sik-hung, LAU Hing-sang  
and other persons unknown, unlawfully and  
maliciously wounded PANG Pui-yuen, with intent  
to do him grievous bodily harm.

40 To this indictment they have pleaded not  
guilty and it is therefore your charge to say,  
having heard the evidence, whether they or any  
of them be guilty or not guilty.

MR. LUNN: My Lord, members of the jury, I appear  
in this case for the Crown. The two accused men  
have the advantage of being represented by my  
learned friend Mr. van Buuren who sits next to me.  
Of course, his Lordship presides over matters.

The purpose of my addressing you at this  
stage of the trial is to outline to you some of  
the procedures that take place in the trial.  
Some of you may have sat on a jury before, so you

In the  
High Court

No.2  
Proceedings  
10th August  
1981

(continued)

may well be familiar with them, but for those who haven't, you may find it helpful.

At the conclusion of the trial, you will be addressed again by my learned friend and myself and in any event the whole of the evidence will be summed up to you and you will be directed on the law by the learned trial judge.

The evidence that will be put before you will come in two forms in this trial - and you are to treat them as being the same, that is of the same importance - from witnesses who will come and speak to you orally from the witness-box and describe events, and from statements of witnesses that I will read to you. 10

Now that latter procedure is used as you might well anticipate that to put evidence before you of witnesses that are not controversial between the Crown and the defence will save those witnesses the time and trouble of having to come to court, but what is read to you is nonetheless evidence just as much as those that come from a witness speaking from the witness-box to you live in court. 20

You have the indictment before you and you have had an opportunity to peruse it. You will see from it that these two accused men face jointly each of the five counts on this indictment, as you see, one count of murder and four counts of wounding with intent to do grievous bodily harm. 30

You are to consider each of those counts at the end of the evidence separately one from the other and reach a verdict on each count in turn.

Before you are able to return a verdict of guilty, you will have to be satisfied that the Crown has proved to you beyond reasonable doubt the guilt of these two accused men or one of them on each of these various counts, and it is for the Crown, not for the defence, to prove the matter to you. 40

You will see in each of these counts that these two accused men are accused of committing these various offences together with two other men and other persons unknown. You will see in the particulars of offence of the 1st count, that of murder, and this is repeated in the other counts, they are accused of committing that

offence together with a man called LAU Sik-hung, a second man LAU Hing-sang and other persons unknown.

In the  
High Court

No.2  
Proceedings  
10th August  
1981

(continued)

10 You will also notice from a quick perusal of the charges that all these offences are said to have been committed on the same day and at the same place, that is, the Good World Billiard Room which is on the 8th floor of a building in Sai Yeung Choi Street in Mongkok.

20 Turning then, if I may, to the facts, to give you an outline at the outset of what the Crown expects to put before you by way of evidence. The circumstances which led to these charges being laid occurred in this way: by way of a fracas that occurred at this ball room in the late evening, about a quarter past 11 on the 26th of June of last year, 1980, and this fracas occurred between two groups of men who were well known to one another and a general melee and fight ensued.

At the conclusion of that fight in which the Crown will say billiard cues were used as a weapon amongst other weapons, the deceased who appears on the 1st count, NG Fuk-nam, lay dead and these other men were injured. You will have described to you their injuries.

30 The background, to give it some context of the matter, is this that a man called Yip, Yip Kam-ping, who is the victim, if I can call him that, of the 2nd count on the indictment, the man who suffered injuries on that 2nd count, went to that ball room earlier on in the evening at about 10 o'clock, and there an argument ensued between that man Yip and a man called... by the nickname Luen Mo but otherwise known as LAU Sik-hung who is one of the other men named in the various counts of the indictment.

40 Now the argument was over the question of the use of a billiard table by Yip and resulted in Yip retreating from that billiard room and making his way to a restaurant in Portland Street which, as you know from Mongkok, is a nearby street. There in the Kam Ma Wah Restaurant Yip gathered together a number of his companions and complained to them of the circumstances of this argument and the way in which he had been treated.

Those companions comprised, amongst others, three of the persons mentioned as victims of this

In the  
High Court

No.2  
Proceedings  
10th August  
1981

(continued)

wounding. Now together with other persons, the matter was discussed. During these discussions, Yip received a call on his paging device as a result of which he made a telephone call and spoke to the 2nd accused. The 2nd accused invited Yip to return to the ball room to discuss the matter to see if the whole incident could be resolved. Now that is what Yip together with his various companions decided to do and in due course they returned to the ball room.

10

On their return to the ball room, in pretty short order, another confrontation resulted between Yip and Luen Mo, this man LAU Sik-hung. And it occurred in this way with Lau immediately striking Yip blows with his fists. Well, that was a signal for everybody else to start fighting. And Yip not only was assaulted by Lau but was assaulted by.... all manner of blows rained upon him by the billiard cues by the accused and otherwise. He will tell you that at the outset he heard the 2nd accused shouting his nickname, "Beat Tai Ngan Chai to death." Yip will tell you that is his nickname and that was shouted twice.

20

Well, Yip was not the only one attacked. Those that had accompanied Yip were likewise subject to attacks with billiard cues, and in the course....so say the Crown, in the course of this melee and fight the various victims of counts 2 to 5 sustained their injuries.

30

Well, overwhelmed as they were by the other gang of men, Yip and his companions tried the best they could to make their escape. Yip and three of his companions escaped down a rear staircase. However, the deceased together with a man called TAN Man, he is the victim of the 3rd count of the indictment, were not so lucky. They were caught at the doors to the lift which goes up to this 8th floor billiard room and dragged back in to the billiard room, and there back in the billiard room they were subjected to and sustained a brutal assault as a result of which Tam was knocked unconscious as was the deceased. It was from that attack, says the Crown, that the deceased later succumbed and died.

40

That assault was witnessed by one of the other companions of Yip who had gone to the ball room and you will hear him describe that assault to you.

50

As far as the particular details of this assault are concerned, Yip will tell you that during.....at the very initial stage of the attack upon him, he was struck a blow, a single blow, by the 1st accused with a billiard cue.

In the  
High Court

No.2  
Proceedings  
10th August  
1981

10 The 2nd accused was seen, as I mentioned earlier, first of all to have shouted this invitation to a general attack, "Beat Tai Ngan Chai to death", he was heard to say that by Yip, but he was also seen to make physical attacks and a man called Chan, he is one of the witnesses on the back of the indictment, Chan, the fourth witness, CHAN Chun-ki, will tell you that he saw the 2nd accused attacking another man called Poon with a billiard cue.

(continued)

20 The fifth victim, that is the victim in the 5th count on the indictment, PANG Pui-yuen, will tell you that during this melee he became isolated from his companions and trapped in the billiard room and he saw the deceased and TAM Man being dragged back from the lift shaft and subjected to this sustained attack whilst they were on the floor. He will tell you that he saw the 2nd accused delivering blows with a billiard cue to the prostrate and unconscious body of the deceased.

30 That account will be confirmed to you by a man who happened to be playing billiards in the billiard hall, LI Kit-hung, who is the ninth witness on the back of the indictment. Nothing to do with either of these two gangs of men, he will confirm to you that he saw the 2nd accused administering these brutal assaults, together with other men, on the prostrate body of the deceased.

40 Lest you would be concerned that these matters may be difficult to follow, there will be put before you at an early stage of the trial photographs of the scene taken shortly afterwards and a plan of the scene. I should warn you also that it would be necessary for the Crown to put before you photographs of the dead man so that you can see the injuries he sustained.

The medical evidence will come from doctors whose statements I anticipate I will read to you and you will there have described to you the injuries that these various victims in counts 2 to 5 sustained.

In the  
High Court

No.2  
Proceedings  
10th August  
1981

(continued)

A pathologist will be called to tell you of the results of a post-mortem examination performed upon the deceased, and in short tell you that the cause of death was bleeding and bruising to the deceased's brain. You will also learn that the deceased was certified to be dead at the Kwong Wah Hospital shortly before midnight on this night so that death followed very shortly after this assault.

As far as forensic evidence is concerned, again this is a matter that may well be read to you by way of statement, the Crown will prove to you that a broken billiard cue, the one that is on the table in front of me, in front of you, was located at the billiard room by police officers and a fingerprint detected on it, which fingerprint was compared and found to be identical with a fingerprint taken from the 1st accused. 10

The two accused men were not arrested immediately. The 1st accused was arrested some days later on the 2nd of July. You will hear details of how he came to be arrested. You will also hear that when charged with this matter and cautioned, he made, in general terms, denials of any involvement. 20

The 2nd accused was not arrested for a considerable time until in fact February of this year. And his arrest came about when this man Yip from the 2nd count on the indictment saw the 2nd accused in the street and kept watch on the 2nd accused and his companions until patrolling police officers came by and then informed them resulting in the 2nd accused's arrest. 30

You will also have put before you the explanation, the account, given by the 2nd accused to police officers when these matters were put to him. You may feel - in fact I would invite you to take this view - that really the crux of this case comes in the account of the various witnesses to the actual assault. There being no real controversy about either the forensic evidence or the explanations given by the accused. 40

Turning then, if I may, finally to matters of law. Let me say this at the outset: as I have already said, the learned trial judge will sum up the law to you at the end of the trial



and you are to take what he says as the final, complete direction. So anything that I say now is subject to his later correction, but it may help if I outline to you what I feel is the law contained in these counts.

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High Court  
No.2  
Proceedings  
10th August  
1981

10           Murder, the 1st count before you, you may feel you will have no difficulty with it. Murder is an unlawful killing committed by persons who have either the intention to kill or the intention to do really serious harm to somebody and killing results.

20           The wounding charges against....in the other counts 2 to 5. Wounding, as you readily appreciate, is a cut in the continuity of the skin. And as you can see in the words of the particulars of the offence that wounding is unlawful and is committed by somebody who has the intent to do grievous bodily harm to the person who is wounded, "grievous" means really serious, you may feel you have no difficulty with that.

30           One final matter, as will be apparent to you, I trust, by now, the Crown says of this matter that these two accused, together with these other men named on the indictment and these other persons unknown, had embarked upon a joint adventure in this fight, that they were all party to a general attack upon the dead man and his companions, and that as co-adventurers in this attack, they are jointly liable for the consequences that resulted.

40           As you will appreciate from the facts that I have outlined to you, the Crown does not say that the 1st accused was seen to be attacking the dead man although the Crown says that the 2nd accused was seen to attack the deceased. The Crown does not say the 1st accused was seen to do that, but says that he is to be considered jointly liable with these other men having become a party to the whole matter.

          Perhaps an analogy might help you consider that submission. In a bank robbery, for instance, it is often the case that one man remains outside the bank, in the car, the other man going into the bank, armed with guns and commits that part of the robbery, but nonetheless the man outside is just as guilty of robbery as the man who goes inside.

          That this attack was committed with a murderous

(continued)

In the  
High court

No.2  
Proceedings  
10th August  
1981

(continued)

intent was made very clear at the outset of the assault by the 2nd accused shouting as Yip will tell you, "Kill or beat Tai Ngan Chai." In my submission, you will treat the whole of that adventure as a murderous attack, one that succeeded upon the deceased and his companions.

Members of the jury, I will now turn to putting evidence before you, and the evidence I propose to adduce at the outset I will do by way of reading some statements to you, to put you in possession of photographs and the plan.

10

COURT: Perhaps before you go on, would counsel give some indication of the possible length of this trial so that I can tell the jury or can't you say just yet?

MR. LUNN: My Lord, as I have indicated to the jury, I think many matters will be agreed, but there do remain...or not controversial, but there do remain eight witnesses to the actual fight. My Lord, I would have thought that the three weeks that this trial is set down for are far more than one would need.

20

COURT: Certainly it will be finished within two weeks. There you are, members of the jury, although this case is originally set down, I think, and to carry through to about the 29th of August, you can now safely make your plans in respect of your personal affairs on the basis that the case can certainly finish by the end of two weeks. Thank you, Mr. Lunn.

30

MR. LUNN: My Lord, the first statement I will read is at page 32 of the depositions, that of a police photographer, MOK Chiu-hung.

COURT: Yes.

MR. LUNN: Perhaps your learned clerk can have exhibit P.1 and the copies ready. Members of the jury, this witness says:

" I am Police Photographer, MOK Chiu-hung. I am attached to the Photographic Section of the Identification Bureau of the Royal Hong Kong Police Force.

40

On the morning of 28.6.80, I attended the Kowloon Public Mortuary. Thereat, I

took six views of a corpse named NG Fuk-nam from different angles.

In the  
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At the Photographic Section, I developed the film and made enlarged copies of the photographs.

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10th August  
1981

I now produce twelve sets of these six photographs which I identify with the reference number K6272/80.

(continued)

10 The above statement consisting of one page has been read over by me. It is true to the best of my knowledge and belief."

COURT: Yes. The photographs referred to will be exhibited as exhibit P.1A to F.

20 MR. LUNN: My Lord, yes. I am obliged. My Lord, the next statement I propose to read is at the following page, page 33, the statement of the second police photographer. My Lord, perhaps your learned clerk can have committal exhibit P.2 ready.

" I am Police Photographer YU Kwok-cheung. I am attached to the Photographic Section of the Identification Bureau of the Royal Hong Kong Police Force.

On the morning of 27.6.80, I attended the Good World Billiard Room, 8th floor, 80 Sai Yeung Choi Street, Mong Kok. Thereat, I took fifty-four views from different angles.

30 At the Photographic Section, I developed the film and made enlarged copies of the photographs.

I now produce twelve sets of these fifty-four photographs which I identify with the reference number K6247/80.

The above statement consisting of one page has been read over by me. It is true to the best of my knowledge and belief. "

40 COURT: Yes. Those photographs will be exhibited as exhibit 2A to BBB.

MR. LUNN: My Lord, may I say at the outset there are perhaps more photographs in this bundle

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than are useful. My Lord, with discretion we might be able to refer to the ones that are useful.

My Lord, the next statement I propose to read is at page 34, that of a plan drawer. My Lord, perhaps your clerk will have exhibit P.3 ready. My Lord, reading that statement.....

" I am Chinese male WAT King-sang. I am a Survey Officer Trainee of the Building Ordinance Office of the Public Works Department. 10

On the morning of 24.7.80, I together with Detective Constable 9506 LO Ngok-ping, attended the Good World Billiard Room, 8th floor, 80 Sai Yeung Choi Street, Mong Kok. Thereat, I took certain measurements of two scenes. Later, at my office, using the measurements I had taken, I made a scaled tracing of the area. 20

I now produce the original tracing which I identify with my signature thereon.

The above statement consisting of one page has been read over by me. It is true to the best of my knowledge and belief."

COURT: Yes. The tracing will be exhibit P.3. I believe there are 12 copies. That will be marked P.4. 30

MR. LUNN: My Lord, perhaps I might read that second statement at page 35 dealing with the copy.

" I am Chinese male MA Yuk-piu. I am a Technical Officer of the Crown Lands & Survey Office of the Public Works Department.

On the morning of 25.9.80, I received a tracing which shows the general lay-out of the vicinity of the 8th floor, 80 Sai Yeung Choi Street, Mong Kok, Kowloon, from Detective Constable 7365 NG Pui-kan of the District Crime Unit III, Kowloon C.I.D. Headquarters. 40

Later, at my office, I made twelve copies of the plan. I now produce them which I identify with the chop mark of the Reprographic Section of the Public Works Department thereon.

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The above statement consisting of one page has been read over to me. It is true to the best of my knowledge and belief."

(continued)

10 My Lord, I might pause and add a word of explanation there. Members of the jury, the plan you have you will see details a number of tables by number in the plan. You will see from the photographs exhibit P.2 that a number of the numbers of the tables appear in the photographs. They are on the lighting apparatus above the billiard tables. My Lord, for example, exhibit P.2P shows table 4.  
20 Exhibit P.2P, the lighting apparatus above the billiard table number 4. By reference to that you will be able to place the photographs.

My Lord, the next statement I propose to read was the subject of the notice of additional evidence. It is a statement of Dr. LI Yau-pang. Members of the jury, reading this statement, the doctor says :

30 " I am Doctor LI Yau-pang, presently attached to the casualty department of Kwong Wah Hospital. My qualifications are: M.B.B.S. (Queens Land).

On the evening of 26-6-1980, I medically examined a Chinese male whom I later knew to be called NG Fuk-nam. When I saw this patient, his general condition was doomed, with no spontaneous respiration, no palpable pulse, no audible heart sound, pupils fixed and dilated. I therefore certified him 'Dead' on 2358 hours.

40 Upon further examination, I found :-

(a) 5cm wound with fracture skull left parietal area.

(b) lines of bruises on back of chest.

The above statement consisting of one page has been read over by me. It is true to the best of my knowledge and belief."

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My Lord, I propose now to turn to oral witnesses. I wonder if that might be a convenient moment.

COURT: Yes, very well, Mr. Lunn. Thank you very much. Members of the jury, every day at round about half-past 11 we take a short adjournment of 15 minutes. This morning we are taking it a little earlier because it is a convenient point in the presentation of the Crown's evidence. When I adjourn, the usher will tell you where the toilets are and where the canteen is. We will adjourn now for 15 minutes.

10

11.20 a.m. Court adjourns

11.40 a.m. Court resumes

Both accused present. Appearances: as before.  
JURY PRESENT.

COURT: Yes, Mr. Lunn?

MR. LUNN: My Lord, before I move on to the first oral witness, there is one other witness I propose to read. My Lord, at page 19 of the depositions, Madam NG Lin-ying. Members of the jury, that witness says :

20

" I am Chinese female NG Lin-ying. I live at room 848, block 3, Sun Fat Estate, Tuen Mun with my family. I have four brothers and Chinese male NG Fuk-nam, aged 28 years was my younger brother.

About two years ago, NG Fuk-nam married with Chinese female Lai Fung-sheung who later bore a daughter. They used to live at room 518, block 6, Shek Yam Estate. Recently, LAI Fung-sheung has been pregnant for eight months.

30

On the afternoon of 2.7.80, I attended the Kowloon Public Mortuary where I identified a corpse. He was my younger brother NG Fuk-nam.

40

The above statement consisting of one page has been read over to me in Punti dialect. It is true to the best of my knowledge and belief."

YIP KAM-PING

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My Lord, the first oral witness I propose to call is at page 20, YIP Kam-ping.

P.W.1. - YIP Kam-ping Affirmed in Puncti

XN. BY MR. LUNN:

- Q. You live on the 10th floor, 7 Tai Yau Building, Tai Ching Street, Tai Kok Tsui?
- A. Yes.
- 10 Q. What's your occupation?
- A. Taxi driver and also in connection with finance matters.
- Q. Now on the 26th of June last year, did you sustain some injuries to your person?
- A. Yes.
- Q. Did that occur in the Good World Billiard Room?
- A. Yes.
- 20 Q. I would like you to describe to his Lordship and the jury, if you would, the events that preceded that injury to yourself.
- A. Yes.
- Q. Had you gone to the billiard room earlier in the evening?
- A. Yes. At about 10 o'clock I arrived at the billiard room.
- Q. Were you alone or accompanied?
- A. With my friend called Ah Nam.
- 30 Q. What happened on that occasion?
- A. That time there were quite a lot of people playing billiard and there were also many people waiting for a table.
- Q. Were you able to get a table?
- A. At that time I saw a good friend playing there. I asked him to yield a table to me.
- Q. Did he do so?
- A. Yes. He did. I then played.
- Q. Whilst you were playing, did something happen?
- 40 A. Yes. At that time a person nicknamed Luen Mo approached me and abused me with foul language.
- Q. Do you know his real name?
- A. No, I don't.
- Q. Was he alone or was he accompanied by others when he abused you?
- A. He was in the company of several other persons.
- Q. Do you know these people?
- A. I knew some of them but not all.
- Q. Who were the ones that you knew?

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A. One by the name Ah Sang and the other one called Ah Chun and the other one called Ah Dum.

Q. Do you see any of these men in court today?

A. Yes. One of them is here.

Q. Would you point him out?

A. That one.

COURT: You are pointing to the man in the middle?

A. Yes.

COURT: Pointing to the 2nd accused.

10

MR. LUNN: I am obliged.

Q. And by what nickname do you know him?

A. Ah Chun.

Q. How long have you known him?

A. One year and some months up to the time of the incident.

Q. Now you were telling us that the man you called Luen Mo was abusing you with foul language. What happened to them?

A. Then he struck me in my head with a billiard cue. I avoided his attack and I told him to shut up.

Q. What happened then?

A. Then I said to him, "We are very familiar to one another. Please don't be so noisy."

Q. What did you do?

A. Then he said to me, "We are all waiting for a table for a long time and now you have taken this table before we do. Are you angry with me or is there anything you cannot put it up with me?" 30

Q. What happened then?

A. Then he walked away.

Q. Did you leave the billiard room yourself?

A. Yes. Then I left the billiard room.

Q. And who left with you?

A. Ah Nam.

Q. Do you know Ah Nam's full name?

A. No, I don't.

Q. Is Ah Nam the man who later that night died? 40

A. Yes.

Q. What had he been doing during this argument between yourself and Luen Mo about the table?

A. Ah Nam was simply standing behind me. He didn't say anything at all.

Q. Having left the billiard room, where did the two of you go?

A. I went to a restaurant for tea.

Q. What was the restaurant called?

A. Kam Ma Wah.



Q. Did you meet anybody there that you knew?  
A. Yes. I saw several friends there.  
Q. Can you help us as to how many friends were there?  
A. About 6, about 6 to 7.  
Q. Did you discuss with them what had happened to you earlier in the billiard room?  
10 A. Yes.  
Q. Whilst you were at the restaurant, did you receive a call on your pager?  
A. Yes.  
Q. Did you make a telephone call as a result of that?  
A. Yes.  
Q. To the number that you were given from the paging company?  
A. Yes.  
20 Q. To whom did you speak on that telephone conversation?  
A. With a person called Ah Chun.  
Q. Is it the same Ah Chun you mentioned earlier as being the 2nd accused?  
A. Yes.  
Q. What was discussed between you?  
A. He told me to go up there. He said, "A moment ago you had a row with my big brother. That is not too serious. It will be quite all right. Come up here."  
30 Q. Where did you understand him to be inviting you to go?  
A. I understood him for calling me up to the billiard room.  
Q. What did you say to the invitation?  
A. At that time I said to him, "We are all very familiar with one another. It is not worth while to have a quarrel. If there is nothing wrong, then it is very good."  
40 Q. Did you agree to go up to the billiard room?  
A. Then I said to him, "If there is anything wrong, then have a talk downstairs. If it is quite all right, I will go up." He then told me to go up and so I did.  
Q. Did you go up together with your companions to the billiard room?  
A. Yes.  
Q. Can you recall now who was with you when you went up there?  
50 A. One called Peng Chai. One called Ah Sang. One called Ah Sap. One called Ah Nam. One called Ah Keung. One called Ah Ki. One called Ah Kei.  
Q. Are you able to tell us what their full names are or not?

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- A. No, I can't.
- Q. What time was it when you went up to the billiard room with your companions?
- A. Around 11 o'clock.
- Q. What happened when you arrived there?
- A. Upon our arrival Ah Sap and Ah Ki went up to Luen Mo.
- Q. Apart from Luen Mo, did you see any other people with him that you recognized?
- A. Yes. 10
- Q. Who was that?
- A. The two persons here.
- Q. By that you mean the two accused?
- A. Yes.
- Q. Were there any other men you knew as well?
- A. Yes. Some.
- Q. You said your two companions went up to Luen Mo, what did you do?
- A. At that time I had not yet met Luen Mo. I met Ah Chun first and I talked with him. 20
- Q. Ah Chun being the 2nd accused?
- A. Yes.
- Q. What was said between the two of you?
- A. At that time he said that his big brother wanted to see me. He told me to go up to him.
- Q. Big brother being Luen Mo?
- A. Yes.
- Q. Did you go up to see him?
- A. Yes. 30
- Q. What happened?
- A. Then he said to me, "Earlier on did I hit you?"
- Q. Did you say anything?
- A. Then I asked him, "Why you hit me a moment ago?" I was trying to ascertain the reason for his attack on me a moment ago.
- Q. Did he explain?
- A. In fact he didn't hit me, so I was taken by surprise of his question. 40
- Q. By that do you mean that you had managed to dodge the blow?
- A. Yes.
- Q. Did something intervene during this conversation with Luen Mo? Did something happen?
- A. As soon as the conversation finished, then he started to hit me.
- Q. Would you describe to my Lord and the jury how he hit you and with what?
- A. At that time he gave me a punch right in the front of my chest and I was also inflicted with three blows with a hammer from behind me. 50

Q. What else happened?  
A. At that time the situation was very confusing and I heard a voice shouting out twice to kill me.

Q. Can you recall what words were used?  
A. He said, "Kill Tai Ngan Chai first."  
Q. Whose nickname is Tai Ngan Chai?  
A. My nickname.  
Q. Did you see who shouted that?  
10 A. I didn't see that man shouting, but I recognized the voice.  
Q. To whom did the voice belong?  
A. It is the voice of Ah Chun.  
Q. Ah Chun is the 2nd accused?  
A. Yes.  
Q. Did you recognize any of your assailants?  
A. Yes.  
Q. Who was attacking you?  
20 A. The one who used a hammer to hit me is not present in court now, but the one who inflicted the blows with a cue is present here.  
Q. Would you point him out?

COURT: He is pointing to the 1st accused.

MR. LUNN: I am obliged, my Lord.

Q. Where upon your body did the 1st accused strike you with a billiard cue?  
A. Here.  
Q. Pointing to your chest.  
30 A. Yes.  
Q. How many blows did he deliver to your body?  
A. Just once.  
Q. Can you demonstrate for my Lord and the jury how that blow was delivered?  
A. At that time I was running and when he inflicted the blow, he was face to face with me.  
Q. Can you demonstrate how the blow was delivered?  
40 A. While I was running in front of him, he inflicted the blow as demonstrated.  
Q. You were demonstrating a thrust rather than a downward blow.  
A. Yes.  
Q. Did you see what was happening to your companions whilst this was happening to you?  
A. At that time it was very confusing, so I could not see things very clearly.  
50 Q. Well, even though you couldn't see things clearly - could you give us some idea of what was happening?

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- A. That time, it was very confusing and during the fight one couldn't see which one was attacking which one.
- Q. Were your companions fighting as well then - is that what you're saying?
- A. I beg your pardon?
- Q. Were your companions also involved in the fight?
- A. As I understand it, several of them were also assaulted. 10
- Q. Did you leave the billiard room?
- A. Yes, I was helped by my 2 companions - Ah Sup and Ah Kai. They supported me to run downstairs and we escaped.
- Q. Now, you've been describing to my Lord and the jury, the sequence of events in the billiard room during this fight - what was the lighting like to enable you to see what you described?
- A. The lighting was as usual. 20
- COURT: Well, none of us had been in the billiard room so we had don't know what "as usual" is.....
- A. A little bit dimmer than this court-room.
- Q. Did you have any difficulty in making out and identifying people?
- A. No, no difficulty in recognising people.
- Q. Now, you've told us that you left the billiard room. Did you go off to the Queen Elizabeth Hospital? 30
- A. Yes.
- Q. And were you there treated for your injuries?
- A. Yes.
- Q. What were your injuries?
- A. My head was broken in 3 areas and I received 10 odd to 20 stitches in hospital.
- Q. Apart from your head, were there injuries to your body?
- A. There was a bruise in this part of my body.
- Q. The point of your chest?
- A. Yes. 40
- Q. Following that treatment, did you discharge yourself from hospital?
- A. Yes.
- Q. Now, some days later on the 3rd of July, did you go along to Kowloon City Police Station?
- A. Yes.
- Q. And there did you see one of the men who detected you in the billiard room?
- A. Yes.
- Q. And who was that?
- A. Which one?

10 Q. I'm pointing at the first accused.  
A. Yes.  
Q. Now many months later, in February of  
this year, were you walking along the  
road in Mongkok when something happened  
to you in connection with this case?  
A. Yes.  
Q. What was that?  
A. Ah Chun.  
Q. What about Ah Chun?  
A. That time, Ah Chun was touring in the  
street with 2 friends and I recognised  
him as one of the attackers.  
Q. So what did you do?  
A. I then informed the policemen and as a  
result of my information, he was arrested  
by the police.  
Q. Thank you Mr. Yip

MR. LUNN: I have no other questions.

20 COURT: Yes, Mr. Van Buuren?

MR. VAN BUUREN: Thank you, my Lord.

XXN.BY MR. VAN BUUREN:

30 Q. Now, Mr. YIP, according to you, the  
earlier incident was simply between you  
and Mr. Luen Mo, is that right?  
A. Yes.  
Q. Now, did you know at that time that LUEN  
Mo was the natural brother of the  
second defendant LAU Sik-chun?  
A. Yes, I knew.  
Q. So is it your evidence that LUEN Mo came  
up to you at that first incident and  
simply struck you with a billiard cue?  
A. Yes.  
Q. Why should he do that?  
A. He blamed me for jumping the queue in  
taking a table.

COURT: That's Q-U-E-U-E, not the C-U-E.

40 Q. Yes, Mr. YIP. So there must have been  
some argument between you and LUEN Mo  
before you say he struck you with a cue -  
a billiard cue?  
A. We didn't quarrel much. He simply accused  
me with foul language for a short while  
and then he thrust the cue towards my head.  
Q. And when he used foul language on you, did  
you respond in the same language?

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- A. No.
- Q. Come, Mr. YIP. Are you seriously telling this court that you did not respond when LUEN Mo used foul language on you?
- A. Because I realised the situation that we were surrounded by several of his men and we knew one another very well. And it is not a matter worthwhile quarrelling that's why I told him to shut up.
- Q. And am I right that you thought since he had a number of his men around, you should go out and bring your own men into the billiard room? 10
- A. No, because we knew one another very well and that it is not worthwhile a quarrel. I didn't know whether he was waiting for a table or not. I had asked my friend to yield the table to me, and I did tell him that if he wanted to play first, I would give up the table to him. 20
- Q. So is it your evidence that your friends just happened to wait for you at the Nam Wah Resturant or happened to be there when you went to the Nam Wah Restaurant later?

INTERPRETER: Nam Wah ----

MR. VAN BUUREN: The name of that restaurant...

INTERPRETER: Tam Wah....Ma Way(?)....

- A. Yes.
- Q. How did they happen to be there?
- A. I knew that they often went there for tea, so I went to look for him. We did not have any pre-arrangement to meet. 30
- Q. You mean they were at "yum char" at 11 o'clock at the night?
- A. Yes. Usually, they did.
- Q. You didn't have to summon them to meet you at that restaurant?
- A. No, I didn't.
- Q. This telephone call you say you received on your pager, now that is not true, is it? 40
- A. I did receive a paging call.
- Q. And what number were you asked to call back?
- A. 962287.
- Q. ---What is that number---number of what place---that telephone number belongs to what place?
- A. This is the telephone number of the Good World Billiard Hall. I was told by the pager centre that a person called Ah Chun was looking for me. 50

Q. So is it your evidence that you called the billiard room and asked for Ah Chun?  
A. Yes.  
Q. How would they know who is Ah Chun?  
A. They called out. "Ah Chun - a phone call for you."  
Q. And how did you know that?  
A. I heard somebody shouting very loudly.  
Q. Now, Mr. YIP, isn't this the truth that you called the Billiard Room to find out whether Ah Chun and LUEN Mo were still there so that you could go back and attack them?  
A. No, because I had received a pager call, so I made a reply call to check out what he wanted to do with me.  
Q. I put it to you that that's not true at all, Mr. YIP.  
A. I'm telling the truth.  
Q. When you went back to the billiard room, did you take any weapons with you?  
A. No.  
Q. All your friends-----did they carry any weapons with them?  
A. No.  
Q. How do you know?  
A. We went up there because Ah Sup had said that he knew the other party very well, and that nothing wrong would happen. So we went up there unarmed.  
Q. I see.  
A. We didn't anticipate to have a quarrel or a fight.  
Q. Oh, I see - that if you expected a fight, you would have gone armed, is that correct?  
A. In fact, it didn't occur to us to have a fight with them. Then why shouldn't we bring along the weapons?  
Q. Mr. YIP, you and your friends - do you normally go to have fights with other gangs?  
A. Never.  
Q. Because your evidence - you appeared to know something about fighting and going armed and things like that?

INTERPRETER: Fighting and -----?

MR. VAN BUUREN: Going armed to have fights.

A. Now, I have heard a lot from you.  
Q. I see. So you mean that you are normally a very innocent person who doesn't take part in any fights or anything of that sort?

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- A. Never.
- Q. So when you went back to this billiard room, how did it happen that your friend Ah Sup and Ah Kai went up to LUEN Mo but you didn't go up to him, when you went up to the billiard room?
- A. Because at that time, Ah Chun was the one who was looking for me so I went to meet him first.
- Q. Yes, so how did it happen that Ah Sup and Ah Kai should go up to LUEN Mo? 10
- A. Because while we were going up in the lift, I was told by Ah Sup and Ah Kai that they knew the other party very well, so I gather it may be because of that reason, they approached LUEN Mo upon our arrival.
- Q. Mr. YIP, according to you, this was a minor quarrel, and you went back simply because Ah Chun asked you come back, right?
- A. Yes, that's correct. 20
- Q. Then why did it happen that Ah Sup and Ah Kai should go up to LUEN Mo, when it's simply a matter between you and Ah Chun?
- A. I also went up....I also went up.
- Q. You also went up to LUEN Mo?
- A. When I first arrived there, I didn't see LUEN Mo because there was a pillar between him and me, and at that juncture, I saw Ah Chun, so I came up to Ah Chun first.
- Q. What was Ah Chun doing when you went up to him? 30
- A. Ah Chun was holding a billiard cue.
- Q. You were playing billiards, isn't that right?
- A. By the time I was walking up to him, he stopped playing and he just stood there with a billiard cue in his hand.
- Q. What about the first defendant, Mr. YEUNG?
- A. When I first saw Ah Chun, I didn't see the first accused. It was at the time I was running, I saw him dashing out. 40
- Q. Now, how long have you known the first defendant, Mr. YEUNG?
- A. About 2 years.
- Q. You said the situation inside the billiard room at that time, was quite confusing?
- A. Yes.
- Q. What caused the confusion?
- A. At that time, there were about 50 to 60 persons in the area. So the situation was very complicated - was very confusing.
- Q. You see, according to your evidence, Mr. YIP, there was nothing confusing at all - at the beginning, you went up to him - you said - "LUEN Mo" - and you said, "I asked him why" -



"then I asked him, "Why did you hit me?"  
I was trying to ascertain the reason for  
the attack. In fact, he did not hit me.  
I was taken by surprise by his question.  
I had managed to dodge the blow. As  
soon as conversation finished, he  
began to hit me," and that was my note.

- A. Yes.
- 10 Q. But if it's simply a conversation between  
you and him, why should the others be  
concerned if he hit you - you pushed  
him aside and then the fight between the  
2 of you - why should there be a confusing  
situation?
- A. At that time the atmosphere was very poor.  
There were 50 to 60 persons. Amongst this  
group, there were many strangers. Earlier  
on, something had happened. I was then  
called to go up there. So please imagine  
20 when I was in this circumstances, how  
confusing my mind would be.
- Q. That I can appreciate, Mr. YIP, but my  
question to you is what caused the  
confusion inside the billiard room at that  
time? I suggest to you that what caused  
the confusion, was your command to your  
people to attack the group and there was  
a general fight, am I right?
- 30 A. At that time, I was being attacked and I  
have told you several times.
- Q. Yes, you told me several times, Mr. YIP,  
that there was a fight between you and  
Mr. LUEN Mo. How did the others get  
concerned in this fight?
- A. While I was being attacked by LUEN Mo, I  
was struck by someone from behind me. As  
to the other persons, I didn't know why  
they took part in the fight.
- 40 Q. And I put it to you, Mr. YIP, that this  
voice which you say shouted out words,  
"Beat you" or "Kill you" or whatever it was,  
that didn't belong to the second defendant?
- A. I disagree, because around that period, I  
almost met the 2nd Accused every day and I  
talked to him - on every occasion I met  
him, so I could recognise his voice.

(continued)

COURT: Yes, Mr. Lunn?

NO RE-XN by MR. LUNN

50 COURT: Thank you, would you care to go to the  
back of the court? We'll arrange for you  
to be paid, witness.....

(PAUSE. Witness released.)

MR. LUNN: My Lord, the next witness the Crown  
would call is TAM Man at page 21.

P.W.2 TAM Man

Affirmed in Puntì

XN. BY MR. LUNN:

(continued)

- Q. Do you live in Flat D on the 1st Floor of  
11, Luen On Street in Kwun Tong?
- A. Yes. 10
- Q. What's your occupation?
- A. Presently unemployed.
- Q. Now, on the 26th of June of last year, were  
you together with a number of your  
companions involved in an incident at the  
Good World Billiard Hall in Sai Yeung Choi  
Street?
- A. Yes.
- Q. Now, prior to going to the Billiard Hall,  
where had you spent the evening?
- A. How long before? 20
- Q. Well, what----let me ask the question this  
way----what time did you go to the Good  
World Billiard Hall?
- A. We went up there after we had taken tea.  
I started taking tea from shortly after  
9 o'clock and it took me about half an hour  
to finish the tea - so by the time I went up  
to the billiard room, it was about 10 o'clock.
- Q. Why would it be later than 10 o'clock?
- A. I can't remember the time very well, but it 30  
was around 10 o'clock.
- Q. Where have you been having tea?
- A. Kam Ma Wah.
- Q. With whom have you been having tea?
- A. Many persons.
- Q. Can you tell my Lord and the jury who they  
were - their names?
- A. I don't know their full names very well.
- Q. Were these the people that later you went  
together with to the billiard hall? 40
- A. Yes.
- Q. Can you help us as to what their nicknames  
were?
- A. Yes.
- Q. Would you be so good as to tell us ----
- A. One called Tai Ngan Chai.
- Q. Has he just left the court-room?
- A. Yes.

- 10 Q. Anybody else?  
 A. One called POON Chi-chuen. One called  
 chan Chun-kuen and one called LI To(?)  
 One called Ah Kai.  
 Q. Do you recall any others?  
 A. And Ng Fuk-nam.  
 Q. Is he the man who died later that evening?  
 A. Yes.  
 Q. How is it that you came to be having tea  
 in that restaurant at that time?  
 A. There was another person called Ah Sing.  
 Q. Will you put my question? (Pause, Mr.Lunn  
 addresses Interpreter)  
 A. Very often, we gathered at that place to  
 have tea.  
 Q. Had you gone there by arrangement or by  
 chance?  
 A. Not by the arrangement but it is the place  
 we used to join one another.  
 20 Q. How is it that it was decided that you  
 and your companions should go to the  
 billiard room?  
 A. Because a moment ago, Tai Ngan Chai had  
 travelled with somebody in the billiard  
 room, and then he went to the Nam Ma Wah  
 Restaurant to join us for tea. He told  
 us what had happened in the billiard hall  
 and asked our opinion as to what should be  
 done. We told him to have tea first, and  
 then I heard the pager buzzing.  
 30 Q. Whose pager is that?  
 A. Tai Ngan Chai's.  
 Q. And what did he do after the pager had  
 sounded?  
 A. Then Tai Ngan Chai went to make a reply  
 call to see who was looking for - upon his  
 return, he told us that a person called Ah  
 Chun wanted him to go up and to settle the  
 matter. Then Tai Ngan Chai asked whether  
 we would like to go up with him.  
 40 Q. And did you all agree to accompany him to  
 go to the Billiard Hall?  
 A. Yes.

MR. LUNN: My Lord, I wonder if that's a  
 convenient moment because I'm going to move  
 on to other evidence.

COURT: Very well. We'll adjourn now until 2.30 p.m.  
 members of the jury, thank you.

12.50 p.m. Court adjourns.

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(continued)

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2.35 p.m. Court resumes

Both accused present. Appearances as before.  
Jury present.

COURT: Mr. TAM Man, you're still subject to  
the affirmation you made this morning to  
tell the truth....

A. Yes.

COURT: Mr. Lunn, before we go on, there's  
something I forgot to mention to you 2  
gentlemen and to members of the jury... 10

MR. LUNN: My Lord ....

COURT: On Wednesday of this week, I will be  
hearing another case----an urgent case  
that I had to take--- so we won't be  
sitting on this case on Wednesday. Members  
of the jury, you won't be required in  
court on Wednesday.

MR. LUNN: My Lord, I'm grateful for the  
warning----I'll warn the witnesses.... 20

COURT: I was going to tell you about it this  
morning but I completely forgot - sorry  
about that.....

P.W.2. - TAM Man Affirmed in Punti

XN. BY MR. LUNN (cont'd)

Q. Mr. Tam Man you were telling us before  
lunch that the circumstances which led you  
and your companions to go up to the  
Billiard Hall--- the Good World Billiard  
Hall on the evening of the 26th of June of 30  
last year----

INTERPRETER: Sorry, I didn't get the first part  
because I was explaining what had just  
transpired.

MR. LUNN: I'll try again, Mr. Interpreter.

Q. Before lunch, Mr. Tam, you were telling  
us that circumstances which led you and  
your companions to go to the Good World  
Billiard Hall on the evening of the 26th  
of June last year---would you be so good as 40

	to tell my Lord and the jury what happened when you arrived at the Billiard Hall?	In the <u>High Court</u>
	A. We went----the 9 of us went up there by lift. We passed through the door of the lift and then there was another door leading to the premises. LUEN Mo was there by that door. He told Tai Ngan Chai to come up and then he started hitting Tai Ngan Chai.	Prosecution Evidence No.4 Tam Man Examination 10th August 1981
10	Q. Can you estimate for my Lord and the jury how long it was from the time of your arrival before Tai Ngan Chai was struck?	(continued)
	A. Immediately after our arrival Tai Ngan Chai was told to come up to him and the hitting started.	
	Q. With what was Tai Ngan Chai struck?	
	A. LUEN Mo inflicted the first blow and it developed into a fight----the situation became confusing....	
20	Q. Apart from Luen Mo and Tai Ngan Chai, did anybody else join in the fight?	
	A. Yes.	
	Q. And who was that?	
	A. There were too many persons around.	
	Q. How many of them joined in the fight?	
	A. About several tens.	
	Q. Who were they fighting? Who were they fighting - these several tens of people?	
30	A. There were 9 on our side and there were several tens on the other side so there was a total of 30 to 40 persons.	
	Q. Did you recognise any of the people on the other side?	
	A. I could recognise most of the people known to me, but I couldn't recognise the strangers----	
	Q. Well, what did you do when this fighting broke out?	
40	A. Sorry, before the fight ended, the deceased and I escaped and we got to the entrance of the lift---there were quite a lot of people entering the lift at that time. So the deceased and I was unable---were unable to get into the lift in time and we were caught up by the other parties.	
	Q. Was it your companions who were getting into the lift?	
	A. Yes.	
50	Q. Well, you say you were unable together with the deceased to get in----what happened to you 2?	
	A. At that time, I saw a person called Ah Chun and another person called Ah Sang dragging Ah Nam into the premises, and I was also	

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attacked by the others and as a result  
of the attack, I was jostled into the  
premises by the crown.

- Q. Do you see this Ah Chun or Ah Sang in  
court today?  
A. Only Ah Chun is present. Ah Sang is not  
here.  
Q. Will you point him out?  
A. The one sitting in the middle.

COURT: Yes, the witness points at the second  
accused. 10

(continued)

MR. LUNN: Obligated, my Lord.

- Q. You say that the second accused and Ah  
Sang dragged Ah Nam back into the billiard  
room?  
A. Yes.  
Q. Is this Ah Nam the deceased?  
A. Yes.  
Q. Did you see what happened to Ah Nam after  
he'd been dragged back by this accused and  
the other man into the billiard room? 20  
A. When I was jostled into the billiard room,  
I saw Ah Nam was being attacked by 3 to 4  
persons.  
Q. Can you describe the manner of this attack  
to my Lord and the jury?  
A. While I was being attacked by the others  
I saw Ah Nam was beaten up by several persons  
including Ah Chun and Ah Sang. I don't  
know the other persons. 30  
Q. Well, can you describe to us the way the  
beating took place?  
A. Because at that time, I myself was being  
attacked so I only saw a group of persons  
attacking him. It took place near the  
first table----near the entrance.

MR. LUNN: May the witness have a sight of  
Exhibit P4 please?

COURT: Yes.

(PAUSE. Witness views Exhibit P4) 40

MR. LUNN: (to interpreter): Could you fold the  
map in that way so that the details of the  
inside of the premises is displayed.

- Q. Mr. Tam, that is a plan drawn of the billiard  
hall, where this took place?

MR. LUNN: Mr. Interpreter, I wonder if you would be good enough to point out to the witness, the words "lifts" and "corridors" ----

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10

Q. You understand then, Mr. Tam, that one emerges from the lifts into that little corridor area and through an entranceway into the billiard hall. Were you able now to point to where you saw Ah Nam being attacked by these 3 or 4 people in this first table as you described it? Could you hold the plan up and demonstrate? You're pointing at the stools in front of Table 4.

(continued)

A. The place between table 5 and table 4...

Q. At that time was the deceased standing up or squatting or lying down?

20

A. When I was being attacked, the deceased was also being attacked. ..I was so attacked that I lost my consciousness...when I began my consciousness, I found the deceased in a lying position.

Q. And was he lying at the place you pointed to on the map---on the plan?

A. Yes, around that area.

Q. Now, where were you---perhaps you would be so good as to point on the plan---at the time when you say you saw the deceased being attacked within the billiard hall?

30

A. The deceased was attacked----

Q. Will you turn the map around so my Lord can see----

A. The deceased was attacked here and I was chased by the others so that I ran along this way and when I got there I fell unconscious.

COURT: Mr. Interpreter, would you mind explaining this to the jury please----

MR. LUNN: My Lord, I'm obliged.

40

(PAUSE. Interpreter shows plan to jury).

Q. The place where you fell unconscious is in the vicinity of table 3, is that right?

A. Yes, about that area.

Q. Now, when you recovered your consciousness, was the fighting still going on or had it finished?

A. When I regained consciousness, the fighting had already stopped.

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(continued)

- Q. Were you still able to see the deceased?  
A. Yes, yes. And I picked him up and helped him to get away.  
Q. Were you able to wake him? Were you able to wake him?

COURT: That is revive him if you were unconscious....

A. At that time, I was under impression that he was just falling unconscious. After I had picked him up and walked for a few paces, I noticed that there was no movement at all. It was at that juncture, I heard the sirens of the police patrol car. So I dropped him down, I ran away. When I reached the ground floor I was stopped by the police.

10

Q. And thereafter, did you receive medical treatment for 3 or 4 days at Queen Elizabeth Hospital?

A. At first, I was sent to the Kwong Wah Hospital and then transferred to Queen Elizabeth Hospital...

20

Q. Thank you.

COURT: Yes, Mr. Van Buuren?

Cross-  
Examination

XXN. BY MR. VAN BUUREN:

Q. Mr. Tam, when you arrived at the Kam Ma Wah Restaurant was Tai Ngan Chai already there?

A. He wasn't there.

Q. How long after you arrived there, did he arrive?

30

A. About several 5 minutes.

Q. Did someone ask you to come to the Kam Wah Restaurant?

A. No.

Q. When you arrived there, who were the other friends of yours who were already there?

A. Pang Pui Yuen, no others.

Q. And when did these others - POON Chi-chuen, CHAN Chun-kuen(?) LEE Keung, Ah Kai, NG Fuk-nam and Ah Sing, when did they arrive?

40

A. They arrived when we were having tea.

Q. What is your association with these other people - how did it come about that you associated with all those other people?

A. Previously, we used to meet at the Kam Ma Wah Restaurant. We talked with one another. We had tea together, that is a place of social gathering.

Q. Are you members of the same gang or same



club or same school or same association?  
 A. We had known one another for a very long time, at least 5 years.  
 Q. When this Tai Ngan Chai---incidentally, do you know Tai Ngan Chai's real name-- do you know Tai Ngan Chai's full name?  
 A. No, I don't.  
 Q. Is it a leader of your gang or your group?  
 10 A. No.  
 Q. Now who is the leader of your group?  
 A. Tang Kar.  
 Q. Who is Tang Kar?  
 A. I have not seen him for a long time.  
 Q. Was he there on that day on the 26th of June 1980 that evening - at that Kam Wah Restaurant?  
 A. No.  
 20 Q. How did it come about that he didn't arrive on that day---do you know how it came about that he was not there on that day, on the 26th evening?

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(continued)

INTERPRETER: Sorry, I didn't ---

Q. Do you know how it came about that he did not come on that evening to the Kam Wah Restaurant - you said all of you usually met there in the evening - do you know how it came about that Tang Kar was'nt there that evening?  
 30 A. Because he had not been at the Kam Ma Wah.  
 Q. You mean he was not summoned there that evening?  
 A. No - in fact, no.  
 Q. When Tai Ngan Chai arrived at that Kam Ma Wah restaurant that evening, what was his complaint - what was the gist of his complaint?  
 A. He said that he had quarrelled with LUEN Mo in the billiard room.  
 40 Q. Yes, and he said he discussed what should be done----I mean, did he tell you, for instance, --- 'Let's go back and beat them up' or something of that sort?  
 A. When Tai Ngan Chai arrived there, he told us that he had quarrelled with LUEN Mo and he asked what we should do.  
 Q. What was his suggestion?  
 A. He had not yet thought about the matter thoroughly when the pager buzzed.  
 50 Q. You see, Mr. Tan, you told his Lordship and the jury in your examination-in-chief that Tai Ngan Chai came to the Kam Wa Restaurant and

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(continued)

- discussed what should be done. "We asked him to have tea first." That suggested to me that he wanted something done and you told him, "Now, wait a minute. Sit down and have a cup of tea first."
- A. Yes, yes, told him to sit down and have a cup of tea first.
- Q. So what did he want to do - did he want to runaway or go back and beat LUEN Mo. What was his manner? What did he intend to do? 10
- A. Tai Ngan Chai arrived there. He wanted to discuss with us to find out a way to deal with ---
- Q. You mean he was determined to take revenge of some sort?
- A. I don't know what was in his mind, but after he had received the pager call, he made a reply to it and when he returned, he said Ah Chun was looking for him, telling him to go up and have the matter settled down, otherwise there would be trouble. 20
- Q. And why did you go with him?
- A. I used to associate with him. We played together.
- Q. But Mr. Tam, this was not your quarrel and according to your evidence, Mr. Tai Ngan Chai was going back to settle the matter. Why didn't you go along with him?
- A. At that time, after he had made a reply pager call, he said that Ah Cheung had said to him, that it was quite all right, and he was told to go up. So he asked us whether we would like to go with him and we agreed to go with him. 30
- Q. Now that is not the truth, is it, Mr. Tam. The truth is that you just went along with Tai Ngan Chai to take revenge on LUEN Mo and his friends in the billiard room --- Isn't that the truth? Isn't that the truth Mr. Tam? 40
- A. No.
- Q. Did you carry any weapon with you that evening?
- A. No.
- Q. Did your friends - your companions carry any weapons with them?
- A. No.
- Q. How do you know - how do you know - how do you know? 50
- A. Because the 9 of us were taking tea together on that night.
- Q. Yes, they could have knives in their waste-band - how would you know that they have had no weapons?

