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Judgment
26, 1966

IN THE PRIVY COUNCIL

No. 4 of 1966

ON APPEAL FROM THE
SUPREME COURT OF HONG KONG,
APPELLATE JURISDICTION.

B E T W E E N:

1. MAWAZ KHAN
alias FAZAL KARIM

2. AMANAT KHAN

Appellants

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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Solicitors for the Respondent

CLASS MARK

ACCESSION NUMBER

~~PC~~
~~EM662~~

87092

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

ON APPEAL FROM THE
SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION

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RECORD OF PROCEEDINGS

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E X H I B I T S

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AD	Photograph of Accused Amanat Khan	
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ON APPEAL FROM THE
SUPREME COURT OF HONG KONG,
APPELLATE JURISDICTION

B E T W E E N:

1. MAWAZ KHAN
alias FAZAL KARIM

2. AMANAT KHAN

Appellants

- and -

THE QUEEN

Respondent

10

RECORD OF PROCEEDINGS

NO. 1
INDICTMENT

In the
Supreme Court
of Hong Kong

No. 1

The 30th)
day of)
March)
1965)

IN THE SUPREME COURT OF HONG KONG
At the Ordinary Criminal Session
of the Supreme Court holden at
Victoria for the Month of April,
1965, THE COURT IS INFORMED by the
Attorney General on behalf of Our
Lady THE QUEEN that Mawaz Khan alias
Fazal Karim and Amanat Khan are charged
with the following offence:-

Indictment
9th April
1965

20

Common Law.

Statement of Offence

Cap. 212
Sec. 2.

Murder, contrary to Common Law.

In the Supreme Court of Hong Kong.

Particulars of Offence

Mawaz Khan alias Fazal Karim and Amanat Khan, on the 10th day of February, 1965, in this Colony, murdered Said Afzal.

No. 1

Indictment
9th April 1965
(Continued)

To: (1) Mawaz Khan alias (Sgd) M. Morley John
Fazal Karim Deputy Public
Prosecutor, for
(2) Amanat Khan Attorney General

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

10

L.S. (Sgd) C.M. Stevens
Registrar.

No. 2

Proceedings
26th April
1965

NO. 2

PROCEEDINGS

IN THE SUPREME COURT OF HONG KONG
CRIMINAL JURISDICTION

Case No. 3
April 1965 Session

20

Transcript of the shorthand notes taken by the Court Reporters at the trial of Regina v. (1) Mawaz Khan alias Fasal Karim and (2) Amanat Khan, charged with Murder before the Honourable Mr. Justice Huggins.

Date: 26th April, 1965 at 10.05 a.m.

Present: Mr. D. O'Reilly Mayne (A. el Arculli)
for both Accused Mr. N. Macdougall,
Counsel for the Crown.

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MR. MACDOUGALL: May it please my Lord, I appear for the Crown and my learned friend, Mr. O'Reilly Mayne, appears for both the accused.

COURT: The pleas have already been taken.

In the Supreme
Court of Hong
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No. 2

Proceedings
26th April
1965
(Continued)

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

10

ACCUSED: No objections.

MR. MAYNE: May it please your Lordship, in this particular case I have an application to make, which must be made before the jury is empanelled to try this case. It is an application, which I think not only desirable but necessary that it should be heard in the absence of the respective jurymen. The nature of the application, I think is possibly made known to your Lordship, so I should, therefore, ask that I be allowed to make this application in the absence of the respective jurymen in this case.

20

COURT: I suppose I must allow this, Mr. Mayne. It is perhaps a little unfortunate that the application is not made until today. It means that the jurors in waiting will have to wait yet further. If this application had been made on the committal day, we may save some time, however ..

30

MR. MAYNE: I appreciate that, my Lord. I do regret any inconvenience which has been caused. In point of fact, I believe I was in Japan - I, of course, had instructions and papers of the case, but this application has resulted - on the other hand it had formally - finally culminated as a result of ...

COURT: Yes, jurors in waiting, I am sorry that we shall have to detain you for a little while. I must ask you, if you would be good enough, to wait outside until I have heard the application which is about to be made to me. This applies only to jurors in waiting.

40

In the Supreme
Court of Hong
Kong

Any other members of the public are at
liberty to remain if they so wish.

10.10 a.m. Jurors leave court.

No. 2

Proceedings
26th April
1965
(Continued)

MR. MAYNE: May it please your Lordship -
before I commence this application, there is
one factor which I have discussed with my
learned friend, and which may have a bearing
on the order that your Lordship may make with
regard to the jurors, with particular reference - 10
to their avoiding undue delay or inconvenience -
due to the fact that I returned back from
Japan on Saturday night, I did not have the
opportunity to give my learned friend the
legal authorities that I intend to rely upon in
this application, and indeed I was not in a
position to give your Lordship these authorities
either - I trust my apologies will have been
received through your Lordship's clerk, in my
not having given you these authorities until
today. 20

My learned friend and indeed I feel that in
view of the fact that this is - the nature of this
application is new to my learned friend, and he
has not had the opportunity to go through the
authorities on it, that I feel that if he wishes
a short adjournment to consider the authorities
before replying to my application ..

COURT: Let's wait and see whether he makes an
application for it.

MR. MAYNE: If he wishes. 30

COURT: Let's hear the application first and then
we can know what we have to reach ..

MR. MACDOUGALL: I am completely in agreement with
your Lordship on that.

MR. MAYNE: I am sorry - I thought he wished the
jury to come back tomorrow instead of today,
or rather ..

COURT: I am not prepared to release the jury
until I have heard you Mr. Mayne. I do not
know how long this application is going to
take - I imagine it will not take very long? 40

MR. MAYNE: I hope not. In that case I will proceed immediately.

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(Continued)

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Now, my Lord, the application which I wish to make is for separate trials of the two defendants - the two accused persons in this case, and first of all, I think I might best serve the court by referring you briefly to the general principles as contained in Archbold in this particular question. In the 35th Edition at paragraph 129 under the heading, "Separate Trials", there the learned author has this to say:-

"When persons jointly indicted plead not guilty, the court has power to order them to be separately tried where the interests of justice seem to require that course to be taken."

20

That really is the test in each and every application of this kind, and I readily recognise that the interests of justice include not only the interests of the defendant but also of the crown, and indeed, the purpose of granting by the court an application of this kind is to avoid any chance whatsoever of a miscarriage of justice. That really is the test, and it is my respectful submission if there is any reasonably slight possibility of a miscarriage of justice through a joint trial of two defendants, then I think the decision, as the decision in all criminal cases, must be in favour of the accused. The learned author goes on to say:-

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"The question whether there should be separate trials is one for the discretion of the judge at the trial, and the Court of Criminal Appeal will interfere with the discretion of a judge in this matter only where it is shown that the exercise of the discretion has resulted in a miscarriage of justice - in other words, that improper prejudice has been created either by a separate or a joint trial."

Now because they are really appeal cases, I will refer briefly to them, but the principles there

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set forth are Court of Appeal acts, if the application to grant a separate trial is refused by the learned trial judge, but I don't think, my Lord, they have any bearing on the decision which your Lordship makes - it may be the Court of Appeal says, 'This is a matter for the discretion of the trial judge - we won't interfere' - but that is not, I think the approach ..

COURT: Surely what all these cases show is that the judge has to go very far wrong before the Court of Appeal will interfere? 10

MR. MAYNE: Quite so.

COURT: Notwithstanding, it is the duty of the judge not to go wrong.

MR. MAYNE: It is - it is a matter within your discretion, which you, of course exercise judicially.

COURT: Is all this necessary or isn't it more than for you to show me on the facts of this case there is a danger that there will be a miscarriage of justice? 20

MR. MAYNE: Before doing that, I should like to refer to particular cases - before going on to deal with what I would call the Court of Appeal's decisions on the matter. The first of these is reported in Cox's Criminal Cases Volume VII, which is the case of Queen against Jackson and Another, and it is reported on page 357. The headnote is:- 30

"Where two persons charged with murder by the same indictment had made statements implicating one another, and those statements were evidence for the prosecution, the court, upon the application of the counsel appearing for one prisoner, allowed them to have separate trials."

Then it goes on to say, which I think has bearing on this particular case:- 40

"Where two persons go out with the

common object of robbing a third person, and one of them, in pursuit of that common object, does an act which causes the death of that third person, under such circumstances as to be murder in him who does the act, it is murder in the other also."

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10 Now pausing there, it is my respectful submission that in this particular case, there is no evidence on depositions showing in any way a joint enterprise, in other words, pre-determined, pre-meditated commission of a crime.

20 On the other point, your Lordship will have seen certain statements alleged to have been made by the two different accused persons - I should say, at this stage, that with regard to certain of these statements I will be challenging the admissibility of these statements, and we do not know, at this stage, whether one of the statements will go in, or both of them or neither of them will go in - assuming one goes in and not the other, I think that there is then, on that limb alone, a very real chance of the alleged statements of one defendant being used either consciously or sub-consciously by the jury in assessing the case against the other accused, despite the warning, which no doubt your Lordship will give, if that situation arose, but this is the point, my Lord, which I do feel very strongly about. One hears very often in the District Court, that there should not be separate trials - after all the learned District Court Judge is a very experienced lawyer - he has a trained legal mind, and he can put out of his mind altogether anything he hears in case it is inadmissible.

30 40 With great respect, even in the District Court, I don't think it is possible for any lawyer, however experienced, to put out of his mind altogether something that he has heard.

COURT: Is this not a challenge to the established practice of English Courts over a matter of centuries, where statements are made by two prisoners, the judge warns the jury against

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their taking one statement as evidence against the other - which has been accepted by us for centuries - but isn't that sufficient warning ..

MR. MAYNE: That is so, my Lord, but I think one has to look further. The fact that this system has been used - one does not know with what success - over the centuries, still does not preclude the court from looking at this aspect of the case in deciding whether or not to grant separate trials. With great respect, my Lord, the Members of the Jury are only human, and on the evidence in this case, there is a grave danger, in my view, of the jury - the two defendants - the two accused persons being together - in saying, 'Well, either they both did it or they both did not do it.' I think there is a grave danger of confusion in the minds of the jury, despite that warning - there is a grave danger that the jury will not separate the cases, as lies against the 1st accused, and the case as lies against the 2nd accused. Well that is just by the way for the time being. 10 20

The reason I mentioned this 'pursuit of unlawful object' aspect is that I think it may well be that way - that is the evidence on the depositions, the principles may well be different - if I may refer your Lordship to the opening remarks of Mr. Justice Bramwell, at page 360 - the factor that he obviously took into account is this, when he was summing up to the jury:- 30

"The rule of law is this, - if two persons are engaged in the pursuit of an unlawful object, the two having the same object in view, and, in the pursuit of that common object, one of them does an act which is the cause of death, under such circumstances that it amounts to murder in him, it is murder in the other also." 40

Well, my Lord, I think it may well often be in the case where there is evidence before the alleged commission of the crime or if

there is evidence suggesting an intention and acts showing preparation for a commission of a criminal act jointly by two persons - there I think the court might be slower to grant separate trials, but that is not the case here. There is no evidence, at all in my respectful submission, to suggest in the events that are alleged in the depositions, there was, in the commission of this alleged offence, any common attempt to pursue a common unlawful object.

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Now the other case which I like to refer your Lordship to is reported in XV Cox's Criminal Cases, and there are just a few references which I would like to give your Lordship about this case - this is the case of Queen vs. Bradlaugh and Others, reported on page 217 - this, my Lord, is a case of Blasphemous Libel. There is a passage, my Lord - first of all at the foot of the page 219:-

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"The defendant Bradlaugh applied that he might be tried separately and first - before the others - who were now in prison under a sentence for a similar offence."

That particular aspect of the case does concern us here,

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"He made the application, he said, on the ground that, though the defendants were jointly indicted, yet the offence of which they were accused was one for which each might be separately indicted, and it was unfair to indict and try them together, one consequence of which might be that he might desire to call the others as his witnesses; another might be that he might be prejudiced by being tried with the others. He cited the observations of Cockburn, C.J. in Reg. v. Boulton and Park as to the unfairness of including in one indictment parties who might be separately indicted,

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and on these grounds asked that he
might be tried separately, and
tried first."

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Just down the page, Lord Coleridge has this
to say - he said that -

"he did not see why this might not be
shown, if it could be, just as well
on a trial of the defendant Bradlaugh
separately as on the trial of the
three defendants jointly. He did not
see, therefore, that the prosecution
would be embarrassed or prejudiced by
his being tried separately, while he
could see that the defendant Bradlaugh
might be prejudiced by his being tried
with the others, who had already been
convicted on a similar indictment. On
a balance, therefore, of the convenience
or inconvenience of trying the defendant
Bradlaugh, separately or jointly with
the others, he thought that he should be
tried separately."

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With reference to these particular remarks, in
regard to the present case there is no
possibility, whatsoever, of the crown being
prejudiced in any way by a separate trial. In
other words, if there are separate trials, they
can place before the court, before the jury
all the admissible evidence which they would be
entitled to do in a joint trial - they will be
able to introduce evidence, if they wish, of
association and all the rest - in other words
they will not be prejudiced in any way, but
what can happen in a joint trial here is that
there may well be, either consciously or sub-
consciously or even unconsciously, a feeling in
the minds of the jury, having heard all the
evidence, having heard all the case, there may
be a tendency to put each of the defendants in
one boat, if you may say so. Apart from the
statements aspect, which I have referred your
Lordship to, there are certain pieces of
evidence given by the individual defendants which
would be hearsay in a separate trial. There
are certain conversations, not cautioned
statements, or the statements before the charge -

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there are various statements made by each of the defendants to the police, not always in the presence of each other. That evidence, my Lord, I think, can be highly prejudicial in this case and again could well confuse the jury, and have the effect of lumping the two defendants together instead of looking at the case of each defendant separately. They are the statements alleged to be made in the Mandarin Hotel, and again, later on, at the place where each defendant was alleged to have shown the police a certain point where the alleged quarrel or struggle took place.

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Now there may be some confusion in your Lordship's mind there - I think the Crown will agree, that in this regard, the depositions are slightly inaccurate. In the evidence of Mr. Webster, page 3 of the depositions, he says there that he went with the 1st accused and another Inspector to a certain place, and there apparently conversation took place between the police officers and the defendant, as a result of which, the 1st defendant, in the absence of the 2nd defendant, pointed out a certain place, which is of course hearsay in any trial against the 2nd accused, and I can see quite a considerable amount of prejudice possibly being incurred by the 2nd accused by reason of this particular hearsay.

COURT: How does this arise - I am not quite clear how there can be any prejudice from that.

40

MR. MAYNE: Here is hearsay evidence by one accused as far as the 2nd accused is concerned, all tending, as I say to really lump the cases into one and not dividing them, as it should properly be, into two. If I may refer your Lordship to page 7 of the depositions, there at about the ninth line down, there the witness Mr. Qureshi, he gives evidence of going with the 2nd accused to a certain place - he gives evidence of the conversation and pointing out by the 2nd accused of a certain position - you will notice in the 14th line, that starts with, "They were asked" - I think that is either a

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clerical error or a slip on the part of the Inspector, because the evidence - I don't think this will be disputed by the crown - will clearly show that on each of these visitations ..

COURT: "They were asked" in line 14?

MR. MAYNE: Line 11, sorry.

COURT: "They were asked where they had a fight".

MR. MAYNE: Now, that is quite incorrect, because the evidence here will show that these visits to this particular scene, were quite separate. In other words, the two accused persons were brought there separately, so that what they said indeed in relation to this quite important matter will be hearsay as against the other.

10

My Lord, apart from these aspects, looking at the depositions as a whole, I think the evidence shows that, with particular regard to the 2nd accused, that he would definitely be prejudiced by a joint trial with the 1st accused. There would be that danger despite whatever warning your Lordship gives to the jury. I know these warnings will be given, should the situation arise, but we do not know how effective they are, but we do know what human beings are - I think it is impossible to put out of one's mind altogether anything that one has heard - it may even effect your judgment adversely - in other words, if you are told to disregard a thing, you may remember to do that or you may go too far - on the other hand it may stick in your memory - you may just disregard the particular context - it may influence one's approach to the case generally, and one's decision as to accept or reject other parts of the evidence - with minds which have not got legal training in this aspect despite however great the warning may be, I don't think it can be said in any case that a jury can be unaffected by the evidence which they hear against an accused person which is inadmissible. The degree which may effect the minds, of course, is another matter, but in this case, there is in my respectful submission, both with regard to the statement aspect, and the hearsay aspect, and having regard to the great

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10 difference in the evidence relating to each of the defendants, insofar as it endeavours to show the presence of the individual defendants at the scene, which is quite a lot of difference between the first and second balance, if the evidence goes before the jury as a whole, there is in my respectful submission, a grave danger in this case being lumped together as one, when it can, and, in my respectful submission, should be tried separately

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20 Now as I have told your Lordship, it is quite clear that what one must be guided by is interests of justice. Now it cannot be disputed that the crown will not be prejudiced by a separate trial. I think and it is quite true, I know that they have indicted these defendants together for the purpose of using the evidence as a whole against one particular individual, but that can well happen if there is a separate trial - they will not be embarrassed in any way - they have all the admissible evidence against each of the defendants in any separate trial, but what they will not have - what the jury will not have is evidence which is inadmissible in a separate trial against one particular accused, and looking at the matter as a whole, therefore, my Lord, we know the position is this - the crown cannot be prejudiced; either or both, particularly the 2nd accused, might well be, in my respectful submission, would likely to be, but even if there is a possibility, bearing in mind again the jury are human beings - and there is, I think, in this particular case more ground for feeling there can be a mingling of the case against the two defendants because of a certain similarity of what appears to be their defences as disclosed in statements to the police, there would, I think having regard to that very factor itself, there would be a feeling that this is one case that could fall together or they could go free together. There is every danger here of identity of the two persons as one, so you have the position that the crown cannot be prejudiced - there is the possibility, I would say strong possibility and probability -

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that there are not separate trials the defendants could be prejudiced.

Having regard to that, my Lord, if there is any possibility of miscarriage of justice, to say there cannot be as far as the crown is concerned but there can be as far as the defendants are concerned, if there is that possibility, having regard to the fact that your Lordship will give due warning about all the matters that jury have to be warned about, but also having regard to the fact that jurymen are human, that there are certain points of similarity in what appears, at this stage, to be the defences of the defendants, there is grave danger of this case being lumped together. 10

Now the apparent similarity of the defences is not the test for determining whether or not there should be a joint trial; it has to be borne in mind whether there is a possibility of confusion of the case against either of the defendants - what has to be borne in mind really is the case for the prosecution, and here as I say, we have got a number of important differences - the question of the statements, that is the written statements, there is the question of the various pieces of hearsay evidence, there is the question of evidence at the scene tending to incriminate either one individual as it does both, may or may not be accepted in whole or part by the jury - but the acceptance of the part of the identification evidence of one accused may well be used sub-consciously against the other accused. In these circumstances, my Lord, I would submit that there is a real ground for fear that there can be a miscarriage of justice, and for these reasons I make this application. 20 30

On this particular point, I think there are only one or two other passages which may help your Lordship. There is a passage under subject paragraph 2547 of Archbold, which is at page 1020, 40 under the heading, 'Separate Trials', and I think it is my duty, with regard to the second paragraph here, which reads - has your Lordship got it?

COURT: Yes.

MR. MAYNE:

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10

"The question whether there should be separate trials of prisoners jointly indicted is one for the discretion of the judge at the trial. Separate trials may be ordered where an essential part of one prisoner's defence amounts to an attack on a co-prisoner, but the mere fact that a prisoner in the course of a statement excusing himself has made observations throwing blame on a co-prisoner is not a ground for rendering it necessary that they should be separately tried."

20

I drew that passage to your Lordship's attention, because I think it is my duty to say that is not the position here - the statements do not incriminate each other, and on the instructions which I have I don't think there is any possibility of the defence of one accused throwing the blame on the other - if that were the case they would appear jointly. That is one of the many factors to consider.

30

Just before I sit down - again on the point which I haven't made, which I think is important on this question of separate trial, the principles applicable in charges of conspiracy, of course, are very different to charges of substantive offences, and only in very rare cases one can get a separate trial on a conspiracy count, but this is not a conspiracy count. Nevertheless, there is evidence of an inadmissible kind which may come before the jury as against one or other of the defendants. As I say the conspiracy count is different, but in substantive counts, if there is any danger whatsoever of miscarriage of justice, I think with great respect, the decision of the court must be for a separate trial. I know that the time factor is not one which has not to be taken into account by the court. In point of fact, I think separate trials would mean possibly a slightly longer duration - there will be two shorter trials instead of one longer one. Of course, this

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should not influence the decision of your Lordship at all.

COURT: Perhaps I can indicate what is passing through my mind, Mr. Mayne. At the moment I am not at all clear that there is any real degree of substance in your application, but I understand the basis of the application to be that evidence will be admissible in the trial against both accused which will not be admissible in a trial against one of them?

10

MR. MAYNE: Yes, my Lord.

COURT: That evidence consists of statements made by several accused?

MR. MAYNE: Yes.

COURT: Well, now ought we not to look at that evidence for you to satisfy me that there is some real substance in the suggestion that a warning to the jury will not be adequate?

MR. MAYNE: My Lord, I have - I thought I had indicated what this evidence was.

20

COURT: You say that they were taken severally to what you described as the scene.

MR. MAYNE: No, to a scene.

COURT: A scene.

MR. MAYNE: A place in the vicinity of Ocean Bar. There they both had separate conversations with the police and went through certain actions. Prior to that, my Lord, both of the defendants made statements to the police officers in the Mandarin Hotel. It is certainly not clear on the depositions that the separate statements by the defendants were made in the presence and within the hearing of the other defendant. These statements are of considerable importance. Finally, there are the cautioned statements, which I will be challenging. One or other may go in, both may go in, but although there is some similarity in these statements, there are important details which might well be brought to bear by the jury against the defendant who

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had not made that statement, despite ..

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COURT: Let us assume that is so for the moment, although I don't rule that it is - what is the prejudice which may result - what is the nature of these statements which they made, which is going to be so prejudicial to the other accused?

10 MR. MAYNE: My Lord, the important matter, I think, if I may answer your Lordship slightly briefly is this. There is to a degree a similarity of the evidence against both - the evidence - both, as you may say, on independent evidence and in the statements of the defendants. Now that alone, I think, in this particular case will have a tendency in any order of the human mind, to place the case of each defendant rather in one position fused or merged ...

20 COURT: That must happen in every case where two men are charged jointly.

MR. MAYNE: My Lord, in this case there is, my Lord, danger. Then again ..

COURT: Why? That is what I am trying to find out - what is there about this case which raises such a prejudice against the other accused that they ought to be tried separately?

MR. MAYNE: Well, to go through it again, my Lord ..

30 COURT: I don't want you to go through it again, because you have said nothing yet which shows that there is real prejudice in this case as distinct from any trial where two persons are charged together.

40 MR. MAYNE: Well, my Lord, in most trials where persons are tried jointly, it is unusual to have hearsay evidence - we always of course have statements - that is rather cautioned statements and statements in answer to the charge, but here we seem to have more than that. We have actual hearsay, as appears on the depositions.

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COURT: If it is true hearsay, it is not admissible in any event, but it is merely a statement by one accused that can be dealt with as it always is, and if a statement made by one accused is so manifestly prejudicial to the other accused that it ought not to be admitted upon the trial of the 2nd accused, he will order there to be a separate trial.

MR. MAYNE: I think with great respect, your Lordship is placing the basis a little bit too high - to go back to the words of Archbold:-

10

"Where persons jointly indicted plead not guilty, the court has power to order them to be separately tried where the interests of justice seen to require"

which is, you are satisfied that looking at the evidence as a whole and at the individual matters which I have placed before your Lordship, here, the interests of justice seen to require - and arriving at a decision your Lordship will determine - one side the crown case - can they be prejudiced? The answer is, no. - and the other side, is there a possibility, and it is my respectful submission that looking at the evidence as a whole as well as the individual matters about which I have addressed your Lordship, that there is this case where it does seem to require in the interests of justice that there should be separate trials. May it please your Lordship.

20

30

COURT: I need not trouble you Mr. Macdougall.

The application is one for separate trials of the charge against these two accused. There is no suggestion here that the one accused is going to make an attack upon the other. What is suggested is that the interests of justice seem to require that there should be separate trials on the ground that evidence which will be admissible against one of them, ought not, in the circumstances of this case, to be given against the other. So far as I understand it, the only evidence to which reference is made is

40

statements made by the several accused, which of course are not, unless given in the presence of the other accused, and then only in some cases, admissible against the other accused. The nature of the statements appears merely to be that they went - they gave separate accounts of what happened at a certain scene. Exactly how those accounts differ, I am not sure, but it has certainly not been shown to my satisfaction that there is likely to be any prejudice at all. If there is any prejudice, it is certainly not such prejudice as cannot be guarded against as in other cases where statements are made by persons accused jointly, in the charge to the jury, when the jury will be warned that such statements are admissible only against the persons making them.

My view, there is not here sufficient ground for ordering separate trials.

10.55 a.m. Jury returns to Court.

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

Duarte Edouardo Goularte.

MR. MACDOUGALL: Stand by.

30 COURT: You are making a challenge to this Juror for cause?

MR. MACDOUGALL: Not for cause, my Lord. I am not challenging that Juror. I am simply asking him to stand by. This will mean that he will be relegated to the end of the panel. When the panel is exhausted and his name again appears, then if I wish to challenge him it must be for cause.

COURT: Is that the position in Hong Kong?

40 MR. MACDOUGALL: My Lord, I understand it is the position.

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MR. MAYNE: I think the position as set out in the Jury Ordinance is that the practice here in Hong Kong is slightly different from the United Kingdom as far as the Defence challenges are concerned, but I think as far as the Crown's rights are concerned --

COURT: You would agree that they are the same?

MR. MAYNE: Yes, my Lord.

10

COURT: I am obliged to you, Mr. Mayne.

MR. MACDOUGALL: Thank you, my Lord.

CLERK: Buckli Hans. ... Now, Mr. Hans, will you please take the first seat?

CLERK: Kai Tsen Koon.

Law Kam Gee

Law Knin Ling

Alfred Norman Richards

Joseph Young Sze Chiu

Joseph Burton Donnally.

20

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

BOTH ACCUSED: No objection, sir.

COURT: Very well, let them be sworn.

MR. HANS: Your Honour, I wish to object. I am coming from a country where they don't have the death penalty.

COURT: I'm sorry, I can't hear you.

MR. HANS: I am coming from a country where they don't have the death penalty.

30

COURT: Yes.

MR. HANS: And I think I would, if I could, prefer to stand over. I am in principle against the death penalty.

COURT: Do you wish this Juror to stand down?

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MR. MACDOUGALL: Yes, my Lord, I think it would be advisable in the circumstances.

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COURT: Yes, you can stand down, sir.
Thank you. (Mr.Hans)

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CLERK: Yes, Mr. Hans, you can go back.

CLERK: Mrs.Lucy Lai.

10 MR. MACDOUGALL: My Lord, I do feel perhaps in view of the evidence, some of the evidence which will eventuate in this case, it may be undesirable to have a woman on the Jury. Perhaps your Lordship might agree with me on this point. I don't know what my learned friend's attitude is but of course you do have power to exclude if you feel that the circumstances do not warrant a woman sitting on the Jury.

20 COURT: I haven't seen the depositions, Mr. Macdougall. Such information as I have about this case leaves me completely in the dark as to the nature of the evidence to which you refer.

MR. MACDOUGALL: My Lord, perhaps if you would care to examine these photographs?
(Set of photographs handed up to Court)

COURT: I see. The nature of the injuries?

30 MR. MACDOUGALL: That is so, my Lord. .. I have no objection on any other ground, my Lord.

COURT: No, I appreciate that, Mr. Macdougall.

MR. MACDOUGALL: It is just the sensibilities of a woman in a case such as this.

COURT examines photographs.

I appreciate your intervention but I think on the whole that there is really not sufficient

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ground here to justify my interfering with
the ordinary practice.

MR. MACDOUGALL: I am much obliged to your
Lordship.

COURT: Thank you very much.

CLERK: Accused, have you any objection to Mrs.
Lai?

BOTH ACCUSED: No objection, sir.

USHER starts swearing and affirming Jurors.
(Chinese Juror reads oath)

10

COURT: Tell me, sir, how long have you been in
Hong Kong?

JUROR: Since 1949.

COURT: Since 1949?

JUROR: Yes.

COURT: You were not educated in Hong Kong?

JUROR: No.

COURT: In China?

JUROR: Yes.

COURT: Yes. Your reading of the oath, sir, was
not perhaps as fluent as it might be. I say
this with all respect to you, sir, but the
question which is occupying my mind is whether
you have sufficient knowledge of the English
language to be able to follow clearly all the
evidence which may be given in this case.

20

JUROR: I thought that myself too.

COURT: You have your own doubts, sir?
I think my doubts are shared, gentlemen, - I
think, sir, that although you have been
sworn I have a duty to ensure that Jurors have
a sufficient knowledge of the English Language,
and I think I would ask you, if you would, to
stand down, sir.

30

CLERK: May I have your name, please?

JUROR: Mr. Koon. (Juror leaves box)

CLERK: Filoneno Henrique da Silva.

MR. MACDOUGALL: Stand by.

COURT: Yes, next?

CLERK: Li Chung Long.

CLERK: Accused, have you any objection to Mr. Li?

BOTH ACCUSED: No objection, sir.

10 (USHER swears or affirms latest Juror)

COURT: Thank you, Sir.

CHINESE JUROR: (Mr. Joseph Young) My Lord,
I wish to retire from the Jury because I
understand this is a murder case and I object
to sentencing anybody to death.

COURT: Very well, sir, you may stand down.

(Juror leaves box)

CLERK: Ng Kwok Man.

20 CLERK: Accused, have you any objection to Mr.
Ng?

BOTH ACCUSED: No objection, sir.

JUROR: (Mr. Ng) My Lord, the same thing happened
to me. I understand this is a murder case.
I am against any killing of mankind and any
sentence of death.

COURT: You may stand down, sir.

(Juror leaves box)

CLERK: Fung Fa Lung.

CLERK: Accused, have you any objection to Mr. Fung?

30 BOTH ACCUSED: No objection, sir.

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(USHER swears or affirms latest Juror)

COURT: Thank you, sir.

MRS. LAI: I'm sorry, sir, I don't wish to be
a Juror in this murder case.

COURT: Do you have scruples against the sentence
of death, madam?

MRS. LAI: No, sir.

COURT: You do not. Then what is your objection
to sitting on the Jury?

MRS. LAI: I do not wish to serve.

10

COURT: That, I'm afraid, is not sufficient grounds
for my releasing you from Jury Service. There
are very few who wish to serve on Juries, and
if all those who wished to be released were
released we should have no Juries at all. If
you have no other ground, madam, I'm afraid I
must require you to be sworn and serve.

(Mrs. Lai sworn)

COURT: I'm sorry I could not hear that.
Was that correct - I didn't hear the closing
words?

20

MR. MACDOUGALL: I think, my Lord, the order
(wording) was correct. "Evidence" was the last
word.

USHER: Jurors sworn and affirmed, my Lord.

CLERK: Members of the Jury, will you please
choose your Foreman?

COURT: This is not an arduous task, members of the
Jury. All that is required is that one of your
number should act as spokesman for all of you
and formally to return a verdict.

30

FOREMAN is Mr. J.B. Donnelly.

(Final Jury empanelled) 1. Law Kan Gee
2. Law Khin Ling
3. Alfred Norman Richards

4. Joseph Burton Donnally (foreman)
5. Mrs. Lucy Lai
6. Li Chung Long
7. Fung Fa Lung

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10

CLERK: Jurors-in-waiting, you are at liberty to leave the Court now. Will you please return to No. 2 Court on the ground floor on the 3rd of May, 1965 at 10 o'clock. Please return to No. 2 Court on the ground floor on the 3rd of May at 10 o'clock.

COURT: That, of course, includes those who have been released from serving as Jurors in the present case.

...
Yes?

MR. GOULARTE: Do we have to come back?

COURT: Yes, if you please, sir.

20

CLERK: Members of the Jury, the accused, Mawaz Khan alias Fazal Karim, and Ananat Khan, are charged with the offence of murder. The particulars of offence are that these two accused, Mawaz Khan alias Fazal Karim, and Ananat Khan, on the 10th day of February, 1965, in this Colony, murdered Said Afzal. To this indictment they have pleaded Not Guilty, and it is therefore your charge to say, having heard the evidence, whether they be guilty or not guilty.

30

COURT: It is not necessary that the opening of the Crown shall be recorded by the shorthand writer.

MR. MACDOUGALL: If it please you my Lord, members of the Jury.... I have every confidence that you will do this.

COURT: Do you wish, gentlemen, to have an adjournment? It is the common practice in these Courts to have a mid-morning adjournment. I don't know if Counsel require it?

MR. MACDOUGALL: I would be most grateful, my Lord.

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COURT: 10 to 12? -

Members of the Jury, I should perhaps warn you - it is perfectly proper for you to discuss this case as we go along amongst yourselves, but it would be most improper for you to discuss it with anybody else. If it were to be brought to my notice that you had done so of course it might have very serious consequences upon this trial. So you will bear that in mind.

10

11.42 Court adjourns.

(26th April, 1965).

12.04 p.m. Court resumes

Two accused present. Appearances as before.
Jurors answer to their names.

COURT: Yes, I believe, Members of the Jury,
You wish to address me?

MR. RICHARDS (Juror): I should like to say that the Prosecution has brought out the fact that the accused are employees of the Mandarin Hotel. The Mandarin Hotel is a member of the International - Intercontinental Hotels Association, which is a subsidiary of Pan American World Airways by which I am being employed. Therefore my presence might be prejudicial to them or to myself, and may I ask for your permission to stand down? 20

COURT: Do I understand that you have had no personal contact with them at all?

MR. RICHARDS: No, sir.

30

COURT: Do you wish to pursue the matter further, Mr. Mayne?

MR. MAYNE: Well, it is a difficult situation, my Lord. The juror has very fairly pointed out to the Court that he feels that his position, vis-a-vis the employers of the accused, might have an effect upon him. Of course he is the best judge of that. I am very grateful that he should have pointed this out at this stage.

It raises rather complex points of law, and I should like to - apart from going into these points of law - I should like to obtain the instructions of my clients on the matter. And I do express my gratitude to the juror concerned for bringing up this matter.

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COURT: It's very proper; he should have done it of course. You have no objection?

10 MR. MACDOUGALL: I have no objection.

COURT: To Mr. Mayne taking instructions in the matter?

MR. MACDOUGALL: Certainly.

20 COURT: As I say, it is very right that you have brought this matter to our attention, and I think it is perhaps not clear whether you ought to be discharged. But the proper course is for us to adjourn this matter until 2.30 so that counsel can consider the matter and take instructions. And we can then decide what has to be done. I am loath to proceed with a trial for murder with only six jurors, because if one more were to become ill or indisposed we should then have to start all over again. However, let's adjourn until 2.30 and we would then consider what has to be done.

12.08 p.m. Court adjourns.

2.30 p.m. Court resumes

30 Two accused present. Appearances as before. Jurors answer to their names.

COURT: Yes, Mr. Mayne?

MR MAYNE: May it please your Lordship. Since we last met I have had an opportunity of consulting with my clients in this matter, and my instructions are that under the circumstances as being described, they are quite happy for the trial to continue with Mr. Richards as a member of the Jury. They feel that they are quite

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happy that he can bring in a verdict according to his oath and conscience; in other words, they do not object to him at all.

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COURT: Thank you. In those circumstances I think we may properly proceed. Thank you for drawing our attention to the matter.

MR. MACDOUGALL: I call Ho Man Chor, police witness No. 2 on the depositions, my Lord - page 4.

Prosecution Evidence

NO. 3

10

HO MAN CHOR

No. 3

P.W.1 - HO Man Chor - Affirmed in Puntl.

Ho Man Chor Examination

Xn. BY MR. MACDOUGALL:

Q. Your full name is Ho Man Chor, and you are a surveying assistant employed at the Public Works Department? A. Yes.

Q. On the 1st of March this year did you attend at 36 B Kennedy Road? A. Yes, I did.

Q. Whilst you were there did you take certain measurements and make a plan?

A. Yes, I did. 20

Q. Of what did you make a plan?

A. Yes, I used tracing.

Q. But of what did you make a plan - the 4th floor and the ground floor?

A. Yes, I used ground floor as well as the 4th floor.

Q. Did you make 12 copies of this tracing? A. Yes.

Q. Would you examine that plan and see if you can identify the plan you made? (Plan handed to witness). A. Yes, correct. 30

Q. Are those the copies? A. Yes.

Q. Do you produce those in evidence?

A. Yes, I do.

COURT: Exhibit A.

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CLERK: Exhibit A, yes.

(Copies of the Plan distributed among
Counsel, Court and Jury).

Prosecution
Evidence

MR. MACDOUGALL: I have no further questions.

No. 3

COURT: Yes?

Ho Man Chor
Examination

MR. MAYNE: No cross-examination.

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(Continued)

COURT: Thank you. This witness may be
released.

10

Gentlemen, one of the difficulties I often
find when we have a jury trial in these
courts is that the jury have the utmost
difficulty in seeing the witness when
counsel are standing up by the Bar table.
I think it might be convenient if the
Bar table could be pulled back a little bit.

Do you have any objection to this?

MR. MACDOUGALL: No, my Lord.

MR. MAYNE: No, my Lord.

20

COURT: I see that the juror at the far end is
having difficulty in seeing the witness.
Would you like to move up to the back, sir?

JUROR: Yes, your Lordship.

COURT: Would you like to have the table go
back a little? It might also assist.

(Table moved back accordingly)

MR. MACDOUGALL: I call Leung Hang, police
witness No. 3, my Lord, on the depositions.

NO. 4

No. 4

30

LEUNG HANG

Leung Hang
Examination

P.W.2 - LEUNG Hang - Affirmed in Punti.

XN. BY MR. MACDOUGALL:

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Evidence

No. 4

Leung Hang
Examination
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(Continued)

Q. Your full name is Leung Hang and you are a police photographer attached to Police Headquarters? A. Yes.

Q. On the 11th of February this year approximately at 8.50 a.m. you attended Kennedy Road No. 36B. A. Yes, I did.

Q. Under the direction of Inspector Chapman did you take some photographs? A. Yes.

Q. Do you identify these as the photographs which you took of the ground floor (Handed to witness)?

10

A. Yes, these are the photographs.

CLERK: Exhibit B.

Q. Do you produce them in evidence? A. Yes, I do.

CLERK: Exhibit B.

Q. Did you also take some photographs on the 4th floor? A. Yes, I did.

Q. Did those photographs depict the scenes which you were instructed to photograph?

A. Yes, they are.

20

COURT: Exhibit C.

Q. Do you produce this as an exhibit? A. Yes, I do.

Q. On the 12th of February this year at 10 a.m. did you attend the Victoria Public Mortuary and under the direction of Dr. Tong take some photographs? A. Yes, I did.

Q. Do you identify these photographs as depicting the scenes which you were instructed to photograph?

A. Yes, they are (Indicates).

30

COURT: Exhibit D.

CLERK: Exhibit D, yes.

Q. Do you produce them in evidence? A. Yes, I do.

Q. On the 3rd of March this year did you accompany

Inspector Chapman to Harcourt Road and take further photographs?

A. On the 3rd of March?

Q. 3rd of March. A. Yes.

Q. Do you identify these photographs as depicting the scenes which you were instructed to photograph?

A. Yes, they are.

10 COURT: Exhibit E.

CLERK: Exhibit E.

Q. Do you produce them in evidence?

A. Yes I do.

Q. On the 11th of February this year did you attend at Kennedy Road No. 36B, 4th floor and take photographs of heel prints at the direction of Inspector Koh?

A. Yes, I did.

20 Q. Do you identify these photographs as depicting the scenes which you were instructed to photograph? Select only those which relate to the heel prints only.

A. These are the photographs.

Q. And do you produce them in evidence?

A. Yes, I do.

COURT: Exhibit F.

CLERK: Exhibit F, yes.

A. These are also the photographs of the heels.

30 MR. MACDOUGALL: My Lord, some confusion might arise because these are the photographs which have been arranged in group by an identification expert. So perhaps it might be better if I took the witness through the whole of these and asked him to produce them.

COURT: Very well.

Q. On the 25th of February this year at the direction of Inspector Griggs did you

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Prosecution Evidence

No. 4

Leung Hang Examination
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(Continued)

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Leung Hang
Examination
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photograph the heels and soles of some shoes? A. Yes.

Q. Which are the photographs relating to the heels and soles of the shoes?

A. These photographs are relating to two soles; these photographs relate to one sole; and these photographs are relating to soles and heels together.

Q. Do you identify these shoes as being the shoes you photographed? A. Yes.

10

Q. Now, which photographs relate to those shoes?

A. These photographs are the photographs of these two shoes.

COURT: These must be marked so that we can identify them for the record. The whole of these are going to be exhibit F, and start numbering those which are being handed in, would you?

CLERK: Yes, my Lord.

COURT: You can number those as F1, whatever they are.

20

CLERK: Yes, my Lord.

COURT: Yes. There is only one sheet in a set. That is exhibit F1.

CLERK: F.1, yes.

MR. MAYNE: Sorry, my Lord, I was rather confused by this evidence. The witness said they related to two soles. What did he mean by that? Which of the various soles?

COURT: It was the last lot put in. And he says these are the ones which relate to these shoes which have been shown to the witness.

30

MR. MAYNE: Is this F.1?

COURT: F.1.

MR. MAYNE: Thank you very much.

COURT: And these shoes must be marked for identification.

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MR. MAYNE: Yes.

CLERK: Identification No. 1.

Prosecution
Evidence

Q. Do you identify these shoes as being other shoes which you photographed?

No. 4

A. These photographs are relating to these two shoes.

Leung Hang
Examination
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(Continued)

10 COURT: The shoes should be marked for identification as No. 2, and the picture as F.2.

CLERK: F.2.

Q. Do you identify this as another shoe which you photographed?

A. These photographs are relating to this shoe.

COURT: Marked for identification No. 3 - the shoe; and F3 - the photographs.

Q. Did you take a photograph of the inked impression of a heel print of this shoe?

20 CLERK: Identification No. 3, sir.

A. Yes.

MR. MACDOUGALL: That's on the right-hand side of F3, my Lord.

A. Yes.

MR. MACDOUGALL: I propose to have these photographs produced by Inspector Griggs, my Lord.

Q. On the 25th of February, 1965 at 15.50 hours did you speak to Inspector Chapman?

30 A. Yes, I did.

Q. Did you receive a negative of a photograph?

A. Yes.

Q. Do you identify this as the negative which he handed to you? A. Yes.

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No. 4

Leung Hang
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Q. Did you subsequently make 9 developments of that negative? A. Yes, I did.

Q. Do you identify these as the developments you made of the negative? A. Yes.

Q. And you produce those negatives?

A. Yes, I do.

COURT: The negative is going to be proved, I take it?

MR. MACDOUGALL: That is so, my Lord. The photographer who actually took the negative will be called later to give evidence in that regard. 10

COURT: Would you mark the negative and the four prints as No. 5?

CLERK: The negative is identification No. 4 and the positive is identification No. 5.

Q. These photographs which are pasted onto the white sheets, did you hand those photographs and the copies thereof to Inspector Griggs?

A. Yes. 20

MR. MACDOUGALL: My Lord, just to obviate any confusion which might arise, the negative will subsequently be proved by the witness, but the photographs which have been made have been produced.

COURT: I appreciate that, but I don't think they should go in now. That's why I suggested that they should be marked as No. 5. You are not going to ask this witness further questions on these other pictures, are you? 30

MR. MACDOUGALL: I thought they have been produced.

COURT: They have been produced, but we don't know what they have been taken of.

MR. MACDOUGALL: I thought I have asked him about that, my Lord. Could I examine those? (Handed to Counsel).

Q. Do you identify this shoe as being a shoe which you photographed?

CLERK: Identification No. 2, sir.

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A. Yes.

MR. MAYNE: I'm very sorry. I can't hear
a word of what this witness speaks.

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COURT: Could you speak up please?

No. 4

A. This shoe is one of the shoes, of the
other two shoes. On this particular shoe
I made extra 12 copies more out of that
copy.

Leung Hang
Examination
26th April 1965
(Continued)

10 Q. Did you also take a photograph of that
inked print of that shoe?

A. Yes, I do.

Q. Do you identify that as the inked print?

A. Yes.

COURT: Exhibit F.4.

CLERK: F.4.

MR. MACDOUGALL: As I previously said, all
these photographs which are pasted will be
subsequently produced by Inspector Griggs.
I have no further questions.

20

MR. MAYNE: May it please my Lord. I should
like to have leave to postpone my cross-
examination of this witness for two reasons.
First of these is that my instructing
solicitor wrote asking for copies of the
photographs for the purpose of this trial,
to be used during the course of this trial.
We have not received them until this time.
They are photograph F and so on which have
never been produced. I certainly think
that was due to the oversight of the Crown.

30

MR. MACDOUGALL: I don't think it is quite so.
The Crown has received a letter from the
instructing solicitor asking for two copies
of the depositions.

COURT: Copies of what?

MR. MACDOUGALL: Of depositions. Subsequently the

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No. 4

Leung Hang Examination 26th April 1965 (Continued)

solicitors replied that an application for depositions must be made to the Registrar of the Supreme Court. There was no information to hand in regard to the photographs. If in fact a request had been made certainly they would be made available.

MR. MAYNE: Perhaps I have misunderstood that point. There isn't reference to any of these photographs, exhibit F, in the depositions of this witness; there is reference in the deposition of No. 10, Mr. Griggs. But until Mr. Griggs gives evidence I should like to ask for leave to postpone my cross-examination of this witness in view of all these circumstances. It was Mr. Griggs in the lower court who actually produced these photographs.

10

COURT: I think you are entitled to reserve your cross-examination if you so wish.

MR. MAYNE: I am much obliged.

COURT: Very well, sir. You will be required again. May we release this witness temporarily upon his undertaking to return on receiving notice from telephone?

20

MR. MACDOUGALL: Yes, I have absolutely no objection. I call Poon Ngok-ming, police witness No. 4 of the depositions.

(Witness temporarily released)

No. 5

Poon Ngok-ming Examination

NO. 5

POON NGOK-MING

P.W. 3 - POON Ngok-ming - Affirmed in Punt.

30

Xn. BY MR. MACDOUGALL:

Q. Your full name is Poon Ngok-ming, and you are a police photographer attached to the Police Headquarters. A. Yes.

Q. On the 13th of February this year at 1415 hours under the direction of Dr. Tong you took certain photographs? A. Correct.

Q. Do you identify those photographs as depicting the scenes which you were instructed to photograph?

A. Correct, they are.

Q. Do you produce those photographs in evidence?

A. Yes, I do.

CLERK: Exhibit G.

COURT: Exhibit G.

10 MR. MACDOUGALL: I have no further questions, my Lord.

MR. MAYNE: I have no cross-examination, my Lord.

COURT: Thank you. You may go, sir.

MR. MACDOUGALL: I call Ng Kin-hung, police witness No. 7, on page 7 of the depositions, my Lord.

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No. 5

Poon Ngok-ning Examination 26th April 1965 (Continued)

NO. 5(a)

NG KIN-HUNG

No. 5(a)

Ng Kin-hung Examination 26th April 1965

20 P.W.4 - NG Kin-hung - Affirmed in Punt.

XN. BY MR. MACDOUGALL:

Q. Your full name is Ng Kin-hung, and you are D.P.C. 517 attached to C.I.D. Central?

A. Yes.

Q. On the 11th of February this year did you attend at 36B, Kennedy Road, 4th floor? A. Yes.

30 Q. Do you identify these photographs as depicting the scene which you saw on the 4th floor? A. Yes.

COURT: Which photographs are you looking at, sir?

INTERPRETER: C10 and C11.

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No. 5(a)

Ng Kin-hung
Examination
26th April 1965
(Continued)

A. Yes.

Q. Answer this question - yest or no: did you receive any instructions? A. Yes.

Q. As a result of these instructions what did you do?

A. At 11.25 a.m. I escorted the dead body to the public mortuary.

Q. The dead body being the body which you identified in that photograph? A. Yes.

Q. And on the 12th of February what did you do in relation to that dead body? 10

A. Yes, on the 12th of February at 1100 hours I took off the clothings, shoes, socks of the dead body in the public mortuary and took them back to the police station, to the Central Police Station.

Q. Was any one present at the time?

A. Dr. Tong was present.

Q. Do you identify these as the itens of clothing which you took from the deceased? A. Yes. 20

COURT: Marked for identification as --

CLERK: No. 6.

Q. And you identify this likewise?

A. Yes.

COURT: Is this a part of the clothing?

MR. MACDOUGALL: Yes.

COURT: All should go in as exhibit No. 6.

MR. MACDOUGALL: All right.

Q. And is this the remaining part of the clothing which you took from the deceased? 30

A. Yes, and one pair of shoes.

Q. Can you identify them - can you see if they are the shoes? A. Yes.

INTERPRETER: Identification No. 1, sir.

COURT: All No. 1?

INTERPRETER: Yes, my Lord.

COURT: Very well. Would you mark them as identification No. 6 and No. 1.

Q. And you took all these items of clothing back to the Central Police Station and handed them back to Inspector Chapman at 1400 hours on the 14th? A. Yes.

MR. MACDOUGALL: I have no further questions.

10 MR MAYNE: No cross-examination, my Lord.

COURT: This witness may be released. Thank you.

MR. MACDOUGALL: I call Inspector Koh, your Lordship. Police Witness No. 5, at page 6 of the depositions.

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No. 5(a)

Ng Kin-hung Examination 26th April 1965 (Continued)

NO. 6

KOH AH-CHEONG

P.W. 5 - KOH Ah-cheong - Affirmed in English

No. 6

Koh Ah-cheong Examination

XN. BY MR. MACDOUGALL:

20 Q. Your full name is Koh Ah-cheong, and you are a senior inspector attached to the Identification Bureau, Police Headquarters?
A. Yes, my Lord.

Q. On the 11th of February this year did you attend at 36B Kennedy Road, 4th floor?
A. I did, my Lord.

30 Q. Would you tell his Lordship and Members of the Jury what you saw there?
A. Well in the premises on the floor I saw traces of foot marks - shoe marks rather.

(Photographs, exhibit C, handed to witness).

Q. Which photograph are you looking at?
A. Well, the one I am looking at is C8.

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No. 6

Koh Ah-cheong
Examination
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(Continued)

Q. And what do you see there?

A. I saw a foot mark there.

Q. Where?

A. Shall I mark it down, my Lord.

Q. Just point it out.

A. (Witness indicates).

Q. Yes. And did you see any other foot marks?

A. Yes. In the photograph shown at C6 I also saw two shoe marks. 10

Q. Would you point out where you saw the shoe marks?

A. One of the foot marks (Indicates) - that is the one.

Q. How many did you see there.

A. I also saw another shoe mark (Indicates) here.

Q. At your instructions did police photographer Leung Hang take some photographs?

A. Yes, under my instruction Leung Hang took photographs of these three shoe marks. 20

Q. Do you identify the central photograph of these sets - F2, 3 and 4 - the central photograph in each one?

A. This is one of the shoe marks.

USHER: F.3.

COURT: The middle of F2?

A. The middle one.

COURT: That is F3. Yes.
Now would you look at F2?

A. This is another shoe mark. 30

COURT: Yes. and F4?

A. This is also another one shoe mark.

MR. MACDOUGALL: I have no further questions, my Lord.

MR. MAYNE: No cross-examination, my Lord.

COURT: Thank you. We need not detain you further, Mr. Koh. Thank you.

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MR. MACDOUGALL: My Lord, I wish to apply for a brief adjournment as my next witness will be Inspector Webster and he will be producing certain items. At the present time we are unable to find them. We have a table here.

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No. 6

COURT: How long do you think it will take?

Koh Ah-cheong
Examination
26th April 1965
(Continued)

10 MR. MACDOUGALL: Five minutes will be adequate.

COURT: Any objection?

MR. MAYNE: I have no objection, my Lord.

COURT: While perhaps that is being done the photographs could also be arranged. I have asked in the past that the photographs which are being exhibited should be tagged at the top left-hand corner, so that everybody knows which way to look at the photographs. Some of these are obviously not so attached.

20

MR. MACDOUGALL: The photographs, I understand, my Lord, were supposed to be numbered in the committal proceedings. If your Lordship would look --

COURT: They have been numbered, but they are not tagged so that we cannot understand them. Some of them, however, are tagged, but the first one is obviously not correctly tagged.

MR. MACDOUGALL: Yes, my Lord.

30 3.28 p.m. Court adjourns

3.40 p.m. Court resumes

Both accused present. Appearances as before.
Jurors answer to their names.

COURT: Yes, Mr. Macdougall.

MR. MACDOUGALL: I call Inspector Webster, police witness 1 on the depositions.

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NO. 7
BRIAN WEBSTER

Prosecution
Evidence

P.W.6 - Brian WEBSTER. Sworn.

XN. BY MR MACDOUGALL:

No. 7

Brian Webster
Examination
26th April 1965

Your full name is Brian Webster and you are a Detective Inspector of Police attached to Central Division?

A. Yes, my Lord.

Q. And you are the officer in charge of C.I.D. Central?

10

A. That is correct.

Q. On the 11th February this year did you take charge of a murder case?

A. I did, my Lord.

Q. And did you go to 36B Kennedy Road, 4th floor?

A. I did, my Lord.

Q. What did you see on the 4th Floor of Kennedy Road?

A. On the 4th floor of 36B Kennedy Road I saw the apparently lifeless body of a Pakistani male. I refer to Exhibit C8, my Lord, which depicts the body as I saw it. C8, C9 and C10. I saw that the body had severe mutilations. Also near the body I saw several heel prints in the blood. In the corridor of the flat, as depicted at Exhibit C3, C4, I saw a brown blanket and a white metal finger ring by the side of the blanket. This metal ring is shown in C4, and a close-up is shown in C5, my Lord. 20

Q. Do you identify that as the blanket which you saw? 30

A. I now identify this blanket as the blanket I saw in the corridor, my Lord.

CLERK: Identification No. 7 is the blanket.

A. I now identify this finger ring as being the white metal finger ring depicted in the photograph C5. I now identify the ring.

CLERK: Identification No. 8.

Q. Would you examine the plan that was produced in evidence, Inspector? Would you indicate by reference to that plan where you found the body?

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A. Looking at the plan - the plan of the 4th Floor is the centre diagram of the three - the location of the body was situated just in front of the part which is marked "flower box" with its head, looking at the map, towards the left hand side and the feet towards the right hand side. The head and feet (indicating).

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No. 7

Brian Webster
Examination
26th April 1965
(Continued)

10

Q. And where did you find the blanket and the finger ring?

A. The blanket and finger ring were located at the spot which I am just indicating now, which is the part of the lobby on the left and a bathroom on the right. There is a small corridor as depicted in the photograph I have stated. As can be seen in the photograph C4, it is directly opposite to the door next to the living and dining room - directly opposite.

20

Q. In which room, Inspector, did you see the heel prints?

A. The heel prints were found near the body in the living and dining room, on the northern aspect of that room, as I am now showing. The heel prints were in that area.

30

Q. Did you examine any of the doors of the flat?

A. I did, sir.

Q. And what did you find there?

A. On the main door of the flat there was a stain which appeared to be blood. This is depicted in photograph C1, which is the main door of the flat looking from the living and dining room down towards the bathroom - one of the bathrooms of the flat - in the corridor where the blanket and finger ring were found. That is the main door of the flat. C2 depicts the inside of the main door of the flat. The stains can be seen in the upper part of C1 on the door - what appeared to be bloodstains.

40

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No. 7

Brian Webster
Examination
26th April 1965
(Continued)

- Q. And C2, Inspector?
A. And also C2 with what appears to be a drip of blood down the door. On the wall of the living and dining room, as depicted at both C6 and C7, was what appeared to be a hand smear and what appeared to be blood. I will now point out on C6, my Lord, and it appears on the same corner on C7 on the left hand side of the photograph.
- Q. Did you examine the floor of the passageway?
A. I did, my Lord. 10
- Q. What did you see there?
A. On the floor of the passageway were splatterings of what appeared to be blood. This is depicted in C4, the dark marks on the floor. In the foreground, the centre and the background is what appeared to be blood. The foreground, centre and background.
- Q. And what about C3 and C5, Inspector?
A. C3 shows the background of C4 which is by the front door, the blood in between there and the front door, which I am now circling. C5, you can see a slight spot of what appeared to be blood near the blanket and the white metal finger ring. 20
- Q. And did you go to the ground floor and make an examination of the surroundings there?
A. I did, my Lord.
- Q. What did you find?
A. On the ground floor of 36B Kennedy Road in the west side garage I saw what appeared to be blood on the wall of this garage. The garage, looking from the roadway, is shown at B5. From that photograph you are able to see a tap on the right hand side of the photograph in the centre of the wall. It is on the wall of this garage. 30
- Q. What did you see there, Inspector?
A. On the wall of this garage around the tap I saw what appeared to be blood, and this scene is depicted at B6. The darker splattering marks around the tap in the area which I am now showing appeared to be blood. From this tap ran a hose which led into an open drain. The end of this hose and the open drain are depicted at B7. Inside 40

the open drain was one handkerchief soaked with what appeared to be blood.