- 10 A. If we had the intention to go for a fight, then we would have made it clear - the members of our party, that we had weapons with us. But as a matter of fact, we intended to go there to settle down the matter. So we had no weapons with us.
- Q. So is this the position that if you were going to have a fight - you would have carried weapons with you that evening?
- 10 A. Yes.
- Q. What kind of weapon?
- A. It all depends.
- Q. For example?
- A. If there was anything suitable nearby?
- Q. A hammer for instance.
- A. No.
- Q. Now is it your evidence that as soon as Tai Ngan Chai went through the door of the billiard room, he was attacked by LUEN Mo?
- 20 A. Yes.
- Q. Can you on that map show his Lordship and the jury where this attack by Luen Mo on Tai Ngan Chai took place?
- A. That time, Tai Ngan Chai was here and Luen Mo was here. Luen Mo told Tai Ngan Chai to come up to him and then he struck Tai Ngan Chai.
- 30 MR. VAN BUUREN: I think it's upside down, My Lord. He's holding the map upside down. Can you show this to the jury please?
- (PAUSE. Interpreter shows map to jury).
- Q. Where were you at that time?
- A. I was standing nearby Tai Ngan Chai.
- Q. Where was the deceased at that time?
- A. He was standing next to me.
- Q. Now is it your evidence that Luen Mo asked Tai Ngan Chai to come up to him and as soon as Tai Ngan Chai came up to him, he gave him a blow, is that your evidence?
- 40 A. Yes.
- Q. Were any words exchanged?
- A. No.
- Q. Now, do you know why Luen Mo struck Tai Ngan Chai in that strange manner without saying a word?
- A. (I don't know?)
- Q. So when Tai Ngan Chai was struck by Luen Mo, what happened next?
- A. Then the situation was very confusing.

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(continued)

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(continued)

- Q. I know that Mr. Tam, but what did you do for instance? Did you take up a billiard cue and start hitting the people around you - or did you pick up any kind of weapon and start striking people around you - what happened?
- A. No.
- Q. What did you do after Luen Mo struck Tai Ngan Chai. What did you yourself do?
- A. The deceased and I were retreating to the lift lobby. 10
- Q. That was a very close distance that was just behind you - wasn't it?
- A. To the front door.
- Q. Yes, Mr. Tam. That must have taken you about 2 seconds to get to that door--- did all this happen in 2 or 3 seconds? What did you do after you say Luen Mo struck Tai Ngan Chai?
- A. After Luen Mo had inflicted the first blow on Tai Ngan Chai, other persons belonging to Luen Mo's group also rushed towards us. Seeing that happen, the deceased and I were trying to escape. With those persons chasing after us, the deceased and I then held the door of the entrance in order to prevent those persons inside from rushing towards us, and the lift at that time, had not yet arrived. 20
- Q. Do you mean that you were guarding the door to prevent the people inside from escaping? 30
- A. No.
- Q. What were you doing holding the door?
- A. To avoid being beaten up.
- Q. There were lifts, there were staircases there, why didn't you run up the staircase or down the staircase?
- A. Because the rear exist of the staircase was locked. 40
- Q. Look at the plan, Mr. TAM, and tell his Lordship and the jury which door you are talking about, and which rear exit of staircase was locked.
- A. At that time we were being attacked and we escaped through this doorway, we held the door in a closing position.
- Q. Yes, you have told us that before, Mr. TAM. But just now you said that you could not - "I did not go upstairs nor downstairs because the rear exist of the staircase was locked", and I am asking you what are you talking about. 50

A. I mean when the attack was taking place, most of them scattered around here, so despite of the fact there was an exit here, we could not get through the wall of human beings.

Q. Mr. TAM, you said you were outside on the corridor keeping the doors closed, is that right?

A. Yes.

10 Q. And you said before that you had been standing near table 4.

A. No.

Q. Now isn't that your evidence, that you were standing behind Tai Ngan Chai near table 4?

A. No, when the door was opened, we were somewhere near here, not on the other side of the table.

20 Q. Yes, all right, all right, that is where you were, so all you had to do was to run through the entrance, but now you tell his Lordship and the jury that you wanted to go somewhere on the right.

COURT: He did not, I do not think. We are at cross-purposes. He answered your question when you asked him why didn't he run down the stairs, he said because the rear exit door was locked. Then you asked him to indicate where that entrance was where he was holding the door, he indicated that. And then you asked him where was this rear exit. Then you asked him about, "You told us some people were standing near the entrance", and it appears that he seems to think that which is marked "Smoke Lobby" is some sort of entrance or exit.

30

MR. VAN BUUREN: That appears to be near table No.9 my Lord. My question was if he was on this side of the table and he was running towards the corridor, why couldn't he take the staircase that was closest to him.

40

Q. Mr. TAM, do you understand what I am trying to tell you? You said that you were somewhere near table 4 close to the entrance, and then you said that you could not escape from the right hand side near table No.9 because there was a wall of persons. So my question to you is, did you have any other means of escape from that spot where you were?

50

A. At that time it did not occur to me whether there was any other exit. I only ran towards where there was a way to go.

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(continued)

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(continued)

- Q. Then how did you know that the exit was locked? Forget it, Mr. TAM, forget it.  
A. I want to know which exit you are talking about.

COURT: Counsel is asking you about the rear exit that you have mentioned earlier.

- A. By experience, because we had been playing billiards for some time in that place, I knew that the doors were always kept locked, so I only ran through this exit. 10

- Q. Yes, you were playing billiards there often, you knew the 2nd defendant, didn't you, Ah Chun?

A. Yes.

- Q. Now you made a statement to the police, you remember, some time soon after the incident?

A. Yes.

- Q. And isn't it correct that in that statement you did not mention a word about Ah Chun? 20

A. Because at that time I believed that the deceased was only unconscious, and I was in the hospital at that time, I did not want to give a statement to the police.

- Q. Now when did you give a statement to the police, Mr. TAM, do you remember?

A. When I was in hospital.

- Q. How many days after the incident?

A. On the same night.

- Q. Do you remember whether you mentioned Ah Chun at that time to the police? 30

A. No mention of him on that night.

- Q. I have no further questions.

NO RE-XN. BY MR. LUNN

No.5  
Chan Chun-ki  
Examination  
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No. 5

CHAN CHUN-KI

MR. LUNN My Lord, the next witness I propose to call is at page 22, CHAN Chun-ki.

P.W.3. - CHAN Chun-ki (Affirmed in Puntti)

XN. BY MR. LUNN:

- Q Do you live at Tin On Building, Flat F on the 2nd Floor in To Kwa Wan?

A. Yes.

Q. Is your nickname Ah Ki?  
A. Yes.  
Q. What is your employment?  
A. Bartender.  
Q. Now on the 26th of June of last year, were you involved in an incident at the Good World Billiard Hall, Sai Yeung Choi Street?  
A. Yes.  
10 Q. Prior to going to that billiard hall, where had you spent the evening?  
A. I had been in the Kam Ma Wah Restaurant, I had tea there.  
Q. And had you companions with you at that time at the Kam Ma Wah Restaurant?  
A. Yes.  
Q. Whilst you were there, were you joined by other companions?  
A. Yes.  
20 Q. Tell us first of all, as far as you can remember, who were the companions who were there with you originally, before you were all joined?  
A. When I first arrived there, there was no other companion.  
Q. By whom were you joined?  
A. Tai Ngan Chai, Ah Nam, Ah Kei and Ah Man.  
Q. Well, is Ah Man the witness who had just left the witness box?  
30 A. Yes.  
Q. And is Ah Nam the man who died later that evening?  
A. Yes.  
Q. Was there a discussion at the table as to what had happened to Tai Ngan Chai earlier that evening?  
A. Yes.  
Q. What was the gist of the discussion?  
A. There was no suggestion....

40 COURT: I think you missed the question, Mr. Interpreter, it was what was the gist of the discussion.

A. At what stage?  
Q. Was there any topic of note that came up that evening apart from the price of prawns? Was there any topic that was noteworthy that came up during the evening?  
A. Are you referring to the stage after Tai Ngan Chai had raised about what had happened to him?  
50 Q. What did Tai Ngan Chai tell you had happened to him?  
A. Tai Ngan Chai told me that he had a quarrel with Luen Mo because both of them wanted to use the table.

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No.5  
Chan Chun-ki  
Examination  
10th August  
1981

(continued)

In the  
High Court

Prosecution  
Evidence

No.5

Chan Chun-ki  
Examination  
10th August  
1981

(continued)

- Q. Did you know Luen Mo?  
A. Yes.  
Q. Do you know what his full name is?  
A. No.  
Q. Did you reveal the fact that you knew Luen Mo?  
A. Yes.  
Q. And was any plan or action agreed upon?  
A. We agreed to go up to talk with Luen Mo in order to settle the matter to prevent any further quarrel. 10  
Q. Prior to going up to the billiard room, did anything happen in connection with Tai Ngan Chai?  
A. At that time there was a phone call at the counter for Tai Ngan Chai. Tai Ngan Chai went up to receive the phone call, and when he returned he said the call was from Luen Mo's brother. He wanted Tai Ngan Chai to go up and to talk and settle the matter. 20  
Q. Can you help my Lord and the jury as to how this person would know where to find Tai Ngan Chai in order to telephone him?  
A. Because prior to that the pager of Tai Ngan Chai sounded, and he made a reply call.  
Q. Are you saying that there were two telephone conversations?  
A. Once.  
Q. You say the pager sounded, what did Tai Ngan Chai do when the pager sounded? 30  
A. He left the table where we were sitting around for a while.  
Q. Did you see what he was doing whilst he was away from the table?  
A. I knew that he was going to listen to a phone call, but I did not see what he was actually doing.  
Q. When he came back to the table, what did Tai Ngan Chai say?  
A. He said that Luen Mo's younger brother Ah Chun wanted him to go up to the billiard room to talk with him and settle the matter that had happened a moment ago. 40  
Q. Do you know this Ah Chun yourself?  
A. Yes.  
Q. Do you see him in court today?  
A. Yes.  
Q. Would you point him out to my Lord and the jury?  
A. The one in the middle. 50

COURT: Points to the 2nd accused.

- Q. Following the return of Tai Ngan Chai to the



table, did there come a time when all of you left and went together with him to the billiard hall?

A. Yes.

Q. Can you describe to my Lord and the members of the jury what happened when you entered the billiard hall?

A. I went out of the lift first. I came up to Luen Mo. I said to him, "Put an end to what happened between you and Tai Ngan Chai. It is a trivial matter, not worthwhile the quarrel." Then Luen Mo said to me, "Ah Ki, none of your business. Don't put your nose into it. Tell Tai Ngan Chai to come up and talk to me." Then Tai Ngan Chai came up to Luen Mo and said to him, "Luen Mo, we should not quarrel just for a table." Then Luen Mo said to him in reply, "Tai Ngan Chai, don't you think that I dare not hit you." Soon after that, Luen Mo inflicted one blow on Tai Ngan Chai. There were friends brothers of Luen Mo, and they picked up billiard cues and then started to fight in that confusion. I shouted at them to stop to fight, but I was unsuccessful. Some of the friends and brothers of Luen Mo said to me, "Ah Ki, none of your business, go away." And then they pushed me to the rear staircase. When I looked over my shoulder, I saw the head of Tai Ngan Chai was bleeding. He was running towards me.

Q. Perhaps I could just stop you there. You told us that you saw Luen Mo deliver a blow to Tai Ngan Chai. Did you see anybody else struck Tai Ngan Chai?

A. I saw Ah Chun, Ah Sang and Ah Keung, the three of them I can remember now.

Q. Can you describe to my Lord and members of the jury what you saw Ah Chun doing?

A. After Luen Mo had inflicted one blow on Tai Ngan Chai, Ah Chun then rushed towards Tai Ngan Chai and beat him up.

Q. Did he beat him up with his fist or with any weapon?

A. It was very confusing, I did not see it very clearly.

Q. Is this Ah Chun the 2nd accused that you said that you knew earlier?

A. Yes.

Q. Now apart from seeing the 2nd accused fighting with Tai Ngan Chai, did you see him fight with anybody else?

A. While I was escaping with Tai Ngan Chai at the rear staircase, I saw Ah Chun striking

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(continued)

Ah Sap with a cue. Ah Sap's full name is POON Chi-chuen.

- Q. Can you describe to my Lord and the jury how that blow was delivered?
- A. He inflicted the blow right in the front, and then he stepped back. He repeated the same thing several times.
- Q. Were these blows delivered as thrusts or as broad strokes?
- A. Strokes. 10
- Q. Did you then descend this rear staircase with Tai Ngan Chai and others and escaped from the building?
- A. Yes.
- Q. Before you were able to escape from the building, did you have to do something?
- A. Yes.
- Q. What was that?
- A. At that time, while POON Chi-chuen was helping Tai Ngan Chai to descend the staircase for two to four flights, while I was holding the door in a closing position, then I heard that Tai Ngan Chai had fallen unconscious. I came up to help him pick him up together with Ah Sap, that is POON Chi-chuen. When we got to the ground floor level, we found that the door was locked. So it was Ah Sap, POON Chi-chuen, who smashed the glass pane of the door, and we escaped through the gap - the broken gap. We went to the hospital. 20 30
- Q. Now some days later, in fact on the 3rd of July of last year, did you go along to Kowloon City Police Station?
- A. Yes.
- Q. Were you there asked to see if you could identify any men who had been in the billiard room on the night of the 26th June?
- A. Yes.
- Q. And did you there see somebody you knew and recognised as having been there? 40
- A. Yes.
- Q. Who was that?
- A. This one.

COURT: The witness points to the 1st accused.

- Q. By what name do you know the 1st accused?
- A. Hung Chai.
- Q. What, if anything, had you seen the 1st accused do on the evening of the 26th June whilst you were in the billiard room? 50
- A. Before the attack on us had taken place, I saw him standing there holding a billiard cue in his hand.

- |    |                                |  |                                 |
|----|--------------------------------|--|---------------------------------|
|    | Q.                             | Could you see whether or not he was playing billiards?   | In the<br><u>High Court</u>     |
|    | A.                             | He was not playing billiards.  |                                 |
|    | Q.                             | Apart from that observation, did you see him at any stage in the ensuing melee at the billiard room?   | Prosecution<br>Evidence<br>No.5 |
|    | A.                             | Are you talking about something happened before?   | Chan Chun-ki<br>Examination     |
| 10 | Q.                             | I am asking you after the fighting started, did you see this 1st accused at all?   | 10th August<br>1981             |
|    | A.                             | No.  |                                 |
|    | Q.                             | Now many months later, in February this year, in fact on the 27th of February, did you attend an identification parade at Mongkok Police Station where you were asked to see if you could identify anybody who had been an assailant, anybody who had taken part in the fighting at the billiard room?                                     | (continued)                     |
| 20 | A.                             | Yes.   |                                 |
|    | Q.                             | Did you pick anybody out?  |                                 |
|    | A.                             | Yes.   |                                 |
|    | Q.                             | Who was that?  |                                 |
|    | A.                             | The 2nd accused.   |                                 |
|    | Q.                             | Thank you very much.   |                                 |
|    | <u>XXN. BY MR. VAN BUUREN:</u> |  | Cross-<br>Examination           |
| 30 | Q.                             | Mr. CHAN, at the Kam Ma Wah Restaurant that evening, the evening of the 26th June, 1980, you were there, you said, when some other people joined you, they were Tai Ngan Chai, Ah Nam, Ah Kei, Ah Man. You said that Ah Man was the previous witness. Do you know how it came about that they should come to that restaurant that evening? |                                 |
|    | A.                             | Yes.   |                                 |
|    | Q.                             | How did it come about that they came to the restaurant that evening?   |                                 |
| 40 | A.                             | On that day, I had time off, so I went to the cinema with POON Chi-chuen. We also strolled in the street, poking about Kam Ma Wah Restaurant. It was a place of our social gathering, we used to meet there, so we happened to be there on that day.   |                                 |
|    | Q.                             | You mean you, all of you, belonged to the same group?  |                                 |
|    | A.                             | We were friends.   |                                 |
|    | Q.                             | What kept all of you together, what was the common bond?   |                                 |
| 50 | A.                             | As friends, very often we played mahjong, we gambled, we had tea together.   |                                 |
|    | Q.                             | Was there an understanding if someone had  |                                 |

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(continued)

- attacked one of you, all of you would defend him, was there some sort of an understanding like that?
- A. I do not follow you.
- Q. I mean, you were good friends, and was there an understanding that if one of your group was assaulted or hit by someone else, all of you would go to defend him or to take revenge?
- A. No, I would not. 10
- Q. Then why did you go with Tai Ngan Chai to the billiard hall later that evening?
- A. Because I had known Tai Ngan Chai for several years, and I also knew Luen Mo. I went there with a view to settle down the matter between them.
- Q. Oh, you mean you were the peace-maker.
- A. You may say so.
- Q. What about the others, why did they go? Were they all going as peace-makers, the other members of your group? 20
- A. That is my feeling. We did not want that there was trouble in the billiard hall, we did not want to have a fight.
- Q. There were nine of you, weren't there, nine of you who went up to the billiard hall that evening?
- A. I cannot remember how many.
- Q. You mean there could have been more?
- A. Not more than nine, several. 30
- Q. Were you armed? Did you have any weapons with you?
- A. No.
- Q. What about your friends, your companions that evening, did they have any weapons with them?
- A. We all went up there empty handed.
- Q. To make peace.
- A. Yes.
- Q. But you said it was a trivial matter, why was it necessary to make peace for a trivial matter? 40
- A. Because on the part of Luen Mo, he had touched Tai Ngan Chai with a billiard cue, and he also abused him with foul language. I knew both parties, I did not want that there was any grudge, any conflict between them.
- Q. You mean Tai Ngan Chai had lost face, and you thought that it might get out of hand. 50
- A. No.
- Q. Did Tai Ngan Chai appear to be angry when he came to the Kam Ma Wah Restaurant?
- A. He did not appear to be angry, he only talked about the matter.

	Q.	Did he make any suggestion as to what he should do about it?	In the <u>High Court</u>
	A.	No.	
	Q.	You had been to that billiard room many times, hadn't you?	Prosecution Evidence
	A.	Yes.	No.5
	Q.	And you know these two defendants also quite well, don't you?	Chan Chun-ki
	A.	I did not know them very well, but I knew them.	Cross- Examination
10	Q.	What do you mean by "him"?	10th August 1981
	A.	The two of them.	
	Q.	You knew, for instance, that the 2nd defendant was the younger brother of Luen Mo, didn't you?	(continued)
	A.	Yes.	
	Q.	In your evidence-in-chief you said, "We decided to go up to settle the matter before anything happened." What did you mean by that? What did you expect to happen?	
20	A.	I fail to catch....	
	INTERPRETER: As interpreter, I must comment on this. He said went up there to prevent something happen, not before anything happened. Otherwise he will lose track.		
	Q.	If you meant you went there to prevent anything happening, you must have had something on your mind that something was going to happen. Did you expect some kind of gang war?	
30	A.	Because at that time the younger brother of Luen Mo, Ah Chun, made a phone call to Tai Ngan Chai asking him to go up. At that stage I did not anticipate that it would end up in that situation.	
	Q.	Now come, Mr. CHAN, you know that that is not true, that you made this up, this phone call business, you made this up to justify your going up there with your friends and Tai Ngan Chai to take revenge against Luen Mo, isn't that the truth?	
40	A.	I disagree with you.	
	Q.	What is Tai Ngan Chai's pager number?	
	A.	1697.	
	Q.	Is that the number now?	
	A.	I do not know what is the number now.	
	Q.	How do you remember this number so well, this happened about a year ago?	
50	A.	Because during that period I had frequent contact with him, so I remember this number very well.	

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(continued)

- Q. Did any of your other friends know this number, do you know? Any other friends of your group, did they know this number, do you know?
- A. Yes, should be.
- Q. Now you said that you and Tai Ngan Chai escaped from this billiard hall down a staircase. Now can you look at P.4 and indicate which staircase you are talking about? 10
- A. I cannot read English. Here. (Interpreter: Witness pointed to the place marked "1.20 m".)
- Q. That is above table 9, is that right?
- A. Yes.
- Q. And it is your evidence, is it, that you and Tai Ngan Chai and POON escaped down that staircase?
- A. Yes.
- Q. Now how long after you saw Luen Mo inflict one blow on Tai Ngan Chai did you run down the staircase? A few minutes, a few seconds? 20
- A. About one minute only.
- Q. Now there must have been a number of people milling around that area, the area around table 9, table 4 and table 3, is that right?
- A. Yes.
- Q. I put it to you that you never saw Ah Chun strike POON with a billiard cue or anything as you said in your evidence-in-chief. "While we were escaping at the rear staircase, I saw Ah Chun strike POON", I put it to you that that is not true. 30
- A. I disagree with you.
- Q. Did you say, "While I was escaping at the rear staircase", according to my note, "I saw Ah Chun strike POON"?
- A. Yes, I said that. 40
- Q. But I thought POON escaped with you?
- A. Yes.
- Q. And you took one minute to go out. How did it happen that while you were escaping POON was being struck by Ah Chun? How did it happen? You were escaping with POON and Tai Ngan Chai, and you said, "While I was escaping, I saw Ah Chun strike POON." How did it happen?
- A. It did not take me one minute to escape. 50  
At that time I was standing near the doorway.
- Q. Which doorway are you talking about?
- A. The door leading to the rear staircase. I was standing here in front.
- Q. Can you point out to his Lordship and the jury? Hold it up.

COURT: You think that is the doorway?  
A. No, this is the wall, this is the entrance.  
COURT: Oh, that part there, where it is marked - it says in English "Smoke Lobby". You did not go out through the same door that you entered?  
A. That is right.  
Q. Now what were you trying to say, that you did not take one minute to escape, that you were standing somewhere - where were you standing?  
A. Here.  
Q. What were you standing there doing?  
A. Because I had been pushed by Luen Mo's men telling me to go away.  
Q. Who was the friend who pushed you?  
A. A person nicknamed Char Chai.  
Q. I have no further questions.

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(continued)

NO RE-XN. BY MR. LUNN

20 COURT: I will adjourn now until 10 a.m. tomorrow.

4.25 p.m. Court adjourns.

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10.06 a.m. Court resumes

Both accused present. Appearances as before.  
JURY PRESENT.

COURT: Good morning. Yes, Mr. Lunn?

30 MR. LUNN: My Lord, I propose to interpose a witness in the flow of evidence at this stage and that is a police officer CHEUNG Hing-lee whose the 22nd witness: in the back of the indictment---appears at page 42 in the depositions...my Lord, I hope that his evidence will be very short and he'll be able to go about his duties.

P.W.4 - CHEUNG Hing-lee (Interposed)  
Affirmed in Punt

XN. BY MR. LUNN:

Q. Are you a Detective Sergeant 105 in the Royal Hong Kong Police Force, Mr.Cheung?

A. Yes.

Q. And now as in June of 1980, are you attached to the Identification Bureau of the Royal Hong Kong Police Force?

10

A. Yes.

Q. And as part of your duties do you attend the scenes of crimes and try to develop fingerprints?

A. Yes.

Q. Now on the 27th of June of last year, shortly after midnight, did you attend premises on the 8th floor of No.80 Sai Yeung Choi Street, Mongkok?

20

A. Yes.

Q. And during the course of your duties there, were you successful in identifying and lifting fingerprint impressions on a billiard cue that had been found on the 8th floor of that building?

A. Yes.

Q. Would you have a look at Committal Exhibit P12, this is the billiard or broken billiard cue-----

30

MR. LUNN: My Lord, can it be marked for identification?

COURT: Yes, it can be marked PP12.

Q. Were you there able to see marks that you left on the billiard cue indicating the area upon which you found and lifted fingerprints?

A. From this part of the cue marker I found the fingerprint, and I marked it as KLP 3059/80F.

40

Q. Have you marked the billiard cue itself with 2 black lines - with a felt-tipped pen to indicate the area where the fingerprint was lifted?

A. Yes, yes. And then I lifted the fingerprint impression with adhesive tape. (PAUSE. Exhibit passed to court for examination.)



COURT: I see.

MR. LUNN: And I wonder if the jury might have  
a look at it?

Q. Would you now have a look at Committal  
Exhibit P6?

MR. LUNN: My Lord, might that also be marked  
for identification?

Q. Is that a piece of plastic upon which  
you've fixed a piece of tape, adhesive  
tape, on which you lifted the fingerprint?

10

A. Yes.

COURT: In other words, does that adhesive tape  
now contain the fingerprints that you  
found on that particular billiard cue?

A. Yes.

COURT: That can be admitted as Exhibit P6.

Q. And, in fact, are the reference numbers  
you gave us written on the piece of plastic?

A. Yes.

20

Q. Now the following day, the 28th of June,  
1980, did you hand that piece of plastic  
together with the adhesive tape containing  
the fingerprints that you've lifted to a  
Detective Station Sergeant Chan Lam-kan at  
the Identification Bureau of the Royal Hong  
Kong Police Force Headquarters?

A. Yes, I did.

COURT: So I jumped the gun having those admitted  
as an exhibit. I don't think it's going to  
matter though....

30

MR. LUNN: My Lord, with respect, I think your  
Lordship is right....

COURT: I always like to hear I'm right.

MR. LUNN: This witness is the witness that  
initiates the exhibits---my Lord, in any  
event I propose to (re-examine?) at a later  
stage-----

COURT: Mr. Van Buuren?

NO XXN. BY VAN BUUREN

40

COURT: Thank you, Sergeant. You may leave.  
(PAUSE. Witness released.)

POON CHI-CHUEN

Prosecution  
Evidence

No.7  
Poon Chi-chuen  
Examination  
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MR. LUNN: My Lord, the next witness I propose to call - and I have reverted to the earlier chain of witnesses is POON Chi-chuen, who is at page 23 of the depositions.....

P.W.5. - POON Chi-chuen Affirmed in Puncti

XN. BY MR. LUNN:

- Q. Mr. Poon, do you live at No.181 Matauwei Road on the 8th Floor, in Tokwawan? 10
- A. Yes.
- Q. And what is your occupation?
- A. Furniture.
- Q. By that you mean a furniture manufacturer?
- A. Carpenter.
- Q. Now, on the 26th of June of last year, were you present at an incident in the Good World Billiard Hall at Sai Yeung Choi Street? 20
- A. Yes.
- Q. Now prior to going to the Good World Billiard Hall, where did you spend the earlier part of the evening?
- A. I had tea with a friend in the Kam Ma Wah Restaurant.
- Q. When had you gone to the Kam Ma Wah Restaurant?
- A. Some time after 10 o'clock.
- Q. And with whom did you have tea at that restaurant? 30
- A. With several friends.
- Q. Can you tell my Lord and the jury the names of those friends?
- A. Ah Kei, Ah Nam, Ah Man, Ah Kai and Ah Keung, and then I met Tai Ngan Chai.
- Q. When you say you met Tai Ngan Chai, was that the first time you met him?
- A. No.
- Q. Well, what do you mean you met Tai Ngan Chai? 40
- A. While we were having tea, we were joined by Tai Ngan Chai.
- Q. Now, after Tai Ngan Chai joined you, was there some conversation about what had been happening to him earlier in the evening?
- A. Yes.
- Q. And what did you learn had been happening to him?

A. He said that he--- while he was playing  
 billiards, he scrambled with someone for  
 a table, and it developed into a dispute.  
 Q. Did he identify with whom this dispute  
 had taken place?  
 A. With a person called Luen Mo.  
 Q. Did you know Luen Mo?  
 A. Yes.  
 Q. Now, we know that later in the evening,  
 you were in the Good World Billiard  
 Room or Billiard Hall yourself. How is  
 it that you came to be there?  
 A. While we were having tea, Tai Ngan Chai  
 mentioned about what had happened to  
 him, and it was right at that time----  
 his pager sounded. Then he made a reply  
 pager call and when he returned, he said  
 a person called Ah Chun was looking for  
 him, wanting him to go out to the  
 billiard room.

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(continued)

COURT: Members of the jury, I think I should  
 mention to you at this stage, when he says  
 that Tai Ngan Chai said to the person  
 called Ah Chun and said such and such a  
 thing, that is not evidence that Ah Chun,  
 for instance, did say such and such a  
 thing. It's hardly or evidence that Tai  
 Ngan Chai----it's not evidence that Ah  
 Chun, for instance, did make the telephone  
 call...

MR. LUNN: My Lord, yes.

Q. Who did you understand to be Ah Chun?  
 A. Yes.  
 Q. Who - did you know Ah Chun?  
 A. This one.  
 Q. You're pointing at the 2nd Accused?  
 A. Yes.  
 Q. Now, after Tai Ngan Chai had imparted this  
 information, what was decided to do--for  
 the rest of you to do?  
 A. He said that Ah Chun had passed a message  
 to him from Luen Mo saying that because  
 all of us were very familiar with one  
 another, and should not have any grudge,  
 so Luen Mo wanted him to go up to talk to  
 him and to settle the matter.  
 Q. Well, was it decided to accept that  
 invitation?  
 A. Yes, because we had in mind that we knew  
 Luen Mo and Ah Chun.

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(continued)

- Q. How many of you went up to the billiard hall?
- A. 7
- Q. Was that all of the number that had been having tea together?
- A. That's correct.
- Q. Why did all of you go rather than simply Tai Ngan Chai?
- A. Because we believed that it is a matter of trivial nature, and that because we knew the other party, so we had in mind to go up to be peacemakers. 10
- Q. Now, would you describe to my Lord and the jury, what happened when you reached this 8th floor billiard hall?
- A. We went up to the billiard hall by lift. Once we came out from the lift, we were surrounded by a group of persons - about 20 to 30 persons. I saw Luen Mo standing in the centre. Then a friend of mine and I came up to him with a will to speak to him, to forget the matter and put an end to it. 20
- Q. What was his friend's name?
- A. Ah Kai.
- Q. And what's your nickname?
- A. Ah Sap.
- Q. And did you speak to Luen Mo?
- A. No, I didn't. It was Ah Kai who spoke to him.
- Q. And what was the result of that conversation?
- A. Luen Mo said, "None of your business. Tell Tai Ngan Chai to speak to me." 30
- Q. Now, apart from Luen Mo, did you recognise any of these other men - 20 to 30 men?
- A. Some.
- Q. Can you tell us what their names were?
- A. Some of them; I know them by their faces because they frequented the billiard halls, but I do not know their names.
- Q. You've told us that you know the 2nd Accused by the name of Ah Cheung, was he there? 40
- A. Yes.
- Q. Where was he in relation to Luen Mo?
- A. He was somewhere with some persons inbetween him and Luen Mo.
- Q. Well, where was he in relation to Tai Ngan Chai?
- A. Are you talking about Ah Chun or Luen Mo?
- Q. I'm talking about Ah Chun. How was Ah Chun in relation----?
- A. About 6 to 7 feet away. 50
- Q. Now, you told my Lord and the jury that Luen Mo asked to speak to Tai Ngan Chai. Did that happen?
- A. Yes.

Q. Would you describe to my Lord and the jury what did happen?

A. Then Tai Ngan Chai came up to Luen Mo. Tai Ngan Chai said that there was no reason for us to have a dispute. Then Tai Ngan Chai said, "There is no reason that you should beat me up." Then Luen Mo said, "If I do beat you up, then how about it"? Then he inflicted one punch on the chest of Tai Ngan Chai. Then Tai Ngan Chai held Luen Mo in his arms, and it developed into a fight. People came up to us and beat us up. Then I saw a person holding a hammer and struck Tai Ngan Chai's head with the hammer. I didn't see the others being beaten up because they had gone to the other side of the premises. Then with several other persons, I retreated to the side of the wall and stood there. The beating up lasted for some time, and then I saw Tai Ngan Chai coming up towards us with blood all over his head and face. I had been injured at that stage. With Ah Ki and Ah Kei, I helped him to escape through the rear staircase. When we reached the ground floor, we found that the rear door was locked. There was no way to escape. Seeing that broken, I broke the window and escaped through the window at the rear lane. We left the scene and Ah Kai helped Tai Ngan Chai to the hospital.

Q. During the fight, apart from seeing somebody strike Tai Ngan Chai with a hammer, did you see any other kind of weapon being used?

A. Yes.

Q. What was that?

A. Some billiard cues.

Q. And were you yourself attacked at all at any stage in the billiard hall?

A. Yes, but I dodged away.

Q. Did you see who was attacking you?

A. Ah Chun.

Q. By that you mean the 2nd Accused?

A. Yes.

Q. At what stage in the incident, were you attacked by the second accused?

A. When I was standing by the side of the wall with several friends.

Q. How soon before your escape down the stairs was this attack?

A. About one minute or so. It happened just in a moment

In the  
High Court

Prosecution  
Evidence  
No.7  
Poon Chi-  
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(continued)

In the  
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No.7

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(continued)

- Q. Was any weapon involved?  
A. He used a billiard cue.  
Q. Now, apart from identifying Luen Mo was one of the men who attacked Tai Ngan Chai, did you recognise any of the other men?  
A. No.  
Q. Now some months later in February of this year, in fact, on the 27th of February, did you attend an identification parade at Mongkok Police Station? 10  
A. Yes.  
Q. And were you there asked to see if you could identify any of the assailants from that fight in the billiard hall?  
A. Yes.  
Q. Did you identify anybody?  
A. Yes.  
Q. Who was that?  
A. Ah Chun.  
Q. The 2nd Accused? 20  
A. Yes.  
Q. Thank you.

COURT: Yes, Mr. Van Buuren?

Cross-  
Examination

XXN. BY MR. VAN BUUREN:

- Q. Now you made a statement to the police on the 3rd of July, 1980, is that right?  
A. Yes.  
Q. And you never mentioned anything about this attempted attack on you by Ah Chun, did you?  
A. I mentioned it to the police. 30  
Q. You were asked in this statement, do you know the males who beat Tai Ngan Chai, and this was your answer, according to the record, they were Lau Ping-san who was holding a cue, then you said Ah Chun who was holding a cue, Ah Bump who was holding a cue and another male holding a hammer whom I did not know. That is the only time that you mentioned Ah Chun taking part in this fight. 40

INTERPRETER: I'm sorry, I'm afraid I can't remember that long.... please do it phrase by phrase.

- Q. You were asked a question by the police on the 3rd of July, 1980? Do you know the males who beat Tai Ngan Chai? They were Lau Ping-san who was holding a cue, Ah Chun who was holding a cue, Ah Bump who was holding a cue, and another male holding a hammer whom I do not know. Nowhere in 50

this statement have you mentioned anywhere that Ah Chun even aimed a blow at you which you dodged.

In the  
High Court

A. What do you mean by that?

Prosecution  
Evidence

Q. I'm asking you why you did not mention to the police on the 3rd of July about Ah Chun attempting to attack you?

No.7  
Poon Chi-  
chuen

COURT: Firstly, do you agree that you did not mention to the police that Ah Chun had attacked you?

Cross-  
Examination  
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10

A. The situation is such that I was not injured as a result of the fight so the police put no questions to me as to who attacked me, so I didn't mention to the police about that. It was some time later. I told the police that he tried to beat me but he didn't reach home.

(continued)

Q. Mr. Poon, you said that the 7 of you went to the billiard hall because it was a trivial matter of a peculiar nature and we knew the other party---we went as peacemakers. Now, my question to you is: if it was a trivial matter and if you were going for that purpose, don't you agree that a number of you going into the billiard hall might have been construed as an attempt to attack the people inside the billiard room?

20

A. I disagree with you because I had no grudge with him.

30

Q. Exactly. If it were a trivial matter, the proper thing for you to have done was to tell Tai Ngan Chai, "Go and settle this small matter with Luen Mo. Just leave us out of it." Why did you do that?

A. Very often we went up there to play billiards and even if we didn't go up on that particular occasion, we wouldn't have gone up for some other reason and it is not uncommon to have somebody else in my company.

40

Q. Yes, Mr. Poon. I have no quarrel with that. The point here is that Tai Ngan Chai had had a quarrel with Luen Mo. He came to the Kam Wah Restaurant and was complaining about the incident, right?

A. Yes.

Q. So now you said that you decided, all of you, to go into the billiard hall as peacemakers? Now, if that was your purpose, don't you think---don't you agree that going into your group might be misconstrued by the other party?

50

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High Court  
  
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chuen  
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(continued)

- A. Then I don't know what they would construe.  
Q. I'm putting it to you that you didn't go as peacemakers, you went there to get revenge?  
A. I had no animosity with him. Why should I go there for revenge?  
Q. Because you were a member of the gang?  
A. I knew Luen Mo as well.  
Q. How would that help?  
A. Then am I one of the members of Luen Mo's gang?  
Q. You did go to the billiard hall with Tai Ngan Chai and you did get involved in a fight inside the billiard hall, isn't that the truth?  
A. No.  
Q. I've no further questions.

10

NO RE-XN BY MR. LUNN

COURT: Yes, would you like to wait at the back of the court for a moment. We'll arrange for you to be paid witness....

20

No.8  
Pang Pui-  
yuen  
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No.8  
PANG PUI-YUEN

MR. LUNN: My Lord, the next witness the Crown calls is PANG Pui-yuen.

P.W.6 - PANG Pui-yuen Affirmed in Punt

XN: BY MR. LUNN:

- Q. Mr. Pang, do you live at Flat C, No.6 Wai King Court on the 7th floor of Wai Hang Chong Sun Tsuen, Tokwawan?  
A. Yes.  
Q. What is your occupation?  
A. Cakes.  
Q. I beg your pardon?  
A. Cakes.

30

COURT: I think he means in the cake business...

- Q. Now on the 26th of June of last year, were you present in the Good World Billiard Hall in Sai Yeung Choi Street in Mongkok when a fight took place?  
A. Yes.  
Q. How did it come about that you were in the billiard hall on that occasion?

40



A. Well, having tea there----I happened to meet a friend.  
 Q. Where were you when you met this friend?  
 A. While I was having tea.  
 Q. Where were you having tea - which restaurant?  
 A. Kam Ma Wah Restaurant.  
 Q. You met a friend and what was the result?  
 A. He mentioned that he had a dispute with somebody in the billiard hall and that he was blamed by Luen Mo.  
 Q. Who was the friend telling you this?  
 A. Tai Ngan Chai.  
 Q. And when he recounted this adventure to you, were you together with other companions?  
 A. His friend or my friend - his company or my company?  
 Q. Well, were you in any company first of all?  
 A. My companion or---?  
 Q. Were you with anybody?  
 A. Yes.  
 Q. Were there people you knew or not?  
 A. Yes, my friends.  
 Q. How many of them were there?  
 A. 6 to 7.  
 Q. Did you know this man Luen Mo that Tai Ngan Chai told you he had the dispute with?  
 A. I had seen him before.  
 Q. How was it decided to go to the billiard room as we know you did?  
 A. Because Luen Mo's natural young brother called him Ah Chun, made a pager call to Tai Ngan Chai.  
 Q. Did you come to know that because that's what Tai Ngan Chai told you?  
 A. I was present, and I was there with Tai Ngan Chai.  
 Q. In all events, after this pager call, was there some discussion?  
 A. No, Tai Ngan Chai made a phone call to the billiard room to Ah Chun.  
 Q. And then what happened?  
 A. Ah Chun told him to go up to have a talk with him.  
  
 COURT: How do you know that?  
 A. I was told by Tai Ngan Chai; he said on form that it was quite all right. Nothing wrong would happen.  
 Q. And what was decided between you and your companions and Tai Ngan Chai?

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(continued)

In the  
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(continued)

- A. Went up to have a talk with him.  
Q. Well, why did you all go up?  
A. We happened to meet one another; there were 8 to 9 persons.  
Q. Perhaps I'll put the question again. This is a dispute between Luen Mo and Tai Ngan Chai. Why did you all go out to the ball room---to the billiard room?  
A. He told us to go up to have a talk and we had in mind to have a talk. 10  
Q. Well, would you describe to my Lord and the members of the jury what happened when you reached the billiard hall?  
A. We pressed the button of the lift to go up to the billiard room. Upon arrival, the door was opened. I saw Luen Mo's group----there were about 50 to 60 persons.  
Q. Yes, what happened?  
A. Then Tai Ngan Chai came up and there was a person saying that he was looking for Luen Mo in order to talk to him. When Luen Mo and Tai Ngan Chai were quite close to one another, Tai Ngan Chai said to Luen Mo, "We are very familiar with one another. It is not worthwhile to have a dispute." 20  
Q. What happened then?  
A. Then Luen Mo punched Tai Ngan Chai in his chest once. Then I heard a person called Ah Chun saying, "Kill Tai Ngan Chai."  
Q. Do you know this person Ah Chun? 30  
A. I had seen him twice before.  
Q. Did you see him in court today?  
A. Yes.  
Q. Would you point him out to my Lord and the jury?  
A. This one.  
(PAUSE. Witness indicates.)  
Q. You're pointing out the 2nd Accused?  
A. Yes.  
Q. And what tone of voice and level of voice was this said? 40  
A. Very loud.  
Q. What happened after it had been said?  
A. People on this side struck us with the billiard cues.  
Q. Were you struck yourself?  
A. Yes.  
Q. And what did you do?  
A. I dodged away. I escaped but they chased after me, trying to hit me. 50  
Q. To where were you chased?  
A. To my left.  
Q. And what was in the vicinity of the area where you were chased to?  
A. Near the lavatory.

	MR. LUNN: My Lord, may the witness be shown the plan----Exhibit P4?	In the <u>High Court</u>
	Q. Mr. Pang, this is a plan of the billiard hall in which you were----	Prosecution Evidence No.8
	MR. LUNN: Mr. Interpreter, would you be so good as to point out to the witness the words "lifts" and "corridor" and interpret that to him----it's indicating where the lift area was.	Pang Pui-yuen Examination 11th August 1981
10	Q. Can you point to us where you went? A. Isn't it this side? Q. Well, let me point out reference points to you and then you tell me where it was that you went? If you'll just wait a moment, -- I'll point out a few places to you...just wait please. Do you have the area marked "lifts" first of all? That's where one comes into the billiard hall. Now, have you seen the top right hand corner - the	(continued)
20	word"automatic machines" -- those are pinball machines - automatic games, top righthand corner of the plan. Now, (with?) those 2 reference points - were you able to say where you were chased to? A. This side. Q. Pointing to an area to the top lefthand side of table 13. A. The left corner of table 13.	
30	Q. And what happened to you when you were there? A. I was assaulted by 5 to 6 persons and as a result of the beating up by those persons I fell on the ground. Q. Were your assailants using weapons? A. Yes, with billiard cues. Q. And where were you struck on your body? A. My head, my body and my hand. Q. And you say you fell to the ground---what happened then?	
40	A. And then I got up. Q. Where did you go then? A. Then I ran away. Q. To where? A. Then I ran towards here. Q. Pointing at the area at the bottom of the plan between tables 3 and 4? A. Yes.	
	MR. LUNN: My Lord, I don't know if the members of the jury saw that. Perhaps if the interpreter could hold it up again?	

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(continued)

INTERPRETER: It is the mid-point of the bottom  
line---the mid-point of the bottom line.

(PAUSE. Interpreter shows jury.)

Q. Now, what happened to you when you reached  
that point?

A. Then I saw Ah Sang together with 3 other  
persons drag Ah Nam and Ah Man back into  
the billiard room.

Q. Were these 2 men, Ah Man and Ah Nam, 2 of  
the companions who'd accompanied you to  
the billiard hall? 10

A. Yes.

Q. Was Ah Nam the man who subsequently died?

A. Yes.

Q. Do you know Ah Man's full name?

A. Yes.

Q. What is that?

A. Tam Man.

Q. So would you were describing to my Lord  
and the jury what happened to these 2 men? 20

A. The 2 of them were dragged from the corridor  
into the billiard room.

Q. You say Ah Sang and some other men did  
this---did you recognise any of the other  
men?

A. I didn't know the others so I'm unable to  
identify the others.

Q. Could you point at the map and show where  
you say this corridor was from which Ah Nam  
and Ah Man was dragged? 30

A. The lift lobby.

COURT: You pointed to the area which is marked  
"corridor" on the plan?

MR. LUNN: My lord, I'm obliged.

Q. Having been dragged back into the billiard  
hall, what happened to Ah Nam and Ah Man?

A. Then I saw Ah Sang and several other men  
strike him with billiard cues.

Q. Were both Ah Nam and Ah Man attacked in  
this fashion? 40

A. Later on, Ah Man managed to escape.

Q. My question was: were they both attacked  
with billiard cues?

A. Yes.

Q. Well, would you describe this part of the  
fight to my Lord and the jury - what happened  
to Ah Nam and Ah Man?

A. They were struck with billiard cues in their  
heads and bodies.

Q. Well, did they fall to the ground?

	A. Yes.	In the
	Q. What happened after they had fallen on the ground?	<u>High Court</u>
	A. Ah Man got up but Ah Nam was unable to stand up.	Prosecution Evidence
	Q. Did the attack cease when the men fell on the ground or not?	No.8
	A. No.	Pang Pui-yuen
10	Q. Well, what happened?	Examination
	A. they struck him with elbows and kicked him in his head and chest.	11th August 1981
	Q. Who is "him"?	
	A. Ah Nam.	(continued)
	Q. At this stage, were any weapons used?	
	A. Yes.	
	Q. What was that?	
	A. Billiard cues.	
20	Q. Now, at this stage of the attack on Ah Nam, whilst he was on the floor, did you recognise who his assailants were?	
	A. I only saw their backs so I could only recognise them by their dress and their build. The situation was very confusing.	
	Q. Well, did there come a time when the attack on Ah Nam ceased?	
	A. By then, Ah Nam was unable to move.	
	Q. What were you doing during this time that Ah Nam and Ah Man were being attacked?	
30	A. I was trying to escape with people chasing after me. And on one occasion, I stopped running. I stood in the middle.	
	Q. What were you able to see whilst that happened---stopped running and standing in the middle?	
	A. I saw Ah Nam was lying there. He was unable to move.	
	Q. Was this at the stage when Ah Nam was still being attacked or had the attack finished?	
40	A. No, the attack was still going on. People were chasing after Ah Man.	
	Q. I was asking you about the attack on Ah Nam. Was that still going on?	
	A. Those people were still beating him up.	
	Q. Yes. Well, would you look at the plan which shows where you mean by "middle" - when you say you stopped running in the middle?	
	A. He pointed to the lefthand side of Table 9.	
	Q. And where was Ah Nam at this stage?	
	A. Here.	
50	INTERPRETER: Witness pointed to the place on the right of table 11.	

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(continued)

- Q. So you were close to one another?  
A. Yes.  
Q. Well, at that stage, were you able to recognise any of Ah Nam's assailants?  
I don't think the plan will help you answer that. At that stage, were you able to recognise any of Ah Nam's assailants?  
A. Yes.  
Q. Who was attacking Ah Nam?  
A. A person called Ah Sang. 10  
Q. Well, apart from Ah Sang, are you able to identify anybody else which you knew?  
A. I could only recognise one.  
Q. Who was that?  
A. Ah Sang.  
Q. Now, you've told us that at an earlier stage, in the incident, you had heard Ah Chun, the 2nd Accused shout "Kill Tai Ngan Chai" --- did you see him do anything else during the course of the incident? 20  
A. Yes.  
Q. And what was that?  
A. He chased after us to beat us up.  
Q. Did he chase after you?  
A. Yes.  
Q. Did you see him strike any blows against anybody?  
A. Yes.  
Q. Who was that?  
A. Ah Sap, Ah Kei. 30  
Q. Did you see whether or not he had a weapon?  
A. He was holding a billiard cue.  
Q. Were those blows delivered with that weapon?  
A. Yes.  
Q. Apart from those 2 men, did you see him attack anybody else?  
A. The situation was very confusing, so I didn't see it.  
Q. Did you sustain any injuries yourself from this incident? 40  
A. Yes.  
Q. What were they?  
A. My head, my body and my hands.  
Q. Were you examined by a doctor?  
A. The forensic pathologist.  
Q. Did that take place on the 3rd of July?  
A. I can't remember the date.  
Q. Months later, in February of this year - on the 27th - did you attend an Identification50 Parade at Mongkok Police Station?  
A. Yes.  
Q. And were you there asked to see if you could identify any of the assailants from this

incident in the billiard hall?  
 A. Yes.  
 Q. Could you pick somebody out?  
 A. Yes.  
 Q. Who was that?  
 A. Ah Chun.  
 Q. That is the 2nd Accused?  
 A. Yes.  
 Q. Thank you, Mr. Pang.

10 COURT: I think we'll take our mid-morning break and allow the shorthand ladies to change over as well...

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(continued)

11.25 a.m. Court adjourns

11.45 a.m. Court resumes.

Both accused present. Appearances as before.  
 Jury present.

P.W.6. - PANG Pui-yuen (o.f.a.)

XXN. BY MR. VAN BUUREN:

Cross-  
 Examination

20 Q. Mr. PANG, when you arrived at the Kam Ma Wah Restaurant, who of your friends were already there?  
 A. About three to four of them had already been there.  
 Q. What about Tai Ngan Chai, was he there?  
 A. No.  
 Q. How long later did he arrive?  
 A. About five to six minutes later.  
 Q. Did he ask you to meet him there? Did Tai Ngan Chai ask you to meet him at that restaurant?  
 A. No.  
 Q. Can you name the people who were already there when you arrived?  
 A. Ah Yung, Ah Sap, Ah Man, Ah Ki.  
 Q. And after you arrived, did any other friends join you apart from Tai Ngan Chai?  
 A. Yes.  
 Q. Who were they?  
 A. TAN Man, Ah Ki, Ah Nam and then followed by Tai Ngan Chai.  
 40 Q. You mean Tai Ngan Chai came along with those three persons?  
 A. No.  
 Q. Then what happened?  
 A. Tai Ngan Chai came with Ah Nam.  
 Q. And the others?