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Q. Do you identify this as the handkerchief?

A. This is the handkerchief which I saw in the drain.

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CLERK: Identification No. 9.

No. 7

10 A. That handkerchief was in the drain at that location. Also shown in the photograph by the side of a piece of newspaper was a piece of towelling, which also appeared to be soaked in blood.

Brian Webster
Examination
26th April 1965
(Continued)

Q. Do you identify this as the piece of towelling which you have just referred to?

A. I now identify this as the piece of towelling.

CLERK: Identification No. 10.

20 A. From the west side garage to the front entrance of the foyer, which is shown at B8 and B9, at B8 you can see the relation of the foyer to the tap in the west side garage, this being the foyer. In B9, which is a close-up of the foyer floor, you can see spots of what appeared to be blood leading from near the edge step to the main iron gateway. B10 shows the iron gateway leading into the flats, and there were smears at B10 where I am now depicting on the lock of the gate, what appeared to be blood, running at an angle across the edge of the gate. On B11, 30 which is a close-up of that same gate, the smears of what appeared to be blood can be seen clearly.

Q. Did you conduct an examination of the garage on the other side of the foyer?

40 A. Yes, my Lord. There is a garage on the eastern side of this building and this garage is shown generally at Exhibit B1. In this photograph can be seen a deck chair situated where I am now pointing, on which were two green and white sheets. On the deck chair there were spots of what appeared to be blood and also on the green and white sheets.

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No. 7

Brian Webster
Examination
26th April 1965
(Continued)

Q. Do you identify these as the deck chair and green and white sheets you have just referred to?

A. I identify these as the two green and white sheets which were on the deck chair.

CLERK: No. 11.

COURT: And that is the chair?

A. And I identify that as the deck chair.

CLERK: 12.

A. Further inside this garage as depicted at B2, and a continuation of B2, B3, can be seen further spots of what appeared to be blood spattered near the pipes and on the pipes in B2. This is more clearly shown in B3, and at B4, which was at the western edge of the building and at the rear of the garage, is shown a knife on a wooden block. 10

Q. Do you identify this as the knife, Inspector?

A. I identify this as the knife and the wooden block. 20

CLERK: Identification No. 13.

Q. Inspector, would you refer to the plan and indicate to the jury the layout of the ground floor and the positions in which you found these stains and objects?

A. I refer to the plan, the left hand side diagram of which depicts the ground floor and the entrance hall. The long rectangular space is the west side garage. Depicted on the map is a "gully trap". That is the drain to which I referred, and the tap was in about this location where I am now pointing. The location of the articles, the handkerchief and towelling, in relation to the drain can be seen in the photograph. The steel main gate is shown as "steel main gate" in the diagram below "entrance hall". This area here is what I referred to as the foyer. This area here is the eastern side garage. The deck chair was located by this pillar facing in that direction. The pipes I referred to were located between that pillar and that pillar lying along there. And the wooden block on which the knife I just identified 30 40

was resting was located in this corner.

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Q. Would you briefly indicate where you saw the blood, or what appeared to be bloodstains, Inspector?

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10

A. The locations where I saw what appeared to be bloodstains was on the inside of this wall here, in the foyer there leading at an angle towards the main gate, also further bloodstains inside the entrance hall, the area marked "entrance hall", leading towards the stairs, which are there. What appeared to be the blood-stained deck chair and the two green sheets on the deck chair were located there, the bloodstains spattered in this area here and on the pipes located there. That is all.

No. 7

Brian Webster
Examination
26th April 1965
(Continued)

Q. Did you inspect the balustrading of the stairs on the 4th Floor?

A. I did, my Lord.

20

Q. What did you see there?

A. On the balustrade of the stairs leading to the 4th floor outside the flat were what appeared to be smears of blood.

Q. Will you indicate that on the plan for the benefit of the jury?

30

A. The balustrade is shown on the map, the centre plan, and it says "DN", which means down, and the smears were on the edge of the balustrade where I am now pointing. The balustrade at that point came down from upstairs and did a U-turn downwards, and it was on that U-turn bend outside the front door.

COURT: Could I be quite clear about the level of those smears? Was it at the level of the landing or above the landing or below the landing?

A. The landing and below, my Lord.

40

Q. Would you tell his Lordship and the jury what you did on the 12th February this year at 11.30 a.m.?

A. On the 12th February this year at 11.30 a.m. I, together with Inspector Rab Nawaz, went to the Mandarin Hotel, where I there saw a Mr. Wilson who is the chief security officer of that hotel.

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Brian Webster
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(Continued)

In his company I went to the basement of that hotel to the security guards' quarters. Inside the quarters, which was a sleeping room for all the security guards of the hotel, I saw a man whom I now identify as the 1st accused.

Q. Would you please point him out?

A. The man on the left next to the warder, now standing up. I saw that he had injuries to both his hands. I showed him my warrant card and using Inspector Nawaz as interpreter asked him how he received those injuries. He made a reply in a dialect with which I am not familiar but which was translated to me by Inspector Nawaz as being "I had a fight with a friend. We were drunk. He had a knife. When I tried to take it away from him he cut my hand." I then asked which friend, and he indicated the 2nd accused, whom I now identify as standing up. I identified myself to the 2nd accused, and again I saw that the 2nd accused had an injury to his left little finger. I asked the 2nd accused how he received the injury and he stated "I had a fight with a friend," I asked him which friend and he said "Mawas Khan". I then asked both of them if they had any objections to returning to Central Police Station with me for further enquiries. Both replied that they had no objections. I then asked them if they had any objections if all their property was further examined. They once again stated that they had no objections. I then instructed them to gather up all their property. By this stage Inspector Chapman had arrived together with an Inspector Qureshi. The accused both changed their clothes and gathered together some suitcases. I then asked them "Is this all the property that you have?", to which they both replied "yes". I then gave certain instructions to Inspector Chapman.

Q. What was Mr. Wilson doing all the time that this was going on?

A. Mr. Wilson was present within the sleeping quarters whilst this was going on.

Q. What did you do then?

A. I returned to Central Police Station.

Q. Prior to returning to Central Police Station.

A. Prior to returning to Central Police Station I

saw another person in the hotel and had a conversation with that man. I then returned to Central Police Station together with the 1st accused and Inspector Nawaz.

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Brian Webster
Examination
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(Continued)

Q. Did you make any examination of any place in the hotel?

10 A. Yes, my Lord, we did. I made an examination of the immediately surrounding area surrounding the quarters in the basement of the hotel, which I found to be some form of engineering plant and also some form of store. I did not find anything. On arriving at Central Police Station I went to my office, which is situated on the 1st floor from Central Police Station compound, and there through Inspector
20 Nawaz I spoke to the defendant, the 1st accused. I asked the 1st accused whether he had any objection to giving me a statement. He stated that he had no objection. I then recorded a statement from the 1st accused using Inspector Nawaz as interpreter in a question and answer form.

30 MR. MAYNE: May it please your Lordship. I think this may be a convenient time to tell your Lordship that I wish to make a legal objection to the admissibility of this particular document. I think the objection is one which must be heard in the absence of the jury.

COURT: Yes, very well. How long do you think this is going to take?

40 MR. MAYNE: It won't take very long, my Lord, but I think it would certainly be safe to release the jury for to-day. I know that nobody wants to keep the jury hanging around unnecessarily. I would suggest, with respect, my Lord, that possibly to be quite sure we are ready for them, if they will return at 11 o'clock on Wednesday.

COURT: Do you have any comment to make as to the time it will be?

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Brian Webster
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(Continued)

MR. MACDOUGALL: My Lord, I am not perfectly certain what my learned friend intends to do, but there are quite a few witnesses and if perhaps I could speak to him a moment we might be able to clarify this between us.

COURT: Yes, certainly.

MR. MACDOUGALL: My Lord, we have agreed that it would perhaps be preferable if the jury return on Thursday in view of the number of witnesses involved. We anticipate there will be five witnesses, my Lord, and as it is almost time to rise now we have only one day to complete the trial within a trial.

10

COURT: Well I think I must be guided by you gentlemen, but I am reluctant to waste time, not only the time of the court but also, of course, of the jurors. Do you think it would perhaps be better to ask the jurors to return at 2.30 to at least see if we can finish in the morning?

20

MR. MACDOUGALL: Perhaps, my Lord, that would be a desirable step. I think the proceedings will take the whole day, but in order not to waste too much time perhaps it would be advisable to have them return at 2.30 on Thursday.

COURT: Members of the jury, I think it is in your interests that the whole case should finish without delay. I think if you return at 2.30 on Wednesday afternoon, tomorrow being a public holiday, we may be able to release you for the rest of Wednesday, but it might save time in the long run if you will return at 2.30 on Wednesday. If you like to withdraw now we will continue with the legal submissions.

30

4.19 p.m. Jury leave Court

COURT: Yes, Mr. Macdougall.

Q. Would you please continue with your evidence, Inspector?

40

A. I there recorded a statement in question and

answer form from the 1st accused using Inspector Nawaz as an interpreter. I wrote the question down, which I then repeated, and then wrote down the answer I received from Inspector Nawaz.

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No. 7

Brian Webster
Examination
26th April 1965
(Continued)

Q. Is this the statement in question and answer form to which you have just referred?

A. This is the statement, my Lord.

10 COURT: Marked for identification No. 14.

MR. MACDOUGALL: Perhaps, my Lord, as there was an interpreter present it would be better if the interpreter provisionally produces the statement, rather than the Inspector who merely identifies it.

COURT: Oh yes.

Q. Inspector, would you read the questions and answers in this statement?

20 A. Statement of the 1st accused, Mawaz Khan, taken by myself at 1225 hours on the 12th February:-

"States:-

Told I am making enquiries into the murder of a Pakistani watchman called SAID AFZAL.

Q. You have received certain injuries on your hands and forehead. Can you tell me how you received those injuries?

30 A. On my forehead there is a boil, it is not an injury. With regard to my hands and these injuries I received these on 10.2.65 at about 2100 hours when I quarrelled with another friend ANANAT KHAN near the Fire Brigade at the old dockyard building. We were both drunk, and I was holding a bottle of beer. Ananat Khan asked me to give him the bottle of beer. As
40 he was drunk he started trouble with me, and attacked me with a small knife. As a result, I received

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(Continued)

injuries to my hands. I hit him back with my fist and bottle and I think he received a cut on his finger. Then we sobered up, and realised that we had done something wrong, and I told him that I was on sick leave that night and that he was on the night shift so we should settle the matter between ourselves without bringing it the notice of the No. 1 because if he came to know we had been drinking and fighting he probably would dismiss us and we would lose our job. We settled it between ourselves and we went back to the Mandarin Hotel. Up till now we never told anyone at all. I have been hiding my injured hand with a towel. No one had asked me about the injury so I think no one has noticed. That night I stick adhesive tape over the injury, and went to bed, and the following morning I went to see a doctor in Wanchai at the Hong Kong Laboratory in Hennessy Road, 5/F1. That's all.

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Q. Where were you all day and the evening of the 10th February, 1965, and who did you see? Also who were you with at various times?

A. At about 11.00 hours on the morning of the 10th February, 1965 I went to see the hotel doctor about the boil on my left forehead. At about 12.00 hours I went back to my room at the Mandarin Hotel and had my midday meal. After my meal I lay on my bed reading, also in the room sleeping were KHAN BAZ, DILBAR KHAN, ZEB JAMAL KHAN, I remember only these three, they were all asleep. I went asleep, and I stayed in that room till about 18.00 hours when Amanat Khan came to me and ask me to go out for a walk. We left the hotel at about 19.00 hours and boarded a tram at the tram stop at Des Voeux Road Central opposite the Asia Bank. We travelled third class in the tram, and went in an easterly

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direction. We got off the tran near the Southern Playground I do not know the exact location. We then walked to the Ocean Bar. Outside the bar was a Chinese fat man. We went into the bar, and sat at the second table behind the juke box. There were many other people in the bar but we were the only two Pakistani. We entered the bar at about 19.30 hours. I do not know how long we stayed there but the bill we finally paid amounted to \$25. This bill was for whisky which both of us drank. Before we left the bar I bought one small bottle of San Miguel beer, and I carried it out of the bar with me.

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Brian Webster
Examination
26th April 1965
(Continued)

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We then walked back to the Mandarin Hotel. When we came out of the bar and walked along the road leading to the waterfront. I am not sure which side of the road we walked but I think it was on the right hand side pavement. When we reached the seafront road we crossed over the road, and walked along the left side of the road slowly at a normal speed towards the Mandarin Hotel. I carried the bottle of beer which was unopened. We walked along the road, and when we reached opposite the dockyard, and where the Italian Exhibition had been before, Amanat Khan asked me to give him the bottle of beer to drink. I refused. He then tried to take the bottle of beer which I was carrying in my right hand away from me by force. At the same time he took a knife from one of his pockets, and tried to attack me. As he attacked me I put up my hands and received injuries to my hands. I attempted to take the knife away from him, and got my fingers cut. I struck him on the right side of his face once with my right fist. The blow I gave him was quite hard. I

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Examination
26th April 1965
(Continued)

tried to hit him with the bottle but I cannot say whether I hit him or not. He was well drunk, and I was drunk. He then started to go away. I went up to him, and told him that even though I had cut my fingers with the knife we had better settle it between ourselves as if the No. 1 came to know we had been drinking and fighting he would probably beat us up, and take other actions besides as drinking wine is forbidden to us. He is a very strict man and does not like people to drink. We then walked back to the Mandarin Hotel and went into the hotel by the side entrance from Connaught Road Central. On our way in we passed FAKIR MOHAMMED at the Connaught Road side entrance, and then also MOHAMMED SHARIF at the Chater Road entrance. Fakir Mohammed did not talk to us but I exchanged greetings with Mohammed Sharif. As we went in I kept my left hand in left hand trouser pocket wrapped in a handkerchief and my right hand wrapped in toilet paper in my right hand trouser pocket. We then went downstairs to our room. Then I applied adhesive tape to my hand, and I went to bed. Amanat Khan went to duty. When I entered the room in the basement everyone was asleep. There were no persons awake, and I spoke to no one. Asleep in the room were ZIARAT KHAN, KHAN BAZ, SAJAWAL KHAN, there may have been others but I cannot remember.

Q. What happened to the bottle of beer?

A. I threw it away deliberately where we had the fight because the bottle got broken when I tried to hit Amanat Khan with it and it hit a wall at that place.

Q. What clothes were you wearing that night?

A. Same vest, same underpants, white shirt, dark grey trousers, same jacket as I am now wearing, these same socks and shoes and my wrist watch.

Q. Where is the handkerchief you used to bind your hand?

- | | | | |
|----|----|--|--|
| | A. | I threw it in the litter box at the Hotel the second floor at about 22.00 hours on the 10th February, 1965. | In the Supreme Court of Hong Kong |
| | Q. | Where is the remainder of the clothing that you state you were wearing? | Prosecution Evidence |
| | A. | At the hotel where I sleep. | No. 7 |
| 10 | Q. | Do you know a Pakistani by the name of SAID AFZAL was murdered? | Brian Webster
Examination
26th April 1965
(Continued) |
| | A. | Yes. | |
| | Q. | Did you know him? | |
| | A. | Yes. | |
| | Q. | Can you tell me what you know of him? | |
| 20 | A. | My village is HAIDER and his village was CHALARA and known as HAIDER CHALARA. There are in fact two separate villages about two furlongs apart. He used to be my class fellow in primary school of the Shadi Khan Middle School in Shadi Khan Village. We studied in the same class, the fourth class for one year. When we took the final exam. I passed and he failed. That is all I know about him. | |
| | Q. | When did you last see him in Hong Kong? | |
| 30 | A. | I last saw him on the 5th February, 1965 at about 19.00 hours at 119 Lockhart Road the day following the Eide Festival. I shook hands with him and we exchanged greetings. I stayed there until 21.00 hours when I left I did not see him there when I left. I have not seen him since that time at all. | |
| | Q. | To whom does this ring belong? | |
| 40 | A. | This is not my ring, I have never worn any kind of ring. I do not know whom it belongs to. I have never seen it before. | |

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Brian Webster
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(Continued)

- Q. You have shown me a bloodstain on your underpants. Can you fully explain this?
- A. Perhaps when I was taking off my clothes the night I received my injuries I touched my underpants.
- Q. Are you willing to give me all of your clothing for further examination?
- A. Yes, I am.
- Q. What clothing was Amanat Khan wearing on the evening of 10th Feb. 1965? 10
- A. I do not remember.
- Q. Have you ever been to 36B, Kennedy Road?
- A. I have never been to 36B Kennedy Road.
- Q. What shoes were you wearing on the evening of 10th Feb., 1965?
- A. This pair of black shoes.
- Q. When did you last wear your other pair of shoes the brown ones? 20
- A. On the 4th Feb., 1965.
- Q. Where do you keep your brown pair of shoes?
- A. Underneath my bed where I sleep.
- Q. When did you last see your brown pair of shoes?
- A. I last saw them on the 9th Feb., 1965 and then today. They were still there over my suitcase under my bed. The last time I saw my shoes they were on the suitcase. Today they were on the floor I do not know who put them there. 30

This statement has been read over to me in Urdu and is correct with the alterations that I have asked you to make and signed."

There are certain alterations on the statement which have been signed by the 1st accused.

- Q. Inspector, did you consider the 1st accused to be under arrest?
- A. No my Lord. 40

Q. Prior to taking this statement did you make any threats, promises or inducements to him?

A. No, my Lord.

Q. Did you offer him any physical violence?

A. No, my Lord.

MR. MACDOUGALL: My Lord, unless you wish I continue further on this evening, this may be a convenient moment to stop.

10 COURT: Very well. Then we will continue on Wednesday at 10 o'clock. Thank you.

4.32 p.m. Court adjourns.

NO. 8

PROCEEDINGS

28th April, 1965

10.00 a.m. Court resumes

Both Accused present. Appearances as before.
JURY ABSENT.

20 MR. MAYNE: May it please your Lordship - before I start my cross-examination of Mr. Webster, there is one matter which I should like to mention, arising out of a publication, both in the China Mail of last Monday evening and repeated in the South China Morning Post of yesterday morning - if I may hand up the passage to you, which I take exception to, which I think could have an effect on this case.

30 You will find in the front page article on the question of the jurors, which is not only inaccurate, but really bad taste in regard to the fact that this is a murder case and not a matter for frivolity, but the purpose of the things which I take particular exception to is what I am reported to have said, which is contained in the third paragraph of page 10. It comes after this passage here,

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Examination
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(Continued)

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(continued)

"The court adjourned while the judge and counsel discussed an objection raised by one of the jurors".

Next paragraph -

"Mr. A.N. Richards, manager of Pan American at Kai Tak airport told the court that the Mandarin Hotel was a member of the International Continental Hotel Association which was a subsidiary of Pan American."

10

Now the report goes on to say that at this stage I said to you:-

"that although Mr. Richards had had no personal contact with the defendants the employers of the defendants might have an affect on him".

In other words, the inference there is that I suggested to the court three things - (1) that Mr. Richards was a man who may or can be affected by the defendants' employers - which was never suggested or thought of - was never said - the only reference was to the matter of his employment.

20

The second matter is that there is an attack - an implied attack upon the employers of the Pan-American, International Continental Hotel and the Mandarin Hotel - which was completely unjustified, and which was never in my mind. And thirdly, in my view, there is a very serious and incorrect reporting of what I said.

30

COURT: I am sorry to interrupt, but am I concerned with all this? How does it affect the trial?

MR. MAYNE: I should like your Lordship's leave to let me correct this matter when the jury returns, because I think it can have an effect upon their minds, which I would like to remove.

40

COURT: Surely, Mr. Mayne, the jurors were present at the time when these events took place, the

jurors must know very well what happened, and if it has been inaccurately reported in one of the journals, then they must know if they saw that, that it was inaccurate.

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28th April 1965
(Continued)

10 MR. MAYNE: That is possible, my Lord, but not entirely certain, particularly with a case that may go on for a number of days - the memory of the jurors of what was said may be influenced - it may emerge that something they have read about the case - it may well be, if not now but later - that it will form as a fact that something inaccurate is made against the character of either Mr. Richards or the Mandarin Hotel. It also places a grave reflection upon myself, and I don't think, and indeed any member of the Bar, I don't think any person in my profession makes an
20 attack without very good reason, upon the character of a ...

COURT: The fact is, here reporting is not always, as in any part of the world, as accurate as one might hope, that we are often alleged to have said things which we certainly never said, and ought never to have said, but would have been grossly wrong to have said, nevertheless, it seems to me that we have to allow things to pass
30 without making too much of them, unless justice is not going to be done.

MR. MAYNE: That is what I am afraid of.

COURT: A personal attack upon you may be very unfortunate, grossly unjustified, and it may be that you have a remedy, but it does not seem to me that is a remedy which should be sought in this court at the present time.

40 MR. MAYNE: My Lord, I am not concerned with any personal attack on me as such on the current post or otherwise - the newspapers do not concern me at all. I firmly agree with your Lordship that inaccuracy in reporting is more real of Hong Kong than accuracy.

COURT: I did not say that.

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28th April 1965
(Continued)

MR. MAYNE: But it is my view - but what I am afraid of is that any reflection from what I am alleged to have said, which I did not say, may pass on to my clients - that is what I want to avoid, so I would with great respect stress to this court that the reported words that I am alleged to have said here, were never said - they were never used or directed to any person or thought of - that wouldn't be the last report of that nature - it is unheard of for any member of the Bar to make an unfounded attack on person or persons - I would like leave, in case there should be any confusion now or at any other stage of the trial as to what the position was with regard to Mr. Richards. I would like permission to clear up to the jury as I said earlier - having consulted with my clients, my clients are completely happy that Mr. Richards is in a position to, and will bring in a verdict in this case in accordance with his conscience and in accordance with his position.

10

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COURT: I think, Mr. Mayne, that the appropriate way of dealing with this matter, if you feel that it is necessary to deal with it, is that you should make such comment as you see fit when the time comes, if it does come for you to address the jury.

MR. MAYNE: Very well, my Lord, I shall do that - at this stage ..

30

COURT: I always allow counsel for the defence the greatest latitude, that I feel is consistent with my duty, in addressing the jury, and if you think that it is necessary or desirable to mention this matter, I shall not stop you. I don't think that it is necessary that we should depart from a generally accepted practice as to the conduct of the trial by allowing you to address the jury on this matter before the usual time.

40

MR. MAYNE: May it please your Lordship - arising out of your Lordship's remarks, I would make two things plain and clear - I am not asking for latitude - the pure purpose of my application is

to make sure that any feelings arising out of this mis-reporting will not prejudice my clients.

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COURT: Well, let's not argue about the meaning of the word latitude. I have said that I will allow you to address the jury upon this matter if you think it desirable.

No. 8

Proceedings
28th April 1965
(Continued)

10 MR. MAYNE: Very well, my Lord. Much obliged to your Lordship.

MR. MACDOUGALL: I recall Inspector Webster to the box.

NO. 9

BRIAN WEBSTER (resumed)

Prosecution
Evidence

No. 9

P.W.6 - Brian WEBSTER - On former oath.

Brian Webster
Examination
(resumed)

XN. BY MR. MACDOUGALL (Cont'd):

28th April 1965

Q. Prior to speaking to both of the accused how many people did you interview regarding this matter Inspector?
20 A. A considerable number, my Lord.

Q. Have you any idea roughly?
A. I have no idea of the exact number, my Lord - I would say certainly in excess of 40.

Q. Now after you have taken a statement from the 1st accused what did you then do?
A. I caused certain enquiries to be made at the Ocean Bar in Lockhart Road.

Q. And then what?
30 A. Subsequent to this I caused certain examinations to be made of the shoes of the 1st and 2nd accused. Subsequent to this examination and further enquiries at Police Headquarters I formally arrested the 1st accused at Central Police Station.

Q. Prior to this Inspector, did you go anywhere with the 1st accused?

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Evidence

No. 9

Brian Webster
Examination
(resumed)
28th April 1965
(Continued)

A. Yes, my Lord. After the taking of the statement from the 1st accused I accompanied him to Harcourt Road together with Inspector Nawaz, and whilst driving along Harcourt Road, slowly past Police Headquarters from east to west, I asked him to point out the exact location which he stated he had had the fight with the 2nd accused. At a point a little distance past the present Fire Brigade Vehicle Station in Harcourt Road, he stated that that was the spot - the location. We stopped the vehicle, we alighted. I asked him if he was sure that was the location and he stated, yes. He then pointed out the exact location - may I refer to exhibits - I now refer, my Lord, to Exhibit G.4 - the location pointed out by the 1st accused to myself where they had the fight was there (indicating on photograph).

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Q. Is that G or E Inspector?

COURT: Would you look at this, Mr. Lee and tell us.

CLERK: E.

A. I beg your pardon, my Lord - E.4, - I asked the 1st accused where the bottle had been broken and he pointed out the retaining wall in the centre of the roadway there. I myself searched an area approximately 20 yards either side of the spot stated by the 1st accused to have been the location where the bottle broke. I searched both the roadway and the top of the retaining wall on which was a brass verge - I was looking for any pieces of broken glass of any size. I was unable to find any such pieces. The roadway at this point had the appearance of not having been swept for some considerable time. Inspector Nawaz also searched.

30

Q. This search, I take it, was before you conducted the examination of the shoes?

40

A. Yes, my Lord, it was immediately after the taking of the statement. Subsequent to that was the examination of the shoes and my visit to Police Headquarters. Upon my return to my office after the visit to Police

Headquarters, I formally arrested the 1st accused using Inspector Qureshi as interpreter. I cautioned the 1st accused and Inspector Qureshi wrote on a piece of paper a language of which I am not familiar.

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No.9

Brian Webster
Examination
(resumed)
28th April 1965
(Continued)

Q. What words did you use Inspector?

10 A. 'I now formally arrest you for the murder of Said Afsal. I caution you that you are not obliged to say anything unless you wish to do so, but anything you do say may be taken down in writing and may be given in evidence.'

Q. Did you make any threats, promise or any inducement to the 1st accused?

A. No, my Lord.

Q. What happened then?

20 A. The 1st accused then made a reply which was translated to me as being, "Why am I arrested? How am I arrested?"

Q. Was in fact anything written down?

A. Something was written down by Inspector Qureshi, yes.

Q. Do you identify that as the writing which you saw?

A. This is the document which was written by Inspector Qureshi, my Lord.

COURT: Marked for Identification.

CLERK: 15.

30 COURT: 15.

Q. Did you subsequently obtain a certified translation of that writing from the Supreme Court Interpreter?

A. I did, my Lord. I now produce the certified translation in evidence.

COURT: 15A.

Q. What happened then?

A. I then formally arrested the 2nd accused, again using Inspector Qureshi.

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Evidence

No. 9

Brian Webster
Examination
(resumed)
28th April 1965
(continued)

Q. And what did you say?

A. I repeated the caution as before and Inspector Qureshi wrote down on a piece of paper a language which I am not familiar. The 2nd accused made a reply which was translated to me as being, "I understand."

Q. Do you identify this as the writing that you saw?

A. I now identify this as the piece of paper which was written on by Inspector Qureshi.

10

COURT: 16.

Q. Did you subsequently obtain a certified translation of that writing from the Supreme Court translator?

A. I did, my Lord. I now produce the certified translation.

COURT: 16A.

Q. Then what did you do Inspector?

A. I then caused certain things to be done, and subsequently the following morning I formally charged both 1st and 2nd accused at Western Police Station.

20

Q. What did you say on that occasion?

A. I formally charged them with the offence of murder - the 1st accused, using Inspector Nawaz as interpreter in the presence and hearing of Divisional Superintendent Grieve of Central Division. I read over the caution from the statement in answer to charge form which was translated by Inspector Nawaz. The 1st accused elected to make a written answer to the charge. This was written in a language which I am not familiar with.

30

Q. Do you identify that as the statement in answer to the charge?

A. I identify this document as the statement in answer to the charge and it bears my signature upon it.

Q. Did you subsequently obtain a certified translation?

A. I subsequently obtained a certified translation of the statement made by the 1st accused, and it

40

stated, 'I have not committed this murder, neither I know anything about it. Signed Mawaz Khan.'

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Q. What did you do then?

Prosecution Evidence

A. After this I formally charged the 2nd accused with murder using - again using Inspector Nawaz as interpreter, and once again in the presence of Divisional Superintendent Grieve of Central Division. Inspector Nawaz, after the caution and the statement by the 2nd accused wrote something down - once again in a language I am not familiar with. I subsequently obtained a certified translation of that statement.

No. 9

Brian Webster
Examination
(resumed)
28th April 1965
(Continued)

10

Q. Do you identify this as the statement in answer to the charge and the certified translation?

20

A. I identify this as the statement in answer to the charge and it bears my signature - the statement as translation certified by the Supreme Court translator said, "Whatever I have said yesterday is my story. I accept whatever punishment the Inspector wants to give me. I am innocent. God will punish the fellow whoever accused me. Signed Amanat Khan."

30

COURT: First marked for Identification 17 ...

Q. Did you at any stage make any threats, promises or inducements to either of the accused?

A. No, my Lord, I did not.

Q. Did you at any time obtain any information from the Forensic Pathologist regarding the shoes and bloodstains?

A. I merely obtained information to the effect ..

40

Q. We don't want to hear the information.

A. I obtained certain information from the Forensic Pathologist.

Q. When did you obtain this?

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No. 9

Brian Webster
Examination
(resumed)
28th April 1965
(Continued)

A. In relating to the shoes, on the evening of the 12th - Friday.

Q. Was that before or after the arrest?

A. That was prior to the arrest.

Q. And the bloodstains at 36B Kennedy Road?

A. I obtained certain information of the bloodstains at 36B Kennedy Road on the 11th and the 13th my Lord.

Q. Have you anything to add to your evidence Mr. Webster?

A. No, my Lord.

10

MR. MACDOUGALL: I have no further questions.

Cross-
examination

Cross-examination BY MR. MAYNE:

Q. Now Mr. Webster, I want to ask you a number of questions, with particular reference to the - what is mine P.7 - the alleged cautioned statement of the 1st accused - may I say that it is marked P.7 in the court below.

COURT: Which is this one?

CLERK: That is Identification No. 14.

20

Q. This is the one that you took apparently on the 12th. Now your ability and your integrity are well known, Mr. Webster, so you need not expect me to waste time suggesting that you used torture, violence or promise or threats or anything of that kind at all, but I do want you to help us inasmuch as you can with regard to the general circumstances of taking this particular statement - how long are you in the Hong Kong Police Force for?

30

A. How long have I been in Hong Kong?

Q. Yes.

A. Since September 1957.

Q. 1957 - come on to seven years now?

A. Just over seven years.

Q. And I think you have very considerable experience both in the C.I.D. and dealing indeed in court work generally? A. Certain experience.

Q. Quite a lot - you spent most of your time in the C.I.D. is that right?

A. No, sir.

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Q. How long have you been in the C.I.D. for?

A. I have been in C.I.D. since August 1962.

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Evidence

No. 9

Q. 1962 - up to the present time?

A. Up to the present time.

Brian Webster
Cross-examination
28th April 1965
(Continued)

10 Q. And I suppose during that time you have investigated many crimes indeed?

A. Quite a number, sir.

Q. You meet a great number of different types of people in the course of these investigations?

A. Yes, sir.

Q. Now you have told us that before - correct me if I am wrong - before you went to the Mandarin Hotel you had interviewed - had interrogated some 40 persons is that right?

20 A. Certainly in excess of 40 persons.

Q. In excess of forty - when you went to the - before I ask you that - were most of these people from Pakistan - Pakistanis?

A. They were Pakistanis in their entirety.

Q. All of them were?

A. All of them were Pakistanis.

COURT: All of the people - all the forty?

A. Yes, my Lord.

30 Q. So I take it that the purpose of your interrogation was to find the culprits of this particular crime?

COURT: Could you speak up?

Q. I think the purpose of your interrogation of these persons was to discover the culprit or culprits of this particular crime?

A. Yes, sir.

Q. And you were looking for the culprit or

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Brian Webster
Cross-examination
28th April 1965
(Continued)

culprits from among the Pakistani
community?

A. That is correct, sir.

Q. Yes, by the time you had got to the Mandarin
Hotel, I suppose you had got quite an amount
of information, true or untrue, from the 40
odd persons that you had interviewed?

A. Relating to what?

Q. Relating to this case.

A. No, sir.

10

Q. No - you mean you interviewed over 40 persons
and you got no information relating to this
case?

A. That is correct.

Q. Correct?

A. Very little information.

Q. Let's get this clear - then you have got some?

A. Yes, sir.

Q. And was it that information that you had got
that brought you to the Mandarin Hotel?

A. No, sir.

20

Q. Are you absolutely sure about that?

A. Quite positive, sir.

Q. Why did you go to the Mandarin Hotel?

A. As a result of certain information received.

Q. About this case?

A. About the 1st accused.

Q. About the 1st accused - so in effect you went
to the Mandarin Hotel looking for the 1st
accused?

A. That is correct, sir.

30

Q. Now, I am not going to ask you what was the
source of this information but can you tell us
this - was the source of this information any
witness in this trial?

A. Yes, sir.

Q. It was - is that witness giving evidence in
this trial? A. Yes, sir.

- Q. Well, in the circumstances I feel I must, in the interests of justice, ask you who that witness is.
- A. I cannot remember his name off hand, my Lord.

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Brian Webster
Cross-examination
28th April 1965
(Continued)

- Q. You can have this list.
- A. The list of witnesses - (looks through the list) - I would appear to be incorrect.

- 10 Q. You can check the depositions if you like - this is important - I like you to be accurate about this for everyone's sake.

COURT: There is a notice of additional evidence, Mr. Mayne.

MR. MAYNE: Yes, my Lord, I have seen that.

COURT: The names are not all included in the list of witnesses.

- 20 MR. MAYNE: Yes, I know that, my Lord. If this can be of any help to you - the notice of additional evidence, Mr. Webster - there it is.

(Witness looks through the depositions)

- A. No, my Lord. What I said was incorrect - he is not a witness in this trial.

Q. He is not?

A. A witness at this trial.

Q. Not a witness at this time?

- 30 A. At this trial.

Q. Did he give evidence in the court below?

A. Apparently not, from the depositions, sir.

- Q. Mr. Webster, I am quite sure that you are trying to recollect clearly about these events, but this is rather an important matter - I mean here is the person whose information you say led you to go to the Mandarin Hotel to look for the 1st accused - how is it that you first thought that he was a witness in the trial?
- 40

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Brian Webster
Cross-examination
28th April 1965
(Continued)

- A. I first thought he was a witness in the trial, because I believe I did have him down on my original list which I made up myself.
- Q. You actually - you were present during the hearing down below were you?
- A. I was.
- Q. So you saw all the witnesses who gave evidence there?
- A. I did, sir. 10
- Q. You would know if any witness on the list has been crossed off or not wouldn't you?
- A. In the first instance I had a list of witnesses in excess of 40.
- Q. Yes, I understand but you would know if - you are informed - if anyone has been crossed off the list or not?
- A. Normally I should.
- Q. How can you explain this error in telling the court that you believed the informant was a witness in the trial, having regard to two facts - (1) that you have been investigating officer and (2) that you were present during the committal proceedings - isn't it a very extraordinary error? 20
- A. Yes, sir - it was an error.
- Q. You would agree?
- A. It was an error.
- Q. Extraordinary error in the circumstances?
- A. I think natural. 30
- Q. Why do you think it was natural?
- A. There were so many witnesses involved.
- Q. I understand that, but this was the very witness whose information led you to look for the 1st accused - different from the others?
- A. The information received from this person ...
- Q. I am not asking about this information.
- A. I am not going to tell you, the information received from this person did not come to me direct. 40

Q. Are you in a position to tell us who did come to you?

A. As far as I am given to understand, sir?

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Q. Yes.

A. The information in the first instance went to Police Headquarters.

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Q. Police Headquarters.

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A. And then from Police Headquarters it went to the Hong Kong Island Headquarters. From Hong Kong Island Headquarters it went to Central Division. From Central Division it came down to myself.

Q. Well perhaps you can tell us this much about the informant at the moment - was he at the time an employee of the Mandarin Hotel?

A. No, sir - not to the best of my knowledge.

20

Q. No - was the informant related in any way to any employee of the Mandarin Hotel?

A. I don't know, sir.

Q. You don't know surely you got a statement from him - his statement at the same time?

A. I did, sir.

Q. Did you not find this matter out?

A. No, sir.

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Q. Was the informant any relation of the deceased?

A. I don't know, sir, but I don't think so.

Q. Did you not take the trouble to find that out?

A. The informant, sir, was Chinese.

Q. I see - did you take the trouble to find out what grounds of friendship there might be between the informant and the deceased?

A. No, sir.

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Q. You don't at all?

A. No, sir.

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Q. Did you take the trouble to find out what degree of friendship or opposite there might be between the informant and either of the accused?

A. Yes, sir.

Q. You did?

A. I did, sir.

Q. What the informant said about this friendship or otherwise?

A. The informant said he had only seen the 1st accused on one previous occasion - in all two occasions on consecutive days. 10

Q. What days?

A. I have to refer to the statement I took from him.

Q. Just roughly - I don't particularly want you to ..

A. I believe, sir, it was the evening of the 10th the early evening of the 10th of February of this year and I believe the mid-morning noon of the 11th, sir of February. 20

Q. Is Mr. Dilber Khan giving evidence in this trial do you know - again if you have difficulty from remembering names ..

A. I know that name very well, sir, I believe ..

COURT: Is that fair question to put to the witness?

MR. MAYNE: I am just asking if he knows - I have particular reason for that.

COURT: He cannot tell what is in the mind of counsel for the Crown - Counsel for the Crown might not call him. 30

MR. MAYNE: We have no notice that he is not being called or tendered - I am asking as far as he knows.

A. As far as I am aware..

MR. MACDOUGALL: Notice has been given to my learned friend and instruction that this witness will not be called at the trial.

Q. Then the position is Dilber Khan will not be giving evidence here.

A. As I understand, sir.

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Q. Did you ascertain what relationship or friendship there might be between Dilber Khan and the informant.

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A. You are talking about the informant ..

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Q. The informant - his relationship or otherwise with Dilber Khan.

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10 A. The informant that gave the information to Police Headquarters?

Q. Yes.

A. No, sir.

Q. You don't know - no idea at all?

A. No idea, sir.

Q. Can you tell me this with regard to the informant - I am not going to ask you at this stage who he is and I am not going to ask you what the information was, except to this extent - did he purport to tell you things that he had seen himself or did he purport to tell you the things that he had heard from other persons?

20

A. He purported to things which he had seen himself.

Q. I see, but although he was apparently in a position to give a personal account of things that he himself had seen concerning this case, he is not being called as a crown witness, is that right?

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A. I am not in a position ..

COURT: Mr. Mayne, where is this taking us - how can this be relevant to the admissibility of the statements?

MR. MAYNE: It relates to the state of mind of the witness at the time he went to the Mandarin Hotel, at the time he invited the defendants back to the Police Station, and to the state of mind at the time he took the statements.

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MR. MACDOUGALL: Perhaps this will be clarified

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if my learned friend would ask what was the name and occupation of the informant.

MR. MAYNE: Well I conduct my own cross-examination, with great respect, my Lord. Yes, so at any event we do know that when you went to the Mandarin Hotel, you went there for the specific purpose of seeing the 1st accused?

A. Correct, sir.

Q. And can we take it that when you went there, you had, by reason of information with possibly accurate, possibly inaccurate, grounds for suspicion against the 1st accused?

A. Yes, sir.

Q. Yes, so it wasn't a matter of just going into the Mandarin Hotel dormitory where all these Pakistani Security Officers lived and looking generally for Pakistanis - you were looking for the 1st accused?

A. I was looking - as it turns out I was looking for the 1st accused.

Q. Not as it turns out.

A. When I went into the dormitory I was looking for a person by the name of Mawaz Khan.

Q. The 1st accused's name.

A. Which the 1st accused answered to.

Q. So that at the time that he answered to his name he was already suspect by you?

A. Yes, sir.

Q. Then of course you saw the injuries that he bore?

A. At the same time as he answered to his name I saw the injuries.

Q. I suppose that increased your suspicion?

A. That was when he directly came under suspicion.

Q. You told us at the time you went there he was already a suspect?

A. He could have been a suspect in a certain manner.

Q. In your mind, he was a suspect before you went there?

A. Yes, sir.

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Q. Yes, so that when you found him there with the injuries you were even more suspicious, I suppose?

A. Yes, sir.

Q. Up to that time had you any suspicions at all against the second defendant - up to that stage, yes?

A. No, sir.

10

Q. So you became interested in him only at that time because of the fact that he bore the injuries also, and there was this conversation of the fight between the 1st and 2nd defendants?

A. As a result of the conversation between myself and the 1st accused, and as a result of seeing the 2nd accused, yes.

Q. So at that time you had begun to have certain suspicions against the 2nd accused also?

20

A. Correct, sir.

Q. Now you say that after this conversation with the 1st and 2nd accused you invited both of the defendants back to the Police Station?

A. Not in so many words - I asked them if they had any objections to return with me to the Central Police Station.

Q. The usual formula is "invited back" - did you use that formula?

30

A. "I invite you back"? No, sir.

Q. You said, "Have you any objection to coming back"?

A. For further enquiries.

Q. For further enquiries?

A. Yes, sir.

Q. And then you showed your warrant card at that time?

A. Before that?

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Q. Before that - did you indicate in any way to either of the defendants that if they did not want, they could stay where they were

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- in the Mandarin Hotel?
- A. No, sir.
- Q. You did not - you would, with your experience, I suppose, appreciate that persons who have not lived in Hong Kong or under other administration for a period of time, because of their background and their previous surroundings and connections and the feelings of their local authorities, you do recognise, don't you Mr. Webster, that a warrant card and sight of a policeman, in many minds - if a policeman asks a person, who is not fully familiar with the rights in the British law, that an invitation like this without an explanation that there is no compulsion to go, can often be understood by, shall I say, newcomers to Hong Kong as in fact an order - would you agree with that? 10
- A. I cannot tell what went on in anyone's mind.
- Q. Yes, I understand that, but taking persons who are from countries nearby who are aware that the authorities can sometimes be harsh, yes? 20
- A. I had no personal experience.
- Q. I am not talking about personal experience - a matter of common knowledge isn't it?
- A. I can only state on what I have read in certain newspapers.
- Q. I am not talking about newspapers that report our trials in Hong Kong, but from the many sources of your information, haven't you got reason to believe that the individual does not have as much in the way of rights as he has in Hong Kong. 30
- A. Yes, sir, I do.
- Q. Yes, and in the circumstances persons coming from outside Hong Kong if they were told by you, they may construe an invitation by a police officer with a warrant card as something to be obeyed? 40
- A. Possibly, sir.
- Q. Yes. Tell me, what was the need to take these two accused out of the Hilton Hotel if you wanted to interview them - couldn't you have

done so there or ask for some spare room in the Hotel?

A. It was the Mandarin Hotel.

Q. I am sorry, Mandarin Hotel.

A. In the circumstances, the basement of this Hotel consist in the main of only two rooms that I saw, which was a dormitory in this case which sleeps 18 persons.

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Q. Yes?

A. In tiered bunks all the way round as well as a second room which is frequented as the eating place and generally resting place, I believe, by the Security Officers of the Hotel.

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Q. I quite agree it will be undesirable to interrogate persons down in the dormitory - you could of course for instance have the loan of a small room in the Mandarin, which would not be charged too much?

A. In the circumstances, sir, it did not enter my mind.

Q. Is that because it is this invariable practice of Hong Kong that investigations, interrogations are mainly carried out inside the walls and barred windows of a Police Station?

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A. I agree, sir, in the main, investigations are carried out in these walls but not within barred windows.

Q. That in itself, without any threat or force or anything improper of that kind, it could well have a frightening effect upon certain persons, don't you think - it may well have, especially people who have come from elsewhere - don't you think?

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COURT: Is this all a matter of comment or evidence of this witness - you are asking his opinion of a thing, when he really is not the proper person to give evidence about.

MR. MAYNE: I think he is, my Lord, because he

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is the person who took these particular statements - he is the person, who in effect, is saying to you that he was satisfied that the statements are free and voluntary.

COURT: If you can confine your questions to these particular persons, well and good - if you are asking generally ..

MR. MAYNE: With great respect, I don't think it is improper in any way to start upon the general, and from the general to go to the particular and see if there are any reasons why the particular individual should be different from the general individuals - any experienced police officer must in the course of his duties know - have I your Lordship's permission to carry on?

10

COURT: I think I must direct that you confine yourself to the individual.

MR. MAYNE: May it please your Lordship. Now taking the individuals - take the 1st accused, how long has he been in Hong Kong for, do you know?

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A. The 1st accused, I believe sir, approximately 18 months.

Q. 18 months - so he is very much a newcomer to Hong Kong and to its laws and administration?

A. Yes.

MR. MACDOUGALL: My Lord, this is a question of definition - if the witness says it is - how is he in a position to say whether 18 months to someone is enough to absorb all the laws or not?

30

COURT: A matter of comment.

MR. MAYNE: Is that question disallowed?

COURT: Yes, I shall disallow it.

MR. MAYNE: May it please my Lord - what travel documents does the 1st accused have?

A. I believe, sir that he has a Pakistani Passport.

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Q. Don't you know?

A. I believe the 1st accused has sent his passport to be renewed at Peking or Shanghai.

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Q. To the Pakistan Consulate or Pakistan Embassy? A. Yes.

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Q. I see - it appears he has no travel document at all in his possession?

A. He is in possession of a letter which states that the document has been received by the Pakistani Consulate or Embassy for renewal.

Q. Yes - who has that letter now - the police?

A. It is in police custody.

Q. Since when?

A. Since the 12th.

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Q. Since the day you brought him along to the Station?

A. That is correct, sir.

Q. You agree that without a travel document, it will be difficult to leave this particular colony?

A. It can be very difficult.

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Q. Even if his passport were to arrive back from Peking or wherever it is - if you wanted to ensure that this particular man should not leave the Colony, all you had to do was to tick off the Immigration, the Airport or various other places?

A. The legal points of exit and entry, yes.

Q. How about the 2nd accused - how long has he been in Hong Kong for?

A. Best of my recollection, I believe possibly in excess of two years.

Q. Yes. A. I think 1962, I believe.

Q. What kind of travel document has he got?

A. Also same - Pakistani Passport.

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- Q. Where is this?
A. In the possession of the police.
- Q. Has been since? A. The 12th.
- Q. So his position with regard to leaving the colony would be even more difficult than the 1st accused - in other words you have his travel document - the 1st accused might get it back.
- A. If 1st accused were in possession of his passport?
- Q. You have his passport? A. Yes.
- Q. So exceedingly difficult for him to leave Hong Kong? A. Yes, sir.
- Q. You knew at the time that you invited the two accused persons to the Station, you knew where they worked?
- A. Yes, Sir.
- Q. You knew where they lived?
- A. Yes, sir.
- Q. And I think, both of them have family connections in Hong Kong?
- A. Certain family connections.
- Q. Yes - as far as you know, that is why they came to stay and reside?
- A. As far as I know?
- Q. Yes - in those circumstances what was the necessity to bring these two accused persons back to the Police Station?
- A. For further enquiries.
- Q. Yes, why at the Police Station, with all its advantages and disadvantages - why not somewhere else?
- A. At the Police Station I have facilities for conducting further investigations which I would not have at any other location.
- Q. But you would agree with me wouldn't you, persons in the position of the two defendants, who might not know the rights, they might be in a state of fear by the

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reason of their being in the Station occupied by Police Officers - they might?

A. I don't think so, sir, in relation to the 1st accused.

Q. You think possible in relation to the 2nd accused?

A. I don't know, sir - I couldn't gather anything from his expression, sir.

10 Q. Am I to take it, as soon as you got back to the Police Station you started interrogating the 1st accused, or was there a lapse of time?

A. There was a short lapse of time.

Q. About how long?

A. I should think approximately ten to fifteen minutes.

Q. Where was the 1st accused during that period of time?

20 A. In my office.

Q. In your office - to get to your office - Central isn't it? A. Yes, sir.

Q. ... you go into the compound and then into the ground floor from the compound, that is the first floor from the street and up the stairs through the Police Station into your office - isn't that right?

30 A. From the street level - I believe this is the second floor.

Q. From the street?

A. We entered the Police Station, Central compound, which was in the second floor level from Hollywood Road.

Q. Ground floor from the compound?

A. Ground floor.

Q. Not a pleasant atmosphere you have there - on one side the Victoria Remand Prison, on the other side the Police Station, which is quite formidable looking, isn't it?

40 A. The Police Station as a whole, sir?

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- Q. That area - prisons, Police Station?
A. Surrounded by buildings I agree.
- Q. It is quite formidable looking - looks pretty serious - grim?
A. Never occurred to me.
- Q. You don't feel that way about it?
A. No, sir.
- Q. Now, after about fifteen minutes you started on this long statement of the 1st accused, and I think it is right that you handed the 2nd defendant over to another police officer? 1
A. The second defendant - 2nd accused was together with another police officer.
- Q. Now you were officer in charge of this case weren't you?
A. That is correct, sir.
- Q. It is normal isn't it for the officer in charge to take statements from any important witnesses or suspects himself, isn't that the usual practice? 2
A. Not necessarily so.
- Q. I don't think, not necessarily so - it is the usual practice, isn't it.
A. I would say that would be dictated by circumstances.
- Q. But the circumstances usually are that the officer in charge takes the important statements of the accused, isn't it?
A. If there is sufficient time.
- Q. If there is sufficient time - so did you feel that there was some great urgency about getting statements from these two accused persons - urgency so great that you gave the taking of the statement of the 2nd accused over to some other police officer? 3
A. No, sir.
- Q. Then why did you do it?
A. The reason was in this case I had already interviewed quite a considerable number of persons. 4

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Q. We know that.

A. I had also a tremendous number of persons still to interview, and the longer time went on, the further things might get away from us.

Q. You were in a hurry otherwise - in other words, some evidence might get stale or disappear?

A. That is correct, sir.

10

Q. How long did the taking of the statements last - this statement of the 1st accused?

A. How long did it last - from 12.25 p.m. sir until twenty minutes to four.

Q. Yes, and during this time the 2nd accused apparently was making a statement to another police officer?

A. That is correct, sir.

20

Q. You arranged this before you started taking the statement from the 1st accused, did you? A. That ..

Q. That some other police officer would take a statement from the 2nd accused?

A. I did, sir.

Q. Not knowing at that time how long it would take to obtain a statement from the 1st accused?

A. Correct, sir.

30

Q. Not knowing indeed whether he might refuse to make a statement?

A. Quite correct, sir.

Q. So that if he refused to make a statement or made a particularly short statement, then you would have been kept very little time before being able to move on to the 2nd accused?

A. I don't understand, sir.

Q. You arranged that the 2nd accused makes a statement to another police officer while you are taking a statement from the 1st accused because of the urgency of the matter?

40

A. Yes, sir.

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- Q. Yes, but at the time you arranged this, you say that you had no idea as to whether the 1st accused will say anything or how long the taking of the statement would take?
- A. That is correct.
- Q. So it may have taken a very short time indeed?
- A. It may have done.
- Q. It could have?
- A. It could have done but it didn't. 10
- Q. You arranged for it before the statement was taken, so at that time, as far as you knew, it could have taken a very short time indeed?
- A. Yes, sir.
- Q. In that case there would be no great delay in getting on to the taking of the statement from the 2nd accused?
- A. Under those circumstances, correct.
- Q. Yes, but you arranged for this before you found out how long you would have been with the 1st accused? 20
- A. Yes, sir.
- Q. Isn't that a bit unusual - I can understand, this is casual enough of handing the statement taking to another officer, if you are taking a long time with the 1st accused - or you anticipate particularly longer time, you arranged this other defendant to have his statement to be taken by some other police officer - you arranged it then. I am curious to know as to why you made this arrangement before you knew what duration of the 1st accused's statement was at all? 30
- A. I am unable to tell once I start a statement how long it would take.
- Q. But you told us you made this arrangement before you started taking the statement at all?
- A. That is correct.
- Q. At that time you did not know - why you made this arrangement because of urgency when you knew nothing at all about the time factor in connection with the 1st defendant's statement? 40

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- A. The officer who I directed to take a statement from the 2nd accused was working together with myself.
- Q. Yes, is that the only reason - you see you told us before it was a matter or urgency?
- A. Yes, sir.
- Q. It was the time factor?
- A. It was the time factor.
- 10 Q. Would you agree with me you did not know what the time factor would be at all?
- A. I agree.
- Q. Can you advance any other reason other than it was the chap working with you, as to why you gave over the 2nd accused to him for statement purposes?
- A. There were two taking the statements, sir - there is no reason at all.
- 20 Q. No reason - tell me you went to the Mandarin, you told us, looking for the 1st accused - you found him with injuries?
- A. Yes, sir.
- Q. You invited him to the Station for further enquiries.
- A. Yes, sir.
- Q. Supposing he said to you, 'Look here, mind your own business - I am not going anywhere' - what would you have done then?
- A. There is nothing I could have done.
- 30 Q. There are lots of things you could do - you could say, 'All right, stay where you' or 'No, you are coming with me.' - which of these courses would you insist to be adopted?
- A. I couldn't have forced him to come with me, sir.
- 40 Q. You know very much the custom of these courts the delay by certain police officers - I am not saying for wrong or improper reasons at all - the delay of this magic formula of 'I arrest you' until a long time after the accused person is in fact in custody - in

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- other words, if he wanted to go away he couldn't - was that the position here, quite honestly, Mr. Webster?
- A. No, sir.
- Q. It wasn't - you are quite sure about that?
- A. I am quite sure.
- Q. So that if he hadn't gone with you, your evidence is that you might have continued investigation in the Mandarin Hotel, but you would not have taken the 1st or the 2nd defendants into custody? 10
- A. Correct, sir.
- Q. Now when you arrived there you told us, you asked them to bring all their personal belongings and clothing and so on?
- A. That is correct.
- Q. Down in the Mandarin did you notice any bloodstains on any of the clothing?
- A. The clothing was not examined.
- Q. I am not asking for examination - did you notice? 20
- A. No, sir.
- Q. You did not see anything that appeared to be bloodstains?
- A. Yes, I did - one item.
- Q. Of what?
- A. On the 1st accused's underpants.
- Q. Underpants - surely that was a factor which would make you even more suspicious?
- A. It was a factor, but that is the underpants. 30
- Q. It was an additional factor.
- A. It was a small factor.
- Q. Now what was the purpose of bringing their clothing along - was it to examine them or was it so that they could set up house at the Central Police Station when they arrived there?
- A. It was for further examination.
- Q. After these statements were taken what happened to the two defendants - I am talking about the

statements - these first statements that were taken by yourself and Mr. Chapman in the Police Station.

A. After the statements were taken?

Q. Yes, after.

A. The 1st accused accompanied me to Harcourt Road.

Q. You told us about what happened there.

A. Yes, sir.

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10 Q. After that what happened to the 1st accused?

A. They stayed at Central Police Station.

Q. You are not suggesting they asked you to put them up there are you? A. No.

Q. They did not ask you for a room with a view? A. No.

Q. You in effect brought them back to the Station didn't you?

A. In effect - if you wish to put it that way.

20 Q. Did you suggest any option - let's deal with the 1st accused - did you suggest to him he had any option to go anywhere else?

A. I did not suggest to him.

Q. No - did you ask him whether he would like to go back if he wished to?

A. I did not ask if he wished.

Q. You just brought him to the Station?

A. We just went back.

30 Q. You gave no indication that he could go anywhere else? A. No, sir.

Q. Having gone back, where was he put then?

A. He was sitting in the General Office together with the 2nd accused.

Q. Until when?

A. Until the time I formally arrested him.

Q. Which was?

A. Just after 9.00 p.m.

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Q. On the 12th - as far as you know, at that time nobody had indicated to either of the defendants that they could leave the Police Station?

A. No, sir. Both seemed perfectly happy.

Q. Which is unusual for a person to be perfectly happy to sit in the Police Station, surely?

A. They both stated their willingness to go back to the Police Station, to assist in further enquiries.

10

Q. That was at the Mandarin Hotel?

A. I beg your pardon?

Q. But not after.

A. Enquiries were still continuing.

Q. The willingness they expressed to go to the Police Station was only at the Mandarin Hotel not at any other time?

A. That was correct, sir.

Q. So in effect you brought them back, apart from this visit to the vicinity of the Ocean Bar, and you kept them in the Police Station didn't you?