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(continued)

- A. They came on their own.  
Q. After Tai Ngan Chai arrived?  
A. Yes.  
Q. Now you were going to the billiard hall, you said, to have a talk. What were these talks about?  
A. Ah Chun made a pager call to Tai Ngan Chai telling him to go up for a talk. He did not telephone me.  
Q. Yes, but what was the point of going there to talk at all? 10  
A. Talking about matters between Tai Ngan Chai and Luen Mo.  
Q. You mean to claim some kind of compensation?  
A. No.  
Q. It was a trivial matter between Luen Mo and Tai Ngan Chai, why was it necessary to go back to that billiard hall to have a talk, do you know?  
A. We met one another coincidentally while having tea there. 20  
Q. Yes, but I still do not understand, Mr. PANG, why was it necessary for you, for instance, to go there to have a talk?  
A. I had in mind to go up to play billiard.  
Q. It was not your idea to support Tai Ngan Chai and have a show of force against Luen Mo, that was not your intention, was it?  
A. No.  
Q. I put it to you that you went there again to take revenge on Luen Mo for having had a dispute with your leader Tai Ngan Chai. 30  
A. I disagree with you.  
Q. You said inside the billiard hall there was some conversation between Tai Ngan Chai and Luen Mo, and then you said that Tai Ngan Chai said it was not worthwhile having a quarrel, and then Luen Mo punched Tai Ngan Chai once, that was your evidence-in-chief.  
A. It was said by Tai Ngan Chai, not by Luen Mo. 40  
Q. Tell us again what happened, about the conversation between Luen Mo and Tai Ngan Chai.  
A. When Tai Ngan Chai approached Luen Mo, he said to him, "Luen Mo, you and I are very familiar with one another, it is not worthwhile to have a quarrel."  
Q. Yes, and then did Luen Mo say anything in reply?  
A. No, he simply inflicted one blow on Tai Ngan Chai.  
Q. That's right. Now my question to you is did Tai Ngan Chai give him a blow in return?  
A. No.



	Q. Are you sure?	In the
	A. Yes.	<u>High Court</u>
	Q. How far were you from these two persons?	
	A. Very near.	Prosecution
	Q. How many feet?	Evidence
	A. About from here to the lady wearing a	No.8
	white shirt.	Pang Pui-
	Q. You remember making a statement to the	yuen
	police on the 2nd of July, 1980?	Cross-
10	A. Yes, I remember.	Examination
	Q. Remember telling the police this, "Luen	11th August
	Mo punched Tai Ngan Chai on his chest,	1981
	Tai Ngan Chai struck back." Remember	
	saying that to the police?	(continued)
	A. Yes, I remember.	
	Q. Now why, when I asked you just now whether	
	Tai Ngan Chai punched him back, did you	
	say no?	
20	A. Tai Ngan Chai hit back only after he had	
	been assaulted by many persons. He did	
	not retaliate immediately.	
	Q. What did he hit back with? Did he use a	
	billiard cue to hit back?	
	A. Which one?	
	Q. Tai Ngan Chai.	
	A. No.	
	Q. What did he hit back with?	
	A. With his hands.	
30	Q. It was after he hit back with his hands	
	that he was struck on the head with the	
	hammer, is that right?	
	A. No, at that time he had already been	
	attacked with the hammer and billiard cues.	
	Q. Now at what stage did you say that you	
	heard a person called Ah Chun say, "Kill	
	Tai Ngan Chai"? At what stage did you	
	hear that?	
	A. When Luen Mo was beating up Tai Ngan Chai.	
40	Q. You had, you said, seen Ah Chun only twice	
	before, is that right?	
	A. Yes.	
	Q. How can you say it was Ah Chun who said	
	those words?	
	A. But later on Tai Ngan Chai said that it	
	was him.	
	Q. So you are repeating what Tai Ngan Chai	
	told you?	
	A. No.	
	Q. What do you mean?	
50	A. It was heard by many other persons apart from	
	Tai Ngan Chai. He was known to many others.	
	Q. I have no further questions.	

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RE-XN. BY MR. LUNN:

- Q. Just that last matter, Mr. PANG, so that my Lord and the jury could understand what your evidence is as to who said, "Kill Tai Ngan Chai". Did you yourself hear Ah Chun saying that, or are you simply repeating what others had told you? Think carefully before your answer that.
- A. I also heard that.
- Q. And in addition you have heard others say that they heard, is that what you are saying? 10
- A. Yes.
- Q. Thank you.

No.9  
Lee Kit-hung  
Examination  
11th August  
1981

No.9  
LEE KIT-HUNG

MR.LUNN: My Lord, the next witness the Crown calls is LEE Kit-hung, who is at page 27.

P.W.7. - LEE Kit-hung (Affirmed in Punti)

XN. BY MR. LUNN:

20

- Q. Do you live at Room 1113 on the 10th Floor of the Orchid Building in So Uk Estate?
- A. Yes.
- Q. Now on the evening of the 26th June of last year, were you present in the Good World Billiard Hall on the 8th Floor of No.80 Sai Yeung Choi Street in Mongkok at the time when there was an incident?
- A. Yes.
- Q. What time had you gone to the billiard hall yourself? 30
- A. Around 9 o'clock in the evening.
- Q. With whom had you gone?
- A. With several friends.
- Q. And as the evening progressed, did you witness an argument?
- A. Yes.
- Q. Did you know the parties arguing?
- A. I knew their names but I did not know them.
- Q. Tell us their names then. 40
- A. One called Tai Ngan Chai, another called Luen Mo.
- Q. Was this billiard hall a place that you - prior to the 26th June, 1980 - a place that you had gone to frequently?

A. Yes.

Q. Was this where you came to know the names of these two men, Tai Ngan Chai and Luen Mo?

A. Yes.

Q. Can you tell my Lord and the jury what you could see happening between these two men?

A. What happened on that night?

10 Q. You were there, tell my Lord and the jury what happened.

A. At about 9 o'clock, I went to the Good World Billiard Room to play billiards. When we arrived there, there was no table available, so we went to play the automatic machines. We played for one hour or so. Then I heard from outside where people played billiards two persons quarrelling, between Luen Mo and Tai

20 Ngan Chai. I did not bother, I continued playing automatic machines. About one hour later, we had finished playing automatic machines.

Q. Before you continue, perhaps I can ask you this. Were you able to hear or see what the earlier argument, this argument you have described, was about between Luen Mo and Tai Ngan Chai?

A. I knew that they were having a quarrel,

30 but I did not hear what it was all about.

Q. Please continue then. About an hour later, you said.

A. About an hour later, when we had finished playing automatic machines, we then stood by the side of the billiard table watching people playing. I also saw ten odd persons were standing at the doorway. Not long after that, they had

40 a fight amongst those persons. The situation was very confusing, people chasing after one another during the fight. My friends and I were very scared, so we stood by the side.

Q. Did you see who any of the people were who were fighting?

A. I knew the names of several fighters. They were Tai Ngan Chai, Luen Mo, Ah Sang and Ah Chun.

Q. Do you see any of them in court today?

50 A. Yes, a person called Ah Chun.

Q. Would you point him out to my Lord and the jury?

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(continued)

- A. The one sitting in the middle.  
Q. Pointing at the 2nd accused.  
A. Ah Chun.  
Q. You say that you were very frightened, what did you see happening?  
A. Seeing them engaged in a fight, we stood aside. The fight lasted for some time, and then I saw people running away through the rear staircase. I also saw Ah San and Ah Chun together with one or two other persons bumped open the door near the lift. 10  
Q. Yes, continue.  
A. There were two persons holding the door in a closing position, and after the door had been bumped open, then the group assaulted the two men. Then I saw Ah Sang and Ah Chun drag another man wearing light coloured dress back into the billiard room and then hit him. There was another man who dragged another man wearing dark coloured dress into the billiard hall and beat him up. The man wearing light coloured dress then fell unconscious somewhere near the door, but Ah Sang continued to inflict blows with his elbow and fist on that man and Ah Chun struck him with a billiard cue. Not long after that, they ran away. Then the whole group of us left the place through the rear staircase. But when we got to the ground floor, we were stopped by a police party, we were not allowed to go away. 20  
Q. I wonder if you would just pause there for a moment in the recollection of events. You have told us that Ah Sang and Ah Chun and others broken down - pushed in a door, I think you put it, to get at two men. Is that right?  
A. Yes.  
Q. And that a fight then took place with these two men. 40  
A. Yes.  
Q. Were these the same two men who were brought back into the billiard hall for the fight to continue, for the attack to continue?  
A. Yes.  
Q. I wonder if you would have a look at the plan, P.4., and see if you can identify for us the door in question.  
MR. LUNN: Mr. Interpreter, point out the lift on the plan. 50  
INTERPRETER: Witness pointed to the place marked "Entrance".

Q. Next to the word "Corridor"?  
 A. Yes.  
 Q. Now you say that these two men were brought back in and the fight continued. Now where did the fight continue? Can you point to the plan and indicate that?  
 A. The one wearing light coloured dress was beaten up here. The one wearing dark coloured dress was dragged to this place.  
 10 Q. You are pointing out on the plan, in relation to the light coloured dress man, to the area immediately in front of table 4, and in front of that is - between the lift and table 4. And in relation to the man dressed in dark coloured clothing, to the area at the bottom of the plan next to table 4 and table 5.  
 A. Yes.  
 20 Q. Now you say that Ah Sang and Ah Chun continued the attack upon the man dressed in the light coloured clothing after he had fallen to the floor.  
 A. Yes.  
 Q. And is this Ah Chun the 2nd accused you identified earlier?  
 A. Yes.  
 Q. You say that he used a billiard cue at this stage in the attack?  
 A. Yes.  
 30 Q. Could you see which part of this man's body he was attacking with the billiard cue?  
 A. His back.  
 Q. And how were the blows delivered?  
 A. Can you let me make a sketch to demonstrate?  
 MR. LUNN: My Lord, may the witness - perhaps it might be easier if the witness was given Exhibit P.12.  
 Q. Can you just demonstrate?  
 A. There was another part of the cue.  
 40 Q. Yes, assuming that it is twice the size of that.  
 A. He was holding the other part of the cue and inflicted the strokes.  
 Q. Are you able to say now many blows were delivered in that fashion?  
 A. Cannot remember how many times.  
 Q. Even if you cannot remember exactly, can you help us at all as to whether it was one blow or many blows?  
 A. About four to five times.  
 50 Q. Where were you - perhaps you would be so good as

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- to look at the plan and indicate - when you saw this part of the attack taking place?
- A. Originally we were standing here (Interpreter: Table 1) watching people playing. When the fight took place, people were chasing and hitting one another through this gap (Interpreter: Witness pointed to the place between table 1 and 2), so we shifted our position to table 2. Later on, some of the people taking part in the fight left the place leaving a smaller number of persons amongst them; there were Ah Sang and Ah Chun. We shifted our position to here (Interpreter: The place marked "Stool" above and between table 2 and 3) when the other two men were still being beaten up. 10
- Q. And from where you were at that stage when these two men were being beaten up in the middle area of the plan, how far were you from them? Can you point to an object in the court to indicate where Ah Sang and Ah Chun were attacking this man? 20
- A. Further away from the wall - a little bit further away from the wall.
- Q. Pointing to the back wall of the court.
- A. Yes.
- Q. Now you say that eventually the parties ran off and you yourself went down the staircase.
- A. Yes.
- Q. Now when you did that, what had become of the man that Ah Chun and Ah Sang had been attacking in the way you have just described to us, where was he? 30
- A. He was lying on the ground and he did not move any way.
- Q. Was he lying on the ground in the same position that you had described earlier where he had been attacked by Ah Sang and Ah Chun?
- A. Yes. 40
- Q. And what of the other man, the second man that had been dragged back into the billiard hall from the doorway whom you had said had been attacked behind table 4 and 5, where was he?
- A. I did not notice him.
- Q. Now some months later, in fact many months later, in February of this year, 27th, did you go along to Mongkok Police Station and attend an identification parade? 50
- A. Yes.
- Q. And were you there asked to pick out any assailants that you had seen on this occasion at the billiard room?
- A. Yes.

	Q. Did you pick anybody out?	In the
	A. Yes.	<u>High Court</u>
	Q. Who was that?	
	A. Ah Chun.	Prosecution
	Q. Is that the 2nd accused?	Evidence
	A. Yes.	No.9
	Q. Thank you.	Lee Kit- hung
	<u>XXN. BY MR. VAN BUUREN:</u>	Examination
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10	Q. Now you had been frequenting this billiard hall for a long time before the 26th June, 1980, is that right?	(continued)
	A. Yes.	
	Q. Were you on friendly terms with Tai Ngan Chai?	
	A. No, I heard people calling him Tai Ngan Chai, that is why I know his name.	Cross- Examination
	Q. What about Luen Mo, were you friendly with Luen Mo?	
	A. No, I am not very familiar with him.	
20	Q. Now you said you were there with some friends on the 26th June, 1980. How many friends?	
	A. Two.	
	Q. What are their names?	
	A. One called KO Lai-cheung, one called CHEUNG, Yiu-kwong.	
	Q. Did they also frequent that billiard room with you on many occasions before the 26th June, 1980?	
30	A. The two of them seldom went up there, but I frequented the place.	
	Q. During the fight, what happened to those two friends, where were they during the fight?	
	A. They were standing behind.	
	Q. Did the three of you leave the billiard room after the fight together?	
	A. Yes.	
	Q. Did the police stop the three of you together downstairs?	
40	A. Yes.	
	Q. The 2nd defendant, Ah Chun, had you seen him at the billiard room before, before the 26th June, 1980?	
	A. Yes.	
	Q. Did you know that he was Luen Mo's younger brother?	
	A. I do not know.	
	Q. During the fight, you said that the condition was quite confused inside the billiard hall, isn't that so?	
50	A. Yes.	

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(continued)

- Q. People running around and a number of people milling around trying to escape.
- A. Yes.
- Q. I put it to you, Mr. LEE, that your view of the incident you have described, the hitting of the man on the ground by Ah Chun, that you were mistaken.
- A. I disagree with you.
- Q. Can you remember, for instance, what he was wearing at that time? 10
- A. Shirt, trousers.
- Q. Can you be more specific than that?
- COURT: If you do not remember, say so.
- A. Can't remember very well.
- Q. Now the incident you had described about this group of persons trying to bump, as you put it, bump open the door, why did they have to bump open the door?
- A. Because on the other side of the door there were two persons holding the door in the closing position. 20
- Q. How do you know that?
- A. I saw it.
- Q. It was a glass door?
- A. I could see through the glass.
- Q. What kind of glass was it?
- A. Semi-transparent.
- Q. Were there only two persons outside or more than two persons outside?
- A. Should be only two. 30
- Q. Why do you say should be?
- A. I do not know whether there were any other persons inside the lift while it was descending.
- Q. Mr. LEE, we are not talking about the lift. Outside the door of the billiard room, you say, which was semi-transparent and glass, how many people were outside?
- A. I only saw two.
- Q. How do you know that they were keeping the door closed? How do you know that they were holding the door in a closing position? 40
- A. Because they put their hands against the door and I could see it.
- Q. Could you recognise the two persons who were outside? Could you recognise their faces, the persons outside?
- A. No, I could not.
- Q. And after the door was bumped open, did you see what happened outside? 50
- A. After the door had been bumped open, Ah Sang, Ah Chun and two other persons started hitting the two of them.



- Q. What about those two, didn't they also fight back? In the High Court
- A. Yes. Prosecution Evidence
- Q. So you mean they had a fight outside? No.9
- A. Yes. Lee Kit-hung
- Q. Could you see how many persons were involved in that fight outside? Cross-Examination
- A. Five. 11th August 1981
- 10 Q. Did you see what weapons were used in that fight outside?
- A. Somebody holding billiard cues.
- Q. Mr. LEE, I put it to you again that it was not Ah Chun who took part in that fight outside that door or inside that door later, as you had described it. (continued)
- A. I disagree with you.

NO RE-XN. BY MR. LUNN.

No. 10

LEE KEUNG

No.10  
Lee Keung  
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- 20 MR. LUNN: My Lord, the next witness the Crown calls is Mr. LEE Keung, page 26.

P.W.8 - LEE Keung (Affirmed in Puntis)

XN. BY MR. LUNN:

- Q. Do you live at No.75, Kilung Street?
- A. Yes.
- Q. Whereabouts is that, that street?
- A. Shan Shui Po.
- Q. Do you work as a waiter in a dim sum restaurant?
- 30 A. Yes.
- Q. Now on the evening of the 26th June of 1980, were you present in the Good World Billiard Hall when a fight took place?
- A. Yes.
- Q. How was it that you came to be in the billiard hall that evening?
- A. I met Tai Ngan Chai.
- Q. Where had you met him?
- A. In the Kam Ma Wah Restaurant.
- 40 Q. Were you two together with other companions?
- A. Yes.
- Q. How many?
- A. About seven.

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No.10

Lee Keung  
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(continued)

- Q. Did Tai Ngan Chai tell you what had been happening to him earlier that evening?
- A. No.
- Q. How was it that you ended up going to the Good World Billiard Hall?
- A. Because we knew one another.
- Q. We weren't there, can you describe to my Lord and the jury how it was decided to go to the Good World Billiard Hall?
- A. Because we were friends. The pager of Tai Ngan Chai sounded, we were told to go up to the billiard room. 10
- Q. Did you know why you were going up to the billiard room?
- A. I did not know at that time.
- Q. What happened when you arrived at the billiard hall?
- A. I became aware when I arrived at the billiard hall.
- Q. What did you realize then? 20
- A. I knew that a person had hit Tai Ngan Chai.
- Q. What happened when you arrived at the billiard hall, what did you see?
- A. The situation was very confusing when there was a fight.
- Q. How did the fight occur?
- A. I am not very clear about that.
- Q. Did you see between whom the fight was?
- A. I saw a person nicknamed Luen Mo beating up Tai Ngan Chai. 30
- Q. Did you see how that came about?
- A. With fists.
- Q. Did you remain in the billiard hall yourself?
- A. I just stepped out of the lift.
- Q. Did you stay in the billiard hall once this fight had started?
- A. About one minute after the fight had started, the lift arrived, so I returned to the lift.
- Q. Apart from having seen Luen Mo attacking Tai Ngan Chai with his fists, did you see any other people fighting? 40
- A. About the others, the situation was very confusing.
- Q. Thank you very much.

Cross-  
Examination

XXN. BY MR. VAN BUUREN:

- Q. Is this not the position, Mr. LEE, that on the evening of the 26th of June, 1980, you came across your friend Tai Ngan Chai outside the theatre, and he was with seven or eight friends, and he asked you to come along to the billiard room, isn't that what happened? 50

	A. Yes.	In the
	Q. Why do you say just now that you met them at the Kam Ma Wah Restaurant?	<u>High Court</u>
	A. Because the theatre and the Kam Ma Wah Restaurant are in the same district.	Prosecution
	Q. You had been discussing your evidence with other persons in this case, had you?	Evidence
	A. Will you please repeat once more?	No.10
10	Q. Have you been discussing your evidence with other persons concerned in this case?	Lee Keung
	A. No.	Cross-
	Q. The story about the pager, for instance, the pager call to Tai Ngan Chai in the Kam Ma Wah Restaurant, that was told to you by somebody else, wasn't it?	Examination
	A. Yes.	11th August
	Q. Who told you about that?	1981
	A. Tai Ngan Chai.	(continued)
20	Q. When did he tell you that?	
	A. At that time.	
	Q. That time means what time?	
	A. On that same night before we went to the billiard room.	
	Q. You mean on the street?	
	A. The place between the theatre and the Kam Ma Wah Restaurant.	
30	Q. Is it your evidence that you went with Tai Ngan Chai and seven or eight of his friends to the Kam Ma Wah Restaurant first, and then from the Kam Ma Wah Restaurant you went to the billiard hall, is that your evidence?	
	A. Yes, I went from Kam Ma Wah Restaurant to the billiard room.	
	Q. Do you understand my question?	
	A. Understand.	
40	Q. Then why didn't you answer the question? My question to you is did you go from the theatre after you had met Tai Ngan Chai and seven or eight friends to the Kam Ma Wah Restaurant and then from the restaurant to the billiard hall?	
	A. Yes.	
	Q. Thank you.	
	COURT: Is your nickname Ah Keung?	
	A. Yes.	
	MR. LUNN: I have no re-examination.	
	<u>NO RE-XN. BY MR. LUNN.</u>	
	COURT: Yes, I will adjourn now to 2.30 p.m. <u>12.55 p.m. Court adjourns.</u>	

2.35 Court resumes.

Both accused present. Appearanceas as before.  
Jury present.

MR. LUNN: My Lord, may I indicate at this stage that I propose now to deal with some of the formal matters moving away from the eye-witnesses' accounts of events. May I indicate at this stage - and I apprehend that this will be the position at the end of the Crown's case - that the man said to be wounded in the fourth count, KWOK Shing-yip, has not been contacted by those instructing me, and as I say, I apprehend that the Crown will not be in a position to call him. My Lord, perhaps the final decision on that can await the end of the Crown's case.

10

COURT: Very well.

20

MR. LUNN: My Lord, in addition, may I indicate that I have had contact made with the forensic pathologist. My Lord, he is unable to attend today, my Lord, and I propose to call him when we next sit on Thursday. So, my Lord, what I will now be dealing with, both orally and the written statements, are some of the formal evidence. This officer, my Lord, is Police Constable 14937, LAM Tak-hing, who appears at page 40.

30

P.W.9 - LAM Tak-hing (Affirmed in Puntì)

XN. BY MR. LUNN:

Q. Are you a police constable in the Royal Hong Kong Police Force attached to the Emergency Unit of Kowloon West District?

A. Yes.

Q. At about 19 minutes past 11 on the 26th June, 1980, you received instructions to

40

	go to Sai Yeung Choi Street?	In the
	A. Yes.	<u>High Court</u>
	Q. On arrival at No.80, Sai Yeung Choi Street on the ground floor, outside the lift, did you encounter a group of people?	Prosecution Evidence
	A. Yes.	No.12
	Q. In particular did you encounter a man called TAM Man whose head was bleeding?	Lam Tak-hing Examination
	A. Yes.	11th August 1981
10	Q. And after speaking to him for a short while, did you leave him in the custody of two of your colleagues, fellow police constables, and proceeded upstairs to the 8th floor yourself?	(continued)
	A. Yes.	
	Q. Now when you reached the 8th floor, did you enter a billiard hall?	
	A. Yes.	
	Q. And therein did you find an injured man?	
20	A. Yes.	
	Q. How far into the billiard hall was it that you found this man?	
	A. He was inside the billiard room about ten feet from the entrance.	
	Q. From what you were able to see, were you able to detect any signs of life or not.	
	A. He was lying there unconscious. When I examined him, I found that there was no breath.	
30	Q. In all events, in due course, did ambulance personnel arrive and was this man taken out of the billiard hall?	
	A. Yes.	
	Q. Now at some stage did you mark the place where you had found this body with chalk marks?	
	A. Yes.	
40	Q. Would you be so good as to have a look at the photographs, Exhibit P.1 - P.2, I think, yes, P.2. Would you have a look at photograph (P) and (Q) in that series? You have those two photographs?	
	A. Yes.	
	Q. Are those the chalk marks that you put down?	
	A. Yes.	
	Q. Are they where you found the injured man lying?	
	A. Yes.	
50	Q. Would you then have a look at the plan and confirm what appears to be clear in the photograph - perhaps, Mr. Interpreter, you could explain where the lift area is in that photograph - it would appear from photograph	

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(continued)

(P), officer, that the body you found was some area in front of table 4, because we can see the number 4 on the lighting apparatus above that billiard table.

- A. Yes.
- Q. Can you point out on the plan where it was you saw the body? Pointing to an area between table. ....
- A. Here.
- Q. An area between table 11 and 4 by the word "Stool", or just beyond that. 10
- A. Yes.
- Q. And was this man, together with the other man Tam Man, taken away from Sai Yeung Choi Street by two of your colleagues, police constables 17239 and 17539?
- A. Yes.
- Q. I have no other questions.

NO XXN. BY MR. VAN BUUREN.

No.13  
Tang Hoi-on  
Examination  
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No.13

20

TAN HOI-ON

MR. LUNN: My Lord, the next witness the Crown calls is Police Constable 17239, page 37. His name is TANG Hoi-on. My Lord, although I have not tendered him with a written Notice of Additional Evidence, I have mentioned it to my learned friend, and I will supply such additional notice later. There is an item of clothing that I propose to produce through this witness that was not exhibited in the committals but which appears in the depositions. 30

P.W.10 - TAN Hoi-on (Affirmed in Puntì)

XN. BY MR. LUNN:

- Q. Are you Police Constable 17239, and are you attached to Mongkok Police Station in Uniformed Branch?
- A. Yes.
- Q. Now on the evening of the 26th June, 1980, as a result of instructions you received, did you proceed to No.80, Sai Yeung Choi Street in Mongkok? 40
- A. Yes.
- Q. And there did you encounter one of your colleagues, P.C.14937, who has just left the court?

A. Yes.

Q. And a man called TAM Man who appeared to be injured in the head?

A. Yes.

Q. In due course, did you, together with your colleague P.C.17539, escort TAM Man and a second man who was brought down from upstairs to a hospital?

A. Yes.

10 Q. Did you later learn that the second man was NG Fuk-nam?

A. Yes.

Q. Did you and your colleagues escort those two men to the Kwong Wah Hospital?

A. Yes.

Q. And at two minutes to midnight on the 26th June, were you present in the casualty ward of Kwong Wah Hospital when a doctor LEE Yau ping certified NG Fuk-nam as being dead?

20 A. Yes.

Q. Did you then escort the corpse to the Kowloon Public Mortuary?

A. Yes.

Q. Where, at quarter past midnight on the following morning, the 27th June, you took possession of a number of items of personal property found upon the corpse?

A. Yes.

30 Q. And amongst the clothing was this light blue T-shirt?

A. Yes.

MR. LUNN: My Lord, I wonder if that might be marked?

COURT: It has not been admitted before, has it?

CLERK: 15.

Q. In addition, did you take possession of this pair of blue jeans?

A. Yes.

40 COURT: That will be Exhibit P.16. Members of the jury, later on when you retire to consider your verdict, you will have all these exhibits with you. In case I forget to tell you later, I am going to tell you now, we have been warned by the Government Chemist in the past not to touch any item at all which has got any blood stain on it, because there is a risk of contamination. So as far as possible, when you come to examine these things,

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Tang Hoi-on  
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I would advise you to examine them by not removing them from the plastic bags. If you find you do need to remove them, be very careful how you handle them.

XXN. BY MR. VAN BUUREN:

Q. Officer, the items of clothing which you seized at the mortuary, were they handed over to you by someone in the mortuary?

A. No, not by somebody else.

Q. How did you seize them in the mortuary?

A. I took it off by myself.

10

NO. RE-XN. BY MR. LUNN

No.14

Lo Ngok-  
ping  
Examination  
11th August  
1981

No.14

LO NGOK-PING

MR. LUNN: My Lord, the next witness the Crown calls is Detective Constable 9506, he is at page 48.

P.W.11 - LO Ngok-ping (Affirmed in Puntì)

XN. BY MR. LUNN:

Q. Are you Detective Constable 9506, are you a member of the District Crime Unit No.3 of the Criminal Investigation Department of Kowloon Police Headquarters?

A. Yes.

Q. Now in the early hours of the morning of the 27th of June, 1980, together with other members of that team 3, did you attend the Good World Billiard Room on the 8th Floor of No.80, Sai Yeung Choi Street in Mongkok?

A. Yes.

Q. And in the course of your duties, did you have cause to work together with a detective sergeant 105 from - CHEUNG Ming-lee - from the Identification Bureau?

A. Yes.

Q. At 13 minutes past 3 in the morning, did that officer hand to you a broken billiard cue from which he lifted the impression of fingerprint?

A. Yes.

Q. Could you have a look at Exhibit P.12 please? Is that the billiard cue in question?

A. Yes.

20

30

40



Q. Where was that billiard cue found?  
A. It was on the No.5 table.  
Q. Would you have a look at the plan please?  
This is a plan of the billiard hall, in  
the middle of which is the lift area.  
Could you indicate where the lifts are,  
Mr. Interpreter? Each table is marked  
with a number. Could you indicate to my  
Lord and members of the jury where on  
table 5 you found this cue?  
A. On this table at this point.  
Q. You are indicating the area above the  
word "Table".  
A. Yes.

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(continued)

MR. LUNN: My Lord, I think I am right in  
saying that although there are a great  
number of photographs, that particular  
table is not one of them.  
  
MR. VAN BUUREN: No, it is in P.2J.  
  
20 MR. LUNN: My Lord, my learned friend corrects  
me, it is there, but one can't see the cue  
on it, the billiard cue. My Lord, P.2J.

COURT: P.2J?  
  
MR. LUNN: My Lord, P.2 being the exhibit number  
SO.....  
  
MR. VAN BUUREN: My Lord, the number is on the  
back.

COURT: I beg your pardon?  
  
30 MR. VAN BUUREN: The number is on the back of  
the photographs.

COURT: Yes. Thank you.  
  
Q. Officer, one general matter. It is right,  
is it not, that you spent quite a few hours  
in that billiard hall that early morning?  
A. Yes.  
Q. And although they are not being produced in  
this trial, is it right, as one can see  
from the photographs, that the billiard  
40 cues were to be found in all sorts of places,  
lying on the floor and on the tables,  
generally throughout the billiard hall?  
A. Yes.  
Q. And in fact on the staircase?  
A. Yes.

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(continued)

Q. Thank you, officer.

COURT: This one you looked at, was it the  
only broken one or were there others  
broken as well?

A. There were other broken ones.

NO XXN. BY MR. VAN BUUREN

MR. LUNN: My Lord, there is one matter I ought  
to have asked your Lordship for direction,  
and that is I think that the billiard cue  
is only provisionally marked for identifica- 10  
tion. Might it now become an exhibit?

COURT: If it has not been marked, it will be  
now.

MR. LUNN: My Lord, I am obliged. P.12.

COURT: Exhibit P.12, yes.

No.15  
Ng Pui-kan  
Examination  
11th August  
1981

No.15  
NG PUI-KAN

MR. LUNN: My Lord, I now propose to move on  
to deal with the arrest of the 1st accused. 20  
My Lord, the next witness I will call is  
Detective Constable 7365 at page 45.

P.W.12 - NG Pui-kan Affirmed in Puntì

XN. BY MR. LUNN:

Q. Officer, are you a member of District Crime  
Unit III of the Criminal Investigation  
Department which is situated over Kowloon  
Police Headquarters?

A. Yes.

Q. And shortly after 11 o'clock on the 2nd of  
July, 1980, were you a member of a police 30  
party led by Detective Inspector Tang that  
went to an address at the 4th floor of 14,  
Pak Ho Street, Mongkok?

A. Yes.

Q. Now having gained entry to the flat, was it  
discovered that there were five sub-flats  
or cubicles inside?

A. Yes.

Q. Is it right that when a knock was made on  
the door, no reply came from any of the 40  
cubicles?

- |    |           |   |                   |
|----|-----------|---|-------------------|
|    | A.        | Only applied to one of the rooms.   | In the            |
|    | Q.        | In due course was entry forced into one of the cubicles with the use of a crowbar?  | <u>High Court</u> |
|    | A.        | Yes.  | Prosecution       |
|    | Q.        | And in that cubicle was there a man, a woman and a child?   | Evidence          |
|    | A.        | Yes.  | No.15             |
|    | Q.        | The man identified himself as YEUNG Kwong-hung?   | Ng Pui-kan        |
| 10 | A.        | Yes.  | Examination       |
|    | Q.        | Is that the 1st accused?  | 11th August       |
|    | A.        | Yes, the one wearing a light shirt.   | 1981              |
|    | Q.        | Did you tell the 1st accused that you were making inquiries into a case of murder and of wounding which had occurred at a quarter past 11 on the 26th of June, 1980 at the Good World Billiard Room at the 8th floor, 80, Sai Yeung Choi Street in Mongkok? | (continued)       |
| 20 | A.        | Yes, I did.   |                   |
|    | Q.        | Did you tell the accused that he was under arrest and then cautioned him?   |                   |
|    | A.        | Yes.  |                   |
|    | Q.        | And in answer....Perhaps you can tell us what words of caution you used?  |                   |
|    | A.        | I verbally cautioned him. I said to him, "You are not obliged to say anything unless you wish to do so. It may be given in evidence."   |                   |
| 30 | Q.        | And did he have nothing to say in reply to that?  |                   |
|    | A.        | That's correct.   |                   |
|    | Q.        | Was he then taken to Mongkok Police Station where an initial report was made and then on to Kowloon City Police Station?  |                   |
|    | A.        | Yes.  |                   |
|    | Q.        | Now once you were back there at Kowloon City Police Station at 20 past 2 on the 3rd of July, 1980, did you once again caution the 1st accused to make a written record on this occasion of what was said?   |                   |
| 40 | A.        | I wrote down on a piece of paper and formally cautioned him in writing.   |                   |
|    | Q.        | And did he say something after that formal caution? Was that also written down?   |                   |
|    | A.        | It was written down by himself.   |                   |
|    | Q.        | And then did you both sign the document?  |                   |
|    | A.        | Yes.  |                   |
| 50 | MR. LUNN: | My Lord, may the witness be shown committal exhibit P.9 together with the certified translation?  |                   |

In the  
High Court

Prosecution  
Evidence  
No.15  
Ng Pui-kan  
Examination  
11th August  
1981

(continued)

COURT: Yes.

Q. Is that the document upon which the record was made?

A. Yes.

Q. And is that your signature together with the signature of the 1st accused?

A. Yes.

MR. LUNN: My Lord, may that be exhibit P.9 together with the certified translation?

COURT: Yes. The document will be admitted as exhibit P.9 and the translation as P.9A. 10

MR. LUNN: I wonder if your learned clerk will give copies of that to the jury at this stage and I might read out the translation itself.

COURT: Very well.

MR. LUNN: I am obliged. Members of the jury, I think you will find that the translation is on the opposite side of the page.  
(Mr. Lunn reads exhibit P.9A) 20

Q. Now, officer, later that day, that is the 3rd of July, in the late afternoon, did you have occasion to once again caution YEUNG Kwong-hung?

A. Yes.

Q. And did that come about in this way that once again you were in room 49 of the District Crime Unit No.3 when Detective Sergeant 4679 KWOK Pau-fuk led in a Chinese man YIP Kam-ping? 30

A. Yes.

Q. And did that man YIP Kam-ping point out the defendant, accuse him of beating him with a cue during the course of the incident on the 26th of June, 1980?

A. Yes.

Q. Following that was YIP Kam-ping led out of the office and thereafter did you caution the accused and make another written record of what transpired? 40

A. Yes.

Q. And at the end of your written record, did the accused write some characters of his own and did the two of you sign that record?

A. Yes.

MR. LUNN: May the witness be shown committal exhibit P.10 together with the certified translation?

In the  
High Court

COURT: Yes.

Prosecution  
Evidence

No.15

Q. Is that the document upon which the record was made which both of you signed?

Ng Pui-kan  
Examination  
11th August  
1981

A. Yes.

MR. LUNN: My Lord, may that become exhibit P.10 and P.10A?

(continued)

10 COURT: Yes. The document will be admitted as exhibit P.10 and the translation P.10A.

MR. LUNN: My Lord, I am obliged. Once again may copies be given to the jury? Once again perhaps I might read that. (Mr. Lunn reads exhibit P.10A)

Q. Now shortly thereafter, officer, were the same sequence of events repeated in that another man was led in to room 49 where you were together with the accused?

20 A. Yes.

Q. And was that man CHAN Chun-ki?

A. Yes.

Q. Was he led in by Detective Constable 6637?

A. Yes.

Q. And did CHAN Chun-ki say that he had seen the accused holding a billiard cue on the 26th of June, 1980?

A. Yes.

30 Q. Was CHAN Chun-ki then led out of the office and once again did you then caution the accused and make a written record of it?

A. Yes.

Q. Did the accused himself sign that record?

A. Yes.

MR. LUNN: My Lord, may the witness be shown exhibit P.11?

COURT: Yes.

40 Q. Is that the written record and does that document bear your signature together with the accused's?

A. Yes.

MR. LUNN: My Lord, may that be exhibit P.11? May the translation be exhibit P.11A?

In the  
High Court

Prosecution  
Evidence  
No.15  
Ng Pui-kan  
Examination  
11th August  
1981

(continued)

Cross-  
Examination

COURT: Yes.

MR. LUNN: My Lord, I am obliged. Your learned clerk hasn't anticipated my request, may I ask him to give copies to the jury? My Lord, once again may I read it?

COURT: Yes.

(Mr. Lunn reads exhibit P.11A)

MR. LUNN: Thank you, officer.

XXN. BY MR. VAN BUUREN :

Q. Officer, when you went to the 1st defendant's 10 house at about 11 o'clock in the night, did you have a warrant for his arrest?

A. I went there with Inspector Tang as the team leader.

Q. Answer the question please. Did you have a warrant for his arrest? Yes or no?

A. I didn't have one for myself.

Q. Did you have a warrant to search his cubicle?

A. Of course myself didn't have one.

Q. When you went into this cubicle, is it right 20 that he was asleep?

A. They were lying in bed.

Q. Now on the 3rd of July, 1980, who gave you instructions to confront the defendant D1 with the potential prosecution witnesses inside the police station?

A. At that time I was ready to make any possible caution against YEUNG Kwong-hung. I didn't know what was done by my colleague, which one was brought in by my colleague. 30

Q. Do you mean your colleagues brought the potential prosecution witnesses into your presence when you had the prisoner in your custody? Is that your testimony?

A. Yes.

Q. Who brought in Mr. YIP Kam-ping into your presence when you were with the prisoner?

A. A detective sergeant, No.4679.

Q. And did you question that witness in the presence of the defendant? 40

A. No.

Q. Did you say that YIP Kam-ping pointed out to you that the defendant YEUNG had beaten him up with a cue during the course of the incident?

A. Yes.

Q. Why did you do that? Why did you question YIP Kam-ping in the presence of the prisoner?

A. I didn't ask the witness. It was the witness

	YIP Kam-ping who pointed out the defendant and said those things of his own volition.	In the High Court
	Q. Are you aware that there are strict rules about identification of prisoners?	Prosecution Evidence
	A. I don't know what you are talking about, what sort of rule. They came in to identify somebody and I was only there to record what transpired.	No.15 Ng Pui-kan Cross-Examination
10	Q. Have you heard of a police identification parade?	11th August 1981
	A. Yes.	
	Q. Can you tell us what happened at these parades?	(continued)
	A. In a formal identification parade, the presence of a senior police officer is required and we also require some people we call it 'actors' to be present with the person to be identified.	
20	Q. Why wasn't that done on that occasion when you were with him?	
	A. I don't know. I knew that there were witnesses to come in for identification purpose, so I waited for the witnesses to come. I was with YEUNG Kwong-hung.	
	Q. Who brought in the witness CHAN Man on that evening on the 3rd of July, 1980?	
	INTERPRETER: CHAN Man is not a witness.	
	Q. I am sorry. CHAN Chun-ki.	
30	A. He was brought in by Detective Constable 6637.	
	Q. And again did you question that witness CHAN Chun-ki in the presence of the prisoner?	
	A. No.	
	Q. Who questioned him?	
	A. CHAN Chun-ki spoke out of his own volition.	
	Q. You mean he just came into the room and saw the prisoner and said something?	
	A. Yes.	
40	Q. Any other witnesses brought in that evening?	
	A. Only two.	
	Q. Were there any other witnesses outside in the police office at that time?	
	A. If there was any witness or witnesses, he or they were brought in in the presence of YEUNG Kwong-hung and myself.	
	Q. I ask you again, were there any witnesses outside in that office where you were on that evening?	
50	A. I don't know.	
	Q. Why didn't you say so?	

NO RE-XN. BY MR. LUNN

In the  
High Court

No.16

Prosecution  
Evidence

No.16  
Statement  
of P.C.Fung  
Siu Kit  
dated 11th  
August 1981

STATEMENT OF P.C. FUNG  
SIU-KIT

---

MR. LUNN: Would your Lordship allow me a moment?  
My Lord, with my learned friend's consent,  
I propose now to read some statements.

COURT: Yes.

MR. LUNN: My Lord, the statements that I will  
turn to first of all deal with the arrest  
of the 2nd accused and his interview. The  
first statement is one of Police Constable  
19038. My Lord, his statement forms part  
of the affidavit that results in the  
voluntary bill indictment. My Lord, it is  
therein referred to as J, exhibit J. Police  
Constable 19038. I wonder if your learned  
clerk would have ready the exhibit to that  
statement, that is the police officer's  
notebook which the accused signed. Does  
your Lordship have that statement at hand? 10 20

COURT: I am trying to find it. Anyway, you  
go on. I will find it.

MR. LUNN: Members of the jury, this is a  
statement of Police Constable 19038.

" I am Police Constable 19038, FUNG  
Siu-kit of the Royal Hong Kong Police  
Force. I am attached to the No.1 Unit of  
the Emergency Unit, Kowloon (West).

At 2130 hours on 22.2.81, I with  
sergeant 7459 and P.C.19850 were  
patrolling at the vicinity of Shang Tung  
Street near Shanghai Street. A Chinese  
male named YIP Kam-ping, aged 33 years  
made a complaint to me. As a result, we  
stopped three Chinese males at outside  
No.451, Shanghai Street. Chinese male YIP  
Kam -ping pointed at one of them and said,  
"That was him" That male identified himself  
as LAU Shek-chun aged 26 years. He is the  
defendant. I told the deft. that I had  
reason to believe that he may be connected  
with a murder case which occurred on the  
26.6.80 at the Good World Billiard Room,  
Sai Yeung Choi Street, Mongkok. I told the  
def. that he was under arrest. I verbally  
cautioned the deft. The three Chinese males 30 40



were then brought back to the Mongkok Police Station where an entry was made in the Report Book.

In the  
High Court

10 At 2232 hours on the 22.2.81, at the Report Room of Mong Kok Police Station, I formally cautioned the deft. I used my police notebook. I wrote the preamble in respect of the case and caution and read it over to the deft. He signed to indicate that he understood. He then wrote some Chinese characters in his own handwriting. When he had finished I read it back over to him. I invited him to sign. He did. I signed.

Prosecution  
Evidence  
No.16  
Statement  
of P.C.Fung  
Siu Kit  
11th August  
1981

(continued)

20 I later caused a translation to be made of the entries in my note-book. This translation was certified. I now produce my Police note-book and the certified translation thereof. I identify my signatures.

The above statement consisting of one page has been read over to me in Punti dialect. It is true to the best of my knowledge and belief."

My Lord, the notebook referred to therein, may that become exhibit P.17?

COURT: Very well. The notebook will be exhibit P.17 and the translation 17A.

30 MR. LUNN: My Lord, I am obliged. My Lord, may copies of that notebook and the translation be given to the members of the jury now and I will read the translation.  
(Mr. Lunn reads exhibit P.17A)

No.17

STATEMENT OF DET.SGT.KWOK  
PAU-FUK

No.17  
Statement  
of Det.Sgt.  
Kwok Pau-fuk  
11th August  
1981

40 My Lord, the next statement I propose to read is that of Detective Sergeant 4679, exhibit K in the affidavit. My Lord, I seek to produce with that statement a record which your learned clerk has copies of ready for the jury.

COURT: Yes.

In the  
High Court

Prosecution  
Evidence  
No.17  
Statement  
of Det.Sgt.  
Kwok Pau-fuk  
11th August  
1981

(continued)

MR. LUNN:

" I am Detective Sergeant 4679 KWOK Pau-fuk of the Royal Hong Kong Police Force, I am attached to the District Crime Unit III, Criminal Investigation Department, Kowloon Police Headquarters.

On the evening of 22.2.1981, at outside No.451, Shanghai Street, Mongkok, Kowloon, Chinese male LAU Shek-chun was arrested by Police Constable 19038 FUNG Siu-kit and party of Kowloon Emergency Unit (West). He is the defendant.

10

On the morning of 23.2.1981, at the office of District Crime Unit III, Kowloon C.I.D. Headquarters, Detective Senior Inspector TANG Chung-yeung instructed me to interview Chinese male LAU Shek-chun, aged 27 years and made further investigation into a 'Murder' and 'Wounding Sec.17' case which occurred at about 2330 hours on 26.6.1980 at the Good World Billiard Room, 8th floor, 80 Sai Yeung Choi Street, Mongkok, Kowloon.

20

At 0020 hours on 23.2.1981, at room 49, of the District Crime Unit III, in the presence of Detective Station Sergeant TSUI Kwan, I interviewed Chinese male LAU Shek-chun, aged 27 years. I used a plain paper. I wrote a preamble concerning the case and this was followed by the caution. I read this over to the defendant who signed to indicate that he understood. I signed. Detective Station Sergeant TSUI Kwan signed.

30

I then asked the defendant a series of questions. I wrote down the questions and read them over to him. I wrote down his replies and read them back over to him.

When I had finished, I read the whole statement over to the defendant and invited him to sign. He signed each page and the foot of the statement. I signed each page and the foot of the statement. Detective Station Sergeant TSUI Kwan signed each page and the foot of the statement. The time was 0245 hours.

40

I later caused a translation to be made

of this statement. This translation was certified. I now produce the original statement and the certified translation which I identify by my signature thereon.

The above statement consisting of one page has been read over to me in Puntí dialect. It is true to the best of my knowledge and belief."

10 COURT: The statement will be admitted as exhibit P.18 and the translation P.18A.

MR. LUNN: My Lord, I am obliged. (Mr. Lunn reads exhibit P.18A)

Your Lordship will allow me a moment before I move on to another witness?

No. 18

STATEMENT OF DET.CON.  
LI SAU-YEE

20 My Lord, again with my learned friend's consent, I propose to read some further statements. In this case in connection with the fingerprint evidence the statement of Detective Constable 7715 at page 41, LI Sau-ye. My Lord, I will read that statement.

COURT: Yes, Mr. Lunn

30 MR. LUNN: "I am Detective Constable 7715 LI Sau-ye and have 15 years of police service. I am at present attached to the District Crime Unit, Team III, Kowloon District Police Headquarters.

At 01.30 hours on 3.7.1980 at Room 49, Kowloon District Police Headquarters, I recorded the fingerprints of YEUNG Kwong-hung on a fingerprint form and in my presence he signed the fingerprint form YEUNG Kwong-hung.

40 On 3.7.1980 I handed the above fingerprint form signed YEUNG Kwong-hung to Detective Station Sergeant CHAN Lam-kan at the Identification Bureau, Police Headquarters.

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High Court

Prosecution  
Evidence  
No.17  
Statement  
of Det.Sgt.  
Kwok Pau-fuk  
11th August  
1981

(continued)

No.18  
Statement of  
Det. Con.  
Li Sau-ye  
11th August  
1981

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High Court

Prosecution  
Evidence  
No.18  
Statement of  
Det. Con.  
Li Sau-yee  
11th August  
1981

(continued)

The above statement consisting of one page has been read over to me by Detective Station Sergeant CHAN Lam-kan in Punti dialect. It is true to the best of my knowledge and belief. "

No.19  
Statement  
of Chan Lam-  
kan  
11th August  
1981

(continued)

No.19

STATEMENT OF CHAN LAM-  
KAN

My Lord, the second statement I will read in relation to that evidence is at page 43, the recipient of that form.

10

COURT: Yes.

MR. LUNN: I will read that statement, my Lord.

" I am CHAN Lam-kan, 50 years of age and have 28 years of police service. I am at present attached to the Scenes of Crime Section, Identification Bureau, Royal Hong Kong Police Force.

For the past 21 years, I have been engaged in the study of finger, palm and sole prints, the search for and development of chance impressions at scenes of crime and the identification of persons by friction or papillary ridge characteristics. This is internationally accepted as a positive method of personal identification. It entails the comparison of finger or palm print trace found at crime scenes.

20

Where twelve or more identical ridge characteristics occur in the same sequence in two finger, palm or sole prints, there is no doubt that these prints have been made by the same person. In my experience I have never found or known of finger, palm or sole prints made by different persons to agree in

30

sequence of the ridge characteristics.

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High Court

I hold a Certificate of Competency in Fingerprint Technology awarded by the Commissioner of Police to persons who attain expert status in this field.

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Evidence  
No.19  
Statement  
of Chan Lam-  
kan  
11th August  
1981

10

I have given evidence regarding these matters in the courts of judiciary in Hong Kong on many occasions and have been accepted by these courts as an expert in this field.

(continued)

On 28.6.1980 I received from Detective Sergeant 105 two digital impressions marked K.F.P. No.3059/80F at the Identification Bureau. "

My Lord, that is exhibit 6.

"I photographed these impressions and the resultant photograph is shown on the left hand of the Book of Photographs."

20

My Lord, I wonder if your clerk will obtain exhibit 7, the book of photographs?

COURT: Yes. They will be exhibit P.7.

MR. LUNN: My Lord, I am obliged.

"On 3.7.1980 I received a set of fingerprints recorded on a fingerprint form signed YEUNG Kwong-hung from Detective Constable 7715."

My Lord, I wonder if exhibit 5 might be produced?

COURT: Yes. They will be admitted as exhibit P.5.

30

MR. LUNN: I wonder perhaps the jury could have these exhibits while I read it. My Lord, I think the copies of the photographs are in fact exhibit 8. The original photographs are exhibit 5. Might the copies be marked exhibit 8?

COURT: Yes. The copies will be marked exhibit P.8.

40

MR. LUNN: My Lord, I am obliged. Members of the jury, it may help if I continue to read the statement you have in front of you the photographs together with the ridge characteristics being identified.

In the  
High Court

Prosecution  
Evidence  
No.19  
Statement  
of Chan Lam-  
kan  
11th August  
1981

(continued)

" On comparison, I found that one of the two impressions marked K.F.P. No. 3059/80F disclosed in the photograph on the left hand page of the Book of Photographs was identical in the sequence of the ridge characteristics to the right ring fingerprint recorded on the fingerprint form signed YEUNG Kwong-hung.

In order to illustrate this identification, I have prepared photographic enlargements of the one of the impressions K.F.P. No.3059/80F and of the right ring fingerprint recorded on the fingerprint form.

10

These photographic enlargements are shown on the right hand page of the Book of Photographs. On these enlargements, I have each marked twelve ridge characteristics in agreement and in sequence.

20

I have no doubt that the one of the two impressions marked K.F.P. No.3059/80F was made by the person whose fingerprints are recorded on the fingerprint form signed YEUNG Kwong-hung.

I have read over the above statement consisting of two pages. It is true to the best of my knowledge and belief. "

No.20  
Statement  
of M.A.P.  
Majurey  
11th August  
1981

No.20

STATEMENT OF SUPERINTEN-  
DENT M.A.P. MAJUREY

30

My Lord, the final statements I propose to read at this stage are of a superintendent, Majurey, who conducted the identification parade, and of his interpreter. They appear at letters M and O, the exhibit to the affidavit in the voluntary bill. My Lord, I will read that statement.

" I am Morgan Alan Philip MAJUREY, Superintendent of Police, currently posted to the Mongkok Division as the Assistant Divisional Superintendent.

40

At 1310 hours on 27.2.81, I was in charge of an Identification Parade which was held in the Action Squad Office, Mongkok Police Station. The Identification Parade was being held in connection with a case of 'Homicide' and 'wounding Sec.17' which occurred at about 2330 hours on 26.6.1980, at the Good World Billiard Room, 8/F, 80, Sai Yeung Choi Street, Mongkok, Kowloon.

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Prosecution  
Evidence  
No.20  
Statement  
of M.A.P.  
Majurey  
11th August  
1981

10

The prisoner was a Chinese male LAU Shek-chun, aged 27 years and resident at room 1520, Block 4, Shek Lei Estate, Kwai Chung, New Territories. A Police Interpreter, Mr. Happy SHEK, was present during the proceedings. A solicitor Mr. NG Siu-pang and his clerk Mr. SHUM Tak-on who were representing the prisoner, were also present during the proceedings.

(continued)

20

There was a total of 8 persons on the Parade including the prisoner. They were all dressed in European style clothing and were of similar height, build and age group. Through the Police Interpreter, I explained the purpose of the parade to the prisoner. He stated that he had no objection to appearing on the parade nor to the other participants. I told the prisoner that he was free to choose any of the positions marked with Boards numbered one to eight on the floor. He elected to stand at the position number five.

30

The first witness was called at 1337 hours. This witness was Chinese male LEE Kit-hung...."

My Lord, if I can pause there. It may help if I say he is the ninth witness on the back of the indictment.

40

"LEE Kit-hung, aged 22 years, and resident at room 1113, Orchid House, So Uk Estate, Kowloon. Through the Police Interpreter, I explained the purpose of the parade to him. I told him to examine the eight persons on the parade. He walked along the line to the prisoner and put his hand on his right shoulder and said 'number five'. He left at 1339 hours. I informed the prisoner that a second witness would be called and he elected to stand at position Number Seven.

50

In the  
High Court

Prosecution  
Evidence  
No.20  
Statement  
of M.A.P.  
Majurey  
11th August  
1981

(continued)

The second witness was called at 1340 hours. This witness was Chinese male PANG Pui-yuen..."

My Lord, he is the sixth witness on the back of the indictment.

"aged 23 years and resident at Flat C, 7/F, No.6, Wai King Court, Wai Hang Cheong Sun Tsuen, Kowloon. Through the Police Interpreter, I explained the purpose of the Parade to him. I told him to examine the eight persons on the parade. He walked along the Parade stopped and looked at all from a distance. He then walked around the back of the Parade and behind the prisoner. He touched the prisoner's right shoulder. He was asked the number and he said 'Number seven'. He left at 1342 hours. I informed the prisoner that a third witness would be called and he elected to stand at position number three.

10

20

The third witness was called at 1358 hours. This witness was Chinese male POON Chi-chuen....."

My Lord, No.5 on the back of the indictment.

"aged 22 years and resident at 8/F, 181, Ma Tau Wei Road, Tokwawan, Kowloon. Through the Police Interpreter, I explained the purpose of the parade to him. I told him to examine the eight persons on the parade. He turned around and walked straight to the prisoner. He touched him on the left shoulder and said 'Number three'. He left at 1400 hours. I informed the prisoner that a fourth witness would be called and he elected to stand at position number four.

30

The fourth witness was called at 1402 hours. This witness was Chinese male CHAN Chun-ki....."

40

My Lord, No.4 on the back of the indictment.

"aged 23 years and resident at Flat F, 2/F, Tin On Building, Tokwawan, Kowloon. Through the Police Interpreter, I explained the purpose of the parade to him. I told him to examine the eight persons on the



parade. He turned around and walked quickly along the line and touched the prisoner on the right shoulder. He was asked the number and he said 'Number four'. He left at 1404 hours.

In the  
High Court

Prosecution  
Evidence  
No.20  
Statement  
of M.A.P.  
Majurey  
11th August  
1981

10

The prisoner was called across and was informed of the result of the Identification Parade. With regarding the Identification Parade, he had no complaint. Parade concluded at 1407 hours.

(continued)

During the course of Identification Parade, I had several discussions with the solicitor Mr. NG Siu-pang, all of which were recorded on the Identification Parade Book by me.

20

The above statement consisting of two pages has been read over by me and it is true and correct to the best of my knowledge and belief."

No.21

STATEMENT OF HAPPY SHEK  
WING-YUI

No.21  
Statement of  
Happy Shek  
Wing-yui  
11th August  
1981

My Lord, the final statement that is agreed is that of the interpreter whose name is Happy SHEK Wing-yui and is letter O.

30

" I am Chinese male Happy SHEK Wing-yui, Police Interpreter Class II. At present I am attached to the District Crime Unit III, Kowloon C.I.D. Headquarters.

40

On the 27.2.1981, I attended an Identification Parade and acted as Interpreter between Mr. Morgan Alan Philip MAJUREY, Superintendent of Police and Chinese Males LEE Kit-hung, PANG Pui-yuen, POON Chi-chuen and CHAN Chun-ki; and also between Mr. Morgan Alan Philip MAJUREY, Superintendent of Police and Chinese Male LAU Shek-chun on the other hand; that I interpreted faithfully everything that was said to me, both from English into Chinese; and vice versa.

The above statement consisting of one

In the  
High Court

page has been read over by me. It is true and correct to the best of my knowledge and belief. "

Prosecution  
Evidence  
No.21  
Statement of  
Happy Shek  
Wing-yui  
11th August  
1981

My Lord, with that I come to a stage where save for the forensic pathologist and possibly one or more of the other doctors, there is no further evidence. My Lord, in those circumstances, I would ask your Lordship to adjourn until Thursday.

(continued)

COURT: Very well. We will adjourn until 10 am on Thursday, members of the jury. Thank you. 10

4.10 p.m. Court adjourns

11th August, 1981

13th August  
1981

13th August, 1981

10.05 a.m. Court resumes

Both accused present. Appearances as before. Jury present.

MR. LUNN: My Lord, I propose to begin the evidence today by reading a further two statements, and then calling the forensic pathologist. My Lord, the statements I propose to read are of doctors who examined TAM Man and YIP Kam-ping. My Lord, if there are any matters that arise in these statements, I will ask Dr. LAM, the forensic pathologist, to elaborate on medical descriptions. 20

COURT: Very well.

No.22  
Statement  
of Dr. Leo  
Lu  
13th August  
1981

No.22

30

STATEMENT OF DR. LEO LU

MR. LUNN: My Lord, then the first statement that I will read is Dr. LEO LU. He is letter H in the affidavit. Members of the jury, this is a statement of Dr. LEO LU, presently attached to the Pathology Unit of Kwong Wah Hospital.

" My qualifications are M.B.B.S.  
(Rangoon).

In the  
High Court

On the evening of 26.6.80, I medically  
examined Chinese male TAM Man...."

Prosecution  
Evidence

No.22

My Lord, may I say that TAM Man is the victim,  
if I can call him that, on the third count.

Statement  
of Dr. Leo Lu  
13th August  
1981

"....30 years old, at the Casualty  
Department of Kwong Wah Hospital. My  
findings were as follows :-

(continued)

- 10
- (1) laceration wound at occiput 1" long  
skull deep
  - (2) laceration wound at right parietal  
area 1.5" long skull deep
  - (3) contusion jaw and left infraclavicular  
area
  - (4) abrasion with contusion right forearm
  - (5) loss of consciousness present at the  
time of incident.

20

The patient was immediately admitted into  
Neuro-surgical ward with 5% dextrose 500 ml  
drip and at the time he was in a state of  
impending shock, and head injury with  
lacerated wounds.

The above statement consisting of one page  
has been read over by me. It is true to  
the best of my knowledge and belief. "

No.23

STATEMENT OF DR. TUNG  
MAN-KWONG

No.23  
Statement of  
Dr. Tung  
Man-kwong  
13th August  
1981

30

My Lord, the second statement is that, at  
letter I, of Dr. TUNG Man-kwong. My Lord,  
members of the jury, that statement says this,

"I am Dr. TUNG Man-kwong, presently  
attached to the Neuro Surgery Unit of  
Queen Elizabeth Hospital. My qualifications  
are: M.B.B.S. (H.K.)

On the evening of 26.6.80, I medically  
examined Chinese male YIP Kam-ping....."

My Lord, that is the victim of the second count.

In the  
High Court

Prosecution  
Evidence  
No.23  
Statement  
of Dr. Tung  
Man-kwong  
13th August  
1981

(continued)

"....32 years at the Queen Elizabeth  
Hospital. My findings were as follows:-

- (a) fully conscious
- (b) 3 cm laceration of scalp
- (c) abrasion on chest.

On 27.6.80, Chinese male YIP Kam-ping  
was discharged against medical advice.

The above statement consisting of one  
page has been read over by me. It is  
true to the best of my knowledge and  
belief. "

10

No.24  
Dr. Lam Ping-  
yan  
Examination  
13th August  
1981

NO. 24  
DR. LAM PING-YAN

My Lord, then I will call, if I may, Dr. LAM  
Ping-yan, who is at page 30.

P.W.13 - LAM Ping-yan (Sworn in English)

XN. BY MR. LUNN:

Q. Are you a forensic pathologist, doctor?

A. Yes.

Q. And are your qualifications M.B., B.S.  
(H.K.)? 20

A. Yes.

Q. Do you work at the Kowloon Police  
Laboratory?

A. Yes.

Q. Doctor, before I deal with the examinations  
you conducted in respect of the deceased  
and others, may I seek your assistance in  
explaining to my Lord and the members of  
the jury some of the medical descriptions 30  
we have heard in the statement of Dr. LEO  
LU who examined a man called TAM Man?  
Now doctor, you were in court and you  
heard them, but perhaps I could repeat them  
sentence by sentence and you can elucidate  
for us what those matters were. Dr. LEO  
LU describes, first of all, an injury thus  
to TAM Man, "a laceration wound at occiput  
1" long skull deep". Can you help us as  
to what that is? 40

A. The occiput is the back of the head; the  
left occiput means the left side of the head.

And laceration is a splitting of the skin. It is a complete split of the skin overlying this area down to the bony surface.

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Q. Secondly he described "a laceration wound at right parietal area 1.5" long skull deep".

Prosecution Evidence  
No.24  
Dr. Lam Ping-yan  
Examination  
13th August  
1981

10

A. The parietal region is over here. Again laceration exposing bones underneath.

Q. Both of those wounds are described as being "skull deep". Can you help my Lord and the jury as to what force, however applied, would be required to result in an injury of that nature?

(continued)

A. It depends very much on the weapon used; but generally speaking it requires more than a moderate amount of force.

20

Q. Assuming, if you would, for the moment the weapon was a blunt weapon, what force would be required in those circumstances?

A. I would say more than a moderate amount. And in my classification, I classify force as light, moderate and severe.

Q. So you say more than moderate would be required?

A. More than moderate.

COURT: More than moderate but not severe.

A. Yes.

30

COURT: In between moderate and severe, and you have got no classification for that.

A. No.

Q. Thirdly, Dr. LEO LU observes that there was a contusion of the jaw and left infraclavicular area. Can you help us as to what that is?

A. "Infra" means below, and "clavicular" means collar bone. That is this is the collar bone, the infra means below the collar bone. And the contusion is synonymous with bruise.

40

Q. Thank you, doctor. I think those are the only technical terms used in that statement. Turning then, if we may, doctor, to your examination of the deceased. On the 28th....

COURT: Before you go on, Mr. Lunn - pardon me if I am wrong - but did you get from the doctor that he is an experienced forensic pathologist?

MR. LUNN: My Lord, I have not.

Q. Doctor, perhaps you could deal with that. How

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No.24

Dr. Lam Ping-  
yan

Examination  
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(continued)

long have you been practising as a  
forensic pathologist?

A. Since 1978.

Q. And when were you qualified as a doctor?

A. 1977.

Q. And how frequently have you been called  
upon to give evidence in court dealing with  
your examinations of dead people?

A. On numerous occasions.

Q. Turning then, doctor, to your examination.  
On the 28th of June, 1980, did you conduct  
a post-mortem examination on a man NG Fuk-  
nam?

10

A. Yes.

Q. When you conducted that examination, did  
you make notes of your findings?

A. Yes.

Q. When you made those notes, were matters  
to which you referred still fresh in your  
mind?

20

A. Your Lordship, may I refer to my record?

COURT: Yes, certainly.

Q. Perhaps, doctor, it would be simpler if  
you - by referring to your notes - tell  
us what your findings were.

A. Can I assist the court by pointing out  
the injuries in the set of photographs?

MR. LUNN: My Lord, that is Exhibit P.1.

A. Exhibit P.1(F) shows the deceased who was  
a moderately built Chinese male adult,  
height 163 cm., that is about 5'4".  
Photograph P.1(E) shows a bruised abrasion  
about 3 cm by 2 cm. over the left forehead,  
that is just above the left eye. Photo-  
graph P.1(C) refers to a bruised abrasion  
measuring 1 cm. by .7 cm. over the outer  
corner of left eye. There is another  
bruise shown in the same photograph  
measuring .5 cm. by .7 c.m. over the inner  
corner of the left eye. There is a lace  
ration shown in photograph P.1(A) measuring  
3 cm. long over the left back of head,  
that is the left occiput. There is an abra-  
sion measuring 2 cm. by 1.5 cm. over the  
back of right lower forearm, not shown in  
the photograph but roughly here. There is  
another area of bruising measuring about  
2 cm. by .8 cm. over the inner aspect of  
left distal forearm, and it is shown on  
photograph P.1(A), it shows the hand and

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forearm of the deceased. Photograph P.1(C) shows an elongated band of bruising, here, measuring 8 cm. by 2 cm. over the inner end of the right collar bone. Photograph P.1(F) shows another elongated band of bruising 9 cm. by 1.5 cm. over front of right lower chest. There is a bruised abrasion shown on photograph P.1(D) measuring 2.4 cm. by .6 cm. over the back of upper chest in the midline. On the same photograph is shown three bands of parallel bruising. The first of the two pairs - there were two pairs of parallel bruising with central pallor each measuring about 16 cm. by 2 cm. over the back of right middle chest region. There was another pair of parallel bruising with central pallor measuring about 15.5 cm. by 2 cm. below the previous bruises.

10 Q. Are we able to see those in the photograph, doctor?

A. Sorry? This is the first two pairs. Altogether there were three bands of bruising over the back right chest, one, two and three.

Q. Thank you.

A. There were two small abrasions about 2 cm. by 1 cm. and 1 cm. by 1 cm. over the right upper back, over here. There were scattered areas of small abrasions measuring 10 cm. by 3 cm. over the upper back in the midline. Internally there was diffused bruising - it is not shown in the photographs - over the left side and the back of the scalp. The underlying skull bone was intact. There was a small quantity of subdural blood clot seen over the left side. A dura is the outermost hard covering of the brain, it is a tough membrane, and subdural blood clot means bleeding between the brain and this tough covering. There was also diffused subarachnoid bleeding over the whole of the brain surface. Subarachnoid bleeding means bleeding underneath the inner most covering of the brain. The brain was swollen because of oedema. That is a collection of fluid with tentorial herniation, which is a sign of increased intracranial pressure. This tentorial herniation was more marked over the right side.

30

40

50 As far as the brain was concerned, there were scattered areas of surface bruising over the whole of left side of the brain. The blood vessels of the brain were normal. Bones of the voice box, that is the Adam's apple,

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 Prosecution  
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 yan  
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(continued)

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yan

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(continued)

were intact. The gullet was empty.  
The windpipe contained some fine froth  
as a result of oedema and congestion of  
the lungs. The heart was healthy. All  
other organs were healthy with no injuries  
or diseases found.

- Q. Doctor, what, in your opinion, was the  
cause of death?
- A. In my opinion the cause of death was intra-  
cranial haemorrhage, that is bleeding into 10  
the skull box, and contusion of brain,  
that is bruising of the brain.
- Q. Can you help us as to the possible causes  
of the various injuries you have described  
resulting in the death of this man?
- A. The only fatal injuries were those applied  
to the head. So intracranial haemorrhage  
and contusion were consistent with being  
the result of repeated by or against a  
hard surface. 20
- Q. You are saying repeated blows by or against  
a hard surface to the skull?
- A. Yes.
- Q. Can you help us as to the nature of the  
object with which the skull came into  
contact to cause the injuries you have  
described?
- A. Has to be a blunt object.
- Q. May the witness have sight of Exhibit P.12?  
Are the injuries to the skull that you 30  
discerned consistent with repeated blows  
with that blunt object?
- A. Yes.
- Q. That or an object similar to it.
- A. Or similar to this.
- Q. Are the injuries to the skull consistent with  
blows by a hammer?
- A. In my opinion, no.
- Q. Can you help us, doctor, as to how you  
reached that opinion? 40
- A. If someone was hammered on the head with  
a hammer, and with the hammering surface,  
I would expect more grave injuries to the  
brain such as fracture of skull, because  
the hammering surface would imprint a fracture  
which is roughly oval-shaped and roughly  
similar in measurement to the striking  
surface of the hammer. In this particular  
case, the brain injury was consistent with  
repeated blows with a blunt object with more 50  
than a moderate amount of force. This  
amount of force was insufficient to fracture  
the skull, but could rock the brain inside  
the skull cavity causing haemorrhage and  
bruising.



Q. Turning, if I may, doctor, to the injuries to the deceased's dorsal. Would you have a look at photograph (D)? That shows the deceased's back. Those particular areas, parallel-striped areas of bruising, with what sort of blows are they consistent?

A. These are characteristically cane marks, anything elongated in shape or resembling a cane in appearance would cause an injury similar to this.

10 Q. Doctor, are those injuries consistent with blows administered by Exhibit P.12, that is the billiard cue?

A. Yes.

Q. And what amount of force would have had to have been used to cause those injuries, assuming the blows were delivered with a billiard cue like Exhibit P.12?

20 A. Well, it is difficult to say accurately, but it would require a moderate to a heavy force.

Q. Remaining, if we may, doctor, with that photograph, we notice on a line with the spine above those two areas, parallel areas of bruising, a small and more intense area.

A. Yes.

Q. Can you help us to what sort of blow would have caused that injury?

30 A. This is what we call an impact abrasion, that is an object impacting on the skin surface and partially imprinted the shape on to the skin surface. So one can see that this abrasion is roughly circular directing from the right to the left, so anything with a small roughly circular surface would cause such an abrasion.

Q. Would that be consistent with the tip of the cue, of the billiard cue?

40 A. Yes.

Q. Doctor, turning, if I may, finally to the skull wounds. Again would you have a look at photograph P.1 (B)? That injury there, is that injury consistent with what you have said earlier, that is to say a blow with a blunt object, one that is consistent with Exhibit P.12, the billiard cue?

A. Yes.

50 Q. Turning then, doctor, from that examination. On the 3rd of July, did you examine two men at the laboratory in Kowloon Police Headquarters?

A. Yes.

Q. Did you make notes of your examination?

A. Yes.

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High Court  
 Prosecution  
 Evidence  
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 Dr. Lam Ping-  
 Yan  
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(continued)

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High Court

Prosecution  
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Dr.Lam Ping-  
yan  
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(continued)

Q. Were those notes made at the time the matters to which you referred were fresh in your mind?

A. Your Lordship, may I refer to ....

COURT: Yes, certainly, doctor.

Q. Doctor, would you tell us what your findings were on those occasions?

A. I examined two Chinese males. One was identified to me as PANG Pui-yuen. He weighed 115 pounds, 5'5". He was moderately built. There was a healing laceration measuring 1.5 cm. long over the left back of the head, that is over here. There was another area of scabbed abrasion.... 10

Q. Perhaps I could just stop you there, doctor ....

MR. LUNN: My Lord, to assist the jury, we are dealing with the victim of the fifth count.

Q. Doctor, you say that there was a healing laceration 1.5 cm. long. Are you able to help us as to the nature of this laceration before the healing had taken place, as to how deep it had been? 20

A. It is very difficult, but anything with a blunt edge can cause a laceration.

Q. You are not able to help us as to the depth of the laceration?

A. No, I cannot. There was an area of scabbed abrasion measuring .7 cm. by .2 cm. above the inner end of the right eyebrow, that is over here. There was a cane mark, that is an elongated band of bruising, 5 cm. long by 1 cm. over the outer aspect of right arm, that is over here. 30

Q. That cane mark, doctor, would that be similar - at least in style if not in size - with the ones that you have described on the back of the deceased?

A. Yes.

Q. Would that be consistent with having been administered by a billiard cue? 40

A. Yes. There was a resolving bruise measuring 4 cm. by 4 cm. over the front of left chest wall, that is over here.

COURT: What is a resolving bruise, doctor?

A. Resolving bruise is about five days to a week, in this particular case, old.

COURT: You mean it is getting better?

A. Yes, Bruises, when it is first inflicted, is

red in colour, and generally it proceeds along a colour change from purplish, slightly bluish, yellowish, greenish, lemonish colour. So from the colour change of the bruise you can roughly, if not very accurately, estimate the time of the infliction.

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yan  
Examination  
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COURT: This, according to what you are saying, was in your opinion about five days old.

10

A. Five days to a week old.

Q. Did you discern any other injuries on that man?

A. There were no other injuries.

Q. What about your second examination, doctor?

A. The second man I examined was identified to me as being KWOK Sing-yip, 23 years old, weighing 154 pounds, 5'10". He was well-built. There was a scabbed abrasion measuring .2 by .2 cm. over the back of right shoulder, that is over here. There was another scabbed abrasion measuring .7 cm. by .2 cm. over the back of right elbow, that is here. There was again a cane mark 8 cm. long and 1 cm. wide over the back of left shoulder.

20

Q. Again, doctor, is that injury one consistent with a blow delivered by a billiard cue?

A. Yes. There were remains of herbal medicine over the left elbow which was recognised by the yellowing stains on the skin left over by Chinese herbs. There was another scabbed abrasion measuring .5 by .2 cm. over the inner border of the left mid-forearm, this is the inner border, that is over here. There was another cane mark 9 cm. long and 1 cm. wide over the back of left upper chest, over here. There were no other injuries. His limbs were normal.

30

Q. Doctor, as far as the cane marks that you discerned on this man, KWOK, are concerned, are you able to tell us what force was involved in causing those injuries?

40

A. Again a moderate to a heavy force.

Q. Thank you, doctor.

XXN. BY MR. VAN BUUREN:

Cross-  
Examination

Q. Doctor, what is the difference between an abrasion and a laceration?

A. Abrasions are grazes of the skin surface, that is when you scratch yourself hard enough, you get an abrasion. Laceration is a complete split of skin surface, that is

50

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High Court

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Dr. Lam Ping-  
yan  
Cross-  
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(continued)

- the skin virtually splits open into two halves.
- Q. So am I right in saying that for a laceration, one would require a larger amount of force than for an abrasion? To cause a laceration, the assailant would have to use a greater degree of force than for an abrasion?
- A. Well, it is not necessarily so, because the mode of infliction of either injury is not similar, so it is difficult to compare. But generally speaking, it requires heavier force to cause a laceration. But sometimes, an abrasion can be so extensive that it requires a force which is even heavier than one usually used to cause a laceration. 10
- Q. Yes, doctor, what I mean is that given the same instrument, say a cane or a stick, a light blow would cause perhaps an abrasion, but a hard blow might cause a laceration. 20
- A. A cane, it can either cause a bruise or a laceration, but never an abrasion.
- Q. Never an abrasion?
- A. If you hit somebody with a cane in an orthodox manner, that is you beat him, you either get a bruise or a laceration. But if you poke somebody with a cane, then you get an abrasion. It is the mode of infliction of both injuries is dissimilar.
- Q. But if you use, say, a hammer, inevitably it would be a laceration. 30
- A. Usually, yes.
- Q. So if a hammer is used with a moderate degree of force, it is likely that a laceration would be caused rather than an abrasion.
- A. It depends on where you hit the person.
- Q. On the head.
- A. The head, it would cause laceration.
- Q. Doctor, if you look at photograph P.1(D), you called them two pairs of parallel bruising with pallor in between. 40
- A. Yes.
- Q. Doctor, could these have been caused by two strokes?
- A. They actually are two strokes, one, two, three strokes, two strokes above, one stroke below.
- Q. I see. Doctor, did you examine any other persons other than the deceased, Mr. PANG and Mr. KWOK? 50
- A. You mean in association with this case?
- Q. Yes.
- A. Actually I took a blood sample from another person who had been medically examined by

another doctor, and the report had been read over to me just then, and his name was YIP Kam-ping, I took a blood sample from him.

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High Court

Q. When was that taken, doctor, when did you take the blood sample?

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Evidence  
No.24

A. On the same day, that is 3rd of July.

Q. And did you see Mr. YIP?

Dr. Lam Ping-  
yan

A. Yes.

Cross-  
Examination  
13th August  
1981

10 Q. You saw him. The blood sample was not given to you but you took it yourself?

A. I personally took it.

Q. Did he complain to you that he had been hit by a hammer?

(continued)

A. Well, my business with him was only to take blood from him, no questions were asked except for consent.

Q. Thank you.

NO RE-XN. BY MR. LUNN.

20

No. 25

LAI YAU-KUEN

No.25  
Lai Yau-kuen  
Examination  
13th August  
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MR. LUNN: MY Lord, the next witness the Crown calls is at page 39, Police Constable 17539.

P.W.14 - LAI Yau-kuen (Affirmed in Punti)

XN. BY MR. LUNN:

Q. Officer, are you attached to Mongkok Police Station?

A. Yes.

Q. And were you so attached in June of 1980?

30

A. Yes.

Q. Now on the evening of the 26th of June, 1980 as a result of instructions you received, did you go to No.80 Sai Yeung Choi Street in Mongkok?

A. Yes.

Q. And there did you encounter some fellow police officers and some citizens, one of whom was injured?

A. Yes.

40

Q. In due course did you learn that that man's name was, the injured man, was TAM Man?

A. Yes.

Q. Did you and your colleague P.C.14937 escort TAM Man and the second injured man to the Kwong Wah Hospital?

A. No.

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Lai Yau-kuen  
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(continued)

- Q. Can you tell us what part you played then, officer, in relation to TAM Man?  
A. I arrived at the scene, I took care of this injured person, I helped him to bandage his injuries. Then my colleague, Police Constable 17239, sent this man to the Kwong Wah Hospital.  
Q. Did you go to the Kwong Wah Hospital?  
A. Yes, I did.  
Q. Did you go together with TAM Man? 10  
A. Yes.  
Q. Was TAM Man admitted to the Kwong Wah Hospital?  
A. Yes.  
Q. And after he had been admitted, did you seize items of clothing from TAM Man?  
A. Yes.  
Q. Amongst other items of clothing, was there this dark blue shirt?  
A. Yes. 20

MR. LUNN: My Lord, may that be Exhibit P.19?

COURT: Yes, it can be admitted as Exhibit P.19.

Q. And in addition, officer, did you seize from him this pair of white shorts?

A. Yes.

MR. LUNN: My Lord, may they be Exhibit P.20?

COURT: Those shorts will be admitted as Exhibit P.20.

NO XXN. BY MR. VAN BUUREN

COURT: What time was it when you got to Sai Yeung Choi Street? 30

A. About 18 minutes past 11 p.m.

MR. LUNN: My Lord, the final witness the Crown calls is Inspector TANG, my Lord, he is at page 50.

No.26  
Tang Chung-yeung  
Examination  
13th August  
1981

No. 26

TANG CHUNG-YEUNG

P.W.15 - TANG Chung-yeung (Affirmed in English)

XN. BY MR. LUNN:

	Q.	Are you a detective senior inspector, and in June of 1980, were you attached to District Crime Unit III, Criminal Investigation Department, Kowloon Police Headquarters?	In the <u>High Court</u>  Prosecution Evidence No.26
	A.	Yes.	
10	Q.	Now in relation to this case, was it your duty on the 4th of July, 1980, in the District Crime Unit No.III's office, to formally charge the 1st accused YEUNG with an offence of wounding in relation to YIP Kam-ping?	Tang Chung-yeung Examination 13th August 1981
	A.	Yes.	(continued)
	Q.	And did you make a written record of those events?	
	A.	Yes.	
20	Q.	May the witness have a look at committal Exhibit P.14? Did the accused, in the course of events, make his own written record on the document?	
	A.	Yes. After he was cautioned, he made a short statement by his own handwriting.	
	Q.	Do you see your signature upon that document? Those are the signature of the 1st accused.	
	A.	Yes.	
	Q.	Both of your signatures rather. Could you tell us what you charged the accused YEUNG with?	
30	A.	I charged the defendant YEUNG Kwong-hung with a charge of wounding, contrary to Section 19 of the Offences against the Person Ordinance, Cap.212, Vol.8.	
	Q.	Can you tell us what the particulars of the offence were?	
40	A.	The particulars of the offence were as follows, "YEUNG Kwong-hung, you are charged that on the 26th day of June, 1980, at the Good World Billiard Room, 8th floor, 80, Sai Yeung Choi Street, Mong Kok, Kowloon, in this Colony, you unlawfully and maliciously wounded YIP Kam-ping."	
	Q.	Now in the bottom right hand corner of that form, did the accused write his answer to that charge?	
	A.	Yes.	
	Q.	Can you tell us what the certified translation of that is?	
	A.	He wrote, "That day I did not hurt Tai Ngan Chai", and then he signed it.	
50	MR. LUNN:	My Lord, may that be exhibited, P.14?	
	COURT:	Yes, it will be exhibited as Exhibit P.14.	

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(continued)

MR. LUNN: Members of the jury, I think you will find a certified translation on the other side of the page. That is the translation of what is written by the 1st accused in the bottom right hand corner.

Q. Then many months later, officer, on the 23rd of February, 1981, again in the same office, did you have occasion to charge a man LAU Shek-chun with the offence of murder? 10

A. Yes.

Q. And again was the same procedure followed and was a written record made?

A. Yes.

Q. Again did you and LAU both sign that document?

A. Yes.

Q. I wonder if the officer could have the document in front of him? Could you tell my Lord and members of the jury what exactly it was you charged the accused with? 20

A. I charged the accused with a counter of murder.

Q. Can you tell us what the particulars were?

A. Which is contrary to the Common Law. And the particulars of the offence were as follows, "LAU Shek-chun, you are charged that on the 26th day of June, 1980, at the Good World Billiard Room, 8th floor, No.80 Sai Yeung Choi Street, Mongkok, Kowloon, in this Colony, you did together with LAU Shek-hung, LAU Hing-sang not in custody, YEUNG Kwong-hung and other persons unknown, murdered NG Fuk-nam." 30

Q. What did the accused write in answer to that?

A. He wrote down by himself, "I understand. At that time I was present at the scene, but I did not take part in the fight." And then he signed it. 40

Q. Now these two men, YEUNG and LAU, are respectively the 1st and 2nd accused in this case.

A. Yes, that is the 1st accused, and that is the 2nd accused.

MR. LUNN: My Lord, may that be Exhibit P.21?

COURT: Yes, that document will be admitted as Exhibit P.21. 50



XXN. BY MR. VAN BUUREN:

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Q. Inspector, the 1st defendant Mr. YEUNG Kwong-hung, you charged him, you said, with Section 19 of wounding. Do you know what he is being charged with in these proceedings now in respect of wounding?

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A. I cannot follow you.

10

Q. Do you know that it is wounding, Section 17, now we are concerned with, do you know that?

A. Yes, but at that stage....

Q. Please answer the question yes or no. Do you know that it is now Section 17?

A. Yes, I know.

Q. Now when you charged the 2nd defendant with murder, you said that you charged him with having committed murder at the Hoover, did you say Hoover?

A. Good World.

20

Q. Did you charge him at that time with any wounding offences?

A. No, I only charged him with one count of murder.

(continued)

NO RE-XN. BY MR. LUNN.

MR. LUNN: My Lord, as I indicated on Tuesday - and this is still the position - the Crown is not in a position to call KWOK Shing-yip, who is the alleged victim of the fourth count. My Lord, that being the case, the Crown now closes its case.

30

No. 27

PROCEEDINGS

No.27  
Proceedings  
13th August  
1981

COURT: Do you have any submissions to make?

MR. VAN BUUREN: Yes, my Lord, I do have a submission of law.

COURT: How long is the submission likely to take?

40

MR. VAN BUUREN: I am just going to say, my Lord, I have given your Lordship a list of some of the authorities....

COURT: I saw a lot of books being carried in a while ago.

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(continued)

MR. VAN BUUREN: Anyway, my Lord, I was wondering whether it would be convenient to your Lordship to resume tomorrow morning.

COURT: So you think it could be likely to take all the rest of today?

MR. VAN BUUREN: I thought that if I could begin tomorrow morning, and it might take the whole of tomorrow morning, including my learned friend's reply. Then your Lordship might take some time to consider, and perhaps the jury can be asked to come back on Monday morning.

10

COURT: That is all I want to know, it is just a matter of giving the jury something definite. I do not want to have them come back at 2.30 this afternoon and then say.....

MR. VAN BUUREN: I suggested to my learned friend that perhaps I can see your Lordship in chambers and suggest that we adjourn now and send the jury away and ask them to come back on Monday morning by which time we would be ready.

20

COURT: Well, all right. Members of the jury, would you kindly leave the court now and return at 10 a.m. on Monday. The reason for that is that there are considerable questions of law apparently which counsel are going to raise with me, and as you have already heard, your function in this trial is to consider questions of fact, mine to consider questions of law, so we are going to spend a day or so dealing with my part of the case, and we will have you back on Monday morning, perhaps at 10 a.m. Thank you. Very well, I will adjourn the trial until 10 a.m. tomorrow morning.

30

11.00 a.m. Court adjourns

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10.10 a.m. Court resumes

Both accused present. Appearances as before.  
JURY ABSENT.

SUBMISSION BY DEFENCE  
COUNSEL

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by Defence  
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COURT: Yes, Mr. Van Buuren?

MR. VAN BUUREN: May it please you, my Lord.

10 My Lord, I submit, with the greatest respect, that the Crown has not made out a prima facie case on all the charges that go against both defendants. I will deal, my Lord, first with the evidence against each defendant on each count.

Now the 1st charge against the 1st defendant is one of murder. My Lord, there was no evidence at all that the 1st defendant struck the deceased at any time, therefore my submission is that the only basis for this charge is a matter of common intent. I will deal with common intent, my Lord, in due course.

20 Then the 1st defendant....the 2nd charge against the 1st defendant is one of wounding Mr. YIP Kam-ping, otherwise known as Tai Ngan Chai.

30 Now in respect of this charge, there is the evidence from Mr. YIP Kam-ping himself. His evidence was as follows: This is his examination-in-chief after he related how he went back to the billiard hall. He was asked whether there were any other people with Luen Mo and he said, "Yes. D1 and D2." So he mentions D1 there.

40 Then later on he was asked, "Did you recognize any of the assailants?" the people who beat him and he said, "The one who used a hammer to hit me is not present in court today. The one who inflicted a blow with a cue, a billiard cue, is D1." Then he was asked, "Whereupon your body did D1 hit you?" and he said, "The chest". He pointed to his chest. "How many blows did he deliver?" and his reply was "Just once." Then he was asked to demonstrate to your Lordship and members of the jury how that blow was inflicted and his answer was, "I was running and when he inflicted the blow, he was face to face with me." And then

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he was asked, "Was it a stroke or a thrust?"  
and he said, "It was a thrust."

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(continued)

Later on, my Lord, in cross-examination he was asked, "You said that it was only a simple matter between you and Luen Mo, then why did Ah Sup, Ah Kei go up with you? What happened then?" His answer, "When I first arrived there, I didn't see Luen Mo because there was a pillar between me and him. At that juncture I saw Ah Chun, so I went up to him. Ah Chun was holding a billiard cue. By the time I was walking up to him, he stopped playing and he just stood there with a cue in his hand. When I first saw Ah Chun, I didn't see the 1st accused. It was only at that time when I was running that I saw him gashing out." He was asked, "How long have you known D1?" and he said, "About two years."

10

That is the only evidence, my Lord, against the 1st defendant on the 2nd charge. Now your Lordship will see that this evidence that he gave was that he had been hit by the 1st defendant after he, Mr. Yip, had been hit on the head with a hammer.

20

Now, my Lord, there were two other witnesses from what I would call 'Tai Ngan Chai's group' who said that they actually saw Tai Ngan Chai coming towards them with blood on his head or face.

For instance, Mr. CHAN Chun-ki. He said, "I saw Tai Ngan Chai with head bleeding coming towards me." This is CHAN Chun-ki in chief, my Lord. I will read the whole answer, my Lord. It is a long answer. Mr. CHAN Chun-ki in chief.

30

" I went out of the lift first. I came up to Luen Mo. I said to him, 'Put an end to what happened between you and Tai Ngan Chai. It is a trivial matter.' Luen Mo said, 'Ah Ki, mind your own business. Don't poke your nose in it. Ask Tai Ngan Chai to come up and talk to me.' Then Tai Ngan Chai came up to Luen Mo and said, 'You should not quarrel over a table.' Luen Mo said, 'Tai Ngan Chai, don't think I dare not hit you.' Luen Mo aimed one blow at Tai Ngan Chai. There were friends and brothers of Luen Mo and he picked up billiard cues and started to fight. In that confusion I shouted to them to stop but I was unsuccessful. Some of the friends and

40

brothers of Luen Mo said to me, 'Mind your business. Go away' and pushed me to rear staircase. I looked over my shoulder. I saw Tai Ngan Chai, head bleeding, coming to me."

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This Mr. CHAN Chun-ki does not relate any incident relating to D1 and Tai Ngan Chai.

10 Then there was another man, Mr. POON Chi-chuen. He also gave evidence that he witnessed the attack on Tai Ngan Chai. He said in chief, "I saw a person holding a hammer hit Tai Ngan Chai on the head." This was his full answer, my Lord. According to my notes, he was asked, "What happened?" and then he said,

(continued)

20 " Tai Ngan Chai came up to Luen Mo. Tai Ngan Chai said, 'There was no reason for us to have a dispute.' Tai Ngan Chai said, 'There is no reason for you to beat me up.' Luen Mo said, 'If I do beat you up, how about it?' Then he inflicted one punch on the chest of Tai Ngan Chai. Then Tai Ngan Chai held Luen Mo in his arms and it developed into a fight. People came up and beat us up. I saw a person holding a hammer hit Tai Ngan Chai on the head. I did not see others being beaten up because they had gone to other places. Then with several persons I retreated and stood near a wall. The beating up lasted  
30 for some time. I saw Tai Ngan Chai coming towards us with blood over his face. He had been injured at that stage."

So we have another witness who witnessed the attack on Tai Ngan Chai, but does not relate anything concerning the 1st defendant.

40 Now, my Lord, bearing in mind that Tai Ngan Chai should be treated as a person who has some purpose of his own to serve which may lead him to give false evidence and therefore there is a danger of convicting without corroboration, and taking into account that Tai Ngan Chai was himself obviously an unsatisfactory witness with a personal grudge against the defendants because he thought they belonged to the other side, I submit that it would be dangerous to leave this charge on this kind of evidence to the jury.

COURT: What is your authority for saying that?

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(continued)

MR. VAN BUUREN: This is my authority. My authority is in Archbold, the 40th edition, page 930, paragraph 1425a. The paragraph at the top of the page, my Lord, 1425a, it says:

" Other witnesses requiring corroboration. Despite R. v. Barnes and Richards, ante, and other authorities prior to D.P.P. v. Kilbourne, ante, a general rule seems to be developing that when a witness in a criminal case, whether he be a fellow-accused or called for the Crown, may reasonably be regarded as having some purpose of his own to serve which may lead him to give false evidence against an accused, the judge should warn the jury of the danger of convicting that accused on that witness's evidence unless it is corroborated."

10

COURT: It goes on to say the jury should be warned of the evidence. It does not say the judge should withdraw the evidence all together from the jury.

20

MR. VAN BUUREN: My submission is this, my Lord, my submission is that it would be dangerous at this stage to leave that...taking into account what I have said before that Tai Ngan Chai, they are people who witnessed the attack on Tai Ngan Chai and did not support him, and bearing in mind that he needs....his evidence needs corroboration, my submission is it would be dangerous at this stage to leave this charge to the jury.

30

I come to the 1st defendant on the 3rd charge. This is the wounding of Mr. TAM Man. There is no evidence from TAM Man himself that D1 struck him. Therefore, if this charge is to proceed, it must be on the basis of common intent. I shall deal with common intent.

40

The 4th charge is the charge against Mr. Kwok which, I believe, has been dropped.

Then we have the 5th charge. This is the wounding of Mr. PANG Pui-yuen. This witness again made no mention of D1 at all. Therefore, again, if this charge is to proceed, it must be on the basis of common intent.

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Now, my Lord, I come to the 2nd defendant. The 1st charge is that of the murder of Mr. NG Fuk-nam, the deceased. Now on this charge against the 2nd defendant, there is the evidence of Mr. TAM Man and Mr. LI Kit-hung. I shall take your Lordship, with respect, through that evidence.

(continued)

10 In the course of describing in chief what had happened inside the billiard room after he arrived there with Tai Ngan Chai, he was asked, "What happened to you, to you two?" That means Ah Nam, the deceased, and himself, and his answer was this, "I saw Ah Chun and Ah Sang drag Ah Nam into the premises. I was also attacked by others. I was jostled into the premises by the crowd." Then he identified the 2nd defendant in court and he said, "I saw Ah Nam being attacked by three or four persons. While I was being attacked by others, I saw Ah Nam was beaten up by several persons, including Ah Sang and Ah Chun." That is the evidence of Mr. TAM Man in chief.

20 After that, the evidence of Mr. LI Kit-hung. He was also asked after the fight started, "Did you see who were involved in the fighting?" and he said, "Tai Ngan Chai, Luen Mo, Ah Sang, Ah Chun. I saw Ah Sang and Ah Chun and one or two other persons bump open the door near the lift. There were two persons holding the door in a closing position. After the door was forced open, the group assaulted two men. Then I saw Ah Sang and Ah Chun drag another man wearing a light-coloured dress back into the billiard room and hit him. There was another man drag another man wearing a dark-coloured dress and beat him up. The man wearing a light-coloured dress fell unconscious at somewhere near the door, but Ah Sang continued to inflict blows with his elbow and fists and Ah Chun struck him with a billiard cue. Not long after they went away. The whole group left the place by the rear staircase. I was stopped by the police."

30  
40  
50 "You said Ah Sang and Ah Chun continued the attack on the man with a light-coloured dress after he fell on the ground?" "Yes". Question, "He used a billiard cue at this stage of the attack?" Answer, "Yes". He was again asked, "He used a billiard cue at this stage of the attack?" and he said, "Yes." "Which part of his body was attacked?" and his answer was, "His back." "How were blows delivered?" and then he demonstrated with a downward

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(continued)

..... "How many blows? One or many?" "About four or five times." "Where were you when you saw this part of the attack taking place?" "We were standing near table..." And then he went on to describe something else.

My Lord, there is also the evidence of Mr. PANG Pui-yuen that he witnessed the attack upon the deceased, but he said he could not identify the assailant other than Ah Sang. But this witness Mr. PANG Pui-yuen, he said that Ah Chun, the 2nd defendant, was among the people chasing him, so he did recognize Ah Chun in that billiard room. 10

Now my submission is this: If Pang was able to see Ah Chun chasing him, it seems strange that he could not recognize Ah Chun if Ah Chun was among those attacking the deceased. This I accept, my Lord, with great respect, is a matter for the jury, but my point is this that there is no evidence that the fatal blow was delivered by the 2nd defendant. 20

Now your Lordship will remember yesterday that the forensic pathologist said that the fatal blow was the blow to the head. The man died of internal bleeding affecting the brain. So, my Lord, this brings me directly to the question of causation.

To find the defendant guilty of murder, it must be shown that either the act of the defendant caused the death or it was the substantial cause of the death or that it accelerated the death of the deceased. 30

My Lord, causation is a matter of law, and the question as to whether a particular act is sine qua non of the actus reus and even if it is, whether that sine qua non is the cause of the death is a matter of law. This is in Smith & Hogan, my Lord, page 272. Smith & Hogan, the 4th edition. The paragraph is headed "A Question of Fact and Law." 40

"Causation is a question of both fact and law. D's act cannot be held to be the cause of an event if the event would have occurred without it. The act, that is, must be a sine qua non of the event and whether it is so is a question of fact. But there are many acts which are sine qua non of a homicide and yet are not



10 either in law, or in ordinary parlance,  
the cause of it. If I invite P to  
dinner and he is run over and killed on  
the way, my invitation may be a sine qua  
non of his death, but no one would say  
I killed him and I have not caused his  
death in law. Whether a particular act  
which is a sine qua non of an alleged  
actus reus is also a cause of it is a  
question of law. Where the facts are  
admitted the judge may direct the jury  
that a particular act did, or did not,  
cause a particular result."

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20 In other words, my Lord, it is necessary  
to show that the act that actually caused the  
death of the deceased was delivered by the  
accused. That would be a direct allegation  
of murder. If there are two attacks upon a  
victim one of which killed him instantly but  
the other would have killed him, say, in an  
hour, the first assailant is guilty of murder  
but the second is guilty of only an attempted  
murder. See Granville Williams, page 328. At  
the top of page 328, my Lord, your Lordship will  
see in dark print:

30 "Suppose that D1's shot entered the lung  
and would have caused the victim's death  
in an hour, but D2's entered the heart  
and killed him instantaneously? Then, of  
course, only D2 has killed him. D1 is  
guilty of an attempt."

An example of this, my Lord, an example is  
in Smith & Hogan. This is the case of White, 1910,  
2, Queen's Bench, 124. It is not on my list, my  
Lord, but it is...the facts are in Smith & Hogan  
at page 42. At that page 42, my Lord, against the  
paragraph "Causation".

40 "When the definition of an actus reus requires  
the occurrence of certain consequences it is  
necessary to prove that it was the conduct  
of the accused which caused those consequences  
to occur. In murder or manslaughter, for  
example, it is necessary to prove that the  
act of the accused caused the death. If the  
death came about solely through some other  
cause then the crime is not committed, even  
though all the other elements of the actus  
reus and the mens rea are present.

In White it appeared that D put potassium

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cyanide into a drink called 'nectar'  
with intent to murder his mother. She  
was found dead shortly afterwards with  
the glass, three parts filled, beside  
her. The medical evidence showed that  
she had died, not of poison, but of heart  
failure. D was acquitted of murder and  
convicted of an attempt to murder."

(continued)

That is the example of this principle,  
my Lord. My Lord, but in our case the 2nd 10  
defendant, in my respectful submission, cannot  
even be found guilty of attempted murder, because  
your Lordship will appreciate that in the case  
of attempted murder, specific intent to murder,  
specific intent to murder must be shown. Intent  
to do grievous bodily harm will not suffice.  
This is in Smith & Hogan at page 248. The  
principle is taken from a case called Whybrow,  
1951, 35, Criminal Appeal Reports, 141. Your 20  
Lordship will see at page 248 in the last  
paragraph there is the case Whybrow mentioned.  
It says :

"In Whybrow D, by a device which he had  
constructed, administered an electric  
shock to his wife while she was in a bath.  
Parker J. directed the jury that, if he  
did so with intent to kill his wife or  
to do her grievous bodily harm, he would  
be guilty of attempted murder. The Court  
of Criminal Appeal held that this was a 30  
wrong direction. It correctly described  
the mens rea on a charge of murder:

'But if the charge is one of  
attempted murder, the intent becomes  
the principal ingredient of the  
crime.'

My Lord, in reply to these matters, the  
Crown might reply first that even if there is  
no direct evidence that the fatal blow was  
delivered by the defendant, that can be reason- 40  
ably inferred. My response, with respect, to  
that would be that that cannot be an irresistible  
inference at all.

The evidence is that the deceased and  
Ah Nam were holding fast the doors, so they were  
alive and well. They were preventing people  
from inside the billiard hall from going out.  
We have heard the evidence that D2 and Ah Sang  
and a few others bumped open the door and a fight

occurred in the corridor outside the lift and then there was a fight outside. And then there was the evidence that Ah Sang and Ah Chun and some others dragged the two persons into the billiard hall.

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10 Now in those circumstances, my Lord, any one of a group of people could have delivered the fatal blow. It cannot be - my point is this - that it cannot be reasonably inferred that because my client, the 2nd defendant, could deliver that fatal blow on the head, because that would be going into the realm of speculation.

(continued)

The Crown might next argue, my Lord, that even so the 2nd defendant could be found guilty of murder on the basis of common intent, so now I shall proceed directly into the matter of common intent.

20 There are three cases, my Lord, in Hong Kong all relating to what I call 'gang cases'. The first one is in the Hong Kong Law Reports, 1957. The case starts at page 241. This is the case of CHAN Hon and The Crown.

30 First let me tell your Lordship briefly the facts. This is the case, my Lord, where there was a time of political disturbances in Hong Kong involving the Chinese Nationalist Party. A group of people went to some kind of a factory or some place. They broke into the place and dragged some people out and imprisoned them and took them along the road and on the way the deceased...there is evidence that the deceased was struck with a torch on his head. They struck a number of times until they reached the place that they were going and then later on the deceased died, and they charged a man who was seen delivering a blow with the torch on the head of the deceased. So I pick up the point, my Lord, at page 252. Your Lordship will see in the middle of the page:

40 " On the evidence in the present case it seems that the fatal injuries which were inflicted on the deceased resulted either from the blows inflicted on him by the accused during the incident on the journey from Muk Min Ha to Tsuen Wan ..."