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A. To use that phrase, yes.

Q. I am sorry?

A. To use that phrase, yes, sir.

MR. MAYNE: The answer is that he did - apart from the position that you happen to be a member of the Police Force, Mr. Webster, sitting in the Police Station isn't - couldn't be a popular habit for any normal individual, could it?

30

A. I don't know.

Q. .. if they had any idea they could leave?

A. I couldn't say so.

Q. Well it is not a very pleasant or entertaining place to sit in for many hours is it?

A. I don't suppose so.

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Q. Again you conceive that in the case of persons, like the two defendants, that it might have a conscious or sub-conscious intimidating effect?

A. I don't think so - not from the attitude of the 1st accused.

Q. How about the 2nd accused?

A. I couldn't tell.

10

Q. You mean the 1st accused appeared to be putting on a bold front?

A. I wouldn't say that - he was certainly smiling quite a bit.

Q. Smiling? A. Yes.

Q. I suppose people may think it is a good idea to smile at police officers at Police Stations?

A. I couldn't tell.

20

Q. Now at the time that you went to the Mandarin Hotel had you received any information concerning the forensic details concerning this enquiry?

A. I did receive some forensic details.

Q. At what time did you first receive this?

A. That was at the scene of the crime.

Q. The doctor was there? A. Yes.

Q. He gave certain information?

A. That is correct.

Q. I would say, not very full information at that time?

30

A. At that stage it was merely a matter of blood group.

Q. Blood groups - was he able to tell you the blood groups at that time? A. Yes, sir.

Q. Was he able to tell you the blood groups of the two defendants before the time of their eventual arrest?

A. No, sir - I eventually learned of the blood group ..

Q. After the arrest? A. ... on the 13th, sir.

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Brian Webster
Cross-examination
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(Continued)

Q. With regard to the footprint aspect of the evidence - I think you mentioned that you had some information with regard to that prior to the time of actual arrest - when I say actual arrest, I mean prior to the time that you told the two defendants that they were under arrest.

A. Yes, sir.

Q. Was it detailed information or was it just generally? 10

A. It was generally.

Q. What apart from this general foot-print information or potential evidence - apart from that and apart from the visit to the vicinity of the Ocean Bar - what other additional factors came into your mind which caused you to formally arrest the defendants at the time that you did so? 20

A. Initially sir, from the scene of crime it appeared that apart from the deceased there was another person feasibly who appeared to have quite severe injuries.

Q. But you knew that before you - either know or suspect that before you went to the Mandarin Hotel?

A. Yes, sir.

Q. And having gone to the Mandarin Hotel, there you found two persons with injuries? 30

A. Yes, sir.

Q. Now what I am asking you is what additional factors came into your mind, between the time of the taking of the first long statement there at the Central Police Station from the 1st accused and the time that you told him he was under arrest.

A. Other additional factors, sir, were the blood on the pair of shoes belonging to the 1st accused - blood on the pair of shoes of the 2nd accused - which group, at that stage, was unknown. 40

Q. You did not know, but that blood, of

course, would be quite consistent with what each of the defendants told you in the Mandarin Hotel - in other words, that they had a fight with knives, yes?

A. It could have been consistent, certainly, but the location of the blood on the shoes did not appear to bear that out.

Q. Why is that - what was the location - why it did not bear out?

10 A. Location - if that had been true, sir, one would have expected the blood to either drip on to the shoes ..

Q. You mean on to the top of the shoes?

A. On to the top, but the location of the blood on the shoes ..

Q. Yes?

A. ... gave another indication.

Q. Gave?

20 A. The location of the blood on the shoes gave another indication, sir.

Q. The indication, surely, could only have been - whereas blood did not appear to drip on the bottom of the shoes, that the wearer of the shoes had stepped on the blood, yes?

A. I beg your pardon?

Q. The only possible importance of that evidence was surely that instead of blood dropping on the top of the shoe, the wearer of the shoe had stepped on the blood, yes?

30

A. Not entirely.

Q. What inference did you draw other than that?

A. Other than the fact that there was blood on the shoes, sir, no other inference.

Q. No other inference?

A. But these shoes combined with the photographs of the heel impressions found at the scene.

40

Q. Yes, I want to know when did you get these heel impressions?

A. At the Police Headquarters just before I

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(Continued)

returned to Central and formally
arrested the accused.

Q. So you had that other additional
evidence had you?

A. Yes, sir.

Q. And is your evidence to the Court then
that it was these additional factors
that caused you to formally arrest the
first and second defendants?

A. That's true, sir.

10

Q. I see.

Just one other matter, Mr. Webster.
There is to me another unusual feature
about this long statement that you took
from the first accused. Possibly you
would like - you have it there?

A. I have it, yes, sir.

Q. Now the unusual factor that I have in
mind is this, that from the word "go" in
this statement, from the very start it
is interrogation in question and answer?
Yes?

20

A. Correct, sir.

Q. Now don't you agree that that is most
unusual in the forms of statement that
we see so often in Court?

A. I don't consider it unusual myself, sir.

Q. Surely the vast majority of statements
that you have come across, that have been
taken, they appear in narrative form and
then possibly at the end there may be
the odd question and answer about things
that need to be cleared up, but as a rule
- I am not saying it is a rule of the
Police Force or a rule of law or anything
like that - but as a general rule, don't
statements, that is preliminary statements,
don't they take a narrative form?

30

A. Generally, yes, sir.

Q. Yes, generally. But there is no narrative
form here at all - from the word "go"
it is a question and answer?

40

A. Virtually, yes, sir.

Q. So you are not asking a person to assist you in your investigations and to give his story, you are putting specific questions to him and getting answers?

A. Yes, sir.

Q. At this time, of course, there was no caution of any kind to the first accused?

10 A. No, sir.

Q. There was no slightest indication to him that he had every right to make no statement at all?

A. I asked him if he wished to make a statement, he said "Yes".

Q. Yes, but you gave him no indication that he had any right to make no statement?

A. I considered that enough indication.

20 Q. Please answer whether you gave any indication?

A. No indication, sir.

Q. This is from a man whom you had gone to the Mandarin to find - you had found with injuries which made you even more suspicious - clothing with some blood - on the underpants -- and various, shall I say various grounds for suspicion from various sources - this was the statement that you were, this was the man from whom you were taking a statement?

30

A. I don't understand the question. Various grounds from various sources?

Q. Yes, you had a number of different reasons to suspect the first accused - information, what you yourself saw, his injuries, and bloodstained clothing, and these things.

A. I see, sir, yes.

40 Q. So it was a statement that you were taking from a man that you then surely had strong suspicions against to put it at the minimum?

A. I certainly had suspicions, yes.

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(Continued)

- Q. Yes, and instead of taking a statement in the ordinary narrative form, without warning him or advising him or suggesting to him that he need not make a statement, this newcomer to Hong Kong, from Pakistan, he was submitted - now don't think for a moment that I am suggesting anything improper - he was submitted to a gruelling cross-examination? 10
- A. I would not agree to that, sir.
- Q. Well, were the question and answer - if you don't like the term "cross-examination", shall we say "examination-in-chief"?
- A. He was asked certain questions which he answered, sir.
- Q. Which you agree is unusual?
- A. It is not done in the majority of cases, sir, but it is done.
- Q. It was done not only with him, the first accused, it was done with the second accused? 20
- A. That is quite correct, sir.
- Q. You see, I suggest to you, Mr. Webster, that this was done in order to get the final - as much incriminating evidence as possible from the first accused before you pronounced the words "I now arrest you".
- A. No, sir.
- Q. You disagree?
- A. I disagree, sir. 30
- Q. Can you give us any other reason why this particular form of interrogation was used against a man whom you agree you had suspicions against?
- A. Well, sir, I had received certain instructions.
- Q. So your instructions in effect - I am not going to ask you what they were or who they came from - your instructions led you to take this particular type of statement from the first accused? 40
- A. That is correct, sir.
- Q. Which you agree is not the way in which statements are normally taken in cases?

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(Continued)

A. That is so.

Q. So you had special instructions to take this particular statement in an unusual way?

A. I would not call it an unusual way - in this manner.

Q. Not the usual way?

A. In this manner, sir.

Q. Presumably these special instructions came from some senior source?

10

A. A senior officer, sir.

Q. Yes.

Now I am not going to ask you what you said to the senior officer or what he said to you, but had you, at the time that you received these instructions to take this particular statement in this way, had you conveyed to that senior officer the extent of your suspicions and the extent of the potential evidence against the first accused?

20

A. I did explain to the senior officer -

Q. Please answer the question.

A. I did explain the facts as far as they were known at this stage, sir.

Q. Please answer the question.

A. I beg your pardon?

Q. Please answer the question.

A. Would you kindly repeat the question?

30

Q. Had you explained the extent of your suspicions - I will put it this way first, to the Senior Officer?

A. Yes, sir.

Q. You had. Had you explained the potential evidence which you then had against the first accused - that is at the time before you received these special instructions?

A. The potential evidence?

40

Q. Yes. In other words the factors, the information that you had received from this eye-witness who is not giving evidence, the bloodstains, the clothing? A. Yes.

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(Continued)

Q. All the other factors - you conveyed all these to the senior officer?

A. I did, sir.

Q. And as a result of these factors you got these special instructions to take this statement in question and answer?

A. Yes, sir.
(Pause)

Q. And it was because of these special instructions that you took this particular statement in this way?

10

A. That is correct, sir.

Q. Otherwise you would have taken the statement in the ordinary way in narrative form and then possibly the odd question and answer?

A. Quite feasible, yes, sir.

COURT: "Quite.."?

A. Quite feasible.

Q. That is what you probably would have done?

20

A. In all probability, yes.

Q. So have we got it then, that whatever you had decided in the way of arresting the first accused, you were acting under instructions at the time of taking the statement of the senior Police officer? Yes?

A. Acting under instructions, sir.

Q. Were you acting under his instructions throughout this case?

A. Not acting under instructions, no, sir, throughout the case.

30

Q. But with regard to this particular statement?

A. As regards this particular --

Q. And of course you can't tell us - I am not asking you to tell us - whether this, the senior officer, had made up his mind to keep the first accused in custody. You are not in a position to say what was in his mind?

A. No, sir.

40

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(Continued)

Q. The senior officer, is he a witness
in this case? A. No, sir.

Q. OH. Was he the officer who decided --
I'll put it this way. Who instructed
you to arrest the first accused and
second accused, in other words to
announce their arrest?

A. No, sir, that was me.

10 Q. You did it off your own bat?

A. Yes, sir.

Q. Without any communication from any
senior officer?

A. With some communication.

COURT: "With some.."?

A. With some communication, sir, from the
senior officer.

Q. Presumably - was it the same officer?

A. The same officer.

20 Q. The same officer.
So you had a talk with this same officer?

A. That is correct, sir.

Q. And subsequent to that talk you formally
arrested the first and second defendants?

A. I did, sir.

Q. Yes.
With his acquiescence? A. Yes, sir.

30 Q. So in effect the person who decided that
this statement would be taken and taken
in this form, was not you at all, it was
somebody else?

A. The actual decision was mine, but I was
advised by the senior officer on his
instructions.

Q. Let's not split hairs.
If your senior officer had given you other
instructions you would have obeyed his
instructions surely?

A. Yes, sir.

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(Continued)

Q. So the decision to take this statement
in the way that it was taken was his
decision, not yours?

A. Yes, sir.

MR. MAYNE: I see. Thank you.

COURT: Do you wish to have an adjournment?

MR. MAYNE: With respect, my Lord, I think it
would be desirable. It saves time in the
end.

COURT: 5 to 12?

10

11.23 a.m. Court adjourns

11.59 a.m. Court resumes. Appearances as before
accused present.
Jury absent.

P.W.6 - Brian WEBSTER (U.f.o. English)

Re-examination

RE-XN BY MR. MACDOUGALL

MR. MACDOUGALL: May it please my Lord.

Q. Inspector, during your cross-examination you
testified that you went to the Mandarin
Hotel as a result of certain information
which you received. Did you subsequently
take a statement from this informant?

20

A. I did, sir.

Q. What was his name?

A. Dr. Loke.

Q. To what race did he appear to belong?

A. Chinese.

Q. Did either of the accused ever express any
unwillingness to remain at the Station or
accompany you to Harcourt Road?

30

A. Never, sir.

Q. Did either of them ever express any desire
to leave?

A. Never, sir.

Q. You testified in your examination-in-
chief that you caused certain enquiries

to be made at the Ocean Bar - when did you receive the result of these enquiries? Just answer Yes or No.

A. Yes.

Q. When?

A. On the evening of the 12th of February.

Q. On the evening of the 12th?

A. 12th.

Q. Now was that before or after the arrest?

10

A. Before the arrest.

Q. How long before?

A. Approximately three hours.

Q. Did this have any effect upon you at all?

A. It was a small addition.

Q. I'm sorry?

A. It was a small addition to the evidence.

Q. I was not quite clear what you said in cross-examination - whose decision was it to arrest the accused?

20

A. Mine, sir.

MR. MACDOUGALL: No further re-examination, my Lord.

BY COURT: (Of P.W.6 - Brian WEBSTER - Voir dire)

Q. This statement, Inspector, took approximately three hours and threequarters, is that right?

A. Three and a quarter, my Lord.

Q. Three hours and one quarter, is it? 12.25, yes. To 15.40. Three hours and a quarter?

A. Yes.

30

Q. Why did it take so long?

A. The interpretation, my Lord, took some considerable time.

Q. May I see the original statement? (handed to Court).
(Pause)

Q. Was this read back?

A. It was read back to Inspector NAWAZ, my Lord.

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Brian Webster Re-examination 28th April 1965 (Continued)

- Q. Can you tell me how long it took to read back?
- A. I'm afraid I could not, my Lord. I can give an approximation.
- Q. Yes, well an approximation.
- A. I would approximate 15 minutes or so, my Lord.

COURT: Very well, thank you.

MR. MACDOUGALL: I call Rab Nawaz, Police Witness No. 8 on Page 8 of the depositions, my Lord.

10

No. 10

Rab Nawaz Examination

28th April 1965

NO. 10

RAB NAWAZ

Rab NAWAZ (Affirmed in English)

XN. BY MR. MACDOUGALL

- Q. Your full name is Rab Nawaz and you are an Inspector of Police attached to Bayview Police Station?
- A. Yes, at the moment I am attached to Central Police Headquarters.
- Q. Do you recall going to the Mandarin Hotel on the 12th of February this year with Inspector Webster?
- A. On the 12th February at about 11.30 a.m. I accompanied Detective Inspector Webster to Mandarin Hotel.

20

COURT: What's that? "To the Mandarin"?
A. Yes.

- Q. What did you do there?
- A. Then we went to the basement of the Mandarin Hotel.

30

COURT: Did you hear that?

A. (Witness repeats) To the basenent. There we saw a Pakistani male by the name of MAWAZ KHAN (first accused identified)

- Q. Which one is he - point him out.
- A. First on the right. (pointing at dock)

Q. Yes.

A. Detective Inspector Webster showed him his Warrant Card, told him that, "I am Detective Inspector Webster of C.I.D, Central, making enquiries into a murder of one Pakistani male, Said Afzal, at 36B Kennedy Road.", And I acted as interpreter to Detective Inspector Webster and interpreted everything faithfully and honestly, what was said by Inspector Webster.

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No.10

Rab Nawaz
Examination
28th April 1965
(Continued)

10

Q. Well now, what did Inspector Webster say?

A. He asked him, asked the first accused, Mawaz Khan, "How did you receive injury on your hand?"

Q. Yes?

A. Accused, Mawaz Khan replied, "Had a fight with a friend who was drunk, had a knife. When I tried to take away the knife from him I cut my hand." Detective Inspector Webster asked him who was his friend. He said, "Ananat Khan" - second accused. (pointing) At the same time he indicated to him, who was also present there.

20

Q. Yes, what happened then?

A. Detective Inspector Webster then asked him, "Have you got any objection if we take you to Police Station for further enquiry?" Accused said he had no

30

COURT: You say "the accused". Which accused are you referring to?

A. The first accused, Mawaz Khan.

Q. Please continue.

A. Then Detective Inspector Webster asked the second accused, Ananat Khan, "How did you receive injury on your little finger?" He replied that he had a fight with Mawaz Khan, first accused. Detective Inspector Webster asked him, "Do you have any objection if we take you to Police Station for further enquiry"?

40

Ananat Khan replied, "No objection". Then Inspector Webster asked both accused whether they got any objection if we take all of their property to Police Station for further examination.

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Rab Nawaz
Examination
28th April 1965
(Continued)

- Q. Yes?
A. They replied, "No objection".
Then he told them to collect all of their
property together, which they did.
- Q. Yes, what happened then?
A. At the same time they changed into other
clothing; when Mawaz Khan, the first
accused, was changing, I noticed bloodstain
at the rear of his underpants, which I drew
to the attention of Detective Inspector
Webster, and he also saw it.

10

COURT: "And he .."?

A. Also saw it.

Q. Did you in fact return them to the Police
Station?

A. Then returned back to Central Police
Station.

Q. And what happened there?

A. About 12.25 hundred hours I again acted
as interpreter for Detective Inspector
Webster when he asked certain questions
and the first accused, Mawaz Khan, which
were written down by Inspector Webster and
answered by the first accused.

20

Q. And what did you do?

A. I acted as interpreter.

Q. Now these questions and answers - did
the accused appear to understand what you
said to him?

A. I think he understood what - I am fully
satisfied he understood what I read back
to him; after he finished statement I
then read the statement over to him in
Punjabi dialect, and I am fully satisfied
that he understood whatever I read back
to him.

30

Q. Were there any threats, promises or
inducement to make a statement?

A. No, the statement was given voluntarily.
Then he was asked to sign the statement.

40

Q. Do you identify that as his statement?

A. I now identify the statement, my signature and the accused's, Mawaz Khan's signature there.

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CLERK: Identification No. 14.

Prosecution Evidence

Q. Now on the 13th of February 1965 did you again act as interpreter to Detective Inspector Webster?

No. 10

A. Yes, at about 10.50 hundred hours.

Rab Nawaz Examination
28th April 1965
(Continued)

COURT: "10.--"?

10 A. 50. At Western Police Station I again acted as interpreter for Detective Inspector Webster when he formally charged the first accused, Mawaz Khan; also present was Superintendent Grieve, Central Division. Inspector Webster read over the charge in English, and I repeated the charge in Punjabi. He then read over the caution in English and I repeated the caution in Punjabi dialect. The first
20 accused, Mawaz Khan, then elected to make a statement, which he wrote down himself and signed.

Q. Do you identify this as the statement?
(To witness)

CLERK: Identification No. 17.

A. And I identify the statement.

Q. At 11 o'clock did you again act as interpreter for D.I. Webster?

30 A. Yes, 11 o'clock. I again acted as interpreter to Inspector Webster when he formally charged the second accused, Ananat Khan. Also present was Superintendent Grieve, Central Division. Inspector Webster read over the charge to --

Q. Did you go through the same procedure with this as you did with the previous charge?

A. Yes, I did the same procedure.

40 Q. And what happened then?

A. The second accused, Ananat Khan, then

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Rab Nawaz
Examination
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(Continued)

elected to make a statement in answer to the charge, and he asked me to write down for him, stated that he was illiterate. Then I wrote down.

- Q. Do you identify that as the statement?
A. And I identify this as the statement.
- Q. Identification number -?
A. I wrote down whatever he said to me Urdu, and he signed it.
- Q. Were there any threats, promises or inducements at any stage of these proceedings? 10
A. No threats, promises or inducements were used.
- Q. After these statements had been made what then happened?
A. Copies of statements in answer to the charge were served on both accused, and also the copies of statements made by each of them were served on them respectively and they signed for the receipt of document. 20
- Q. Now at 15.50 hours on the 12th February this year, do you recall going to Harcourt Road with Inspector Webster and the first accused, Mawaz Khan?
A. Yes, I accompanied Detective Inspector Webster and the first accused, Mawaz Khan to Harcourt Road.
- Q. What happened there?
A. To the scene of incident mentioned by the first accused in his statement where he had a fight with second accused, Mawaz Khan. He stated that he had --- I now identify the photograph of the scene. 30
- Q. Which photograph, Inspector?
- CLERK: Exhibit E.1.
A. E.2, E.4, E.3.
- Q. Well, what happened at that scene?
A. We searched the area for the broken pieces of glass. We searched and cross-searched the area. 40

Q. How did you know which area to search?
 A. Detective Inspector Webster asked the first accused, Mawaz Khan where he had broken the bottle of beer, and he pinpointed the area, and he had broken a bottle of beer on the wall, seen in E.1.

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No. 10

Q. Now is that the area you searched?
 A. Yes. But we could not find any broken pieces of glass.

Rab Nawaz Examination
 28th April 1965
 (Continued)

Q. Would you please look at the statements in answer to the charge, Inspector? Both statements. Do you identify the signature on those?

A. Yes, I identify the signature of the first accused, Mawaz Khan, second accused Ananat Khan, my own signature and the signature of Detective Inspector Webster.

Q. Did they appear to understand what you were saying to them at the time?

A. Yes, I am fully satisfied they understood because after explaining to them I asked them whether they understood meaning or not. They replied they did.

MR. MACDOUGALL: Thank you.
 I have no further questions, my Lord.

XXN. BY MR. MAYNE (Of Inspector Rab NAWAZ)
Voir dire.

Cross-examination

Q. Mr. Nawaz, can you tell us this? Since the 12th February last, have you refreshed your memory in any way about the events that occurred on the 12th?

A. I beg your pardon? What events?

Q. Do you not understand that question?

A. No. I ask you to repeat the question.

MR. MAYNE: Could your Lordship help him? (?)

Q. Did you not understand my question?

A. I understand, but I am asking you to tell me what events you mean.

Q. Just answer the question. Have you

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examination
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(Continued)

understood my question?
A. (Pause) Refresh my memory by what means?

Q. Please answer the question.

A. (Pause)

COURT: Do you understand the question,
Inspector?

A. (Pause)

COURT: Counsel is asking you whether, since
the 12th of February this year, you have
refreshed your memory of these events. In
other words, have you looked at or heard
of or discussed this matter in any way so
as to refresh your memory otherwise than
by your own recollection of these events?

10

A. No, my Lord.

Q. Now why didn't you answer the question
when I asked it? Did you not understand me?

A. You didn't ask me in what way I refreshed
my memory.

Q. I asked you, 'Did you refresh your memory
in any way?'

20

A. Other than my own recollection?

Q. I asked you, 'Did you refresh your memory
in any way?' Now why didn't you answer
that question? Is it that your English
is not too good or is it that you wanted
to evade the question or what was the reason?

A. Well, I said I could not understand your
question.

Q. I see.

30

COURT: What I am not sure about is whether I
mentioned documents.

C/REPORTER quotes: "Counsel is asking you
whether, since the 12th February this year,
you have refreshed your memory of these
events. In other words, have you looked
at or heard of or discussed this matter in
any way so as to refresh your memory
otherwise than by your own recollection
of these events?"

40

(Answer) No, my Lord."

A. If you mean refresh my memory of my own recollection of the events.

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Q. So your answer is that the reason you didn't answer my question is that you didn't understand it, is that right?

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A. Yes.

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10 Q. You see, these things are important to us in this particular case, Mr. Nawaz, because not only do we wish to hear what you have to say in the way of evidence, but also you were the person who was used as an interpreter for certain statements.

Rab Nawaz
Cross-
examination
28th April 1965
(Continued)

A. Yes.

Q. Now having regard to all of these factors, do you still adhere to your answer that you didn't understand my question?

20 A. Well, as I said, I understand your question, you were asking me whether I refereshed my memory concerning the events - but I could not understand in what way you were asking me - whether I discussed the matter with anybody else or whether I refreshed my memory of this incident --

Q. I said "in any way". Did you not understand that? Did you or did you not understand that part of the question?

A. I just didn't know what way - I understand your question.

30 Q. Would you answer this last question? Did you understand that part of the question where I asked you "in any way" did you refresh your memory?

A. Yes, I understand that.

Q. You did understand it?

A. I did refresh my memory from my own recollection of this incident.

Q. I see. You mean from notes? From reading the depositions? Notes? from Notes?

40 A. From my notebook, yes.

Q. Ah! When did you last refresh your memory from your notebook?

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A. Well, I refreshed my memory on many occasions, I don't remember when.

Q. On many occasions?

A. Yes.

Q. Do you appreciate that after I had asked the question, and after His Lordship had been good enough to make it crystal clear, you swore to His Lordship that you hadn't refreshed your memory? Do you appreciate that? Well, do you or do you not?

A. But that is from my own --

10

MR. MACDOUGALL: My Lord, I hesitate to interrupt, but I think the witness has answered this question. He first of all said "No", but then he qualified his answer by saying that he had refreshed his memory, but not from external sources, only from his own notebook, from his own knowledge. I think he said this several times, my Lord.

COURT: Surely, Mr. Macdougall, in any interpretation of English, that is refreshing his memory? 20

MR. MACDOUGALL: I agree, my Lord.

COURT: If that is correct then surely Mr. Mayne is entitled to pursue it as he sees fit?

MR. MACDOUGALL: Very well, my Lord.

Q. Now we come back to my question. After His Lordship had made it crystal clear as to what I was asking you, you swore that you had not refreshed your memory?

A. Yes, not discussing with anybody else.

30

Q. How long have you been in the Police Force for?

A. About twelve years.

Q. Twelve years. Have you given evidence in Court very often?

A. Yes.

Q. Now are you seriously suggesting that if you have referred to your notebook on several occasions between the 12th February and now about the events on the 12th February, that that was

A. not refreshing your memory?
 Well, I still got everything (inaudible).

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Q. I'm afraid I have difficulty in understanding this English. Please -- I don't think His Lordship heard. (C/Reporter has asked witness to repeat answer). Nobody can understand this - so please help us. What are you saying?

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A. Well, I still got everything. (Pause)

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10 COURT: Could we have the answer?

Q. Would you be kind enough to answer that fairly soon?

A. It was refreshing my memory.

Q. And you knew that, didn't you, when you gave the answer that you did - saying that you had not refreshed your memory? Yes? Yes or no?

A. I gave the answer that I had not refreshed my memory by discussing with anybody else.

20 Q. That is not the answer you gave. You made no qualification at all at the outset. Would you be good enough to read back the first answer he gave when he was pressed?

C/Rep. "COURT: Counsel is asking you whether, since the 12th February this year, you have refreshed your memory of these events. In other words, have you looked at or heard of or discussed this matter in any way so as to refresh your memory otherwise than by your own recollection of these events?"

30

A. No my Lord."

Q. All right, I leave the matter at that. Tell me, when was the last time that you refreshed your memory by reference to this notebook?

A. (Pause) Well, I don't remember it, but say the day before yesterday.

Q. The day before yesterday? A. Yes.

40

Q. I take it that the reason for your doing so was so that you would be prepared in the

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- evidence that you were to give to this Court in this case?
- A. Yes.
- Q. Yes, So what your evidence in this Court in effect is, what your state of mind is now, is having refreshed your memory from notes outside the Court on several occasions? Yes? Do you understand that?
- A. Refreshed my memory from my notebook outside the Court. 10
- Q. I see. I leave it there. With twelve years' service in the Force, I think you must have done some legal examinations?
- A. Yes.
- COURT: Did you answer that question? "Have you done any legal examinations?"
- A. Yes.
- Q. Yes, and I suppose in the course of these legal courses and examinations one of the subjects that you were taught about was the law relating to evidence? 20
- A. Yes.
- Q. And don't you know very well that witnesses are allowed under certain circumstances to refresh their memories by - from certain documents in Court if the Judge allows them to do so? Don't you know that? Don't you know that? What is the delay?
- A. (Pause) 30
Can I ask you to repeat your question, please? The question is rather complicated.
- COURT: Inspector, it is not for you to ask questions. It is for you to answer questions. If you do not understand the question you are entitled to say so and we will endeavour to ensure that you do understand it, but if you understand the question it is your duty to answer it.
- A. Your Honour, I do not understand this. 40
- Q. Well, let's go from the beginning. Did you hear the words that I used?
- A. Yes.

Q. You did. So that the position is that you heard the words that I used but you did not understand what I was asking you, is that it?

A. Yes I could not follow it.

Q. You could not follow me. I didn't use any very complicated words. Just in case there should be any slight change in the form of the question I am going to ask the Court Reporter to be good enough to read the question to you again.

10

C/Rep: "Q. And don't you know very well that witnesses are allowed under certain circumstances to refresh their memories by - from certain documents in Court if the Judge allows them to do so? Don't you know that? Don't you know that? What is the delay?"

Q. Now do you understand the question?

20

A. Yes.

Q. Do you know that?

A. Yes.

Q. You do. And knowing that you didn't wait to ask for His Lordship's permission to refresh your memory, you jumped the gun, you refreshed your memory before you came to Court - just two days ago - right? Yes?

A. Yes.

30

Q. Don't you think that's a little bit dishonest, if not irregular? Certainly irregular?

A. It was not - in fact from Police notebook, you can refresh your memory from Police notebook.

Q. I see.

You have been twelve years in the Force, in the Hong Kong Police Force?

A. Yes.

Q. Is that the way you always give your evidence in Court? You refresh your memory before you go in, is that it?

40

Don't look to Mr. Webster for inspiration - just answer!

A. I am looking at you! Yes, I used to refresh my memory from my notebook.

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- Q. Before coming to Court?
A. Whenever I was in doubt.
- Q. Have you been doing that over the last twelve years?
A. Whenever I was in doubt I looked at my notebook.
- Q. Before coming to Court? Yes?
A. Yes, any time.
- Q. Any time. Maybe the day before the trial, or two days before the trial? Maybe some hours or minutes before the trial? Yes?
A. I told you that. 10
- Q. Yes or no?!
A. Yes.
- Q. But you have never told anyone - any Judge or Magistrate that, I suppose? Have you? Yes or no? It is as easy as that. Do you refuse to answer? (Witness has hesitated) If you do refuse I won't pursue the matter.
A. Well, you asked me and I answered your question. 20
- Q. I am asking you to think -- We will start again. Did you not understand my question?
A. (Pause)
- Q. This should be an easy one to answer fairly quickly - either you understand or you don't understand.
A. (Pause) You asked me whether I refreshed my memory from my notebook. 30
- Q. No, no. I asked you whether you had ever told any Magistrate or Judge that you refreshed your memory before stepping into Court?
A. Yes ...
- COURT: I didn't hear your answer.
A. You mean the Judge in this Court?
- Q. No, no, any Judge.
Well, first of all, did you understand my question? Any Judge or Magistrate. 40

A. You asked me whether I told any
Judge or Magistrate --

MR. MACDOUGALL: I must object, my Lord,
the witness is being harassed. He has
answered the question, my Lord, and then
--

COURT: With respect, I did not hear the
answer, if he did answer; that was
what I was waiting for.

10 MR. MACDOUGALL: If he had been asked the
question a second time, my Lord,
instead of --

MR. MAYNE: My Lord, if there are going to
be any further interruptions at all, or
any valid objections, or invalid
objections, I want this witness to
leave the Court while the objection is
made. He is an English speaker. I do
not want him - I don't think my learned
friend would wish in any way to guide
20 him, but it will be the inevitable
result that there would be subconscious
guidance if we have objections of this
kind in the presence of the witness.

COURT: Very well - yes.
Well, what is the objection?

MR. MAYNE: Is there an objection being
made?

30 MR. MACDOUGALL: My Lord, I merely feel that
the witness is being harassed at this
stage. If he were asked the question
instead of being constantly asked "Can
you remember what it is?" - if the
question were merely reframed back to him -
I am sure he would be able to give an
answer, but it is making him very
uncomfortable!

40 MR. MAYNE: My Lord, this is the first time I
have heard an objection raised on the
basis that the witness is being made
uncomfortable, my Lord.

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COURT: Let us not argue about this. If you care to ask your question again, or have it read, but I would suggest that having put the question you leave it at that and do not also add to it and say "Can you remember what it is?", and repeat it. The witness might possibly be put off. Let us have a straight question and we will listen for a straight answer.

10

MR. MAYNE: My Lord, I think every question so far has been quite straight.

COURT: You did on one occasion when it was read out by the shorthand writer add further questions after you had put the first one. I am not complaining about it but I do -- in view of the suggestion that the witness is being harassed I would make this suggestion to you that you put the question and leave it at that.

20

Q. Well, I will simply put the question - which I hope was understandable - to you Mr. Nawaz. Can you remember what my last question was? About telling the Judges and the Magistrates about refreshing your memory?
A. You asked me, "Have you ever told any Judge or Magistrate about refreshing your memory?"

Q. Outside Court.
A. Yes.

30

Q. Yes, well, that is a simple question. You understand that question, don't you?
A. Yes.

Q. Have you understood that question since I have asked it?
A. I understood the question, that is why I replied to you.

COURT: "I replied .."?

A. I replied to you, I repeated the same question.

40

MR. MAYNE: I'm afraid I am being harassed now, my Lord!

Q. What is the answer? Is there an answer? We can't sit here all this year, you know. We have other things to do. What is the answer? Have you ever told any Judge or Magistrate?

A. Whoever asked me, I probably answered him, I tell him.

10 Q. Is the answer "No"?
Is the answer that you never told any other Judge or Magistrate? Is there a difficulty? I don't want to harass you at all. Do you understand that question?

A. (Pause)

20 COURT: Inspector, the question is a very simple one. "Have you ever told a Judge or a Magistrate that you had, before going into Court, refreshed your memory from your notebook?"

A. My Lord, I might have told somebody, any Magistrate or Judge.

Q. You might have?

A. I do not know.

Q. You don't remember ever having done so, is that it?

A. Yes.

30 Q. I see. I hate to think about these cases over the twelve years. Now with regard to the conversation that took place in the Mandarin Hotel.

A. Yes.

Q. Between Mr. Webster and the first accused. A. Yes.

Q. Which conversation was done through your interpretation.

A. Yes.

40 Q. Now you have told us that what Mr. Webster did was - to summarise it - he revealed his identity and said that he was making enquiries into the

murder of a Pakistani male of 36
Kennedy Road? Now is that what he said?

A. Yes.

Q. Is that what you interpreted?

A. Yes.

Q. Would you agree that what you told the
Magistrate was that Mr. Webster said that
he was making enquiries re the murder of
Said Afzal at 36 Kennedy Road?

A. Yes, I said he was making enquiries into
the murder of one Pakistani male, Said
Afzal, 36B Kennedy Road.

10

Q. Now in his evidence, in the Court below,
Mr. Webster at this stage of the evidence,
of his evidence, he didn't mention any name.
Now are you sure that the name "Said Afzal"
was used at all?

A. Yes.

Q. Are you sure? But you left out that part
in your evidence-in-chief?

A. No, I didn't leave.

20

Q. You don't think you did?

A. I mentioned the name.

Q. Your evidence-in-chief here - I don't want
to confuse you.

A. Yes, I did mention his name.

Q. I see. And what you said was that what
the first accused said was that he was
drunk. I will read out the full passage so
that there can't be any confusion:

30

"D.1 said that he had fight with
friend...that he was drunk...and had
a knife..."

Now did you take that to mean that the
first defendant was drunk or that the
friend was drunk?

A. That the first defendant said that his
friend was drunk.

Q. His friend was drunk?

A. He and his friend were drunk.

40

- Q. I see.
Well, Mr. Webster in his evidence in the Court below says that what you translated to him was, "D.1 said I had a fight with a friend ... we were drunk..."
Now which of these things, if either, was said?
- 10 A. Yes, that's what he told me that time - that he had a fight with his friend, he was drunk.
- Q. And what?
- A. His friend was drunk and he had a knife.
- Q. So according to your recollection -
- A. Yes, that is what he told me.
- Q. So according to your recollection the first defendant did not say at that time "We were.."?
- A. No.
- 20 Q. He didn't.
Which version did you translate to Mr. Webster: that the friend was drunk, or that "we", namely the first accused and the second accused--
- A. I translated to Mr. Webster that the first accused told me that he had a fight with his friend, he was drunk, he had a knife, "when I tried to take the knife from him, I cut my hand."
- 30 Q. So you say that what you told Mr. Webster was that the first accused said that the friend was drunk - no question of their both being drunk?
- A. Yes, that time that is what he said.
- Q. I see. You see, we are-- I am a little bit worried, not really about recollections, as I have told you, about interpretation, because we have had these difficulties here about failure to understand and so forth.
- 40 Now were the first and second defendants asked separately, that is at different time, whether they would object to going to the Police Station or were they asked together?

A. They were asked first at different times. First accused, Mawaz Khan, was with us, first he was asked by Mr. Webster whether he got any objection returning to Central Police Station for further enquiry.

Q. Yes?

A. And he said "no objection".

Q. Yes?

A. Then the second accused, Amanat Khan, was asked whether he had any objection to enter the Station - he said "no objection".

10

Q. I see.

A. Then after that they were asked both together whether they had any objection.

Q. Yes, we know about that.

So they were asked separately one after the other. Now when you and Mr. Webster and the two defendants went back to the Police Station, where did Mr. Webster go to?

A. I beg your pardon?

20

Q. Where did Mr. Webster go to?

A. In his office, C.I.D. Central Police Station.

Q. And did the two defendants go into his office at the same time with him or did they, did either of them go in later?

A. No, one of them only, the first defendant, Mawaz Khan.

Q. Did he go in with Mr. Webster or later?

A. (Pause) Well, I can't remember whether he went in with Mr. Webster or later.

30

Q. I see.

MR. MAYNE: Possibly, my Lord, this might be - I won't be very long but I will be a little time - this might be a convenient time?

COURT: Can you give me any idea now how long we are likely to be on this matter?

MR. MACDOUGALL: I think, my Lord, we should finish today.

COURT: You think we should.

MR. MAYNE: Well, I sincerely hope so - of course I can't guarantee it - so much depends on whether I am harassing the witnesses or whether they answer the questions and so on.

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MR. MACDOUGALL: I entirely agree with my learned friend. However there are three more witnesses - there will be another Inspector who took a statement, another interpreter, and then there will be a very short testimony as appears on the notice of additional evidence, from Mr. Wilson.

COURT: I would imagine we would be here the entire day - shall we need part of tomorrow as well?

MR. MACDOUGALL: I can't tell, my Lord, it all depends on my learned friend.

MR. MAYNE: I don't agree with that.

COURT: Let's not discuss on whom it depends. It may depend upon me.

MR. MAYNE: My Lord, I think it is possible that we can have the jury back tomorrow; on the other hand it is for your Lordship to decide whether it is more inconvenient for the Jury to come back and be sent away, or to tell them to come back at a time when we are sure to be ready for them.(?)

COURT: Yes.

1.02 p.m. Court adjourns.

2.30 p.m. Court resumes

Two accused present. Appearances as before. Jurors answer to their names.

COURT: Members of the Jury, I am sorry to say that we have not finished --

CLERK: One of the jurors is absent.

COURT: Oh, one of them is missing.

10

20

30

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CLERK: Oh, Mr. Fung is absent.
(Mr. Fung now enters Court.)

CLERK: Is that Mr. Fung?

MR. FUNG (Juror): Yes.

COURT: Yes. Members of the Jury, I was just saying this, I am very sorry we have not been able to complete the legal argument, and we shall not require you until tomorrow morning. So you may go. 10 o'clock.

(2.32 p.m. Jury leave Court)

10

MR. MACDOUGALL: I recall Rab Nawaz.

Rab NAWAZ - on former affirmation in English.

XXN. BY MR. MAYNE (Continues)

Q. I think just before lunch, correct me if I am wrong, I think you told us that Mr. Webster went into his office on his return to the police station, and I think you told us you can't remember now where the 1st accused remained, whether he went in straight away, is that right?

A. Yes.

20

Q. Now, eventually you and the 1st accused went into Mr. Webster's room, is that right?

A. Yes.

Q. Can you recall whether they were together with Mr. Webster - whether 1st accused went in first or you went in first?

A. I think I went in first.

Q. Now, after the 1st accused arrived in the office, what position did the three of you take up? First of all, with regard to Mr. Webster was he sitting down at his desk or was he standing?

A. He was sitting down at the desk.

30

Q. How about you yourself? Were you sitting down?

A. I was also sitting down on his right.

Q. And how about the 1st accused?

A. 1st accused was sitting on my right.

COURT: On your right?

A. On my right side.

Q. How did such conversation, as there was, start - in other words, what was said at first by whom after all three of you were in the office sitting down?

A. Said by me?

Q. No. Said by anybody.

10 A. Well Detective Inspector Webster explained to me that we were going to take a short statement from the 1st accused concerning the incident. He mentioned he had a fight.

Q. Are you absolutely clear about the words that he used?

A. Yes.

Q. "He was going to take a short statement"?

A. Yes.

Q. And did you interpret that to the 1st accused?

20 A. I interpreted that to the 1st accused and asked him whether he was willing to make the statement or not.

Q. Did you do that of your own volition or did anyone tell you to ask him that?

A. Mr. Webster then asked me, "You had better ask him whether he had any objection to making that statement concerning the incident." So I asked the 1st accused if he had any objection.

30 Q. Now, I think I am right in my recollection - I think this statement, that one there, the long one, that is the statement which we are dealing with at the present time.

A. Yes.

Q. Now, how was that statement taken? I'll explain to you what I am getting at. After the 1st accused said he was willing to make a statement then did Mr. Webster start asking questions straight away?

40 A. Yes - no, he asked his names first.

Q. The particulars at the top. And then after

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he got the particulars did he start asking questions?
A. Yes, he asked him, "Tell me what happened."

Q. Did you say he asked him?

A. Inspector Webster asked him to tell something about the incident he had with the 2nd accused in connection with the fight.

Q. Are those the exact words he used: Mr. Webster asked the 1st accused to tell him about the fight? 10

A. Yes, he asked him about the fight - he asked the 2nd accused, Amanat Khan.

Q. No.

COURT: Did you hear the question? Are those the exact words he used? A. Yes.

Q. Are you quite sure of that?

A. I am not pretty certain - I would say that was the word he said.

Q. Can we have one way or the other? Are you certain that he used those precise words, or are you not sure? 20

A. I am sure he asked him to tell him about the fight he had with the 2nd accused, but I can't tell you that he used the exact word.

Q. Can you recall what exact Pakistani question you put, first put to the 1st accused?

A. Yes.

Q. What was the English of the Pakistani question which you first used?

A. Well, I asked him, "you are alleged that you had a fight with a friend Amanat Khan. Tell me about this. Now, we are going to take it down in writing." 30

Q. That's what you said to the 1st accused?

A. Yes.

Q. What was the next thing that happened?

A. Then he started to tell us all about the incident.

Q. But even with the assistance of that statement

there, can you tell us - and of course with the assistance of the notebook to refresh your memory and so on - can you tell the Court what the 1st answer was by the 1st accused?

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A. I can't do without reading the statement.

Q. Oh, yes.

A. (Looks at statement).

10

The first question he asked him was, "You have received certain injuries on your hands and forehead. Can you tell me how you received those injuries?"

Q. Well, the words of that alleged first question here have quite a lot of difference from the words of the question that you told us about earlier - first question. Do you agree?

A. Yes, before making the statement I had to explain what we were going to ask him.

20

Q. So?

A. I explained to him that "you are alleged that you had a fight with a friend Ananat Khan. So we are going to take down whatever you tell us; we are going to take it down in writing."

Q. Are you going to tell us that this is not a verbatim report of the actual words that you said to the accused - in other words, you did explain and so on but all this is not referred to here?

30

A. (Pause)

Q. Have I made myself clear? I do not want to confuse you at all. What I am asking you is with regard to the first part of the statement. Were there certain things said by you to the 1st accused which do not appear here? Can you answer that?

A. Explaining what I told him does not appear here.

40

Q. No. Did you explain or say anything to the 1st accused which does not appear here?

COURT: Yes. He has already answered that. "What I explained to him does not appear here."

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MR. MAYNE: I am sorry, my Lord. I didn't catch that. I am much obliged.

Q. Would it be right to say that there are some things that the 1st accused said when you were talking to each other which do not appear here also?

A. That was what I explained to him. He did not answer. I asked him whether he understood. He said "Yes".

Q. Do you agree that doesn't appear here? There is no mention about I understand." 1

A. You can see it; I can see that it does not appear here.

Q. You agree.

Apart from the first few questions and explanations and so on that you gave to the 1st accused, were there other matters, other questions which you asked the 1st accused and which do not appear here?

A. No, I don't think so. 20

Q. Or you are not sure, is that it? Can you tell us - you can read through it if you like.

A. I have to go through the whole statement.

Q. Yes, certainly.

A. (Witness goes through statement).
Everything was taken down in writing.

Q. As far as you can remember?

A. Yes.

Q. So the position is: before you actually read through the statement just now, you were not sure as to whether there were other things that might be said which were recorded here, but now having read this statement through you think - to put it clearly - you think that this statement includes everything said between you and the 1st accused? 30

A. Yes.

Q. Tell me - if that is so why didn't you tell Mr. Webster or include the questions and answers, the preliminary questions that you told us about that do not appear here - the preliminary answers. 40

A. What I explained to him?

Q. Yes. And his answers and so on.
 A. I interpreted it to him - what he said to me I had to interpret to him.

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Q. I was asking why you didn't tell Mr. Webster or you didn't ensure what was said to the 1st accused by way of explanation to be included in this statement.

10 A. Can you give us a reason on that?
 A. I don't know.

Q. You don't know. I see.
 Can you give us any reason why you did not ensure that the preliminary answers - the answer of the 1st accused was not included in this statement?

20 A. I think that was just explaining to the prisoner if you were just asking him to tell you something.

Q. Yes?

A. That's what Mr. Webster told me and I explained it to him, and he said he had no objection to making a statement concerning the incident.

Q. But this wasn't put down here by Mr. Webster although it was said?

A. Yes.

Q. Did you tell Mr. Webster this? A. Yes.

30 Q. Well, this purports to be a continuous interrogation.

COURT: Surely, with great respect, it doesn't purport to be that at all. The very first few words following, "Told I am making enquiries ..." - surely it does not purport to be so.

MR. MAYNE: Perhaps we are talking at cross purposes. My Lord, I am talking about the questions and answers that followed.

40 COURT: You have been talking about the preliminaries, Mr. Mayne.

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MR. MAYNE: My Lord, what was referred to here is different in words to what's contained in the statement. However, that is a matter of comment. I must deal with that later on.

Q. In any event, the position is, correct me if I am wrong, that even after having read this you think this includes everything? Or are you not sure?

A. You mean what I explained to him?

Q. No. What was contained in the questions and answers. 10

A. Yes, that's what the detective inspector asked him and that's what he said in answer to these questions.

Q. Correct me if I am wrong - I understood you to say having read this statement, you were not in effect quite sure that this contained everything that's said between you and the 1st accused; you thought it did but you were not absolutely sure, is that not the position? 20

A. Yes.

Q. Yes, thank you.

Now, did you have any difficulty in understanding what Mr. Webster was asking?

A. No.

Q. None at all?

A. If I had difficulty probably I would ask him to repeat his question.

Q. When he repeated the question did he use the identical words each time, or did he use slightly different words to explain what he meant by his question? 30

A. I don't remember. As far as I can remember I had no difficulty - I do not remember that at any time I asked him. But if I had any difficulty I would ask him to repeat his question.

Q. Again please correct me if I am wrong - I understood you to say if you had any difficulty then you asked him to repeat his question.

A. Yes. 40

Q. Did you or did you not ask him to repeat his question in this case?

- | | | |
|----|---|-----------------------------------|
| | A. In this case I do not remember whether I asked him or not. | In the Supreme Court of Hong Kong |
| | Q. With regard to the 1st accused, had you not the slightest difficulty in understanding what he was saying? | -----
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| | A. No. | -----
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| | Q. None at all. So are we to take it that there was no difficulty at all as far as interpretation is concerned? | Rab Nawaz Cross-examination |
| 10 | A. No. | 28th April 1965
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| | Q. No difficulty? | |
| | A. No. | |
| | Q. So there was no delay of any kind because of difficulties in interpretation? | |
| | A. Delay of getting answers and putting questions to him? | |
| | Q. Yes. | |
| | A. I don't think there was any delay. | |
| 20 | Q. No delay at all. With regard to the questions that you interpreted - Mr. Webster's questions to the 1st accused - now did you use identical expressions or words, or did you paraphrase the English words? Do you understand what I mean by "paraphrase"? In other words, did you use Mr. Webster's exact words or did you paraphrase his questions? | |
| 30 | A. I translated his exact words into the Punjabi dialect. | |
| | Q. Or did you paraphrase his questions? | |
| | A. I translated his exact words into the Punjabi dialect. | |
| | Q. How about the answers? Did you translate the exact words of the defendant or did you paraphrase them? | |
| | A. I translated the exact words of the defendant. | |
| 40 | Q. Tell me - were there any delays at all between the question being asked through you, by you to the 1st defendant, were | |

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Cross-
examination
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(Continued)

- there any delays for the 1st accused to give his answers?
- A. I don't think there was any delay - the question was put to him; and it was put to him to let him think over the answer.
- Q. With regard to his answers, did he need a long time to think or was it given quickly?
- A. Not a long time.
- Q. So he gave them pretty quickly?
- A. Yes - not all the questions. But for some questions he had to think over; for some questions he can give the answers. 10
- Q. Just to clarify what do you mean by "delays" - were there any delays, say, longer than the delays you took this morning to answer some of my questions?
- A. No.
- Q. None at all?
- The alleged statement takes just about four pages of typescript on the depositions. How many pages of handwriting have you got there - 8 and a bit more? You just show this to his Lordship, would you? 20
- A. Yes. (Indicates to Court).
- Q. The other point of importance which has been raised by his Lordship is the time factor. At the end of the statement I think your evidence is that you read the statement back to the 1st accused?
- A. Yes. 30
- Q. How long did that take - the reading back?
- A. It is hard for me to give the exact time.
- Q. I am not asking for the nearest second. It is quite recent - 12th of February - it's not a long time ago. Can you tell us to the nearest, say, five minutes?
- A. I would say 10 to 15 minutes.
- Q. If that is correct that the taking of the statement took - starting at 12.25, finished at 3.40 - the taking of the statement took 3-1/4 hours, can you explain to his Lordship if there were any delays in answering. If 40

there was no difficulty in interpretation why it took that length of time to record this statement?

- A. Are you asking about the delay I answered your questions this morning?

COURT: I can't hear your answer.

- A. Counsel put to me a question about the delay I answered him questions - longer than the delay I answered him the questions this morning.

10

- Q. Do you remember the question I asked you? A. Yes.

Q. Do you?

A. There wasn't any long delay.

- Q. Yes. You told us about that. How do you account for this very long period in taking this comparatively short statement? Can you account for it?

A. No, I can't.

20

- Q. But you do say for sure that it wasn't because of any interpretation difficulties, right?

A. Yes.

- Q. And it wasn't because of any delays in answering?

A. Yes, no longer delays.

- Q. I suppose you would agree that being asked questions over a period of 3-1/4 hours or so is quite a tiring experience, isn't it? Don't you think so?

30

A. Yes, depending on what sort of questions you are asking.

- Q. It is less tiring with questions of one kind; it is more tiring with questions which are more difficult to answer, is that it? Can I put it this way - that this was a long session of interrogation? Do you understand me?

A. Yes.

40

- Q. You agree, yes?

A. Yes, the statement is quite lengthy.

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- Q. It is a long session of interrogation, right? Or I need not labour about it because we know the time. Now, during the time of interrogation was the defendant given any opportunity to rest?
- A. Yes, he was sitting on a chair quite comfortably.
- Q. Yes. But being asked questions all the time?
- A. Yes, he didn't complain.
- Q. I am not asking you that. You are here to give evidence, not to argue the case. Was he offered any chance of a rest from interrogation or the time to recover his thoughts? Yes or no. 10
- A. You mean the break between the evidence?
- Q. No. Did you not understand what I said - did you understand the English words I used?
- A. Yes, I do understand.
- Q. Well, isn't it the position that there was no break at all in interrogation? 20
- A. No break.
- Q. The accused was given no chance at all to either take a rest or to refresh his memory - the term that you know - or to collect his thoughts, right?
- A. I think he was given a fair chance.
- Q. Not what you think.
- A. He was given a fair chance.
- Q. Now, answer the question. Was there any break at all in the interrogation? 30
- A. No.
- Q. During this long interrogation was the 1st accused given any food?
- A. I am sorry I don't remember - except a cigarette.
- Q. So there was no food?
- A. No.
- Q. Surely you could remember whether there was any food or not.
- A. No, I don't remember - I don't remember whether he was given any food, but I do remember whether he was given any tea or soft drink. 40

Q. He wasn't given any food?

A. No.

Q. But you can remember if he was given anything to drink?

A. Yes.

Q. Would it be right to say that you don't know whether the 1st accused had any meal on the 12th of February?

A. No.

10 Q. You don't know whether he had any meals at all that day, is that right?

A. No idea.

Q. Do you know whether he was given any food before the time of his arrest? If you don't know just say so.

A. I don't know.

MR. MAYNE: Thank you.

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

COURT: Thank you.

20 MR. MACDOUGALL: I call Mr. Gordon Wilson.

NO. 11

GORDON WILSON

GORDON WILSON - SWORN

XN. BY MR. MACDOUGALL:

Q. Your full name is Gordon Wilson?

A. That is correct.

Q. Your address is care of the Mandarin Hotel, and you are the Chief Security Officer?

30 A. Correct, sir.

Q. Mr. Wilson, do you recall seeing Inspector Webster on the 12th of February this year?

A. I do, sir.

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Rab Nawaz Cross-examination 28th April 1965 (Continued)

No. 11

Gordon Wilson Examination 28th April 1965

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No. 11

Gordon Wilson
Examination
28th April 1965
(Continued)

Q. Would you relate to the Court the circumstances in which you saw him?

A. My Lord, on the morning of the 12th of February - Friday to be exact - I was called to the back entrance of the Mandarin Hotel where I was told that some police officers wished to speak to me. On arriving at the back entrance of the hotel I met for the first time Inspector Webster who informed me that he was investigating a murder charge, and he wished to see some of my people.

10

MR. MAYNE: I object. This is all hearsay.

Q. Did you speak to Inspector Webster?

A. I did.

Q. Did you see either of the accused?

A. Yes, I saw the 1st accused.

Q. Did Inspector Webster say anything in the presence of both accused?

A. Yes, he did.

Q. What did you hear?

A. Well, one question he asked was whether they had any objection to going back to the station from the Mandarin Hotel. And secondly, he asked if there was any objection to having their belongings taken to the station for examination. And that was all translated to them by the Pakistani inspector who was also present at the time.

20

Q. Did the accused make any reply to it?

A. They agreed; they made no objection to either question.

30

Q. Had you ever seen Inspector Webster before this time?

A. No, I had not met the inspector before the 12th.

MR. MACDOUGALL: I have no further questions

MR. MAYNE: No cross-examination.

COURT: Thank you, Mr. Wilson. This gentleman, of course, will be wanted again?

MR. MACDOUGALL: Of course, my Lord.

I call Inspector Chapman.

40

NO. 12
VINCENT FRANCIS DEREK
CHAPMAN

In the Supreme
Court of Hong
Kong

Vincent Francis Derek CHAPMAN - Sworn
XN. BY MR. MACDOUGALL:

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Vincent Francis
Derek Chapman
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Q. Your full name is Vincent Francis
Derek Chapman?

A. That is correct.

10 Q. And you are an inspector attached to
C.I.D. Central?

A. That is correct.

Q. On the 12th of February this year did
you attend at the basement of the
Mandarin Hotel?

A. I did.

Q. About what time was this?

A. Approximately 11.30 hours, 11.30 a.m.

Q. And what did you do then?

20 A. When I arrived Inspector Webster was
already there together with Inspector
Nawaz, Inspector Qureshi and Mr. Gordon
Wilson and also two accused persons.

Q. Now please answer this - yes or no. Did
you receive any instruction from Mr.
Webster?

A. Yes.

Q. As a result of this what did you do?

30 A. As a result of those instructions I
received all the property of the 1st and
2nd accused as they handed them to me.

Q. Yes. What happened?

A. I then took same property back to Central
Police Station.

Q. And what did you do then?

A. After taking the property back and placing
it in my office, I then at 12.50 hours
commenced to take a statement from the
2nd Defendant. Inspector Qureshi acted
as my interpreter.

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Q. What did you say to the 2nd accused?
A. Before commencing with the statement, I told the 2nd accused that I was inquiring into the murder of Said Afsal, which had taken place at 36B Kennedy Road. I then asked him if he had any objections to making a statement. All this was interpreted by Inspector Qureshi, and the answer I got was he had no objection.

Q. What happened then? 10
A. I then commenced taking the statement.

Q. How did you take the statement?
A. I took it down in long hand in English.

Q. How did you go about the statement?
A. Well, I took it in question and answer form. I asked him the manner in which he had obtained the small injury on his left little finger.

Q. Did you make any threats, promises or inducements to the 2nd accused? 20
A. No.

Q. Do you identify this as the statement made?
A. That is the statement, yes.

Q. Would you read that statement out to the Court?

A. (Witness reads statement)
Statement commenced:

"I have been in Hong Kong for one year and 5 months. I came from the Commcellpare District, Haider Village in Pakistan. I understand the Punjabi dialect. 30

Q. How did you get your injuries?

A. On 10.2.65 I went out at 20.00 hours with Mawaz Khan and we went to Wanchai for a drink. We went to a bar somewhere in Lockhart Road. I do not remember the name of the bar. We had a few drinks together. We left the bar at about 21.00 hours. I bought a bottle of beer and Mawaz Khan took it with him. We walked 40 along Harcourt Road and when near the Fire Brigade Building we started to have an argument. I wanted my bottle of beer

back because I have paid for it, but Mawaz Khan refused to give it to me. We started to fight and I took out a knife. Mawaz Khan tried to grab the knife back. During these he received injuries on the palms of his hands. The bottle of beer fell on the ground and broke. We both fell on the ground and while we were rolling on the ground my left little finger was injured by a piece of broken glass. Because the bottle was already broken we made up the argument ..."

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Derek Chapman
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28th April 1965
(Continued)

10

COURT: What is the punctuation there?
"Because the bottle was already broken we made up the argument ..." Or does it relate to the previous sentence?

20

A. It relates to the second.

COURT: Copies of these statements are very inaccurate. It is about the 4th error in this statement so far.

A. The "because" commences a new paragraph, my Lord.

COURT: New paragraph. Yes, thank you.

A. (Witness reads on)

30

"... and went back to the Mandarin Hotel. We got back to the Mandarin at about 22.00 hours. I then changed my clothes and went on duty at midnight. At about 13.30 hours on 11.2.65 I went to see a Chinese doctor who lives and works on a building two blocks away from the Mandarin Hotel. I do not know the name of the doctor or the building in which he works. He treated my finger and put some plaster on it. He also gave me an injection. I paid him \$25-H.K.

40

The bar we went to was on the right hand side of Lockhart Road, going from west to east, and it was on a

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Derek Chapman
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street corner. We sat down at the end of a row of tables to the right of the entrance. I sat facing the Gents toilet and Mawaz sat with his back to a toilet. Behind his seat was a short wall coming out at right angles from the one running from the door. The actual spot where we had the fight was on some waste ground just past the Fire Brigade Building.

10

Q. Did anyone see you out on that evening?

A. No, I did not see anyone I knew.

Q. When you went out that evening, how did you go to Wanchai?

A. We walked from the Mandarin along Connaught Road, Harcourt Road and into Wanchai.

Q. When you returned to the Mandarin did you see anyone?

20

A. Yes, I saw Mohammed Sheirif on duty at the rear gate of the Mandarin. When we went down to the quarters I saw Khan Bahadar. He was awake and sitting on his bed. Apart from him there was also Jumma Khan, Anayat Ullah, Jan Khan and Khan Baz. All these persons I saw in one of the two rooms. They were all awake. In my room only Khan Bahadar and Jumma Khan were awake. There were a number of others sleeping, but I do not remember who they were.

30

Q. What clothes were you wearing that night?

A. I wore black leather shoes, green and grey socks, dark patterned trousers, and an off white shirt, a yellow pullover with brown pattern. I did not have a tie or a coat.

Q. Did you know Said Afzal?

A. Yes. We belong to the same village. I knew him fairly well thought I was not more than a casual friend of his.

40

Q. Why did you not go to the Mandarin doctor to treat your hand?

A. Because I did not want No. 1 Ziarat Khan to know that we had been fighting.

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Q. I now show you a finger ring. Have you ever seen it before?

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A. No.

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The above has been read over to me and is correct."

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10 Of course the statement was in fact read over by Inspector Qureshi after my taking it.

Q. During the taking of the statement did you seize any property of the accused?

A. Yes, when I came to the question of the fight outside the Fire Brigade Building and the accused mentioned producing the knife and the fight with Amanat Khan, I then asked him if he had the knife. He replied that he had and brought it out. I then asked him if he had any objection to my taking possession of it for possible medical examination, and he said he had no objection, and he handed the knife over to me.

20

Q. Did the accused at any time express a desire to leave the station?

A. He did not at any time.

Q. Did he appear to be unwilling to stay?

A. He didn't appear to be unwilling at all; he appeared to be most co-operative, not unwilling at all.

30

Q. On the 12th of February at about 1600 hours did you go to Harcourt Road with the 2nd accused and Inspector Qureshi?

A. I did. And when I arrived at Harcourt Road I asked the 2nd accused to indicate to me the position which he had the alleged fight. with Mawaz Khan, the 1st accused.

Q. Yes. What did he do?

A. He indicated an area somewhere between the entrance of the Fire Brigade Building and approximately 60 or 70 yards further towards

40

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the west at which point there was a wicker basket lying on the edge of the wood.

- Q. Would you examine the photograph, Inspector, the photograph of Harcourt Road? with reference to this photograph would you give us the spot and point it out?
- A. The spot here as indicated by just the commencement of this photograph, the foreground.
- Q. Which number is that - the exhibit number?
- A. The exhibit number is E1. 10
- Q. Where was the point that you mentioned - the first point?
- A. The entrance to the Fire Brigade Building is immediately in the foreground of the photograph; the other limb is near a small wicker basket which can be just seen past the second private car. This wicker basket is illustrated better in E2 where you can clearly see the wicker basket just by the edge of the pile of wood.
- Q. What did you do there? 20
- A. After ascertaining that this was the area in which the defendant indicated, I then searched the area for any signs of broken bottle of beer - broken beer bottle. I couldn't find any. The area did not appear to have been cleaned in any way. There was plenty of rubbish and pieces of paper lying.
- Q. During the taking of the 2nd accused's statement did you yourself or any one make any threats or promises or inducements to the 2nd accused? 30
- A. No.

MR. MACDOUGALL: I have no further questions, my Lord.

COURT: Oh, this one is not marked. It should be numbered 19 (2nd accused's statement)

CLERK: Identification No. 19.

XXN. BY MR. MAYNE:

- Q. Mr. Chapman, I want to ask you a few questions about this statement, about the surrounding circumstances. A. Yes, sir. 40

Cross-
examination

Q. First of all, with regard to this investigation I think your position at that time was that you were a junior officer in the investigation to Mr. Webster?

A. That is correct, sir.

Q. So you were acting on his direct instructions?

A. Yes.

10 Q. And I suppose as far as any major decisions were concerned, such as, when to arrest or anything like that, it would be for Mr. Webster to decide rather than you?

A. Of course, I would of course consult him.

Q. You wouldn't do it yourself without consulting him?

A. No. I would consult Mr. Webster first.

20 Q. With regard to Mr. Webster he was in direct control of the case, but I suppose in this case, as in every other important case, he himself is controlled by his senior police officers in the police force.

A. Of course, he is subordinate to a superintendent, but in fact a superintendent took no part in this investigation to my knowledge.

30 Q. With regard to this statement that you took, were you told by Mr. Chapman to take ...

A. By Mr. Webster.

Q. I'm sorry. By Mr. Webster?

A. Yes.

Q. At what time?

A. As soon as we got back from the Mandarin - it was about 50 minutes past midday.

Q. It was very soon after you got back?

A. Yes.

40 Q. Prior to receiving the instructions from Mr. Webster to take the statement, do you know whether he had any contact with any

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- senior officer on the phone or otherwise?
- A. I do not know whether he had in fact done so.
- Q. Did Mr. Webster tell you how to take the statement?
- A. No, he merely asked me to take a statement and as to the reason why there was an injury on the 2nd accused's small finger.
- Q. Did he express anything in the way of urgency about taking a statement from the 2nd accused?
- A. He told me I should start as soon as possible. 10
- Q. You don't speak this dialect?
- A. I am afraid not.
- Q. So you had to rely on the interpretation of this Mr. Qureshi?
- A. That is correct.
- Q. Did Mr. Webster tell you to take the statement in the form of questions and answers?
- A. He left it entirely up to me.
- Q. Did he?
- A. He told me merely to inquire into the manner in which the 2nd accused received the injury. He gave me no direct instructions regarding the taking of the statement. 20
- Q. Mr. Webster had told us that he had specific instructions from some senior officer with regard to the taking of his statement, to take it down in the form of question and answer. Did you know that?
- A. I wasn't aware of that. I saw no senior officer on that day. I received instructions from Inspector Webster. 30
- Q. Do you swear positively that he didn't give you such instructions relating to this statement from the 2nd accused as those he obtained from the senior officer about that statement?
- A. I was quite certain he merely told me to take a certain statement concerning the injury and that is all he told me. He did not tell me to take it in any specific form. That's natural of course. 40

Q. Did he tell you to take the statements as soon as possible?

A. Yes, he did.

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Q. He didn't say why?

A. He didn't say why.

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Q. Isn't it usually the case that the taking of the statements from persons whom the police interrogated, isn't it the usual course to take it in narrative form, not question-and-answer form?

10

A. I don't know. It's in the circumstances of this case where I tried to find out the manner in which he came by his injury.

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(Continued)

Q. Mr. Webster told us that it was in fact the usual course generally to take statements in narrative form.

20

A. It is usual, but of course to a certain extent. But I don't think in cases where we asked for specific information that we would take it other than question-and-answer form.

Q. So you had specific information, is that it? You had specific information?

A. I had specific instruction to inquire into the manner in which ...

Q. You mentioned "specific information"?

A. I didn't mention specific information.

30

Q. Mr. Webster told us that the reason for taking this question in the form of question and answer is because of instructions that he received, but you say you received no such instructions?

A. I am quite certain, no.

Q. You see, you didn't indicate to the 2nd accused in any way that he had an option to say nothing, is that right?

40

A. Not in as many words, but I asked him whether he had any objection to make the statement.

Q. You never indicated to him about this: if he did not want to he would not be obliged to?

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- A. But the option was in the manner in which I put it to him.
- Q. If the question is right, say so. Yes?
- A. Yes.
- Q. And you did not tell him what is right - what might be right?
- A. Not specifically.
- Q. Yes. I understand this interrogation of these two defendants simultaneously by yourself and Mr. Webster and your interpreter - this interrogation seemed to proceed almost at indecent speed? 10
- A. Do you think so?
- Q. You don't agree?
- A. No.
- Q. Of course, you would agree that prior to anything improper at all there were very few members of the police force in Hong Kong who would take anything improper. There was always an urge, I imagine, in your profession to solve cases - an urge which, I suppose, you would share? 20
- A. For the sole purpose of solving all our cases - the sole purpose.
- Q. You have this natural urge to solve cases as part of your work?
- A. Not at any cost, nor anything like that.
- Q. No. How long have you been in the force?
- A. 5½ years.
- A
- Q. Would I be right in thinking that as far as police force in the C.I.D. is concerned, Judges' Rules are not too popular? 30
- A. Well, possibly there is always an argument among police officers. Some police officers regard it as a safeguard and a guidance, which is, of course, what it is intending to be.
- Q. You would agree, would you, that if one steps in quickly - and I say, a police officer steps in quickly - in a case of a person who may not know his legal rights and who hasn't had time to get in touch with a 40

solicitor, there is a good chance of getting evidence good or bad which might be otherwise, don't you think so?

A. Of course there is a chance always with a person without legal advice, but I don't think so.

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(Continued)

10

Q. Would it be right to say that in your experience you found there were cases where officers had used "Invited them back to the police station", whereas in point of fact these persons who were invited back had no option but to go?

A. I don't think the question of option - the defendant has the option.

Q. Yes. That is, as far as you are aware it wasn't for an accused to decide?

A. I agree.

20

Q. You know nothing about this telephone conversation between Mr. Webster and his superior officer? A. I do not.

Q. This statement that you took started at 12.50. It is a pretty short one. How many pages of your handwriting, Mr. Chapman?

A. Seven sides.

Q. Large writing? A. Very, very sprawly.

Q. It only takes two and a small bit of typescript - relatively small statement?

A. Yes.

30

Q. Can you tell us, Mr. Chapman - you mentioned the reading back of the statement to him, to the 2nd accused? A. Yes, sir.

Q. How long did that take?

A. But I read it back sentence for sentence, waited for it to be translated and then carried on.

Q. How long did it take? I am not tying you down to the minute.

A. I would say 10 to 15 minutes - I did not time it.

40

Q. So the rest of the statement took an hour and three quarters? A. Yes.

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Q. Can you explain to his Lordship why such a short statement should take as long as you thought?
A. You'll realise, first of all, that it has to be interpreted. Of course the person giving the statement has to think about his answers, and it has to be re-interpreted back to me. Then I have to set it down in writing. All this takes quite considerable time.

Q. Well, we all have had experience in these courts - for instance, where we have interpretations, as to how long it takes to write what amounts to two pages of typescript of course it varies; how long the witness hesitated and so on? A. Yes.

10

Q. Was there any hesitation in the answers here?
A. I can't remember any significant hesitation at all.

Q. Any difficulty in the interpretation?
A. It didn't appear to be any to me - it didn't appear to me to be any difficulty.

20

Q. Well, having regard to - as his Lordship knows very well - how long it takes, with interpretation, to get this kind of thing down in a transcript in this Court, have you any particular explanation as to why it took an hour and three quarters?

A. Only the explanation I have given you.

Q. No other?

A. No other.

30

Q. You have no idea at all what the interpreter said to the 2nd accused?

A. Because I am not familiar with the language of course I cannot say.

MR. MAYNE: Yes. Thank you, Mr. Chapman.

MR. MACDOUGALL: No re-examination.

No. 13

MOHAMMED NAWAZ QURESHIIn the Supreme
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Evidence

No.13

Mohammed
Hawaz Qureshi
Examination28th April
1965

MR. MACDOUGALL: I call Mohammed Nawaz Qureshi.

Mohammed Nawaz QURESHI. Declared in English.XN. BY MR. MACDOUGALL:Q. Your full name is Mohammed Nawaz Qureshi?
A. Yes sir.Q. And you are an Inspector of Police attached to
Yaumati Division? A. Yes sir.10 Q. On the 12th February this year at 12.50 hours did
you act as interpreter for Det. Inspector Chapman
at C.I.D. Central? A. Yes.Q. Would you tell his Lordship what transpired on
that occasion? A. I acted as interpreter
between Det. Inspector Chapman and a Pakistani
male called Amanat Khan.20 Q. Can you identify this man? A. Yes, this one.
(Points to 2nd accused). All the questions put
to Amanat Khan by Det. Inspector Chapman I trans-
lated into Punjabi and I explained to Amanat Khan,
who understood.Q. What did Inspector Chapman say to Amanat Khan?
A. Inspector Chapman put questions to Amanat Khan
in Punjabi.Q. And you interpreted these questions? A. I
interpreted.Q. And what form did the questioning take? A. In
question and answer form.30 Q. Were there any threats, promises or inducements to
the accused to make the statement? A. No.Q. Do you identify that as the statement which was
made by the 2nd accused? A. Yes.Q. Do you provisionally produce that statement?
A. I do, sir.

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 CLERK: That is identification No. 19.

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 continued

Q. Did anyone sign that statement? A. Amanat Khan, sir. Yes sir.

Q. Anyone else? A. Myself.

Q. Do you recall on the 12th February at 16.00 hours accompanying Inspector Chapman and Amanat Khan to Harcourt Road? A. Yes sir.

Q. What happened at that location? A. In Harcourt Road, sir?

Q. Yes, Harcourt Road. A. Just past the Police H.Q. on the southern side Amanat Khan showed an area to Det. Inspector Chapman where he had a fight with the other Pakistani male, Mawaz Khan. 10

Q. Will you examine those photographs, Inspector, and indicate by reference to them the position which was pointed out by Amanat Khan?
 A. They are the photographs of the place.

Q. The location which was pointed out by Amanat Khan. A. On this side, sir, the southern side.

Q. Would you please mention the number of that exhibit? 20

CLERK: Exhibit E2.

Q. And the point which you indicate is the left foreground? A. Yes sir.

Q. After the accused had indicated this location what did you do? A. Together with Det. Inspector Chapman, sir, we searched the area in order to find broken bottle but could not find.

Q. Now the 12th February at 21.05 hours did you again act as interpreter for Inspector Webster at C.I.D. Central? A. Yes sir. 30

Q. And what was this occasion? A. I acted as interpreter when Det. Inspector Webster formally arrested a Pakistani male, Mawaz Khan.

Q. Can you identify this man? A. Yes sir. (Pointing).

Q. Which one is he? A. On the right side, the 1st accused.

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Q. Yes, please continue. What happened? A. I acted as interpreter when he was formally arrested for the murder of Said Afsal and I explained to Mawaz Khan in Punjabi, it was written in Urdu, and after caution Mawaz Khan said he understood and made a statement.

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Mohammed Hawaz Qureshi Examination

10 Q. Were there any threats, promises or inducements to make this statement? A. No sir.

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Q. Do you identify this as being the statement to which you have just referred?

CLERK: Identification No. 15.

A. Yes sir.

Q. Do you provisionally produce that statement? A. I do, sir.

20 Q. Did you subsequently again interpret for Det. Inspector Webster? A. I did, sir, when he formally arrested the 2nd accused, Amanat Khan, for the murder of Said Afsal. I again interpreted.

Q. What happened on that occasion? A. I explained to Amanat Khan, sir, it was written by me in Urdu, and after caution Det. Inspector Webster again repeated that he was being arrested for the murder of Said Afsal. I was satisfied that Amanat Khan understood, and after caution he made a statement.

30 Q. Were there any threats, promises or inducements on this occasion? A. No, sir.

Q. Do you identify this as the statement to which you have just referred?

CLERK: Identification No. 16.

A. This is the one, sir.

MR. MACDOUGALL: I have no further questions, my Lord.

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XXN. BY MR. MAYNE:

Q. Mr. Qureshi - Is that the right way to pronounce your name, Qureshi? A. Qureshi.

Q. How long have you been in the Hong Kong Police Force, Mr. Qureshi? A. About 12 years.

Q. And for what length of time have you been acting as an interpreter? A. Since I joined the police. I had many chances to act as an interpreter.

Q. I take it that you are not employed full time as an interpreter? A. No sir, I am not a sworn interpreter. 10

Q. No, but you are used from time to time for that uppose? A. Yes.

Q. Interpretation is quite a difficult thing, isn't it, to correct, to get the correct meanings as between two different languages in a colloquial sense? A. For me not, sir.

Q. You find it easy? A. No, I don't find any difficulties. 20

Q. So there was no difficulty in your understanding Mr. Webster who was putting the questions? A. No sir, none at all.

Q. You had no difficulty in conveying these questions to the 2nd defendant? A. No sir.

Q. As far as you could ascertain there was no difficulty in his understanding? A. No difficulties.

Q. So there weren't any delays at all by reason of difficulty of interpretation? A. I don't understand the question, sir. 30

Q. There were no delays in the taking of the statement, I think it has been marked 19; is it - 19 - I think you have it before you - that there were no difficulties in, there were no delays in taking 119, that statement there, by reason of difficulty of interpretation? A. No difficulty and no delay also.

- Q. Now where exactly was this statement 119, where was it taken In Central Police Station? A. In Central Police Station C.I.D. office.
- Q. C.I.D. office. Can you describe roughly to us what kind of office that is? Is it a big kind of general office occupied by many persons, or is it a small private office? A. It was taken in an office where Det. Inspector Chapman sits.
- Q. He has a desk there, is that so? A. Yes sir.
- 10 Q. Have a number of other officers got desks. A. There are also other officers.
- Q. During the taking of the statement were you all seated, that is Mr. Chapman, you and the 2nd defendant? Were you all sitting down all the time? A. Sitting down all the time, sir.
- Q. You didn't see, I think, the 2nd defendant until he arrived at Central Police Station. Is that - correct me if I am wrong. A. No, I didn't see him before until he went to the police station.
- 20 Q. You had seen him before? A. No sir.
- Q. I see. So you were called along to interpret by Mr. Chapman? A. For the 2nd accused, yes sir.
- Q. Was it Mr. Chapman or was it Mr. Webster? Was it Mr. Chapman who obtained your services or was it Mr. Webster who obtained your services for Mr. Chapman? Who instructed you to act as interpreter? A. For the 2nd accused on the instructions of Mr. Chapman.
- 30 Q. Are you - At that time were you attached to Central Police Station? A. No sir, another police station.
- Q. So you were seconded to Central, were you? A. I was temporarily attached to Central.
- Q. When did you becoem temporarily attached to Central? A. On the 11th February, sir.
- Q. That is the day before the taking of that statement? A. That is correct.

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continued

- Q. Now when you came along into the C.I.D. office was Mr. Chapman already there or were you there before Mr. Chapman came in? A. They were there, sir.
- Q. That is Mr. Chapman and the 2nd accused and you came along. What was the first thing that happened after you came along? What was the first thing that was said, that was done, etc.? A. The first thing said to the 2nd accused?
- Q. By anyone. When I say by anyone, by you or the 2nd accused or Mr. Chapman, the three of you. I am only concerned with the three of you. What was the first thing that was said? A. The first thing, he was being questioned. 10
- Q. The first thing was he was being question. That doesn't make sense. Who said what? A. Mr. Chapman, sir.
- Q. Said what? A. He said to Amanat Khan that he was being questioned regarding a Pakistani male, Said Afsal, who was found murdered at 36B Kennedy Road, 4th Floor. 20
- Q. Did you tell the 2nd accused that? A. I told him, sir. He understood it.
- Q. Would you look at I19 there. There is no mention of that question, those two statements that you just mentioned at all in this statement. Isn't that right? Look at the start of the statement - that will help you. A. Yes sir.
- Q. Are we to take it that the first words that were spoken at this particular interview were not recorded in this statement? A. No.sir. 30
- Q. But these words don't appear here. Either they were recorded or they were not. Do you agree they do not appear in this statement? A. No sir.
- Q. You do not agree or you do agree? You agree or you disagree? A. Those were not written, sir, on the statement.
- Q. What was the next thing that was said? A. He was asked questions of his name, address and his job, sir.

- Q. His particulars, yes. And what happened after that? What was said next? A. He was asked about his particulars, sir.
- Q. Yes, and after the particulars? A. Then he was asked about the whereabouts.
- Q. The whereabouts of what? A. Whereabouts at the time of the incident on the 10th.
- 10 Q. Well now he was asked his whereabouts, is that it? A. He was asked about the whereabouts of his on the 10th February.
- Q. He was asked about the whereabouts of his on the 10th February. Can I have 119 please? So after the particulars were given by the 1st accused you say - so sorry, by the 2nd accused, you say the 2nd accused was asked about the whereabouts of his on the 10th February. Right? A. Yes sir.
- Q. When did you first learn English? A. Learn English?
- 20 Q. Yes. A. In Pakistan, sir.
- Q. I said when. A. After 1940, sir.
- Q. Were you at school? A. I went to school, sir.
- Q. What level did you get to? A. All languages - Arabian, Persian, Punjabi, Urdu, English --
- Q. I don't think you heard the question. What level did you reach? A. Faculty of Arts, sir, when I left my college.
- Q. When you left your college. A. Yes. After matriculation, sir.
- 30 Q. You matriculated, is that it, and then you took an arts course? A. Yes.
- Q. All right then. When he was asked about the whereabouts of his on the 10th February what was the next thing that was said by anyone? A. Then Amanat Khan answered each question, where he was, what he did.

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continued

- Q. Tell me, have you refreshed your memory from any source in any way about the events that occurred on the 12th February since the 12th February? Do you understand my question?
A. I did, sir.
- Q. You did? A. I did understand the question and I did refresh my memory.
- Q. How often? A. From time to time when I felt that I am not remembering anything I did refresh, sir. 10
- Q. So you felt from time to time that you weren't remembering, that you weren't remembering anything so you refreshed your memory. Is that right? A. That's right.
- Q. So what you are telling us now is dependant purely on the source of what you refreshed your memory from, is that right? A. Partly, sir.
- Q. To a great extent surely? A. No sir.
- Q. When did you last refresh your memory? A. Last night, sir. 20
- Q. Tell me, have you in all these years in the Force, have you taken any legal courses in the police apart from your arts course? A. No sir. Legal course?
- Q. Yes. A. No sir. There is no legal course in the Police Force.
- Q. Have you ever done any legal examinations?
A. I did, sir.
- Q. Without attending any kind of course? A. I did, sir. 30
- Q. Then you have attended legal courses and you have done examinations? A. Yes sir.
- Q. Including the laws of evidence? A. Yes.

- Q. Now don't you know that with regard to refreshing one's memory a witness is in certain circumstances entitled to refresh his memory in court from certain types of documents, provided he is given leave to do so by the judge? A. I understand, sir.
- Q. You know? A. I know, sir.
- 10 Q. But instead of waiting to ask for his Lordship's ruling to refresh your memory in court you decided to refresh your memory just before coming to court? Right? Last night. A. Yes sir.
- Q. Don't you think that is dishonest? A. No sir, not at all.
- Q. You don't, I see. Tell me, how long have you been in the Force? A. 12 years.
- Q. Is this the way that you have been giving your evidence in the various cases you have given evidence in in these 12 years? A. Yes sir, in order to make sure to give correct evidence.
- 20 Q. To make sure. That is what you have been doing, is that what you say? A. Yes.
- Q. You have never told any judge or magistrate about what you have been doing, have you? A. I am a bit hard of listening, sir.
- Q. Hard of hearing you mean. You never told any judge or magistrate about this practice of yours, refreshing your memory before coming into court about your evidence. Is that right? A. No sir.
- 30 Q. And I suppose in many of these cases - before I come to this case - you don't really know what kind of evidence you would have been in a position to give but for the fact that you refreshed your memory? You wouldn't be able to say how much you remember. A. So far as the facts are concerned, sir, I always remember, and I refresh time, date, and the person with whom I worked, sir.
- Q. As far as the facts are concerned you refresh your memory? A. Not about the facts.

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- Q. Oh, you don't refresh your memory, I see. You don't refresh your memory on law do you? On times, dates and names. Aren't they facts? Aren't they? A. They are facts, sir.
- Q. Would it be correct to say that but for this refreshing of your memory, which apparently you have done on a number of occasions since the 12th February, you cannot honestly say what evidence you would be in a position to give now to his Lordship? A. I must say that I am in a position to give evidence. That I say. 10
- Q. If you were really in that position, what was the necessity of refreshing your memory so often? A. Sir, if I refresh my memory it doesn't mean that I did not know. Just to refresh.
- Q. But you told us the reason for your refreshing your memory was you were forgetting about things. A. Yes sir.
- Q. So doesn't it follow that if you don't refresh your memory the things that you were forgetting you wouldn't be able to rec all? A. Not forgetting. Just to make sure I said. 20
- Q. To make sure. That is your evidence, is it? You say you were not forgetting anything at all? A. No sir.
- Q. I see. Despite what you told his Lordship earlier? I leave it. Now there are just a couple of other things I want to ask you. This dialect, what is it called, that you talked to the 2nd accused in? A. Punjabi. 30
- Q. Now can you tell us this? With regard to the questions that were put by Mr. Chapman, did you paraphrase the English words and sentences that Mr. Webster used while you were questioning the 2nd defendant? Do you know what paraphrase means? A. Yes.
- Q. Did you paraphrase? A. I translated, sir, more or less word by word, sir.
- Q. More or less? A. Word by word.

- Q. More or less word by word? A. Yes.
- Q. Now how about the answers that you got from the 2nd accused, did you paraphrase his answers?
A. No sir.
- Q. What did you do? A. He told me in Punjabi, sir, I translated word by word in English to Det. Inspector Chapman, sir.
- 10 Q. So you used a different technique with the questions and the answers. With the questions you translated more or less word for word, but the answers you translated word for word.
A. I translated the same way from both sides. From Mr. Chapman and to Mr. Chapman.
- Q. So was the true position that you were translating more or less word for word all the time? A. Yes sir.
- Q. I see. That is as you understood what Mr. Webster was saying and what the 2nd accused was saying?
A. That is correct, sir.
- 20 Q. Now you have agreed that with regard to the opening statement by Mr. Chapman and with regard to what the 2nd accused said after Mr. Chapman had spoken that these, you have agreed that these words do not appear in this statement. A. I do, yes.
- Q. I don't want to confuse you now. Do you understand? A. I understand.
- 30 Q. Now were there any other words or questions or statements used by Mr. Chapman or by yourself or by the 2nd defendant which do not appear here, or is the position that you are not sure, you cannot say one way or the other? A. No sir, whatever was said by the 2nd accused it was written by Mr. Chapman as I told him, translated to him.
- Q. How do you explain the omission here? Did you translate what the 2nd defendant said to Mr. Chapman? A. Yes sir.
- Q. You did, but he didn't write it down? A. No sir.

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Q. In regard to the 2nd accused, the interrogation took about 1.3/4 hours, is that right?
A. According to the questions put to them.

Q. Would you like me to put my question again?
A. Yes sir.

Q. Would you agree that the interrogation, that is the questioning and the answering and the interpreting of the questions and answers, that took roughly 1.3/4 hours? A. I agree, sir.

Q. There was no break at all in the interrogation? There was no rest or pause? A. No sir. 10

Q. Did Mr. Chapman appear to be in a great hurry to get this statement? A. No sir, not in a hurry.

Q. As far as you were concerned you were never told by anyone that there was hurry or urgency about the matter? A. No sir, no hurry, sir.

Q. There was no break at all, there was no rest during the interrogation, was there? A. No rest, sir. 20

Q. No food was given to the 2nd accused? A. No food.

Q. No drink? A. No drinks.

Q. I don't suppose you know what meals, if any, the 2nd accused had on the 12th February? A. I beg your pardon, sir? I could not understand the question, sir.

Q. Did you not hear what I said or did you not understand the words? A. I did not hear.

Q. As far as you know, you have no knowledge as to what meals, if any, the 2nd accused had on the 12th February? Did you hear me that time? Did you hear the words I used? A. I did, sir. 30

Q. Do you understand the question? A. No sir.

Q. You don't understand that question. I see. Thank you.

NO REYN. BY MR. MACDOUGALL.

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COURT: Do you know if the 2nd accused had any food on that day? A. I don't know, sir.

COURT: Thank you. Yes?

MR. MACDOUGALL: Those are all the witnesses I propose calling with regard to the trial within the trial.

10 MR. MAYNE: I don't propose to call evidence in the circumstances of the case, my Lord.

COURT: I think, Mr. Mayne, you should indicate to us now exactly what is the nature of your objection.

MR. MAYNE: Yes, my Lord, that I shall try to do. I will just address you briefly on this matter. I don't think I need to go into the law of the matter.

20 COURT: All I am asking is for you to indicate what is your objection so that Counsel for the Crown can address me.

MR. MAYNE: Yes. Now my submission is this, my Lord, first of all. Before a statement can be admitted in evidence the Crown must prove affirmatively (1) that the statement was free and voluntary, (2) that it was correct, (3) that it was taken in circumstances which are not improper. On this aspect --

COURT: You say secondly they have to prove that it was correct?

30 MR. MAYNE: Accurate, my Lord.

COURT: And thirdly?

MR. MAYNE: That it has not been taken in an improper way, because even if the statement is free and voluntary if it is taken in an improper way, apart altogether from the Judges Rules as your Lordship will see --

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COURT: Mr. Mayne, what I am asking you, what all of these - what is your objection in this particular instance? You are making an objection, Counsel for the Crown has to meet it, and it is not reasonable, I think, for me to call upon him to address me until he has a statement of the objection. You then have a right to reply.

MR. MAYNE: Of course, my Lord.

COURT: Well I am asking now for a statement of your objection.

10

MR. MAYNE: They are these three.

COURT: All three. That is that the statement was free and voluntary, it was accurate, and it was taken in circumstances which were not improper.

MR. MAYNE: I have to put it slightly differently, my Lord. It has not been proved to be any one of these three things. It has to be proved affirmatively.

COURT: Yes. Now are you able to address me?

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MR. MACDOUGALL: Yes, my Lord. As I understand my learned friend's objections, firstly that the statement was not taken freely and voluntarily. The evidence, I would submit, my Lord, was quite clear on the point. There was no evidence of threats, promises or inducements. In fact, I cannot see what possible objection my learned friend could have taken, unless he was referring perhaps to the Judges Rules. He has not specified this, so I presume it comes under the third heading which he has mentioned, that the statements were taken in circumstances which were improper.

30

MR. MAYNE: In order to help my learned friend, I am referring to the Judges Rules, but you will also find in Archbold, 35th Edition, paragraph 1119, which deals first of all with Rule 3 of the Judges Rules, at page 465.

COURT: 1101?

MR. MAYNE: 1119 at page 465.

COURT: Yes.

MR. MAYNE: There your Lordship will see the learned author says this about Rule 3 in particular:-

"Rule 3 is not intended to encourage or authorise the questioning or cross-examination of a person in custody, after he has been cautioned, on the subject of the crime for which he is in custody, and, long before this rule was formulated and since, it has been the practice for the judge not to allow any answer to a question so improperly put to be given in evidence; but in some cases it may be proper or necessary to put questions to a person in custody after the caution has been administered."

And it goes on to state instances where questions are allowed. What I am saying, my Lord, is that I am basing my objection not merely on Rule 2, because I think, my Lord, it is quite clear from the evidence in this case that it has not been proved. Mr. Webster --

COURT: Mr. Mayne, I cannot allow you three opportunities to address me.

MR. MAYNE: No, I am merely helping my learned friend to answer what I am putting. I say I am basing it on the Judges Rules and on the discretion of the Court apart from the Judges Rules to exclude statements.

MR. MACDOUGALL: Perhaps, my Lord, I should deal firstly with the second ground put forward by my learned friend, that it is incumbent on the Crown to prove that the statements are correct. My Lord, from my understanding we are concerned with the admissibility of the statements, not with the weight to be attached to the statements. The primary concern of the Court at this stage is to ascertain whether or not the statements were obtained under a free and voluntary process. The third ground which my learned friend has mentioned runs concurrently with this. Now, for instance, my Lord, if you

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did in fact find that there had been a breach of the Judges Rules, then you would be perfectly entitled to rule that nonetheless these statements are admissible in view of your overriding discretion in this matter, which is based upon your determining as to whether or not the statements were obtained voluntarily.

Now the evidence as given is such that I cannot see that there was in fact any breach of the Judges Rules. Neither of the accused was in custody - this was quite clearly stated by both Inspectors. They were not under arrest, and therefore it is not necessary to administer a caution. Now it is quite clear, my Lord, that at this stage of the proceedings when the statements were taken that the only evidence which the police had in their possession was that there were two Pakistanis with lacerations on their hands. Nothing further. The two Pakistanis were asked if they had any objection to returning to the station for further enquiries. Both Pakistanis said they had no objection. Now it has been suggested in cross-examination that they were not told that they were not obliged to go to the station. My submission, my Lord, is that this is not necessary, that surely it is implicit in saying to a man "Have you any objections to returning to the station for further enquiries?" that he has a choice of whether to go or not, and that if he refuses to go then he may object.

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If I may refer, my Lord, to 1960 Criminal Law Review. There is an article by the learned author Glanville Williams entitled "Questioning by the Police: Some Practical Considerations". The article commences at page 325. Firstly, my Lord, the learned author says:-

"When the police wish to interview a suspect, they may do so at his house, or they may invite him to go to the police station. A suspect usually thinks it discreet to go to the police station upon request, partly because he does not want the neighbours to know, and partly because he is in a dangerous situation and wishes to try to satisfy the police that he was not implicated."

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On page 327, at the top of the page, my Lord,
the learned author continues:-

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"The best course for the suspect, if he is
'invited' to accompany the officer to the
police station and if he wishes to decline
the invitation, is to ask point;blank:
"Is this an arrest?" If the answer is in
the affirmative, he will then have his action
for false imprisonment if he complies and the
arrest is illegal. If the answer is in the
negative, he can refuse the invitation and
will not be guilty of obstructing the police.
If he does not ask the question, but prefers
to leave the situation ambiguous, there seems
to be no sufficient justification for treating
the case as one of arrest."

There is another passage on the same page, my
Lord:-

20

"When a suspect attends voluntarily for
questioning, the questioning is proper under
the Judges' Rules until the moment when the
police have decided to make a charge. Since
it is for the police alone to determine the
point of time at which they wish to make a
charge, the rule is inherently difficult to
enforce. Where the evidence so far obtained
by the police is enough for making a charge
but doubtfully enough for conviction, the
rule against further questioning requires a
degree of self-restraint on their part which
it is almost unreasonable to look for.
Almost inevitably, the police will continue
their questioning until they have not merely
sufficient evidence for making an arrest, but
sufficient evidence for securing a conviction.
If they are afterwards challenged, it will be
fairly easy to assert that they had still not
finally decided to make a charge."

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The fact in this particular case, my Lord, is
that there was no evidence at this stage except
that two Pakistanis had lacerated hands. Now
surely this is an entirely proper case for the
police to make further enquiries? Are they to be
hamstrung in their investigations simply because

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they were taken to the police station? I refer your Lordship also to the case of Wattam, reported in 1952 Criminal Appeal Reports, Volume 36, at page 72. The argument put forward by the learned Counsel for the appellant in this case was as follows:-

"The appellant was approached at his lodgings by several police officers and asked to accompany them to the police station. He was not told that he was free to refuse to go if he wished. This was equivalent to an arrest and answers subsequently obtained at the police station were inadmissible and should have been excluded." 10

That, My Lord, was a submission put up by the learned Counsel for the appellant. Now the Court in its judgment delivered by Mr. Justice Oliver said this:-

"With regard to the admissibility of that evidence, which was argued by Mr. Skelhorn, the court is of opinion that there is nothing in that point at all. The argument was that the police took the appellant into custody, though they did not call it arrest, and then questioned him; and that, that being forbidden by the Judges' Rules, the evidence was inadmissible. There are several answers to that argument. First of all, in our view, the police had not taken the appellant into custody. The fact that they might have arrested him if he refused to answer their questions did not put him in custody. In our view of the evidence, the matter was really one for the discretion of the judge, and the judge thought that the appellant was not under restraint, and that his answers were made quite voluntarily. The police must investigate matters of this kind, or there would be no protection for anybody. We entirely agree with the learned Judge and no more need be said." 20
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There is also a further reference on that page, which is page 77, my Lord:-

"It was pointed out by Byrne J. yesterday in argument that in Voisin (1918) 13 Cr.App.R.

89, where a man was in detention in a cell, he was asked "How would you spell 'Bloody Belgian'?" and he replied "Bladie Belgiam," and as that was the way in which the murderer had spelt it, that formed a strong piece of evidence against him. It was considered by the Court of Criminal Appeal whether that question ought to have been asked, and it was pointed out by Lawrence J. in giving the judgment of the court (at p. 95): "Even if we disagreed with the mode in which the judge had in this case exercised his discretion, which we do not, we should not be entitled to overrule the decision on appeal. This would be evidence admissible in law, unless it could fairly be inferred from the other circumstances that it was not voluntary," and he then pointed out that the Judges' Rules are not rules of law, but intended only for guidance."

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There is a subsequent case --

COURT: What was the name of that case?

MR. MACDOUGALL: Wattam, my Lord. I would mention, my Lord, because it is of some relevance, that the Court was composed of Mr. Justice Oliver, Mr. Justice Jones and Mr. Justice Byrne, particularly Mr. Justice Byrne, because I am now referring to the case of Bass, which is reported in Criminal Appeal Reports, Volume 37, 1953. Now, my Lord, the decision of the Court of Appeal in this particular instance was delivered by Mr. Justice Byrne. In this case the following cross-examination took place:-

"Mr. Crowder, who appeared for the appellant in this court, and in the court below, asked Det.-Constable Butler: "(Q) The truth of the matter was this, was it not, that you had no intention of cautioning him until you had wrung from him the admission you required? (A) I did not caution him

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until such time as he admitted the offence. (Q) Exactly. It took you three-quarters of an hour in one room with the door shut? (A) Yes. We may have discussed something else as well. (Q) Would you agree that, to all intents and purposes, he was under arrest? (A) No. (Q) If he had tried to go, would you have prevented it? (A) He did not try to go. (Q) If he had you would have done. (A) Yes. (Q) If he had refused to go to the C.I.D. room you would have taken him there by force? (A) Yes." 10

The court then went on to say, my Lord:-

"There can be no doubt, having regard to that evidence, that the appellant was in custody; that he was questioned without being cautioned, and thus that there was a breach of rule 3 of the Judges' Rules."

Now, my Lord, I mention this case for this purpose, that it may be argued that Bass's case has some similarities to the case in point. My argument is that there is no real similarity because in effect the testimony given before this Court by both Inspectors was that they would not have arrested the accused, and I submit that this is quite credible and quite reasonable in view of the paucity of the evidence which was available at that particular time. Furthermore, the Court did say in this instance "There can be no doubt, having regard to that evidence, that the appellant was in custody;". Now, my Lord, that is the totality of all the evidence, not just a small amount. "(Q) The truth of the matter was this, was it not, that you had no intention of cautioning him until you had wrung from him the admission you required? (A) I did not caution him until such time as he admitted the offence," which is of course a positive affirmative to the question that was asked. This of course did not appear in this particular case. 30 40

Your Lordship will also observe, if you care to examine Bass's case, that there is not one reference to Wattam's case, let alone a criticism of Wattam's case. This case was decided one year after Wattam's case by the same court, and the judge in the later case of Bass was a member of

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the court in Wattam's case. Now quite clearly, my Lord, there must be some distinction, therefore, between Wattam's case and Bass's case. So, therefore, the mere fact that a man is not asked, not told that he doesn't have to go back to the station is not important. I think, my Lord, it is quite settled law that each case must be judged on its own particular circumstances, and that quite clearly is what the Court of Criminal Appeal is doing in Bass's case. In Bass's case the appeal was successful. There were in effect three grounds of appeal, one of which doesn't really concern us here, my Lord, because it concerned the refusal of the judge to allow the jury to see the notebooks of two Inspectors who had collaborated in taking statements. That, of course, was expressed by the Court as to have been an improper action on the judge's part but was not sufficient to furnish a ground of appeal. However, they did say on the final page, page 60, "in view of the other matters with which we have dealt, we felt obliged to quash the conviction."

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Now the two matters that were raised were that there had been a breach of the Judges' Rules and that the learned trial judge did not properly exercise his discretion in determining that there had been a breach of the Judges' Rules. He had stated that there was not, and then decided that the statements were admissible because there was not. What the Court should have found was that there had been a breach of the Judges' Rules and then exercised his overriding discretion to admit the statements if he found they were voluntary.

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The second ground of appeal was a ground of misdirection by the learned trial judge to the jury. It was objected to that he had told the jury that they must be concerned with the genuineness of the statements, but he omitted to mention to the jury that they must determine whether or not the statements were obtained voluntarily. And it was in view of these two points, my Lord, that the

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court overruled the decision of the learned trial judge. Which was the operative one I don't know. Whether it was the accumulation of both of them I don't know, but in any event, my Lord, I do distinguish this case from the present case insofar as the evidence is not on all fours with Bass's case at all.

COURT: Will you be much longer because time is getting on?

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MR. MACDOUGALL: Perhaps, my Lord, we could adjourn until tomorrow. I think, my Lord, there might be other matters which might arise from questions you might ask me, and there may be other matters I wish to refer to.

COURT: How long do you think we will be in the morning?

MR. MACDOUGALL: I don't expect to take any more than at the very outside 20 minutes. This of course implies that I will not be asked any questions. I don't know how long my learned friend will be.

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MR. MAYNE: I will be not more than half an hour.

COURT: If in the morning I release the jury until 11 o'clock ...

MR. MAYNE: It should be quite safe, my Lord.

COURT: Then we should in that time be able to finish. 10 o'clock.

4.51 p.m. Court adjourns.

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9.59 a.m. Court resumes.

Both accused present. Appearances as before.
Jurors answer to their names.

COURT: Members of the Jury we can release you until 11 o'clock. I hope by 11 o'clock we will be able to continue with the trial.

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MR. MACDOUGALL: My Lord, the next case which I wish to refer you to is the case of CHEUNG KUN SUN and Others and the Queen, reported in the Hong Kong Law Reports, 1962, on page 13. I mention this report not because I feel that it is identical to the facts of this case, but because this is a decision of the Full Court of the Hong Kong Supreme Court and it did deal with a case in which statements were admitted in evidence and were deemed by the Full Court to be improperly so. I would now read the headnote, because I do feel that this is actually a representation of what actually happened in the case, and also gives the background of the facts:-

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"The five appellants were convicted of conspiracy to commit arson. There were good grounds for strong suspicion against the appellants, but apart from confessions admitted in evidence, there was insufficient evidence to convict them.

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The appellants had alleged at the trial that the confessions were untrue and had been obtained by duress during their detention at the police station, but the District Judge found as a fact that those contentions had not been substantiated.

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During the 3 days after the fires all the appellants had been questioned by the police and all had denied guilty knowledge. On the 4th day all the appellants were required to attend at the police station and were individually interrogated for long periods and it was during these periods that they alleged duress had occurred but which the District Judge rejected. No caution was administered during the taking of statements by interrogation and these statements were not tendered

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in evidence at the trial. The appellants were then forthwith formally arrested, cautioned and the disputed statements taken.

The Full Court considered the propriety of taking statements in this manner and in such circumstances, particularly in relation to Rule 3 of the Judges' Rules. This aspect had not been considered by the District Judge.

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The Court examined the disputed statements and noted that their language and contents were those of reluctant, grudging and unwilling admissions, quite unlike what would be expected of spontaneous confessions."

It was held:-

"The statements obtained by interrogation were clearly taken in breach of Rule 3 of the Judges' Rules."

Now my Lord, there are three distinctions, I would submit, in Cheung's case and the present case. In Cheung's case, the appellants regarded themselves as being in custody, which is not so in this particular instance. I would refer your Lordship to the statement upon arrest taken from the 1st accused, Mawaz Khan, in which he said, 'How am I arrested? Why am I arrested?' I invite your Lordship to find a man who had already considered himself under arrest at this stage. Secondly, my Lord, in Cheung's case, all the appellants confessed, but they confessed in a type and form which was the finding of the Judges of the Appeal Court that the statements were made in a reluctant and grudging manner. This again can be distinguished from the present case, because neither accused confessed, and the statements are certainly not grudging or unwilling - they are complete and in detail, and indicate complete concurrence and co-operation. In Cheung's case also there were previous statements which were not made under caution and which were not tendered in evidence. On page 18 of the report the Full Court says as follows:-

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"The very fact that such statements were not tendered in evidence in itself seems to be not without significance."

Now, my Lord, this does not arise in this particular case at all. There were no previous statements that were not adduced in evidence. In fact the previous statements made by the accused were taken at the Mandarin Hotel and considered entirely acceptable by my learned friend. The statements which were made subsequently at the Police Station are actually the same in form as were taken at the Mandarin Hotel except they were embellishments and enlargements - they were full of details, but they do not depart from what was said at the Mandarin Hotel.

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My Lord, I think that is all I can say on the question of the Judges' Rules, except perhaps to say I don't consider, and I would submit, that Rule, I think (1), was in any way contravened, as your Lordship has already undoubtedly observed that there was no evidence at this stage upon which the police could arrest the two accused - simply the evidence that they were Pakistanis and they had lacerated hands - this is something, of course, which admits further explanation, and it was something the police set out to find out.

COURT: Rule 1 does not relate to arrest.

MR. MACDOUGALL: To the caution, my Lord - to the giving of the caution - I think Rule 1.

COURT: Rule 1 deals with the making of enquiries from persons, whether suspect or not, will they be able to assist the police - I think perhaps Rule 2, you have in mind.

40 MR. MACDOUGALL: I am sorry - I do refer to Rule 2:-

"Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking him any questions,

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or any further questions, as the case
may be."

I think Rule 1 has some relevance, in that,
there is no objection to a police officer,

"putting questions in respect thereof
to any person or persons, whether
suspected or not, from whom he thinks
that useful information can be obtained."

Now, therefore, my Lord, assuming at this
stage that perhaps you may think that the
statements were obtained in breach of the Judges' 10
Rules and traced on the wider ground that they
were, and they are admissible on the ground
that they were obtained voluntarily and freely,
first of all I must necessarily have some over-
lap on the previous argument, but I suggest
this, that the wording of the statements them-
selves indicate voluntariness and desire to co-
operate - hardly words which would be uttered by
a man who did not wish to say anything. The 20
words uttered by the 1st accused, when he was
arrested, also indicate - a statement made by
himself previously mentioned, 'Why am I arrested,
how am I arrested". The police clearly asked the
1st accused - both accused whether they had any
objection to go to the Police Station for further
enquiries, and both accused said they had no
objections.

Now it was suggested in cross-examination that
these men may come from places with oppressed 30
jurisdiction, where they are used to oppressive
police measures, therefore, they think they had
no choice but to go to the Police Station. Well,
my Lord, these men come from Pakistan - a place
which is under the same system that is operating
here - it is basically the same system of
justice and law. In any event, the wording is
'Have you any objection?' Any man would see he
has the choice from that wording.

Again, I would repeat, my Lord, the statements 40
taken at the Police Station were nothing but
enlargements and embellishments to the statements
which were made at the Mandarin Hotel - if they
made - if both accused made confessions at the
Station, it would be contrary to what they said at

the Mandarin Hotel, and then, I would submit, your Lordship will be certainly entitled to regard with some diffidence as to the manner in which the statements were made, but this is not so. The statements are merely enlargements of what was said at the Mandarin Hotel, and these were statements which were taken spontaneously from the accused.

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10 Reference was also made to the fact
that these statements were made in
question and answer form. Well, my Lord,
all I can say to that is what is more
natural with the police making enquiries -
they have not arrested the men and cross-
examined them at this stage of the
proceedings - they had no evidence - they
were trying to find out whether or not
the accused had put up a story which is
20 consistent one way or another - it was
necessary to ask questions to ascertain
the truth, so therefore, these statements
must be taken in question and answer form.
Admittedly the statements which are normally
before the court are in narrative form.
This is simply because they are taken upon
arrest, and the Judges' Rules expressly
forbid cross-examination on the statements
taken on arrest. Naturally the majority
30 of statements are in narrative form, but
this is an entirely different situation.
I would submit, my Lord, that there has
been no breach whatsoever of the Judges'
Rules, that although the onus is on the
crown to prove that the statements are
completely voluntary, there has been
nothing adduced in cross-examination which
would indicate the contrary. I also submit
that, in addition to this, there has been no
40 evidence to contradict the evidence of the
four witnesses, that there were no threats,
promises or inducements. I would, therefore,
submit with respect, that the statements
should be admitted in evidence.

COURT: Thank you. Yes, Mr. Mayne?

MR. MAYNE: May it please your Lordship - on this
particular point, as far as the law is

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concerned, I don't think there is very much between any of us - I think there is no great difficulty in the law. The only other case which I think may have any bearing at all on your Lordship's decision is the 1961 case in Hong Kong Law Reports, CHAN Hung v. the Queen. The facts of that case were very different to the facts here, but two points, I think, have a bearing, because in this particular case, the Chan Hung case, the accused made a number of so-called voluntary statements, admitted everything that he could have admitted stealing - this is a charge of larceny ..

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COURT: With great details.

MR. MAYNE: Great details here - it was subsequently found out that this voluntary confession, in respect of two of the thefts could not have been true, because he was in prison at the time of the alleged offences. It is a Full Court decision - Full Court - the Chief Justice and Mr. Justice Rigby - I say the facts are very different, but I think this is important perhaps, at page 727, when Mr. Justice Rigby, in concluding his judgment, has this to say:-

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"It cannot be too strongly stressed that excessive zeal in striving for confessions can only lead to increased doubt as to whether they have that free and voluntary character on the affirmative proof of which their admissibility depends."

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It would seem to me, my Lord, that there has been that degree of excessive zeal indeed in this case, in getting these statements in the Station from the two defendants in this peculiar form of question and answer.

With regard to the English Law, my Lord, of course we are guided by the English Laws to a great extent, that is with regard to the principles we apply, but nevertheless, in applying these principles, the Full Court show that it applies them with due regard to local conditions, as shown in the MA Case, where the Full Court showed it had a very different approach to this question of provocation in Hong Kong to the kind of provocation that might be required, might be

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considered adequate in the United Kingdom. In other words, the courts of Hong Kong have properly decided that while they apply the British law, they apply it to local conditions, to the people who live here, and they pay due regard to the thoughts that may be in the mind of the local people, who are, I think mainly of the kind who are not usually fully conscious or aware of their rights, as persons in the United Kingdom. I think, it might be said in the United Kingdom conditions are very, very different indeed, that with regard to the majority of the people, they are fully aware of their rights - indeed many of them are mentioning they have rights that they do not possess at all, but here we have a very different situation indeed. Here we have a case concerning Pakistanis. Reference has been made by my learned friend upon the British law which was applied in that part of Asia which is now known as Pakistan.

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COURT: Mr. Mayne, I don't think I need concern myself with the conditions in Pakistan.

MR. MAYNE: No.

COURT: There is no evidence before me as to what the conditions are. It does not seem to me that it assists me.

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MR. MAYNE: I think your Lordship can take judicial notice of this, to this extent, that the Indian Penal Code was applied by the British administrators and judiciary, and under the Indian Penal Code, statements of this kind were wholly inadmissible.

COURT: I don't think I can take judicial notice of the following law.

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MR. MAYNE: May it please, your Lordship, but you can certainly take notice of the fact that here we have persons who come from a country, and who as far as the evidence goes, have not had much time to become aware of their rights, and to become aware of the great fairness of the Hong Kong Police in their dealing with

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many of the cases that they investigate. In other words, they may not appreciate that if they did not co-operate or appear to co-operate the results may be drastic for them.

I listened with some slight amusement, I must confess, to my learned friend's reference to what Professor Glanville Williams has to say about what a man in the street should do if a police officer asks him to accompany him back to the Police Station - I only wish that these remarks of my learned friend here were mentioned to the population of the Colony, for if it were, I think seriously, we will probably have half the number of police that we have now.

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I do doubt, however, the two defendants of this case - let alone the ordinary members of the public of Hong Kong - are aware of what Professor Glanville Williams thinks is probably the wiser course, for a member of the public, with conditions that face the defendants, if invited back to the Station would in fact be to make statements.

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There is only one other observation on the British law - I don't think the BASS case and the other case distinguished by my learned friend, have the great air of difference about them, because after all one was a Court of Appeal case where the test is to whether the discretion of the trial judge is the factor. It is very difficult for the Court of Appeal, and it is not very different, but it takes a lot for a Court of Appeal to interfere with the trial judge's discretion - that is the way presumably which the Court of Appeal approaches the matter in that case - that is quite different matter as to how the learned trial judge should approach the matter when he hears the matter, when he has to consider how to exercise his discretion in any particular case. As I say, I don't think we are really in dispute about the principles of law, but simply as to how it effects this case.

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Now I don't think my learned friend is quite correct in saying that there were no reasons for arrest at the time Mr. Webster took these two defendants to the Police Station. He has told you of the factors that were in his mind which

10 may or may not be sufficient ground for arrest, but there is no strict dividing line. There is one particular argument of my learned friend that I would like to deal with straightaway, which is this - this matter as to whether these statements should be admitted. It depends entirely on how your Lordship regards the surrounding circumstances and it does not depend on any one way as to what the contents of the statements are. In other words, here we are not concerned that the statements which on the face do not appear to be confessions of guilt, but of course they are important evidence in the case. So the question is in the circumstances should they be admitted or not, not what the actual statements say.

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20 Now I want to ask - can your Lordship be happy about these statements to the extent of feeling that they have been affirmatively proved, that the statements were taken either freely or voluntarily or in breach of the Judges' Rules, or that in every manner they were properly taken? For a number of factors that I don't think I need enlarge upon but which I will just mention briefly because the evidence is fresh in your Lordship's mind, Mr. Webster apparently was in direct charge of this case and Mr. Chapman really had no decision to make one way or another about the arrest, about the custody. He was acting at all times under the immediate instructions of Mr. Webster, but here you are faced with a difficulty with regard to the statement, in particular of the 1st accused. It wasn't Mr. Webster's decision as to how to take these statements or what course of action to take then, because on his own evidence, before he did anything with regard to the statements he conveyed all his suspicions and all the evidence which he himself is aware of - all the information to a superior officer, who directed him to take the statements in the unusual, which he admitted, unusual manner that he did. So was this person under de facto arrest or not? Whether he is in custody or not does not

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depend entirely to the time which the particular police officer repeats the magic words, 'I arrest you.'