That is from the factory to wherever they were taking these people.

"which has been described by the witnesses,

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or from violence done to him either by the accused or other members of the mob during the subsequent assaults which took place in or about the Hung Lin Bakery or on the way to it. The jury, therefore, had to consider the position in relation to two possibilities :-

- A. that the deceased met his death as a result of a blow to his forehead delivered by the torch wielded by the accused on the journey from Muk Min Ha to Tsuen Wan, or from some other blow delivered by the accused; or 10
- B. as a result of a blow or blows inflicted on him by some unidentified assailant at some time after the departure from the premises at Muk Min Ha and before the termination of the assaults by the mob.

If he died in the manner suggested at A, i.e. as a result of a blow from the torch or some other blow delivered by the accused, then it was necessary for the jury to decide whether such blow was delivered. 20

- (i) with the intent by that blow itself to kill the deceased or to inflict grievous harm upon him, or
- (ii) in furtherance, or in the course, of an intent then existing in the mind of the accused, which he may or may not have shared with other members of the crowd, to kill or inflict grievous harm on the deceased at a later stage, or 30
- (iii) in the course of, or in furtherance of, an intent then existing in the mind of the accused, which he may or may not have shared with other members of the crowd, to commit a crime, such as that of assault or false imprisonment, which was not a felony involving violence or a misdemeanour to be carried out at all hazards. 40

If on the other hand the death was caused in the manner suggested at B, i.e. through a blow delivered by an unidentified assailant,

it was then necessary to decide whether:-

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- 10 (i) that blow was inflicted with an intent, shared with the accused, by that blow to kill or inflict grievous harm on the deceased or
- (ii) that blow was inflicted in the course of, or in furtherance of, an intent shared at the time with the accused, to kill or inflict grievous harm on the deceased later that evening or
- 20 (iii) that blow was inflicted in the course of or in furtherance of an intent, shared at the time with the accused, to commit a crime, such as assault or false imprisonment which was not a felony involving violence or a misdemeanour to be carried out at all hazards or
- (iv) although the blow was struck by the actual assailant with the intention mentioned under (i) or (ii), the accused did not share that intention.

30 If death was caused in the circumstances mentioned at (i) or (ii) of A or B then the accused would have been guilty of murder. If it was caused in the circumstances mentioned at A (iii) or B (iii) the accused would have been guilty of manslaughter. If death was caused in the circumstances indicated in B(iv), the accused position would depend on whether the accused participated in the crime but with the lesser intent indicated at (iii) or although present had no evil intent whatever. In the former event he would be guilty of manslaughter; in the latter event

40 he should have been found not guilty.

Although all this sounds complicated, the essential issues could have been put succinctly to the jury by telling them :-

- (1) that if they were satisfied that the blow which killed the deceased was delivered, either with the specific intent of thereby causing death or

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grievous bodily harm or in  
furtherance of an intent at a  
later stage to kill or cause  
grievous injury to the deceased,  
and

- (2) being so satisfied they were equally  
satisfied that, in the event of  
the hand which delivered the blow  
not being that of the accused, he  
nevertheless shared the intent with 10  
which it was delivered

then they should find the accused guilty  
of murder; otherwise they should put out  
of their mind any question of murder and  
acquit the accused or find him guilty of  
manslaughter, depending on whether

- (3) they believed either that he did  
not participate in any manner in  
the assault or were uncertain as 20  
to whether he did, in which event  
they would acquit or

- (4) believed that he did participate  
either as a principal or by aiding  
and abetting but were uncertain as  
to his intent in so participating  
or believed it to be less grievous  
than that just described as necessary  
for murder, in which event they  
would find a verdict of manslaughter."

In this case, my Lord, the learned judge 30  
withdrew from the jury any question of manslaughter  
and directed them either to convict the accused  
of murder or to acquit him, and that was held  
wrong. And their Lordships substituted a verdict  
of manslaughter for the verdict of guilty of  
murder that was brought by the jury.

The second case is a 1972 case. This is 40  
Hong Kong Law Reports, 1972, R. v. LI Chi-wing.  
It starts at page 315. The facts are, my Lord,  
on page 315.

" The appellants had taken part in a  
revenge raid against members of a triad  
society. Arising from this affray a  
variety of counts were laid against each  
appellant and several were found guilty  
of murder as well as on lesser charges.

On appeal two of the appellants complained that the defence of provocation had been withdrawn from the jury as far as they were concerned. Two other appellants argued that although the trial judge had directed the jury on provocation in their cases he had misdirected or failed adequately to direct on that issue.

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10           At the trial there was little evidence as to which of the accused had struck the fatal blow.

(continued)

Held: 1. A finding of death due to a common intent to kill or to do grievous bodily harm rules out the possibility of a finding that there was provocation in law which could reduce the offence to manslaughter.

20           2. Where death results from an affray only the accused who struck the fatal blow can attempt to set up provocation.

3. Where the killer cannot be identified beyond reasonable doubt no question of provocation can ever arise for determination by the jury. "

30           The issue, my Lord, which came up here is at page 320. The issue that is relevant to our case today is at page 320. At page 320, my Lord, at the long paragraph on that page.

"The matter which has caused us most anxiety is the verdicts returned against the 6th appellant. Counsel does not, in fact, challenge the conspiracy verdict. "

- the first charge was conspiracy, my Lord -

40           "but submits that it is inconsistent with the verdict of not guilty of murder but guilty of manslaughter on the second count and that of not guilty of wounding with intent to cause grievous bodily harm but guilty of wounding on the third count. The alleged conspiracy was one to wound such members of Wo Shing Wo Triad Society as they might meet in Tsz Wan Shan

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(continued)

Resettlement Estate. The evidence of conspiracy was that of a girl, YU Mei-hung, who said that she saw all the Accused except the 3rd appellant in a hut at 10 o'clock on the morning of the alleged murder and that they were talking about fighting. Later she went to another hut and while she was there all the Accused except the 1st and the 3rd appellants came in. The 6th appellant's trousers were torn and he told her that a fight had taken place and that someone had been injured. She could not say how he knew this but the prosecution obviously wished the jury to infer that it was a result of his own observation. There was no evidence - apart from that of his statement to the Police that he was near the scene - which could otherwise possibly connect him with the alleged murder and a fortiori none that he was there armed with a weapon more lethal than a water-pipe. On the contrary, all the other Accused said he was not at the scene. His statement put him at a distance of twenty yards from an attack on four members of the Wo Shing Wo by some of his co-accused, who were holding a triangular file, a knife and water-pipes or similar articles. Upon his evidence, it is the submission of counsel for the 6th appellant that if the conspiracy was one to wound with intent to cause grievous bodily harm (which was not the offence charged in the 1st count) and the 6th appellant was present aiding and abetting at the scene of the attack, then he was necessarily guilty of murder. However, if (as in fact alleged in the 1st count) the conspiracy was merely to wound and if the 6th appellant had no reason to believe that lethal weapons would be used he was rightly acquitted of murder but he was equally entitled to be acquitted of manslaughter because the use of lethal weapons went outside the common intent evidenced by the conspiracy: see Reg. v. Anderson & Morris. Counsel for the Crown submits, on the other hand, that it was open to the jury on the evidence to find that the 6th appellant was present at the scene and that he took part in the attack, although intending to do something less than grievous bodily harm. He concedes that the verdict on this appellant is difficult to reconcile with

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10 those on the others because the 6th appellant admitted to the Police that he had a water-pipe. But counsel relies upon the fact that in his statement the 6th appellant said he did not know until shortly before the attack that his companions carried knives: it was possibly upon that basis that the jury thought it right to differentiate between the appellants.

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(continued)

In a case where the prosecution relies upon common intent it is for the jury to decide whether there has been

an overwhelming supervening event which is of such a character that it will relegate into history matters which could otherwise be looked upon as causative factors."

20 - this is taken from Anderson & Morris my Lord -

"In Betty Lord Parker quoted from the judgment of Slade J. in Reg. v. Wesley Smith, including this passage at p.602:-

30 It is significant....that (the appellant) knew that Atkinson carried a knife. Indeed, I think he knew that one of the other men carried a cut-throat razor. It must have been clearly within the contemplation of a man like (the appellant) who, to use one expression, had almost gone beserk himself to have left the public house only to get bricks to tear up the joint, that if the bar tender did his duty to quell the disturbance and picked up the night stick, any one who knew he had a knife in his possession, like Atkinson, might use it on the barman, as Atkinson did. By no stretch of imagination, in the opinion of this court, can that be said to be outside the scope of the concerted action in this case. In a case of this kind it is difficult to imagine what would have been outside the scope of the concerted action, possibly the use of a loaded revolver, the presence of which was unknown to the other parties...."

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In the present case the learned judge said :-

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"Now the ingredient of intent is satisfied if the accused person is proved to have intended to kill, but it is also satisfied if the accused person is proved to have intended something slightly short of killing, that is inflicting really serious injury. Now you may think that this is really common-sense. If an accused person takes such risks with another person's life, that intending really serious injury though not actual death, he embarked on an attack with such intent and death resulted he is guilty of murder. He has to take the consequences if he chooses to take such risks with another person's life. If, however, a person embarked on an attack on another human being intending some harm short of serious bodily harm and death resulted he is not guilty of murder but is guilty only of manslaughter. "

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20

That might have been a proper and sufficient direction where there was no question of common intent, but this was not such a case. Later the judge went on to deal with common intent:-

"The intention as the Crown alleges in this case, is one shared amongst the accused. Now, in relation to each accused, as I have said, the degree of intention need not be identical. If in respect of any one of the accused you come to the conclusion that he went back to Block 32 Tsz Wan Shan with some lesser intent that causing grievous bodily harm, such as for instance taking part in a show of force by frightening and intimidating the other group, and that at Tsz Wan Shan he did just that and no more, but one or more of his fellows went beyond the common design and FUNG Yum-yue was killed then you will not find him guilty of murder but only guilty of manslaughter. To put it slightly differently, if the Crown satisfies you on the evidence that in relation to any one of the accused persons, he took part knowing that weapons were being carried for an unlawful purpose but thinking that these weapons were to be used to cause something less than grievous bodily harm, then you will find him not guilty of murder but guilty of manslaughter."

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Then he said in respect of the 6th appellant :- 50

(continued)

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"I come now to the 7th accused. He says in evidence that he was not there at all. So as I have directed you at the beginning of my summing-up you have to be satisfied beyond a reasonable doubt in the first place that the 7th accused was there; and if you are satisfied that he was there, to be guilty of the 2nd and the 3rd charges, he must be proved to have taken part with intent to inflict at least grievous bodily harm. Again if you are satisfied that he was there, that he did take part in an attack but his intent was something less than grievous bodily harm - some harm, but something less than grievous bodily harm, or that he intended some unlawful purpose such as, for instance, to menace, to threaten, and that from the affair the deceased was killed by someone in his group going beyond that common intent, then the 7th accused would be guilty of manslaughter but not guilty of murder. To be guilty of murder, he must be proved to have taken part in the attack with intent to inflict at least grievous bodily harm. "

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There was a similar direction in respect of other defendants, but as they were found guilty of murder nothing turns upon that. In our view, the direction of the learned judge did not accord with the authorities which we have cited. It would indeed have been open to the jury, as counsel for the Crown submitted, to find that the 6th appellant took part in the attack although intending to do something less than grievous bodily harm but he could be convicted of manslaughter only on the basis that the killer did not go outside the scope of the common intent when he used a triangular file or similar weapon. The question is whether, as did the court in Reg. v. Wesley Smith we can say that "by no stretch of imagination...can (what happened) be said to be outside the scope of the concerted action in this case." We do not think we can and it follows that the conviction of the 6th appellant for manslaughter cannot stand.

50

- the latest case, my Lord, is a 1980 case; it is in the Hong Kong Law Reports 1980, at page 126. Your Lordship might be acquainted with the facts of this case, it's quite a recent case - the case that a police sergeant was shot in a ---

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(continued)

COURT: Oh, yes, yes.

MR. VAN BUUREN: In fact, my Lord, we take the case up from the-----from page 126, from the 3rd paragraph----the first appellant---

" The first appellant who had taken part in the planning of the robbery but was not himself present as it pleaded guilty to manslaughter and robbery. The second, third and fourth appellants were all convicted of murder and sought leave to appeal against their conviction. 10

On behalf of the second and third appellants one of the grounds of appeal was that the judge failed to give an adequate direction as to the meaning of "common design" or "common intent". On behalf of the fourth appellant it was submitted that the judge erred in not directing the jury that they must consider the possible justifications of provocation and self-defence. 20

Held:

1. The judge in his direction to the jury had made it abundantly clear that if the second or third appellants believed that the firearms were to be used at the most, for firing warning shots, they should be acquitted of murder, though they could be convicted of manslaughter. This direction was correct and the appellants suffered no prejudice because the judge did not refer in terms to what was the reverse side of the same argument. 30
2. The real issue for the jury was whether there was a common intent to do serious bodily harm. In order to establish this, it was material to decide what was in the minds of those who took part before the expedition began, and it was perfectly proper also to look at the way they behaved both during and after the raid. It could not be said that any reasonable jury would have reached a different conclusion. " 40

- the law, my Lord, at page 132 - his Lordship - Chief Justice - at page 132, my Lord, dealt with common intent, at the bottom of the page -

"Direction on common intent"

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High Court

The second main ground of appeal advanced on behalf of D2 and D4 was that the judge failed to give an adequate direction as to the meaning of "common design" or "common intent".

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The judge deals with this question in the following passage of the summing-up :-

(continued)

10 "Likewise, it is not only the person who performs the physical act of killing who is guilty of murder; any person who is party to a common design doing serious bodily harm to somebody else when it results in death is equally guilty of murder, as equally guilty as the person who inflicts the fatal blow, fires the fatal shot, administers the fatal poison; is obvious in this case that it was only  
20 one shot that killed this unfortunate sergeant and one shot could only have been fired by one person in ordinary circumstances. Now the contention of the Crown is that all these three are equally guilty because they were party to a common design to rob and to take any violent steps that were necessary with loaded firearms to succeed in this robbery and to get away. That is the contention  
30 of the Crown and it is with that matter that you will be very much preoccupied in relation to each of the accused because, of course, you will be delivering a number of verdicts and you must consider the case of each accused individually and you will be delivering verdicts individually, though a good deal of the evidence affects them all in common. "

He considers the same question again when dealing with the evidence of YU :

40 "You may very well believe from the evidence of YU, if you are prepared to accept it and from what the sixth accused had said that sundry of the robbers were to be carrying loaded firearms. The question really is what design did the robbers have in carrying loaded firearms? The Crown said the design was to take any steps necessary to facilitate this robbery and get away, never mind what danger to life there was,

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(continued)

never mind that it might envisage inflicting serious bodily harm or killing somebody. The Defence denied that this was the situation and it has to be said that YU Wing-sang himself told us that the robbers were not expecting any resistance. Quite the reverse, the matter had been canvassed among them: they felt confident that the gambling operation was so recently started that the police wouldn't have heard of it; no policemen would be there in one capacity or another, or for one purpose or another, and that once they produced their weapons, and, even more so, once they fired warning shots, everybody's resistance, if any, would cave in and they could do what they liked and get away. And that is the evidence which you are entitled to take into account. "

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20

He also dealt with the matter in the passage from p.459 which is quoted above.

The effect of R. v. Anderson and Morris and R. v. Lovesey is that, where there is a killing in the course of an expedition by several persons, one of whom went further than was contemplated by the common design, the others -

(a) may be convicted of murder only if the common design included the causing of serious harm or the use of whatever force was necessary to achieve their object or to permit their escape;

30

(b) would be entitled to be acquitted both of murder and of manslaughter if the common design did not include the infliction of serious harm.

These cases did not deal with the intermediate situation, in which (unlike Anderson) the others knew that the killer was armed. In such circumstances, the others will be convicted of murder or manslaughter according to their own mens rea - i.e. the use to which they intended that the weapons would be put. If they thought it would be used only to frighten, this would be manslaughter. See R. v. Reid in which Lawton L.J. dealt with the law relating to the liability of members of an armed gang in the following terms:-

40

10 "When two or more men go out together  
in joint possession of offensive  
weapons such as revolvers and knives  
and the circumstances are such as to  
justify an inference that the very  
least that they intend to do with them  
is to use them to cause fear in another,  
there is, in our judgment, always a  
likelihood that, in the excitement  
and tensions of the occasion, one of them  
will use his weapon in some way which  
will cause death or serious injury. If  
such injury was not intended by the others,  
they must be acquitted of murder, but  
having started out on an enterprise  
which envisaged some degree of violence,  
albeit nothing more than causing fright,  
they will be guilty of manslaughter. It  
follows that the verdict of manslaughter  
20 could properly have resulted from the  
application by the jury of the general  
directions given by the judge. "

(continued)

The intent with which D2 and D4 took part in  
the robbery has to be inferred from the  
circumstances. On any reading of the evidence,  
any jury must have come to the conclusion that  
there was a common design to use the firearms  
to intimidate. The Crown's case, however, was  
that the possibility of resistance was within  
the minds of the gang on the evidence of PW3.

30 - and your Lordship goes on to deal with the  
evidence - my Lord, at page 135, the other  
parties deal with the various evidence in that  
particular case, but for our purposes, your  
Lordship, perhaps, will find assistance on the  
page on the paragraph which starts at the bottom  
of page 135.

40 "What is material, for the purpose of gaug-  
ing common design, is the intention which  
was in the minds of those who took part  
before the expedition began. However, in  
order to decide what this may have been,  
it is perfectly proper to look at the way  
in which those concerned behaved during and  
after the raid. If, for example, D2 and D4  
had, immediately after the killing,  
disassociated themselves from all further  
action, this would have been cogent evidence  
that the killer had exceeded the common  
design. A person's anterior intention----"

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- quoting Cross on Evidence, my Lord, may  
also be proved by such (effects?) -

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"But it is apparent that the killing  
of the Sergeant did not deter any of them.  
They continued with the robbery exactly  
as planned. They returned to their base  
in Nathan Road, and distributed the loot  
as agreed.

(continued)

Against this background, it is hardly  
surprising that the jury should have  
concluded that this was a case in which  
those taking part intended, if necessary  
to do more than use their guns for the  
purpose of inducing fear. "

10

- my Lord, from these cases, I expect the  
principle upon the charge of murder if common  
intent is the basis of the Crown's case, there  
must be evidence that the actors did have time  
to consider and agree on a course of action  
that was likely to end in the murder or at least  
in serious bodily harm, and that they did, in  
fact, decide on the course of such action.

20

But, my Lord, in the course of a fight  
especially one like this that arises spontane-  
ously, like a spark in a tinder box, people do  
not have time to stop and think. Some are  
seeking to run away, some to defend themselves  
from the (flame glows?) some to defend their  
friends, some to attack the attackers, and  
some simply have (inaudible).

30

Now, my Lord, in those circumstances, I  
submit that it is impossible to find answers  
to the following questions:- first, what was  
the common intent, and secondly, when was it  
formed?

My Lord, mere presence in the billiard hall  
can never, in my respectful submission, be  
evidence of common intent. If that was so, my  
Lord, then all 50 or 60 persons in that billiard  
hall at that time will be guilty of murder. If  
the common intent was to have settlement talks,  
then the defendants cannot be very reliable if  
someone went beyond that agreement. There is  
nothing intrinsic here - illegal about settlement  
costs.

40

Then, my Lord, there is no evidence on which  
the jury can be asked to infer that there was a



common intent before the fight to do anything unlawful, leave aside stalling murder or serious bodily harm

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Then, my Lord, the question arises - could the common intent have been formed during the fight? Everyone seems to agree that there was confusion and chaos - described as a fracas and a melee even by my learned friend.

(continued)

10 Now, my Lord, my learned friend might tell your Lordship that from the evidence, that there is evidence that Ah Chun was heard to say, "Killing Tai Ngan Chai" - but my Lord, my position is that that is hardly evidence of common intent. Even if it was uttered, it was in the heat of battle so to speak, when actors are giving and taking blows, it is very much like in  
20 a boxing match, my Lord, when 2 boxers are going for each other, hammer and tools or whatever it is, and people --- hammer and tongs---and people in the audience are shouting "Kill him, kill him", it's very much better - in the heat of battle, people don't think about what they say. That I submit, therefore, is not evidence of common intent. My Lord, from cases your Lordship will see, according to that,  
30 it is not common intent. People get excited and get carried away in the heat of battle.

COURT: ..... 4 or 5 people----?

MR. VAN BUUREN: Well, my Lord, that's not common intent, my Lord, because he's not the leader of the gang. Yes, it is so, (is it not there?) - one gang goes towards another gang, my Lord, on an expedition, just a spontaneous fight. And then if the fight---

40 COURT: There is somebody shouting out, "There's a fire - let's get out" and we all rush through that door - surely you'd say that that's evidence of a common intent ----

MR. VAN BUUREN: My Lord, that's not common intent ---- I am shouting "Fire" with the intent of saving myself. Common intent, my Lord, must be some kind of agreement amongst us all ---

COURT: What (if I suddenly arrived through that door?), our common intent is to get out, no matter what you call that ---

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(continued)

MR. VAN BUUREN: Naturally, my Lord --- but each one has his own intent. Each one formed his own idea so your Lordship - if your Lordship rushes out of the door - and the cause of which pushes a man - and he happens to die of that, but I can't possibly be found guilty of manslaughter - that is my point---

COURT: You have no doubt that the common intent was to ---

10

MR. VAN BUUREN: Yes, that would be so... but the common intent, my Lord, must be direct to what happened----the common intent, yes, what I mean is that his shouting, "Kill Tai Ngan Chai" is not evidence of common intent to kill Ah Nam ---

COURT: Yes, but what I'm saying is I think the substance of your point would seem to suggest that with common intent, we'd all have to get down and sit around the table and draft documents showing how common intent--- you said he had one common intent---

20

MR. VAN BUUREN: Yes, my Lord.

COURT: And all of a sudden, you (rushed?) out that door - the inference to be drawn from that conduct is at that time, the common intent to get out ---

MR. VAN BUUREN: Yes, my Lord, that's true --- we've finished with all that---but the point is this: the common intent to do something unlawful - to do something sinister - that's my point and the point I'm making is that just simply those words - it's not evidence - conclusive evidence, at least, of common intent - and remember, my Lord, this is the common intent to murder someone else - not Tai Ngan Chai.

30

My Lord, the common intent must be shown to have been arrived at before the event - when the actors had had the opportunity and the choice, and break away - the choice to break away and resist from doing anything unlawful, and having had that choice deliberately chose to involve himself in the criminal activity.

40

If the common intent, my Lord, if the common intent is found during the course of a fight between 2 groups of persons it may well be a common intent to defend themselves.

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10

My Lord, I have now dealt with common intent in respect of D2 on the murder charge - that is, if your Lordship would appreciate it, apply equally to D1 if the basis of the wounding charges against them or even murder charges - is on the basis of common intent.

(continued)

20

Now, my Lord, the second defendant faces the second charge of wounding YIP Kam-ping with Tai Ngan Chai. There is no evidence from Tai Ngan Chai himself that D2 struck him. I submit, therefore, my Lord, that the charge cannot stand even on the basis of common intent. The same applies to the third charge - wounding Tam Man. Tam Man himself did not say that he was struck by D2. The fourth charge I believe had been dropped - leaves us lastly with the fifth charge against the second defendant, that is wounding Mr. Pang Pui-yuen - again Mr. Pang did not say that D2 struck him.

30

I summarise, my Lord, by submission as follows: against D1 - I submit that he has no case to answer on all the charges, and against the second defendant, I submit on the basis that there is insufficient evidence that the second defendant struck the fatal blow and on the basis of the lack of evidence on which the jury could find common intent to commit murder or serious bodily harm --- the charge must be withdrawn from the jury and on the other charges against the second defendant, the wounding charges, there is no evidence on the victims themselves that the second defendant struck him and, therefore, he has no case to answer on (those?) charges ---

40

(Court indicates to counsel that there should be a mid-morning adjournment.)

11.30 a.m. Court adjourns

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REPLY TO SUBMISSION  
(No.28)

11.49 a.m. Court resumes

Both accused present. Appearances as before.  
JURY ABSENT.

COURT: Yes, Mr. Lunn?

MR. LUNN: My Lord, may I begin by conceding  
at the outset, that there is insufficient  
evidence to support the fourth count  
against either accused? 10

My Lord, turning from that, my learned  
friend in the course of his submission,  
has invited your Lordship to say that on  
2 counts, the evidence is so conflicting  
that they ought not to go before the jury.

In count 2 he says that the evidence  
against the 1st Accused falls into that  
category, and as of count 1, he says the  
same is true in relation to the 2nd Accused. 20

My Lord, he says in relation to count 2  
that YIP is the only one who speaks of  
the attack, that he's unsatisfactory.  
My Lord, my answer to that is that that is  
eminently a matter for which the jury are  
suited to decide and not for your Lordship  
to intervene.

My Lord, in relation to count 1, it  
affects the 2nd Accused, my Lord, he says  
the same about the 3 witnesses who described 30  
the attack there - Tam Man, LI Kit-hung and  
Pang - my Lord, once again I answer that by  
saying that deciding issues of fact it is  
a matter for the jury to determine, and  
in my submission, no question of that  
evidence is so discrediting that (no?)  
jury properly directed could consider the  
matter.

My Lord, turning from those 2 counts,  
the rest of the case against both accused 40  
men, rest on the question of joint enterprise  
which is as your Lordship will recall, how

10 I address the jury at the outset in relation to the first count, that they jointly together with others, intended either to do serious bodily harm or to kill the deceased-in relation to the other counts, that they intended to do grievous bodily harm to the various victims described in those 4 remaining counts - 3 counts of wounding as it would be.

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(continued)

My Lord, any question of intent is to be decided by looking at what people do because human ingenuity has not invented ways of reading people's minds and it is to what these 2 men did - that one has recourse to decide whether or not they've embarked upon any common intent.

20 And, my Lord, shortly the matters to which the jury can properly have regard to decide common intent are these: my Lord, that is both these men were armed with what they turned into weapons, billiard cues - both these men struck blows - the witnesses have come to court and testified as to that - in relation to the first accused one blow - in relation to the 2nd Accused - a number of blows aimed at different people.

30 My Lord, thirdly, all their various assaults take place after the murderous invocation uttered by the second accused. "Kill Tai Ngan Chai" - and that is clear from the fact that as YIP has testified, that was said, right at the outset.

40 My Lord, that there was no supervening and intervening causes of effect of the deceased's death - we know from the pathologist who says that the blows from the deceased's head which caused the death are consistent with blows from a billiard cue but not consistent, in his opinion, with blows from a hammer which is the only other weapon of which you've heard mentioned.

50 My Lord, in my submission, they're there from that simple factual basis - there is sufficient evidence - it's for a jury to consider the question of common intent of these 2 men to do serious, at least, serious bodily harm to anyone of Tai Ngan Chai's group of men who arrived at the same time as him.

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(continued)

My Lord, my learned friend raised  
in the course of his argument, the issue  
of causation suggesting to your Lordship  
that it could not be shown by the Crown  
that the deceased delivered a fatal blow---

COURT: Your submission to that was outside his  
submission regarding common intent ---

MR. LUNN: My Lord, it was ---

COURT: If the Crown's case is one of common  
intent, Mr. Van Buuren's submission is  
regarding causation --- 10

MR. LUNN: My Lord, I'm obliged --- the Crown's  
argument is that this is a joint adventure--  
and that each accused was indeed the other  
man involved -- they are all jointly liable  
for all of their collective actions.

My Lord, my learned friend has read to  
you the relevant passages of the learned  
Chief Justice's judgment (ensued?). And  
my Lord, that really is the law as I would  
urge it upon you and I don't propose to  
take your Lordship's time by dealing with  
it further. But, save, my Lord, perhaps  
in this respect, at page (113?) his Lordship  
refers to the case of Reid. 20

My Lord, in this way - perhaps I might  
refer your Lordship to Reid because Reid  
deals with an additional proposition - a  
proposition that a joint enterprise must  
involve an intention to kill or an intention  
to do serious bodily harm. 30

My Lord, the Lord Chief Justice says  
this - these cases did not deal with the  
intermediate situation in which unlike  
Anderson, the others knew that the killer  
was armed. In such circumstances, the others  
would be liable to be convicted of murder  
or manslaughter, according to their own  
mens rea, that is the use to which they  
intended the weapons to be put. If they  
thought it would be used only to frighten,  
this would be manslaughter, my Lord -  
frightened, not cause grievous bodily harm  
or kill. My Lord, turning to Reid, your  
Lordship has a copy of that. 40

Reid is a case of - I could call it this:

an IRA-style killing, involving 3 men, one of whom fired the shot that killed the deceased - and the question is of the intent -- and the appellant Reid whose defence was that he had gone along with the other 2 men simply because he didn't believe there were, in fact IRA killers, and to his surprise and horror, finds that the killing takes place in his presence.

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10           And the question of intent is dealt with  
thus by Lord Justice Morton, at the bottom  
of page 111:

(continued)

20           "On the findings implicit in the jury's  
verdict the appellant did not share  
the murderous intent which O'Conaill and  
Kane had had. As the jury must have  
rejected Kane's alleged purpose of  
forcible kidnapping, all that remains is  
the appellant's evidence that he was an  
interested but innocent spectator (and  
the jury rejected that) and the jury's  
finding that he was in joint possession  
with the other two of the weapons. This,  
it was submitted, was not enough to support  
a verdict of manslaughter unless there was  
either a common design to use them in some  
way which was reasonably likely to cause  
some harm, short of serious injury, to  
Colonel Stevenson, which did cause his  
30           death or the appellant personally had an  
intention to use them in some way reasonably  
likely to cause such harm with the same  
result. This is so. The intent with which  
the appellant was in joint possession of the  
weapons with the others has to be inferred  
from the circumstances. He did not share  
the murderous intent and according to his  
own evidence, he had no intent to do harm.  
The first problem for us is whether this  
40           Court would be entitled to infer from the  
fact of joint possession an intent to do  
some harm to Colonel Stevenson. These  
weapons were offensive weapons. If men  
carrying offensive - indeed deadly - weapons  
go to a man's house in the early hours of the  
morning for no discernible lawful purpose,  
they must, in our judgment, intend to do him  
harm of some kind, and the very least kind  
of harm is causing fight by threats to use  
50           them. The second problem is whether, on the  
evidence in this case, Colonel Stevenson's  
death resulted from the unlawful and dangerous  
act of being in joint possession of offensive

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(continued)

weapons. The appellant did not intend either death or serious injury. On the jury's findings O'Conaill must have gone beyond anything he may have intended.

In ANDERSON AND MORRIS a distinction was drawn between a mere unforeseen consequence of an unlawful act and "an overwhelmingly supervening event which is of such a character that it will relegate into history, matters which would otherwise be looked upon as causative factors" - see the judgment of Lord Parker C.J. was O'Conaill's deliberate firing of the revolver "a mere unforeseen consequence" of the unlawful possession of offensive weapons? We adjudge it was when two or more men go together in joint possession of offensive weapons such as revolvers and knives and the circumstances are such as to justify an inference that the very least they intend to do with them is to use them to cause fear in another - there is in our judgment, always a likelihood that, in the excitement and tensions of the occasion, one of them will use his weapon in some way which will cause death or serious injury. If such injury was not intended by the others, they must be acquitted of murder, but having started out on an enterprise, which envisaged some degree of violence, albeit nothing more than causing fright, they will be guilty of manslaughter. "

My Lord, that seems to take the matter further, and my Lord, it may be that that proposition is restricted to what his Lordship calls "offensive weapons", that is to say guns or knives, and it may well not apply in this situation.

And, my Lord, in my submission that's a matter that may occur later, but at this stage of the trial, that there is adequate evidence to put before the jury of common intent to do at least serious bodily harm.

My Lord, on that basis, I would like your Lordship to allow the case to proceed, on all these counts ---

COURT: Yes. Anything in reply to that, Mr. Van Buuren?



MR. VAN BUUREN: No, my Lord.

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No. 30

RULING

---

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COURT: As it is conceded that there is insufficient evidence to support the 4th charge going on, the jury will be directed on their return to return a verdict of not guilty in respect of that charge.

10 In respect of the submissions of no case in respect of each of the defendants in respect of each of the remaining charges, it does seem to me that there is sufficient evidence from which the jury could, not that they must but from which they could, draw an inference of a common intent on the part of both the accused, together with others, to cause at least serious bodily injury to the members of  
20 Tai Ngan Chai's group. There is, therefore, sufficient evidence to warrant the charges going on and remaining in the charge of the jury. I, therefore, would not take the case in respect of those other charges from the jury at this stage. Accordingly, I rule that there is a case to answer, as we say.

30 I suppose theoretically I cannot really call on the accused to make their election now without having obtained from the jury the verdict of not guilty on the 4th charge. I think I should obtain that first and then explain to the accused their rights. Since, anyway, you know the course that the trial is now taking, Mr. Van Buuren, you have the weekend within which to take instructions from your clients and when we resume at 10 a.m.

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(continued)

on Monday, you will be in a position  
to tell us after I make my formal  
explanation what they propose to do.

MR. VAN BUUREN: Indeed.

COURT: Very well. I formally adjourn now  
until 10 a.m. on Monday.

12.05 p.m. Court adjourns

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10

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10.05 a.m. Court resumes:

Both accused present. Appearances as before.  
Jury present.

COURT: Well, members of the jury, during your  
absence we have had quite a discussion  
about the law involved in this case, and  
one conclusion we have come to is that  
there is insufficient evidence for the  
fourth charge to continue before you. As  
a result, I am going to have to ask you  
to do something which to you may appear to  
be rather odd, so I think I should make  
some explanation first. You will remember  
that when you were sworn in, you were asked  
to make an oath that you would return a  
true verdict according to the evidence. At  
the time that you were asked to do that,  
both the accused pleaded not guilty to the  
charges, and they were, as we say, then put  
in your charge. From that moment on, the  
only people who could ever say whether  
they were guilty or not guilty are the  
seven of you. It has been mentioned to you  
that you and I perform respective functions:  
you are the judges of the facts and I make  
rulings on law. Having decided that there  
is insufficient evidence to enable the  
fourth count to continue before you, and

20

30

10

since your duty is to return a true verdict according to the evidence, so it necessarily follows if there is insufficient evidence, the only verdict has to be not guilty. So, therefore, I will be asking you, Madam Foreman, to return a verdict on the fourth count; and in view of my explanation, it has, of course, to be not guilty. But we do have to ask you really to consult with the other members of the jury in order that you return a unanimous verdict. Mr. Clerk, can you ask the jury to return a verdict on the fourth count?

20

CLERK: Miss Foreman, will you please stand up? As directed by his Lordship, I am going to ask you to return your verdict on the fourth count, wounding with intent against both accused. Have you agreed upon your verdict on the 1st accused?

FOREMAN: Yes.

CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: Not guilty.

CLERK: Have you agreed upon your verdict on the 2nd accused?

FOREMAN: Yes.

30

CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: No guilty.

COURT: Thank you, members of the jury.

40

YEUNG Kwong-hung and LAU Shek-chun, we have now reached the stage in your trial where all the evidence is before the court that the prosecution wishes to put before it in support of the remaining charges against you. Each of you now has the opportunity to

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(continued)

give evidence yourself and/or to call witnesses to give evidence on your behalf. I say you have the opportunity, it does not mean that you must give evidence or that you must call witnesses. Before you can be found guilty, the jury would have to be satisfied beyond a reasonable doubt about your guilt. If, therefore, you thought that the substance of the evidence was such that it could not convince the jury beyond a reasonable doubt of your guilt, you could, through your counsel, submit that to the jury and decide not to give evidence and not to call witnesses. If, however, you thought you would like to give evidence yourself or you would like to call witnesses, then you now have the opportunity to do so. YEUNG Kwong-hung, do you understand my explanation?

10

1ST ACCUSED: Yes.

20

COURT: And LAU Shek-chun, do you understand what I have just said?

2ND ACCUSED: Yes.

COURT: Mr. Van Buuren, do you have instructions from your clients?

MR. VAN BUUREN: May it please you, my Lord, members of the jury, I do. Both my clients have elected to give evidence in their own defence.

COURT: Yes, Mr. Van Buuren.

30

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No. 32

YEUNG KWONG-HUNG

MR. VAN BUUREN: May it please you, my Lord. My Lord, members of the jury, as you have just heard, the defendants have both elected to give evidence on their own behalf, they will not be calling any evidence, and I shall call them each by turn taking the 1st defendant first, Mr. YEUNG Kwong-hung. Please, Mr. YEUNG Kwong-hung.

40

XN. BY MR. VAN BUUREN:

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- 10 Q. Now Mr. YEUNG, first of all you must raise your voice, speak loudly, because some members of the jury do understand Chinese. Now you reside at 14 Pak Po Street, 4th Floor, Kowloon.
- A. Yes.
- 10 Q. You are 30 years of age.
- A. Yes.
- Q. And you were born on the 16th of August, 1950, in China.
- A. Yes.
- Q. You are married and settled down in Hong Kong and you worked as a printing worker.
- A. Yes.
- 20 Q. Now you heard the evidence of the prosecution that there was an incident in the Good World Billiard Room on the 26th June, 1980. Now were you there inside the billiard room at the time of the incident that evening?
- A. Yes.
- Q. Now I want you to tell his Lordship and members of the jury what you saw and what happened in your own words. First of all, start by telling his Lordship and members of the jury what time you went to the billiard hall that evening?
- 30 A. Around 10 o'clock.
- Q. Did you go alone or did you go with any friends?
- A. I pre-arranged with a friend but I went there alone.
- Q. You said you got there about 10 o'clock. After you got there, what did you do?
- A. When I got there, my friend was already playing billiards there.
- 40 Q. What is your friend's name?
- A. I do not know his full name. His nickname is Tak Chai.
- Q. Yes, and your friend Tak Chai was playing billiards. Do you remember at what table he was playing billiards?
- A. I do not know which table.
- Q. Now perhaps you can look at the plan. This is exhibit P.4. Now you see - once more I shall explain this plan to you - there is the lift there, the corridor and various tables marked with numbers, those are the billiard tables.
- 50 A. This table. (Interpreter: Table marked 4.)

(continued)

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(continued)

- Q. Your friend was playing at table No.4,  
and then what did you do?
- A. Then he told me to wait until he had  
finished the game, then he would play  
with me.
- Q. Yes, carry on.
- A. About ten minutes later, his friend had  
finished playing the billiards with him,  
so I replaced his friend and played with  
him. 10
- Q. Yes, carry on.
- A. Before the second game was finished, quite  
a number of persons came up to the place.  
Then I saw quite a number of persons  
quarrelling and fighting.
- Q. Now, those people who were quarrelling  
and fighting, did you recognise any of  
them? Did you know any of them?
- A. Tai Ngan Chai, Ah Ki, Sap Chai, Luen Mo,  
and I do not know the names of the others. 20
- Q. Those people, did you know them personally,  
or did you know them by sight, or did you  
know them - were they friends of yours?
- A. They were not my friends.
- Q. Yes, and how did you know their names.
- A. Because in the billiard hall, Tai Ngan Chai  
and Luen Mo were very popular.
- Q. Yes, now you saw this group of people, you  
said, quarrelling and fighting, and then  
what happened? 30
- A. I saw Tai Ngan Chai approach Luen Mo and  
point his finger at Luen Mo. I did not  
know what was the talk about between them,  
and then it developed into a fight.
- Q. Yes, carry on.
- A. Then I saw Ah Ki who was standing by my  
side picking up a billiard cue and went to  
hit people.
- Q. Yes?
- A. I do not know the names of those being hit  
by Ah Ki. 40
- Q. Now this Ah Ki, did you say Ah Ki was  
standing by your side?
- A. Not really by my side, but in the vicinity  
about the distance from where I am to the  
lady over there.
- Q. Now can you roughly show where Ah Ki was  
in relation to the plan at the time? Hold  
it up.
- A. Between the table and the stool. 50
- Q. And where were you at that time?
- A. I was at the corner of table 4.
- Q. Yes, carry on.
- A. There were many people taking part in the

	fight and the situation was very confusing.	In the High Court
	Q. Now when the quarrelling and the fighting began, did you have anything in your hand?	Defence Evidence
	A. When the quarrelling started, I had something in my hand, I was holding a billiard cue because I was playing billiards.	No.32 Yeung Kwong-hung
10	Q. Yes. And now you said that there was confusion, during the confusion, what did you do?	Examination 17th August 1981
	A. So the only thing I could do was to walk to this side.	(continued)
	Q. Yes, and then what happened?	
	A. Then I ran away with Tak Chai.	
	Q. How did you run, in which direction did you run?	
	A. Ran in the direction indicated.	
20	Q. That means you ran between table No.5 and table No.4 towards the portion marked "Smoke Lobby" on the left of the plan.	
	A. Yes.	
	Q. Now how long after the fighting had gone on roughly did you start running towards the smoke lobby?	
	A. Less than one minute.	
	Q. Now did you notice anyone hitting anyone that you knew inside the billiard hall while you were running out?	
30	A. Yes.	
	Q. Who were the people that you recognised who were fighting?	
	A. Yes, Luen Mo, Tai Ngan Chai, Ah Ki, Sap Chai and about four to five other persons. I did not know their names. There was a total of about ten persons.	
	Q. What about the 2nd defendant Ah Chun, did you see him taking part in the fighting?	
40	A. I did not see him throughout the whole incident on that night.	
	Q. Before that incident, did you know Ah Chun, the 2nd defendant?	
	A. No.	
	Q. Now after you got to the smoke lobby, what happened?	
50	A. There was a wooden door which was left unlocked, I pushed open that wooden door, and then there was a metal grille, at first I was under the impression that it was locked, but there were two persons behind me, one of them said that I could open the grille by lifting it up, so I did as what I was told. After the grille was opened, there was another wooden	

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(continued)

- door, I pushed it open and ran through that door.
- Q. Now on the plan, can you show his Lordship and members of the jury where that iron grille was?
- A. Here.
- Q. Pointing at the outer doors of the section marked "Smoke Lobby", is that right?
- A. Yes.
- Q. Yes, you pushed open the wooden doors, and then what did you do? 10
- A. I pushed open the wooden door, and then lifted up the metal grille, and then there was another wooden door, I pushed it open, the door leading to the exit of the building.
- Q. Where was that, on the ground floor?
- A. Yes.
- Q. Now from this floor where the billiard hall was, to get to the ground floor, how did you go? 20
- A. By the staircase.
- Q. Now when you went down the staircase, were you alone or were there other people with you?
- A. Yes, Tak Chai and two other unknown persons, they were behind me.
- Q. Yes, and when you went to the ground floor, what happened?
- A. Arriving at the ground floor, we then walked to the Hollywood Theatre, and then I parted with Tak Chai, I returned home. 30
- Q. Now look at the photographs, Mr. YEUNG, the photographs. I want you to look at photograph P.2(P). Have you got that one? Now this is a picture of table No.4, isn't it?
- A. Yes.
- Q. Do you see in this photograph the place where you were standing when the fight began?
- A. It is not shown in the photograph, further away. 40
- Q. Where would it be?
- A. Should be on this side.
- Q. And after the fighting began, you said you ran towards the back of table No.4. Is the place where you ran to shown in this photograph?
- A. No, it is not shown in this photograph.
- Q. Is there any photograph there which would show the place where you were standing before the fight and the place where you went to after the fighting began? In fact there is none, there is no photograph of the area between table 4 and table No.5. What about 50



- P.s(L), this one?
- 10 A. The table is not shown here.  
Q. Now on the 3rd of July, 1980, you were  
in the police station, is that right?  
A. Yes.  
Q. And what happened at that time? Did you  
see Tai Ngan Chai being brought into your  
presence?  
A. Yes.  
Q. Did you hear the conversation after Tai  
Ngan Chai came to your presence?  
A. Yes.  
Q. What happened?  
A. At that time a police constable asked  
Tai Ngan Chai, asked him whether I was  
Hung Chai.  
Q. Yes?  
A. The police constable further asked Tai  
Ngan Chai, "Did Hung Chai take part in  
20 hitting you at that time?"  
Q. Yes?  
A. Tai Ngan Chai replied yes. He said Hung  
Chai struck him one blow which landed here  
(Witness demonstrates shoulder.) When he  
said "Hung Chai", he meant me.  
Q. Yes, after that what happened?  
A. Then another police officer brought Tai  
Ngan Chai away from the room.
- 30 COURT: What did he say then, Mr. Interpreter,  
what did he then say?
- INTERPRETER: "Tai Ngan Chai". Perhaps I did  
not get that clear.
- 40 Q. Yes, and then what happened?  
A. About five minutes later, then a person  
called Ah Ki was brought in. Then the  
police officer asked him whether he knew  
me. Ah Ki replied, "He is Hung Chai."  
Then the police officer asked Ah Ki whether  
Hung Chai was present in the billiard hall  
on that night, and whether he took part in  
beating up people. Ah Ki replied, "I only  
saw him holding a billiard cue. I did not  
see him hitting people." Then he was brought  
out.
- 50 Q. Yes, and then what happened?  
A. Then that police officer took a statement  
from me. He wrote down something in the  
statement form and told me to sign. I said  
to him, "This is not my statement, why is  
it necessary for me to put on my signature?"  
Then he showed me the statement and I said  
to him, "I did not take part in hitting

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(continued)

people." So I refused to sign my name on the statement. Then he said, "Tai Ngan Chai had just alleged that you had hit him. You heard it. You heard it, it is not a fabrication from me." Then I said, "As a matter of fact I did not hit people." Then he said, "If you did not hit any people, then write down your explanation on this piece of paper." So I wrote down on the statement form words to the effect that I did not hit people, I did not hit Tai Ngan Chai. At the end of the passage I signed my name. Concerning the other statement, the allegation was made by Ah Ki that he saw me holding a billiard cue, and as a matter of fact I was holding a cue when I was playing billiards, so I signed my name.

- Q. Now what happened to that billiard cue? When you were holding it, after the fighting started, what did you do with the billiard cue, do you remember? 10
- A. When I moved aside, I threw the cue - or I dropped it.
- Q. Do you remember about where you dropped it in relation to the plan P.4?
- A. I remember it was somewhere around this corner. I was standing by the side of the table originally, so I do not remember whether I put it on the table or placed it vertically on the ground leaning against the side of the table. 30
- Q. That was between table No.4 and table No.3, is that right?
- A. But nearer to table 4.
- Q. That is all, I have no further questions.

Cross-  
Examination

XXN. BY MR. LUNN:

- Q. Mr. YEUNG, how long had you been going to that billiard hall? Over what period of time had you been going there? 40
- A. More than six months.
- Q. Was it more than a year?
- A. No.
- Q. How frequently did you go there in the period of more than six months?
- A. About once in a week.
- Q. Was it at the billiard hall that you had come to know Luen Mo?
- A. I knew people calling him Luen Mo.
- Q. Had you spoken to Luen Mo yourself? 50
- A. No.

	Q.	Had you seen him other than at the billiard hall?	In the High Court
	A.	Yes, when I was in a teahouse.	
	Q.	What about Tai Ngan Chai, had you seen him other than at the billiard hall?	Defence Evidence
	A.	Yes.	No.32
	Q.	Where had you seen him?	Yeung Kwong-hung Cross-Examination
	A.	Pak Mun Restaurant.	17th August 1981
10	Q.	Have you ever talked to him?	
	A.	Yes.	
	Q.	In the billiard hall?	
	A.	In a restaurant.	
	Q.	Was he somebody you knew quite well or not?	(continued)
	A.	No.	
	Q.	Now you have described to my Lord and the jury the events, as you recalled them, on the evening of the 26th June, 1980.	
	A.	Yes.	
20	Q.	You have told my Lord and the jury you had got there around 10 o'clock, waited a while and then began playing billiards with your friend Tak Chai.	
	A.	Yes.	
	Q.	And that your second game was interrupted by the beginnings of a quarrel and some fighting.	
	A.	Yes.	
30	Q.	And you could see, amongst the participants in that quarrel, Tai Ngan Chai and Luen Mo, amongst others.	
	A.	Yes.	
	Q.	Had you seen any earlier altercation or quarrel between Luen Mo and Tai Ngan Chai?	
	A.	I did not notice, I do not know.	
	Q.	Before this quarrel, had you noticed Luen Mo being present in the billiard hall?	
	A.	I did not notice his presence.	
40	Q.	Would you have a look at the plan, Exhibit P.4? Can you show us where Tai Ngan Chai and Luen Mo were when you saw them quarrelling for the first time?	
	A.	Here.	
	Q.	Pointing to the stools just above the left side, top side of table 4.	
	A.	Yes.	
	Q.	So this quarrel was going on very close to where you were?	
50	A.	It is by the side of a pillar. The distance about from here to the whereabouts of the Crown Counsel, but perhaps a bit further away, a bit longer than that.	
	Q.	How many men were involved in the quarrel?	
	A.	I did not know what was the subject of the quarrel, what was the content of the quarrel.	

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(continued)

- I only knew that Tai Ngan Chai was pointing at Luen Mo.
- Q. How many men were involved in this quarrel?
- A. Only Tai Ngan Chai against Luen Mo.
- Q. Did you see any blows being struck between those two?
- A. Yes, I saw a fight.
- Q. Who struck whom?
- A. I did not see it.
- Q. What did you see if you saw a fight?
- A. I saw the two of them sticking to one another in a lump.
- Q. Can you help us by what you mean by that, aticking to one another in a lump?

10

COURT: In a clinch?

A. Yes.

Q. What were the other men doing?

A. Which one?

Q. Was anybody else fighting?

20

A. At that time I did not see any.

Q. Did you see any weapons being used by anybody at any stage in the fight?

A. Yes.

Q. What were they?

A. Billiard cues.

Q. At any stage did you see anything other than billiard cues being used?

A. No.

Q. You say that you saw Tai Ngan Chai and Ah Ki and Sap Chai, and you saw others whose names you did not know. Were you able to tell what was the size of the group that was with Tai Ngan Chai?

30

A. I do not know which persons belonged to which group.

Q. Had you seen Tai Ngan Chai arriving in the billiard hall?

A. No, I did not see him.

Q. Might he have been there quite some time without your realizing he was present?

40

A. When I turned round, I saw him at the position just indicated by me. At that time I had my back towards the doorway.

Q. Now you say that what you did was to put down your billiard cue and move to the far side of table 4.

A. Yes.

Q. Did the fight continue at this pillar that you have pointed out on the plan?

50

A. Yes.

Q. Was the fighting taking place in any other part of the billiard hall that you could see?

A. Yes.

Q. Where was that?

A. Luen Mo and Tai Ngan Chai were fighting here, and some fighting here, and some over here.

10 Q. You are pointing to an area by table 6 in the corner where Luen Mo was fighting, an area in the middle of the plan above table 4 where there was some other fighting and then an area above table 9 where there was yet another scene of fighting.