It is for your Lordship to decide when a person is de facto in custody. Now apparently, and this is borne out by the whole evidence that Mr. Webster said he later decided to arrest, but before doing so he got in touch with some superior officer, and it was with his apparent - apparently with his direction - or I think the words used actually were "his assent that the two defendants were in fact arrested." This whole thing points to the fact that the man in charge didn't order statements should be taken or whether arrests should be made - some superior officer, who apparently is so senior and so superior, that he does not intend to come to court to tell us about what he thought, in other words whether he had decided that the defendants should remain in custody or not, which after all is what arrest is. So we don't know whether the police officer who actually gave the instructions - knowing all the circumstances - to take these statements in the peculiar way in which they were taken, whether he had decided on de facto custody. This is a tendency to try to defeat the purpose of the Judges' Rules by deferring the announcement of arrest until the last moment. You don't know what is in the mind of this gentleman because he is not here to tell us.

In those circumstances do you know whether this man - or in the mind of the man in charge of the case - whether he decided to keep this man in custody or not? One thing we do know. He gave specific instructions to take the statements in the way which Inspector Webster admits is unusual, and I think looking at the statement itself, it amounts to grilling and severe cross-examination.

The next step in this reference to both of these statements, but probably more especially the first statement is this was all done through an interpreter. How has that interpreter impressed you in the box? Is he a honest witness?

COURT: Does that concern me?

MR. MAYNE: I think it does, my Lord, on this point of accuracy, which I think I possibly did not make quite clear to your Lordship. I think it will be highly prejudicial if a statement were put before the jury which had not affirmatively been proved to be an accurate translation of what Mr. Webster said and what the accused said. If there is, this is something more than a matter of weight for the jury. It is a factor, I think, which your Lordship is entitled to put into consideration in deciding whether to exercise your discretion to exclude the evidence or to allow it to go to the jury, but certainly I think it is a very disastrous thing that a statement which depends so much on what went on between a witness - the two witnesses such as we have seen, first insofar as any witness I think can be, I think he more or less admitted perjury to your Lordship. There were lots of delays - there appeared to be great difficulty in understanding English - your Lordship's English and mine, and as well as there was this peculiar I think, extraordinary admission by both of these interpreters that despite their knowledge of this question of allowing to refresh their memory, they had in effect been deceiving our courts here on this matter of refreshing memory for about, I think, twelve or thirteen years respectively.

COURT: What justification is there for alleging deceit, Mr. Mayne?

MR. MAYNE: My Lord, if the law lays down a certain process by which the witness is allowed to refresh his memory - you see, the whole purpose of this procedure with regard to refreshing memory is that a person may in certain circumstances be allowed by the Judge to refresh his memory, and that is well-known, admittedly well-known to both of these witnesses, but the whole purpose of that is got around if the refreshing is done before the witness steps into the witness box, and it is in my submission, deliberate deceit, in my submission, of the

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Court, if a man is allowed to give evidence from his own recollection, his own unassisted recollection, where he knows that the law provides for his being allowed to refresh his memory, under proper circumstances, by the Judge. If he takes the jump and does that before being allowed to do that, and doesn't tell the Judge - in other words, over these years, these two witnesses apparently have been refreshing their memory before giving evidence in all of their cases purporting to give evidence which they can remember without difficulty, and knowingly defeating the whole purpose of this particular branch of the law of evidence. 10

COURT: Have you any authority which shows judicial criticism of a witness refreshing his memory before trial?

MR. MAYNE: It has happened in one case that I appeared in before Mr. Cooper quite recently in the Magistrate's Court, but there would be quite a considerable branch of law relating to refreshing the memory which your Lordship will find in Phipson. If the Courts did not feel that before there should be any refreshing of memory certain precautions should be taken by the Court -- 20

COURT: If you are right it would be wrong for a witness to read his proof of evidence again before he goes into Court? 30

MR. MAYNE: Yes, my Lord. I have addressed the Courts on many occasions about this, and I can say that when it has become known that this has been done, that in effect the witness's evidence has been primed, either by himself looking at his statement, or being shown the statement by the Police Officer in charge of the case, there has been disapproval, it has been a matter which not only goes to weight, but certain Judges have certainly expressed the opinion that it was improper. 40

COURT: But that disapproval has not been reported?

MR. MAYNE: Not to my -- but, my Lord, surely it goes without saying that if the laws of

evidence go to the extent of saying how memories should be refreshed, it is a complete fraud, it is a deceit in a Court, to do what a person may not be allowed by the Judge in Court to do - to do it immediately before he gives it. As I say, I think it is manifest that there is a deceit, a deliberate deceit in the case of a Police Officer who admittedly knows this branch of the law, and I think it goes to his whole credibility. Otherwise I think it might be better if instead of coming to Court at all, these cases should be tried at rehearsals in a Police Station - because there, without refreshing their memory, we might know how much or how little witnesses can remember before they are primed. This priming, this rehearsal, takes away the whole purpose of evidence apparently from memory in the witness-box.

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There are two other aspects of these statements which I think are very peculiar, which rather - very much go towards showing that here, that there was what Mr. Justice Rigby calls "excessive zeal" in striving for confessions, for statements. First of all, almost immediately after the defendants arrived at the station, and before it was known to the Police how long the taking of statements might take, it was arranged by Mr. Webster for the immediate questioning of the two defendants simultaneously. The other factor is, my Lord, and I think very important too, your Lordship well knows the length of time that it takes in ordinary question and answer form, with interpretation, without any undue delays - that the evidence is or was that Mr. Webster said there was difficulty in translation, he thought, in interpretation. We know how long it takes to fill a couple of pages of this. Why did these statements take so long, if you have got the whole truth? The reading back took 15 minutes, in 10 or 15 minutes, in each case. Are you satisfied that the Crown have

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affirmatively proved that you should be so satisfied about the admissibility of these statements that you should let them go to the Jury? The time factor alone suggests must have been going on if there weren't delays. Then of course there is the question of the length of this grilling - that apparently without any regard to the questioning factor, the tiredness factor, which your Lordship well knows from your experience in Court on the Bench and at the Bar - cross-examination, and that is what it was here, and answering cross-examination is a very tiring process, went on without a stop for $3\frac{1}{4}$ hours against the first accused, 2 hours in the case of the second accused - as I said, with this indecent haste, without any delays, in this unusual manner, question and answer, and on the instructions of this gentleman - who he is we don't know - where he is we don't know - presumably in the Colony - it was his decision. How can you decide whether these persons were under de facto arrest?

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COURT: Upon whom is the burden of proving that a man was in custody so that there is a breach of the Judges Rules?
Do you follow me?

MR. MAYNE: I'm sorry, my Lord, I didn't catch the end.

COURT: Upon whom is the burden of proving that a person is, or rather was a person in custody? A Police Officer has made up his mind to charge a person and therefore upon failing to caution the accused he has committed a breach of the Judges Rules. Is it for the Crown to establish that there has been no breach of the Judges Rules or is it for the Defence to show that there has been a breach?

30

MR. MAYNE: My Lord, I don't know of any direct authority on this, but following the general principles relating to extrajudicial statements, I think in all cases it is upon the Prosecution to prove affirmatively not only that the statement was voluntary, but also even before the Judges Rules it was taken in such circumstances as not to render the taking of it improper. If they didn't satisfy the Court about that, even before the Judges Rules

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10 the Court had the right, and used that right, to not allow the statement to go to the Jury. In the same way, my Lord, it is my respectful submission that the principles are just the same with regard to the Judges Rules. It is for the Crown to prove that the statements have been properly taken in every way, and of course I recognise that the Judges Rules are not rules of law, but I would with great respect submit this to your Lordship. If your Lordship is in doubt about a breach of the Judges Rules or in doubt about the propriety of taking a statement, my Lord I think it would be a very - of course very important in this case, I think it would be - we know the difficulty that we have in almost every case, and I suppose in 80% of criminal cases about the statements - and we know that in many cases Judges have held that the spirit of the Judges Rules had not been complied with or the letter of the Judges Rules has not been complied with, and they have excluded statements. My Lord, if your Lordship feels that there is any impropriety either by way of Judges Rules or otherwise about taking of these statements, my Lord, I would with great respect say that it would be a very bad thing for the interests of justice generally to allow in a statement where your Lordship is not sure.

COURT: But the question is whether there has been any impropriety.

MR. MAYNE: That is for your Lordship to decide.

40 COURT: Yes, but you say that there is a possibility that a Police Officer whose identity we do not know had made up his mind to charge the first accused.

MR. MAYNE: My Lord, I am not saying quite that. I am saying it is quite clear on the evidence that the person in charge who gave the instructions for the taking of these two statements, that he was the person who was in real control of this case.

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COURT: Well let us assume that that is so -

MR. MAYNE: Yes.

COURT: The question is, had any Police Officer made up his mind to charge the accused so that there has been a breach of Rule 2?

MR. MAYNE: My answer to that is that your Lordship doesn't know. It is for the Crown to show.

COURT: Precisely, and I am asking, is it for the Crown to show that anybody had made up his mind to charge the first accused, or is it for the Defence to show that somebody had made up his mind?

10

MR. MAYNE: Both in law and reason it must be for the Crown to show that. We don't even know the name of the Police Officer who is dealing with this matter. Are we to call him and say, "Look here, did you make up your mind to charge this man or arrest him or not?" Is he our witness? Can we get at him? He is the Crown's witness - they have chosen not to call him. They have left you in the position that you don't know what he --

20

COURT: But the Officer we do have said that he had not made up his mind and he was acting on the advice of a superior.

MR. MAYNE: Yes, but he is not in a position to say what the superior's view was on whether the accused should be kept in custody or not.

Let me give you an example, my Lord. If this were the position then the Judges Rules could be evaded every day of the week, even more than they are. Mr. Webster, who knew all about the case, supposing he decided the person should be in custody, he could hand the accused over to a Corporal who knew nothing about the case. The Corporal couldn't of course decide whether or not to arrest the person, he had nothing to go on, or he might have something to go on, but he would not be the Officer whose business it was to decide, and then of course it could be denied by the Crown, because the Corporal hadn't decided to bring this man into custody. Here we have a

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very similar position. We have Mr. Webster in direct control of the charge, but he himself took his instructions from another man who gave him instructions to take this statement in this peculiar form, - but we don't know, your Lordship has not been told, what was in the mind of this top man who apparently was in overall charge of this case. It is, with great respect, for the Crown to show what was in the mind of the person who was giving the overall instructions, and the specific instructions in relation to these statements. It is for the Crown to show that - we can't show it.

10

So that is all that I wish to say to you on this particular matter. I am much obliged, my Lord.

20 COURT: Objection has been taken to the admission of a statement made by the first accused, and as I understand it although the time has not yet come to deal with a similar statement taken in almost identical circumstances from the second accused, we are in effect dealing with the admissibility of both these two statements.

30 The objection is based on three grounds, the first of which I will take is the ground advanced by Counsel for the accused, namely, that the statement has not been shown to be correct and accurate. He of course refers not to the contents of the statement which were the observations of the accused themselves, but the manner in which the statements have been recorded and whether the words which appear on the paper are in fact the words spoken by the accused. It is suggested that where it has been shown that there is reason to suspect the accuracy of a record, that that may be justification for keeping the statement from the Jury. It is I think sufficient for my purposes to say that I do not think the circumstances in this case are such that I ought to keep the statements from the Jury on that ground. It may well be that if a statement has been

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shown to have been interpreted so badly that prejudice is almost bound to result, that the Court would be right to exclude the statement on that ground. As I say, I do not think that is the case here, and I think I must leave it to the Jury to decide, after hearing the evidence, whether they think it is safe to attach any weight to the statements. That is assuming that the statements are admissible

The second objection is that it is incumbent upon the Prosecution, and I think this is accepted by the Crown, to prove affirmatively that the statements were voluntary; that is to say, it must be shown that there was no inducement given to the accused which might lead them to make statements which were not true. The usual type of case is where an accused has been threatened with violence if he does not make a statement. Clearly in such circumstances the possibility is equally that the accused will make an untrue statement merely to avoid the unpleasant consequences which are threatened. In the present case there is no real suggestion that the statements are otherwise than voluntary except perhaps that it is pointed out that the statements were taken in a Police Station. I, for my part, am not of the view that every statement taken in a Police Station must ipso facto be involuntary. The accused have not themselves suggested that there was any threat or promise made to them. 30

The Police Officers concerned all say that there was no threat or promise or other inducement.

As I observed, there was a considerable time spent in taking these statements, and that undoubtedly is a ground for looking at the statements with some suspicion, but there are many reasons why the statements could take a long time. The Prosecution witnesses have said that the whole of this time was taken up in recording, interpreting, and so on, and I do not think from my own experience in recording evidence in Court, that the time is so long that the only possible conclusion is that there must have been some impropriety in the taking of the statements. As I see it, the witnesses say quite adamantly 40

that the statements were taken freely from the two accused, and I see no reason to disbelieve that evidence. I accept that no improper pressure was placed upon these two accused.

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10 This rule that statements must be
voluntary are really - is really a
development from the general discretion
which the Court has to exclude evidence
which is unfairly prejudicial. That part
of the rule has grown into a rule of law
and the Judge no longer has a real
discretion, if the statement is not proved
to be voluntary he must rule it to be
inadmissible. But there still remains
a true discretion to reject evidence
which is unfairly prejudicial, and this is
what the Defence ask me to do here. They
say that there has been a breach of the
20 Judges Rules, and that in all the
circumstances it has not been shown affirm-
atively that the statements were taken in
such a way that they ought to be admitted
as evidence against the accused.

30 There are two grounds, two allegations
of breach of the Judges Rules. First, it is
said that these accused were in custody and
therefore should not have been questioned
without the usual caution being administered.
They were interviewed by the Police at the
Mandarin Hotel. They were asked whether
they had any objection to going to the Police
Station for further questioning, and they
each indicated that they had not. They were
not expressly informed that they had the
option to refuse if they saw fit, but they
were asked if they had any objection. When
they said they had not, they were taken to
the Police Station, and almost immediately
40 these statements were taken from them. It
is true that afterwards they were kept in the
Police Station - I say "kept" - they remained
in the Police Station - I see no reason to
believe that they had any good ground for
believing that they were not free to go.
Whether or not they did believe that they were
prevented from going I do not know because

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they have not told me, but they certainly had no reason, upon the evidence, to think that they were not free to go if they wished.

I find that these men were not in custody.

It is then said that whenever a Police Officer has made up his mind to charge a person with a crime he should first caution such person before asking him any questions. I should, of course, emphasize that we are at present in Hong Kong still bound by the old Judges Rules, and that a very different consideration might apply if the new rules were applicable in particular, I think, that if the new Rule 2 were to apply it might very well be that there had been a breach of the Judges Rules. That is not the position here, it is suggested that a Police Officer may have made up his mind. Mr. Webster was the officer immediately in charge of this case. He was serving under superior officers, one of whom he consulted, and from one of whom he received certain instructions. That superior officer has not been called but there is no reason to believe that he had knowledge which was not in the possession of Mr. Webster. Mr. Webster says that he had not made up his mind to arrest the first accused, and I believe him. It does not seem to me that there was evidence upon which he would have been justified in arresting the first accused at the material time. There were certainly grounds for suspicion but that is not the same thing.

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It has been suggested that this ruling will lead to wholesale evasion of the Judges Rules. I am happy to think that that does not necessarily follow. If the officer in charge of a case, having made up his own mind that an accused ought to be arrested, were then to direct a Corporal who knew nothing about the case to take a statement with the object of circumventing the Judges Rules, I do not think that the Courts would be slow to deal with that situation in no uncertain manner. Quite clearly, once any officer has made up his mind to arrest an accused, that officer is bound to give a caution and it is not possible to evade that responsibility by merely handing a prisoner over to somebody else, and if it were to appear that the person who actually

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is asking the questions is not the officer in charge of the case, it might well be that the Court would not be satisfied until it had heard the officer-in-charge of the case. But that is not the position here. We have heard the officer who was immediately in charge, and there is no reason at all to believe, as I have said, that his superior from whom he took advice was in possession of any other evidence against this accused. That being so, I do not think that there has been a breach of Rule 2.

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As regards the second accused's statement the position is even stronger insofar as the admission of the statement is concerned, because Mr. Chapman, who took the statement, was acting under instructions of Mr. Webster. I can not agree that this was - this questioning was aptly described as "grilling". So far as I can see the questioning was carried out in a perfectly fair manner. All I wish to add is that the suggestion was made to one of the witnesses that he had deliberately sought to deceive the Court by looking at his notebook before he came to Court. I would agree with Counsel for the Defence to this extent, that the Courts will not tolerate any attempt by witnesses to learn their evidence parrotwise before they give it, but that is a very different thing from a witness looking at his proof of evidence to remind himself of all the material facts. To suggest that by so doing a witness deliberately deceives the Court if he knows that the Court might allow him to refresh his memory in the witnessbox, appears to me to be unjustified. It might well be that the sole object of the witness was to ensure that justice was done, and that he did not mislead the Court by having misremembered something which occurred. I do not think it is necessary to elaborate upon this - I merely make that comment in passing.

I have considered all the cases which have

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been cited to me, and the submissions made by Counsel for the accused, and I have come to the conclusion that there is no ground upon which I can properly keep these statements from the Jury. It is for the Jury to decide what weight ought to be attached to them.

MR. MAYNE: Does your Lordship intend to have a mid-morning break this morning? This might be a convenient time.

COURT: Do we need one? The Jury have only just come in. Is it necessary to have a break this morning?

10

MR. MAYNE: I think it would be desirable, my Lord.

COURT: Well, let's carry on for the time being.
11.03 a.m. Jury return.

Prosecution Evidence

No.15

Brian Webster Examination

NO.15

BRIAN WEBSTER

COURT: Mr. Webster?

P.W. 6 - Brian WEBSTER. (U.f.o.) English)

20

XN BY MR. MACDOUGALL. (continuing)

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

Q. Inspector, when you were in the box when the Jury were last here you testified that there were two statements made by each of the accused, that is to say, one statement each at the Mandarin Hotel.

Now would you tell the Jury what happened after those statements were made?

A. We then returned to Central Police Station.

30

Q. Did you say anything to either of the accused before you returned to Central Police Station?

A. Apart from the statements at the Mandarin Hotel?

Q. After they had made statements, did you ask them a question?

A. Yes. I asked them if they had any objection to returning to Central Police Station with me for further enquiries. Both said they had no objection.

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Prosecution Evidence

No. 15

Brian Webster
Examination
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(Continued)

Q. Did you make any reference to their clothing?

A. I asked them if they had any objections if all their property were taken back to the Police Station for further examination. Both said they had no objections. I then gave instructions for them to gather up all their property. They then changed their clothing and gathered together their property. I then asked them if this was all their property, and they said "Yes".

10

Q. And did you then return to the Station with the two accused?

A. I did, my Lord.

Q. Would you tell His Lordship and the Jury what happened when you reached the Station with the two accused?

20

A. Upon reaching the Central Police Station the first accused, myself and Inspector Nawaz went into my office. I left to see a senior officer and upon my return I spoke to the first accused. I asked the first accused whether he had any objection to giving me a statement. He said he had no objection. I told him that I was making enquiries once again into the murder of one Saïd Afzal. I then recorded a statement from the first accused in question and answer form.

30

Q. You were of course using Inspector Nawaz as interpreter?

A. Using Inspector Nawaz as an interpreter.

Q. Tell me, Inspector, did you make any threats, promises or inducements to the accused to get him to make a statement?

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A. No, my Lord.

Q. Did anyone to your knowledge do this?

A. No, my Lord.

Q. Was there in fact a statement made in question and answer form?

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Prosecution Evidence

No.15

Brian Webster Examination 29th April 1965 (Continued)

A. It was, my Lord.

Q. What happened when it was completed?

A. When it was completed it was read over by Inspector Nawaz to the first accused. Alterations were made to it at the request of the first accused which he signed and he signed the statement.

Q. Do you identify this, Inspector, this being the statement to which you have just referred?

CLERK: Identification No. 14.

10

A. I now (looks at document) I now identify this as the statement to which I referred.

Q. Inspector, how long did it take to obtain the statement?

A. The statement was recorded between 12.25 p.m. and 3.40 p.m. 3 1/4 hours.

Q. I see. And everything that was said was interpreted as between yourself and the accused?

A. Everything I said was interpreted, yes.

Q. Would you kindly read the statement to the Jury?

20

A. (Reads statement) "States:-

Told I am making enquiries into the murder of a Pakistani watchman called SAID AFZAL.

Q. You have received certain injuries on your hands and forehead. Can you tell me how you received those injuries? ...

.....
Q. When did you last see your brown pair of shoes?

A. I last saw them on the 9th February 1965 and then today. They were still there over my suitcase under my bed. The last time I saw my shoes they were on the suitcase. Today they were on the floor I do not know who put them there.

30

This statement has been read over to me in Urdu and is correct with the alterations that I have asked you to make and signed." 40

and signed by myself, and signed by the first accused.

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MR. MACDOUGALL: My Lord, Inspector Nawaz will produce this statement subsequently.

Prosecution
Evidence

No.15

Brian Webster
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(Continued)

Q. Inspector, what was the attitude of the first accused at the time this statement was taken?

A. The first accused was quite cheerful. He smiled several times during the taking of the statement and he appeared most co-operative.

10

Q. Now Inspector, how many people did you interview regarding this crime prior to your seeing the two accused at the Mandarin Hotel?

A. I interviewed a considerable number of persons. I can't say how many but certain well in excess of 40.

20

Q. Now after you took this statement from the first accused - do you remember the observations made by the first accused regarding the Ocean Bar?

A. Yes, my Lord.

Q. Did you do anything in this regard?

A. With relation to the statements made by the first accused about the Ocean Bar, I then caused certain enquiries to be made at the Ocean Bar.

30

Q. Did you then accompany the accused, first accused, and Inspector Nawaz to Harcourt Road?

A. Just after the statement I went together with the first accused and Inspector Nawaz to Harcourt Road. As we were driving along the road from East to West past Police Headquarters I said to the first accused that he was to point out the location where he said that he had had the fight with Amanat Khan. He pointed out a location and the car was stopped and we alighted from the car.

40

Q. Inspector, would you examine those photographs of Harcourt Road and indicate to the Jury by reference to the photographs where the spot

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Brian Webster
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(Continued)

- is that the accused indicated?
- A. I refer to photograph, Exhibit E.4, my Lord. (holding up photo) This shows Harcourt Road, with Police Headquarters in the background, and this is the spot which the first accused pointed out.
- Q. When you arrived at the scene, Inspector, what did you do?
- A. I asked him if this was the location and he stated "Yes", and then I asked him where he stated he had broken the bottle of beer and he pointed out a location in the centre of the road on the retaining wall. Same Exhibit, E.4. and he pointed out the location and the retaining wall in the centre of the road there (pointing) as being the location where the bottle was broken. 10
- Q. That is on the other side of the road?
- A. That is in the centre of the road, it is on the other side of this Harcourt Road.
- Q. Is it a dual carriageway road? 20
- A. It is a dual carriageway road. In actual fact this portion of the road the actual road is on the top, but due to the roadworks they brought a subsidiary road coming round the roadworks. This is a dual carriageway one way - two lanes running one way from East to West.
- Q. This bottle was smashed upon opposite side of road to where accused was standing?
- A. That is correct.
- COURT: On the opposite side of the road? You said the opposite side of the carriageway. 30
- Q. I'm sorry - I just want this to be clear - on the opposite side of that carriageway?
- A. Opposite side of the carriageway on the retaining wall there.
- Q. Did you conduct a search of that area?
- A. I conducted a search of the area for a distance of approximately 20 yards on either side of the location pointed out by the first accused. And also the same distance on the grass verge on the top of the retaining wall. I was looking for pieces of glass of any size. I did not find any. 40

- Q. Can you make any observation as to the condition of the roadway?
 A. The appearance of the road at this location had the appearance of not having been swept for some considerable time.

In the Supreme Court of Hong Kong

Prosecution Evidence

No.15

Brian Webster
 Examination
 29th April 1965
 (Continued)

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- Q. Inspector, you said that you caused certain enquiries to be made at the Ocean Bar. Did you or did you not receive any information from that quarter?
 A. I later received information from that quarter.

- Q. That is after your visit to the roadway?
 A. After the visit.

COURT: Query.

- A. After the visit to Harcourt Road.

- Q. Subsequently, Inspector, did you arrest the first accused?

20

- A. Subsequently, a little after 9 p.m., I arrested the first accused.

- Q. What did you say on that occasion?

- A. On that occasion I informed him that I was formally arresting him for the murder of Said Afzal. I cautioned him.

- Q. What did you say to him?

- A. "I caution you that you are not obliged to say anything unless you wish to do so, but anything you do say will be taken down in writing and may be given in evidence."

30

- Q. What happened then?

- A. This was said through Inspector Qureshi.

COURT: Qureshi?

- A. Qureshi, yes, my Lord.

- Q. He was the interpreter?

- A. He was the interpreter. The first accused made a reply which was interpreted to me: "Why am I arrested?". "How am I arrested?".

- Q. Was anything written down, Inspector?

40

- A. Inspector Qureshi was writing in a language with which I am not familiar.

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No. 15

Brian Webster
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(Continued)

- Q. Do you identify this, Inspector, as the writing to which you refer?
A. That is correct, I identify it.
- Q. Is it signed, Inspector?
A. It is signed, yes, Inspector Qureshi.
- Q. Yes, anyone else?
A. Well, I can't tell from this.
- Q. I'm sorry, Inspector. Did you subsequently obtain a certified translation of this statement?
A. I subsequently obtained a certified translation from the Supreme Court translator. It is the longer one of the two, my Lord. 10
- Q. The longer one?
MR. MACDOUGALL: I'm sorry, my Lord.
A. That is the longer one of the two, my Lord. I was mistaken.
- Q. And subsequently you obtained a certified translation from the Supreme Court translator?
A. I did. 20
- Q. Do you identify this as the translation?
A. I identify No. 15A. This is the certified translation, my Lord.
- Q. Do you tender that in evidence?
A. I now produce it.
- Q. Would you read out what it says, Inspector?
A. (Reads) "MAWAZ KHAN alias FAZAL KARIM I now formally arrest you for the murder of one Said Afzal. I caution you that you are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence. Do you understand? Reply: 'Yes, I understand.' 'How am I arrested.' 'Why am I being arrested?' Reason for the arrest explained to MAWAZ KHAN alias FAZAL KARIM. States: 'I understand, nothing to say.' Signs. 2108 hours. 12.2.65." 30
- Q. Inspector, were there any threats, promises or 40

inducements made to obtain the statement from the accused?

A. No, my Lord.

Q. Did you also arrest the second accused?

A. After formally arresting the first accused I formally arrested the second accused using Inspector Qureshi once again. The second accused made a statement after the caution and said "I understand".

10

Q. Was the same procedure adopted on this occasion?

A. I beg your pardon?

Q. Was the same procedure adopted on this occasion as with the previous statement upon arrest?

A. The same procedure, my Lord.

Q. And what happened?

A. This was written down once again.

20

Q. Do you identify this as what was written down?

CLERK: Identification No. 16.

A. This is the written statement by Mr. Qureshi of the second accused's formal arrest.

Q. Inspector, did you subsequently obtain a certified translation of that document from the Supreme Court translator?

A. I did.

Q. Do you identify this as the translation?

30

CLERK: Identification No. 16A.

A. This is the certified translation of this document.

Q. Do you produce that certified translation?

A. I now produce this certified translation.

Q. And did you subsequently charge the accused, both of the accused?

A. Subsequently on the 13th of February of this year I formally charged the first accused with the offence of murder at Western Police Station.

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- Q. Who was present on that occasion?
A. Present on this occasion was Inspector Nawaz, whom I was using as an interpreter, and Superintendent Grieve, Divisional Superintendent of Central Division.
- Q. What happened on that occasion?
A. The charge was read, the caution was read, and the first accused elected to make a written statement in answer to the charge.
- Q. Were there any threats, promises or inducements on this occasion made by anyone? 10
A. No, my Lord.
- Q. And do you identify this as the statement in answer to the charge? 20
- CLERK: Identification No. 17.
A. This is the document. It bears my signature on it.
- Q. Who has signed it?
A. This document has been signed by myself and by Inspector Nawaz, the interpreter. 20
- Q. Did you subsequently obtain a certified translation of that?
A. I subsequently obtained a certified translation.
- Q. And what does the translation say, Inspector?
A. The translation says:
- "I have not committed this murder.
Neither I know anything about it."
(Signed) Mawaz Khan.
- Q. Did you then formally charge the second accused?
A. I then formally after that charged the second accused, using the same procedure, the same interpreter. 30
- Q. And did the second accused make a statement?
A. The second accused elected to make a statement which was written down by Inspector Nawaz.
- Q. Do you identify this as the statement from the second accused?

CLERK: Identification No. 18.

A. I now identify this document.

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Q. Who is it signed by, Inspector?

A. Signed by myself, Inspector Nawaz, and according to the translation, the second accused.

Prosecution
Evidence

Q. And you obtained a certified translation of this document from the Supreme Court translator?

No.15

A. I did.

Brian Webster
Examination
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(Continued)

10 Q. What does it say?

A. The translation reads:

"Whatever I have said yesterday is my story. I accept whatever punishment the Inspector wants to give me. I am innocent. God will punish the fellow whoever accused me."
Signed: Amanat Khan.

COURT: "... whoever has accused me."

A. "Whoever has accused me."

20 Q. These two statements in answer to the charge, Inspector, what did you do with them after the statements had been made?

A. After the statements had been made I served a copy of each of their own statements on each of the accused and also a copy of the other person's statement on each of the accused.

30 Q. Were there any threats, promises or inducements in relation to the charging of the second accused?

A. No, my Lord.

Q. Inspector, did you subsequently have occasion to go to the Mandarin Hotel?

A. I subsequently had occasion to go to the Mandarin Hotel on the 7th of April.

Q. And what did you receive there?

A. I there, in the office of Mr. Wilson, the Chief Security Officer, received from him two knives. Two penknives.

40 Q. Do you identify this Exhibit as being the knives?

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A. These are the two knives in question.

Q. What did you do with these knives, Inspector?

A. These knives, the same day I took to Police Headquarters where I handed them to Dr. Tong. I subsequently received the same two knives back from Dr. Tong on the 12th April.

Q. Inspector, is there anything which you wish to add to your evidence?

A. No, my Lord.

COURT: Could we have these marked? He is producing these two?

10

MR. MACDOUGALL: Mr. Wilson will be producing them.

COURT: Mr. Wilson. Mark them for identification.

CLERK: 20 and 21.

COURT: Do they need numbering separately?

MR. MACDOUGALL: I don't think there is any necessity my Lord. There is no distinction between them.

COURT: Very well, No. 20.

CLERK: No. 20.

MR. MACDOUGALL: I have no further questions, my Lord.

20

COURT: 10 to 12?

MR. MAYNE: May it please your Lordship.

11.36 a.m.

11.50 a.m. Court resumes.

Both accused present. Appearances as before. Jurors answer to their names.

P.W. 6 - Brian WEBSTER - On former oath.

Cross-examination

XXN. BY MR. MAYNE:

Q. Mr. Webster, we all know that you are a highly experienced police officer and would be glad to

30

have your assistance here. There are a number of questions that I want to ask you about this case, and about the evidence that you have given already, but first of all there is this aspect of the case - you were present in court, I think, when we heard counsel for the crown saying that it was his duty to place before the jury all the evidence incriminating the two defendants - you were here when he said that?

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10

A. I was.

Q. Now with regard to your investigation of the case, was that what you were concentrating on after you began to suspect the 1st and 2nd defendants?

A. No, sir.

Q. No - so you had a different approach to the matter in your investigation is that right?

20

A. Yes, I was endeavouring to ascertain the truth.

Q. I see - did you concentrate very much on matters in the way of evidence that might not be incriminating to the defendants?

A. I cannot remember in particular that I did investigate which has not been or will not be produced in court.

Q. Well it is not quite an answer to my question - perhaps the court reporter would be good enough to repeat my question to you.

30

COURT REPORTER: "Did you concentrate very much on matters in the way of evidence that might not be incriminating to the defendants?"

A. I also made thorough investigation of the statements of the accused, which if true would not incriminate ..

Q. I have put the question once, therefore, would you please answer it?

40

A. I am answering to the best of my ..

MR. MACDOUGALL: How more explicit can he be - he said he examined the statement which had been taken ..

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COURT: I am not interrupting the cross-
examination of counsel for the defence
unless I am forced to do so.

MR. MAYNE: May it please - I don't think your
Lordship would be put in that position.
Would you answer?

A. I have answered the question to the best of my
knowledge.

Q. You made some mention of statements - can't you
answer my question yes or no? 10

A. In that respect, yes, sir.

Q. I see - I suppose a very thorough investigation
was made into this case by the police?

A. Yes sir.

Q. Well, it has been suggested that because of
certain bloodstains, the defendants were suggested
to have been not only on the 4th floor of the
premises where the deceased was found, but also
on the staircase and downstairs, and I think
in the garage and near the tap - water tap on the 20
ground floor, isn't that right?

A. Yes, sir.

Q. Yes - now I take it will be elementary in many
investigations of this kind to look for
fingerprints?

A. Yes, sir.

Q. Were fingerprints looked for in this case?

A. Yes, sir.

Q. And wouldn't it be right to say that not one
fingerprint was found which tallied with the 1st 30
and 2nd accused?

A. That is correct, sir.

Q. Correct - don't you regard that as an important
factor in this case?

A. Not necessarily so, sir, because the actual flat
itself was under construction - all the surfaces
were extremely rough and not capable of really
bearing fingerprints on them.

Q. How about doors?

A. They were rough. 40

Q. What do you mean rough?

A. They have been - it appeared that the doors

of this place had been sand-papered, but they had not been sand-papered to such an extent as to be capable of taking fingerprints.

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Q. The body was found on the floor, is not that right?

A. That is correct, sir.

Q. How about the floor - wooden?

10 A. The floor was wooden - it was block parquet flooring.

Q. Like that?

A. Similar, but on a rough side - again having been sand-papered.

Q. How about the walls of the passage - staircase?

A. The walls, sir, were distempered.

Q. Distempered?

A. Yes sir.

Q. Couldn't distemper carry fingerprints?

20 A. Only if they were made - I am not an expert on the subject, of course;

Q. I see.

A. So I cannot really answer that question.

Q. Yes, I suppose the position really is that you are not an expert on this subject, so you cannot really say, as an expert, what surfaces might carry fingerprints or not?

A. Correct, sir.

30 Q. But it is a relevant factor, isn't it, no fingerprints of the 1st and 2nd accused - defendants, were found anywhere at all in the vicinity of the scene of this crime?

A. Under the circumstances, no, sir.

Q. It is not a relevant factor?

A. I wouldn't consider it relevant that there were none found.

Q. Come now Inspector - the amount of importance which might be attached to the presence or absence of fingerprints, the amount of weight

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- that might be attached to them, might be small or great depending on what the expert says, but it is a factor isn't it?
- A. A factor, certainly.
- Q. Yes - a factor in the present case, which putting it at its lowest, is rather in favour of the defendants, isn't it?
- A. Putting it that way, sir.
- Q. Would you agree with me that there is no single mention of this aspect in the evidence taken in the court below? 10
- A. Yes, sir, I would agree.
- Q. I see. So but for these questions, the jury might not have known that there were no fingerprints of the defendants found at the premises?
- A. That is correct.
- Q. With regard to the clothing that you received at the Mandarin Hotel - I think you satisfied yourself that you were getting all of the clothing there which belonged to the 1st and 2nd 20 defendants?
- A. Yes, sir.
- Q. They freely and voluntarily gave you all of their clothing?
- A. To the best of my knowledge - I cannot of course be sure that they did not.
- Q. They appeared to give you everything?
- A. They appeared to, yes.
- Q. Quite freely and voluntarily?
- A. Yes. 30
- Q. Including the shoes and articles upon which bloodstains were apparent?
- A. Yes, sir.
- Q. Your visit to the Mandarin Hotel, of course, was about midday on the 12th of February?
- A. 11.30.
- Q. 11.30 on the 12th of February?
- A. That is correct, sir.
- Q. It is roughly - roughly about a day and a half

after the time in which the police doctor, pathologist, estimated to be the time of death of the deceased?

A. Approximately, yes.

Q. So that a guilty person with clothing which might possibly tend to incriminate him in an offence that he knew about, such a person would have, in that day and a half, ample time to get rid of this clothing, is not that right?

10

A. Yes, sir.

Q. And such a person, if not the clothing, would have ample time to get rid of the bloodstains or try to do so?

A. Yes, sir.

Q. There was no slightest indication that there had been any attempt to remove any of the bloodstains found on any of the articles which were brought to the Police Station, isn't that right?

20

A. I cannot say in relation to all the clothing - I cannot answer that.

Q. But in relation to the articles upon which you say blood was found on them, the prosecution say blood was found - you are in charge of this investigation - apart from what you know yourself you know about all the other investigations too, isn't it right to say there is no suggestion at all - on the evidence to suggest there was any attempt to remove bloodstains from the articles on which blood was found?

30

A. I wouldn't say that was correct.

Q. You don't know?

A. I wouldn't say it was correct.

Q. You disagree?

A. I disagree.

Q. But at any event you agreed that the articles in this dormitory where the defendants reside, they were all given to you quite freely by the defendants?

40

A. Quite freely, yes.

Q. But would, if they had wanted, have had an

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- opportunity to have gotten rid of these articles?
- A. Yes, sir.
- Q. Now, during the course of your investigations, you have mentioned that before going to the Mandarin Hotel you had interrogated, I think, over forty persons?
- A. Yes, sir.
- Q. Am I right in thinking that all of these forty persons were of Pakistani descent? 10
- A. Correct, sir.
- Q. And I suppose after visiting the Mandarin, you interrogated many other witnesses as well?
- A. As well as sir?
- Q. As well as the 40 - the other forty that you mentioned.
- A. Yes, sir.
- Q. Am I right in thinking that prior to the committal proceedings in the court below, you as officer in charge of the case, prepared a list of witnesses to be called by the crown, whom you considered could give material evidence in this case. 20
- A. I prepared a list, yes, sir - the witnesses who could give evidence?
- Q. Material evidence.
- A. I wouldn't say material because it was later proved to my satisfaction it was not.
- Q. I am asking about the list which you prepared.
- A. In my opinion? 30
- Q. The list that you prepared surely included the list of witnesses that could give material evidence?
- A. The time I prepared the list, yes sir.
- Q. And in your view, are these persons - these were persons - they were material witnesses at that time?
- A. As far as I knew, sir.
- Q. And you had, I suppose, taken statements from

these potential witnesses?

A. Yes, sir.

Q. I think it is right to say that from your list a number of witnesses included in your list were not called in the court below?

A. Correct, sir.

10 Q. You are aware of the law with regard to prosecutions - where prosecutions have taken statements from a person, who can give material evidence and decide not to call that person, they are under duty to make that person available as witness for the defence - I quote there from Archbold, paragraph 1374 ..

COURT: Is it not the practice not to address a witness on the law - you may put the question without any comment.

20 MR. MAYNE: Of course, my Lord. With regard to the law, I was merely trying to assist the court by referring to the passage that I had in mind. You are, of course I suppose with your great experience, aware of that particular duty?

A. I am aware of that.

30 Q. Isn't it right that of these persons whom you considered to be material witnesses, from whom you have taken statements, isn't it right to say that the defence had not been - only the name of one such witness has been conveyed to the defence?

A. I think that is correct, sir.

Q. You have been, I think, working as a police officer in Hong Kong - I have forgotten the exact number of years, Mr. Webster - how many years?

A. Approximately 7½ years, sir.

Q. 7½ - and when did you first join the C.I.D.?

A. In August 1962, sir.

40 Q. 62 - yes and since that time I think I am correct in thinking that your work has been

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solely directed towards C.I.D. work?

A. Yes, sir.

Q. Prior to that time what kind of work did you do in the Force?

A. Prior to 62, sir, since I came to Hong Kong in 1957 I was in Traffic Office until 19, I think it was end of 1959, but I cannot be certain, and subsequent to that I was in Uniform Branch of A Division.

Q. Uniform Branch - that work involves you quite a lot in criminal cases, court work generally?

A. Reasonable amount, yes.

Q. So you have quite a long experience of police and C.I.D. methods generally?

A. Yes, sir.

Q. Tell me, is this the first case that you have had in Hong Kong concerning Pakistani witnesses or defendants, so on?

A. I cannot really remember, sir.

Q. I understand, from your long experience it is difficult to remember.

A. I cannot really answer - there may have been or there may not have been - I cannot answer.

Q. Yes, but I imagine the thorough investigations that you made in this case, made you acquainted with quite a number of the Pakistani population that we have living here in Hong Kong?

A. Yes, sir.

Q. There is, I think, quite a substantial Pakistani population in Hong Kong?

A. I don't know exactly how many.

Q. I am not trying to ask you to say in tens, hundreds - quite a number of them?

A. Quite a few, sir.

Q. But from your own personal experience of dealing with Pakistani gentlemen in this case and Hong Kong, would you - is it your impression that the Pakistani community is rather a close-knit community here?

A. I formed that.

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Q. You formed that view? Did you by chance form the view of those that you met - I am not asking you generally - that there is a tendency in this particular community rather to stand by one another?

A. I formed the view, sir, that as far as Pakistanis from the same villages or districts - best to say villages, they seem to stick together.

10

Q. They do in any event?

A. Yes, sir.

Q. When you say stick together, do you mean they wouldn't like to incriminate another Pakistani - same villager, using your version?

A. I couldn't say, sir.

Q. I see, when you mean stand together ..

A. I meant stick together.

20

Q. Stick together - wasn't that really but the same thing?

A. No, sir.

Q. I see.

A. I mean that because I made enquiries I found that Pakistanis from the same village were living together, and although at certain times they do have talks with other Pakistanis, they sleep mainly by themselves.

30

Q. I see - wouldn't you agree, from your experience in this investigation or otherwise, that Pakistanis from the same village, using your own words, they would be, from your experience, they might well be reluctant to incriminate fellow Pakistanis from the same village or same surroundings?

A. There is a possibility, sir.

Q. There is that possibility, yes. So that was your view with regard to fellow villagers from Pakistan - may we take it you are not in a position to express views about Pakistanis generally?

40

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- A. I am not really in a position to express a view on the Pakistanis anywhere.
- Q. Except of course the views that you have expressed personally?
- A. I mean personally.
- Q. Now on the 12th of February, when you were at the Mandarin Hotel, you told us that apart from conversing with the two defendants in the dormitory, you conversed with some other men whose names you did not mention, or that Mr. Wilson by chance .. 10
- A. Mr. Wilson, the Chief Security Officer?
- Q. Is that the man you conversed with on the 12th?
- A. On the 12th?
- Q. Yes.
- A. At the Mandarin Hotel?
- Q. Yes.
- A. I did converse with Mr. Wilson.
- Q. He, I think, was giving evidence in this case? 20
- A. He is.
- Q. He is the Chief Security Officer in the Mandarin Hotel?
- A. Yes, sir.
- Q. And I suppose as such he would be in a position to give you any details you require concerning the geography of the Hotel?
- A. Yes, he should be.
- Q. You mentioned to us in your examination in chief that you searched the basement area of the Mandarin Hotel down where the engineering plant was - down where the engineering plant was, is that correct? 30
- A. Where an engineering plant was.
- Q. An engineering plant was - did you search personally yourself?
- A. I made that search, yes sir.
- Q. Knowing you Mr. Webster, I feel sure it was a thorough search.
- A. Quite thorough, yes.

Q. Did you have any other officers assisting you in the search?
 A. Mr. Chapman, sir.

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Q. Mr. Chapman, also a thorough man as far as you know his work - he works under you?

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A. That is correct, sir.

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COURT: Which question did you answer?

A. He works under me, sir.

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10 Q. As far as you know, also a thorough man - likely so?

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A. Yes, sir.

Q. Was Mr. Wilson there?

A. I believe Mr. Wilson was around, yes sir.

Q. He was around - was he searching or assisting in the search?

A. No, sir.

Q. I see but he was present.

20 A. I believe he was, yes sir - I cannot remember, but I believe he was.

Q. I understand, but despite your searches in the Mandarin Hotel, I think it is right to say that on the 12th of February you found no weapons - I think it was a pen-knife which was in the possession of the 2nd accused, correct me if I am wrong.

A. At the Mandarin - at the basement of the Mandarin Hotel you are now talking about?

30 Q. The Mandarin Hotel.

A. From top to bottom - I only searched the basement.

Q. Yes, we know that - in the Mandarin Hotel, the dormitory, basement, isn't it right to say that you did not find any weapons on the 12th?

A. On the 12th correct, sir.

Q. Thank you - there was this pen-knife which was found, correct me if my recollection is wrong - where was the pen-knife found?

A. The small pen-knife?

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- Q. The small pen-knife.
A. That was handed over by the 2nd accused to Mr. Chapman in the course of his statement.

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- Q. That is in the dormitory?
A. No, sir at the Central Police Station.

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- Q. At the Central Police Station - as far as you know it was handed over completely freely and voluntarily?

A. As far as I know, sir, yes.

- Q. Yes - we have it, as far as police search at the Mandarin on the 12th are concerned, no weapons were found? 10

A. In the basement of the Mandarin Hotel?

- Q. In the basement of the Mandarin.

A. Correct.

- Q. Nor found in the dormitory?

A. Nor in the dormitory.

- Q. Nor anywhere that you, the police were searching, as far as you know?

A. I beg your pardon? 20

- Q. Nor indeed anywhere where the police were in the Mandarin Hotel?

A. I wouldn't go as far as that - we only searched the basement - I was in other locations in the hotel on other floors of the hotel.

- Q. You were on other floors - let's not split too many hairs, Mr. Webster. In order to get to the basement, in order to go to the other floors, you have to go through the passage, staircase in question - but as far as the police were concerned, they found no weapons in the Mandarin Hotel on the 12th, right? 30

A. Where the police searched, sir.

- Q. Thank you. Now when you went to the Mandarin Hotel down to the dormitory of the hotel, I think I am right in suggesting that on entering the dormitory you asked to see a particular person?

A. Correct, sir.

- Q. The 1st accused?

A. It turned up the 1st accused. 40

- Q. He answered the name that you asked for?
A. Correct, sir.
- Q. No hesitation about it at all?
A. Not apparent, sir.
- Q. How many persons were with you at the time that you entered the dormitory?
A. I was together with Inspector Nawaz, Mr. Wilson and there was, I think a Detective Police Constable who was outside.
- 10 Q. Was outside?
A. Yes, sir.
- Q. You all in plain clothes were you, except for the Constable?
A. We were all in plain clothes.
- Q. Mr. Wilson with you when you went into the dormitory?
A. Yes, sir.
- 20 Q. The Security Officer?
A. He took me there, sir.
- Q. Yes, when you asked for the 1st accused by name he revealed himself straightaway?
A. Yes, sir.
- Q. You, through the Interpreter I think, you put certain questions to the 1st accused then?
A. Yes, sir.
- 30 Q. Did the 1st accused appear to answer those questions completely freely and voluntarily?
A. To the best of my knowledge, yes sir.
- Q. Yes, the position was that 1st accused at that time he could have chosen not to answer your questions at all or he could have chosen to answer, yes?
A. Correct, sir.
- Q. In point of fact he chose to answer?
A. He did so.
- Q. And from his appearance did you have the

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impression that he was giving full co-
operation to you whom he knew to be a police
officer?

A. As far as I knew, yes, sir.

Q. And I think it was the 1st accused who discussed
this fight and mentioned the 2nd accused?

A. That is correct, sir.

Q. This conversation that you had with the 1st
accused, I think it was in Urdu - the interpreter
and the 1st defendant were speaking in Urdu?

A. I don't know which dialect. 10

Q. It was a Pakistani dialect?

A. I did not know.

Q. Some language you did not understand?

A. Quite right.

Q. You had no idea what was being said in fact?

A. None whatsoever, sir.

Q. I am just going to trace my steps for a moment -
you see that deck chair there?

A. Yes, sir. 20

Q. If you don't know the answer to this question
just say so - are you suggesting in any way
that that deck chair wouldn't carry fingerprints?

A. I couldn't tell you, sir.

Q. You don't know. It doesn't look that it is
recently made?

A. No, sir.

Q. It doesn't look too rough?

A. It certainly has a rough surface.

Q. I see - the jury will leave it to inspect. Just 30
one thing I want to clear up, if we can with
regard to what was translated to you by the
Interpreter in the Mandarin Hotel.

A. Yes, sir.

Q. Concerning this alleged fight between the 1st and
2nd defendants as described by the 1st defendant.
As interpreted to you did the 1st defendant, in
describing the struggle say that he was drunk
at the time or that the 2nd defendant was drunk

- or that they were both drunk?
- A. To the best of my recollection, sir.
'We were drunk'.
- Q. We were - if the interpreter says that what was said by the 1st accused was that it was the 2nd accused who was drunk, then I suppose the position must be that there is some mistake over the interpretation or there is some presence of faulty memory of somebody?
- 10 A. Yes, sir, but also could be the understanding of the English to some extent.
- Q. Some lack of understanding along the line?
- A. Could be anything, sir.
- Q. This matter of interpretation, with your experience I suppose you would agree with this suggestion, that it is quite a difficult job interpreting the colloquial speech from one end to another.
- 20 A. I have never done any, sir.
- Q. Yes, but you have been present in court, out of court interpretation that has gone on ...
- A. Yes, sir.
- Q. I am sure there are occasions that you are aware that there was apparent difficulty in getting across from one side to another a correct interpretation, even in the case of qualified interpreters?
- A. Yes, sir.
- 30 Q. Yes?
- A. Yes, sir.
- Q. And I am sure you were present in court where even interpreters - sworn interpreters of the courts, with the high qualification that is required, it has been found that their interpretation has been incorrect, and they have admitted that - have you been present?
- A. I cannot remember having been present on such an occasion.
- 40 Q. Could have been for instance, in cases where we have interpretation into Cantonese or Mandarin and so on, where we

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have the advantage of having Chinese counsel - haven't you been present on occasions where there is dispute as to what the accurate interpretation was?

A. I have been present on occasions when there has been dispute as to what the interpretation was, yes sir.

Q. Surely on some of these occasions, it has been agreed that the interpretation first given has been incorrect?

A. It is difficult to remember, sir.

Q. I understand.

A. It could.

Q. You can envisage it happening?

A. I can certainly envisage.

Q. Yes - with regard to the weapons that Mr. Wilson will produce - am I right in thinking that there is no fingerprint on either of these weapons which correspond with either of the defendants?

A. You are right in thinking there was no fingerprint found at all.

Q. Including no fingerprint of the 1st and 2nd defendants?

A. There was no fingerprint on at all.

Q. If you would answer the question you are put, instead of enlarging, it might speed things up.

MR. MACDOUGALL: That does not necessarily imply that the fingerprints of the 1st and 2nd defendants ...

COURT: Mr. Mayne, that was in answer to your question³⁰

MR. MAYNE: It was an enlargement, with great respect - it was unnecessary. Now you, I think, were down in the dormitory of the Mandarin Hotel and you asked if both defendants had any objection to coming back to Central Police Station for further enquiries, yes?

A. I thought that was a statement from you - I am sorry, I thought that was a statement from you. Yes, sir.

Q. They both agreed to come back to the Police

10

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Station - they made no objection at all?

A. They both agreed - they made no objection.

Q. In other words, they co-operated in this desire of yours that they should go back to the Station - they co-operated fully with your request to come back to the Station?

10 A. That is correct, sir.

Q. And I think in the Station they - I think your evidence is that they were co-operative in making statements when they were asked to do so?

A. Yes, sir.

Q. This is the statement that they made where I think they were not made in the usual manner the police take statements - in other words they were in the form of question and answer rather than narrative form?

20

A. The statements were in the form of question and answer, yes, sir.

Q. And I think, you will agree, that is not the usual way of taking statements - it is more commonly taken in narrative form?

A. More commonly they were taken in narrative yes.

Q. I think they were taken in this uncommon form because of certain instructions you received from a police officer - senior police officer?

30

A. Correct, sir.

Q. So you made contact with this senior police officer before taking the statements, and I suppose - you may answer that question first - you made contact with a Senior Police Officer before taking the statements?

A. I did, sir.

Q. You made him fully aware of the position as you understood it concerning the offence and suspicions, and so on?

40

A. Yes, sir.

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Prosecution
Evidence

No. 15

Brian Webster

Cross-
examination
29th April 1965
(Continued)

In the Supreme
Court of Hong
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No.15

Brian Webster
Cross-
examination
29th April 1965
(Continued)

- Q. And after that he gave you specific instructions to take the statement of the 1st accused by question and answer rather than narrative form?
- A. Yes, sir.
- Q. Would you agree, Mr. Webster, that the mere surrounding of a Police Station together with its occupants, police officers as we have them - guns there, batons there or the other way round, it might have a frightening effect upon a person who, outside of Hong Kong, does not - or who might not know of the fairness of the Hong Kong Police Force in dealing with investigations? 10
- A. It might, sir but I really cannot tell.
- Q. You can see it might have that frightening effect?
- A. It may so.
- Q. You can see that persons coming from other territories where conditions may be more severe with them, without any threats or inducements at all, they might feel a compulsion to say something to a Police Officer in these surroundings, if asked to do so? 20
- A. They might.
- Q. They could - might be?
- A. I cannot tell whether it was.
- Q. But you can envisage that possibility?
- A. Yes, sir.
- Q. And after the statements were taken you have mentioned that you took the 1st accused to a certain spot which you marked on Photograph E.4. You took the 1st accused to that place marked, which you showed us on E.4.? 30
- A. Yes, sir.
- Q. Did he give the indication of being co-operative that time?
- A. Yes, sir.
- Q. On this question of drink - a person being drunk on the night - of the persons being drunk as described by the 1st accused - I suppose you would agree that persons if they are drunk could have difficulty in remembering exact 40

locations where certain events might have occurred?

A. Yes, sir.

Q. In fact they might be - depending on how good the party was or how bad the party was - they might be rather confused about the proceedings on that night where the party took place?

A. Quite possible, sir.

10 Q. I am sure you found, even amongst your own colleagues and parties that even they may have some difficulty in giving a minute by minute description of what took place, where and when - at parties that you attended?

A. I think that is fairly common.

20 Q. After you brought the 1st accused back to the station, after the visit to this area marked on E.4, I think the 1st accused remained in the Police Station?

A. That is correct, sir.

Q. Whose idea was that?

A. Mine, sir.

Q. Yours - your idea, but I think your evidence is that at that time the accused was not under arrest - he was - 1st accused was not under arrest - he was free to go if he wished?

A. Correct, sir.

30 Q. As you say, although you did not tell him that did you?

A. No, sir.

Q. And is it your evidence to the Court, as far as you can see, he remained in the Station, after you told him, quite voluntarily?

A. He remained quite voluntarily.

40 Q. That is rather an unusual choice isn't it - to stay and remain in the Police Station voluntarily rather than stay at the Mandarin Hotel - the services in the Station aren't as good as Mandarin Hotel, are they?

A. No, sir.

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Brian Webster
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examination
29th April 1965
(Continued)

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No. 15

Brian Webster
Cross-
examination
29th April 1965
(Continued)

- Q. I see, but you still contend that the - well you have told the 1st accused to stay in the Police Station but he was not then under arrest?
- A. I did not specifically say, 'Stay in the Police Station' - I just asked him to take a seat outside the office which he did.
- Q. Sit outside the office in the Police Station - so asking him to sit down - sit outside an office in which is the Police Station? 10
- A. Within the Police Station.
- Q. So you asked him to stay within the Police Station?
- A. Not in so many words.
- Q. In effect?
- A. In effect.
- Q. I see, and I think it was after this voluntary stay in the Police Station rather than going back to the Mandarin Hotel, further statements were taken from the 1st accused? 20
- A. When he was formally arrested?
- Q. Yes.
- A. Yes, sir.
- Q. Even at that time he had done all that you had asked him to do - he remained in the Station, he had been co-operative all the time?
- A. He had been co-operative, yes, sir.
- Q. And I think the same can be said of the 2nd accused?
- A. Yes, sir. 30
- Q. But going back to the Mandarin Hotel again, was there any search made by any police officer you know about of the dormitory in the hotel?
- A. Yes, sir.
- Q. A thorough search, I suppose?
- A. It was done in my absence, under my instructions.
- Q. Can you tell us who had - Mr. Chapman who did the search of the dormitory?
- A. Two Detective Inspectors, Police Constables, one Corporal, I believe. 40

Q. So the dormitory was in fact searched?

A. Yes, sir.

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Q. And am I right in thinking that despite this search nothing of an incriminating nature was found in the dormitory?

A. Correct, sir.

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10

Q. This is a question that you may feel, Mr. Webster, that you are not in a position to answer - if you are not, just say so - but you saw the body of the deceased in this case - you saw the terrible injuries that were inflicted on the deceased, yes?

Brian Webster
Cross-
examination
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(Continued)

A. I saw the injuries at the scene.

Q. At the scene?

A. I saw the injuries which were visible.

Q. Very violent - I think 40 wounds altogether?

20

A. It was later found there was a total of 49.

Q. Yes, but I think I am really treating you as an expert on this particular aspect after all these years of experience - in your experience of cases relating to bodily injury, would you agree that where there are signs of very violent injuries we generally find that these injuries rather have been inflicted at the height of great passion?

30

A. I cannot answer that question, my Lord - I cannot answer that question, I don't have sufficient experience.

Q. Can you answer it this way - from your experience would you say that an enormous quantity of injuries, such as were present in this case, it is rather more consistent with a sudden violent attack as opposed to a premeditated attack?

40

A. I cannot answer that question either, my Lord -

Q. You don't know?

A. I don't know.

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Brian Webster
Cross-
examination
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(Continued)

Q. I see - wouldn't you agree that it would take a person seized either of enormous passion or viciousness to inflict injuries of the kind that you found upon the deceased in this case?

COURT: Is this a question the witness is qualified to answer?

MR. MAYNE: If your Lordship rules the question inadmissible I will withdraw it - I would have thought with his experience of investigating crime generally here he might be in a position to assist us, but if your Lordship feels that he is not qualified to answer, I don't press with the question.

10

COURT: It seems to me this is a matter for a medical expert witness.

MR. MAYNE: Yes, very well, my Lord. Now how long has the 1st accused been in the Colony for - do you know roughly?

A. The 1st accused is approximately 18 months.

20

Q. 18 months - 2nd accused?

A. Approximately 2 years.

Q. 1st accused here in Hong Kong for 18 months, 2nd accused, 2 years?

A. Approximately, yes sir.

Q. How about the deceased - can you tell us how long, as far as you know, he had been in the Colony for?

A. The deceased, as far as I know, has been in the Colony - had been in the Colony for approximately 30

..

COURT: Before you answer, are you objecting to this?

MR. MACDOUGALL: If my learned friend feels that it is in the interests of justice, I have no objection whatsoever.

MR. MAYNE: Much obliged.

A. I believe approximately 15 months.

Q. So that if there was any suggestion that this crime was committed by either of the defendants

30

arising out of events that have happened elsewhere, the position would appear to be that the 1st accused, as far as he is concerned, he did not - please understand it, I am not suggesting that he was partner to this crime at all - looking at its worst ..

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Brian Webster
Cross-
examination
29th April 1965
(Continued)

10 COURT: Mr. Mayne, I am sorry to interrupt, you must not predicate your question with comment - you may put the question to the witness if he is able to answer, but it is later the time for comment.

MR. MAYNE: Which comment has your Lordship got in mind?

COURT: All that you have said so far since the last counsel has been in the nature of comment.

20 MR. MAYNE: With great respect I was clearing up to the witness and the jury, but I wasn't suggesting that the 1st accused had taken part in this matter - as a preliminary to my question, which is this, if the 1st accused had revenge in his heart about matters that happened outside the Colony, this crime did not occur for 18 months approximately after 1st accused arrived here, is that correct?

A. Yes, sir.

30 COURT: The first part of what you said after my interruption was also a comment.

MR. MAYNE: I thought I was clarifying my question.

COURT: The question Mr. Mayne, was as simple as any question could be - it is unnecessary to predicate with any comment at all - I must ask you not to add comments. There is ample authority on the House of Lords to the effect that that is improper.

40 MR. MAYNE: My Lord, as your Lordship knows, I would be the last person to do anything improper but I very much like to - I must apologise if your Lordship feels I have done so.

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Brian Webster
Cross-
examination
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(Continued)

COURT: Very well.

MR. MAYNE: I must confess I thought I was trying to clarify the question. As far as the 2nd accused is concerned, he had been in the Colony for two years prior to any attack - prior to this alleged offence?

A. Approximately, yes sir.

MR. MAYNE: Possibly, my Lord, the time is one o'clock.

COURT: Well, yes. 2.30 please.

10

1.00 p.m. Court adjourns.

2.27 p.m. Court resumes

2 accused present. Appearances as before.
Jurors answer to their names.

COURT: Yes?

P.W. 6 - Brian WEBSTER - o.f.o.

XXN. BY MR. MAYNE:

Q. I'll ask you a couple of questions, Mr. Webster, about this conversation you had with a certain officer prior to your taking the statement of the 1st accused. Is it your evidence that you actually went to see this senior officer, you saw him personally before the taking of this statement?

20

A. I did, sir.

Q. Was he in the same building as you?

A. Yes, sir.

Q. Are you sure about that?

A. Quite sure, sir.

Q. Didn't you tell us yesterday that you spoke to him on the telephone?

30

A. No, I didn't sir.

Q. I put it to you, Mr. Webster, that's what you did say yesterday- possibly my recollection is quite correct - I put it to you that is what you said.

A. I don't agree.

Q. You disagree?

A. Yes.

Q. Coming back to this finger print point again, amongst the belongings which were taken, belongings of the 1st and 2nd accused that were taken from the Mandarin Hotel, I think it is right to say that no gloves were taken at all.

A. I cannot be certain about that.

10 Q. Would you like to check it up?

A. I am unable to check at the present moment, sir.

Q. What do you mean?

A. I feel certain there were no gloves; I cannot recollect seeing any gloves at all, sir.

Q. How long would it take you to check that up? It is of some importance in my view.

20 A. It is merely a matter of going back to Central Police Station and back, sir.

Q. I don't want you to go now. Possibly if you can check this up overnight you'll tell us tomorrow.

A. Yes, sir.

Q. You are certain there were no gloves?

A. That's my recollection.

Q. And it is right also, isn't it, that the search of the dormitory in the Mandarin Hotel revealed no bloodstained gloves?

30 A. Correct, sir.

Q. Would you agree that if - I take the case first where supposing either of the defendants was concerned in this matter - if they were not wearing gloves, then of course there would be a possibility of finger prints being found?

A. I put it as a remote possibility.

Q. You say you are not the expert?

A. I am not, sir.

Q. But a witness will tell us more about that.

40 A. Yes.

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Court of Hong
Kong

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Evidence

No. 15

Brian Webster
Cross-
examination
29th April 1965
(Continued)

In the Supreme Court of Hong Kong

Prosecution Evidence

No. 15

Brian Webster
Cross-examination
29th April 1965
(Continued)

Q. Now, the possible outline of what happened on this particular night in this premises has been given by my learned friend to the Jury, where he described one theory that a very violent struggle took place, so violent and confused that the assailants not only cut the accused but they also cut each other. You were present for that?

A. Yes, sir.

Q. If there was such a struggle, such violent move, etc., one would expect, would one, that there would be a likelihood of hands and fingers coming into contact with various places at the scene?

10

A. Yes, sir.

COURT: Isn't this a matter of comment - and not of evidence of this witness?

MR. MAYNE: I think, my Lord, this is a matter of this investigation of crime. I think he can express a view on the matter, but of course if your Lordship feels that is not the position, I will share --

20

COURT: I feel that that is not a proper question put to this witness.

MR. MAYNE: I see.
May I put this question, my Lord, to this witness?

Q. Taking the position of the assailants wearing gloves and getting cut in the hands, one would expect to find on any gloves used at that time blood stains?

30

COURT: This is not a matter for this witness surely: it is a matter of comment.

MR. MAYNE: Very well, my Lord; in that case I will not put the question.

Q. Now, this statement which you took from the 1st accused, I think it is marked 119?

CLERK: 14.

MR. MAYNE: 14. Thank you.

Q. At what time did this statement commence?

A. 12.25 sir, p.m.

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Kong

Q. That's on the 12th of February?

A. Correct, sir.

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Evidence

Q. And I think it finished, including the reading back, $3\frac{1}{2}$ hours later approximately.

A. Finished, sir, at 3.40 p.m. - $3\frac{1}{4}$ hours afterwards.

No. 15

Brian Webster
Cross-
examination
29th April 1965
(Continued)

10 Q. Do you agree it was a prolonged interrogation?

A. I agree it was quite a lengthy statement.

Q. Yes. The statement in your handwriting, how many pages?

A. 8 and one sentence.

(I.14 handed to Jury for perusal)

Q. And is it your evidence, Mr. Webster, that it took $3\frac{1}{4}$ hours, including the reading back, to write those pages there?

A. Yes, sir.

20 Q. Of that time, how much of the time was spent in reading back the statement?

A. I can't give an exact estimate, sir - approximately 15 minutes.

Q. Yes.

You were asked by my Lord what was the reason for this length of time in obtaining this statement.

Would you tell the Jury what your explanation is?

30 A. It is a matter of interpretation; it takes time.

Q. What matter of interpretation? Difficulty of interpretation?

A. The interpretation from English into the language which, I understand, is Punjabi, and back again from Punjabi to English.

40 Q. In your experience as an experienced police officer here have you come across where potential witnesses, not being the defendants for the time being, the witnesses, potential

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No.15

Brian Webster
Cross-
examination
29th April 1965
(Continued)

witnesses have appeared to tell you silly
lies?

A. Yes, sir.

Q. You have.

In your experience I mentioned have you come
across cases where suspects have appeared to
tell you silly lies?

A. Suspects told lies, yes, sir - I wouldn't say
silly lies, but just lies.

Q. Then persons who were not suspects in your
experience, merely potential witnesses, they
have told you lies as far as you are concerned?

10

A. At times, yes.

MR. MAYNE: Yes. Thank you very much, Mr. Webster.

COURT: Before you sit down, Mr. Mayne, you did tell
this witness something that he said?

MR. MAYNE: Yes, my Lord.

COURT: I have no recollection of what you put to him.
Have you any note of this?

MR. MAYNE: My Lord, I am afraid I haven't. It
would appear that that was in answer to your
Lordship's question; it wasn't in answer to
any of my questions.

20

COURT: Can you assist me, Mr. Macdougall?

MR. MACDOUGALL: My Lord, I think I have a very
vague recollection, but I cannot remember the
passage. Perhaps we should examine the record.

COURT: I'll have it clarified later.

MR. MAYNE: I, of course, was on my feet at that
stage.

30

COURT: I appreciate that. I appreciate that a
note was taken on your behalf.

MR. MACDOUGALL: I have no re-examination, my Lord.

COURT: Thank you, Mr. Webster.

P.W. 7 - Gordon WILSON - Sworn

In the Supreme
Court of Hong
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XN. BY MR. MACDOUGALL:

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Evidence

No. 16

Gordon Wilson
Examination
29th April 1965

Q. Your full name is Gordon Wilson and you are care of the Mandarin Hotel?

A. Correct, sir.

Q. And you are the Chief Security Officer at that hotel?

A. Correct, sir.

10 Q. Mr. Wilson, do you recall seeing Inspector Webster and the two accused on the 12th of February this year?

A. I do.

Q. Can you recall any conversation which took place between the inspector, Mr. Webster and the two accused?

A. I can, sir.

Q. Would you tell his Lordship and the Jury what the conversation was?

20 A. On the morning of the 12th in the company of Inspector Webster, I proceeded to the basement and he asked both the accused two questions: question (1) - Had they any objection to going back to the station? question (2) - Had they any objection to their belongings taken back to the station for examination? This was then translated by the Pakistani inspector, and the accused had no objection whatsoever to either (1) or to (2).

30 Q. Mr. Wilson, do you recall receiving a certain information on the 7th of April this year?

A. I do, sir.

Q. As a result of that information what did you do?

A. I proceeded to the T floor in the Mandarin Hotel, which is the number of the floor - it is the third floor of the Mandarin Hotel. And underneath a case I found two knives.

40 COURT: Under the case?

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Court of Hong
Kong

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Evidence

No.16

Gordon Wilson
Examination
29th April 1965
(Continued)

A. Underneath a wooden case, my Lord.

Q. Do you identify these as being the knives which you discovered, Mr. Wilson?

USHER: Identification 20.

A. Those are the knives.

Q. Do you produce them in evidence?

A. I do.

Q. Mr. Wilson, will you describe where those knives were found?

A. They were found in one of the technical rooms on the T floor. The T floor is one where all technical plants and machinery are situated. I found them in one of the plant rooms under a case - about 2 feet high maybe, between 12 and 14 inches square - underneath this case I found them. 10

Q. Would it be in the centre of the floor?

A. Against the wall. This box you mean?

Q. Yes.

A. This box was against the wall. That was the wall facing out of the room. 20

Q. And you contacted Inspector Webster?

A. By phone - I telephoned to him.

Q. And he came to the Mandarin Hotel, and you took him ...

A. No, I took my handkerchief and picked the knives up with the handkerchief, put them into the handkerchief and brought them to my office and then I called for the inspector.

MR. MACDOUGALL: I have no further questions. 30

MR. MAYNE: Just a couple of questions.

COURT: I am sorry. They should be marked as exhibit H. I am sorry, Mr. Mayne.

MR. MAYNE: That's all right, my Lord.

Cross-
examination

XXN. BY MR. MAYNE:

Q. These knives that you found, you found them on

the 7th of April of this year, is that right?

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A. Yes, correct, sir.

Q. That is approximately 5 days after the defendants were last in the Mandarin Hotel?

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A. The 7th of April?

No. 16

Q. The 7th of April - Oh, yes. I am sorry.

Gordon Wilson
Cross-examination

10 MR. MAYNE: It's a matter of months. Thank you.

29th April 1965
(Continued)

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

COURT: Thank you, Mr. Wilson. We needn't detain you any further.

MR. MACDOUGALL: I call Inspector Nawaz.

NO. 17

RAB NAWAZ

No. 17

Rab Nawaz
Examination

P.W. 8 - Rab NAWAZ - Affirmed in English.

20 XN. BY MR. MACDOUGALL:

Q. Your full name is Rab Nawaz?

A. Yes.

Q. And you are an inspector of police attached to Central C.I.D.?

A. Yes, that is correct.

Q. Now, inspector, I want you to speak up so that the Jury and his Lordship can hear you.

30 Do you recall going to the Mandarin Hotel at about 11.30 a.m. on the 12th of February, 1965 with detective Inspector Webster?

A. I accompanied detective inspector Webster to Mandarin Hotel at 11.30 a.m. on 12th February, 1965. Then we went to the basement of the Mandarin Hotel, where we saw a

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No.17

Rab Nawaz
Examination
29th April 1965
(Continued)

Pakistani male by the name of Mawaz Khan, the first defendant - identified sitting on the right (Indicates). Inspector Webster showed him his warrant card and said that "I am detective inspector Webster of C.I.D. Central. I am now making inquiries into the murder of a Pakistani male, Said Afsal, in 36B Kennedy Road, and asked the 1st accused Mawaz Khan, 'How did you receive those injuries on your hand?'"

10

I acted as interpreter for detective inspector Webster.

Mawaz Khan replied that he had a fight with a friend. He was drunk and had a knife. "When I tried to take away the knife from him ..."

COURT: Is that what the man said?

A. Yes, your Lordship, the 1st accused. "...I cut my hand." Then Inspector Webster asked him who was the friend. He said "Amanat Khan." At the same time he indicated the 2nd accused, Amanat Khan, who was also present there. Then inspector Webster asked him, "Do you have any objection to returning to Central Police Station for further inquiries?" First defendant, Mawaz Khan, replied, "No objection."

20

Then inspector Webster asked the 2nd accused, Amanat Khan, "How did you receive injury on your little finger?" Second defendant, Amanat Khan, replied he had fought with Mawaz Khan. Then inspector Webster asked him, "Do you have any objection to returning to Central Police Station for further inquiries?" He replied, "No objection."

30

Then inspector Webster asked both defendant, "Do you have any objection if we took all of your property to Central Police Station for further examination?" They replied, "No objection." Then inspector Webster said to them, "Then collect all of your property," which they did.

40

At the same time they changed into other clothing. Whilst 1st defendant, Mawaz Khan, was changing, I noticed blood stains at the rear of his under-pants which I drew to the attention of detective inspector Webster, and he also saw it.

Q. Did you eventually return to Central Police Station?

A. Then we returned to Central Police Station.

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Prosecution Evidence

Q. And what happened there?

A. At 12.25 hours I again acted as interpreter for detective inspector Webster when he asked certain questions from 1st accused, Mawaz Khan. It was taken down in writing by detective inspector Webster and answered by the 1st accused, Mawaz Khan.

No.17

Rab Nawaz Examination
29th April 1965
(Continued)

10

I then read over the statement to the 1st accused, Mawaz Khan, in Punjabi dialect, and I am satisfied he fully understood what I read back to him. He was then asked to sign his name, which he did; and I also signed my name.

(Identification 14 handed to witness).

20 USHER: Identification 14.

A. I now identify the statement.

Q. Inspector, were there any threats, promises or inducements made to the accused?

A. No, sir. The statement was given voluntarily.

Q. Do you produce that statement in evidence?

A. I now produce that statement.

CLERK: Exhibit J.

COURT: J?

CLERK: Yes.

30 Q. Did you at 15.50 hours on the 12th of February this year accompany detective inspector Webster and 1st accused to Harcourt Road?

A. Yes.

Q. Would you tell his Lordship and the Jury what happened on that occasion?

A. We went to the Harcourt Road with detective inspector Webster and the 1st accused, Mawaz Khan. Upon our arrival there, detective inspector Webster first asked the 1st accused

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No.17

Rab Nawaz
Examination
29th April 1965
(Continued)

where he had a fight with Amanat Khan. And he showed us the place where he had fought with 2nd defendant, Amanat Khan.

- Q. Inspector, would you examine this photograph of Harcourt Road and indicate to the Jury the spot at which the 1st accused indicated to you?
- A. The scene in this photograph in E1 is near the wall. Also in E.2 (Indicates). He said he had broken a bottle of beer during the fight on the wall. 10
- Q. Would you examine exhibit E4 and refer to that - that is the same one as Inspector Webster referred to.
- Which was the location indicated to you by the 1st accused as where he allegedly had this fight with the 2nd accused?
- A. Yes, this is the picture.
- Q. Where?
- A. He pointed out to us that this is where he had a fight on this side of the road. He started fighting at this side of the road and they went to the other side of the road where he had broken a bottle of beer (Indicates). 20
- Q. Did you examine the scene, inspector.
- A. We examined the scene to find the broken bottle of beer.
- Q. And what was the result of your examination?
- A. We couldn't find anything there.
- Q. Do you recall the 13th of February this year at about 10.50 hours? Were you again acting as interpreter for Inspector Webster? 30
- A. Yes, on 13th of February at 10.50 hours at Western Police Station I again acted as interpreter for detective inspector Webster when he formally charged 1st accused, Mawaz Khan. Detective Inspector Webster read over the charge in English. I interpreted the charge in Punjabi. Detective Inspector Webster then asked a question in English and I interpreted the question in Punjabi. Also present there was Superintendent Grieves, of Central Division. 40
- 1st defendant, Mawaz Khan, then elected to make a statement in answer to the charge, which he

wrote down himself in Urdu and signed it.

In the Supreme Court of Hong Kong

Q. Let me clarify one point, Inspector. I understood that the dialect is called Punjabi, but the writing is called Urdu, is that right?

Prosecution Evidence

A. Yes, that's correct.

No. 17

Q. Would you kindly examine this statement and see if you can identify that as the statement which was made by the 1st accused, identification 17?

Rab Nawaz
Examination
29th April 1965
(Continued)

10

A. Yes, I now identify the statement made by the 1st accused. And this is his signature my signature, Inspector Webster's signature.

Q. Do you formally produce that statement in evidence?

A. I now produce the statement.

COURT: K?

CLERK: Exhibit K, sir.

20 Q. At 11 a.m. the same day did you again act as interpreter for Inspector Webster?

A. Yes.

Q. What happened then?

A. Then we formally charged the 2nd defendant, Amanat Khan.

Q. Was the same procedure observed on this occasion?

A. We adopted the same procedure, except when the 2nd defendant elected to make a statement, he asked me to write for him stating that he was illiterate. Then I wrote down in Urdu what he said to me, and he signed it.

30

Q. Were there any threats, promises, inducements made on this occasion?

A. No, sir.

Q. Do you identify this document as the statement made by him?

USHER: Identification No. 18.

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No. 17

Rab Nawaz
Examination
29th April 1965
(Continued)

Cross-
examination

A. I now identify the statement made in answer to the charge by the 2nd defendant, Amanat Khan.

Q. And do you produce that statement in evidence?

A. Yes.

COURT: L.

CLERK: Exhibit L.

Q. After both these statements were made what was done with the written statements?

A. The copies of statement made in answer to the charge were served on both defendants and also a copy of statement made by each other was served on them respectively. And they signed for the receipt of them. 10

MR. MACDOUGALL: I have no further questions, my Lord.

XXV. BY MR. MAYNE:

Q. Mr. Nawaz, I think it is correct to say that between the 12th of February and now you have refreshed your memory on a number of occasions from certain notes as to what took place on the 12th of February? 20

A. That is correct, yes.

Q. I think the last time that you found it necessary to refresh your memory in this way is about two or three days ago?

A. Yes.

Q. Did you feel that you needed to refresh your memory in this way before coming into Court?

A. Yes.

Q. With regard to exhibit J, that was I19... 30

CLERK: I.14.

MR. MAYNE: I.14. I am sorry.

Q. That was the statement that was taken through you by Mr. Webster on the 12th of February?

A. Yes.

Q. It started at 12 ... what time?

A. 12.25.

- Q. Finished at what time?
 A. 15.40.
- Q. That is a long time, isn't it?
 A. Yes.
- Q. Presumably what length of time did the reading back of the statement take?
 A. Reading back of the statement?
- Q. Yes.
 A. Say, 10 to 15 minutes.
- 10 Q. Were there any delays in answering on the part of the 1st accused - in answering questions?
 A. As far as I can remember there wasn't any significant delay.
- Q. No significant delay. Did you find any difficulties in interpretation?
 A. No, on my part I did not find any difficulty.
- 20 Q. How do you account for this long period of time in taking this relatively short statement if there were no delays and if there was no difficulty in interpretation?
 A. It might be due to clarifying the questions and answers, sir.
- Q. I see. You found it necessary at times to clarify questions and answers, is that right?
 A. Yes, in some cases, to the defendant - for instance, if he said he returned to hotel...
- 30 Q. "He said"?
 A. He returned to hotel at this time, so I have to ask him which way into the hotel.
- Q. These clarifications, they don't appear on this document, exhibit J, at all, do they?
 A. This was when the ...
- Q. Please answer the question.
 A. Yes.
- Q. You agree that they don't appear?
 A. No.

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 No. 17

Rab Nawaz
 Cross-
 examination
 29th April 1965
 (Continued)

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- Q. So in point of fact, document J, exhibit J is not a full and accurate portrayal of everything that was said between you and the defendant, the first defendant. It doesn't contain everything that was said - I simplified the question.
- A. It does.
- Q. Well, if it doesn't contain the clarifications, how could it contain everything that was said?
- A. May I explain my answer? 10
- Q. Would you answer my question and then explain anything you like?
- A. That will be the better way of doing it. I think everything appeared in exhibit J - whatever detective inspector Webster asked the 1st accused and whatever he answered through me - everything here.
- Q. But if you had clarified things there is no mention or reference of clarifications in the document, isn't that right? There is no indication in the document itself that you needed to clarify anything. Do you agree? 20
- A. Well, that was ...
- Q. Do you agree or not? Yes or no. Is there any indication in the document that you had to clarify any question?
- A. These are the answers of the questions.
- Q. Will you answer the question? Are there any indications at all in that document that you had to clarify any questions? It is a simple question. 30
- A. Well, there is a certain amendment.
- Q. That's an amendment made by the defendant after the reading back?
- A. Yes.
- Q. That is a different thing. Are there any indications on that document that you had to clarify any questions by Mr. Webster?
- A. No. 40
- Q. So this document in fact does not include all of the things that you said to the 1st defendant, is that right?
- A. It does include everything of what I said to the 1st defendant.

- Q. I thought you agreed with me a moment ago that it didn't include such clarifications that were made.
- A. The clarifications I made were to make sure if he understood me or not.
- Q. Then the document does not include such clarifications as you thought fit to make.
- A. Then whatever I said to ...

MR. MAYNE: No, please.

- 10 MR. MACDOUGALL: My Lord, the witness was about to explain in his own words.

COURT: He can answer the question by "yes" or "no" and add any explanations he saw fit.

MR. MAYNE: I am asking him a simple question, my Lord.

- Q. Do you want to answer the question?
- A. Yes, I have already answered your question - no clarification.

- 20 COURT: I beg your pardon?
- A. The defence counsel is asking me.

COURT: The clarifications do not appear in the document?

A. Yes.

- Q. So the document is not a complete record of what you said to the defendant, right?
- A. It is the complete record of what was said by the defendant.

- 30 Q. But if it does not include the clarifications surely it is not a complete record. It is only natural.

Now, Mr. Nawaz, you are not just an ordinary experienced witness. You have been in the Police Force for many years, haven't you?

A. Yes.

Q. You have long experience in giving evidence in Court?

A. Yes.

Q. You know you have a duty to answer questions

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if you are in the box and if they are not disallowed by the judge?

A. Yes.

Q. Now, referring to what you told us yesterday - and I hope I am correct - I think what you told us was this exhibit, exhibit J, as it is now, was, I think the word was, roughly word for word what the inspector said, is that so?

A. Yes.

Q. Is that right?

A. Yes.

10

Q. Is it roughly what the 1st accused said?

A. It is, yes.

Q. That is as far as your refreshed memory can put the matter at this stage, isn't that so?

A. I beg your pardon?

Q. Did you not understand the English or did you not hear my question?

A. I couldn't hear the question.

Q. Is that as far as your refreshed memory can put the position today?

A. Yes.

20

MR. MAYNE: Yes.

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

COURT: Very well. Thank you.

MR. MACDOUGALL: May this witness be released, my Lord?

MR. MAYNE: No objection, my Lord.

COURT: Yes, witness released.

MR. MACDOUGALL: I call Vincent Francis Derek Chapman.

30

My Lord, my learned friend wishes to recall Inspector Webster into the box, and I have no objection to that.

COURT: Very well.

MR. MACDOUGALL: I will call Vincent Francis Derek Chapman, witness No. 9, at page 10 of the depositions, my Lord

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Cross-examination
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(Continued)

No. 18

Vincent Francis Derek Chapman
Examination

NO. 18

VINCENT FRANCIS DEREK CHAPMAN

P.W.9 - Vincent Francis Derek CHAPMAN - Sworn

XN. BY MR. MACDOUGALL:

- 10 Q. Your full name is Vincent Francis Derek Chapman?
- A. That is correct
- Q. And you are an inspector attached to C.I.D. Central?
- A. Yes.
- Q. Did you on the 11th of February this year go to the 4th floor of 36B Kennedy Road?
- A. On the morning I went to the 4th floor of 36B Kennedy Road where I saw the body of a man whom I now know to be named Said Afsal, Pakistani male.
- 20 Q. Did you accompany a photographer called Leung Hang?
- A. I did, indeed, and after making a thorough examination of the area I directed Leung Hang to take 11 photographs of the inside of 36B Kennedy Road and 11 of the outside.
- Q. And would you examine those photographs, Inspector, and see if they depict the schene which you instructed Leung Hang to photograph?
- 30 A. These photographs prefixed C depict the inside of Kennedy Road - C1 down to C12.

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Q. Do those photographs depict the scenes as you found it?
A. They do, yes.

Q. Did you then descent to the ground floor of 36B Kennedy Road?
A. I did. I there instructed 12 further photographs to be taken of the outside of Kennedy Road. These are the exhibits prefixed B1 to B12.

Q. Do they fairly represent the scene as you found it?
A. Yes, they do.

10

Q. Did you investigate the premises at the ground floor of 36B Kennedy Road?
A. I made a thorough check of the premises and in the garage on the right-hand side of the main entrance of 36B, Kennedy Road.

Q. Is that the one facing you?

A. Yes. If you look at exhibit B1 it is the one - the garage is just behind the motor cycle, just out of view in fact. The main entrance is behind, just behind the motor cycle; the garage is right at that end (Indicates). Exhibit B 5 is a photograph of that garage.

20

Q. Yes. What did you find there?

A. There the drain, below the tap, as you can see it, on the right-hand side I found one white and green handkerchief soaked in blood and one white piece of towelling, white and pink.

Q. Do you identify these as the two objects you just mentioned to the Court?

30

USHER: Identification No. 9 and No. 10.

A. Yes, this is the handkerchief and this is the piece of towelling.

Q. Do you produce those in evidence?

A. I do.

Q. Yes. What did you do then?

COURT: May they be marked ..

CLERK: M and N.

COURT: M and N.

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A. I then took possession of these two items and went to the garage on the left hand side of the main entrance of 36B Kennedy Road, which is depicted in exhibit B1, and there I seized a vegetable knife. The exact position from which I seized it is shown in exhibit B4.

10 Q. Do you identify that as the vegetable knife which you just referred to (Knife handed to witness)?

USHER: Identification 13.

A. This is the knife.

Q. Do you produce that knife?

A. I do, indeed.

COURT: Exhibit O.

20 A. These three items were then taken by me to the Police Headquarters where I handed them over to Dr. Ong.

Q. Dr.?

A. Tong - I am sorry.

Q. Did you then return to the scene?

A. Yes, I returned to the scene and then took possession of further items. From the left hand garage I took possession of a deck chair, which can be seen in exhibit B1, in the position in which I found it, next to the second pillow.

30 USHER: Identification 12.

A. And I also took possession of two pieces of green and white cloth which were on the deck chair.

Q. Do you identify these exhibits here as being the deck chair and the two pieces of white and green cloth?

A. Yes.

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USHER: Identification 11.

Q. Do you produce these in evidence?

A. I do, yes.

COURT: May we have one at a time? The deck chair
- number?

USHER: Identification No. 12 - Exhibit P.

COURT: P.

USHER: And identification No. 11 as Q.

COURT: Thank you.

A. I then went up to the 4th floor of 36B Kennedy Road where just behind the main entrance to the flat, in the position shown in exhibit C3, I seized one brown blanket. 10

USHER: Identification 7.

Q. Do you identify that as the blanket?

A. That is the one.

Q. Do you produce that in evidence?

A. I do.

COURT: I'm sorry?

USHER: Identification No. 7 as exhibit R. 20

A. And also from the position illustrated in exhibit C5 I took possession of one white metal finger ring.

Q. Do you identify that as the white metal finger ring?

A. Yes, this is the ring.

USHER: Identification 8.

Q. Do you produce that in evidence?

A. Yes.

Q. What did you do then? 30

USHER: Identification No. 8 as exhibit S.

- A. I then took these exhibits back to the station, numbered them. And on the 15th of February in the afternoon I took them to the Police Headquarters where I handed them over to Dr. Tong, that is, with the exception of the finger ring.
- Q. You retained that in your possession?
A. I retained that in my possession.
- 10 Q. On the 12th of February this year at approximately 11.30 did you attend at the basement of the Mandarin Hotel?
A. I did.
- Q. Did you receive an instruction from detective inspector Webster?
A. I did receive instruction from inspector Webster.
- Q. We don't want to hear what he said. What did you do as a result of this instruction?
A. As a result of these instructions I took possession of all the property of the 1st and the 2nd accused and took those property back to the Central Police Station.
- 20 Q. What did you do when you returned to Central Police Station?
A. After placing all the property in my office I then again at the instruction of Inspector Webster and with the assistance of Inspector Qureshi, who acted as interpreter, took a statement from 2nd accused.
- 30 Q. What did you say to the 2nd accused?
A. First of all, I informed him that I was making inquiries into the murder of Said Afsal which had occurred at 36B Kennedy Road, 4th floor, after which I asked him whether he had any objection to making a statement. He said he had no objection.
- Q. Do you identify the 2nd accused?
A. I do, yes; he is the nearest one to me.
- Q. The nearest one?
40 A. The nearest one.
- Q. After having said that to him what happened?

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A. After having said that to him I then commenced with the statement at approximately 12.50 hours.

Q. In what form was this statement taken?

A. The statement was taken in question and answer form.

Q. Were there any threats, promises or inducements made to the accused?

A. None whatsoever.

Q. Did he appear to be co-operative or unco-operative? 10

A. He appeared to be quite co-operative.

Q. After the statement was made who signed it?

A. After the statement was made, it was then read over to the accused who was invited to make any alterations if he thought fit. It was then signed by myself, the accused and Inspector Qureshi.

Q. Inspector, do you identify this as the statement made? 20

USHER: Identification 19.

A. This is the statement, yes.

Q. Would you kindly read that statement to his Lordship and the Jury?

A. The statement commenced at 12.50 hours and it commenced:

"I have been in Hong Kong for one year and 5 months. I came from the Comcellpare District, Haider Village in Pakistan. I understand the Punjabi dialect. 30

Q. How did you get your injuries?

A. On 10.2.65 I went out at 20.00 hours with Mawaz Khan and we went to Wanchai for a drink. We went to a bar somewhere in Lockhart Road. I do not remember the name of the bar. We had a few drinks together. We left the bar at about 21.00 hours. I bought a bottle of beer and Mawaz Khan took it with him. We walked along Harcourt Road and when near the Fire Brigade Building we started to have an argument. 40

I wanted my bottle of beer back because I have paid for it, but Mawaz Khan refused to give it to me. We started to fight and I took out a knife. Mawaz Khan tried to grab the knife back. During these he received injuries on the palms of his hands. The bottle of beer fell on the ground and broke. We both fell on the ground and while we were rolling on the ground my left little finger was injured by a piece of broken glass, because the bottle was already broken. We made up the argument and went back to the Mandarin Hotel. We got back to the Mandarin at about 22.00 hours. I then changed my clothes and went on duty at midnight. At about 13.30 hours on 11.2.65 I went to see a Chinese doctor who lives and works on a building two blocks away from the Mandarin Hotel. I do not know the name of the doctor or the building in which he works. He treated my finger and put some plaster on it. He also gave me an injection. I paid him \$25 - H.K.

The bar we went to was on the right hand side of Lockhart Road, going from west to east, and it was on a street corner. We sat down at the end of a row of tables to the right of the entrance. I sat facing the Gents toilet and Mawaz sat with his back to a toilet. Behind his seat was a short wall coming out at right angles from the one running from the door. The actual spot where we had the fight was on some waste ground just past the Fire Brigade Building.

Q. Did anyone see you out on that evening?

A. No, I did not see anyone I knew.

Q. When you went out that evening, how did you go to Wanchai?

A. We walked from the Mandarin along Connaught Road, Harcourt Road and into Wanchai.

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Q. When you returned to the Mandarin did you see anyone?
A. Yes, I saw Mohammed Sheirif on duty at the rear gate of the Mandarin. When we went down to the quarters I saw Khan Bahadar. He was awake and sitting on his bed. Apart from him there was also Jumma Khan, Anayat Ullah, Jan Khan and Khan Baz. All these persons I saw in one of the two rooms. They were all awake. In my room only Khan Bahadar and Jumma Khan were awake. There were a number of others sleeping, but I do not remember who they were. 10

Q. What clothes were you wearing that night?
A. I wore black leather shoes, green and grey socks, dark patterned trousers, an off white shirt, a yellow pullover with brown pattern. I did not have a tie or a coat.

Q. Did you know Said Afzal? 20
A. Yes. We belong to the same village. I knew him fairly well though I was not more than a casual friend of his.

Q. Why did you not go to the Mandarin doctor to treat your hand?
A. Because I did not want No. 1 Ziarat Khan to know that we had been fighting.

Q. I now show you a finger ring. Have you ever seen it before?
A. No. 30

The above has been read over to me and is correct."

And it was of course read over.

COURT: This is exhibit T?

CLERK: Exhibit T, yes.

Q. Inspector, in the course of taking this statement did you take possession of anything from the accused when he made a reference to the knife?
A. Yes. I asked him if he had the knife on him. He said he had. And I asked him if he would produce it, which he did. I then asked him if he 40

had any objection to my taking possession of it in order that it may subsequently be examined by a forensic specialist. He had no objection. I took possession of it.

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- Q. Do you identify this as the knife which was handed to you by the 2nd accused?
A. Yes, this is the one. I now produce it.

USHER: Exhibit U.

- 10 Q. Are you familiar with Lockhart Road?
A. I am fairly familiar with it.

- Q. On the 10th of February this year could you tell his Lordship and the Jury how many bars were there on a corner of the south side of Lockhart Road?
A. To my knowledge there were only two on a corner - rather 3.

- Q. On the south side?
A. Yes.

- 20 COURT: On the south side of Harcourt Road?

MR. MACDOUGALL: Lockhart Road.

- Q. Are you quite positive of this?
A. On a corner on the south side?

- Q. On a corner on the south side.
A. Yes.

- Q. Did you on the 12th of February this year at 16.00 hours attend Harcourt Road with Inspector Qureshi and the 2nd accused?
A. I did.

- 30 Q. What did you do there?
A. Through Inspector Qureshi I asked 2nd accused to indicate to me the position in which he had the alleged fight with the 1st accused.
Q. Yes. And what did he say?
A. He indicated the position to me between the entrance to the Fire Brigade Building and

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the spot some 60 or 70 yards away from it. The photograph E1 illustrates this site. The immediate left foreground is the entrance to the Fire Brigade Building, and past the second private car you can just see a small wicker basket on the edge of a pile of wood. This basket is better illustrated in photograph E2. He told me he had a fight somewhere between those two points.

- Q. Yes. What did you do? 10
A. After he indicated this position to me I then searched the area for any sign of a broken bottle but I found no sign of any broken bottle at all.
- Q. At 23.00 hours on the 12th of February this year at Central Police Station did you take possession of any clothing?
A. I did. I took possession of the 2nd accused's clothing.
- Q. What clothing?
A. The clothing which he was wearing. 20
- Q. Enumerate please.
A. He had a pair of shoes, a pair of socks, a pair of trousers, white shirt, yellow pullover, and underpants and a vest.
- Q. Do you identify these as being the articles which you have just described?
A. I do, yes.
- CLERK: Exhibit V, a pair of shoes.
- Q. Do you produce that in evidence?
- COURT: Has that been numbered? 30
- CLERK: Exhibit V, not numbered. I'm sorry, my Lord, it is identification No. 2.
- COURT: No. 2.
- Q. Do you identify this as being one of the articles which you described?
- CLERK: Also Identification No. 2.
A. Yes, this is the other shoe.

Q. Do you produce that in evidence?
A. I do.

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CLERK: Identification No. 2 as Exhibit V.

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Q. Do you aslo identify this?
A. This is the pullover, yes.

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Q. Do you produce that in evidence?
A. I do, yes.

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CLERK: Exhibit W, not numbered yet.

10

COURT: Wasn't all this produced as one
exhibit previously?

MR. MACDOUGALL: I'm sorry, my Lord, I think
it was identified as one exhibit.

COURT: It was identified as one?

MR. MACDOUGALL: Well perhaps, my Lord, if all
these were handed up together they can be
identified.

20

COURT: Were they not all numbered 2? I have
no clear record, no very clear recollection,
but I was under the impression that is
what --

MR. MACDOUGALL: They were numbered as No. 2,
my Lord.

COURT: They were?

MR. MACDOUGALL: Yes.

COURT: That is what I thought. Could all the items
numbered 2 be put to the witness?

30

Q. Do you identify all the articles which are
being handed to you now as the clothing which
you took at the police station on that
occasion?

A. Yes, I identify all the clothing and I now
produce it.

Q. You produce it, good. That was the clothing
you took from the 2nd accused was it?

A. Yes. In addition to clothing I also took a
wristwatch.

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Q. What did you do with these items of clothing and wrist watch?
A. I later sealed the clothing, made my identification mark on the outside, and on the 15th February in the afternoon I took them to Police H.Q., where I handed them over to Dr. Tong.

Q. At 23.25 hours the same evening did you take possession of the clothing of the 1st accused at Central Police Station?

A. I did. I took possession of a pair of shoes, pair of socks, pair of trousers, a shirt, an undervest, and a pair of underpants, and a windcheater, a woolen wincheater, and also a wrist watch.

Q. Do you identify these as being the items you took from the 1st accused on that occasion?

CLERK: Nos. 42, 43, 44, 45, 46.

COURT: No, no, no, we have no such numbers.

CLERK: Lower court number.

COURT: Have they been marked in this court?

CLERK: Not marked.

MR. MACDOUGALL: They have not been marked yet, my Lord.

COURT: Mr. Clerk, I appreciate you were not in court at the time, but there should be a list of all the items which have been marked for identification. Is it not there?

CLERK: Yes, but --

MR. MACDOUGALL: I'm sorry, my Lord, these have not been previously identified.

COURT: Very well, that accounts for it. Very well.

CLERK: Exhibit W.

Q. Do you produce these in evidence?

A. I do, yes.

10

20

30

Q. What did you do with these items?
 A. I later sealed those items, made my identification mark on them, and on the 15th February in the afternoon I took them to Police H.Q., where I handed them over to Dr. Tong.

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Q. On the 14th February this year did you receive from D.P.C. 517 certain items of clothing?

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10 A. Yes, in the afternoon of that day I received the clothing of the deceased from D.P.C. 517. It consisted of a pair of socks, a pair of shoes, a pair of trousers, a jacket, a shirt, a pair of pants and a yellow sweater, pullover type.

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Q. Do you identify these as the objects which you received from D.P.C. 517?

20 A. I do, and I now produce them in evidence.

COURT: Exhibit X.

Q. What did you do with these items?

A. With the exception of the jacket I sealed all the items, made my identification mark on them, and on the 15th February in the afternoon I took them to Police H.Q., where I handed them over to Dr. Tong.

30 Q. On the 14th February this year at 15.00 hours did you examine the property of the 1st accused which he brought back from the Mandarin Hotel?

A. I did and I took possession of certain property I found in a white and black suitcase belonging to the 1st accused, and also a pair of brown leather shoes which were loose, not in any suitcase. The items of clothing were a vest, a shirt and a suit.

Q. Do you identify these as the objects which you have just mentioned?

40 A. I identify those articles and I now produce them in evidence.

CLERK: Exhibit Y.

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Q. Did you examine the property of the 2nd accused which you took from the Mandarin Hotel on the 12th February?

A. I did, yes.

Q. What were these items?

A. One photograph with writing on the back and a jacket and a pair of trousers.

Q. Do you identify these as the objects which you have just described?

A. I do.

10

Q. And do you produce those in evidence, Inspector?

A. I do.

CLERK: Exhibit Z.

Q. What did you do with these exhibits?

A. The clothing I later sealed, made my identifying mark on the cover, and on the 15th February in the afternoon I took them to Police H.Q., where I handed them over to Dr. Tong. The photograph I kept in my possession.

Q. When did you receive back these exhibits from Dr. Tong?

20

A. On the afternoon of the 25th February.

Q. That is all the exhibits that you sent to him?

A. All the exhibits that I sent to him.

Q. After receiving back these exhibits did you take three pairs of shoes to Chief Inspector Griggs?

A. I did.

Q. And did you subsequently receive these back from Chief Inspector Griggs?

30

A. I received them back on the 9th March.

Q. On the 25th February this year at approximately 15.20 hours did you go to 64A Percival Street, 1st floor, and see photographer TSANG Ping-chow?

A. I did.

Q. Did you receive anything from him?

A. From him I received a negative which was in a packet belonging to his studio, the Cosmo Studio.

CLERK: Identification No. 4.

Q. Do you identify that as the photograph.

A. I do, and I now produce it in evidence.

Q. No, you don't produce it, Inspector.

A. Oh, I'm sorry.

COURT: This has not been identified in this court before, has it?

10 MR. MACDOUGALL: I don't think so, no. This witness merely identifies it, my Lord. I understand the photographer LEUNG Hang, my Lord, I think he identified this because he made copies of that negative.

COURT: Oh, is this the one? He did receive a negative of which he made prints. Is this the one?

MR. MACDOUGALL: That is so.

20 Q. Now after receiving this negative what did you do?

A. I went back to Police H.Q., where I handed it over to LEUNG Hang, asking him to develop some prints from that negative.

Q. And when did you receive it back?

A. The following morning, which was the 26th.

Q. On the 3rd March this year did you go to Harcourt Road with photographer LEUNG Hang?

A. I did.

30 Q. And did you direct him to take some photographs there?

A. I directed him to take four views, four general views of Harcourt Road, the south side. Exhibit E1 to E4 are the photographs.

Q. Do they depict the scenes which you instructed him to photograph?

A. They do indeed, yes.

Q. Now, Inspector, I want you to think very

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carefully. If you cannot answer this question please say so, but do you recall how many bars there were on the southern side of Lockhart Road at the night of the murder? Not now, at the night of the murder.

A. On the night of the murder there was in fact only one bar to my knowledge.

Q. And what is the name of that bar?

A. It is known as the Ocean Bar.

Q. And I assume there are now some other bars? 10

A. There have been some recently opened, my Lord.

Q. I have no further questions.

COURT: This is the whole of the south side of Lockhart Road from one end to the other?

A. At that time on the street corner, yes.

Cross-
examination

XXN. BY MR. MAYNE:

Q. Mr. Chapman, show us your right hand. Have you got a cut on the small finger of your right hand?

A. I have indeed, yes. 20

Q. Has anyone taken a long statement about it?

A. Well the Traffic Office took a short statement because I was involved in a traffic accident.

Q. Are you in custody.

A. No.

Q. I expect from time to time you have had cuts on your fingers and hands?

A. I have, yes.

Q. The Traffic Office were quicker, it didn't take two hours? 30

A. It didn't, no.

Q. You were asked earlier on in your evidence whether you were familiar with the number of bars on the south side of Lockhart Road on the 10th February.

A. Yes sir.

Q. That is the day of the alleged murder.

A. That is correct, sir, yes.

- Q. And your answer was that to the best of your recollection there were two or three.
- A. If the prosecuting Counsel said the 10th February in his original question I must have misunderstood him.
- Q. We will come to misunderstandings later. Well having been put that question --

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10 COURT: Are you quite sure the date was put to him?

MR. MAYNE: It was, my Lord, I have a note of that. But if your Lordship would like it read back.

COURT: Are you quite sure? My note is in the present tense. "I am familiar with Lockhart Road. To my knowledge there are three bars on the south side."

20 MR. MAYNE: That is at the earlier stage of the evidence, is it, my Lord? I feel sure that your Lordship's note is very likely to be accurate. Oh yes, here it is, my Lord, in my instructing solicitor's note. There is an actual mention in the question 10th February.

Q. So here you are, Mr. Chapman, an experienced police officer, you have been asked about your familiarity with the bars in Lockhart Road on the south side on the 10th February and your answer was to the best of your recollection two or three.

30 A. That was my answer, yes.

Q. You, an experienced police officer asked that question by Counsel, you made a mistake. Yes?

A. It would appear so, yes sir.

Q. There are quite a number of bars in Lockhart Road altogether, aren't there?

A. There are, yes.

40 Q. I suppose you agree with me that in all likelihood, whatever the feelings of the more enthusiastic patrons of these bars going to

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- Lockhart Road, coming away they might be a bit unsure of what was north, south, east or west?
- A. Yes sir, it could possibly happen.
- Q. And I suppose, I think you probably agree with me that as regards bars generally in that area, there is quite a big, shall we say similarity with regard to interior decor, so there would be quite a considerable similarity between many of them. 10
- A. I think to the best of my knowledge most of them differ inside.
- Q. That is to the best of your knowledge?
- A. Yes.
- Q. You are not a police expert on bars in Lockhart Road?
- A. No.
- Q. With regard to broken bottles and rubbish on the streets, isn't it the duty of the Urban Services to clean streets, collect rubbish and so on? 20
- A. It is, yes.
- Q. I am not asking you whether they do it or not but that is what they are supposed to do. Now you told us near the beginning of your evidence-in-chief that you took from the Mandarin Hotel all the property of the 1st and 2nd defendants.
- A. That is correct, sir.
- Q. Would you agree with me that amongst the property of the 1st and 2nd defendants there was not one glove? 30
- A. I cannot recall seeing any gloves at all.
- Q. Would you like to check? You produced these.
- A. Of all the property I produced there is not one glove.
- Q. I think there was - apart from what you took along there was, Mr. Chapman (Webster?) told us, there was a search by other police officers of the dormitory. 40
- A. I understand there was.
- Q. You were Mr. Webster's chief assistant in this

- investigation, weren't you?
 A. Yes.
- Q. Can you tell us this? Isn't it true that no gloves were taken from the Mandarin Hotel at all?
 A. No, sir, there were no gloves I would agree with you.
- 10 Q. So it is superfluous to ask you whether there were any torn gloves or bloodstained gloves. There were no gloves.
 A. There were no gloves whatsoever.
- Q. And I think it is right to say that there is no evidence in this case of the defendants being seen wearing gloves.
 A. No sir.
- Q. At any time?
 A. At any time.
- 20 Q. Now with regard - Oh, there is one question I would like to ask before going on to this statement that you took. As next in command to Mr. Webster you may be able to tell us this about the two defendants. It is right to say that the 1st accused has no record of any kind of any criminal offence?
 A. In Hong Kong, no, sir.
- 30 Q. As far as you know none anywhere else either?
 A. I have not enquired anywhere else.
- Q. Then the position is you don't know of any criminal offences anywhere else?
 A. I don't know.
- Q. But you do know he has not any in Hong Kong?
 A. I do.

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- Q. Does the same apply to the 2nd accused?
A. It does.
- Q. So as far as Hong Kong authorities are concerned both of the defendants come into this case as persons of good character?
A. Yes sir.
- Q. In steady employment?
A. Yes sir.
- Q. And conduct which apparently was sufficiently good to have them in the employment of the Mandarin Hotel? 10
A. Yes sir.
- Q. Now with regard to this statement that you took from the 2nd accused, it is a pretty short statement isn't it?
A. Fairly short, yes sir.
- Q. I know in your writing, which is pretty expansive, it covers a number of pages, but you agree that in this ordinary typescript the actual interrogation is under two pages of typescript on this kind of paper. I think you say the position is that the reading back of the statement took about 10 or 15 minutes. 20
A. About that.
- Q. Don't you think that 1.3/4 hours is a long period to put these questions and receive these answers, even through interpretation?
A. I don't think so. 30
- Q. Of course you don't understand the dialect at all?
A. No, I don't.
- Q. You don't know what questions were put or what answers were made?
A. Of course, sir.
- Q. You don't know whether this is complete or incomplete. Right?
A. That is so.

Q. You don't know whether it is accurate or inaccurate?

A. No, sir.

Q. Thank you very much, Mr. Chapman.

REXN. BY MR. MACDOUGALL:

10 Q. Inspector, would you examine the statement, the long statement which you took from the 2nd accused? Would you refer or examine the description of the bar? Would you find that?

A. I have it here, yes.

Q. Would you read it? Read it to us.

20 A. "The bar we went to was on the right hand side of Lockhart Road, going from west to east, and it was on a street corner. We sat down at the end of a row of tables to the right of the entrance. I sat facing the Gents toilet and Mawaz sat with his back to a toilet. Behind his seat was a short wall coming out at right angles from the one running from the door."

30 That is the description of the interior of the bar.

Q. If you cannot answer this question, Inspector, don't hesitate to say so, but does this fit the description of any bar that you know?

A. It fits the description of the interior of the Ocean Bar, my Lord.

Q. And, Inspector, when I asked you the

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question about how many bars were
there on the south side of Lockhart
Road why did you initially say three?

A. Because I thought you were speaking of
the present time.

Q. Thank you, Mr. Chapman.

COURT: Thank you.

A. Thank you, my Lord.

COURT: Can this witness be released?

MR. MAYNE: Yes indeed, my Lord, as far as
I am concerned.

10

COURT: We need not detain Mr. Chapman.

MR. MACDOUGALL: My Lord, perhaps this may
be a convenient time to adjourn.
There is only five minutes left and
we will be starting on a new witness.

COURT: 10 o'clock, members of the Jury.
Thank you.

4.25 p.m. Court adjourns.

30th April, 1965 at 10.01 a.m. Court resumes.
 Appearances as before. Accused present. J.A.N.

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MR. MACDOUGALL: May it please you, my Lord,
 I call Mohammed Nawaz Qureshi, Police
 witness No.6 on Page 7 of the depositions,
 my Lord.

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 Mohammed Nawaz
 Qureshi?
 Examination

No.19
Mohammed Nawaz Qureshi

10 P.W.10 - Mohammed Nawaz Qureshi (Aff. in
 English)

NX, BY MR. MACDOUGALL:

Q. Your full name is Mohammed Nawaz Qureshi?
 A. Yes.

Q. And you are an Inspector of Police at
 present attached to Central C.I.D.? A.Yes.

Q. On the 12th February this year, 12.50 hours,
 did you act as Interpreter for Detective
 Inspector Webster at C.I.D. Central? A. I
 did.

20 Q. Would you tell His Lordship and the Jury what
 happened on that occasion? A. In the C.I.D.
 office at Central Police Station I acted as
 interpreter to Detective Inspector Chapman
 and Pakistani male Amanat Khan, and
 Detective Inspector Chapman recorded the
 statement. I translated the questions into
 Punjabi to Amanat Khan who understood and I
 translated back the answers to Detective
 30 Inspector Chapman. After recording the
 statement it was read over the Amanat Khan who
 said it was correct. He signed the statement,
 I also signed.

Q. Inspector, were there any threats, promises
 or inducements made to the second accused on
 this occasion? A. No.

Q. Did you gauge his attitude to be co-operative
 or unco-operative? A. Co-operative.

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Q. Inspector, would you have a look at that statement and see if you can identify it as the statement which was made on that occasion? A. This is the statement, my Lord.

CLERK: Exhibit "T".

Q. Who signed the statement, Inspector? A. Accused and myself.

Q. On the 12th February this year at 1600 hours, did you accompany Inspector Chapman and the second accused to Harcourt Road? A. I did.

10

Q. What happened there? A. Accused was taken to Harcourt Road which is past Police headquarters on the southern side where according to him he had a fight with another Pakistani male, Mawaz Khan, and there he pointed out an area where he said they had a fight.

20

Q. Would you examine the photographs, and see if you can indicate the position on the photograph which the second accused said the fight was held at. A. This one.

Q. Which Exhibit is that, Inspector - the number is on the reverse side. A. A.2.

Q. Now will you please indicate the position which the accused indicated to you and Inspector Chapman? A. This area, sir. (on photograph).

30

Q. What did you do then, Inspector? A. I together with Detective Inspector Chapman, searched the area for a broken bottle which we could not find, and then we went back to Central Police Station.

Q. Did you find any broken glass at all? A. No.

40

- Q. On the 12th February this year at 21.05 hours, did you again act as interpreter, or did you act as interpreter for Webster at C.I.D. Central? A. I did.
- Q. Would you tell His Lordship and the Jury what happened on that occasion?
A. I acted as interpreter to Detective Inspector Webster in Central Police Station when he formally arrested a Pakistani male, Mawaz for the murder of Said Afzal.
- Q. Do you identify this man? A. I do, sir.
- Q. Would you indicate him? A. First one (stands up)
- Q. Can you identify Amanat Khan, the second accused? A. Yes. This one. (stands up)
Second one.
- Q. Yes, please continue, Inspector. A. All which was said by Detective Inspector Webster I translated into Urdu and wrote it, which was explained to Mawaz Khan who understood and after caution Mawaz Khan made a statement.
- Q. Were there any threats, promises or inducements made to the first accused on this occasion? A. No.
- Q. Did he make the statement voluntarily or involuntarily? A. Voluntary statement.
- Q. Would you please examine the statement, Inspector, and see if you identify it as the statement which was made on this occasion?
- USHER: Identification No.15. (handed to witness)
- A. This is the one, my Lord.
- Q. Is it signed, Inspector? A. Signed.
- Q. Who by? A. By Mawaz Khan and by me.
- Q. Do you produce that in evidence, Inspector.
A. I do.
- COURT: This is Exhibit? "AA".

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CLERK: "AA".

Q. At 21.10 hours on the 12th February
this year, did you again act as
interpreter for Inspector Webster?
A. I did.

Q. Would you tell His Lordship and the
Jury what occurred on that occasion?
A. Detective Inspector Webster formally
arrested Pakistani male, Amanat Khan,
for the murder of Said Afzal. All that
was said by Detective Inspector
Webster I wrote in Urdu and explained
to Amanat Khan who understood, and
after caution he made a statement, and
after that he signed and I also signed
on the slip of paper. (sheet of paper).

10

Q. Were there any threats, promises or
inducements made on this occasion?
A. No.

Q. Do you identify this as the statement
which was taken, Inspector?

20

USHER: Identification No.16.

A. This is the one.

Q. Do you produce that in evidence?
A. I do.

COURT: AB?

CLERK: Exhibit "AB", yes.

Q. Have you anything further to add,
Inspector? A. No.

MR. MACDOUGALL: No further questions.

30

Cross-
examination

XXN. by MR. MAYNE (of P.W.10 - M.N.Qureshi)

Q. Mr. Qureshi, I think you are one other wit-
ness who has refreshed his memory before
coming to give evidence in Court?
A. Refreshed my memory?

Q. I'm sorry, did you not catch my
question? I think you are one

other witness who has refreshed his memory before coming to give evidence in Court?
A. I did, sir.

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Q. Yes. On a number of occasions? A. On two or three occasions after 12th February.

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Q. Yes. When was the last occasion which you did so? A. On the evening of 27th this month.