A. Yes.

Q. All this fighting would have prevented you from making your way to the entrance, I suppose?

20 A. Yes.

Q. So you were trapped behind table 4, a witness to what was going on.

A. Yes.

Q. At the start of the fighting, did you hear a shout, "Kill Tai Ngan Chai first"?

A. No.

Q. As the fight developed, did you see two men dragged back from the doors that led to the lift, dragged back into the middle of the room?

30 A. No, I did not see.

Q. As the fight developed, did you see Tai Ngan Chai being struck with billiard cues?

A. No, I did not see it.

Q. You say you saw a man being struck by cues, who was being struck?

A. I do not know him.

Q. Now that evening, as you have told us, you were playing billiards. Had you used more than one cue that evening?

40 A. Only one cue.

Q. Now before the 26th June, when was the last time that you had been in the billiard hall playing billiards?

A. I do not know.

Q. Was it the day before, was it a week before or a month?

A. About one week's time.

50 Q. Now we know from what police officers have told my Lord and the jury, and you have been listening to this, that a billiard cue was found on table 5, and that that cue had your fingerprint on it. Do you recall that evidence?

A. Yes.

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(continued)

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(continued)

- Q. May the witness have a look at Exhibit P.12? You see, that is the billiard cue which the police officer says he has developed an impression of your fingerprint found at the end of it, towards the end of it. Can you help my Lord and the jury as to how a broken billiard cue should be found on table 5 with your fingerprint on it?
- A. Yes. 10
- Q. Tell us how it came to be there.
- A. Because I had been playing billiards there on that night. When I first arrived there, I had to choose a cue to see whether it fitted me or not. So it might be the case that I came into contact with two or three cues when I was making the selection.
- Q. Well, you were the one who was making the selection, do you remember how many cues you tried? 20
- A. I am not very sure, about two or three.
- Q. Why didn't you tell my Lord and members of the jury about this earlier when you were answering questions by your own counsel?
- A. Because my own counsel only asked me about circumstances I arrived at the billiard hall, and about how I disposed of the cue when the fight had started. He did not ask me any questions relating to the selection of cues. 30
- Q. Mr. YEUNG, you know that this is a matter of some importance, don't you? This is not simply a billiard cue, it is a broken billiard cue.
- MR. VAN BUUREN: With respect to my learned friend, my Lord, this might be the cue he was using at the time, this very cue might very well be the cue that he was using at the time. 40
- COURT: I think it is quite in order, Mr. Van Buuren, for Mr. Lunn to give him an opportunity to comment on the fact that his fingerprint was found on the cue.
- Q. Mr. YEUNG, let me repeat my last question. You know that this is a matter of considerable importance because your fingerprint was not simply found on a billiard cue, but a broken billiard cue near to where this fight had been going on, why didn't you tell my Lord and members of the jury earlier about this? 50

A. Because I had consulted with my lawyer and I was advised that there was no evidence as to the fact that I had used the cue to hit anybody, and that I had left the place in the early stage of the incident, and that it could be used by somebody else.

Q. Isn't it in fact the case that this is the cue that you used during the fight?

10 A. I did not use the cue to hit anybody in the fight.

Q. How would you describe to my Lord and members of the jury your relationship with Tai Ngan Chai, that is YIP Kam-ping?

A. When we see one another, we say "Hello" and nod, nothing in particular.

Q. So your relationship at least is cordial?

A. Yes.

Q. You do not know of any reason why he should have a grudge against you?

20 A. There is one way only he has grudge against me.

Q. Can you tell us what that is, and why he should have it?

A. Because on one occasion when he was playing billiards there, he cheated a person of his money, and I disclosed the matter to that person, so he became angry with me.

Q. Is that the only reason that he might have a grudge against you?

30 A. I do not know whether there is any other reason or reasons.

Q. When was this incident resulting in your disclosure of his cheating?

A. Longer than one month before the incident.

Q. In that month, had you seen YIP, Tai Ngan Chai, seen him at the billiard hall or in the restaurant?

A. Twice.

40 Q. Had he behaved in a way that led you to believe that he bore you a grudge?

A. Because prior to that incident, whenever he met me, he said "Hello" to me. But after that incident, he did not say "Hello" to me when he saw me.

Q. Now you have heard what YIP has said you did to him on that evening, have you not?

A. I did not, as a matter of fact.

Q. Remember though that he said that as he was running, escaping from the billiard hall, you struck him with a billiard cue in his chest. Do you remember him saying that?

50 A. Yes, I remember.

Q. Can you help my Lord and the jury as to why he should say that if that is not true?

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MR. VAN BUUREN: How would he know why he said that?

COURT: I think it is a fair question. Do you know of any reason why he should say that?

- A. What he said was very difficult to make me to believe because there were many people in the billiard room, and if I inflicted a blow on him, there is no reason that it was not seen by the others, there was no evidence from the others that I hit Tai Ngan Chai apart from himself. And furthermore, he did not see me before the incident. 10
- Q. You have told my Lord and members of the jury that you did not see the 2nd accused at all that evening at the billiard hall.
- A. Yes.
- Q. Did you know that he was the brother of Luen Mo?
- A. No.
- Q. Whilst you were trapped behind table 4, were you watching the fighting in front of table 4 by that pillar? 20
- A. Yes.
- Q. You see, we have heard from a number of witnesses, from a Mr. TAM Man, from a Mr. LEE Kit-hung and from a Mr. PANG, that the 2nd accused was seen fighting in that area. Are you sure you did not see him there?
- A. I am sure. 30
- Q. As you made your escape up between table 4 and 5, up towards the smoke lobby, did you see any man lying unconscious on the floor, bleeding?
- A. No.
- Q. Was fighting still going on there or not?
- A. Yes.
- Q. You were prepared to take a chance of making your escape at that stage, were you, although fighting was going on immediately next to you? 40
- A. Yes.
- Q. Why didn't you take that chance earlier right at the beginning of the fight?
- A. Because at first there was quite a number of persons gathering here, I was standing here, so I could not walk through those persons. At first I did not anticipate that they would be fighting, and when the fight did take place, there was no chance for me to run out from here. 50



- |    |    |   |                             |
|----|----|---|-----------------------------|
|    | Q. | You say that when the fight started, you put down your billiard cue, you are not sure where, but you put it down.   | In the<br><u>High Court</u> |
|    | A. | Yes.  | Defence                     |
|    | Q. | Why didn't you keep it in your hands to protect you in case you were attacked?  | Evidence                    |
|    | A. | Because I believed that nobody would attack me.   | No.32                       |
|    | Q. | If you believed that, why didn't you leave straightaway?  | Yeung Kwong-<br>hung        |
| 10 | A. | Because those people were fighting, wielding the billiard cues here and there, so I did not dare to get nearer to them.   | Cross-<br>Examination       |
|    | Q. | The fact is, Mr. YEUNG, that you, together with the 2nd accused and other friends of Luen Mo, set about Tai Ngan Chai and his friends intending to deal whatever serious harm you could to any one of them you came across. | 17th August<br>1981         |
| 20 | A. | I disagree with you.  | (continued)                 |
|    | Q. | No other questions.   |                             |

NO RE-XN. BY MR. VAN BUUREN.

BY COURT:

- |    |    |  |
|----|----|--|
|    | Q. | You said that Tai Ngan Chai did not see you before the incident.   |
|    | A. | What do you mean by "before the incident?"   |
|    | Q. | Well, that is what I was going to ask you, that is what you said.  |
| 30 | A. | You mean immediately before the fight or several days before the fight?  |
|    | Q. | You said, you see, that Tai Ngan Chai did not see you before the incident.   |
|    | A. | Now I am asking you whether your question referred to the period when the fight was taking place or before the fight took place?   |
|    | Q. | Well, it is just something that I was giving you the opportunity to explain if you wanted to. You said when you were being questioned about Tai Ngan Chai's allegation that you thrust a billiard cue at him, you said that Tai Ngan Chai did not see you before the incident, implying, I thought, you were saying that Tai Ngan Chai did not see you before the fighting incident. |
| 40 | A. | The question put by the Crown Counsel is that Tai Ngan Chai alleged that when he was running away, he was inflicted with one blow with a cue by me.  |
| 50 | Q. | Yes.   |
|    | A. | In fact I ran away before he did, he was still fighting with the group including Tai Ngan Chai, so I gathered that he did not see me.  |

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INTERPRETER: I beg your pardon. May I ask  
the witness to repeat what he had just  
said?

A. When I was running away, Tai Ngan Chai  
was still fighting with Luen Mo. I had  
ran away, so it is not sure whether he  
saw me or not.

COURT: Anything arising out of that?

MR. LUNN: No.

MR. VAN BUUREN: No, my Lord.

10

COURT: Yes, adjourn now for 15 minutes.

11.25 a.m. Court adjourns

11.45 a.m. Court resumes

Both accused present. Appearances as before  
JURY PRESENT.

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No. 33  
LAU SIK-CHUN

D.W.2 - LAU Sik-chun (2nd accused) Affirmed in  
Punti

XN. BY MR. VAN BUUREN:

20

Q. You reside at room 849, 7th floor, Yu Shun  
Lau, Chaiwan Estate, Hong Kong?

A. Yes.

Q. And you are 27 years of age?

A. Yes.

Q. Born in Hong Kong?

A. Yes.

Q. And you worked as a painter and then you  
helped your father with his newspaper  
business?

30

A. Yes.

Q. Now you heard the evidence against you on  
the four charges you are facing and that  
evidence related to an incident at the Good  
World Billiard Room on the 26th of June,  
1980. Now first of all I want you to tell  
his Lordship and members of the jury whether

you went to that billiard hall on that evening, the evening of the 26th of June, 1980.

10 A. Yes. I left home and I went there by a car. It was my birthday.

Q. Yes. And what time did you arrive there?

A. Shortly before 10 o'clock.

Q. Yes. And you said it was your birthday, so why did you go there was because it was your birthday?

A. On that night I had dinner at home. I had been told by my elder brother that since it was my birthday, he would like to meet me at the billiard room and then after playing billiard, he would go with me to the nightclubs for celebration.

Q. What is your elder brother's name?

A. Luen Mo. His full name is LAU Sik-hung.

20 Q. Now after you arrived at the billiard hall, can you name the people you knew who were in the billiard hall at that time?

A. Tai Ngan Chai, Ah Ki, Sap Chai and another person called Pai Sau Man and one Char Kwor Chai and Tai Ngan Chai's wife.

Q. What about Luen Mo? Was Luen Mo also there?

A. Yes. He was with Ah Sang and also my sister-in-law.

Q. Your sister-in-law is the wife of Luen Mo or the wife of some other?

30 A. Luen Mo's wife.

Q. So when you were out at the billiard hall, what was your brother Luen Mo doing?

A. He was playing billiard with Ah Sang and also with my elder brother's wife.

Q. That means with Luen Mo's wife?

A. Yes.

Q. Now I want you to look at the plan P.4 and first of all let me explain what this plan is. You have got the lifts there, the corridor and then the entrance to the billiard room. There are numbers, circular numbers on squares, those are the billiard tables and the numbers of those billiard tables.

40 A. Yes, I know.

Q. Now do you recognise the place?

A. Yes.

Q. When you went into the billiard hall, where was Mr. Luen Mo playing billiards?

50 A. At this table, table 14.

Q. Yes. And then what did you do when you went there and saw your brother playing billiards?

A. He told me to wait for a moment and that he would give up the table to me a moment later.

Q. Yes. And then what happened?

A. Then he gave up the table to me. I then played with Ming Chai.

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- Q. Now who is Ming Chai? When you entered the billiard hall, was he also there at the time?
- A. When I got there, Ming Chai had already been there.
- Q. Yes. And then what happened?
- A. Then I played billiard with Ming Chai.
- Q. When you were playing billiard with Ming Chai, did you see what happened to your brother Luen Mo? 10
- A. Shortly before he left, he said, "Today is your birthday. I have invited two or three friends to join us at the nightclub."
- Q. Yes. Carry on.
- A. Then I played billiard with Ming Chai for about half an hour.
- Q. Now you said before your brother left, do you mean left the billiard hall or left the table?
- A. Left the table. 20
- Q. And did you see in what direction he left?
- A. From here towards there.
- Q. That means he went towards the area between table 11 and table 9?
- A. Yes.
- Q. And did he go out of your sight or could you see where he was waiting? Did he leave your sight or did you see where he was waiting?
- A. I lost sight of him when he passed this gap. When he got around here, I lost his sight. 30
- Q. And then what happened?
- A. Then I played billiard for about half an hour.
- Q. And then what happened?
- A. Then I was told by someone that my elder brother quarrelled with someone.
- Q. Yes. And then what did you do?
- A. Then I approached to see with whom my elder brother was quarrelling. 40
- Q. Now point out to which place you went when you say you approached.
- A. I walked from table 14 to this place.

INTERPRETER: Witness pointed to table 8.

- Q. And then when you approached table 8, what happened?
- A. I saw Tai Ngan Chai was quarrelling with my elder brother.
- Q. Yes. Carry on. 50
- A. Then I tried to persuade them to stop quarrelling on grounds that we were very familiar with one another and that there

- should be no quarrel.
- Q. Do you know what the quarrel was about?
- A. At first I didn't know.
- Q. Yes. Carry on.
- A. After they had stopped quarrelling, they walked away and I returned to the table, continued playing billiard.
- Q. Now when you said they were quarrelling, did you see any blows exchanged between the two of them?
- 10 A. No, not at that stage.
- Q. And now you said that they went away, can you tell his Lordship and members of the jury in which direction first of all Mr. Tai Ngan Chai went and in which direction Mr. Luen Mo went?
- A. I don't know to which direction Luen Mo parted with my elder brother, but in any event they parted with one another after the quarrel stopped.
- 20 Q. You said Luen Mo or Tai Ngan Chai?
- A. Luen Mo and Tai Ngan Chai walked away.
- Q. Now in this way, in which direction did Tai Ngan Chai walk away?
- A. It is a long time ago, now I cannot remember but in any event he walked away in the direction indicated.
- Q. That is towards table No.13?
- A. They parted with one another.
- 30 INTERPRETER: He meant several directions.
- Q. In the area around the portion marked counter, table 13, table 8 and table 9?
- A. Yes.
- Q. And how did you return to your table No.14?
- A. I walked to the table...to my own table.
- Q. Indicate on the plan how you walked.
- A. From here towards there.
- Q. When you walked towards your table, did you notice where Tai Ngan Chai was?
- 40 A. No.
- Q. Carry on.
- A. Then I continued playing billiard for several tens of minutes.
- Q. And then what happened?
- A. Then I heard a commotion. I looked towards the direction where the commotion came from. I saw Tai Ngan Chai and my elder brother were around here.
- INTERPRETER: The left top corner of table 4.
- 50 Q. Now between that period, the period before you heard this commotion, did you make any telephone call or did you receive any telephone

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- call? First of all, did you make a telephone call yourself?
- A. No.
- Q. Did you receive a telephone call from anyone?
- A. No.
- Q. Then carry on. You saw, you say, Tai Ngan Chai there, and then what happened?
- A. He was with my elder brother. Again they were quarrelling. 10
- Q. Now do you remember at that time how they were standing in relation to you? Were they facing you or was anyone's back towards you? How was it in relation to you, the two persons, Tai Ngan Chai and Luen Mo?
- A. They had their sides towards me.
- Q. And were they close to each other?
- A. Yes.
- Q. Carry on.
- A. There were quite a number of persons surrounding them. 20
- Q. Did you know any of the others surrounding them?
- A. I know some of them.
- Q. Who do you remember was surrounding them at that time?
- A. Ah Sang, Lun Chai, Ah Ki, Char Kwor Chai. I don't know the others.
- Q. What about the 1st defendant? Did you notice the 1st defendant anywhere around them? 30
- A. No, I didn't see him.
- Q. And then what happened?
- A. Then I intended to go over to dissuade them.
- Q. Yes. Carry on.
- A. Unexpectedly before I reached them, I was inflicted with several blows with poles.
- Q. Did you notice who inflicted the blows?
- A. I only recognise one of them is Char Kwor Chai. I didn't know the other attackers. 40
- Q. Now those sticks that they attacked you with, do you know what kind of sticks they were?
- A. Billiard cues.
- Q. Now at that time when you were attacked, do you remember where you were standing, whereabouts you were in relation to the plan P.4?
- A. Around here. 50
- Q. By the side of table No.11?
- A. Yes.
- Q. Just before you were attacked, did you notice whether Tai Ngan Chai and Luen Mo were exchanging blows?

	A.	I didn't see things very clearly, but I saw them cleanching one another.	In the <u>High Court</u>
	Q.	You mean embracing one another?	
	A.	Yes.	Defence
	Q.	Did you notice what the other people around them were doing?	Evidence
	A.	Taking part in a fight.	No.33
	Q.	How did they fight? Did they use their hands or using instruments?	Lau Sik-chun
10	A.	At that time many of them picking up instruments, picking up billiard cues.	Examination
	Q.	Yes. You said you were attacked, where were you struck? On which part of the body were you struck?	17th August
	A.	Around here, the back of my head and also here.	1981
	Q.	Yes. And then what happened?	(continued)
	A.	Then I ran away in a hurry.	
	Q.	In which direction did you run?	
20	A.	From the nearest rear exit.	
	Q.	Which was that? Can you show it on the plan?	
	A.	Here.	
	Q.	Indicating the portion marked "smoke lobby" on the left side of the lifts.	
	A.	Yes.	
	Q.	And then what happened?	
	A.	I pushed open this door.	
	Q.	Yes?	
30	A.	I saw there was a metal grille. I left here and returned to the inner part, to this place.	
	Q.	I think you came back into the billiard hall and you went towards table No.12, is that right?	
	A.	Here.	
	Q.	The portion marked "cue rack", about table 11, close to table 12.	
	A.	Yes.	
40	Q.	And then what happened?	
	A.	I stopped there for a moment, very short time. Then seeing that there were very few people around here, so I went to the main entrance.	
	Q.	You said few people near here, pointing at the portion marked "entrance" on the map, is that right?	
	A.	There was no people around here. People were fighting around here.	
	Q.	That is just about table No.4, people were fighting about table No.4?	
50	A.	Yes.	
	Q.	And then what happened?	
	A.	Then I pushed the door over here. I intended to escape through this door.	
	Q.	Now that door, was that door closed or was it open? Were both doors closed or both doors open?	

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- A. Closed.
- Q. Now normally is that door kept open or kept closed?
- A. Open normally.
- Q. And then what did you do?
- A. I pushed the door with both my hands, trying to get away through this door.
- Q. Yes. And then what happened?
- A. At that time there was somebody on the other side of the door to stop it from being pushed open. 10
- Q. Yes. And then what happened?
- A. So I escaped through the other rear exit.
- Q. Which one is that?
- A. Here.
- Q. The portion marked "smoke lobby" on the right-hand side of the lifts.
- A. Yes.
- Q. And then what did you do?
- A. When I arrived here, I saw many people, several other persons, returned to this place. 20
- Q. You are indicating the portion between the two doors of the smoke lobby?
- A. Yes.
- Q. And then what happened?
- A. Then I heard somebody saying that there was no way to get out because it was locked up.
- Q. What was locked up?
- A. Because it was locked up downstairs. 30
- Q. Yes. And then what happened?
- A. So I ran away from this door to this side.
- Q. Indicating from the portion marked "smoke lobby" on the right towards table No.8, is it?
- A. Yes.
- Q. And then what happened?
- A. I stopped here for a short while.
- Q. Is that the dark portion on the right of the stool between tables 9, 8, 2 and 3? 40
- A. Yes. The space between those tables.
- Q. And then what happened?
- A. While I was standing here, I saw quite a number of persons running through this door.
- Q. Indicating the smoke lobby on the left of the lifts?
- A. Yes.
- Q. And then what happened?
- A. I saw quite a number of persons running through this door and they didn't return, so I was under the impression that the door had already been opened by someone. 50
- Q. Yes, and then?
- A. Then I ran downstairs.



- 10 Q. Now first of all when you went....the first time when you tried to escape out of the smoke lobby on the left side of the lifts and you found that the iron door was closed, were you alone or was there anyone else with you?
- A. I was just by myself.
- Q. And then when you ran towards the entrance and couldn't get out that way, were you alone by yourself?
- A. The same entrance.
- Q. Later you came back into the billiard hall and later you tried to get out of the main entrance near the corridor, at that time were you alone?
- A. I was by myself.
- Q. And you said that you saw at that time some people fighting near table No.4, about table No.4. Now did you notice who were the people taking part in the fight about table 4?
- 20 A. I didn't notice.
- Q. You didn't notice or you didn't pay attention?

COURT: What's the difference?

INTERPRETER: I find it difficult.

- 30 Q. Then you went next to the smoke lobby on the right-hand side of the lifts. At that time you said there were some people inside the smoke lobby. Did you notice who those people were?
- A. I didn't know those persons.
- Q. Before I leave the entrance, the main entrance, you said you tried to push open the main entrance door but you couldn't because some people were on the other side. Could you recognise the people on the other side?
- 40 A. I could not see those people outside because the glass door was very blurred. As soon as I noticed that the door couldn't be pushed open, I left.
- Q. The glass on that glass door, is it clear glass or opaque glass?
- A. Clear glass but because it had been used for a long time, so it was not very clear.
- Q. Now after you left the smoke lobby and came towards the direction of tables 9, 8, 2 and 3, when you stood there, did you see where the fighting was going on?
- 50 A. At that time my mind was very much confused, so I didn't pay particular attention to the surrounding. I only saw people running here and there.

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(continued)

- Q. Now at that time when you were in the vicinity of tables 9, 8, 2 and 3, did you notice where Tai Ngan Chai was?
- A. No, I didn't.
- Q. Before you got to that spot, did you at any time notice where Tai Ngan Chai was? I am referring to the time when you came out back into the billiard hall, ran towards the main entrance and then ran towards the smoke lobby on the right. During that time, did you notice where Tai Ngan Chai was? 10
- A. No, I didn't.
- Q. What about your brother Luen Mo, did you see where Luen Mo was?
- A. No.
- Q. After the second quarrel when you said you approached Tai Ngan Chai and Luen Mo and then you were struck by a billiard cue, now after you were struck by a billiard cue while you were trying to escape and you came back, did you at any time notice where your brother was, Luen Mo? 20
- A. I didn't see my elder brother any longer.
- Q. Now when you left the billiard hall finally and ran down the stairs, did you leave alone or were the other people with you leaving?
- A. Just by myself.
- Q. But were there people also escaping with you?
- A. I didn't know the others who escaped.
- Q. There were others escaping with you at the same time? 30
- A. Yes.
- Q. Now just before you were struck, you said you came towards the vicinity of tables 4, 9 and 11 from table No.14. Now when you came, did you carry anything in your hand?

INTERPRETER: I am not sure of your question.  
Will you please repeat?

- Q. I beg your pardon. Just before you were struck, before that incident, you said you came towards the vicinity of tables 11, 4 and 9, and my question to you is when you came towards that position, did you carry anything in your hand? 40
- A. No.
- Q. Now you were playing billiard before you came on that occasion, you must have been using a billiard cue.
- A. Yes.
- Q. Do you remember what you did with your billiard cue when you came towards....?
- A. I placed the billiard cue on the table. 50

Q. Now you said you came down...Finally you left the billiard hall and came downstairs. After you came downstairs, what did you do?

A. I left the place by a car.

Q. And then what happened? Your own car or private car?

A. A taxi.

Q. And then what happened?

10 A. I went to Jordan Road. Several five minutes later I returned to the ground floor of the building with a view to see whether anything had happened to my elder brother and Tai Ngan Chai.

Q. And then what happened?

A. Then I saw many police patrol cars, ambulance cars and policemen surround the area.

Q. Yes. And then what happened?

20 A. Then I returned to the Jordan Road area by vehicle.

Q. Yes. And then?

A. About one hour or so later, I received a pager call from my elder brother.

Q. Yes?

A. He told me that they were at the Ko Fu Association in Wanchai area.

Q. Yes. And then?

30 A. Then I went to the ground floor of the Ko Fu Association in Wanchai area. I made a 'phone call to my elder brother. Then he went downstairs with Ah Sang.

Q. Yes?

A. Then we went to an unknown restaurant for tea. I don't know the name of the restaurant.

Q. About what time was this?

A. Very late in the night. I can't remember exactly what time.

Q. Carry on.

40 A. After we had our tea, we went to a friend's premises in O'Brien Road where we spent one night.

Q. Yes?

A. Then on the following morning my elder brother and the others suggested to go to Castle Peak area.

Q. Did they say why?

A. No.

Q. Yes. And then what happened?

50 A. Then I went to Chaiwan and lived there.

Q. And then what happened?

A. I lived there for ten odd days. Then I received a pager call from my elder brother. He said that he had hired a flat in Causeway Bay area and he asked me whether I would move in.

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(continued)

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(continued)

- Q. Before that time, where was he living?  
Before this incident, where was your  
brother living? Do you know?
- A. In Lamtin area.
- Q. So after you moved in with him in Causeway  
Bay and then what happened?
- A. I went up and lived there for two days.
- Q. Who was living there with him at that time?
- A. Ah Sang.
- Q. Anybody else? 10
- A. My sister-in-law.
- Q. Yes. Anybody else?
- A. Nobody else.
- Q. You lived there for two days and then what  
happened?
- A. Then I left the place.
- Q. And where did you go?
- A. I went to my friend's premises. I lived  
here and there.
- Q. Where were they? 20
- A. No fixed abode.
- Q. Why didn't you go back and live in Chaiwan?
- A. Because the children of my elder sister  
were all grown up and it would be  
inconvenient to me to live there together  
with them.
- Q. And then what happened?
- A. Then I lived around here and there. On one  
occasion my elder brother told me to leave  
Hong Kong but I refused. 30
- Q. Did he tell you why?
- A. He said that in order to avoid further revenge  
from Tai Ngan Chai.
- Q. Now during that period, were you afraid of  
Tai Ngan Chai taking revenge on you?
- A. Will you please repeat once more to me?
- Q. During this time when you said you were  
living at one place and another, were you  
afraid that Tai Ngan Chai might take revenge  
on you? 40
- A. Yes.
- Q. Did you see Tai Ngan Chai at any time during  
this period?
- A. I was seen by him in the street.
- Q. That was in February, 1981?
- A. Yes.
- Q. And that was the time when you were arrested  
and taken to the police station?
- A. Yes.
- Q. And you made this statement to the police? 50
- A. Yes.
- Q. Now have you got a copy of your statement?  
I am looking at the long statement. I  
don't know what that number is, my Lord.

COURT: 18. Exhibit P.18.

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MR. VAN BUUREN: Thank you, my Lord.

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10 Q. This is exhibit P.18 and you are looking at the Chinese. There is a question here, towards the end, that is on page 3 of the translation, my Lord. The question, "Did you call Tai Ngan Chai through the pager that night?" Now when that question was asked of you, did you know what connection Tai Ngan Chai's pager had to do with this affair?

(continued)

A. NO.

Q. I have no further questions.

XXN. BY MR. LUNN:

Cross-  
Examination

Q. You have told us of your movements after the evening of the 26th of June, the various places you stayed in.

A. Yes.

20 Q. You have told us that you were concerned that Tai Ngan Chai might take revenge on you.

A. Revenge on my elder brother and the others.

Q. Are you saying then that you weren't concerned for yourself that he might take revenge on you?

A. I was also frightened of the revenge on myself.

Q. What you were doing was hiding, in effect, so he couldn't find you?

30 A. Yes.

Q. What had you done that might cause Tai Ngan Chai to want to take revenge on you?

A. Will you please explain to me further?

Q. What had you done either on the evening of the 26th of June or on some other occasion that might cause Tai Ngan Chai to want to take revenge on you?

A. I didn't do anything.

40 Q. Then why should Tai Ngan Chai want to take revenge on you if you had done nothing?

A. Because he knew that I was the natural younger brother of Luen Mo and that there might be some misunderstanding between my elder brother and Tai Ngan Chai causing him to do something harmful to me.

Q. So was the fact that you were Luen Mo's younger brother the only reason that you thought Tai Ngan Chai might want to take revenge on you?

50 A. My elder brother also told me to keep away from Tai Ngan Chai.

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(continued)

- Q. After the incident on the 26th of June, 1980 in the billiard hall, did you come to know that a man had died in that fighting that you witnessed?
- A. Are you asking me whether I heard any news? I heard that from the radio.
- Q. You heard on the radio that a man had died in the incident that you witnessed?
- A. You mean the deceased?
- Q. Whoever it was, somebody died in this fight you had seen and you learned that on the radio, isn't that correct? 10
- A. Yes. I learned that one of them died.
- Q. You would have realised then that the police would be anxious to interview anybody who had been at the billiard hall at the time of this killing, would you not?
- A. Yes.
- Q. Did you go along to the police and tell them that you had been there? 20
- A. No.
- Q. Why not?
- A. Because when I returned to the place, to the ground floor of Good World Billiard Room by vehicle, there were so many policemen around.
- Q. Didn't that afford you an excellent opportunity to tell one of them you were a witness to what had gone on upstairs?
- A. It is none of my business. 30
- Q. Or is it in fact the case that you were hiding not only from Tai Ngan Chai but also from police at the time after this incident when you kept moving addresses?
- A. No. I disagree.
- Q. The reason that you were hiding was that you had taken part in this fighting that led to a man's death.
- A. No.
- MR. LUNN: My Lord, I wonder if that might be a convenient moment before I go on to other matters. 40

COURT: Yes. Would it be too early for everybody if we came back at 2.15? Members of the jury, any difficulty about that? Very well. 2.15

12.50 p.m. Court adjourns

2.20 p.m. Court resumes

Both accused present. Appearances as before.

JURY PRESENT.

D.W.2 - LAU Sik-chun (2nd accused) o.f.a.

XXN. BY MR. LUNN: Continues

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- 10 Q. Mr. Lau, this morning you have been telling us about a man called Tai Ngan Chai and described various things that he did on the evening of the 26th of June last year. How long have you known that man Tai Ngan Chai?
- A. Over one year.
- Q. That is a year prior to that incident?
- A. Up to the present moment about two years.
- Q. And how would you describe your relationship with Tai Ngan Chai prior to this incident?
- A. Friends.
- Q. How would you describe Tai Ngan Chai's relationship, as far as you could judge it, with your elder brother Luen Mo?
- 20 A. Friends.
- Q. In fact, you felt able to go up and part the two of them earlier that evening, dissuade them from their quarrel, that is correct, is it not?
- A. That is true during the first occasion.
- Q. And, in fact, on the later occasion that is what you were trying to do as you walked past table 11 when you were assaulted?
- A. Yes.
- 30 Q. How close had you got to Luen Mo and Tai Ngan Chai when you were assaulted by table 11?
- A. Not very far away, about from where I am to the books over there.
- Q. So you were able to see Luen Mo clearly at that stage?
- A. Yes, you may say so.
- Q. That was at a time when you saw Luen Mo and Tai Ngan Chai in a clinch, was it not?
- 40 A. Yes.
- Q. What did you take that to be, a fight?
- A. After they had clenched to one another, those people nearby also taking part in the fight.
- Q. What were they doing?
- A. Fighting.
- Q. Were they using weapons?
- A. Tai Ngan Chai and Luen Mo did not, whilst the others surrounding them picking up some billiard cues.
- 50 Q. Were these others attacking Luen Mo or Tai Ngan Chai?
- A. I could not see things very clearly. I could

(continued)

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(continued)

- not make it out. People were hitting one another.
- Q. Were you concerned for your brother's safety, Luen Mo's safety?
- A. Yes, but I had no way.
- Q. You have told us that you were struck on the back of your head and on your shoulder and that then you ran away to the nearest exit.
- A. Yes. 10
- Q. Then you described to my Lord and members of the jury your various travels around that room to various exits looking for ways out.
- A. Yes.
- Q. Didn't you ever try to go to your brother's aid?
- A. No.
- Q. You just abandoned him?
- A. At that time I didn't have any way to get nearer to him because he was surrounded by numerous persons. 20
- Q. What was to prevent you from pulling these people away from your brother, coming to his assistance?
- A. If I tried to get nearer, I believe I would be beaten up as well because prior to that I had been beaten up.
- Q. Now you told my Lord and members of the jury of your first attempt to escape. You went to the rear exit on the left-hand side of the lift, there you found a metal grille, is that right? 30
- A. Yes.
- Q. And as I recall it, you told us that you pushed open the metal grille, is that correct?
- A. No. I pushed open the door immediately in front of the metal grille.
- Q. Did you try to open the metal grille? 40
- A. No.
- Q. Why not?
- A. Because I was under the impression that the iron grille was locked.
- Q. Wasn't one way to find out by trying to open it?
- A. I didn't try.
- Q. Had you tried, it seems that you might have been able to open it because the 1st accused has told us that that's the way he escaped. 50
- A. At that time my mind was so confused that it didn't occur to me to try and open the grille.



- |    |    |   |   |
|----|----|---|---|
|    | Q. | Now you have told my Lord and the members of the jury that at the time that you first saw Tai Ngan Chai in this later incident, you were playing billiards, that you put down your billiard cue when you went across to join Luen Mo and Tai Ngan Chai. | In the<br><u>High Court</u><br>Defence<br>Evidence<br>No.33<br>Lau Sik-chun |
|    | A. | Are you referring to the first stage or the stage after the fighting?   | Cross-<br>Examination   |
| 10 | Q. | At the stage which events resulted immediately in a fight, you told us you were at table 14, you put down your cue on the table and you walked towards Luen Mo and Tai Ngan Chai.   | 17th August<br>1981   |
|    | A. | I intended to come up to them but I was assaulted when I was half way.  | (continued)   |
|    | Q. | All I am asking you is - just say yes or no to this - did you put the billiard cue down before you walked over towards your brother?  |   |
| 20 | A. | Yes. I placed the billiard cue on the table with a view to go up to them, but before I succeeded in getting nearer, I was assaulted when I was half way through.  |   |
|    | Q. | At any later stage prior to your escape from the billiard hall, did you pick up any other billiard cue or that billiard cue that you put down?  |   |
|    | A. | No.   |   |
| 30 | Q. | So at no stage after that did you have a billiard cue in your hand whilst in the billiard hall?   |   |
|    | A. | That's correct.   |   |
|    | Q. | At any stage did you take part in the fighting by striking anybody yourself either with fists or a billiard cue?  |   |
|    | A. | No.   |   |
|    | Q. | So any witness that has come to court and told my Lord and the jury that they saw you with a billiard cue or that they saw you fighting would be wrong, would they?   |   |
| 40 | A. | Perhaps he misidentified people.  |   |
|    | Q. | They would be wrong, would they not?  |   |
|    | A. | I think so.   |   |
|    | Q. | Now you have heard what Mr. Yip said about having a telephone conversation with you prior to his return together with his companions to the billiard hall, is he wrong about that?  |   |
| 50 | A. | He is wrong in saying that. I didn't have any telephone contact with him.   |   |
|    | Q. | Mr. Yip says that on his return to the billiard hall with his companions, he spoke to you first of all, is he wrong about that?   |   |
|    | A. | Yes, because at that time I was still playing   |   |

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(continued)

- billiard and I didn't know at what stage he arrived.
- Q. Now you will recall that Mr. Yip said that shortly after a man started to assault him, he heard you shout, "Kill Tai Ngan Chai first." Is he wrong about remembering you saying that?
- A. I didn't say so.
- Q. And you will recall no doubt that Mr. Yip is not the only person who said he heard you saying that. You will recall the evidence of Mr. Pang who said he heard you shout, "Kill Tai Ngan Chai first." Is Mr. Pang wrong as well? 10
- A. Yes.
- Q. Now you have told my Lord and the jury that there came a time in your flight around this billiard hall and your search for an exit when you came to the doors outside the corridor which lead to the lift. 20
- A. Are you talking about the main entrance?
- Q. Call it the main entrance if you will, but at all events the doors that lead to the lift.
- A. During the course when I was trying to escape, on one occasion I tried to push open the door but as soon as I found there was someone holding the door on the other side in a closing position, I immediately retreated. 30
- Q. Now you will remember no doubt the evidence of a Mr. TAM Man who says that he saw you there at those lift doors.
- A. I wonder whether he misidentified.
- Q. I thought you agreed that you were there at the lift doors trying to push them open, do you accept that?
- INTERPRETER: I beg your pardon?
- Q. I understood you to be saying that you were there at the doors outside the lift trying to push them open. 40
- A. Yes.
- Q. Mr. TAM Man says that he saw you doing that.
- A. I pushed the door.
- Q. So you are at one with Mr. TAM Man as far as that goes, you were there pushing the door.
- A. I do not know which person or persons were on the other side of the door. I tried to push open the door, but as soon as I found that the door was being held by the others in a closing position, I left there. 50

COURT: I take it, Mr. Interpreter, when you use 'closing position', you mean actually closed, actually shut, not in the course of being closed or being shut.

INTERPRETER: Yes.

COURT: Being held to shut?

INTERPRETER: Holding shut.

- 10 Q. So that there is no disagreement between you and TAM Man that you were there pushing the door?
- A. Perhaps he was on the other side of the door. When I was pushing the door, I found there were people on the other side, but I couldn't see which persons were there.
- 20 Q. You see, as you no doubt recall, Mr. TAM Man says that you didn't fail in your attempts to push open the door, you succeeded. Is he wrong about that?
- A. He is wrong in saying that. In fact, I failed in my attempt to push open the door.
- Q. He says, as you no doubt recall, that you were trying to push open that door together with other men. Is he wrong about that?
- A. He is wrong in saying that.
- Q. Because no doubt, as you recall, he says that having succeeded in opening the doors, you together with these other men brought two men back into the billiard hall and set about them, attacking them.
- 30 A. No. When I was trying to push open the door, I was by myself. There was nobody else doing that with me. I failed to push open the door because there were people holding it on the other side of the door, so I left the place.
- Q. You will recall no doubt the evidence of Mr. LI Kit-hung who also describes this incident which TAM Man described. He says that he saw you and other men pull TAM Man and the deceased from behind these doors and then embark upon attacking them in the billiard hall, is he wrong?
- 40 A. They were wrong in saying that.
- Q. He says he saw you striking the prostrate figure of a man with a billiard cue, that you did so four or five times, is he wrong about that?
- A. Yes, he is wrong. I did not take part in the fight. I did not assault anybody on that
- 50 night. The only thing I did was trying to escape.

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(continued)

- Q. You see yet another witness, you will no doubt recall, says he saw you with a billiard cue attacking somebody. That was Mr. CHAN Chun-ki. He said he saw you attacking Ah Sap, that is Mr. Poon, that you did so with a billiard cue. Is he wrong?
- A. I did not.
- Q. So Mr. Poon is likewise wrong then, is he, when he confirms that you did make an attack 10 against him. So Mr. Poon is wrong when he confirms what Mr. Chan says about you attacking Mr. Poon with a billiard cue?
- A. Yes, because as a matter of fact I did not hit him.
- Q. No doubt the prosecution case is clear to you. I put it to you that you together with Luen Mo and your companions set about Tai Ngan Chai and his companions.
- A. No. 20
- Q. I put it to you that your intention in using the billiard cues as weapons was to do them really serious bodily harm if you could possibly do so.
- A. I disagree.
- Q. I put it to you that you succeeded as far as the deceased was concerned and that you were there over his prostrate body beating him with a billiard cue as he lay unconscious.
- A. No. I didn't use a billiard cue in the 30 fight.
- Q. I put it to you that what you did thereafter was your very best to avoid meeting up with the police and having to explain what you had done that evening.
- A. I did not try to avoid the police.

MR. LUNN: My Lord, I have no other questions.

BY COURT:

- Q. Did you know NG Fuk-nam?
- A. No, I do not know him. 40
- Q. When you heard over the radio that he had been killed, you didn't know whether he belonged to Tai Ngan Chai's crowd or not?
- A. I didn't know because to me he was a stranger.
- Q. So as far as you knew, his death could have been caused by one of Tai Ngan Chai's companions?
- A. I didn't know about this point and I didn't take part in the fight.
- Q. Could the witness be shown exhibits P.17 and 50 P.18? Did you see Tai Ngan Chai punch your brother?

- A. At that time when he raised his arm, he was embraced by my elder brother immediately. In the High Court
- Q. Have a look at P.17, you say there, "I then tried to go over to dissuade them again. But before I reached them I saw Tai Ngan Chai punch my elder brother once." Defence Evidence No.33
- A. At that time Tai Ngan Chai raised his hand but he was embraced by my elder brother immediately. So I got the impression that he wanted to deliver a blow on my elder brother. Lau Sik-chun Cross-Examination 17th August 1981
- 10 Q. It then goes on to say, "Afterwards I saw many people fighting and quarrelling together." (continued)
- A. Yes.
- Q. You see that suggests that you went over to Luen Mo and Tai Ngan Chai. As you were going over, you say Tai Ngan Chai punch your brother, then there was quarrelling and fighting and then you were struck with the poles.
- 20 A. Yes. At that time Tai Ngan Chai raised his hand as demonstrated that way towards my elder brother and he was embraced by my elder brother immediately.
- Q. Any other comment you want to make on that?
- A. No.
- Q. All right. Have a look now at exhibit P.18, page 3 of the translation, 7 or 8 lines down. Now the extract to which I am referring is, "At the time of having tea, the three of us were already aware that just then, in the fight, someone had died. We learnt of it from the radio news broadcast. Therefore the three of us discussed about hiding away, not to go out." Did you say that?
- 30 A. It was recorded by the police and I read over what was written by the police. I was trying to say that my elder brother suggested to me to go away and hide, but I argued with my elder brother that I need not take any shelter, to hide myself, because I did not take part in the fight.
- 40 Q. You see that suggests that the reason for hiding was the knowledge that someone had died in the fight.
- A. No.
- Q. You didn't say that to the police?
- A. No. I tried to say that while we were inside the restaurant, my elder brother insisted that I should hide myself somewhere. I explained to him that I didn't want to do so because I did not take part in the fight. I was simply involved in the matter because I was playing billiard at that time. My elder brother said
- 50

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that it would be better for me to go  
away from the Colony, but I disagreed  
with what he suggested.

- Q. So there was no mention in what you said  
to the police officer about hearing  
someone had died in the fight?
- A. Yes. I did tell the police about hearing  
the news of a person passed away, but I  
denied that I did tell the police about a  
discussion held between the three of us  
to keep away from the police.

10

(continued)

COURT: Yes, Mr. Van Buuren?

NO RE-XN. BY MR. VAN BUUREN

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No. 34

PROCEEDINGS

COURT: Very well. You may go back to the dock.  
That is the case for the defendants?

MR. VAN BUUREN: Yes.

COURT: Yes, Mr. Lunn?

MR. LUNN: Does your Lordship intend to take  
both speeches this afternoon? 20

COURT: What I intend to do...Members of the  
jury, we have heard now all the evidence  
in the case. It now remains for each  
counsel to address you and for me to sum up.  
there is a modern day practice that we  
avoid, as far as possible, sending juries  
out to consider their verdicts in the after-  
noon. So if it is not inconvenient to  
counsel, I propose to hear their addresses 30  
to you this afternoon and then I will sum  
up to you in the morning so that you will  
have most of the day to consider your verdict.  
That is what I propose to do.

MR. LUNN: My Lord, for my part I am amenable  
to that.

MR. VAN BUUREN: My Lord, I was hoping that  
your Lordship will give me a few minutes to  
sort of collate the evidence, but it is all  
right. 40

COURT: Certainly. Yes, I don't mean that.

MR. VAN BUUREN: What I want to do was to sort of collate all the evidence that has been given for both sides because my evidence was given today, then I can extract the relevant parts which might be important to the jury, but I see your Lordship's point of view, with great respect.

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10 COURT: My main concern is that I want the jury to go out tomorrow morning, not tomorrow afternoon, so that if you won't mind doing part of your address this afternoon and finishing off in the morning to give you the chance to have a look at your notes to make sure that you have covered everything.

20 MR. VAN BUUREN: Another suggestion, if I may, my Lord, is for both my learned friend and I to go tomorrow morning and if it is not too inconvenient to members of the jury, they can come on Wednesday for the summing-up.

COURT: I think Mr. Lunn is prepared to address now.

MR. LUNN: My Lord, I am.

COURT: So we might as well take advantage of the time and then we will re-consider the matter, all right? Thank you, Mr. Lunn.

No. 35

30 ADDRESS OF COUNSEL FOR  
PROSECUTION

No.35  
Address of  
Counsel for  
Prosecution  
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40 MR. LUNN: Members of the jury, as his Lordship has outlined to you, and as indeed I have outlined to you at the beginning of this trial, the purpose of my addressing you now is to address you on the evidence as it has turned out in this case and also to touch upon matters of law. Now in so far as I do touch upon matters of law, they are of course subject to final directions that you will receive from his Lordship.

Let me remind you once again that the burden

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of proving these allegations, one of murder and three of wounding, lies fairly and squarely on the shoulders of the Crown, at no stage does it move over to the defence. The defendants, two of them, don't have to prove anything to you. It is for the Crown to prove the case to you. And to prove the Crown case so that you can come back and return verdicts of guilty, the Crown has to satisfy you so that you are sure that these men are guilty of these separate 10 offences.

As you know, there are now four counts on the indictment, one of murder and three of wounding, you are to consider those counts separately. You are to consider the case as against the two accused men separately and arrive at your decisions as to whether they are guilty or not by considering each man's case separately.

Having said that, you will know from my opening speech, and from the way in which this case has 20 been conducted, that it is the Crown's case that these two men, together with others, were joint adventurers to what happened in this billiard hall. That is to say that they embarked upon a course of action against Tai Ngan Chai, as we call him, and his companions and that they were jointly liable for what then ensued.

Now you will know, for example, in relation to the 1st accused, and I have told you this at the outset, that the only evidence of his 30 participation in fighting was his attack against Yip and that was a single blow, so that the Crown has not shown to you that he struck any blows against the deceased nor has it shown that he struck blows against TAM Man in the 3rd count or PANG Pui-yuen in the 5th count. What the Crown says is that he was part of an enterprise together with these other assailants and is responsible for their actions just as much as 40 they are responsible for his actions.

Now of course the crucial decision for you to make in this case is to decide whether or not either or both of these two men were part of such an adventure. You are not able to read their minds, so you can only judge them by what they did on this occasion and by what they say that they did in the witness box today. You have to look at their actions. And in relation to both these men, these are factors that I 50 would ask you to look at in being able to decide that these two men were part of this larger



enterprise involving other men, some of whom  
are named on this indictment, to deliver serious  
bodily harm to any one of Tai Ngan Chai's men  
that they could get their hands on, and the  
factors that I would ask you to look at are  
these, and we have this from two witnesses  
and I will go through the evidence in more  
detail in a moment, that if you accept the  
prosecution witnesses as being truthful, both  
10 these men, that is the 1st and 2nd accused,  
both delivered blows to these victims of the  
assault with weapons. Now the weapons were  
makeshift weapons in the sense that they were  
normally to be found in this place, billiard  
cues. The fact that they delivered blows with  
weapons, not simply blows with fists, and that  
both these men delivered those blows, obviously  
the 2nd accused delivered a great deal more  
20 than the 1st accused on the evidence that we  
have, if you accept it, that they delivered  
those blows after this murderous invocation,  
this murderous shout, "Kill Tai Ngan Chai  
first" is the way one of them remembers it,  
"Kill Tai Ngan Chai" is the way another witness  
remembers it, so I would invite you to say that  
that sets the context that gives you the flavour  
of the way in which these assaults then ensued,  
that is the background.

30 I would invite you to say that from that, and  
from the fact in the case of the 2nd accused,  
from what he subsequently did, and what witnesses  
tell us that he did, that the enterprise they  
embarked upon was to deliver serious bodily  
harm to these men - to any one of these men that  
they can get their hands on.

40 Now in relation to the murder count, you will  
recall that I told you at the outset that murder  
is the unlawful killing of a man by persons who  
have either the intent to kill him or the intent  
to cause him really serious bodily harm but does  
in fact result in a killing, and it is that  
intention that I would invite you to say that  
these two men had from the start of this adventure  
bearing in mind those two factors that I have  
mentioned to you as enabling you to decide that  
that was their intention.

50 Now in relation to that count of murder, I should  
tell you this at the outset, that you will be  
asked to deliver a unanimous verdict, that is a  
verdict of all seven of you on that count. You  
may have heard of majority verdicts, that does not

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apply in this count of murder. You must  
all be agreed upon your verdict.

In respect of the wounding charges, the ingredients of those offences, the three of them, are as set out in the particulars of the offences. That is to say, the causing of a wound to each one of these persons. And wounds are breaking of skins as we have heard from one of the doctors, from the forensic pathologist, but that that wound was inflicted by people who intended to cause, in the old-fashioned language, grievous bodily harm such as you have, really serious bodily harm, not some minor harm to a person but to cause serious harm.

10

Turning then to the evidence, if I may, and I have put much of the case against particularly the 2nd accused to him in cross-examination a few minutes ago so I don't propose to go through it at great length, but let me say this: In your approach to the evidence, one of your crucial functions as a jury is to assess the reliability of witnesses, to assess them as to whether or not they are credible. Are they truthful? Are these witnesses who are trying their best to help us as jurors or are they witnesses who are trying not to reveal things to us? And that is an important function that you will have to perform.

20

You must bear in mind, I have no doubt you will, that these are events that happened some 14 months ago and inevitably with that passage of time people's memories as to what happened will become vaguer. In the first place you may feel that - you may accept this - no two people remember exactly the same thing even if they are asked to recount it immediately; no two people remember over a period of time those same things in any event, so you will have to deal with those matters.

30

40

You heard from the prosecution witnesses different accounts of what they saw. You have some men remembering that the 2nd accused was doing this or doing that whereas others who are able to say that they saw him that night don't remember seeing him do this or that. You may feel that in what was clearly a chaotic situation it's not surprising that what one man sees is not necessarily what another man sees and remembers.