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Qureshi
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examination
(Contd.)

Q. Evening of the - ? A. 27th.

10 Q. I'm sorry? A. 27th.

COURT: The evening of the 27th.

MR. MAYNE: Thank you, my Lord.

Q. Yes. I suppose the reason for your wanting to refresh your memory was that the events of the 12th were beginning to disappear from your memory? A. No. sir.

Q. What other reason could there be? A. Just to make sure the evidence I am going to give in the Court is correct.

20 Q. You know of course that there is a regular procedure in Court where a witness wants to refresh his memory - he is allowed by the Judge to do so from certain documents under certain conditions - it is always with the leave of the Judge and according to the conditions. You know that, don't you? A. I do, sir, but I preferred to do it in that way, sir.

Q. You preferred to do it without the leave of the Judge, is that right?

30 MR. MACDOUGALL: If it please, my Lord, my learned friend is suggesting there is some impropriety in refreshing his memory - in fact there is no impropriety and I think it is wrong to try and draw this inference to the Jury's attention, and I would object on that ground, my Lord.

COURT: Yes - what do you say to that, Mr. Mayne?

MR. MAYNE: My Lord, the question may possibly carry an inference of impropriety, depending on what views one has as to what is proper or improper.

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COURT: Well, you know my views on that.

MR. MAYNE: That is so, my Lord, but of course on this question of fact one has to consider the Jury, what the Jury thinks about questions of fact, and I think when one is questioning a witness on credit, credibility generally, one is entitled to find out from a witness his motives for doing a certain thing.

10

COURT: Yes, but are you at liberty to show or to hint that there is impropriety which does not exist?

MR. MAYNE: My Lord, the question, if it conveys a hint of impropriety, would not for that reason be open to objection. The question is, is the question admissible or inadmissible?

COURT: In my view that question is unfair to the witness. I shall not allow it.

20

MR. MAYNE: Very well, my Lord.

Q. So at any event we have it that you have refreshed your memory before coming to Court? A. I did.

Q. Yes, I see. But there is one thing that I want to ask you about, this name "Khan" in Pakistan, Inspector. It is a very common name, isn't it? It is a very common surname? A. Not very common, my Lord, but this is a kind of family name.

30

Q. Yes, it really would be a kind of a tribal name or a clan name? A. Still call it a family name, that if a man is born to a particular family so he can add "Khan" at the end of his name.

Q. Yes, but there are a great many families in Pakistan, aren't there, that do add this name "Khan" to their name? A. According to the families, they do.

40

Q. They do, yes.

COURT: The question was: "There are a great many families which do add this name?"

A. There are, my Lord.

COURT: "There are."

MR. MAYNE: Yes.

10 Q. So to make it short and simple - it is in fact a common name in Pakistan? A. I would still say, my Lord, sir, it is not common, but the members of those families who belong to that particular family may use that name.

Q. Yes, so if we may just analyse your evidence, a great many people use that name in Pakistan but it is not a common one, is that a fair summary?

MR. MACDOUGAL: My Lord, the witness did not say this.

COURT: That is not what he said at all.

20 MR. MAYNE: I must be mistaken, my Lord, in my hearing. I thought at one stage he said that it was not a common name.

COURT: Yes.

MR. MAYNE: But a great many families did use it.

COURT: He said, "A great many families may use it."

MR. MAYNE: I'm sorry, I thought he said "did".

Q. Is it "may" or "did"? A. May.

Q. "May". Well, can we get this straight. Do a great many families use this name? A. Yes.

30 Q. They do.

MR. MAYNE: So it is "did" my Lord, with great respect.

Q. So it is a fair summary of your evidence that a great many families do use this name - right? A. If they want to.

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Q. Yes, that is not the answer. They do use this name? A. They do.

Q. But on the other hand you say that it is not a common name? A. Not a common name.

Q. I see.

Q. With regard to this statement that was taken from the second accused, Ex. "T", - I think he has it - that is --

10

CLERK: That is the first accused's statement, not the second accused.

Q. That is the one that you have there, is it? A. Exhibit "T".

Q. Exhibit "T". Yes, thank you. Now that is a comparatively short statement, in fact, isn't it? A. Not very short, my Lord.

Q. Not very long? A. Not too long, sir.

Q. How long did the reading back of the statement take? A. Pardon?

20

Q. How long did the reading back of the statement take? A. About 15 minutes.

Q. So the taking of the statement took about one hour and three quarters, is that right? A. Approximately.

Q. Were there any delays or any - delays of any kind in the defendant answering the questions that he was asked?

A. My Lord, sometimes there was delay when the question was put to him and he could not give a clear answer, because for example he did not know the exact place, so he thought --

30

Q. So - ? A. He thought about the answer and gave -- a few more questions were put in order to clarify his answer.

- Q. I see. Would you just stop there for moment? We will allow you to carry on later. You mean further questions were put by you for clarification purposes, is that it? A. No, by the Detective Inspector.
- 10 Q. Did you translate or interpret to Mr. Webster - I'm sorry, to Mr. Chapman, any of the occasions where there was some lack of understanding or anything of that nature? Did you convey any of these occasions to Mr. Chapman? A. I did translate the answer of the accused whether it was clear or not, to Detective Inspector Chapman, as said by the accused.
- Q. I see. Can you remember - would you hand the document to me, please? Can you remember word for word what was said during the taking of this statement? A. During or in the beginning?
- 20 Q. During the taking of this statement? A. The first - ? The second accused?
- Q. No, I am not asking you what was said, I am asking you do you remember word for word what was said? A. I don't remember word by word what was said.
- Q. Not even after this refreshing of your memory? A. I did not refresh my memory about word by word statement.
- 30 Q. I see, but the position is that you can't remember what was said word for word? A. I cannot remember word by word of the statement.
- Q. Can you tell us this? Was any word said that doesn't appear in this statement? A. There are some words, my Lord, questions which were put to clarify the answer of the accused.
- Q. I see. A. But the main questions remain the same.
- 40 Q. So this statement is not in fact a full and complete record of what was said on this particular occasion? Certain things were said that don't appear here? Yes? A. All the main questions.

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- Q. Now answer the question, please. Is that correct or incorrect? A. I could not understand.
- Q. I understood your evidence to be, just a moment ago, that certain words were said which were not recorded here? A. Yes.
- Q. Yes. So it follows, doesn't it, that this is not a complete record of everything that was said during the taking of this statement? A. Yes, with the exception of a few questions. 10
- Q. With the exception of some questions. Can you remember what these questions were? A. I remember, my Lord, on one occasion.
- Q. You remember one occasion, do you?
A. For example, one occasion I remember.
- Q. Yes - do you remember any more than one occasion? A. I do remember more than one occasion. 20
- Q. Yes. Did you translate these things that were not recorded in this statement to Mr. Chapman? A. I did, my Lord.
- Q. You did. So it must be that he failed to put down word for word what was said between you and the second accused? A. Not all the questions.
- Q. Yes, I see. 30
- Q. The statement I think was taken in Central Police Station, is that right?
A. That is correct.
- Q. Correct me if I am wrong - I think it was taken in a room in which there were a number of other Police Officers?
A. There are (were) a few C.I.D. officers there.
- Q. Yes, so at the time of the taking of this statement, the second defendant 40

was in a Police Station in a room in which there were a number of Police Officers around? A. They were in their offices.

COURT: "They were in their offices", did you say?

A. Yes, my Lord.

10 Q. Weren't some of them in the same room as the room in which this statement was taken? A. There were only three persons in that room where the statement was taken.

Q. Now please correct me if I am wrong, but I understood you to say only a few minutes ago that in the room there were a number of C.I.D. officers - I may be wrong there, please correct me. A. I did not say there were a number of C.I.D. officers in that room.

20 Q. I see. Well, while you were taking -- in relation to the C.I.D. room, they were in the vicinity, is that right? A. In the other cubicles.

Q. In the other cubicles. You mean cubicles in the same room? A. On the same floor.

30 Q. On the same floor. Can you explain to His Lordship and the Jury why this particular statement took so long -- well, I'll leave that question as it is. Can you explain why it took so long? A. Detective Inspector Chapman recorded this statement. He put question to the second accused through me in English. I translated into Punjabi to the accused who understood and answered in Punjabi. Then I again translated into English to Mr. Chapman the answer given by the second accused.

30 Q. Yes. A. So in this way it took a bit longer time than if it were taken by two English speakers face to face, my Lord.

Q. Just in ordinary typescript, that is the length

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(Contd.)

of the statement. (Shown to witness) Mr. Chapman's writing is rather erratic, I think you will agree? (Original document to witness) Just in ordinary typescript - I will show you this, just in case you haven't seen this copy of the statement. (handed to witness) You agree with that?

MR. MACDOUGALL: My Lord, this is a type of comment. Witness has already given an answer to the question. If he wishes to address the Jury on this particular point there is a proper time and place for it. 10

COURT: I have this matter in mind, Mr. Macdougall. I do not think that Mr. Mayne has gone further than I should allow him at the moment.

MR. MACDOUGALL: As your Lordship pleases. 20

Q. I would just like you to look at that statement, the copy of Exhibit "T", as typed at the back of the depositions there. You see that in ordinary typing it takes just two and a very small bit of ordinary paper in typescript?
A. (Witness examines copy) (Pause) I don't understand.

Q. You don't understand? A. The question.

Q. Yes, well I will try to make it clear for you. The statement in longhand --
A. This one? 30

Q. Takes up a few pages? A. The writing.

Q. In the writing, yes. But boiled down to ordinary typing, it just takes two pages and about that much (indicating)? A. That is correct.

Q. That is correct. Yes, thank you. (typewritten copy back to Mr. Mayne). Was one factor in the length of taking this statement these clarifications of questions and so on, that don't appear in this statement at all? A. Yes. 40

Q. I see.

Q. The fact that there was a need for clarification, etc., that would indicate wouldn't it, that there was some difficulty in the defendant's mind in understanding the questions as interpreted?
A. No.

10 Q. I see. Then why the clarifications? A. It was because of this reason - that the accused said he went to a place, about which he did not mention which side, which area, the name of the Bar, or where that is situated, near which road or junction - so not to know in fact which Bar he went. A few questions were put only which came to know that that is the Bar he went.

Q. Are these the clarifications which you say don't appear on the statement? A. Yes, my Lord.

MR. MAYNE: I see. Yes, thank you.

20 NO RE-XN. BY MR. MACDOUGALL (OF P.W.10 - M.N. Quereshi)

BY COURT:

Q. You told me that there is, or rather there was a room in which there were a number of C.I.D. officers, in Central Police Station? A. Yes, my Lord.

Q. You then referred to cubicles? A. Yes, my Lord.

30 Q. Do you differentiate between rooms and cubicles? A. On the first floor there are offices or cubicles - Police Officers are there. A kind of partition - cardboard walls and small wooden frames - and each kind of cubicle there is a particular Detective Officer. I don't call them "rooms" because the walls are not so high to the ceiling.

Q. There are a number of these cubicles in one area surrounded by brick walls? A. This is correct, my Lord.

In the Supreme Court of Hong Kong

Prosecution evidence

No. 19
Mohammed Nawaz Qureshi
Cross-examination
(Contd.)

In the Supreme Court of Hong Kong

Prosecution evidence

No.19
Mohammed Nawaz Quereshi
Cross-examination
(Contd.)

Q. The room in which this -- or the area in which this statement was taken, was it what you have just described as a "cubicle" or was it something else? A. It was a room, my Lord.

Q. A room. Were there cubicles in that room? A. Not in that room, my Lord.

Q. This particular room had brick walls or substantial walls up to the ceiling? A. Yes, my Lord.

10

Q. Was there anybody else besides the three of you within those walls? A. There was no one else, my Lord.

COURT: Thank you.

(WITNESS RELEASED)

COURT: Mr. Macdougall, the two statements which were recorded in Urdu have now been admitted. The translations were produced previously for identification - I think they may now be properly admitted as Exhibits?

20

MR. MACDOUGALL: That is so, my Lord, they were provisionally produced before.

COURT: 15A and 16A will become "AA1" and "AB1".

No.20
Tsang Ping-chow
Examination

No.20
Tsang Ping-chow

COURT: I can't hear a word (of affirmation)
(Affirmation repeated)

P.W.11 - TSANG Ping-chow (Affirmed in Punt)

30

XN. BY MR. MACDOUGALL

Q. You full name is TSANG Ping-chow? A. Yes.

Q. You reside at 64A Percival Street and you are a photographer? A. Yes, I am.

Q. Do you recall that on the 27th of November last year you took some photographs of a Pakistani male? A. Yes.

In the Supreme Court of Hong Kong

Q. And can you identify this man in Court? A. Yes, I can.

Prosecution evidence

Q. Would you indicate that man, if you can identify him? A. (Pointing) This one. (Second accused in dock).

No.20
Tsang Ping-Chow
Examination
(Contd.)

10 Q. How many times did you see him? A. Yes, he came for photo-taking twice.

Q. Did you take a photograph of him? A. Yes, I did.

Q. Can you identify this as being the negative of the photograph that you took of him? A. Yes. (with photograph)

CLERK: Identification No.4.

20 Q. Did you do everything involved in the process of obtaining that negative? A. (With negative) Yes, I had it taken and then made prints of it.

Q. Do you produce that negative in evidence? A. Yes, I do.

CLERK: I am not prepared to admit it yet. I am not quite sure what you mean, sir, when you said you "had it taken and made prints of it". Did you take the photographs? A. Yes, I did.

30 COURT: What happened? Who dealt with the film which was used in the camera? A. Yes, I myself.

COURT: You developed it? A. Yes, I did.

COURT: You did that personally? A. Yes, I did.

COURT: Very well, yes.

Q. Do you produce that in evidence? A. Yes, I do.

CLERK: Exhibit "AC".

In the Supreme Court of Hong Kong

Prose ution evidence

No.20 Tsang Ping-Chow Examination (Contd.)

MR. MACDOUGALL: I would ask, my Lord, that the other photograph be given to the Jury as well as that photograph, my Lord.

COURT: No.5. "AD".

MR. MACDOUGALL: I have no further questions, my Lord.

NO.XXN. BY MR. MAYNE (Of P.W.11 - TSANG Ping-chow)

(WITNESS RELEASED)

10

No.21 Dr. George Tong Examination

No.21 Dr. George Tong

P.W.12 - Dr. George TONG (Sworn in English)

XN. BY MR. MACDOUGALL:

Q. Your full name is George TONG, and you are a forensic pathologist attached to the Medical Department?
A. Yes, my Lord.

Q. Doctor, what are your qualifications?
A. M.B. B.S. Hong Kong, D.M.J. (London), M.C. (Pathology) London. 20

COURT: Would you give it in full so that the Jury know what these mean?

Q. Yes, Doctor, would you explain all these symbols in full to the Jury?
A. Yes. Diploma of Medicine and Surgery, Hong Kong University. Diploma in Medical Jurisprudence, London, and Membership of the College of Pathologists, London. 30

Q. On the 11th February this year at about 9.15 a.m., did you attend at the 4th floor of 35B Kennedy Road?
A. Yes.

Q. Doctor, did you take notes at the time that you attended? A. Yes.

MR. MACDOUGALL: My Lord, I would seek permission that the Doctor be permitted to refer to his notes.

In the Supreme Court of Hong Kong

COURT: You have no objection, Mr. Mayne?

Prosecution evidence

MR. MAYNE: I have no objection.

Q. Doctor, you may refer to your notes.

No.21
Dr. George Tong
Examination
(Contd.)

COURT: Yes.

10 Q. What did you see when you arrived at the 4th floor of 36B Kennedy Road? A. There was a Pakistani male lying dead on the floor in a pool of blood.

Q. Doctor, would you examine those photographs and see if any of them fairly depict the scene which you saw when you arrived? A. (Examines photographs) Yes. On photograph C.8, 9 and 10, 11.

Q. Would you hold them up for the Jury, please? A. (Witness does so) C.8, 9, 10, 11.

20 Q. Doctor, did you make a preliminary examination of this body? A. Yes.

Q. What did you find? A. Preliminary examination showed that he had multiple stabs and chop wounds over the body.

Q. At this stage did you make an estimation of the time of death? A. Yes.

Q. And what did you estimate was the time of death, Doctor? A. I estimated that the time of death to be around 10 p.m. on the night, on the previous night.

30 Q. Doctor, did you subsequently perform an autopsy on this body? A. Yes.

Q. That was on the 12th February at 10.05 hours? A. Yes.

Q. Would you tell His Lordship and the Jury the findings that you made as a result of your autopsy? A. My examination showed that he was moderately built, 5 feet 9 inches tall, and his blood-group belongs to Group "B". There were

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Kong

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evidence

No.21
Dr. George Tong
Examination
(Contd.)

multiple cut and stab wounds of the face, the neck, front and back of the trunk, both hands, the thigh, and the buttocks, amounting to 49 in number. Those on the face were 5 in number, on the right cheek, left cheek, right side of the lower lip, and the lower jaw. This varies from $\frac{1}{4}$ " to $3\frac{1}{2}$ " in length and from skin-deep to half-an-inch in depth. There were two small abrasions on the forehead $\frac{1}{4}$ " and $1\frac{1}{4}$ ". On the neck there were 8 wounds - on the front and the back and both sides of the neck, and the muscles of the neck, the vessels, the nerves, the gullet, and the windpipe, were all severed down to the spine. The cut edges are ragged and irregular, and varies from 1" to 5" in length. The chest in front had six wounds, three on the upper left chest, two on the right and one on the upper abdomen. This varies from $\frac{1}{2}$ " to $1\frac{1}{2}$ " and half-an-inch to 5" in depth. 10 20

Q. Doctor, would you please go a little bit more slowly - my learned friend can't keep up? A. Yes. Two of these wounds penetrated into the chest cavities, punctured the lungs, causing it to collapse and bleed. One wound that penetrated into the abdomen did not injure any organs. 30

Q. Any of the organs? A. Did not injure organs.

Q. Organs, yes. A. On the back and behind there were 11 wounds, 4 on the lower back and 7 on the buttock near the anus.

Q. Doctor, is the word "buttock" singular or plural? A. Buttock.

Q. One buttock? A. Both sides - buttocks.

Q. I'm sorry - both sides. Yes, please continue. A. This measures $\frac{1}{2}$ " to $2\frac{1}{2}$ ", and approximately half-an-inch to 4" in depth. Around scrotal area and the left thigh there were 8 wounds, 5 around the scrotum and 3 on the left thigh. This 40

measuring $\frac{1}{2}$ " to 1" and half-an-inch to 3" in depth. On the left arm there were two wounds, one on the upper arm in front, and the other on the elbow.

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Court of Hong
Kong

Prosecution
evidence

No.21

Dr. George Tong
Examination
(Contd.)

Q. What type of wounds were these, Doctor? A.
Stab wounds. This measured half-an-inch
and, and $1\frac{1}{2}$ " and $1\frac{1}{2}$ " and $\frac{1}{2}$ " deep.

10 Q. Doctor, would you please go a little
slower? My learned friend is having
difficulty in keeping up with you. You see,
he is attempting to write down what you are
saying. A. Yes. On the hands there were
defensive slash wounds on both hands, 5 on the
left hand, deep cutting, and 4 on the right
hand, also down to the bones of the digits.

20 Q. Doctor, would you please take it a little bit
slower? A. Yes. The heart and the lungs were
not diseased. The stomach contained a small
amount of digested yellowish food material with
no peculiar smell. All the other internal organs
showed no disease. The bones were not fractured
and the skull was not injured. And the cause of
death, in my opinion, was shock and haemorrhage
from cut wounds of the neck, cut wounds of the
neck and stab wounds of the chest.

Q. Doctor, have you ever seen this ring before?
A. (With ring) Yes.

Q. Did you try it on the deceased? A. Yes.

CLERK: Exhibit "S".

30 Q. Did it fit any of the fingers? A. It fitted only
the small fingers.

Q. Is there anything which you wish to add regarding
to autopsy, Doctor? A. I beg your pardon?

Q. Is there anything which you wish to add regarding
the autopsy before I move on to 36B Kennedy
Road? A. No.

Q. Now when you attended at 36B Kennedy Road, 4th
floor, did you analyse any bloodstains? A. Yes.

40 Q. Would you tell His Lordship and the Jury what your
findings were in this regard - you may refer to the

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No.21
Dr. George Tong
Examination
(Contd.)

photographs if you so desire.
A. (With photographs).

Q. Do those photographs fairly depict
the scene as you saw it, Doctor?
A. Yes.

COURT: Which ones are you looking at?
A. The "C".

COURT: "C".

A. Blood samples were taken from the scene
at various spots for bloodgroup
examination, and my result was that in
photograph "C" 11, 10, 9, 8, that is
from 8 to 11 (held up) where the
deceased lay, were Group B, the same
ground as the deceased. 10

Q. Would you examine C.7, Doctor? Did you
examine a smudge which appears on the
left-hand wall there. A. Yes.
It is also Group B. In photograph C.4
there were bloodstains in drops; at
the front of the picture were Group O
Bloodstains (indicating). 20

Q. What about further down the passageway
there? A. Those further down were
Group B.

Q. Would you examine C.5, please, Doctor?
A. Bloodstains shown in C.5 were Group
B.

Q. That is to say, then, Doctor, you have
said that there was Group O at the
bottom of the photograph here --
Group B just next to the rug, and
Group B further up the passageway?
(indicating places on photograph). 30
A. Yes.

Q. And I presume, Doctor, that C.6
reveals -- it is another photograph
depicting C.7, but that also indicated
only Group B? A. C.6, yes.

MR. MAYNE: C.6. 40

- Q. Would you please examine C.3? A. Yes. In the Supreme Court of Hong Kong
- Q. That is another view of C.4, the reverse, is it not? A. Yes. _____
Prosecution evidence

- Q. Would you please indicate what you found there? A. The bloodstains in the front near the door, were Group B, and that further back in front of the bathroom were Group O. No.21
Dr. George Tong
Examination
(Contd.)
- Q. And near the rug? A. Further down -
- 10 Q. Yes, near the rug itself, in the centre.
A. Group B.
- Q. Group B. What about the doorway, Doctor, did you examine that? A. Yes, Group B.
- Q. Would you just point it out? Now would you refer to photograph C.2? A. Yes.
- Q. Does that again depict the same door as you have just referred to? A. Yes.
Yes, same door, one from the inside and another from the outside.
- 20 Q. Which photograph is from the inside - C.3?
A. C.2 is the inside. Inside of the door and C.1 is from the outside of the door.
- Q. I see, but C.3 is inside, is that so? A. C.3 is outside.
- Q. I mean the photograph was taken from the inside? A. Oh, taken from the inside but it shows outer surface of the -- the door is facing outside.
- 30 Q. Yes. And did you inspect the balustrade of the stairs just outside that door?
A. Yes.
- Q. Did you find anything there? A. Bloodstains, yes.
- Q. What group did they belong to? A. I beg your pardon?
- Q. Which group did those bloodstains belong to?

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(Contd.)

- A. They were bloodstains in small spots dropping down the stairs leading to the front-door in the ground floor, to both sides of the main door; they were found to be Group O.
- Q. Now I referred to the balustrade in particular. Did you find any blood on the balustrade? Please examine your note. I don't think it is depicted in the photographs, Doctor. Perhaps if you consult the plan? There is a plan of the area. (to Doctor). There is a staircase with balustrade? A. Yes. 10
- Q. Bannisters? A. You mean the handrail(?) leading down the stairs?
- Q. Yes. A. There was a small patch belonging to Group B.
- Q. Group B? A. Group B, yes.
- Q. Would you please examine your notes - just to make it positive on that point. A. Yes, it is Group B. 20
- Q. Leading down the stairs? A. Pardon?
- Q. On the staircase? A. Those on the floor were Group O, but one small patch was Group B.
- Q. "B", I see. Now did you examine downstairs, Doctor, on the ground floor? A. Yes.
- Q. What did you find down there? A. Bloodstains in drops were Group O. 30
- Q. Where did you find these bloodstains in drops, Doctor? Can you please refer to the photographs of the ground floor? Photograph B8, B.9, B.10, and B.11. Would you refer to those one by one and indicate where you saw these blood drops? A. On B.8 - it is well defined on B.8, but B.9, those were the drops of bloodstains. 40

- Q. What group do they belong to? A. In the Supreme Court of Hong Kong
Group O. And B.10.
- Q. Also Group O? A. Yes. And B.11.
Those on the door. Prosecution evidence
- Q. Also Group O? A. Yes. No.21
- Q. Would you look at B.7, please
Doctor? Did you find anything there? Dr. George Tong
A. I beg your pardon.? Examination
(Contd.)
- 10 Q. B.7? A. Yes, there were bloodstains
on the floor near the corridor where
Group O human bloodstains.
- Q. Near the drains? A. Yes.
- Q. And B.6? A. Yes. Group O bloodstains
were found on the wall near the tap.
- Q. Does B.5 reveal anything extra on
there? A. No.
- Q. Or is that just a general view of what
you have described? A. Yes, general view.
- 20 Q. Would you examine B.3, please, Doctor?
A. Yes.
- Q. Did you make an examination of that scene?
A. Yes, bloodstain of Group O were found
dripping in on the floor.
- Q. And B.2? A. Yes, also bloodstains of Group
O on the floor. A. Yes.
- Q. And B.1 depicts the general scene? A. Yes.
- Q. So that therefore, Doctor, you only found
two different bloodgroups at the scene,
"B" and "O"? A. Yes.
- 30 Q. Now, Doctor, being a forensic pathologist,
you will be able to answer this question -
if you add Group O to either Group A or
Group B, what happens? A. The A and B will
be dominant, therefore it either turns out
to be Group AB or Group B or Group A.

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No. 21
Dr. George Tong
Examination
(Contd.)

- Q. What happens to Group O? A. It will dominate. The A and B will dominate.
- Q. Now I want to be quite clear on this, Doctor. What happens to Group O? Does it disappear altogether? Can you locate it or isolate it, is it possible? A. No, it is not possible to isolate it.
- Q. It loses its identity, does it? A. Yes. 10
- Q. On the 11th February this year, Doctor, at 10.30, did you see Detective Inspector Chapman? A. On the --?
- Q. 11th February - he handed you three unsealed packages, I believe? A. At my office?
- Q. I could not say, Doctor, but there were three packages which you received on that occasion. Please look at your note. A. Yes. 20
- Q. Is this one of the articles which you received from Detective Inspector Chapman?
- USHER: Exhibit M.
- A. Yes, it contained a --
- Q. Pull it out, please, Doctor. A. (With brown envelope) A handkerchief.
- Q. Yes - did you examine that handkerchief forensically? A. Yes. 30
- Q. What did you find? A. (Searching through notes) On examination I found that there were Group O human bloodstains on this handkerchief.
- Q. Yes, Doctor. In what condition did you actually receive that handkerchief? A. In wet condition.

Q. Did you also receive this article from Detective Inspector Chapman?

In the Supreme Court of Hong Kong

USHER: Exhibit N.

Prosecution evidence

A. This package contained a hand-towel. Examination showed that there were fresh human Group O bloodstains on it. It was received in wet condition.

No.21
Dr. George Tong
Examination
(Contd.)

Q. Did you also receive, Doctor, this vegetable knife?

10 USHER: Exhibit O.

A. This package containing a knife. There were no bloodstains on it.

Q, Doctor, in your opinion, could that knife have inflicted the wounds which you saw on the deceased? A. No.

Q. On the 15th of February this year at 14.30 hours did you receive 37 sealed packages and three unsealed packages from Detective Inspector Chapman?

20 A. Yes.

Q. Do you identify this shoe as being one of the articles which was handed over to you ?

USHER: Exhibit V.7.

A. Yes - package containing black leather left shoe.

30 Q. What is the heel mark on it - the brand name? A. They were labelled "Biltrite" Brand on the heel. "Biltrite" (spelt). Examination showed that Group B human bloodstains in spots and smears on the surface of the shoe.

Q. Do you now identify this shoe as being handed to you on that occasion?

USHER: V.7.

A. This package contained a black leather left shoe.

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Dr. George Tong
Examination
(Contd.)

Q. Brand name? A. With the same
trademark. Examination showed Group
O bloodstains in spots on the surface
of the shoe.

Q. You said the same brand name -
"Biltrite", is that right?
A. "Biltrite".

Q. Do you identify this as being another
object - as being handed to you by
Inspector Chapman?

10

USHER: V.1.

A. A Yellow pullover - no bloodstain
found.

Q. Do you identify this also, Doctor?

USHER: V.2

A. Yes. A pair of cotton underpants -
no bloodstain found.

Q. Do you identify this, Doctor.

USHER: Exhibit V.3.

A. A pair of dark grey woollen shorts -
no bloodstains found.

20

Q. Do you also identify this, Doctor?

USHER: Exhibit V.4.

A. A short sleeved vest - no bloodstains
found.

Q. Do you also identify this?

USHER: Exhibit V.5.

A. A shirt - no bloodstains found.

Q. Do you identify this also, Doctor?

USHER: Exhibit V.6.

30

A. A pair of trousers. No bloodstains.

Q. Do you also identify this wristwatch?

USHER: Exhibit W.1.

A. A wristwatch "O.B" Brand. There were human Group O bloodstains in smears on the inside of the strap.

Q. Do you identify this penknife, Doctor?

COURT: That was Group O?

A. Group O, yes, my Lord.

10 USHER: Exhibit U.

A. A small penknife. No. bloodstains.

Q. Would you open it out, please, Doctor?

A. (Does so).

Q. No bloodstains at all on that? A. No.

Q. Do you identify these trousers, Doctor?

USHER: Exhibit Z.1.

A. A pair of dark trousers. There were Group B and Group O bloodstains found on it. Group B on the left and right leg and upper left front.

20

Q. Right and left legs? A. Yes.

COURT: "On the upper --?"

A. And the upper left front. Group O in smears on the inside of the left pocket.

Q. Do you identify this jacket as being handed to you by Inspector Chapman?

USHER: Exhibit Z.2.

30

A. A dark-coloured jacket, and there were Group B and Group O bloodstains found. Group B in smears on the upper left back, upper back, I beg your pardon, and Group O on the front and back, and also inside of the front.

Q. Were these fresh or stale bloodstains, Doctor?
A. I beg your pardon.

Q. Were they fresh or stale bloodstains?
A. I could not tell, I could not tell

Q. Do you also identify this, doctor?
A. A woollen jacket - nothing found, nothing significant found.

40 USHER: Exhibit W2.

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No. 21
Dr. George Tong
Examination
(Contd.)

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No.21
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Examination
(Contd.)

Q. Do you identify this, doctor?

USHER: Exhibit W.3.

A. A black leather left shoe - no
bloodstains found.

Q. Can you identify this item?

USHER: W.4.

A. A black leather right shoe - no
blood stain found.

Q. Can you identify this, doctor?

USHER: Exhibit W.5.

10

A. A white cotton underpant. There
were group "O" human blood stains
in a patch found on the upper left
back.

Q. Can you identify this one?

USHER: W.6.

A. A short sleeve cotton vest. There
were group 'O' human blood stains
on both sleeve and upper left back.

Q. Do you also identify this, doctor?

20

USHER: Exhibit W.7.

A. A pair of dark green trousers - no
blood stain found on the trousers,
but the handkerchief was found on
the right hip pocket and on the
handkerchief there were group 'O'
human blood stains in smears present.

Q. Do you also identify this, doctor?

USHER: Exhibit W8.

A. A pair of nylon socks - no blood-
stains.

30

Q. Do you identify this, doctor?

USHER: Exhibit W9.

A. A blue shirt with a laundry mark
6841. Examination showed group 'O'
human blood stains on the left sleeve.

Q. Do you identify this, doctor?

USHER: Exhibit W10.

A. A wrist watch CAMY brand. There were
few human blood stains in smears found
on the back of the watch, but not
sufficient for grouping.

40

Q. Do you identify this shoe, doctor?

USHER: Exhibit Y3.

A. A dark brown leather left shoe. There were group 'O' human bloodstains on the surface.

Q. Has that shoe got a brand name on it?

A. No.

Q. It hasn't.

USHER: Exhibit Y7.

10 Q. Would you examine that shoe - was that also handed to you? A. A dark brown shoe. There were also group 'O' human blood stains on the surface.

USHER: Exhibit Y4.

Q. Do you identify that, doctor? A. A pair of dark trousers - no blood stains found.

USHER: Exhibit Y5.

A. A white cotton singlet. There were group 'O' human blood stains on the right lower front.

20 Q. Do you identify this doctor?

USHER: Exhibit Y6.

A. A cotton shirt. There were group O human blood stains in spots and smears on the lower left side.

Q. Do you identify this, doctor?

USHER: Exhibit Y.1.

A. A dark blue woollen jacket - no blood stain found.

Q. Do you identify this, doctor?

30 USHER: Exhibit Y2.

A. A pair of dark blue trousers - no blood stain found.

Q. Do you identify this, doctor?

USHER: Exhibit R.

A. A dark brown blanket - human group 'B' blood stains present.

Q. Do you identify this, doctor?

USHER: Exhibit Q.

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No.21

Dr. George Tong Examination (Contd.)

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evidence

No.21
Dr. George Tong
Examination
(Contd.)

A. This is containing two bed sheets.
There were group 'O' human bloodstains
found on both sheets.

Q. Do you identify this deck chair,
doctor? A. Yes.

CLERK: Exhibit P.

A. There were group "O" human blood
stains in spots and smears present.

Q. Would you point out where they are?
A. Here, here, here (Indicates on
chair). 10

Q. And what about the leg? A. Yes, also
on the back of the left side.

Q. Where is it? Would you please point
in out? A. Here (Indicates on back
leg).

Q. Do you identify this, doctor?

USHER: Exhibit X7.

A. A black leather left shoe. There were
group B human blood stains found on the
surface and sole. 20

Q. Is there any brand name on it? A. No.

Q. Would you examine it? A. Yes. There
is some trade mark on the heel. It
spells as "Goudrich".

Q. "Goudrich". A. It is very vague.

COURT: "Vague".

Q. What blood stains were on it, doctor?
I didn't catch it. A. Group 'B'
human bloodstains. 30

Q. Where? A. On the surface and the sole.

USHER: Also Exhibit X7. (Handed to
witness).

A. A black leather right shoe. There
were group 'B' human blood stains
on the surface and the sole, and
there is a trade mark on the heel
reading as "Coloric". (handed to
Court).

Q. Do you identify this, doctor" 40

USHER: Exhibit X6.

A. A pair of nylon socks - there were group 'B' human blood stains present.

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Q. Do you identify this, doctor?

USHER: Exhibit X.4.

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A. A white shirt soaked with group 'B' human blood, and there were 15 cut holes present.

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Dr. George Tong Examination (Contd.)

10 Q. Would you open it up? A. 11 on the front, 2 at the back, 2 on the lower left sleeve - this is varying from a quarter inch to two and three quarters of an inch in length.

Q. Do you identify this, doctor?

USHER: Exhibit X3.

A. This package is containing a yellow sweater soaked with group "B" human blood stains, and there were 11 cut holes on it - 9 on the front and 6 at the back, varying from 1/8" to 1 3/4".

20 Q. Do you also identify this, dootor?

USHER: Exhibit X2.

A. This package is containing a pair of brown trousers soaked with group "B" human blood stains. There were 14 cut holes on it - 3 on the left front, 1 on the crutch area and 10 at the back, the lengths varying from 1/3" to 1 3/4".

Q: Do you also identify this, dootor?

USHER: Exhibit X5.

30 A. A leather belt with group "B" human blood stains on it.

Q. Do you idenify this, doctor?

USHER: Exhibit X.1.

A. A woollen jacket soaked with group "B" human bloodstains and there were 19 cut holes on it - 4 on the collar, 5 on the lower front, 1 on the right shoulder, 6 on the left sleeve, 2 at the back, and 1 inside the right front, varying from a quarter of an inch to 3" in length.

40 Q. I take you back briefly to your evidence. You mentioned there were wounds on the back and the scrotal area of the deceased. What type of wounds were these.? A. Stab wounds.

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(Contd.)

Q. Do you identify these two knives as being the knives you received from Detective Inspector Webster?

USHER: Exhibit H.

A. Yes. And the package contains two knives - one knife with a "Whale" trade mark on it.

COURT: One with a what on it?

A. "Whale", my Lord. The length of the blade was $3\frac{1}{4}$ " and the widest part of the blade was $2\frac{2}{3}$ ". There were no blood stains found on it. The other knife had a blade of $2\frac{3}{4}$ " in length, half an inch in width, and there were no blood stains found on it. 10

Q. Doctor, in your opinion could those knives have caused the wounds which you saw on the body of the deceased?

A. It is possible. 20

Q. Of course you can't be certain?

A. Yes.

Q. If those knives were washed under water, doctor, would you be able to find human blood stains on them?

A. No.

MR. MACDOUGALL: My Lord, I think this is a convenient moment to break off. I haven't finished his examination-in-chief. I should like to have an adjournment. 30

COURT: Oh, yes. All of us might like a rest. Shall we say 5 past 12?

MR. MACDOUGALL: Yes, my Lord.

11.55 a.m. Court adjourns.

12.07 p.m. Court resumes.

2 accused present. Appearances as before.
Jurors answer to their names.

P.W.12 - Dr. George TONG - o.f.o.

XN. BY MR. MACDOUGALL (Continues): 40

MR. MACDOUGALL: May it please my Lord.

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Q. Doctor, you mentioned that there were wounds in the lower back and the buttocks of the deceased. What was the nature of these wounds? A. They were stab wounds.

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10 Q. Of the exhibits which you have seen today and given testimony in that regard, did you hand those exhibits back to Inspector Chapman on the 25th of February, this year? A. Yes.

Dr. George Tong
Examination
(Contd.)

Q. And would you examine the photographs, exhibits D1-D14? Were these photographs taken under your direction? A. Yes.

Q. Do they fairly represent the scene that you instructed the photographer to photograph at the time? A. Yes.

20 Q. On the 13th of February this year did you at your office direct photographer Poon Ngok-ming to take some photographs of the two accused? A. Yes.

Q. Would you examine exhibit G1 to G6? A. Yes.

Q. Would you describe these photographs to the Jury please, starting from G1? A. G1 showed the wound of the left small finger. G2 ...

Q. Wait a minute, doctor. A wound on the small finger of whom? Did you examine both of the accused? A. Yes.

Q. With their consent? A. Yes.

30 Q. Perhaps you would describe the result of both accused. We'll tackle it that way. A. Yes. On the 13th of February, 1965 in the afternoon I examined a Pakistani male by the name of Mawaz Khan.

Q. Can you identify this man, doctor? A. Yes.

Q. Which one is he? A. The further one (Indicates).

Q. Yes. What did you find in your examination?

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A. I examined him with his own consent. He weighed 133 lbs. - 5 ft. 10½ inches tall. His blood group belongs to group "O". And I found the following injuries on him: On the right hand there were one small shallow out of the index finger, ¾" on the dorsum of the 3rd digit ...

Q. Please refer to the photographs, doctor.
A. It was shown in photograph G6.

10

Q. Members of the Jury might not be familiar with these medical terms. Would you please indicate what do you mean by the "dorsum"? A. This is the dorsum and this is the palm - on this side that is (Indicates).

Q. Would you please indicate by reference to the photographs what did you make reference to? A. The index on this finger - a small out measuring ¾". That was recent and starting to heal. Another out on the middle finger, half an inch in length. This was recent and scabbed.

20

Q. Where was that by reference to the photograph, doctor? A. The small line on the middle finger.

Q. Yes? A. There was another cut of the little finger, ¾" long, on the 3rd digit. This was recent and healing (Indicates).

30

Q. "Recent and healing". A. The wound was recent and healing. On the left hand there were two cuts on the thumb, on the outer aspects of the 1st digit and on the ball of the thumb. This could be seen in photograph G5 (Indicates). The wound was recent and healing. There was one cut on the base of the 4th finger in between the middle and the 4th finger, measuring 1" long and with three stitches. It could be seen on photograph G6. This was recent and healing. There were also abrasions of the skins on the dorsum of the 3rd finger. This was

40

irregular, measuring $\frac{1}{2}$ " and a $\frac{1}{4}$ " respectively, and on the 1st digit the wound was recent and healing. A shallow cut on the index finger, $\frac{1}{4}$ ", on the dorsum of the 2nd digit scabbed. Apart from this there was an old scar of an index finger 1" long on the 1st digit involving the nails, on photograph G6. Apart from this on the hands there was a small out $\frac{1}{3}$ " long on the left side of the forehead (Indicates).

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(Contd.)

10

Q. A cut? A. Cut.

Q. There was a boil on his head?

MR. MAYNE: I object.

A. No.

COURT: Did somebody say something?

MR. MACDOUGALL: I heard something.

MR. MAYNE: A leading question. I object to it.

COURT: You didn't rise to address the Court.

20

MR. MAYNE: That is so. I didn't have enough time to stand up at the time I objected to the question, my Lord.

COURT: You were objecting to the question. I allow the question. This is an expert witness.

MR. MACDOUGALL: I am much obliged, my Lord.

Q. You did not find the boil? A. No.

Q. Yes. Please continue. A. There were no other injuries.

30

Q. Which photograph indicates the out which you referred to on the forehead of the 1st accused, doctor? A. On the forehead, this one (Indicates).

Q. G4? A. G4.

Q. And G3, doctor, could you refer to that one? A. This was a photograph of the 2nd.

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- Q. I am sorry. Did you examine the 2nd accused? A. Yes.
- Q. With his consent? A. Following his examination I examined another Pakistani male adult by the name of Amanat Khan with his own consent in the presence of Inspector Qureshi. He weighed 138 lbs. 5 ft. 6 in. tall. And my examination showed that he had one irregular shelving cut, one irregular shelving cut of the left little finger, measuring about half an inch deep on the medial aspects of the 2nd digit, as in photograph G1. The wound was mildly infected, recent and with swelling. There were four shallow linear cuts on the ball of the right thumb parallel to each other, measuring from half an inch to 1" in length. The wound was dry and recent. 10
- Q. Recent? A. Recent. This was shown in photograph G2. Apart from this there was an abrasion of the left elbow, measuring half an inch x half inch, recent and scabbed. His blood group belongs to group "A", and there were no other injuries detected. 20
- Q. Which photograph indicates the elbow injury, doctor? A. In photograph G3.
- Q. And his blood group was "A" you say? A. "A".
- Q. The blood group of the 1st accused was 'O'? A. 'O'.

MR. MACDOUGALL: I have no further questions, my Lord.

COURT: Yes, Mr. Mayne.

Cross-
Examination

XXN. BY MR. MAYNE:

- Q. Dr. Tong, there are a number of questions that I want to ask you 40

about your evidence and about the case generally. First of all, can you tell his Lordship and the Jury what age you are now? A. 36.

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Cross-
examination
(Contd.)

- Q. And in what year did you qualify as a doctor and surgeon at the Hong Kong University? A. That was 1957 - 8 years ago.
- 10 Q. What kind of work did you do for the earlier part of your career? A. I was working in a Hospital for 2 years, and then I joined the Government and worked as a pathologist for 6 years up to now.
- Q. I notice that you have, I think, a London degree that you have told us about. A. Yes.
- Q. When did you obtain that? A. Three years ago.
- 20 Q. So the position is that your degree with regard to this type of forensic pathologist's degree is just about three years ago. A. Yes.
- Q. Now, there are a number of things, doctor, which are well understood by doctors, but I think it is difficult to understand them for a layman who doesn't know about the subject. So I want you to tell us something more about these questions. I understood that there are four main blood groups into which almost the whole of the world's population falls. A. Yes, generally speaking, yes.
- 30 Q. Are there any statistics with regard to the Hong Kong population as to what percentage of population fall into the various blood groups O A, B, AB, and O? A. Yes.
- Q. When were these last compiled? A. In the year 1961.
- 40 Q. 1961? A. Yes.
- Q. How were these figures arrived at? Was the whole population tested or selected

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examination
(Contd.)

and tested or what? Do you happen to know this? If you don't know tell us. A. Yes, I know.

- Q. Yes. Tell us this way: How did this test - how was it based? How was it conducted? A. It was a survey of the blood groups of the Hong Kong population. And we did blood group on about 13,000 of them and came to the conclusion ... 10
- Q. Not too fast please. To test on 13,000 members of our population, is that right? A. Yes.
- Q. Yes? A. And it is a representative figure of the percentage of the blood group in Hong Kong.
- Q. Yes. That's of course in 1961. A. Yes.
- Q. Now, before going any further on this particular subject, would you please tell my Lord and the Jury in this survey what did that show in percentages of our Hong Kong population - the percentages of the 13,000 population falling into each group? A. The percentage. There were four groups: the 'O' group, the 'A' group, the 'B' group and the 'AB' group. The percentage of the 'O' group is 41.7. 20 30
- Q. I'm sorry. "A" is 41.7? A. Yes, 'O' that is.
- Q. I'm sorry. 'O'. A. "A" is 26.5; "B" is 25.5; and "AB" is 6.2.
- Q. "AB"? A. "AB" is 6.2.
- Q. At the time of taking this particular test, was there any breakdown of the 13,000 persons tested, say, into racial groups comparative to the portion of racial groups in Hong Kong? A. No. 40

- Q. There wasn't. A. They were only -
mainly - Chinese who were
interested in.
- Q. This merely relates to 13,000
Chinese residents?
- COURT: Is that what you say?
- A. Yes, my Lord.
- COURT: They were all Chinese?
- A. Yes, they were all Chinese, sir.
- 10 Q. Of course, you are well aware that
quite a large portion of our population
between 1961 and now are non-Chinese.
A. Yes.
- Q. So these percentages, they are not
helpful, are they, with regard to
these other racial groups at all?
A. Yes.
- Q. You think they are? A. No.
- Q. Oh, you agree. A. I agree.
- 20 Q. I see. Can you tell us this: is
there a tendency for this type of
percentage - in other words, here you
say a population of 13,000 members of
it - 41.7 belongs to group "O". Does
that percentage vary to some extent
from country to country? A. Yes.
- Q. It does? A. It does.
- 30 Q. Take United Kingdom, for example - you
took your degree there. What are the up-to-
date statistics there on this particular
subject? A. The last figure we could get
from the textbooks of the United Kingdom
was that in 1961. The figures come to
46, 42
- Q. "O" is 46? A. 46. 42, 9 and 3.
- Q. I'm sorry. "A" is 42, isn't it? A. Yes

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Dr. George Tong
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(Contd.)

- Q. "O" is 46? A. Yes, 46. 42, 9, and 3.
- Q. "B" is what? A. 9. "AB" is 3.
- Q. Now, with regard to "A" group in the United Kingdom therefore there is a very considerable difference in the percentages? A. Yes.
- Q. Equally "B" group, there is a very considerable difference in the percentages? A. Yes.
- Q. Do you have any figures in relation to Pakistan, east or west? A. Yes, Pakistanis and Indians - we have the figure. 10
- Q. The figure - is this all inclusive geographically of East and West Pakistan and India? A. That, I am afraid, is not.
- Q. What is the figure that you say you have? A. The figure I could quote from the textbook of "Mody" taken from India as a whole and Pakistan. 20
- Q. What is the date? A. Could I refer to it?
- Q. Yes, please do. A. 1961.
- Q. Now, when you say, "taken from India as a whole" would you clarify it with reference to the book? Is there anything to say just exactly what area it covers? A. No, I am afraid it can't. 30
- Q. Why did you say "India as a whole"? A. The textbook is an Indian textbook.
- Q. But India and Pakistan were two different territories in 1961. A. Yes, it was published in Bombay.
- Q. Is there anything there in that to suggest that it includes another nation in Pakistan? A. No.

- Q. It is of India - you mean Indian figures? A. Yes.
- Q. All right. Let's have the Indian figures. "O" is what? A. 26.7. "A" is 26.7, and "B" 37.7, and "AB" 9.
- Q. Yes. So as far as India in concerned - I'm sorry. I take the other way. As far as "O" is concerned it is 46% in the United Kingdom, 41.7% in Hong Kong, and 26.7% in India, right? A. Yes.
- Q. As far as "A" is concerned, it is 42% in England, 26.5% in Hong Kong, and 37.7% in India, yes? A. No.
- Q. Have I got the figures wrong? What's the Indian figure? A. You mean group "B"?
- Q. "B". A. In India it is 37.7, but in Hong Kong it is 25.5.
- 20 Q. For "B"? A. Yes.
- Q. I'm sorry. You would agree that for each group there is very considerable difference in the three different countries? A. In a way, yes.
- Q. Now, have you got any figures at all about Pakistan? A. No.
- Q. None at all. So you have no idea at all as to what the percentages are, of blood groups among Pakistanis? A. No.
- 30 Q. None. Is the position that with regard to non-Chinese members of our community, you have no idea as to how the percentage ratio of various groups varies in the non-Chinese part of our population? A. No.
- Q. Can you tell us this, doctor? From your research and your experience generally with regard to these blood groups, taking the whole of Hong Kong's population there would be enormous numbers - there would likely be enormous numbers of persons residing in Hong Kong this year of 1965 belonging to the "O"

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- group, yes? A. I don't quite understand the question.
- Q. You have told us about the figures in the three different countries. From these three different countries where group "O" in the United Kingdom is 46%, here 41.7%, India 26%, it would be reasonable to expect that there must be a very great number of our Hong Kong population falling into group "O"? 10
A. Yes.
- Q. Yes. Same applies, I suppose, to group "A"? A. Yes.
- Q. And same applies to group "B"?
A. Yes.
- Q. You say that the 1st accused belongs to group "O"? A. Yes.
- Q. And you would agree with me that the indications are that there are an enormous number of people in Hong Kong with the same group? A. Yes. 20
- Q. You told us that the 2nd accused belongs to group "A"? A. Yes.
- Q. There would also be an enormous number of group "A" persons here?
A. Yes.
- Q. So that any stains, blood stains found in any particular place with regard to identification, all you can say is that the blood belongs to a person - one of the many persons belonging to one of the other groups? A. Yes. 30
- Q. There was one bit of your evidence which I found it difficult to understand fully, of course, owing to my non-familiarity with medical matters. It was this question of this group "A" losing its identity. Can you explain to us slowly and clearly what do you mean by this? A. The question was when a few blood spots 40

mixed together, which will come out when you examine the pool of blood.

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Q. You mean a pool of blood contains blood from different groups? A. Yes.

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Q. Then if it is in the blood ... A. I am trying to explain it.

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Q. Yes. A. The thing is that when different blood groups are put together it will sort of clump - agglutinate - in other words, an agglutination will sort of destroy the means of identification of the group. Strictly speaking ...

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Cross-examination
(Contd.)

10

Q. Of any particular group, or "O" group?
A. All of them forming groups will just clump together. But strictly speaking, the "A" blood and the "B" blood will dominate each other - will dominate over the "O" group; that is to say, if you mix "A" blood with "O" group the identification of the blood will come out as "A".

20

Q. This is just my way of analogy. Can you clear this up in my mind? I am not quite clear of what you mean. Take one pool of blood. A. Yes.

Q. Supposing that in this pool there are, say, two or three different groups of blood. A. Yes.

30

Q. Before agglutination, is it possible before clumping to take place, it is possible to determine what blood groups are in the group? A. Strictly speaking, no. Shall I make a comparison?

Q. Please do. A. Just like mixing red colour with white one you can't tell which is red and which is white.

Q. It becomes ... A. Pink, for instance.

40

Q. Yes. You did make particular reference to adding "A" to "O". If you did that something happened. I didn't get down what you told us about that. A. Yes, I said something about

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(Contd.)

"A" and "B" group which will
predominate.

Q. Before we go further, can you explain?

A. Just like any colour the blood
will predominate, and "A" and "B"
blood will predominate.

Q. I am not clear about what you meant
by "predominate" in this particular
context. A. That is so. If an equal
amount of two bloods mixing together
and after the clumping some B would
have left over.

10

Q. Yes? A. And therefore in the
examination of the blood the "B" will
turn up rather than the "O".

Q. Is that before agglutination? A.
Before agglutination or after -
throughout the process.

Q. Which particular groups tend to lose
their identity if there is a mixture?
A. All of them, strictly speaking,
after clumping up and drying up.

20

Q. You did say something specifically
about A losing its identity. Does
it lose its identity quicker than the
others? A. No, no. I don't think I
have mentioned anything about that.

COURT: The witness never said anything
about "A".

MR. MAYNE: I am afraid I wasn't able to
take all down. "If you add "A" to "O"
it loses its identity." And then I
have: "Group "A" loses its identity."
I may have got it wrong. It's about
the third way through the doctor's
evidence in chief.

30

A. I think I said "O" will lose identity
rather than A.

Q. So "O" loses its identity, is that it?
A. Yes.

40

Q. I see. Now, the only types of blood

groups that you found at the premises where you found the body - when I say the premises I mean the premises generally with regard to the 4th floor leading down to the ground floor, the garage and so on - the only blood groups that you found, I think, were "O" and "B", is that right?
A. Yes.

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10 Q. You did not find any "A" group blood stains at all? A. No.

Q. That is the blood group of the 2nd accused? A. Yes.

20 Q. With regard to the blood stains that you found in this same general area where we are talking about, 4th floor, the passages, stairs, garage and so on, were you able to tell from your examination in any way which, if any, of the blood stains were older or newer than the others? A. No.

Q. So from the blood stains, can we take it then that you can't tell from the blood stains as to which stains came first or which came later, is that right? A. Yes, yes.

30 Q. So it is quite impossible, medically speaking, to trace in this particular case the course of events as happening earlier, say, on the ground floor, or earlier on the top floor, the 4th floor? A. That's right.

Q. It is impossible to say? A. Impossible to say.

40 Q. Equally it is impossible to say that anything happened to the corridor where you found the blood stains - it is impossible to say, medically speaking, that that occurred before or after what happened in the inside of the 4th floor premises? A. Yes.

Q. The same applies, I suppose, to the corridor, the staircase and the garage? A. Yes.

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Q. I see. So it is a scientific impossibility merely by looking at the blood stains to say what happened in order of time?

A. That's right.

COURT: Possibility or impossibility?

MR. MAYNE: Impossibility.

Q. Scientific impossibility to say from the blood stain what happened in order of time? A. Yes.

10

Q. You mentioned many other things. This deck chair down here, I think. Could you see it? A. Yes, I could see it.

Q. Now, refresh your memory from your notes if you so wish. Exactly what blood stains did you find on that chair? A. Group "O" blood stains.

Q. That's the group that you say the deceased belonged to amongst many other persons? A. No.

20

Q. The 1st accused. I am so sorry. The 1st accused belonged to, amongst many other persons, "O". Where did you find the blood? A. It was marked in pencils.

Q. Yes. Just turn it around to the Jury. Just point it out. A. Here (Indicates front of chair), somewhere at the back, also here (Indicates its back leg).

30

Q. Are you able to say what was the age of these blood stains that you found on the chair? A. No.

Q. No idea at all. In other words, it could be rather recent or could be old? A. It was agreed throughout the world that nobody could tell about the age of a blood stain.

Q. So in other words it could be recent or very old? A. Yes.

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MR. MAYNE: Possibly that brings us, my Lord, to the convenient stage. I'll pass on to the next subject.

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COURT: Very well. 2.30.

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(Contd.)

12.57 p.m. Court adjourns.

2.30 p.m. Court resumes.

10 Both accused present. Appearances as before.
Jurors answer to their names.

P.W.12 - George TONG o.f.o.

XXN. BY MR. MAYNE Continues:

20 Q. Dr. Tong, just before we leave this time factor with regard to bloodstains - we have dealt with two aspects. One was whether or not you could say whether the bloodstains on the 4th Floor, corridor, staircase, ground floor and so on, whether you could say which particular bloodstains came first, and you told us that you could not say. A. Yes.

Q. And then the other aspect of the time factor with regard to this particular chair, the bloodstains on that. You went a bit further there and you said that these particular bloodstains might be recent or they might be very old. Is that correct? A. Yes.

30 Q. Now I just want to deal with that particular aspect relating to the other bloodstains. Now take the stains that you found on the ground floor generally. The ground floor I think is depicted, Dr. Tong, in the group of photographs B1 to 11. Now with regard to the bloodstains that you found on the ground floor, when you found the bloodstains were they dry or were any of them still wet? A. They were dry, except those found near the tap in photograph B5 and B6.