Now you will recall that the scene of this

50

10 assault is set, says Yip, by a telephone call that he received from the 2nd accused. Now the 2nd accused denies that, and as his Lordship has already told you, there is no other evidence on that point because the number of companies of Yip, Tai Ngan Chai, that had come along and said they heard about a pager call weren't present when that conversation took place, didn't know who was at the other end of the telephone, and all they are able to say is that at that time in the restaurant Tai Ngan Chai told them that's with whom he had the conversation. It doesn't go any further than that. It certainly doesn't go so far as being evidence that that was with whom the conversation was held. At all events, there is an issue there between the 2nd accused and Yip.

20 You will recall that Yip says that on his return to the billiard hall in pretty short order after a very brief meeting with Luen Mo the assaults upon him started. He says, and this is a matter that another witness remembers, that the 2nd accused was the person he knows and at that time had been meeting frequently. The 2nd accused uttered this terrible invocation "Kill Tai Ngan Chai first."

30 Now you will recall that the witness Pang who also was present at the scene and had gone there with Tai Ngan Chai, he's another witness who remembers something like that being said, he doesn't remember the word "first". He told you that he heard the 2nd accused say "Kill Tai Ngan Chai". There are two men who give the same account as to really the beginnings of this attack.

40 As against the 2nd accused on this count of murder, you have really a considerable body of evidence. You have TAM Man saying that he was together with the deceased behind those doors and that it was the 2nd accused together with a man called Ah Sang and others who broke open those doors and dragged the two of them back into the billiard hall, and that that's where they were assaulted.

50 You may feel that the really impressive and telling evidence about that particular part of the assault comes from this man LI Kit-hung who is not one of Tai Ngan Chai's companions, having been there playing billiards with other friends, somebody who came to this billiard hall regularly, knew some

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of these men involved in the fighting, and you may feel somebody you can think of being an independent witness not involved with the party.

He tells much the same story as TAM Man. You will recall that his knowledge of the parties was not sufficient for him to know the deceased and he referred to the men by the colour of their clothing. One man had light-coloured clothing, as he called it, one had dark-coloured clothing. He describes what happened to them when they got back inside. 10

So far as the clothing is concerned, you will know from the clothing that's been produced that the deceased was wearing at the time of his death a light blue coloured shirt whereas TAM Man, the other man dragged out from the lift, was wearing a dark blue coloured shirt. You will be able to - you will have those exhibits when you retire. 20

He says that the man with the light-coloured shirt was dragged in - if you will allow me a moment I will locate his evidence. He says this, as you will recall, "I saw Ah Sang and Ah Chun" - we know Ah Chun is the 2nd accused - "and one or two other persons bump open the door near the lift." Then later on he said "I saw Ah Sang and Ah Chun drag into the room the man in the lighter-coloured clothes and then he was beaten up. Ah Sang continued to inflict blows with his fists whereas Ah Chun struck him with a billiard cue." 30

You will remember he described the blow, this is obviously a downward blow, presumably by this stage the deceased was on the floor. Later on he went on to say that he couldn't remember exactly how many but he thought there were four or five of these blows and that they were being delivered to the back of the deceased. He had seen this man, the man wearing the lighter-coloured clothes, lying there prostrated. He himself then left after the fighting had ended. 40

You may feel that Mr. Li was a frank witness not involved with the parties, as I have said, and describing what other witnesses have said happened, describing it accurately.

Now if you are satisfied, as I will invite you to be, that the 2nd accused was doing what LI Kit-hung says, and what the other witnesses say, that is dragging this deceased back into 50

10 the billiard hall and then setting about,  
together with others, to beat him with the  
billiard cue whilst he was lying unconscious,  
or at least prostrated, on the floor, you may  
feel that that amply satisfies the intention  
that this man must have had to be guilty of  
murder. That is to say that either you can  
be satisfied that he intended to kill this man  
or, at the very least, you can be satisfied  
that what he intended to do to the deceased was  
to inflict serious bodily harm to him.

(continued)

If you are satisfied of that, you are satisfied  
that he was part of a joint adventure with  
these other attackers on this dead man to cause  
him serious bodily harm, you may feel that you  
are able, after mature reflection, that you are  
able to say that this man has committed murder.

20 For the 1st accused to be guilty of murder, and  
as I say, the Crown has not put any evidence  
before you that the 1st accused struck the  
deceased any blows, for him to be guilty of  
murder, you must be satisfied that he was part  
of a joint adventure to cause serious bodily harm  
to the deceased at the very least, or part of an  
adventure to kill the deceased, but taking it at  
its lower level, to cause serious bodily harm.

30 If you feel that you cannot be satisfied of that,  
but that you are satisfied that the 1st accused  
was a party to doing violence of a lesser nature  
than serious bodily harm to the deceased, then,  
as his Lordship will direct you in due course,  
there is another verdict that you can return in  
respect of that 1st accused on the count of murder  
and that is one of manslaughter. That is, if you  
are satisfied that he was a party to a joint  
adventure to do harm to any one of these men but  
that the harm that he was prepared to do to these  
men did not amount to serious bodily harm, then  
you can return, as I say, a verdict of manslaughter.

40 That, of course, is a verdict that you could  
return in respect of the 2nd accused as well were  
you to take the view that he didn't intend serious  
bodily harm to the deceased. But I will invite  
you to say that you can dismiss that from your mind  
because of the ample evidence you have, that that  
is exactly what he intended to do, that is serious  
bodily harm.

In relation to the wounding counts on the indictment,  
the three wounding counts, the 2nd, 3rd and 5th count,

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again the Crown says and asks you to accept that this was part of a joint adventure because, as you all know, not all of these men were struck blows by the two defendants as the Crown has put forward before you as evidence.

So what the Crown is saying to you in respect of these charges as well is these two defendants were party to a joint adventure and are responsible for the injuries inflicted by their companions, their co-adventurers in this attack upon these men, that these three men were wounded, as from the medical reports that were read to you and from the forensic pathologist who gave us evidence about one examination, I think it was Yip, you will recall that these men were all wounded in various ways, the seriousness of the injuries varied, as you will recall, that as far as Yip - and he is the victim of the 2nd count - as far as he was concerned he had a 3 cm. laceration on his scalp and an abrasion on his chest. 10 20.

Now so far as his chest is concerned, you may feel that that medical finding of an abrasion to his chest is consistent with what he said the 1st accused did to him. That is to say, struck him once with a billiard cue on his chest as he, Yip, was trying to escape from the billiard hall. There's medical finding supporting what Yip has told you happened to him, at least as far as an injury to his chest. 30

The victim of the 3rd count, that is TAM Man, clearly suffered more serious injuries. You will recall that he had a 1" long skull deep cut on his head - the back part of his head. He had a 1.5" long cut on the side part of his head and had contusion on his jaw and on his shoulder and, as he told you himself, lost consciousness at the time of the assault. You will recall he says he woke up, went over and then tried to revive the deceased and then left. 40

As far as the fifth victim Pang is concerned, he was examined by the forensic pathologist. And you will recall that this was some days later, in fact on the 3rd of July, so that it is almost a week after these events. The forensic pathologist says he found a healing laceration over the back of this man's head and a scalp abrasion by his eye-brows, cane marks on his right arm and what he describes as a resolving bruising, that is bruising that has changed its colour, over the front of his chest. 50

So that all three of these men had wounds. The extent of their injuries varies and the nature of their injuries is really only one factor for you to consider when you are deciding this question of what was the intention of the people who committed these attacks upon them because the intention that is required, as I have said, is that they intended to cause serious bodily harm.

- 10 Well, that intention can be looked for in what actually happened - that is one thing - but it can also be looked for in the nature of the fight and what was being done. And what was being done was that billiard cues were being swung with more than moderate force, as the forensic pathologist said, into human beings bodies and, in particular, onto their heads. That is another factor, not simply the injuries themselves but the nature of the fight.
- 20 If, and I will invite you to say that you are able to be satisfied, to be sure that that was the intention to cause serious bodily harm, but if you feel that you are not able to reach that level of certitude, there is to these three counts likewise an alternative verdict, and that is of a lesser kind of wounding, that is causing wounding without the intention that is the requirement for this offence. What you have to be satisfied there is that these two
- 30 men together with the others in a joint adventure intended to wound these men and succeeded in doing so, but this form of wounding, this is being section 17, this other wounding that's before you, this other form of wounding, section 19, does not require the intention to do serious bodily harm, it does require the intention to do a wounding and the fact of a wound but not that additional requirement, the intention to do serious bodily harm.
- 40 I mention it without recommending it to you as a verdict to be returned because I recommend to you that you will be in a position to be satisfied that what was intended was to cause a serious bodily injury to these three men, and that you may be satisfied that those injuries were caused, serious injuries. That's what I recommend to you on those counts.
- 50 Members of the jury, you have in this case not only the evidence of the prosecution witnesses to assess but you also have the evidence of the

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defendants themselves and that is another factor that you can consider in weighing up matters, trying to resolve what did happen that day, were these witnesses who were telling you the truth; were they witnesses trying to help you, struggling the best they could with events that were over; or were they witnesses putting forward to you the most favourable view that could be put knowing what the Crown's case against them was; reluctant to admit any more than they apparently could; were they lying to you?

10

Remember at the end of the day, before you can return verdicts of guilty on these four counts, you must be satisfied that the Crown has proved the matters that they allege against these accused beyond reasonable doubt.

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20

MR. VAN BUUREN: Members of the jury, first of all I think it is necessary for me to tell you something about our legal system. You see, we have what is known as the common law legal system. Now this is a legal system which is present in many countries in the world. It is present in the country where I come from, Ceylon. Now this is a legal system that has come down from centuries, centuries of very profound understanding of human nature, a very profound understanding of certain legal principles, and a system which revolves itself, revolves itself, out of plenty amount of experience, human experience, especially experience that come from learned judges. Lawyers have played their parts, but it is mostly in the hands of judges that we find this very learned principle.

30

One of these principles, as my learned friend has told you, is the principle that an accused person has never to prove his innocence. As my learned friend has told you many times, the burden of proof always lies on the prosecution. Now this may sound simple to say but it may be a little difficult to understand sometimes in certain context.

40



You see, the Crown will ask you, and indeed. In the  
I think my learned friend is now inviting you, High Court  
to infer certain things. For instance, he is  
asking you to infer by these defendants' No.36  
actions that they have what he called - Address of  
that they embarked on a joint enterprise. Defence  
Of course, we don't know what is in people's Counsel  
minds. People never know what is in other 17th August  
people's minds. So he is asking you to infer 1981  
10 from circumstances that they had embarked  
on a joint enterprise to kill or to do serious (continued)  
bodily harm.

20 Now, members of the jury, given a certain  
situation there are a number of inferences  
that you can draw. So when it is possible  
from certain given circumstances to draw an  
inference which is detrimental to the accused,  
and it is also possible to infer something  
which is not detrimental to the accused, it  
will be wrong to accept what is detrimental  
and ignore what is not detrimental. That seems  
fair enough, isn't that so? But it goes a  
little further than that, because you must  
remember that if you are going to draw an  
inference which is detrimental it must be proved  
beyond reasonable doubt.

30 This is rather important. So you must say to  
yourself, "Now this is an item of evidence and  
from this I am asked to infer that this man had  
some sinister motive, so am I satisfied that  
that evidence, first of all, is acceptable?  
Can I accept that evidence? Can I be satisfied  
beyond reasonable doubt that this is the logical  
inference?" And you shouldn't, if I may suggest  
with great respect, turn this over in your mind  
because if you have a doubt, dismiss it at once.  
Dismiss it at once, because then you say "I am  
not satisfied", and that is the end of it.

40 You see, to keep on revolving it again and again  
in your mind will only cause you yourself certain  
confusion. It is not your function, members of  
the jury, to find out how this man died. All  
your function is to find out whether the Crown  
have proved beyond reasonable doubt that these  
two men killed this man and seriously wounded the  
others.

50 Perhaps this will be explained to you when his  
Lordship sums up tomorrow but I want you to please  
keep this in mind very carefully because it may  
lead to confusion in your own minds if you are  
rushed to conclusion, groping for some conclusion.

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You see, it is human nature sometimes to try to fill in gaps. "Oh, there is no evidence of that, it's possible it happened in this way". That would be a mistake, members of the jury, with great respect. You mustn't try to fill in the gaps because if there are gaps, then it is the weakness of the prosecution case because the prosecution is required to bring all the evidence they have before you, and if they have not done so, then that's the end of the matter. They have not proved to you they are guilty.

10

You see, now going through the evidence, the telephone calls - the telephone call that the 2nd defendant is said to have made - I give you examples now - this telephone call, the Crown of course brings up this evidence obviously because the Crown wants you to accept that there was some kind of an invitation, sort of luring of Tai Ngan Chai's gang into the billiard room. It is quite obvious.

20

Now if that was a fact which has to be proved beyond reasonable doubt it is very easily to have been done by asking the man inside the billiard hall to come and give evidence whether he got such a call. It's quite simple, isn't it? Because the telephone call, you will remember, was that Tai Ngan Chai called back to the billiard hall, so he wouldn't obviously - of course Ah Chun may not be going to wait by the telephone waiting for the call, I mean some man at the counter would have received the call, taken that and I think may be use his P.A. system, or whatever, and said, "Ah Chun, call for you." That type of thing. Certainly it's very simple to call this man and say "Did Ah Chun get a call that evening?" There, you see, this evidence, if it was going to be proved beyond reasonable doubt it could have been, but the fact is it was not.

30

40

Now look at Tai Ngan Chai's point of view. Now Tai Ngan Chai, he obviously would like you to believe that he went there for settlement talks and what excuse would he give the police when the police first caught him. The obvious question is "Why did you go back? Why did you go back to the billiard hall?", so he has to give some excuse. So the obvious excuse is "I was asked to come back." And then once he got this story that he was asked to come back, of course his companions would go along with him. But as his Lordship told you, the evidence of his companions is not conclusive that the telephone

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call in fact was made. So that is one item of evidence - an item of evidence that struck me and which, with great respect, I suggest would strike you.

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10 The other item of evidence, members of the jury, which the prosecution could have brought before you but didn't was evidence to support Mr. LI Kit-hung. Now my learned friend has already referred to Mr. LI Kit-hung as an independent witness. Now we don't know. We don't know on which side he stood, or whether he stood on any side at all. We don't know unless you extract it from him. We don't know whether he was one of Tai Ngan Chai's group or Luen Mo's group or whether he was independent, we don't know, but it is important when evaluating his evidence to understand that he left at the end of this whole incident, he left the billiard hall and he was caught by the police  
20 downstairs. So having been caught by the police he had to say something perhaps. That's one way of looking at it but the important point is this, that he had with him at that time his companions, so the police when they caught him would have caught his companions.

(continued)

30 Now his companions were by him all the time, he said so, so couldn't those companions come forward and confirm Mr. Li's evidence that he identified the 2nd defendant? No doubt that would have been satisfying evidence for you because you have two independent witnesses because he said he was playing billiard with his friends, nothing to do with these two groups.

The police did have those men downstairs. If they were able to watch this fight the way Mr. LI Kit-hung said he watched it, they might have been able to say whether they saw the 2nd defendant do what LI Kit-hung wants to believe the 2nd defendant did.

40 What I want to do now, members of the jury, is to try to go back a bit because, you see, the two defendants have given evidence today. That is quite fresh in your minds, but perhaps you might find that the evidence you have heard last week is a little dim. I would like to go back a bit, if I may, and try to put together the evidence which you have heard on each of the counts because it is important. You are required to bring a verdict on each count against each defendant, so you must not sort of consider all the evidence in sort of a totality situation,  
50 but try to consider the evidence in relation to each

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charge and in relation to each defendant.

Now we have the 1st Defendant Mr. Yeung. Now his first charge is murder, and as you have heard, there was no evidence at all that he struck the deceased at any time. Therefore, the only basis of this charge against the 1st defendant must be what is known as common intent or what my learned friend calls the joint enterprise. That matter I will deal with a little later. So we have a second charge against the 1st defendant. The second charge is that he wounded YIP Kam-ming.

10

Now when Yeung was charged on, I think, the 3rd of July he was not charged with this serious charge and you may ask yourselves why. Why if the police had the evidence of Mr. Yip that D.1 attacked him in this way, a thrust, why was he not charged with the section 17 wounding? This, members of the jury, as I have said before, you don't have to find an answer. This will raise a doubt. That is my point to you.

20

So if the police did believe Yip they would charge Yeung, the 1st defendant, straightaway with the section 17 wounding. This is a much more serious offence.

And another thing about this first charge is when Mr. Tai Ngan Chai - I mean Mr. YIP Kam-ming who is known as Tai Ngan Chai - when he gave evidence, when he was asked to describe his own wounds - I will just look it up, members of the jury, this is what he says, these are my notes in his examination-in-chief,

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"Did you go to Queen Elizabeth Hospital? Yes. They treated your injuries? Yes. What injuries? My head was broken in three areas and I received 10 to 20 stitches. Any to body?"

And he said bruise on chest. A bruise on the chest.

40

Now remember I asked the doctor the difference between a bruise and a laceration and the doctor explained the difference between a bruise and a laceration. But Mr. Yip himself described that injury as a bruise and not as a laceration. You will imagine, members of the jury, that if someone is rushing towards a person and is

10 'thrusting with a billiard cue, or whatever, that it would cause him a much more serious injury than a bruise. At the least what would happen is that it will catch him like that perhaps at an angle and cut across the skin and then cause a laceration, but it won't cause a bruise. So that is another doubt which I suggest that you should bear in mind when you are considering the first charge against the 1st defendant.

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But a more serious thing is this: before you can accept the evidence of Mr. YIP Kam-ping himself, you must be satisfied that he was a credible witness.

20 Now you would remember the man, he was the first of the so-called eye-witnesses who gave evidence, I think it was, last Monday. I suggest to you that he was a shifty, evasive man, a man who had taken part in the fight and was trying to play down his own part. You will all, with the greatest respect, agree with me that that would be a very just assessment of the man. So if you do not accept that he was a credible witness, that is the end of the matter, you just do not accept it.

30 Now when considering his evidence, again, members of the jury, I suggest that there is another way of looking at it. He gave evidence that he was running away when the 1st defendant, he said, thrust him with a billiard cue.

Now there were two other witnesses who said that they saw Tai Ngan Chai coming towards them with blood on his head and face. One was a man named CHAN Chun-ki. He said, "I saw Tai Ngan Chai, head bleeding, coming towards me." He was also asked specifically, "Anybody else hit Tai Ngan Chai besides Luen Mo?", and he said, "I saw Ah Chun, Ah Sang and Ah Keung." Now he never mentioned anything about the 1st defendant.

40 Now this man who witnessed Tai Ngan Chai coming towards him never mentioned a word about seeing the 1st defendant do anything to Tai Ngan Chai, and you might ask yourselves, "It is surprising, isn't it, that if this man said that he was - if Tai Ngan Chai himself said that he was assaulted when he was running away from the scene, that the man who actually watched him coming towards him didn't see that?"

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And there is another man, this boy POON. POON also gave evidence that he witnessed the attack on Tai Ngan Chai. He said in chief, "I saw a person holding a hammer hit Tai Ngan Chai on the head." Therefore he did get a very good view of the assault. He then said that he, POON, retreated and stood near the wall. And then he continued, "The beating-up lasted for some time. I saw Tai Ngan Chai coming towards us with blood all over his face." 10  
So there is another man who describes the approach of Tai Ngan Chai towards him and does not mention a word about the 1st defendant.

Now there is another way, members of the jury, I suggest, that you treat Tai Ngan Chai's evidence. Now Tai Ngan Chai is obviously a man who has some purpose of his own to serve in giving the evidence he did in that way because he started it off. If he did not go back to that billiard hall that fatal evening, we would not be here today. So he has a certain end of his own, to justify his having gone back to the billiard hall. 20

So now when you treat his evidence, I suggest that you should be very careful - and I am sure his Lordship will direct you about this tomorrow - because it has been found that if a person has got some end of his own to serve in giving evidence in a certain way, it is dangerous to convict on such evidence without corroboration, looking for confirmation in some other parts to see whether he is actually telling the truth, "Can I find some confirmation from some other items available?", and in this case there is none, because as I pointed out to you where he could have been is not confirmed, it is not confirmed by his own companions who were there. So I suggest that you should treat his evidence with a great amount of caution, and in fact disbelieve him. 30 40

Now we have a third charge. The third charge is wounding TAM Man.

Now again, as I said to you before, there is no evidence at all from TAM Man himself that the 1st defendant did anything to him. There is no evidence. TAM Man did not mention a word about the 1st defendant. So if this charge against the 1st defendant is to be proved, then it must be only on the basis of common enterprise or, as my learned friend said, 50

embarked upon a joint enterprise known as common intent.

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Now the fourth charge has been dropped, and we have the fifth charge. Before I leave this fourth charge, members of the jury, I think I should comment. You see, it may occur to some of you that if it is a matter of common intent, then why should that charge be dropped at all?

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10 We have heard the evidence of the doctor, Dr. LAM, who said that he did in fact treat this man, Mr. KWOK, the man named in the indictment on the fourth charge. So we do have evidence that he was injured. And if it was an act of common intent - we have the evidence that he was injured, common intent - why not charge him with that? But quite obviously the Crown Counsel obviously considered that if a man does not come before you and  
20 tell you that he was injured, how can you possibly convict?

So my point to you is this: now if witnesses themselves come into the witness box and do not mention that a certain person injured them, how can you possibly convict? The man himself does not say that the defendant did anything to him, now wouldn't that at least have raised a doubt?

30 So we come to the fifth charge, this is the wounding of PANG Pui-yuen. This witness again, he made no mention of D.1 at all. Therefore if the charge was to be proceeded with, it must be on the basis of common intent.

That ends the 1st defendant, so you have each charge on this defendant.

2nd defendant. The first charge, murder.

Now on this charge of murder, we have the evidence of Mr. TAM Man and the evidence of Mr. LEE Kit-hung.

40 TAM Man, how did he describe this? TAM Man is the second prosecution witness, you will remember, the man who was wearing a striped sports shirt, the second man who gave evidence. Now again I say this to you, that that man was evasive, that he was shifty and he was not prepared to tell the whole truth that was the oath he took, he

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did not tell you the whole truth.

He described the incident in this way, according to my notes: "We, the nine of us, went up by lift. We passed through the door of the lift, another door leading to the premises. Luen Mo was by that door." Now, this, you know, was not consistent with any of the other evidence. He said, "Luen Mo was by that door. He asked Tai Ngan Chai to go up to him and he was struck." As simple as that, that is his evidence.

10

" How many times?" "Immediately after our arrival Tai Ngan Chai was asked to go up and immediately striking started. Luen Mo gave the first blow and the situation became confusing." "Anybody else joined?" "Yes." "Who?" "Many persons." "How many?" "Several tens." "Who were they fighting?" "Nine on our side, several tens on the other side, so 30 to 40 persons." "Recognised anybody on the other side?" "I could recognise most of the people known to me but could not recognise strangers." That is the kind of answers he gave. "What did you do?" "Shortly before fight ended, deceased and I escaped and got to entrance to lift. A number of people entered the lift so deceased and I were unable to get into the lift so we were caught by other side." "Were they your companions in the lift?" "Yes" "What happened to you two?" "I saw person called Ah Chun and a person called Ah Sang drag Ah Nam into premises. I was attacked and jostled." These were his actual words, "I was attacked and jostled into the premises." Then he was asked were Ah Chun and Ah Sang in court. "Ah Chun present.", pointed to D.2. He was asked, "Did they drag Ah Nam into the billiard room?" "Yes." "Ah Nam the deceased?" "Yes." "Did you see what happened to Ah Nam after being dragged into the billiard room?" "After I was jostled into the room, I saw Ah Nam being attacked by three or four persons." And he was asked to describe, "While I was attacked, I saw Ah Nam being beaten by several persons including Ah Chun, Ah Sang." And again he was asked to described in detail. "Because I was attacked, I only saw a group attacking. It took place near the first table." Now that is what TAM Man tried to make you believe.

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Now LEE Kit-hung's evidence on this.

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10 "What did you see happening?" There  
was a pause, he paused and then said, "Seeing  
them engaged in fight, we stood aside. The  
fight lasted for some time. I saw people  
running through rear staircase. I saw Ah  
Sang, Ah Chun and others bump open the door.  
There were two persons holding the door in  
closing position, and when door was bumped,  
the group assaulted the two men. Then I saw  
Ah Sang and Ah Chun drag another man wearing  
light coloured dress and hit him. There was  
another man dragged another man wearing dark  
coloured dress into the billiard room and beat  
him up. the man wearing light coloured dress  
fell unconscious near the door. Ah Sang  
continued to hit him with elbow and fist, and  
Ah Chun struck him with billiard cue. We  
escaped through rear staircase. On ground  
20 floor we were stopped by police and not allowed  
to go away."

(continued)

Now you will see that this description of  
this crucial event by these two persons is not  
consistent at all, because Ah Man said that he  
was jostled into the premises, this man said he  
saw the two people being dragged into the billiard  
room.

30 Now looking at LEE Kit-hung's evidence,  
members of the jury - I have already pointed out  
to you about the lack of evidence from his  
companions - but another thing I would like to  
remind you of, with great respect, is that there  
is a very strange feature in this man's evidence,  
and that is that he kept on describing these  
two persons who were supposed to be assaulted by  
Ah Chun and the others as light coloured dress and  
dark coloured dress.

40 Now it may be plausible that he did not see  
the deceased thereafter, that is plausible, so  
he may not be able to tell you which was the  
deceased and which was the other man. But he would  
surely have seen TAM Man many times, he would know  
TAM Man, so why couldn't he tell you, "And the  
other man was TAM Man"? How could the Crown  
expect you, on this kind of evidence, to be sure  
beyond reasonable doubt as to which of the two  
persons he was referring to?

50 The Crown say that there is the evidence on  
the clothes. But members of the jury, TAM Man  
himself did not tell you what clothes he was wearing  
at that time. Was it dark blue, dark red, green,

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white, yellow? We do not know. The police officers said they took it from TAM Man, but we do not know what actual clothes TAM Man was wearing at that time.

Now this is rather important. Now dark coloured and light coloured dress, these were the actual words Mr. LEE Kit-hung used. Now if you look at the clothing which the Crown want you to believe that the deceased and TAM Man were wearing that evening - I do not know where they are - you will notice that the light coloured and the dark coloured only refer to the upper portion - upper garments, not to the bottom, because, if I remember rightly, I think even the deceased was wearing dark coloured trousers. You will get the exhibits here when the time comes for you to make your deliberations, then you will - I invite you, with great respect, to bear that in mind as to whether you are satisfied as to which of these two persons was wearing the dark coloured dress and which was wearing the light coloured dress.

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Another thing, members of the jury, if this man was able to bear in mind what the colour of the dress that the deceased and TAM Man were wearing was, why couldn't he remember what the 2nd defendant was wearing? Surely he could have told you it was dark or light. He just said, "Trouser and shirt". When I tried to push him, he said, "I cannot remember." Now that again may raise in your minds a certain doubt.

30

And another aspect of the case is, you see, he was quite sure the situation was quite chaotic - as my learned friend also put to him - chaotic, confusing. Now isn't it possible that in the confusion and in this chaotic situation that he mistook Ah Chun for somebody else? Isn't it possible that he did see Ah Chun coming up to that door at one stage, and then - you all know how it is, impressions remain in a person's mind - he assumed that person he saw later was Ah Chun? Because Ah Chun told you that he did go up to that door, he tried to get out. So that again may arouse in your mind a certain doubt. Members of the jury, everything that goes against the defendants, as I said before, must be proved beyond reasonable doubt. So if it is not proved beyond reasonable doubt, then the benefit of the doubt must go to the defendant.

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I have taken you through the evidence of TAM Man and LEE Kit-hung because that is the only evidence there is that the 2nd defendant took part in the attack on the deceased.

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Now members of the jury, about this attack itself, there is another problem. Now this is a problem which arises in law.

10 The evidence is - if you believe LEE Kit-hung despite what I have told you about the doubts, suppose you say, "Oh, defence counsel is talking nonsense, we do accept that LEE Kit-hung's evidence can be accepted." Right, and then what you take from that, you see, LEE Kit-hung demonstrated to you the way he saw the 2nd defendant strike the deceased, with a downward blow, and he said it was only the back.

(continued)

20 Now if you look at the photographs, you will see that there are two marks on his back, two, what the doctor said were cane marks on the back, but that did not kill the deceased, that had nothing to do with the deceased's death. The poor man died of a wound on the top of his head which he could have got in that fight in a hundred different ways.

30 We know from the evidence of LEE Kit-hung himself that there was fighting outside the door, in front of the lift, between the doors and the lift and the corridor there was fighting going on. Any one of a hundred things could have happened to that poor man in the corridor.

40 Even Crown Counsel, when he made his address to you a few minutes ago, said he was hitting the prostrate, unconscious body of this man on the ground. That appears to be the impression that all of us get, that the man was already unconscious and lying on the ground. In that case, he had already suffered the fatal blow already. And who gave him the fatal blow? Now that is a doubt. We do not know. There is no evidence at all as to how he suffered this fatal blow.

So this raises a fairly complicated aspect of the law on which his Lordship will direct you, no doubt, tomorrow, this is what is known as causation. Obviously if someone is already dying, and if somebody else does anything to that person, he would not have caused the actual death. It is difficult to put it into lay terms, but if you think about it, I think you will realize how this works.

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There was a case, for instance, where a person wanted to kill his mother, and he put a glass of poison, poison mixture, on the table, and the old lady drank one-third of it and she died. But it was found that she did not die of poisoning, she died of a heart attack, perhaps, she suffered before she drank this mixture. In those circumstances, it was held that the defendant did not cause the murder, was not guilty of murder, he was guilty of attempted murder, but that is a different matter. 10

So my point to you is this: this is a matter of causation. Causation is both a matter of fact and a matter of law. First of all, as a matter of fact because, members of the jury, you are the arbiters of fact. Matters of law are, of course, for his Lordship. So before the matter of law comes up, you must be satisfied as to the actual cause of death. What caused the death? How did the man die? Now if there is a doubt as to how the man died and who struck the fatal blow, then that doubt again must be resolved in favour of the defendant. So there comes the question of causation. 20

Now I do not want to go into this rather deeply, members of the jury, because his Lordship will take you through it tomorrow, but my point to you is that causation is important because it is also a matter of fact. You must decide how the man died. If you have a doubt as to how the man died, that must be resolved in the defendant's favour, because what it means is that you are not satisfied as to how the man died. 30

The second point now comes to this crucial aspect of this case, and that is the aspect of common intent. Common intent, members of the jury, is another area of the law. There are a number of cases where this question has arisen, common intent. You see, it works like this: if a certain group of people embark on an enterprise, and if it is their intention to, say, commit a robbery, and they do not carry any arms, and they go to some place, and during the course of that robbery suppose one man gets excited or panicked or something and picks up something and hits one of the victims on his head and that victim dies, now the question will arise as to what is their common intent. 40

Now if their common intent is merely to rob and not to cause any harm, which can be inferred by 50

the fact that they did not carry any arms, then it may not amount to murder, unless it can be shown that there was a common intention at some time before the actual incident that these people were going to use violence.

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10 This happened in numerous cases in Ireland, for instance, where people embark on these terrorists activities, and the driver, for instance, the man who drives the car, he is trying to - in some cases he has tried to show, "I did not know that these people were going to do any harm", but that has not got agreed because quite obviously he must have known when they go out with all kinds of weapons, instruments, that they are going on an enterprise which will result in violence, and if this violence does result, then he must take responsibility for the result.

(continued)

20 Now that is all very well and good because people have the choice. They think about it and they go - embark on a raid, on a robbery, on things like that. Now where was the time, members of the jury, for these people in those circumstances to even think about a common intent? It must have happened like I said, like a spark in a tinder-box. The fighting began just like that, people running hither and thither, people trying to escape, trying to defend themselves, others trying to hit other people, a chaotic situation.  
30 Where was the time for these people to even think about a common intent?

A common intent must be a situation where people have got a certain amount of, even temporarily, something that enables them to do something collectively and take the responsibility jointly. But in a fight like this, in a fracas, in a melee - words that were used by my learned friend - in a situation like this, where is the possibility for people to have a common intent? Some of them must  
40 have been fighting for their lives, some people trying to get away. So there was no opportunity for them to form a common intent.

My learned friend wants you to accept that there was a common intent to commit murder. Can you imagine a situation where people with billiard cues, waving them this way and that way, striking others, some defending themselves, people may be rushing, shouting, all kinds of things going on. People must have been just acting almost involuntarily without thinking. That must have been the  
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situation in that billiard hall that fatal evening. Where was the time for them to have formed a common intent?

Well, all right, let us go a little further and say maybe there was a common intent when the men were trying to push open the doors. Now I am telling you, members of the jury, that this is, if you accept the prosecution evidence - but before you accept the prosecution evidence, you must be satisfied beyond reasonable doubt - there were people outside, and people were supposed to be pushing to get outside. Now the Crown would like you to believe that the intention was to get at the people outside. But isn't it equally possible that the people who were inside were trying to escape and get away? Isn't that a reasonable inference, that the people inside were trying to get out? Why accept the inference that they were just trying to get at the people outside? They were just trying to get away. That is one thing.

Now all right, let us take it a stage further and say "Well, they might have got a common intent when they dragged the people into the billiard room." Members of the jury, at that time there could have been absolutely no chance at all for people to form any intent at all, not even an individual intent, not to say a common intent. That must have been the heat of the battle, because we know that the battle took place outside the doors. So they must have been in anger, exchanging blows, and all this must have happened like that in a few moments.

So there again, how can you say that if one of those people who did the attacking, if he had the intent when he gave that fatal blow, that this man, the 2nd defendant, had the same intent to kill that person? Because if you do not accept that this 2nd defendant had a similar intent as that man who struck the fatal blow, the 2nd defendant is not guilty of murder, not guilty at all because he did not have any intention at all. He was just maybe fighting involuntarily, just doing things in the heat of the battle.

You know how people get in a fight, they act in strange ways, they do not think logically. It is very easy for us in the clinical atmosphere of the court house to think about how people reacted, what the intention was, but it never happens like that, members of the jury, as you know.

10 So there again, there must be some doubt as to what his intention was. If he did not have an intention at all and if his intention - it is one thing to think about his intention and another thing to go even further and say whether he had a common intention with someone else. You do not even know who they are except for Ah Sang. We do not know who the other two or three persons are. We do not know who struck the fatal blow. So how can you be satisfied beyond reasonable doubt that this 2nd defendant had the same common intention as the man who struck the fatal blow?

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20 Now that is the 2nd defendant, but I told you before that the same common intent will arise in respect of the 1st defendant. Now we do not know, members of the jury, at that time when this dragging, or whatever you call it, outside the lift doors, when that was going on, where the 1st defendant was at all. There is no evidence at all that he was even there. There is no evidence that he had any opportunity to form a common intention with the others who were doing the deed. How can you possibly find beyond reasonable doubt that the 1st defendant had any common intent to do anything at all? How can he be found guilty of murder on the basis of common intent? That seems to be against common sense.

30 So there again I tell you, members of the jury, that common intention in this case cannot arise in respect of any of the charges. There just is not enough evidence on which you can come to the conclusion that these two defendants acted on - embarked on a joint enterprise with other persons unknown, other persons known, marked and named on the indictment, murdered or did harm to the deceased and to the others named in the indictment.

40 So members of the jury, when you come to consider common intent, you must, first of all, ask yourselves, "What does the Crown wish us to believe was the common intent?" My learned friend tells you the common intent was to commit murder or serious bodily harm.

50 Now you will ask yourselves, "Is there sufficient evidence on which we can come to that conclusion, that these two defendants had that common intent?" If you say, "There is a doubt in my mind, there is insufficient evidence", that is the end.

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But suppose that question is answered, then you go to the next question, "When was that common intention formed?" Now his Lordship no doubt will tell you that common intention must be formed before the incident. I think it must be logical, it must be formed well before the incidence. So when was this common intent formed? What was the intent? When was it formed?

(continued)

Now I am not going to supply the answers to you because my submission to you, with great respect, is that there is no evidence at all that these two men had a common intention to even do serious bodily harm. They must have been fighting for their lives, if you accept the prosecution evidence, they must have been fighting for their lives. If you accept the prosecution case, there cannot be any doubt about it.

10

This now takes me to the two defendants' evidence, the two defendants' evidence. When they gave evidence to you, can you say that they were evasive? Can you say that they were shifty? Weren't they trying to help all of you to get an impression as to what happened that fatal evening in that billiard room? Can you say the same about Tai Ngan Chai and Chun, whatever his name was, and TAM Man? Can you say the same thing about them? Didn't they give you a clear impression of what happened in that billiard room? Didn't these people try to give you a much clearer impression as to what happened in that billiard room that evening?

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Mind you, they are the defendants. If they gave their evidence in a shifty, evasive way, you might excuse them, because they are the defendants, their whole life is at stake.

But members of the jury, it is the prosecution's case that we are concerned about. You are not concerned about the evidence of the defendants, though, of course, you can take that into account. So how can you say, if you do compare the evidence of the prosecution and the evidence of the defendants, how can you say that the defendants came out worse? I say the defendants came out much better, and they did not have to come out with anything at all, because it is the prosecution's case and therefore the prosecution witnesses should have come out best.

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But I say to you, members of the jury, with great respect, that the defendants were trying to be honest and straightforward with you.

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10 And the important thing, members of the jury, is they had said it to the police right from the start, right from the start. It is not a story that they have made up now. The 1st defendant had told the police when he was arrested that he did not hit Tai Ngan Chai, because that was all he was asked. He was not asked anything about a murder. He was asked about whether he had hit Tai Ngan Chai, because strangely enough, the police confronted these two persons together. He said, "No, I did not hit this man." That was all he was asked.

(continued)

20 And the 2nd defendant, the first moment he was arrested, he gave a full statement to the police. He told the police all he knew about the incident, a long statement.

Now isn't that to their credit? And they do come here and tell you substantially the same story, "We did not take part in the fighting. It was not our fight."

30 Now members of the jury, when you consider the 2nd defendant's evidence, you might think, "Oh, this man, he should not have hidden away", as my learned friend has suggested, "hidden away". Now is it unreasonable, I put it to you, is it unreasonable for a man whose brother has been involved in a fight, in a fight that we know a certain person died, now is it unreasonable for him to try to avoid the other side, so to speak? Is it unreasonable for him to try to stay away, to be unnoticed, not to be found in his usual places where the other gang can get at him?

40 You will remember that his Lordship asked him questions about the identity of the dead man. He said, "I did not know this dead man. I did not know him" And his Lordship asked him, "Then you do not know that he belonged to the other side?" "No, I did not know that he belonged to any group at all."

But you know, members of the jury, that he was with his brother. Now his brother would obviously have known that this dead man was not one of his friends. Because you will remember the 2nd defendant told you that he went there because his

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brother asked him to go there to celebrate his birthday, and he said, "I got a few friends together and then we will have billiards first and then we will go to a night-club." So he did not know who his brother's friends were, but his brother would know who his friends were. So his brother obviously would have told him, "You better stay out of sight." He would have known that he was one from the opposite side, not one of his own friends. So is it unreasonable for him to stay unnoticed?

10

But the point is when he was arrested by the police, he did not make any attempt to run away. The first police officer who arrested him who was not concerned with this case said he was always - this man, the 2nd defendant, was eager to tell him. Mind you, the police officer who arrested the 2nd defendant was not concerned with this case, he was not a member of the team that was investigating this murder. But he gave a statement to that man, now isn't that to his credit, that he actually told the officer the first time he met him, "I did not take part in this fight. It was not my fight. I did not hit anyone." Now is it something that is so implausible that you must say, "Oh, I do not believe you at all."? If you believe him or if you think that his story is worthy of belief, that must be the end of the matter.

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Members of the jury, at this stage I must remind you that it is not the proper thing, with great respect, to try to balance the stories. Do not try to say, "Oh, I have heard the stories and I prefer to accept the prosecution evidence." That would be quite wrong. First of all, look at the prosecution evidence, take each item of evidence, find out whether it is worthy of belief. Imagine who said that, that man, he was a shifty, evasive man, out. Or perhaps he was, but this kind of evidence I think I will accept, accept. That is the way to look at it.

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YOU see, you look at the prosecution evidence and then find out whether the prosecution have proved all the ingredients of the offence with which these two persons are charged.

Now when in the process of considering the prosecution evidence, then of course you can go to the evidence given by the defendants and say, "What did the defendant say about this point? What did he say in his statement?" And then you

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come to your conclusion on that basis, all the time bearing in mind that it is for the prosecution to prove beyond reasonable doubt every item of evidence which they want you to accept which goes towards the guilt of the accused.

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10 About this matter of hiding. You see, Crown Counsel has tried to suggest that there was something sinister in the 2nd defendant hiding himself. Now members of the jury, are you satisfied that none of the people who were members of Tai Ngan Chai's group are hiding today? Have we heard from all members of Tai Ngan Chai's group? Why, in that case, if they were so innocent, why are they not all here? Are they not hiding? Why is it that the Crown would like you to accept that there is something sinister in the 2nd defendant hiding and nothing sinister about members of Tai Ngan Chai's group  
20 hiding?

(continued)

30 One thing is this: if you look at the report, the medical report of Dr. LAM, the forensic pathologist - you do not have it there - but in his evidence he said that he examined Mr. PANG Pui-yuen on the 3rd of July, 1980. That was, mind you, almost a week after the incident. How did it come that Mr. PANG was so innocent, did not take any part in the fight, how did it come about that he was not examined by a doctor immediately after the incident? Isn't it possible for you to arrive at the inference that he was also trying to hide and the police got at him and got him examined?

40 So members of the jury, my point to you is this: if you think that there is something sinister about the 2nd defendant not surrendering himself to the police immediately after the incident - I say to you that you cannot safely come to that inference, because I say to you, first of all, that since he is the brother of Luen Mo that it is reasonable for him to be afraid of the other side. Secondly, there are members of Tai Ngan Chai's group who did not readily come forward to the police to tell their version of the story. In fact out of a group of 50 or 60 persons, so they say, in that billiard hall that evening, we have heard from how many? We have heard from five, is it? We have heard from about five persons of this number of people who were in the billiard room that evening. So, members of the jury, I invite you not to hold  
50 against my client that item of evidence.

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So having repeated the evidence which is for the prosecution and the evidence for the defence, and repeated to you, with great respect, that you should not try to balance, and repeating again to you that you should not try to fill the gaps, and repeating again to you that the prosecution must prove every ingredient of the offence, every item of evidence which they want you to accept beyond reasonable doubt, and having considered and trying to imagine how the witnesses 10 behaved in the witness box before you - remember how one man started, when he was being questioned, how he started looking at the map? This is the kind of evidence that they gave before you. Evasive, shifty men.

Now this is the evidence that the prosecution want you to accept as proven beyond reasonable doubt, that these two men are guilty of a very serious charge.

So members of the jury, I leave my clients 20 in your hands, confident that being members of the society in which you live, as we all are in our own minds fair and just people, that you will consider very carefully every item of evidence, that each one of you will make up your mind as to each charge, each count, make up your own mind - you are expected to give a joint decision, but each one of you must make up your own mind. You have got a duty to yourself and you have got a duty to society. I invite you 30 to do that duty justly, do that duty in fairness to your own conscience, and you do that duty in relation to the evidence that has been placed before you in this trial. Thank you.

COURT: Thank you, Mr. Van Buuren. Members of the jury, before we adjourn, I can inform you now that we will certainly be finished with this case some time tomorrow. We will adjourn now until 10 a.m.

4.30 p.m. Court adjourns

17th August, 1981

SUMMING-UP

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18th August  
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IN THE HIGH COURT OF JUSTICE  
CRIMINAL JURISDICTION

Case No. 168 of 1980  
& 49 of 1981

10 Transcript of a tape-recorded summing-up delivered by Mr. Commissioner Barnes on 18th August, 1981, at the trial of Regina v. (1) YEUNG Kwong-hung, (2) LAU Sik-chun, charged with Murder, Wounding with Intent, etc.

COURT: Good morning.

MR. LUNN )  
MR. VAN BUUREN ) Good morning, my Lord.

COURT: Members of the jury, as I reminded you yesterday, your sworn duty is to render a true verdict according to the evidence. That means that you must consider nothing but the evidence.

20 And the evidence is what you have heard from the witnesses who came to give evidence, what you heard from the witnesses whose statements were read out to you, and what is contained in the exhibits such as the billiard cues, the photographs, and the statements made by the accused to the police.

30 It is your duty to evaluate that evidence, your duty, for instance, to decide which of the witnesses you believe and the extent, if any, to which you believe the evidence of a witness.

It is not necessary that you accept the whole of what a witness has told you. You may find that you're only prepared to accept part of what a witness has told you as the truth. You may even conclude that a witness has not told you any of the truth. Those are questions for you.

40 Any comments that have been made by counsel, any comments that may be made by me, suggesting what the credibility of a witness may be are only to be acted on by you, to the extent to which those comments accord with your own

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assessment of the credibility of a witness.

Having determined the extent to which you accept as the truth - what witnesses have told you - you are also required in evaluating the evidence to determine what inferences, if any, you draw from the evidence which you accept.

In this, as in assessing the credibility of witnesses, you use your experience of the world and your knowledge of human nature. You use your own common sense in making these assessments.

10

You see, you may very well decide that, for instance, you don't accept the evidence of 'Tai Ngan Chai' - I will refer to him by his nickname because that's how he seems to be more familiarly known to us, throughout this trial. You may not, for instance, accept that 'Tai Ngan Chai' is telling you the truth when he says that he went back to the billiard room as a result of a paging call from Ah Chun. But on the other hand, you may believe him when he says that he was attacked when he did go back to the billiard room.

20

You may believe the first defendant as I'll call him when he says that he didn't participate in the attack. You may not believe him when he says that he didn't know the second defendant.

You may believe the second defendant when he tells you about some of the incidents in the billiard room and you may not accept what he tells you about others. You may accept what he tells you about changing from place to place after the incident, but you may not believe his explanation as to why he did that. These are all matters for you.

30

Having decided the extent to which you'll accept the evidence of the various witnesses - having decided what inferences, if any, their evidence leads you to draw - you will then be in a position to say to yourselves, now what matters have been proved to my satisfaction beyond a reasonable doubt, and do those matters which have been so proved - do they amount in law to the offences charged or to any of the alternative offences which you must consider? In order to do that, of course, that means that you have to know what the law is as regards these offences. And that is my function to tell you that.

40

When I tell you what the law is, of course, you accept that without question. It's merely a short-cut way of your arriving at your decision. You take it that I have looked into the law and that I'm accurately stating it for you and that saves you the trouble of going and looking it up for yourselves.

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10 In this particular case, our first count deals with the offence of murder. That has been adequately explained to you by both counsel, but it is necessary, notwithstanding that, that I tell you.

(continued)

The offence of murder is committed when one person unlawfully kills another person with intent either to kill that person or to do that person really serious physical injury.

20 Now, you will notice that it's an unlawful killing and so far as we are concerned in this case, there is not much that we need to worry about. "Unlawful" simply means not authorised, justified or excused in law. We don't need to concern ourselves about when a killing is authorised; we don't need to concern ourselves about when it is justified.

30 Here, the killing would be excused by law if it were done in self-defence. The evidence here does not suggest that if the killing was done, it was done in self-defence, so that if you concluded beyond a reasonable doubt, that NG Fuk-nam was killed, then you'd have no difficulty in concluding in the circumstances of this case that he was unlawfully killed.

40 Now, what does the evidence tell you about NG Fuk-nam? It tells you, if you accept it, that he was attacked by a number of men after being pulled back through the doors of the billiard room, that he was rendered unconscious, later taken to hospital where about midnight, he was found by a medical officer to be dead.

You've got the evidence of Dr. LAM, the forensic pathologist, who tells you what the cause of death was. And Dr. LAM said that the cause of death was subdural haemorrhage he said - subdural bleeding - and he said that means a bleeding between the tough membrane which covers the brain and the brain itself. And he said that, in his opinion, the cause of that fatal injury was a number of repeated blows to the head.

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Now, you may think that that evidence is significant because without that evidence of Dr. LAM you would have the situation here that, there having been an attack on NG Fuk-nam, his friend TAM Man who was with him at the time, says that when he - TAM - recovered consciousness, the fight was over and NG Fuk-nam was lying motionless on the floor and TAM says that he picked up NG Fuk-nam, and was trying to help him, presumably, to leave the billiard room.

10

And he says that while he was doing this, he heard the police sirens and on hearing the police sirens, he says he dropped NG Fuk-nam and he ran away.

Now, if you did not have the evidence of Dr. LAM that the cause of death was repeated blows to the head of NG Fuk-nam, you may very well be in the position where you could not say on the evidence beyond a reasonable doubt that NG Fuk-nam was killed as a result of the attack on him inside the billiard room.

20

But if you accept the evidence of the forensic pathologist, then the cause of death was a succession of blows - repeated blows - and it appears that what Dr. LAM meant and why he concluded that was this - that it was a - he said you'll remember - that the skull of the deceased was not fractured, and that, therefore, for this internal bleeding of the brain to have occurred, it means that his head had to be jarred, as it were, the brain jarred inside this hard membranous cover, and that that's what caused the bleeding. So that it's Dr. LAM's opinion that the nature of the fatal wound was such that it was not just one blow which killed NG Fuk-nam but repeated blows.

30

If you accept all of that evidence, then you would have no difficulty in concluding beyond a reasonable doubt that NG Fuk-nam was unlawfully killed.

40

Having said that, you must, of course, remember that these comments which I make on the evidence, and that is one - are subject to your agreeing with the assessment of the evidence which I put forward as supporting that conclusion. If you do agree with that, then you would have no difficulty in concluding beyond a reasonable doubt that NG Fuk-nam was unlawfully killed.



10 The crux of this case is the other element  
of the charge, if I may describe it that way,  
that is the intention with which the blows were  
struck, if you are satisfied that they were  
struck. And the case here for the prosecution  
is not that either one of the accused actually  
struck the blow - it is rather that the prosecu-  
tion says, "Look, we're unable to say who struck  
the fatal blows, but what we do say to you, is  
that both these accused had the intent, at least,  
to do serious bodily injury to the deceased, an  
intent which they shared with others, an intent  
which they shared with whoever it was who struck  
the fatal blows to cause NG Fuk-nam serious  
bodily injury."

20 It was mentioned to you by counsel that  
intention is not something which can be directly  
proved. It is not possible to give direct proof  
of the mental state of a person which accompanies  
the doing of an act by a person and so, whether  
or not a particular intent accompanies a particular  
act, is a matter that can only be determined by  
inference - a matter that can only be determined  
by saying: what inference do I draw from certain  
observed acts?

30 In this particular case, if you were satisfied  
beyond a reasonable doubt on the evidence that  
NG Fuk-nam did receive repeated blows to his head  
that caused that jarring of the brain which caused  
the bleeding which killed him, then it's a matter  
of common sense that you draw the inference that  
whoever inflicted those blows must have had the  
intention to do him, at least serious bodily injury,  
and if you came to that conclusion, if you draw  
that inference, then you would draw the inference  
that the necessary intent sufficient to establish  
the crime of murder was present.

40 And so then, the really crucial question is,  
does the evidence establish to your satisfaction,  
beyond a reasonable doubt, that either or both these  
accused had that particular intent in this case.  
As counsel have already mentioned to you, it is  
necessary for you to consider each charge separately  
and the case against each accused separately.

A great deal of the evidence, of course, is  
common to all the charges and common to both accused.

Let us first consider the case against the  
first defendant. What evidence is there that he had  
an intent common to the others - whoever they were who

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inflicted the fatal blows? YIP Kam-ping - whose nickname is 'Tai Ngan Chai' - he gave evidence that the 1st accused shortly after 'Tai Ngan Chai's' second altercation with LUEN Mo, and while 'Tai Ngan Chai' was trying to escape, having already been injured by the attackers from LUEN Mo's grip, was confronted with the 1st Accused who pointed a billiard cue at him and jabbed him on the chest.

If you accepted that evidence of 'Tai Ngan Chai', it is not necessarily the end of the matter so far as the first accused is concerned. In other words, accepting the evidence of 'Tai Ngan Chai', about that incident, it doesn't necessarily establish the guilt of the accused beyond a reasonable doubt.

10

You'd have to be satisfied that that incident, that incident, firstly - that it occurred; that 'Tai Ngan Chai' was surrounded by these supporters of LUEN Mo, attacked, and that the purpose of that attack was to do serious bodily harm to 'Tai Ngan Chai' or to his followers or to all of them and that when the 1st Accused held his cue out at 'Tai Ngan Chai' when 'Tai Ngan Chai' was running away, as he said, you will have to conclude that the first accused was trying to prevent 'Tai Ngan Chai's' escape, so this common intent of doing serious bodily injury to 'Tai Ngan Chai' could be carried out.

20

30

The other evidence against the first defendant is the fingerprint evidence. You will remember that one of the police officers lifted as they call it, a fingerprint from that cue, I think it's that broken one down in the cardboard box.

He took a fingerprint from that cue; that later police officers took fingerprints from the 1st Accused, and subsequently, a fingerprint expert examined both, that is, the fingerprint taken from that cue or the 2 fingerprints taken from that cue; the fingerprints supplied by the 1st Accused, and came to the conclusion that one of those prints matched a fingerprint from one of the fingers of the 1st Accused.

40

The 1st Accused has told you that he took no part at all in this fighting incident. You may think that the fingerprint evidence assists

his case. You see, he says that he was there and that he was playing billiards.

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Now, the fingerprint evidence is that the fingerprint which was found, was one from his -- the ring-finger on his right hand. If any of you have ever played billiards, you would know that when you hold the cue, you hold that thick end where his print was found and as you have to do a motion like that, the important part of the grip is usually with that ring-finger. The other fingers are more or less loosely on the cue so that that particular finger print - on the half on which it was found and the finger to which it belongs indicates that it was most likely left there by him in the way that he said it was there.

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If his fingerprint was there while he was holding the cue to use as a weapon, the fingerprint could still be there, but one would have expected other fingerprints there as well, so the fingerprint, you may think, assists his case considerably.

In any event, even if it didn't, it does no more than this - it shows that he held that particular cue at some particular time, and he doesn't deny that he did hold a cue. What he does deny is that he held a cue and used it as a weapon. The only evidence that he did hold a cue and use it as a weapon is the evidence of 'Tai Ngan Chai'.

30

An important witness in this case, you may think, is the witness LI Kit-hung and CHAN Chun-ki.

Now, CHAN Chun-ki, you will remember, went to the billiard room with 'Tai Ngan Chai', and he had been at the restaurant with 'Tai Ngan Chai'. So in the language of this case, he was, to appearances, a member of 'Tai Ngan Chai's' party, but he did give evidence that he was known to both groups - he was familiar to both groups and that he was acting as a kind of mediator, arbitrator, in this dispute.

40

And you may think it significant in his evidence that during the fight, he was escorted from the billiard room by the people who were attacking 'Tai Ngan Chai's' group and if you accepted that evidence - it is significant that he wasn't injured in any way - then he does appear to be a person who was in both camps, as it were, and you may think, that therefore, his evidence is more trustworthy in the sense that he's got no axe to grind, one way or the other and,

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therefore, is more trustworthy as a witness.

Now, he said that he saw the first defendant holding a cue before the fight, but he did not see him during the fight. So you have as against the first accused, only the evidence of Tai Ngan Chai.

You have in favour of the first accused, his own evidence in which he has denied that he participated. Although he has to sit in that dock because he is an accused person, that does not make him - his evidence - any more unreliable than it makes any other witness and you must treat him as a person, who although he's sitting in that dock, he's innocent and if you found that his evidence had the ring of truth, then you would accept it - you should accept it, and not be influenced or prejudiced against him simply because he is a man facing the charge and he's there sitting in the dock, if he has given credible evidence.

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The only evidence against him is the evidence of the man whom he says bears a grudge towards him. You've got one man saying, "Yes, he did", the other man saying, "No, I didn't." It is a typical situation, members of the jury, where given nothing else to assist you to determine which one is telling the truth, you ought to say in this situation, I could not be satisfied beyond a reasonable doubt that he did jab 'Tai Ngan Chai' with the billiard cue. And that being so, you would have to return a verdict of not guilty of murder, not guilty of manslaughter.

30

But even if you accepted the evidence of 'Tai Ngan Chai', are you satisfied that there was this common intent right through this whole incident to do these people serious bodily injury or was this incident, where the 2 were taken from outside the entrance door back into the billiard room and beaten, a separate incident? Was this part of the common intent of all or was this an escapade indulged in by that part of the group who took part in that particular attack described by Crown Counsel as a murderous onslaught?

40

Does it appear to you that that particular attack had a viciousness about it which the original altercation lacked? And if it did, and

if the first accused were not there for this second episode, can it be said, beyond a reasonable doubt, that he shared with those who indulged in that particular attack, the common intent - if you found it - which they had to cause serious bodily injury?

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10 On that basis, if your own view of the evidence accorded with what I am putting forward, you would have to find him not guilty of murder, not guilty of manslaughter, because the prosecution would not have satisfied you by the evidence beyond a reasonable doubt that he did share that common intent.

(continued)

20 To find him guilty of murder, you would have to be satisfied beyond a reasonable doubt; and where, where would you find in the evidence that he did anything which showed that he was intending that really serious bodily harm should come to anybody but, in particular, to NG Fuk-nam? Now, unless you can answer that question, beyond a reasonable doubt, unless you can say to yourself: I'm sure - then you must find him not guilty - must find him not guilty of murder and not guilty of manslaughter.

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

There was the witness PANG who also said that he heard the second accused call out, "Kill 'Tai Ngan Chai'."

40 You have CHAN Chun-ki, the witness I referred to earlier, the man who says he adopted the role of arbitrator. He says that he saw - he didn't say that he heard the second accused call out, "Kill 'Tai Ngan Chai'", but he says he saw the 2nd Accused strike with the others at 'Tai Ngan Chai'. He said he saw the 2nd Accused with others strike blows and he saw 'Tai Ngan Chai's' head bleeding before he left.

CHAN Chun-ki gave evidence, incidentally, that he tried to stop this particular fight, and as I said, you may find that he is a witness who is more reliable than some of the others.

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However, he says that he saw the second defendant actually striking a blow at 'Tai Ngan Chai' but the really important witnesses, you may think, are TAM Man :-

He is the man who says that he was with NG Fuk-nam and that they were both trying to escape together and when they got to the lift entrance, he says there were quite a lot of people entering the lift at the time, so the deceased and he were unable to get into the lift and they were by the door and he said, "At that time, I saw Ah Chun", and he told you that Ah Chun is the second defendant - "I saw Ah Chun and Ah Sang drag Ah Nam" - and you'll remember that is the nickname of the deceased - "drag Ah Nam into the premises. I was also attacked by the others and, as a result, I was jostled into the premises by the crowd." 10

He went on to describe how he himself was attacked - and then he said while he was being attacked, the deceased was also being attacked and that he lost consciousness, and that when he regained consciousness, he tried to help the deceased to get away. 20

Now, the other witness whom you may think was a very important witness is LI Kit-hung, and you will remember Mr. LI said that he was not involved with either of the groups who took part in this incident - that he was there playing billiards, and nevertheless, he was an eye-witness to what happened between the deceased and TAM Man on the one hand, and the attackers on the other, when these 2 men were dragged back in, and you will remember that LI Kit-hung was not able to tell you the names of TAM Man and NG Fuk-nam, but evidence has been led to this effect: LI Kit-hung says that one man was wearing light clothing and another man was wearing dark clothing, and evidence has been put before you of clothing that was taken from TAM Man that night and taken from the deceased, and that clothing has been put in evidence before you. So if you accepted the evidence of LI Kit-hung and came to the conclusion that what he saw was an attack on NG Fuk-nam and TAM Man, then you have confirmation of the evidence given by TAM about the attack on himself and NG Fuk-nam. 30 40

In addition to that, you have the evidence

in the photographs of the body of the deceased and, in particular, you have the evidence of the marks on his back and you have the evidence of Dr. LAM, who said that those marks were cane marks as he described them and he gave the opinion that they could have been caused by his back being struck with the thick end of a billiard cue, and he found 3 such welts on the body.

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10 Evidence was given by Mr. LI Kit-hung that the man who was dragged in by Ah Sang and the second defendant fell unconscious to the floor, but was still beaten by Ah Sang using fists and elbows, and by the second accused, using a billiard cue.

20 Now, he demonstrated how the second accused used the billiard cue and the demonstration was with holding the thin end of the cue and striking with the thick end of the cue. And he says that there were 4 or 5 blows to the man's back as he lay on the floor and that, later, the assailants ran away.

30 Now, if you accepted that evidence, you have this situation taken with the evidence of TAM Man that NG Fuk-nam is alive outside the doors of the billiard room; he is brought back into the billiard room by a group of men amongst whom was the second accused; somehow or other, he's - that is the deceased man - is knocked to the ground - and while he is on the ground, if you accept this evidence, the second accused is seen to deliver 4 or 5 blows to his back, wielding a billiard cue, holding the thin end and hitting with the thick end.

40 Members of the jury, what intention would a person have who strikes a body lying on the floor with a billiard cue in that manner? Could it be any intention other than to cause that body, serious bodily injury? If you drew that conclusion, then you would conclude that he had the intent to cause the deceased serious bodily injury, since the evidence establishes that somehow or other, the deceased at some time in that particular episode, received blows which caused his death, then you would arrive at the decision that the 2nd Accused was guilty of murder.

If you were satisfied of those things beyond a reasonable doubt, that he had the common intent with whoever struck the fatal blows to do serious bodily injury, and therefore, he had the necessary intent in doing what he did to make him guilty of

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murder, and that would be your proper verdict.

You have, however, the evidence of the 2nd Accused denying that he took part in that attack or in any attack, and it's for you to consider that evidence in the same way, as I said, to consider the evidence of the first defendant.

If you thought that the second defendant was telling you the truth, then you must find him not guilty because it wouldn't be proved beyond a reasonable doubt that he did take part in that attack. 10

If you found yourself unsure as to whether to believe him or not, again, you'd have to find him not guilty because the evidence hasn't satisfied you beyond a reasonable doubt, that he did take part in that attack.

In other words, as he has given evidence, unless you come to the conclusion that he's lying when he denies that he took part in that attack, you must find him not guilty. 20

You have to be satisfied beyond a reasonable doubt that he's lying when he denies that he took part in that attack. If the evidence doesn't persuade you as to that, you must give him the benefit of the doubt and you must find him not guilty.

But if you accept the evidence of TAM and LI, you could conclude beyond a reasonable doubt that he had the necessary intent and find him guilty of murder. 30

If, however, your view was, well although, he did strike that prone body with a billiard cue, I don't think that necessarily means an intent to do serious bodily harm. I'm not sure whether it would or not but I am sure that it would cause some harm - then your verdict would be guilty of manslaughter.

If you thought that in doing what he did, it only demonstrated an intention to do something less than serious bodily harm, your verdict would have to be manslaughter. 40

The second count in the indictment, charges the 2 of them with unlawfully and maliciously



wounding YIP Kam-ping with intent to do him grievous bodily harm. Wounding, of course, means as you've already been told, any cut which, or any breaking of the --- what we call the true skin.

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10 In this particular case, there is evidence that from 'Tai Ngan Chai' himself that his head - he received a cut on the head - there is evidence from other witnesses that they saw him bleeding about the head and there is medical evidence from a doctor at Queen Elizabeth Hospital, Dr. TUNG, that the man called YIP Kam-ping was admitted to Queen Elizabeth Hospital that night, and that he had a 3-centimetre scalp laceration.

(continued)

The evidence of 'Tai Ngan Chai', incidentally, was that the injury to his head required 10 to 20 stitches. However, the doctor said it was a 3-centimetre scalp laceration.

20 In any event, if you accept that evidence, you'd be satisfied beyond a reasonable doubt, excuse me, that YIP Kam-ping was wounded.

And if you accept his evidence, and the evidence of others, that there was an attack on him in the billiard hall and that his head was bleeding after that attack, then you would be satisfied that he was unlawfully wounded.

30 The more difficult question here for you is firstly: has it been established beyond a reasonable doubt that that wounding was done with intent to do him really serious bodily harm?

'Tai Ngan Chai' and 2 other witnesses, POON and PANG, said that the attack on 'Tai Ngan Chai' was with hammers and with billiard cues but CHAN Chun-ki - this witness I keep coming back to - he doesn't mention anything about a hammer but he does mention billiard cues and LI Kit-hung, the witness who said he had nothing to do with either party, he didn't mention any weapons.

40 If you came to the conclusion, beyond a reasonable doubt, that 'Tai Ngan Chai' was wounded as a result of an attack on him with billiard cues, then would you say that that is sufficient to compel the inference that the attack was done with intent to cause him really serious bodily harm or do you find that it's not quite sufficient for you to make up your mind about that?

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If you found yourselves able to say, oh, there's no doubt about it - such an attack must have been done with intent to cause really serious bodily injury, then you would find that the intent had been proved.

If, however, you were unable to conclude that - if you were able to say to yourselves, well, at least the person intended to do some injury, then your verdict would be that the crime of wounding with intent as described here, was not established - but that the crime of wounding was established. 10

And then the question is what is the case against each of the defendants? Well, the case against the first defendant is, in the main, again, the evidence of 'Tai Ngan Chai'.

But bearing in mind what I said to you earlier about Tai Ngan Chai's evidence since what the 1st accused did on Tai Ngan Chai's evidence did not cause any wounding, it was a jabbing in the chest and he was found later to have a bruise on the chest, that is not a wound, then the 1st defendant's guilt again would have to be that he had an intention common with whoever did do that wounding on Tai Ngan Chai to cause Tai Ngan Chai injury. 20

Again, of course, it is only the evidence of Tai Ngan Chai's - Tai Ngan Chai against the 1st defendant. Word against word. You may very well conclude in those circumstances it would be unsafe to find him guilty when in order to find him guilty you have to be satisfied beyond a reasonable doubt. 30

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

If you accepted that evidence and did not accept the evidence of the 2nd defendant when he says he did not take part in the attack, if you accepted the evidence of CHAN Chun-ki, then you would be satisfied of the guilt of the 2nd accused on a charge of wounding at least. To find him guilty of wounding with intent, you would have to be satisfied that the evidence established beyond reasonable doubt that the attack on Tai Ngan Chai was done with intent to do him really serious injury. 40

The 3rd count alleges a similar offence. This time the victim being TAM Man. You have Tam's evidence and this, of course, is what I might call 'the second episode', the incident in which, if you accept the evidence, the deceased received his fatal injuries.

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10 TAM Man's evidence is that he himself was attacked at this particular time and his evidence is, as I mentioned to you earlier, supported by the evidence of LI Kit-hung, if you accept Mr. LI Kit-hung as a witness of truth.

(continued)

20 TAM Man was examined subsequently by Dr. Leo LU. His evidence was read out to you and he said that he found two lacerations on TAM Man. Two lacerations on his head, one was an inch long and one was 1½ inches long but both were skull deep, that is how he described it, skull deep which presumably means that the cut went through the outer layer of skin and penetrated through the skin to the bony part of the head, namely, through the scalp. And he said that when TAM Man was admitted, he was in a state of impending shock. TAM Man himself told you that he was rendered unconscious.

30 Do you draw the conclusion beyond a reasonable doubt that if a man receives a blow or blows to the head sufficient to cause lacerations an inch and 1½ inches long and skull deep that such wounds must have been inflicted with the intent to do really serious bodily injury? If so, then you would be satisfied beyond a reasonable doubt that the offence charged, namely, wounding with intent had been made out.

But if you are not satisfied about that and you were satisfied that TAM Man was wounded, then you would be satisfied that the charge of wounding had been made out, that the offence of wounding had been established.

40 Again, the question of the evidence against each accused. The 1st accused it not, on anybody's evidence, placed at the scene of this particular attack. So in order to find him guilty, you would have to be satisfied beyond a reasonable doubt that what was happening to TAM Man and NG Fuk-nam, what was happening then was simply a continuation of the original intention, which all of them had, to do really serious bodily harm. For the reasons which I mentioned to you earlier, if you agree with them,  
50 you would certainly find the 1st accused not guilty.

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The 2nd accused: you have of course the evidence of LI Kit-hung and you have the evidence of TAM Man himself. You have the 2nd accused's denial. Again, you have to be satisfied beyond a reasonable doubt that he is not telling you the truth when he denies taking part in this attack. You will have to be satisfied beyond a reasonable doubt that the other evidence which says that he did take part in it, that you can accept it and that it is true and if you did, then you would be satisfied beyond a reasonable doubt that he at least wounded TAM Man. If you are satisfied beyond a reasonable doubt that he had a common intent with whoever inflicted those wounds to cause really serious bodily injury, you would find him guilty of the offence charged, namely, wounding with intent.

10

The remaining count is the 5th count and here the person allegedly wounded was PANG Pui-yuen. He gave evidence that he was at the billiard room and that after the 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 defendant using a billiard cue.

20

You may remember he was cross-examined and asked why he had not told the police in his original statement that the 2nd accused had attacked him, and he gave the explanation that the 2nd accused had hit him but missed, that is why he did not tell the police at that particular time.

30

Now he says that the 2nd accused did take part in the attack and he says that he was hit by five or six altogether. They were using cues and they hit him on his head and his body, that he fell to the ground.

He was examined, Pang. Pang was examined by Dr. Lam, the forensic pathologist. But of course Dr. Lam examined him some time after the incident and the description of the injuries which Dr. Lam found indicated that they were some days old and most of them were healing, but he was able to say that the injuries which he found on Pang were consistent with his having been struck with a cane and he also found a healing laceration so that there is some support, if you accept Dr. Lam's evidence, for Pang's

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evidence that he was wounded.

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As regards the intent with which he was wounded, you have not got much evidence to go on and it does seem that it would be very difficult here for you to be satisfied beyond a reasonable doubt that the wounding of Pang was done with intent to cause him serious bodily injury.

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10 On the other hand, if you accepted his evidence that he was attacked by the five or six, that he was wounded and that the 2nd defendant took part in that attack, then you would have a basis for concluding beyond a reasonable doubt that the 2nd defendant was sharing a common intent with the others who attacked Pang to wound him. If you accepted all that, you could bring in a verdict of guilty against the 2nd defendant on the charge of wounding.

20 As regards the 1st defendant, Pang does not mention the 1st defendant as having taken part and if you agreed with the observations which I made earlier about the 1st defendant, you would certainly have to bring in a verdict of not guilty as regards the 1st accused.

30 Members of the jury, this has all been made very confusing, I know. When you come back, your madam foreman will be asked about your verdict first on the charge of murder. If you find the 1st defendant not guilty of murder, you will say you find him not guilty. In this particular case, if you found him not guilty of murder, you will also find him not guilty of manslaughter. So if you were then asked, "Have you any other verdict?" you would say, "No" because he is not guilty, he is not guilty of murder. He is not guilty.

40 In regard to the 2nd defendant, if you found him guilty of murder, you would not be asked whether you have any other verdict on that. If you found him not guilty of murder, you would be asked whether you have any other verdict and then you would have to tell us whether you found him guilty or not guilty of manslaughter.

In relation to the other charges, you will be similarly asked what your verdict is on the charges as they stand. If you find an accused not guilty of the charges as they stand, you will be asked if you have any other verdict and that would only be to find out whether you find him guilty of the alternative charge. In other words, if you

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came to the conclusion, for instance, that they were not guilty of everything on the murder charge, you would say, "Not guilty." "Any alternative verdict?" "No" If you found them not guilty of everything on the unlawful wounding charges, you would say, "Not guilty." "Any alternative verdict?" "No."

(continued)

On the charge of murder your verdict has to be unanimous whether you find guilty or not guilty. You must be unanimous.

10

On manslaughter, if you come to consider manslaughter, your verdict need not be unanimous. You may bring in a verdict of 6 to 1 or 5 to 2. And similarly on the other charges you may bring in majority verdicts if you are unable to be unanimous. Equally with them your majority verdict may be either 6 to 1 or 5 to 2.

In a moment I will put you in charge of the usher. We do not have available a special jury room for you to retire to. It will therefore be necessary for all of us to leave the court and to leave you together with the exhibits to consider your verdict.

20

You must now remain together until you do reach a verdict and that is the reason, members of the jury, why I said yesterday that I would not sum up to you in the afternoon. That is the reason why we arranged it so that you can have the most of today's court sitting day to consider your verdict in case you need it.

30

If you find that by, say, half-past 12 that you are unlikely to reach a verdict by 1, if you, Madam Foreman, give a message to the usher, he can arrange for you to have lunch brought to you.

If you find during your deliberations that some of what I have said to you has been so confusing that you would like further elaboration on it, then you again, Madam Foreman, may pass a message to the usher and he will convey the message to me and I will reconvene the Court and we will hear what it is you want enlightenment on.

40

I do not think there is any other way that I can assist you at the moment, so I will ask the

usher to be sworn in and then we will leave the court and I will ask you to consider your verdict and unless you, gentlemen, have any request for re-directions, I will leave my seat and take it again when we hear from the jury.

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MR. VAN BUUREN: My Lord, if the verdict is during the lunch interval, then we might not be available between 1 and 2.30.

(continued)

10 COURT: Thank you, Mr. Van Buuren. That did happen on one occasion, members of the jury, where the jury did ask for lunch and we all went off together and I said, "Don't come back till half-past 2" when the jury were ready with their verdict at half-past 1. So I should explain that. Thank you, Mr. Van Buuren. If you thought "Look, we won't reach a verdict by 1 but we certainly will by half-past 1," if you would let me have that message, but if you thought, "Look, we certainly won't reach a verdict by half-past 2," if you let us have that message, then we know that we can go off until half-past 2. Thank you for reminding me about that, Mr. Van Buuren. We will have the usher sworn in please.

11 a.m. Court adjourns

2.40 p.m. Court resumes

Both accused present. Appearances as before.  
JURY PRESENT.

30 COURT: Yes, members of the jury. I have a note here from Madam Foreman that you have a request and it is in this form: "Is it possible for us to see a copy of the transcript of the evidence given by witness No.3 TAM Man and No.9 LI Kit-hung pertaining to the movements and positions of them during the incident in the billiard hall?" No transcript is, of course, yet available. What I will do is read to you the notes that I have taken and if you find that that is insufficient, we will arrange for the court reporter to look up the shorthand notes and  
40 get you a fuller report.

Turning first to the witness TAM Man, the note I have of his evidence is this :

"Shortly before the fight ended, the deceased and I escaped. We got to the entrance near the lift. There were quite a lot entering at the time, so the deceased and I were unable

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(continued)

to get into the lift in time and we were caught by the other parties. Our companions were getting into the lift. At that time I saw Ah Chun and Ah Sang drag Ah Nam into the premises. I was also attacked by the others and as a result I was jostled into the premises by the crowd."

He went on to say that Ah Sang wasn't here in court and that Ah Chun was the 2nd accused and that Ah Nam is the deceased. 10

"When I was jostled into the billiard room, I saw Ah Nam being attacked by three or four persons. While I was being attacked by others, I saw Ah Nam being beaten by several, including Ah Chun and Ah Sang. It took place near the first table near the entrance."

And the note I have is that he indicated a place between tables 5 and 4 in the plan, a place between tables 5 and 4 in the plan. 20

"When I was being attacked, the deceased was also being attacked. I lost consciousness. When I regain consciousness, I found the deceased in a lying position."

He was lying around the area I indicated, that is, in the area around tables 5 and 4 and he said :

"I was chased to here."

And he indicated somewhere around table 3. 30

"I there fell unconscious. The fight was over when I recovered. I was still able to see the deceased."

And he went on to describe how he picked him up and then what happened.

Now LI Kit-hung, he described how he saw Ah Sang, Ah Chun with one or two others bump open the door near the lift. There were two persons holding the door in a closing position which Mr. Interpreter later added meant a closed position, a shut position. 40

"Then the group assaulted the two men.



10 Then I saw Ah Sang, Ah Chun drag a man wearing light-coloured dress back into the billiard room and then hit him. There was another who dragged another man wearing dark-coloured dress into the billiard room and beat him up. The man wearing light dress fell unconscious somewhere near the door, but Ah Sang could inflict blows with his elbow and fists on that man, and Ah Chun struck him with a billiard cue. Not long after that they ran away. Then the whole group of us left through the rear staircase, but at the ground floor we were stopped by police."

And he then went on to say...he was brought back to talking about the two men guarding the door. He said :

"It was the two men who were guarding the door who were brought back in."

20 And he indicated the entrance near the marking "corridor" on the plan. He was then asked :

"Where did the fight continue after the two were brought in?"

And he said :

"The one in light was beaten up here."

And he pointed to a spot between table 4 and the lifts. Between table 4 and the lifts, he pointed to.

"And the one in dark here."

30 And he pointed to near tables 4 and 5. He said :

"It was the same Ah Chun. He struck the man's back."

And that is when he gave the demonstration of the holding of the cue. He said :

40 "Originally we stood near table 1 watching play. During the fight there were people chasing and hitting one another, so we changed to table 2. Some left leaving a small number among them being Ah Sang and Ah Chun, so we shifted to here."

And he indicated they were standing above and between

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(continued)

'tables 2 and 3. Above and between tables  
2 and 3, as you look at the plan. He said:

"When the other two were still being  
beaten up..."

And he indicated the distance they were away  
from where he was and the note I have is he  
indicated a distance of about 15 to 20 feet,  
whatever it was he pointed to in the courtroom  
here.

Now those are the only notes I have, 10  
members of the jury, about the positions indicated  
on the plan by TAM Man and LI Kit-hung. Does  
that satisfy your questions?

MADAM FOREMAN: Yes, thank you.

COURT: Thank you. Gentlemen.....

MR. LUNN: My Lord, there is nothing else that I  
can add.

COURT: No. Does that seem to you to be an accurate  
recording of what the witnesses said?

MR. VAN BUUREN: Indeed, my Lord, according to my 20  
notes.

MR. LUNN: Yes, according to the notes taken by  
the inspector.

COURT: Very well. That may cover the position.

MR. VAN BUUREN: I don't know whether my cross-  
examination has anything to add. I don't have  
a note of my cross-examination.

COURT: I will check that while we are here.

MR. LUNN: My Lord, as far as my notes are concerned,  
there is no mention of positions in cross- 30  
examination.

COURT: No. There certainly is not in the evidence  
of LI Kit-hung. TAM Man did say this in cross-  
examination that, "I and the deceased held the  
door at the entrance to prevent those inside  
rushing towards us. The lift had not yet arrived.  
At that time it did not occur to me whether  
there was any other exit." He did not mention  
anything in relation to this incident, but you

did ask him, "Do you say that as soon as Tai Ngan Chai went through the door he was attacked by Luen Mo?" He said, "Yes" and he indicated that Tai Ngan Chai was near the aisle between tables 4 and 5 and Luen Mo was near the aisle between tables 3 and 4. That seems to be the only reference to positions, Mr. Van Buuren.

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Very well. I will take my seat again when we next hear from the jury.

(continued)

10 MR. LUNN, Crown Counsel for the Crown.  
MR. VAN BUUREN inst'd by Director of Legal Aid for the defendants.

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VERDICT AND SENTENCES

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10 a.m. Court resumes.

Both accused present. Appearances as before.  
JURY PRESENT.

20 10 a.m. Court sums up to the jury.  
11 a.m. Court adjourns pending deliberation by the jury.

2.40 p.m. Court resumes

Both accused present. Appearances as before.  
JURY PRESENT.

Court gives further direction to the jury.

2.55 p.m. Court adjourns again for further deliberation by the jury.

3.30 p.m. Court resumes

30 Both accused present. Appearances as before.  
JURY PRESENT.

CLERK: Madam Foreman, will you please stand up?  
I am going to ask you to return your verdicts.  
Now on the 1st count of murder against the 1st accused, have you agreed upon your verdict?

FOREMAN: Yes, we have.

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(continued)

CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or  
not guilty?

FOREMAN: Not guilty.

CLERK: Have you any other verdict to return?

FOREMAN: No.

CLERK: Now on the 1st count of murder against  
the 2nd accused, have you agreed upon your  
verdict?

10

FOREMAN: Yes.

CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or  
not guilty?

FOREMAN: Guilty of murder.

CLERK: Now on the 2nd count of wounding with  
intent against the 1st accused, have you  
agreed upon your verdict?

FOREMAN: Yes.

20

CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or  
not guilty?

FOREMAN: Not guilty.

CLERK: Have you any other verdict to return?

FOREMAN: No.

CLERK: Now on the 2nd count of wounding with  
intent against the 2nd accused, have you  
agreed upon your verdict?

30

FOREMAN: Yes.

CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: Guilty.

CLERK: Now on the 3rd count of wounding with intent against the 1st accused, have you agreed upon your verdict?

FOREMAN: Yes.

10 CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: Not guilty.

CLERK: Have you any other verdict to return?

FOREMAN: No.

CLERK: Now on the 3rd count of wounding with intent against the 2nd accused, have you agreed upon your verdict?

20 FOREMAN: Yes.

CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: Guilty.

CLERK: Now on the 5th count of wounding with intent against the 1st accused, have you agreed upon your verdict?

FOREMAN: Yes.

30 CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or not guilty?

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(continued)

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(continued)

FOREMAN: Not guilty.

CLERK: Have you any other verdict to return?

FOREMAN: No.

CLERK: Now on the 5th count of wounding with  
intent against the 2nd accused, have you  
agreed upon your verdict?

FOREMAN: Yes.

CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or 10  
not guilty?

FOREMAN: Not guilty.

CLERK: Have you any other verdict to return?

FOREMAN: No.

CLERK: Thank you.

MR. LUNN: My Lord, in respect of the 1st accused,  
no doubt your Lordship will order his  
discharge.

My Lord, in relation to the 2nd accused,  
the officer-in-charge of the case has 20  
prepared an antecedent statement. Perhaps  
he ought to go into the witness-box and  
test to its veracity. My Lord, he also is  
in a position to tell your Lordship about  
the 2nd accused's criminal record.

TANG Chung-yeung Affirmed in English

XN. BY MR. LUNN:

Q. Are you a Detective Senior Inspector,  
officer, and are you the officer-in-charge  
of this investigation? 30

A. Yes, my Lord.

Q. Have you caused inquiries to be made as to  
the criminal record....record of this 2nd  
accused, LAU Sik-chun?

A. Yes, my Lord.

Q. And is it the case, officer, that this  
accused has one previous criminal conviction

- from Sanpokong Magistrates Court when he was convicted on the 27th of January, 1976 on two charges: One for being in possession of writing of a triad society, and secondly for membership of a triad society, and in respect of both charges was he sentenced to a term of probation for 12 months?
- 10 A. Yes, my Lord.  
Q. By more general terms, officer, have you made inquiries as to the background of this man, and have you found him to be born in Hong Kong on the 14th of June, 1954 making him 27 years of age, is that correct?
- 20 A. Yes, my Lord.  
Q. Was he educated to Primary 6 level?  
A. Yes, my Lord.  
Q. And had he worked as a hawker selling paintings? Is he also a partner in a carton manufacturing factory and at the time of his arrest was he a hawker selling newspapers?
- 30 A. Yes, my Lord.  
Q. And as my Lord already knows, was he arrested on the 22nd of February of this year in Mongkok and detained in custody thereafter?  
A. Yes, my Lord.  
Q. And as we know, he has that one previous criminal conviction. Is he a single man?  
A. Yes, my Lord.  
Q. Does he live with his parents, brothers and sisters at room 1520 in Block 4, Shek Lei Pui Estate?  
A. Yes, my Lord.  
Q. Thank you, officer. Would you just wait there?

(continued)

NO XXN. BY MR. VAN BUUREN

COURT: Thank you, inspector.

MR. VAN BUUREN: Does your Lordship wish to hear from me now?

COURT: In relation to the wounding charges.

40 MR. VAN BUUREN: My Lord, the 1st defendant has been found guilty of the wounding of Tai Ngan Chai and TAM Man, not guilty on the count of wounding Mr. Pang.

My Lord, your Lordship has heard the evidence, and if I may say so with great respect to members of the jury, the verdict must be on the basis that the 2nd defendant had some common intent with others to take part in this attack.

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(continued)

My Lord, as your Lordship has heard, the persons themselves....Mr. Tai Ngan Chai and Mr. TAM Man themselves did not say that they were attacked by the 2nd defendant. So I, with great respect, would invite your Lordship to, having regard to the circumstances of the fracas and the melee as the incident was referred to, that your Lordship will treat him as leniently as possible. Of course, it may at the end of the day be quite academic, but nevertheless I would invite your Lordship to treat him leniently.

10

His background is that he is not married. He was a member of a very large family. There are many members of his family here in court today. He is the sixth in a family of ten brothers and sisters. He is 27 years of age now, and his previous conviction was in 1975. I would suggest that your Lordship would not regard that as a very serious conviction. He was a member of a triad society and he was put on probation for one year.

20

So as I said, my Lord, I leave it in your Lordship's hands. With great respect, bearing in mind the circumstances of the fight and that it was not he who really started the thing going, may he, as I said, be treated as leniently as possible.

30

MR. LUNN: My Lord, before your Lordship passes sentence, there is the question of exhibits. My Lord, as far as I can see, they are all to be forfeited to the Crown. My Lord, I would make an application in those terms.

COURT: What about Mr. Tam's shirt?

MR. LUNN: My Lord, yes. There are bloodstains. Perhaps they ought to be formally ordered to be returned to him. My Lord, they are items 19 and 20, exhibits 19 and 20.

40

COURT: Exhibits 19 and 20, they belong to Mr. Tam?

MR. LUNN: My Lord, they do. My Lord, save for those two items, I seek an order for forfeiture of the rest of the items.



COURT: Very well. YEUNG Kwong-hung, you have been found not guilty by the jury on all the charges and you are therefore to be released, provided you are not being held in respect of any other matters.

MR. LUNN: No.

COURT: He may be released forthwith.

10 LAU Sik-chun, you have been found guilty of the offence of murder and there is only one sentence. The law requires me to pronounce the sentence of death in respect of that conviction, and I pronounce that sentence and order that it be carried into execution in accordance with the law.

20 You have also been found guilty on two other charges of wounding with intent. It is necessary that I impose sentences in respect of them. In respect of each of those convictions, I order that you be imprisoned for 3 years. The sentences to run concurrently.

I order that all the exhibits be returned to the police and all be forfeited where need be except exhibits 19 and 20 which are to be returned to Mr. TAM Man.

30 Members of the jury, I thank you very much for the assistance you have rendered in this case. I heard that if you are called up again in the future that we will by then have advanced to the stage where we can provide you with better accommodations and better amenities than we provided on this occasion. thank you very much.

3.40 p.m. Court rises

18th August, 1981

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(continued)

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No. 39

CERTIFICATE OF SENTENCES

No.39  
Certificate  
of Sentences  
18th August  
1981

IN THE SUPREME COURT OF HONG KONG  
CRIMINAL JURISDICTION

Case No.168 of 1980 and 49 of 1981  
(consolidated)

CERTIFICATE OF SENTENCES

To the COMMISSIONER OF PRISONS

This is to certify that the undermentioned  
person was sentenced this day by The Honourable 10  
Mr. Commissioner Barnes of High Court to undergo  
the undermentioned punishment namely :-

LAU Sik-chun (D.2) :-

1st Count: Death

2nd Count: Imprisonment for three (3) years.

3rd Count: Imprisonment for three (3) years  
(concurrent)

D.2 found not guilty on 5th count.

Date of Plea: 10th August, 1981

Date of conviction: 18th August, 1981.

20

Dated this 18th day of August, 1981.

Sd: N.J.Barnett

N.J.BARNETT  
REGISTRAR

IN THE SUPREME COURT OF HONG KONG

In the  
High Court

CRIMINAL JURISDICTION

No.39  
Certificate  
of Sentences  
18th August  
1981

OFFENCE:-

1st count: Murder, contrary to Common law.

2nd count: Wounding with intent, contrary to S.17(a) of the Offences against the Person Ordinance, Cap. 212.

(continued)

3rd count: Wounding with intent, contrary to S.17(a) of the Offences against the Person Ordinance, Cap. 212.

10

5th count: Wounding with intent, contrary to S.17(a) of the Offences against the Person Ordinance, Cap. 212.

CERTIFICATE OF SENTENCES

NO. 40.

In the Court  
of Appeal

\_\_\_\_\_  
GROUNDS OF APPEAL

No.40  
Grounds of  
Appeal  
21st October  
1981

IN THE COURT OF APPEAL  
APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 754 OF 1981

20

BETWEEN: LAU SIK CHUN

Appellant

and

THE QUEEN

Respondent

\_\_\_\_\_  
THE GROUNDS OF APPEAL AGAINST  
CONVICTION

30

1. The learned trial judge in his summing-up misdirected the jury by high-lighting the evidence that supported a verdict of not guilty in respect of the 1st Defendant and, in contrast, stressed the evidence that showed the guilt of the Appellant thus indicating to the jury his own assessment of the facts and unjustly weighed the scale against the Appellant.



Coram: Sir Alan Huggins, V.-P., Yang & Barker,  
JJ.A.

In the Court  
of Appeal

J U D G M E N T

No.41  
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1982

Sir Alan Huggins, V.-P.

(continued)

10 The Appellant was the second of two defendants jointly charged with the murder of one Ng Fuk-nam and with four offences of wounding with intent. He was convicted on the murder charge and two of the wounding charges and acquitted on the other two charges. He appeals against his convictions pursuant to leave granted by the single judge.

We have already indicated our decision that the two convictions for wounding cannot stand. As to Count 2, the charge of wounding Yip Kam-ping ("Tai Ngan Chai"), the judge directed the jury:

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

30 It is conceded by counsel for the Crown that this was a mis-direction on the evidence. What the witness said was that a number of persons picked up billiard cues and started to fight, but he did not name the 2nd Defendant as one of these persons: later he saw the 2nd Defendant rush towards YIP Kam-ping and beat him up, but could not see very clearly whether he used his fists or a weapon: YIP Kam-ping's head was bleeding: later again he saw the 2nd Defendant striking POON Chi-chuen with a cue. It is therefore apparent that the learned judge read more into the evidence than was there. The mistake was fatal because the Crown's case was thus presented to the jury as one based upon evidence of an assault by the 2nd Defendant himself with a weapon at YIP Kam-ping's head, with a suggestion that the 2nd Defendant was directly responsible for the wound on YIP Kam-ping's head. There was evidence from which the jury might have inferred a common intent to do grievous bodily harm, but the judge did not mention common intent in relation to this count and it is by no means certain that they would have drawn such an inference.

In the Court  
of Appeal

No.41  
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10th February  
1982

(continued)

As to Count 3, the charge of wounding  
TAM Man, the Judge said :

"TAM Man's evidence is that he himself  
was attacked at this particular time  
his evidence is, as I mentioned to you  
earlier, supported by the evidence of  
LI Kit-hung, if you accept Mr. LI Kit-  
hung as a witness of truth."

As Mr. Reid submits, that passage is literally  
correct, but it was not emphasized to the jury  
that the 2nd Defendant himself did not take  
part in that attack on TAM Man. Again, the  
case for the Crown had been based upon common  
intent and in this instance there was a  
reference to common intent in the summing-up,  
but it followed a passage in which the judge  
pointed out that the 2nd Defendant denied  
taking part in the attack on TAM Man and that  
they had to be satisfied that he was not telling  
the truth. The total effect of that might be  
to confuse the jury into thinking that there  
was evidence that the 2nd Defendant was directly  
involved in the assault on TAM Man. Bearing  
in mind that the jurors were not lawyers and  
had to rely on the judge's explanation of the  
law, we thought the direction as to common  
intent was not as clear as it should have been  
and came to the conclusion that the verdict  
was unsafe and unsatisfactory.

That leaves the murder count. There was  
a dispute in a billiard saloon between a man  
nicknamed LUEN Mo and YIP Kam-ping. Yip went  
away and consulted his friends. According to  
the prosecution the 2nd Defendant contacted Yip  
by means of a paging device and invited him to  
return to the billiard saloon to resolve the  
dispute: Yip and his companions, who included  
the Deceased, went there and were set upon by  
the 2nd Defendant and a number of others: as the  
visitors were endeavouring to escape, the  
Deceased the TAM Man were dragged back into the  
saloon and violently assaulted: the 2nd Defendant  
was one of those who dragged the Deceased and  
he was seen hitting the Deceased on the back  
with a thick end of a billiard cue after the  
Deceased had fallen unconscious to the floor.  
It is undisputed that the Deceased died from  
intercranial haemorrhage and bruising of the  
brain.

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10 Since there was no evidence that the 2nd Defendant hit the Deceased otherwise than on the back, the case for the Crown was that the death resulted from an injury inflicted by someone in pursuance of a design common to him and to the 2nd Defendant. The first argument on behalf of the Appellant is that there was no evidence of a common design, and, in particular, that there was no evidence that those who hit the Deceased were all members of a gang. It must be said that the common design suggested by counsel appearing for the Crown at the trial was one to deliver serious bodily harm "to any one of Tai Ngan Chai's men and that they could get their hands on." The judge took a narrower view and invited the jury to consider whether there was a common design to do grievous bodily harm to the Deceased. We think he was entitled to do that.

20 The evidence of that common design was that the 2nd Defendant 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 Defendant 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. Mr. Litton conceded that where several rioters who are unacquainted with each other on the spur of the moment and without consultation, combine to overturn a motor vehicle, they can properly be found to have a common design. Such a case is analogous to the present.

30

40

(continued)

Secondly it was contended that the judge in any event wrongly failed to direct the jury as to the meaning of common design and that he mis-directed them when he said :

50 "You have to be satisfied beyond a reasonable doubt that /2nd Defendant is/ lying when he denies that he took part in that attack. If the evidence doesn't persuade you as to that, you must give him the benefit of the doubt and you must find him not guilty.

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(continued)

But if you accept the evidence of TAM and LI, you could conclude beyond a reasonable doubt that he had the necessary intent and find him guilty of murder. "

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. In the circumstances the passage cited was unobjectionable. TAM Man saw the 2nd Defendant help to drag the Deceased back into the billiard saloon. LEE Kit-hung saw a man (who was clearly the Deceased) dragged in by the 2nd Defendant and another, and also saw the 2nd Defendant beat the man on the back with the thick end of a billiard cue while he lay unconscious on the floor. If those witnesses were believed, the jury could not have been in any doubt as to the existence of a common design. The same answer can be given to the complaint about the following passage in the summing-up:

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"Members of the jury, what intention would a person have who strikes a body lying on the floor with a billiard cue in that manner? Could it be any intention other than to cause that body, serious bodily injury? If you drew that conclusion, then you would conclude that he had the intent to cause the deceased serious bodily injury. Since the evidence establishes that somehow or other, the deceased at some time in that particular episode, received blows which caused his death, then you would arrive at the decision that the 2nd Accused was guilty of murder.

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If you were satisfied of those things beyond a reasonable doubt, that he had the common intent with whoever struck the fatal blows to do serious bodily injury, and therefore, he had the necessary intent in doing what he did to make him guilty of murder, and, that would be your proper verdict. "

The punctuation and paragraphing inserted by



the shorthand writer is obviously suspect, and, apart from that, the second paragraph is somewhat obscure. Nevertheless the jury could have been in no doubt about the necessity to find common intent.

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10 We have already cited a passage in which the judge mis-directed the jury as to the evidence relating to Count 2. There was a further passage relating to Count 5 in which it is now conceded that there was a mis-direction as to the evidence :

(continued)

"PANG Pui-yuen gave evidence that he was at the billiard room and that after the 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 defendant using a billiard cue."

20 Mr. Litton has submitted that these mis-directions could have affected the minds of the jurors in relation to the intent of the 2nd Defendant on Count 1. As to the second passage we think no prejudice can have resulted to the Appellant, because obviously what happened was that the judge confused PANG Pui-yuen with POON Chi-chuen. The latter did give evidence that he was standing against the wall when he was attacked by the 2nd Defendant using a billiard cue (although he managed to dodge the blows aimed at him.) "It was Poon and not Pang who was cross-examined and asked why he had not told the police in his original statement that the 2nd Accused had attacked him".  
30 The passage relating to count 2 was, in relation to Count 1, in our view not so serious a mis-direction as to invalidate the verdict.

The matter which has given us most cause for concern is the absence of any warning by the judge as to the dangers inherent in the identification of a voice. The relevant evidence appears in the following passage:

40 "To find 1st Defendant guilty of murder, you would have to be satisfied beyond a reasonable doubt; and where, where would you find in the evidence that he did anything which showed that he was intending that really serious bodily harm should come to anybody but, in particular, to NG Fuk-nam? Now, unless you can answer that question, beyond a reasonable doubt, unless you can say to yourself: I'm sure - then you must find him

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(continued)

not guilty must find him not guilty  
of murder and not guilty of manslaughter.

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

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There was the witness PANG who also  
said that he heard the second accused  
call out, "Kill 'Tai Ngan Chai'."

It is argued on behalf of the Appellant that  
a warning in accordance with the guidelines  
laid down in the Reg. v. Turnbull 1977 1 Q.B.  
224 was essential and that the omission of  
any such warning was the more serious because  
the judge referred to the voice identification  
right at the beginning of his treatment of  
the case against the 2nd Defendant. Further-  
more, it is said that the purported identifi-  
cation by Pang was worthless because he  
admitted in cross-examination that his  
evidence was hearsay, a fact of which the  
judge did not remind the jury. 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 :

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"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).

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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".

10 Having said that, we would not have it thought that it would not have been better if the judge had warned the jury of the need for caution in its approach to the evidence of voice identification, even though this was not a matter relied upon in his closing address by counsel then appearing for the Appellant. It is unfortunate that Pang was not further questioned concerning his identification, for on one view of the evidence his identification was not even admissible. In cross-examination appears the following exchange:

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(continued)

"Q. How can you say it was Ah Chun who said those words?

A. But later on Tai Ngan Chai said that it was him.

Q. So you are repeating what Tai Ngan Chai told you?

A. No.

Q. What do you mean?

A. It was heard by many other persons apart from Tai Ngan Chai. He was known to many others. "

That was as far as the cross-examiner needed to go. It was arguable that despite the witness's denial he was merely repeating what he had been told. In re-examination the matter was taken up again :

30 "Q. Just that last matter, Mr. PANG, so that my Lord and the jury could understand what your evidence is as to who said, "Kill Tai Ngan Chai." Did you yourself hear Ah Chun saying that, or are you simply repeating what others had told you? Think carefully before you answer that.

A. I also heard that.

Q. And in addition you have heard others say that they heard, is that what you are saying?

A. Yes. "

40 The difficulty about that is that the first question was imprecise and prompted an ambiguous answer, which could have been understood variously by those who heard it: the judge may have thought that the witness was confirming his denial that his identification was merely hearsay. Even if he did, it was desirable that the jury should have been warned against placing too much weight upon corroboration consisting of a voice identification by someone who had met the speaker only twice before. That the evidence of the voice identification was the first  
50 evidence against the 2nd Defendant which was

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(continued)

mentioned by the judge did not give it any undue prominence in view of the fact that the shout was alleged to have been heard at the beginning of the attack which led to the death of the Deceased and was thus mentioned in chronological order.

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 83(1) of the Criminal Procedure Ordinance. The appeal against the conviction on Count 1 is dismissed.

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10th February, 1982

In the Privy  
Council

No.42  
Order granting  
Special Leave  
to Appeal to  
H.M. in  
Council  
22nd December  
1982

No. 42

ORDER GRANTING SPECIAL LEAVE  
TO APPEAL TO H.M. IN COUNCIL

AT THE COURT AT BUCKINGHAM PALACE  
The 22nd day of December 1982

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PRESENT  
THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 9th day of December 1982 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 Lau Sik-Chun in the matter of an Appeal from the Court of Appeal of Hong Kong between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal from a Judgment of the Court of Appeal of Hong Kong dated 10th February 1982 which dismissed the Petitioner's appeal against his conviction for murder: And humbly praying Your Majesty in Council to grant the Petitioner special

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leave to appeal against the Judgment of the Court of Appeal of Hong Kong dated 10th February 1982 and for further or other relief:

In the Privy Council

No.42

Order granting Special Leave to Appeal to H.M. in Council  
22nd December 1982

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that special leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Hong Kong dated 10th February 1982:

(continued)

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" AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

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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 are to take notice and govern themselves accordingly.

N. E. LEIGH

IN THE PRIVY COUNCIL

No.23 of 1983

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O N A P P E A L

FROM THE COURT OF APPEAL OF HONG KONG

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B E T W E E N :

LAU SIK CHUN

*Appellant*  
~~petitioner~~

and -

THE QUEEN

Respondent

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RECORD OF PROCEEDINGS

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