40 Q. Yes. All the rest were dry? A. Yes.

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- Q. Now with regard to - Dealing with the bloodstains depicted in B5 and B6 which you say were wet, were you able to say how old these particular bloodstains were? A. No, I cannot.
- Q. You cannot say at all? A. Yes.
- Q. So even with these wet ones, they might have been recent or quite old? A. Well wet in the sense that it is mixed with water. 10
- Q. It was the water factor in this area that caused them to be wet, is that it? A. Yes.
- Q. So that even with these stains that were wet, you cannot say whether they were recent stains or old stains? A. In this respect I will say it is recent because dry stains don't dissolve in water.
- Q. But can you put any length of time? A. No. 20
- Q. Can you put an outside limit of the time factor? A. I could give it a few months, a maximum limit. It could not have been more than - Let's put it another way. It is recent, it could not have been older than, say, two months.
- Q. Thank you, doctor. So even these ones could have been as much as two months old? A. Yes. 30
- Q. I don't want to confuse you, doctor - refresh your memory if you like - these particular stains in B5 and B6, the wet ones, which group - you can refresh your memory - which group did they belong to? A. Group 'O'.
- Q. From your statistics I think you would agree that Group 'O' is probably the most common of the blood groups? A. Yes. 40
- Q. So that taking even your figures in Hong

- Kong of the persons that you took tests of, as many as 4 % — A. Yes.
- Q. -- are of this particular group, which is the largest group? A. Yes.
- Q. Now taking the rest of the ground floor, I think from your evidence we can assume that these other bloodstains on the ground floor were dry. Were you able to form any estimate at all as to whether these other bloodstains were recent? A. No, I cannot.
- Q. Coming to the area of the, say the staircase and the landing, the landing of the 4th floor and the staircase leading down to the ground floor, the stains that you found there, does the same thing apply, they could be recent or old? A. Yes.
- 20 Q. Now how about the corridor that is portrayed in, I think it is the 'C' group of - yes, the 'C' group of pictures. You found a number of bloodstains in that corridor. Does the same thing apply to these bloodstains, they could have been recent or old? A. May I be indicated on which picture?
- Q. The 'C' group. A. On the door. It was dry.
- 30 Q. No the 'C' group generally. It is the corridor I am asking you about. I think you will find it on C3, C4. A. Yes, it was dry.
- Q. And does the same thing apply with regard to these bloodstains, they could be recent or they could be old? A. Yes.
- Q. How about the bloodstains on the door which you see in C1 and C2 and C3. Were they wet or dry? A. Dry.
- 40 Q. Again is it the position that they could have been, all or any of them could have been recent or old? A. Once it is dry it is

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impossible to tell whether it is
recent or old.

- Q. So that the answer is that with regard to any one of these bloodstains on the door you cannot say scientifically how old it is? A. No, I cannot say.
- Q. Now take the inside of the room depicted in photographs C6, C7 and C8, just these photographs, these particular pictures, 6, 7 and 8. No, I'm sorry, we will just deal with 6 and 7 so far. Be good enough to look at C6, C7. Now taking C6 first of all, how about the bloodstains that one sees there? Were they wet or dry? A. The stains further away from the deceased's body were dry. 10
- Q. Yes. A. But underneath the body, the pool of blood underneath the body was wet at the time. 20
- Q. I don't want to narrow you down in any way, but I just want to get it as clearly as possible. When you say the blood underneath the body was wet do you mean that the blood other than underneath the body was dry? A. Yes.
- Q. So I assume that the answer in respect of these dry pieces of blood, as far as the time factor is concerned nobody can say whether these bloodstains were recent or old? A. Yes. 30
- Q. How about the wet bloodstains underneath the body? Were you able to form any opinion about these? A. My opinion was that it could have been there for, say, 12 hours or so.
- Q. That is the wet blood that you found underneath the body? A. In a very large pool of blood it will take some time to dry up. 40
- Q. The time factor of drying up, I suppose, will depend on a number of different factors? A. Yes.

- Q. So it would be impossible to say exactly, even approximately, how long that blood had been there?
A. Yes.
- Q. With regard to the wet bloodstains that you found underneath the body, what group did they belong to?
A. It belongs to Group 'B'.
- 10 Q. That is the group of the ---
A. The deceased.
- Q. -- the deceased himself? A. Yes.
- Q. None of the blood from underneath the body was of either 'O' or 'A'? A. No.
- Q. In other words the groups of the 1st and 2nd defendants? A. Yes.
- 20 Q. As a result of your examination of these premises, Doctor, are you in a position to tell from medical factors in any way how many persons were present, say, on the 4th floor at about the time that you estimate as being the time of death? A. I cannot tell.
- Q. There could have been just one person besides the deceased or there could have been any number more than one. Is that right? A. Yes. I could not make any opinion in this respect.
- 30 Q. With regard to the wounds on the body, having regard to your examination at the site and again at the time of the autopsy, are you in a position to tell my Lord and the jury which of the wounds, which of any of the 49 wounds that you have told us about came first or later? A. No, I cannot tell.
- 40 Q. So these 49 wounds could have been caused in umpteen different, shall we say mathematical formulae? 49 wounds, any one of them might have come before or after the other as far as you can say? A. Yes.
- Q. So from the medical point of view are you in a

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position to tell us with any kind of accuracy what kind of course this attack took from the wounding point of view? A. I don't understand the question.

- Q. It is really an elaboration of the same thing. Some of the wounds could have been caused at an earlier time than others? A. Some of the wounds could have been caused earlier than others. My Lord, I could not answer the question. 10
- Q. I think probably your previous answer is enough for our purposes. You cannot say in what order the wounds were caused? A. No, definitely not.
- Q. I think that is enough for our purposes. Well that being so, from the medical, scientific point of view you are not even able to suggest in what way the deceased was attacked? In other words you cannot say he was attacked in one way first or another way later? A. No, no. 20
- Q. You cannot? A. No.
- Q. With regard to the various wounds, would it be right to say that - I think it would be clearer to put it this way. You have told us about your view of the cause of death, shock and haemorrhage from two injuries I think. One was the injuries to the chest. A. Yes. 30
- Q. And the other was the terrible injuries to the neck. A. Yes.
- Q. Is a mortal wound, is that a known medical term or not? A mortal wound. Is that known in the field of medical -- A. A fatal wound. 40
- Q. No, a mortal wound. A. No, I could not understand the word.

- Q. You are familiar, I suppose, having regard to your studies and research and so on, with the words of Glaister on Medical Jurisprudence and Toxicology? A. Yes.
- Q. He is a very well known author in this particular branch of forensic medicine, isn't he? A. Yes.
- Q. Highly respected and accepted? A. Yes.
- 10 Q. Are you familiar with the latest edition of his book on this subject, the 11th edition, as recent as 1962? A. Yes.
- Q. You are. I am not going to ask you, doctor, are you in agreement with every word he says, but are you in general agreement with the views of this particular author expressed in this particular textbook? A. Yes.
- 20 Q. You are, yes. There is a slightly older book, Smith & Fiddes on Forensic Medicine. I am sure you have studied that as well. A. Yes.
- Q. Again I think this is regarded as a very good medical textbook on this particular subject. A. Yes.
- COURT: Who was the co-author?
- MR. MAYNE: Smith & Fiddes. I am referring, my Lord, to the 9th edition which is, the last publication I think was 1949.
- 30 Q. And again I am not going to ask you whether you agree with every word in Smith & Fiddes, but are you in general agreement with what is contained in it? A. Yes.
- Q. The term "mortal wound" is used, isn't it, in textbooks on forensic medicine, or do you not know, doctor? A. May I have a look at it?
- Q. Well before you look at it did you know that? A. No, it has not been in our use.

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- Q. Yes, we will come back to this later, but you do use the word "fatal" wound? A. Yes.
- Q. Now what exactly are we to understand by that? Is that a wound which actually causes death or is capable of causing death? A. By means of fatal wound is the wound that caused the death, the main wound that caused the death. 10
- Q. The main wound that caused death. Now you have directed our attention, you see, with regard to the cause of death to two different areas, one the neck, the other the chest. Now dealing with the neck injuries first, even if the chest injuries had not occurred at all could the deceased have survived the neck injuries? A. No.
- Q. Now reading it the other way round, the wounds to the chest which you join as a cause of death, supposing these had been caused without the neck injuries, could the deceased have survived? A. He would have survived with prompt medical attention. 20
- Q. When you say prompt medical attention how prompt would it have to be? First of all how prompt would it have to be? A. Within half an hour. 30
- Q. And what medical attention might have saved his life? What kind of medical attention could have saved his life? A. An immediate operation would have saved his life if the chest wound was there alone.
- Q. I am not saying alone actually, I am just separating it from the neck wounds. If the neck wounds were not there, having regard to the other wounds and the chest wounds, you say that he might have been saved with prompt medical attention, say within about half an hour? A. Yes. 40

- Q. With regard to the neck wound as shown in the photograph, the neck wounds if you like, would death be instantaneous or practically instantaneous on receipt of these neck wounds? A. My opinion is that more or less instantaneous.
- Q. So the chest wounds, they wouldn't cause instantaneous death but the neck wounds would? A. Yes.
- Q. Is it possible from your examination, from your very careful examination of the deceased to say whether any of the wounds other than the neck wounds were caused before or after death? A. No.
- Q. You cannot say? A. Cannot say.
- Q. So the deceased may well have been dead from the neck injuries before any of the other injuries were caused at all? A. Yes.
- Q. And if that were the position, of course, then the other injuries would not have caused his death? A. Yes.
- Q. They would merely be injuries upon a dead body. Yes? A. Yes.
- Q. Now I asked you from the medical aspect could you tell us how many persons were present at the approximate time of death. Can you tell us this even now? Can you tell us how many different kinds of weapons might have been used against the deceased? I don't want to confuse you there, when I say how many kinds of weapons. I mean how many weapons. Have I confused you there, doctor? A. No.
- Q. In other words in causing death to the deceased can you tell us, even approximately, what number of weapons might have been used? A. Judging on the wounds alone it has to be a sharp cutting type of an instrument, and that is all the conclusion I could draw.

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Q. A sharp, cutting instrument. Or, I suppose, any number of sharp, cutting instruments? A. Yes.

Q. Now correct me if I am wrong and refresh your memory from your notes if you wish. With regard to the chest wounds, I think you told us that you found six stab wounds on the chest. A. Yes.

Q. They varied from $\frac{1}{2}$ " to $1\frac{1}{2}$ " in length. 10
A. Yes.

Q. Now when you use the word "length" what exactly do you mean? Taking this as being the surface of the body, when you say "length" what do you mean? A. The width.

COURT: The length means the width?

MR. MAYNE: Apparently.

A. Yes, my Lord, because usually we measure the wound with a tape, and that is the length. Actually if you interpret it in instruments, it would be the width of a knife. 20

Q. And you said that they varied from $\frac{1}{2}$ " to 5" in depth. Does that mean - the depth, does that mean the extent of the penetration? A. Extent of penetration.

Q. You are quite sure about that? A. Yes.

Q. Can I have these two knives please? 30
Would you agree that in order to penetrate to a depth of 5" the blade of the weapon would have to be at least 5" or more? A. Not necessarily.

Q. What would you say would be the minimum length of blade that could lead to a wound in the chest of 5" depth? A. It depends on the part of the body and the pressure of the act of stabbing.

Q. Well possibly you will be good enough 40
to refer us to the particular wounds that were 5" in depth. Are they shown

in any of the photographs? A. Yes.

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Q. Sorry, I don't want to cause any unnecessary unpleasantness. Which photograph will help us best?

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A. It is shown in photograph D6 and that of D10. On D6 it is the one near the centre of the body. This one.

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Q. Is it this wound here, doctor?

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A. Yes. And on D10 it is the one here.

Q. Both of these you say penetrated about 5". A. About 5".

Q. This one here, it is more or less in the tummy area, isn't it? A. Yes.

Q. And I can imagine possibly the tummy bent inward by force. A. Yes.

20

Q. But this one up here, somewhere around here, that would be in the region of the ribs, wouldn't it? A. Yes, it is between the two ribs.

Q. There wouldn't be any great ability to contract that part of the body, would there? A. Well not great ability to contract, but it is possible to push in in between the ribs.

30

Q. Oh yes, I understand that it is possible to push in between the ribs, but there isn't any latitude for contracting that part of the body so as to allow the blade of a knife in 5" is there? A. Yes, it is possible.

Q. In this area of the body try and imagine the maximum amount of force and the maximum amount of contraction. Allowing for these circumstances, what length of blade do you think would be necessary to penetrate 5" here?

A. Well I would say a blade of about 4", plus or minus 1" at each side.

Q. 3" to 5"? A. Yes.

40

Q. But you say 4" would be the most likely? A. Yes.

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- Q. Of course 5" is a clear possibility? A. Yes.
- Q. A blade 5". In point of fact in ordinary circumstances it would be more likely that the blade would be over 4" than otherwise, wouldn't it, to cause an injury 5" deep?
A. Yes, I agree.
- Q. This is Exhibit H, my Lord, I am going to refer to now. Take this one, doctor. Is this the one that you described as being 2 $\frac{1}{4}$ ", the blade as being 2 $\frac{1}{2}$ " in length?
A. 2.3/4", yes. 10
- Q. 2.3/4? A. 2.3/4.
- Q. Measuring from where to where?
A. From the tip to the handle.
- Q. Down to this point here? A. Yes.
- Q. 2.3/4". Very much less than 4"?
A. Yes. 20
- Q. Less even than 3"? A. Yes.
- Q. In fact to incur this particular injury in the chest of 5" I think you gave the outside length as being 3" to 5"? A. Yes.
- Q. So it is less than the outside length? A. Yes.
- Q. So it can be reasonably certain that this weapon did not cause this particular injury? A. Reasonably certain. 30
- Q. This is the other knife that you mentioned. Now correct me if I am wrong. I think you mentioned that the length of the blade was 3 $\frac{1}{2}$ ".
A. Yes, 3 $\frac{1}{2}$ ".
- Q. That is measuring from here to the handle. The handle rather varies. doctor. Measuring from what part of the handle? A. From the highest. 40

- Q. This part here, yes. So again this knife is well below the 4" that you suggested? A. Yes, less than 4".
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- Q. It is just within the outside limits? A. Yes, without taking into consideration the resilience of the tissues.
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- 10 Q. And correct me if I am wrong, I think this depth that you told us about as being the outside limits, that is taking the most favourable or least preferable, whichever way you put it, conditions as being present. That is maximum force and maximum contraction. Is that right? A. Yes.
- Q. So with regard to this knife also, would you agree that this is shorter than a knife which you would ordinarily expect to cause this wound there? A. Yes.
- 20 Q. If both of these knives are unlikely to have caused this particular wound, I suppose it would be a ground for thinking that some other weapon was used, certainly in relation to this particular wound? A. Yes.
- Q. You agree. This particular wound, apart from the width of it, the length - whichever you like to call it - it is quite broad, isn't it? A. Yes.
- 30 Q. That is apart from the blade width, it is quite --
- COURT: I am not sure which one you are pointing to, Mr. Mayne.
- MR. MAYNE: This is D6, rather towards the centre of the chest.
- COURT: D6.
- MR. MAYNE: I'm sorry, D8. I'm very sorry. Rather towards the centre of the chest, slightly towards the left of the centre of the chest.
- 40 COURT: Underneath the '7'?

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MR. MAYNE: Yes, underneath the '6'
and '7'.

Q. Apart from the actual length of
it, the length of the blade, it is
rather a wide wound, isn't it? A. Yes.

Q. That again would be a factor for
suspecting that this wound was caused
by a fairly large weapon, wouldn't
it? A. Not necessarily.

Q. Yes, I think I know what you mean. 10
The movement of pushing in and
withdrawing again may cause the wound
to be broadened. That is one possible
cause, but another probable cause,
or a probable cause I should put it,
would be that the weapon was a fairly
large weapon? A. Yes.

Q. Larger than either of these? A. Yes.

Q. Apart from the wounds that we have 20
been talking about, this chest wound
and the wound down here, quite a
number of the other wounds on the body
are quite deep, aren't they? A. Yes.

Q. Can you tell us roughly how many wounds
there are over 4"? A. There were six
wounds over 4" or 4".

COURT : Of 4" or over?

A. Yes.

Q. I don't want to waste your time or 30
anybody else's time, but without
pointing them out on the body can you
give us an indication as to how broad
these particular wounds were? Those
over 4" in depth. A. Yes, on my chart
it was wound No.23, 1½".

Q. You said that there were, I think, six 40
over 4" in depth. What I am asking you
now, doctor, is this. With regard to
these which were between 4" and 5", over
4" roughly, you have used the term "the
length" which I think you mean to be the

width of the surface. Can you tell us about the surface of these six injuries between 4" and 5" in depth?
 A. Yes, No.1, 1", No.2, 3/4"; No.3, 1", No.4, 1 1/2", and this is the wound on the chest, No.5, 1/2", No.6, 1 1/2".

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10 COURT: I'm sorry, I would like to be absolutely clear about this. We are talking about the length and the width of a wound, not of the length and width of a knife which caused it. These are the widths of the wounds? A. Yes, my Lord.

Q. Just to clear up one other point because there seems to be some ambiguity in it, in the six injuries which you say were over 4" have you included the two 5" wounds in that number? A. Yes.

20 Q. I see, six including these. Now with regard to these six of over 4" depth, can you give us a rough indication as to how broad the wounds were in the sense of width of surface wound? A. Those were the ones I just mentioned.

COURT: That is precisely why I put the question. This is the width we are talking about.

30 MR. MAYNE: I think we are a little at cross-purposes, my Lord. I think the doctor initially described the length as being the length of the opening of the wound. So from there to there.

COURT: I didn't catch what you said.

MR. MAYNE: The length of the wound opening. Isn't that right?

A. Yes, equals to the width.

Q. I thought we had it clear a bit ago. Now take this particular wound here, the 5" wound on D8. Now you see it runs on the body from just under '7' on the right hand side of the photograph.
 A. Yes, yes.

40 Q. To somewhere under '6' further towards the left. Is that what you describe as the length or the

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- width of the wound? A. It is just equal. What I describe as the length is the width actually.
- Q. So it is from there to there, from under '7' to under '6'? A. You mean this one?
- Q. Yes. A. I just said it is $1\frac{1}{2}$ " in length or $1\frac{1}{2}$ " in width.
- Q. Well that is what we are confused about, you see. You have given us what is the distance between there to there, is that right? A. There is actually a difference, my Lord, because we measure the wound by the longest distance. If it is the width, then it is the gaping part which is width. 10
- Q. That is what I mean. How wide were the gaping parts of the six wounds over 4"? A. It has no significance because we never measure the width, unless it is chopped, for tissue disappearing. There is bound to be some gaping somehow, depending on the toughness of the tissues. 20
- Q. And the gape will depend on a number of circumstances? A. No, it will not.
- Q. The gape. A. The gape is the width measuring this way.
- Q. Surely it depends to a degree on the type of weapon? A. In a way, yes, but not sharp, cutting instruments, no. It will be different suppose scissors or triangular file, but not with a knife with a cutting edge. 30
- Q. I thought we were agreed that the gape part depended to an extent on the putting in of the wound and the taking out of the wound. A. No.
- Q. I'm sorry, I thought you had agreed about that. You say it doesn't depend at all upon the movement inward 40

and outward of the weapon in the case of a knife? A. That is the length I have been saying, not the width, not the gape.

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- Q. What factor does this depend on, what you describe as the gape? What factor does the gape depend on?
A. The thickness of the blade.
- 10 Q. Are you sure about that? A. Yes, but you see I said just now it wouldn't matter because it is cut into it. No tissue was lost and therefore the gape is always approximate each other when you pull it straight.
- 20 Q. Take this photograph here, doctor. It doesn't look as though it is together there. A. But that is due to the retraction of the issues on the other side. That is why it gapes.
- Q. Oh, I see, it has been pulled back like that? A. Yes, sideways.
- Q. That is one of the post mortem factors, this pulling back? A. Yes.
- Q. I see. Are we to take it then, doctor, that as far as the width of the blade - I am talking about it that way, width that way. A. The thickness.
- Q. The thickness, yes. You cannot say about any of these wounds how thick the blade was?
A. No.
- 30 Q. You cannot. Now with regard to the time of death, doctor, has anything influenced your opinion as to the approximate time of death, or as to the time of death, between the time that you gave evidence before the magistrate and today? A. No.
- Q. Today you put the time of death as 10 o'clock, 10.00 p.m. A. It was the approximate time.
- 40 Q. Do you remember giving evidence before the magistrate that you estimated the time of death between 9.00 p.m. and 12.00 p.m. 12 midnight?

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A. Yes, I recall that, but today I did not add on the plus or minus, $1\frac{1}{2}$ hours both ways.

- Q. It isn't $1\frac{1}{2}$ hours both ways if it is 10 o'clock, isn't that right? Simple mathematics. You say between 9.00 p.m. and 12.00 p.m. down below, you say approximately 10.00 p.m. here. There is quite a difference, isn't there? Wouldn't this approximation of somewhere between 9 and 12 be correct in your view?
- A. Yes.
- Q. But there are a great many factors to take into account in forming this opinion as to time of death, aren't there? A. That is correct.
- Q. And it is a very variable matter depending on these factors? A. Yes.
- Q. So that it is really quite impossible to tell with any accuracy as to the --
- A. We could determine the time of death within, say, a few hours' accuracy.
- Q. Within a few hours' accuracy. A. That is why I gave a range at the first hearing.
- Q. So the accuracy is a matter of just within a few hours? A. Yes.
- Q. What do you call by a few hours?
- A. Three hours time, plus or minus $1\frac{1}{2}$ but sometimes 2 hours.
- Q. 3 hours plus? A. No, no, $1\frac{1}{2}$ hours each way, that is 3 hours total.
- Q. Well there is no precise scientific measurement of 3 hours, is there?
- A. No, no.
- Q. It could be $3\frac{1}{4}$ hours? A. Yes, yes.
- Q. It could be 3 hours and 45 minutes?
- A. It could be 4 hours.

- Q. Could it be 4 hours and a quarter?
A. Yes.
- Q. In this case? A. Yes.
- Q. Could it be $4\frac{1}{2}$ hours? A. Yes.
- Q. $4\frac{3}{4}$ hours? A. Yes.
- Q. 5 hours? A. That is the maximum.
- Q. 5 hours is the maximum, I see. What factors did you take into account at arriving at your estimate of the time of death in this particular case?
A. The time factor?
- 10 Q. What factors did you take into account at arriving at your estimate of time of death? A. The body temperature, firstly, room temperature.
- Q. Room temperature where? A. At the premises.
- Q. That is the 4th floor? A. The 4th floor of the premises.
- 20 Q. The heat or cooling factor, the heat is one of the major factors in determining this matter, isn't it? A. Yes.
- Q. Now you told us that you went to the premises at 9.15 on the 11th February. Is that correct? A. Yes.
- Q. What temperature did you find the room on the 4th floor in which the deceased was at that time? A. 20°C .
- Q. What was the heat of the body? A. 27°C .
- 30 Q. You don't know, of course, that the heat of the room was prior to your going to the premises? A. That's right.
- Q. So that is one unknown factor which you don't have? A. Yes.
- Q. Of course the body was taken, I think, fairly soon to the mortuary? A. Yes.

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- Q. Where I suppose the temperature is very cold? A. No.
- Q. What temperature is the mortuary?
A. Just like a room temperature.
The temperature of the day.
- Q. Well I have noticed this quaint phrase "room temperature" used in these English textbooks, where I suppose room temperature means sometime in an English spring, summer, winter or autumn. A. I have measured it at the time and it was 20° C. 10
- Q. Now what about the mortuary? Did you measure that? A. My calculation was done at the scene and nothing to do with the mortuary.
- Q. Oh yes, but in the mortuary you are not in a position to say what the temperature was there? A. Well no. 20
- Q. What was the next factor that you took into account, doctor? A. Rigor mortis, post mortem changes.
- Q. How stiff was the body when you found it? A. Rigor mortis was complete.
- Q. That is in every part of the body, was it? A. Yes.
- Q. This question of rigor mortis, that in itself depends on a great number of different factors? A. That's right. 30
- Q. Which factors did you consider in estimating when rigor mortis had set in? A. The previous, the health condition of the deceased, the room temperature, the way that he died. That all counts to the onset of rigor mortis, but it is only a small part in the estimation of death. 40
- Q. When did rigor mortis cease? A. It disappeared?

Q. Yes. A. Within 24 hours.

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Q. Of what? A. From the time of
the death.

Q. Oh no, no. From the time that
you first saw the body, how
soon after that did rigor mortis
cease or disappear? A. You
cannot calculate that way.

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(Contd.)

10

Q. Well possibly you might answer
the question first and then
explain why it is not important.
Can you tell us when rigor mortis
did wear off? A. Generally it
starts to set in --

Q. No, in this particular case. A. At
the time of my examination it was
complete and that is all.

20

Q. Oh yes, but what I am asking you is
when did rigor mortis end? A. In
this case you mean?

Q. In this case. A. It wasn't in my
record and I haven't checked the
rigor mortis.

Q. You haven't checked? A. Yes.

Q. I see. A. It didn't enter into my
calculation of the time of death at
all because of the various factors
affecting rigor mortis.

30

Q. You mean the time when rigor mortis
starts and the time it finishes
can vary to such a great extent?
A. This has no bearing - no importance,
no significance at all in the calculation.

Q. I see, did you take any other factors into
account? A. Yes, whether the windows are
closed.

Q. Windows of the? A. Of the room were closed,
the clothing of the body ...

Q. With regard to the windows, of course you

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- did not know what position the windows were in before you arrived at the scene?
A. Yes.
- Q. So you based on - you based your finding on this factor of the position of the windows at the time you did go to the scene, is that right? A. Yes.
- Q. Did you make any tests concerning the quantum of fluid in the body or state of dehydration? A. No. 10
- Q. Are these all the factors that you took into account in the estimating of the time of death, doctor? A. It may need to go back to the body temperature, and in the first few hours of death, it is fairly accurate with say 2½ hours in between.
- Q. You told us in this case there is a total differentiation of five hours? A. 2½ hours each way. 20
- Q. Five hours in all? A. Yes.
- Q. From your medical examination of the deceased, doctor, were you able to form any conclusion either way as to whether at some stage on the 10th of February, at the time roughly that you estimated as being the cause of death, as to whether or not he himself might, at about that time, have been holding a knife himself or some other weapon? A. Holding a knife himself? 30
- Q. Yes. A. No, cannot.
- Q. You cannot say? A. I cannot say.
- Q. We know, of course, from photographs D.3 and D.4, that at some stage the hands of the deceased had been injured, and after these injuries it would be difficult for him to hold the weapon - would that be right? A. To hold a weapon? 40
- Q. After these injuries - you may look at the photographs - A. D.5?

- Q. No, I have D.3 and D.4, the hands.
A. Yes.
- Q. After the deceased had received these injuries, I suppose everyone would agree and you would agree, after these particular injuries it would be difficult for the deceased to hold a weapon?
A. Yes.
- 10 Q. But you cannot say whether these injuries were inflicted before or after death? A. No.
- Q. And prior to these injuries being caused, you cannot say whether the deceased himself might have been holding some kind of weapon himself?
A. No.
- Q. He might have been holding any kind of knife? A. Yes.
- 20 Q. With regard to the neck wounds, I think you told us, correct me if I am wrong, that the cut edges of the neck wounds were ragged and irregular?
A. Yes.
- Q. That factor may make it virtually impossible to speculate as to the kind of weapons which were used against the neck, wouldn't it? A. It is just the opposite, in fact.
- 30 Q. Yes, then help us there, doctor. A. The ragged and irregular edges show that it wasn't a big knife that was used.
- Q. Yes? A. And it wasn't a chopper kind of knife that was used.
- Q. Why do you say that - possibly it will help us with particular relationship to the photographs of the neck, say D. - D.4, would that be a good example to take?
- COURT: 4 is the hand.
- 40 MR. MAYNE: D.7, I am sorry, my Lord. Would that be a good example for us to take? A. Yes, and also D.8 and D.9.

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- Q. Just confine yourself to D.7 for the time being - some of these injuries there, I think you cannot say how many strikes or cuts there were there at all? A. Yes, that is why the edge becomes ragged and irregular.
- Q. We will move along to that in a moment - can you say how many cuts or thrusts there were into this neck wound? A. No, I cannot say - it was ragged and irregular. 10
- Q. Ragged and irregular - this particular kind of wound could well be caused by, you mentioned for instance a while ago amongst other things, some of the wounds could be caused to the neck by a chisel, isn't that right? A. I did not say that.
- Q. I am not saying you did say that - I am making reference to the earlier part of your evidence where you said, must have been caused by a knife rather than a chisel - I am just coming to this neck wound - what I am asking you is wouldn't it be possible for the weapon - one or more of the weapons used on the neck, wouldn't it be possible for one or more of these weapons of chisel type ... A. It is possible if you used it in a cutting way. 20 30
- Q. Cutting way? A. Yes, bit by bit.
- Q. Could be a jack-knife of any kind? A. Yes.
- Q. I suppose could even be a medium sized scissors? A. Yes.
- Q. Small scissors, yes? A. Yes.
- Q. Or large scissors? A. Yes.
- Q. So would it be right - would it be fair, doctor, to summarise your evidence with regard to the neck 40

wound by saying that you don't know how many blows or cuts or blows were inflicted? A. Yes.

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Q. You cannot say with certainty what kind of weapon was used - could be anything from a chisel to a knife, to scissors, or a combination of those?
A. I will confine myself with sharp cutting instruments.

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10 Q. Including --- A. Including chisels, scissors or sharp cutting - any kind of sharp cutting.

Q. Yes, when you were referring to 49 wounds, doctor, is this one of the 49 - you counted this as one? A. Counted as one.

20 Q. This is the position that, apart from this particular wound and the chest wound, all of the other wounds, although they were great in number, would not have been fatal wounds - you don't say, yes, unless you are satisfied it is correct. A. May I have the question?

30 Q. I am asking you to put out of your mind the neck wound and the chest wound, and just concern yourself with the other 47 wounds that you found on the deceased - these 47 wounds, unpleasant though they might be, would any one of these wounds or any combination of these wounds, have been what you call fatal wounds? A. I said the cut wound on the neck ...

Q. Oh yes, I am asking you to leave out the neck and the chest - we are dealing with all the other 47. A. It is not 47 - there were 8 on the neck.

40 Q. I see - all right leave out the neck, possibly I confused you there - leave the neck wound and the chest wound - with regard to the balance of the wounds, would any one of these wounds or any combination of these other wounds have been, what you call, fatal wounds? A. I would say not immediate fatal.

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Q. Which of the wounds would you say the closest to being fatal - those wounds which you described? A. Any-one wound without prompt treatment to stop the bleeding would be fatal.

Q. Would be fatal? A. Yes.

Q. You are not saying if I get a cut on the leg, 1 inch long and half an inch deep ...

COURT: Sorry?

10

MR. MAYNE: Supposing I have got a cut in the leg just there 1 inch long and 1½ inches deep, would I die if I did not see a doctor?
A. Yes, if the bleeding is not stopped.

Q. But bleeding does stop without doctors, isn't that so? A. That is why I said it is not immediate fatal - you don't die rightaway. If it keeps on bleeding you will die.

20

Q. No doubt - are we to take it the only dangerous aspect about the other wounds, as far as life was concerned, was the loss of blood factor? A. Yes.

Q. Now coming back to the D group of photographs of the unfortunate deceased - you have mentioned wounds which you described as being defensive wounds on the hands, doctor - now first of all can you tell my Lord and the jury what you mean by defensive wounds? A. Wounds on the hands resulted from trying to ward off blows or grabbing hold of weapons.

30

Q. I see, yes. A. Called defensive wounds of the hands.

Q. So that there are two kinds - wounds which will happen because of warding off blows and wounds which happen because of ... A. Grabbing hold of a knife or ...

40

- Q. Knives - I suppose you can also get a defensive wound by attempting to ward off blows or attempting to grab hold of the knives - you can also get wounds with any other places other than where they appear, say on D.3 and D.4. In other words, you may as well get a defensive wound on the arm, on the hand, fingers either side? A. Yes.
- Q. You can? A. Yes.
- Q. What test for you to decide the difference between a defensive wound and some other kind of wound? A. The characteristics of the injuries.
- Q. Such as? A. Such as the depthness and the situation of the wounds could make us tell whether it is defensive or otherwise.
- Q. I did not catch the first word. A. The situation of the wound in the first place.
- Q. Situation ... A. The manner of the wound, that is which side is deeper and which side is more shallow, will give a fair idea.
- Q. There was one other word that I missed..
- COURT REPORTER: The witness said depthness.
- MR. MAYNE: You mean how deep the wound is - so there are three factors - the depth of the wound, the situation ... A. Yes.
- Q. And the third factor is whether the wound is deeper one side or another? A. Yes.
- Q. Well, now take the situation first - do you agree that you can get a defensive wound quite reasonably on any part of the front - palm side of the hand or fingers - you may be trying to ward off? A. Yes.
- Q. So it might apply to the same side of the arm? A. Yes.

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- Q. With regard to this side of the hand which I think you described
A. Dorsum side.
- Q. Dorsum side, equally with regard to situation you may well get a defensive wound anywhere from the fingers up? A. Yes.
- Q. Shoulder? A. Yes.
- Q. Indeed, I suppose you may well get a defensive wound on the leg - if you warded somebody off with the leg?
A. Yes. 10
- Q. With regard to the depth of the wound, on this aspect what do you look for in order to determine whether the wound is defensive or not - in other words, what degree of depth makes the difference in your view? A. Well, in a defensive wound, it is usually very deep because of the great effort on the part of the victim to grab hold of the knife. 20
- Q. Stop at that point now, we will come to it later if you wish - that would depend, wouldn't it, on the amount of force being used by the assailant and the amount of effort being used by the defender to a degree?
A. I would confine myself to the force that is used by the victim. 30
- Q. By the victim, but supposing two bodies meet, like a knife and a hand, a knife and an arm - the depth will depend on the combined force of either the knife or the arm or both these forces? A. Yes, I agree - there are many factors come into play - the sharpness of the knife and the skilfulness when the knife was used and that sort of thing. 40
- Q. But dealing with these points, of course you don't know in this case what were used or that any knives were used - you don't know? A. Yes.

- Q. And you don't know anything about the skill of self-defence or otherwise of the persons involved? A. Yes.
- Q. But you do agree that the depth may well depend on the combined force of the blow from one side and the other? A. It was my opinion, what I said in the report was confined particularly in the slash wounds of the hands, and I am not talking about blows on the arm or this hand - I am talking about defensive wounds on the hands.
- Q. But I think we agreed upon - now doctor we are not concerned about your original report - we agreed now that you can get defensive wounds to almost any part of the body? A. But those are not typical - on the hands, on the palms are typical.
- Q. But it can happen anywhere? A. It can happen anywhere.
- Q. I suppose it often is dependent on the form of the attack? A. Yes.
- Q. Yes, dealing with the third factor that you had in mind, I think really what you had in mind was the direction of the blow - the depth at one end of the wound compared with the depth at the other end of the wound? A. Yes.
- Q. That is the third factor that you have in mind describing a defensive wound? A. Yes, yes.
- Q. Of course, there again I suppose you have a whole lot of unknown factors, for instance some people are left-handed, yes? A. No, no.
- Q. No people left-handed? A. I mean the factors.
- Q. I am dealing with the factors - we are dealing just with this one factor whether the wound is deeper at one side of the wound than on the other side - now that depends on a number of factors, doesn't it - I suggested one - a kind of defensive wound that you might get from a right handed man will be very different from the kind you get from a left-handed man? A. Not in respect of wounds inside the palm.

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- Q. Wounds inside the palm, but other types of wounds? A. Yes, it varies, but wounds regarded in this case are inside the palm.
- Q. Dealing with the wound inside the palm - wouldn't it depend on, supposing your hands are up like that trying to ward somebody off, wouldn't it depend on the knife going in that way or this way? 10
A. The normal defensive is to grab hold of the weapon and all these wounds are characteristic of the grabbing hold of the blade of the knife.
- Q. Changing a little bit, doctor, from what you told us earlier - you call defensive wounds either clutching or warding off - are you now confining defensive wounds to clutching of blades? A. But we are talking of wounds in the palms not on the surface with warding off. 20
- Q. I am talking, I think, of defensive wounds generally as you described in the first instance - in other words, clutching the blade or warding off. A. Yes.
- Q. Leave aside the clutching of the blade aspect for the time being and deal with the defensive type of wound that you get warding off - that I suppose depends on various circumstances? 30
A. Yes.
- Q. Circumstances, such as the person was left-handed or right-handed, yes? A. Yes.
- Q. Even a right-handed person may use the weapon with his left hand or vice versa? A. Yes. 40
- MR. MAYNE: I am afraid, my Lord, there is a lot of talk at counsel's table and I am sure it is not incapable of hearing, but I prefer, since counsel's table is so close to the

jury, every effort should be made to ensure that there is no accidental over-hearing...

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MR. MACDOUGALL: Is my learned friend suggesting that I am endeavouring to communicate with the jury?

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MR. MAYNE: Absolutely not - that is the last thing that I would suggest.

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MR. MACDOUGALL: I am much obliged.

10 COURT: Let's proceed.

Q. Equally with this aspect of the direction of the wound, some people, I suppose, might be very well to use the knife with the blade pointed down, other types might well accidentally or otherwise use the blade with the upward instead of the downward ... A. That is right.

20 Q. All these matters will have an effect on the - on this third factor that you mentioned - the depth of the wound at one end or another? A. Yes.

Q. So in effect doctor, with regard to these warding off types of defensive wounds, it is really very hard to say after the event, as there was no eye witness, with the defensive wound of that kind? A. Yes. Warding off, yes.

Q. You mentioned this ring that you tried on the deceased's hands? A. Yes.

30 Q. And you said that it could fit the small fingers of the hands - I think that is right? A. Yes.

Q. But by that what you meant was the fifth? A. The small finger.

Q. Yes, but lots of people wear rings on the small finger don't they? A. Yes.

Q. Now I think you inspected - you carried out a medical inspection of both of the defendants in this case? A. Yes.

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- Q. I think they quite freely let you examine them in every way that you wanted to, is that right?
A. Yes.
- Q. They were completely co-operative?
A. Yes.
- Q. And the position is, of course, if they had wished they could have refused medical inspection? A. Yes, yes. 10
- Q. Instead of that they agreed and let you do anything you liked while examining them? A. Yes.
- Q. Now you say you found three injuries on the right hand of the 1st accused?
A. Yes.
- Q. Now I think we follow the order of the photographs - take G.1 - G.1, I think relates to the 2nd accused, is that right? A. Yes. 20
- Q. And this particular injury in G.1 relates to the injury that you found on his left fore-finger?
A. Left small finger.
- Q. Left small finger, I am sorry - you mean this one here? A. Yes.
- Q. That is a shelving kind of cut in this direction? A. Yes.
- Q. It is a wound which, I suppose, could have happened accidentally or otherwise? A. Yes. 30
- Q. Which could be self-inflicted - it could be inflicted by anybody else? A. Yes.
- Q. It could be a defensive wound, it could be some other kind of wound?
A. Yes.
- Q. He is not a very big man, is he, the 2nd accused? A. Yes.

- Q. About 5'6", I think you said?
A. Yes.
- Q. This particular wound, could have, I suppose, occurred in a fight?
A. Yes.
- Q. I suppose this kind of wound could have happened if the 2nd accused were trying to separate persons engaged in a fight? A. Yes.
- 10 Q. So for all you know, doctor, medically it might have been got trying to prevent the deceased from being killed? A. Yes.
- Q. The next wound found upon him was what you call - can you state with regard to this particular wound within hours or days, the approximate time of it probably having been caused?
A. In my opinion, I said it was recent or within a few days.
- 20 Q. A few days? A. Yes.
- Q. You saw him, I think on the - was it the 13th of February? A. 13th of February.
- Q. It would have been caused up to a week before? A. No.
- Q. Six days? A. No.
- Q. Two days? A. Yes.
- Q. One day? A. No.
- Q. Three days? A. Yes.
- 30 Q. Four days? A. Yes.
- Q. Five days? A. Yes.
- Q. You say six days, no? A. No.
- Q. I see - he could have been hurt any time five days before - it is very difficult to say exactly? A. Yes.
- Q. Between one ...

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COURT: You said any time to five days - did you not say one day it could not have been?

A. Yes.

MR. MAYNE: I am sorry, my Lord, I missed that - two to five days?
A. Two to five days.

Q. The next thing you saw on him were what you call four shallow linear cuts on the ball of the right thumb- are those the marks which we can see in G.2? A. Yes.

10

Q. These couldn't be described as wounds at all - these scratches?
A. No, it was definitely cut.

Q. You mean there is a breaking of the skin? A. Of the skin.

Q. In all four cuts? A. In all four.

Q. In all four - possibly the photograph is not a good one - it is a very, very minor kind of injury isn't it? A. Yes.

20

Q. Kind of cuts that you may well get anywhere, at any time working or playing or doing household things - of a household nature, anything like that? A. Yes.

Q. And again what is the time factor with regard to the thumb marks doctor? A, It was dry but showed no signs of healing - I will give it about three days.

30

Q. Could be four? A. Could be four.

Q. Could it be two? A. Could be two.

Q. Could it be one? A. No, from two to four days.

Q. Why do you say five is impossible?
A. It would at least show some

signs of healing - this sort of wound, complete healing could occur in say seven or eight days.

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Q. Let's get it right this time - you said from two to four days? A. Two to four days.

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Q. Very slight injury? A. Very slight injury.

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10 Q. Could have been got almost anywhere?
A. Yes, with sharp instruments, yes.

Q. Well two or more of these could be caused at the same time - two or more of these scratches or cuts on the thumb?
A. Caused at the same time?

Q. Yes. A. Yes.

Q. Could? A. Could.

Q. By rubbing against some kind of sharp surface? A. Very sharp surface, yes.

COURT: You will be some time on this?

20 MR. MAYNE: I shall, my Lord, I am afraid - quite a while to go - I hope not too long, but there is certainly ...

COURT: We shall not be sitting tomorrow, and I understand that you have to appear before my Lords in the Full Court on Monday morning.

MR. MAYNE: That is so, my Lord.

COURT: I think it would be convenient if we did not sit here until 11.00 a.m.

MR. MAYNE: Yes, my Lord.

30 COURT: I hope by then that you would be available.

MR. MAYNE: I will endeavour ...

COURT: You will do your best - you are in the hands of their Lordships. Yes, 11 o'clock on Monday morning.

4.30 p.m. Court adjourns.

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3rd May 1965 at 11 a.m. Court resumes.

Appearances as before, Accused present, J.A.N.

P.W. 12 - Dr. George Tong (U.F.O English).

XXN. BY MR. MAYNE (continuing)

Q. Dr. Tong, on Friday afternoon we were talking about the injuries that you found on the second accused as shown in the pictures. We had dealt with photograph G.6 - I'm sorry - I'm sorry for this delay, my Lord. Yes, I think I'm right - I think we had dealt with G.6 and G.5, is that right, Doctor. Possibly your Lordship would be good enough to correct me?

10

COURT: Those relate to the first accused, do they not?

MR. MAYNE: No, my Lord, I think the earlier one, G.1. Oh yes, I'm sorry my Lord, members of the Jury.

20

Q. With regard to G.1, just to get our memories straight, I think you had told us that with regard to this particular injury on the finger, that that could well be what you called a "defensive" injury? A. No.

Q. You say "no"? A. No.

Q. (Pause) I have a note here, Doctor, which is not taken by myself, but His Lordship I think will be able to correct me about this. I think first of all, Doctor, you said that "It could have happened accidentally or otherwise"? Is that right? A. Yes.

30

Q. And then I think you said "It could have happened in self-defence"? A. Yes.

Q. I think you even said that it could have been incurred trying to save the deceased? A. Yes, that is a possibility.

40

- Q. And then you gave your estimate of the duration, of the length of time that the injury had been there?
A. Yes.
- Q. With regard to the defensive injury - when you say it could be caused in self-defence, I suppose you mean it could be caused either in a struggle or a warding-off or fighting for something? A. Yes, it could. I am not saying it is a defensive injury.
- Q. I am suggesting that to you. A. But it is a possibility.
- Q. Then you told us about G.2 -- these small cuts on the thumb. You can look at the photographs Doctor, and refresh your memory. A. Yes.
- Q. I think the position there is that they were very minor? A. Yes.
- 20 Q. They could have been got either separately or at the same time? A. Yes.
- Q. In almost any possible way - of rubbing against a sharp surface? A. Yes.
- Q. Yes. Now I want you to turn to G./.. This is the third injury that you found on the second accused, is that right, Doctor?
A. Yes.
- Q. It is in the region of the elbow, is that right? A. Yes.
- 30 Q. With regard to the time factor, what were the outside limits of this particular injury?
A. About three days.
- Q. Well, could it be four days. A. Yes, it could be four days.
- Q. It could be four days. How about five?
A. Not more than 5.
- Q. Not more than 5 days.
- Q. Well, I should ask you what was the inside limit - one day or -- ? A. About two days.

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- Q. Two days. Two to five days?
A. Two to five days.
- Q. About this particular injury -
I think you called it an
abrasion? A. Yes, abrasion.
- Q. That is - correct me if I am
wrong - is that some rubbing against
some surface causing the skin to
pull off a bit? A. That's right.
- Q. Yes, I suppose there again it
could happen in all kinds of
different ways? A. Yes. 10
- Q. Domestic chores, work, and so on?
A. Yes.
- Q. And these are the only injuries
of any kind that you found on the
second accused, is that right? A. Yes.
- Q. You examined him completely, I suppose?
A. Yes.
- Q. No slightest signs of bruises or
knocks or other injuries at all?
A. No. 20
- Q. So - correct me if I am wrong - the
three minor injuries that you - I
should not possibly call them minor -
would you describe them as minor
injuries? A. Yes.
- Q. These three minor injuries, were
the only injuries that were on the
second accused at the time that you
examined him? A. Yes. 30
- Q. They could all have been caused in
a -- at different times? A. They
could have been.
- Q. Yes ... A. Yes.
- Q. And in a huge variety of different
ways? A. Yes.
- Q. Now I want you to come to the injuries

that you found on the first accused. I think again we will follow the order of the photographs. I will take G.4. A. Yes.

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- 10 Q. That's the small cut on the forehead, the left-hand side of the forehead, that you mentioned? A. Yes.
- Q. Now how about the time factors there - what are the limits, Doctor? A. About three days.
- Q. Could it be four days? A. Yes, from two to five days.
- Q. Two to five days. Again, I suppose, this particular injury that you can see on G.4 could have been caused in a great many different ways? A. Yes, by sharp instruments.
- Q. Would it necessarily have to be a sharp instrument? A. Yes.
- 20 Q. Yes, by reason of the slicing appearance, if that is the word? A. Yes, because it was a cut.
- Q. But all you can say about it medically is that it is a cut which had occurred in your view sometime - two to five days prior to your examination of the first accused? A. Yes.
- 30 Q. With regard to the first accused I think he raised no objection at all to medical examination by you, Doctor? A. No.
- Q. He was completely co-operative? A. Yes.
- Q. He allowed you to examine him fully and completely? A. Yes.
- Q. And again in his case of course if he had refused such an examination, you could not have made it? A. That's right.
- 40 Q. Yes. Passing on to G.5. The first injury which I think springs to one's attention there is the cut on the left thumb. How about the age factor there, Doctor? A. Two to five days about.

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Q. Two to five days about. It was - how did you describe this one? On the left-hand you say there were three injuries, first of all, two cuts on the thumb measuring $\frac{1}{2}$ " and $\frac{1}{2}$ " respectively? First of all, this one - this one that is very apparent here.
A. Yes.

Q. Where is the second one? A. The second one is on the ball of the thumb. It is not visible on the picture. 10

Q. It is not visible. Can you point out roughly where -? A. It is on the edge.

Q. I'm sorry - down -? A. Yes.

Q. Down near the -- do you call this the ball of the thumb here, this part here? A. No, this. (indicating).

Q. I see, yes. So it is up there on the top joint, as you might say? A. Yes. 20

COURT: Doctor, I'm sorry to interrupt you. You say it is not visible. There seems to be an indentation on the ball of the thumb?

A. Yes, there is a small indentation.

COURT: That is the one?

Q. It is just down at the very bottom, is that it? A. Yes.

Q. Well, over the other side, is that it?

COURT: Opposite the left-hand end of the more obvious cut? 30

MR. MAYNE: Yes.

A. Yes, my Lord.

Q. Those are the two cuts that you found on the thumb. With regard to these two cuts - would you agree, Doctor, that they possibly I'd better ask you

- cut by cut. Say the obvious one first. Could that have been caused by trying to ward off a knife held by somebody else? A. Yes, possible.
- Q. Yes. How about the second one, that is not very visible? A. It is also possible.
- Q. It is possible, yes. It is a wound that you could get by being involved in a fight, I suppose? A. Yes.
- 10 Q. Equally it is a wound that you could get by being attacked by somebody? A. Yes.
- Q. And I suppose it is a wound that you could get by trying to separate persons who were fighting? A. Yes.
- Q. With regard to photograph G.5, Doctor, are there any other injuries shown in that photograph that call for comment? A. Yes.
- 20 Q. Which are the ones now? A. The cut on the base of the fourth finger.
- Q. Now it is down here, is it? (on photo). A. Yes. It is better seen in G.6.
- Q. Do you mean the one that seems to have stitches in it? A. Yes.
- Q. So it is more on the - it is slightly - it seems to be a bit more on what you call the dorsal side but stretching a bit on to this other side? A. Yes.
- 30 COURT: Well, it is on the other hand.
A. It is on the left-hand, my Lord.
MR. MAYNE: It is the left-hand, my Lord.
COURT: You were indicating your right-hand, Mr. Mayne.
MR. MAYNE: On my right? I'm very sorry. I'm talking about the photograph. In each case it is the left hand, my Lord. As the Doctor says, it is more clear on photograph G.6; but it stretches around from the dorsal side on to the other side.
- 40 A. Yes.

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- Q. Again, that particular injury, I suppose it could have been caused by a number of different causes in a number of different ways? A. Yes, by a sharp cutting instrument.
- Q. It might be a warding-off injury? A. Yes.
- Q. I suppose it might even be an attempt at the clasping of a knife which -- an attempt to clasp a knife? (grasp?) A. Yes. 10
- Q. That is one of the defensive forms of injury? A. It is not typical but yes.
- Q. It is possible. I suppose when you say it is not typical, I suppose you would expect to find a clasping to be more than here? A. Inside the palm.
- Q. Between the forefinger and the thumb? A. Yes.
- Q. But a person not quick enough or skillful enough, I suppose in trying to grasp the knife he might well miss and get it in here instead? A. Yes. 20
- Q. Coming back to G.5 again, Doctor, are there any other injuries shown there which you have mentioned in your evidence? A. No.
- Q. No. So we turn now to G.6, please?
- Q. Now we have I think dealt with this particular injury on the - it comes on to this finger. That is the one that we have been talking about before. I would like you to just mention the other injuries shown in G.6 which you have mentioned in your evidence. A. It is on the right hand, a small shallow cut of the index finger on the dorsum of the third digit. 30
- Q. All right now - I'm sorry, I didn't catch that? A. A small shallow cut of the index finger on the dorsum of the third digit. 40

- Q. Would you point that one out, please,? On the photograph. That's on the right hand? A. Right hand, index finger. In the Supreme Court of Hong Kong
- Q. You say it was a shallow cut? A. Yes. Prosecution evidence
- Q. A small one? A. Small one. No.21
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- 10 Q. Can you be sure with regard to that particular injury as to whether it was caused by anything sharp or could it possibly have been caused by splitting the finger against a -- Cross-examination (Contd.)
- A. It is a cut and therefore it must be caused by sharp cutting instrument.
- Q. With regard to this particular cut, is it in deeper on one side or the other or is it continuous as far as depth is concerned? When I talk about depth, I mean the penetration. A. No, I can't tell. It is a shallow cut throughout.
- 20 Q. Yes. It could have been caused in a variety of different ways, I suppose, again? A. Yes.
- Q. With regard to the time factor would you be good enough to help us - what is the time limit there? A. Two to five days.
- Q. Two to five days. Again, this one could have been caused in a fight, this injury? A. Caused in a fight.
- Q. Could have been caused in a fight? A. Yes.
- Q. Could have happened in self-defence? A. Yes.
- 30 Q. Could have happened in separating persons fighting? A. Yes.
- Q. There is one injury - I'm sorry for interrupting the sequence of your thought, Doctor - before we leave the left-hand - the forefinger seems to be split in the middle there - is that a wound - is it an injury at all? That's an injury, is it, an old injury, or -? A. You mean this one here?
- Q. No, no, this one. There is a line up. A. Yes - there was an old scar.

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- Q. That is an old scar, I see. Is that all that you found on the - on this forefinger of the right hand? - What you just told us about before I interrupted you. A. I beg your pardon?
- Q. You have told us about the shallow cut which you found - or was it cuts - cut or cuts? A. Cut.
- Q. Cut. Apart from the shallow cut on the forefinger of the right-hand dorsal side, did you find any other injury on that particular part of the --? A. No. 10
- Q. Now what was the next injury which you mentioned in your evidence with regard to G.6? A. Another shallow cut of the middle finger on the dorsum of the third digit.
- Q. Would you be good enough to point that one out, please? It is this one, just below the knuckle, as you might say? A. Yes - a small line there. 20
- Q. Yes. Between this knuckle and here? A. Yes, on the third digit.
- Q. That looks like a very small cut indeed, doesn't it? A. Yes.
- Q. How about the age factor, Doctor? A. About three days - two to five days.
- Q. Two to five days. It is really little more than a scratch, this particular one? A. It is more than a scratch, it is a cut. 30
- Q. A cut, a very slight cut? A. A very shallow cut.
- Q. Again, you can't really say in any way how it may have been caused? A. Yes.
- Q. It could have been caused in a lot of different ways? A. Yes.
- Q. I don't remember - did you put the time factor here - did I ask you - was it two to five days? A. Two to five days.
- Q. Is that all as far as this finger is concerned? A. Yes. 40

- Q. Moving on to this finger, anything on this? A. No.
- Q. That one completely free of any kind of injury? A. Yes.
- Q. Now how about the small finger of the right hand? A. There was an irregular shallow cut on the dorsum of the third digit.
- 10 Q. That's the one down here between this joint and the hand? A. Yes.
- Q. Yes, we can see that. A bit irregular, that. A. It is irregular.
- Q. The age factor - two to five days? A. Two to five days.
- Q. And I suppose it could have happened in a wide variety of different ways? A. Yes.
- 20 Q. Now consult your notes, Doctor, because I don't want you to leave anything out. Are these all the injuries that you found on the first accused? A. On the right hand, yes.
- Q. No, no, when I say "all the injuries", the injuries of G.1 - look at G.1, G.2, and, I'm sorry - G.4, G.5 and G.6. Are these all the injuries that you found on the first accused? A. Yes.
- Q. All of them could have been caused in self-defence? A. Yes.
- 30 Q. All of them could have been caused in trying to separate people engaged in a fight? A. Yes.
- Q. With regard to the rest of the body of the first accused, did you find any slightest sign of bruises or injuries of any other kind? A. No.
- Q. None at all.? A. None at all.
- Q. I see. Now I want you to be good enough to look at photograph C.6, Doctor? (To Court):

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With regard to this particular photograph, my Lord, I think one of the earlier witnesses actually marked two areas. I wonder has Your Lordship got that or is it exhibited?

COURT: Did somebody mark one?

MR. MAYNE: Well, they pointed out certain areas, in this area here. Has your Lordship got the areas?

COURT: They have not been marked with the areas. 10

MR. MAYNE: Not been marked - I see.

Q. On G.6, Doctor, I want you to have a look at this area, roughly that area around there. Do you follow roughly the area that I am pointing at? A. Yes.

Q. Would it help if I showed you more clearly? (May I have your Lordship's permission?) (Counsel goes to witness box) (To witness) It is this area here, including this - these two circles that I have made, just there. A. Yes. 20

MR. MAYNE: Your Lordship has the area?

COURT: No. I would like to see this if there is some significance in the areas.

MR. MAYNE: I think it has, my Lord. I have marked two circles in the area that I pointed out to the witness. I included the general area covered by both circles. (Photo shown to Court). 30

COURT: Yes. Show it to the Jury. (Photo shown to Jury by Clerk) (Mr. Mayne returns to Bar table).

Q. Now first of all, Doctor, did you take any blood samples, make any blood-tests? One question first. Did you take any blood samples from that particular area? A. That particular area? Yes. 40

- Q. With regard to that area, did you make blood tests in relation to -- A. Yes.
- Q. And with regard to blood in that particular area, how many groups did you find there? Just in this specific area that I have mentioned? A. One.
- Q. And what was that? A. Group B.
- Q. Group B. That is the group of the deceased? A. Deceased.
- 10 Q. With regard to the blood that you found in this particular area, was it dry or wet? A. It was dry.
- Q. Dry. So would I be right in thinking, having regard to your evidence on Friday, that you can't tell how old the blood in that particular area was? A. No.
- Q. I think - did you put it up to anything within two months or so? A. Yes - maximum.
- 20 Q. Maximum. There is another photograph that I want you to look at now, C.8.
- MR. MAYNE: Again, my Lord, may I have permission to point out to the witness the area? (Mr. Mayne goes to witness box). Now on C.8 I want you to direct your attention to the stains that one can see just there in the circle that I have marked there. Include this little one outside the circle - just that group of stains. (Shown to Court) (Shown to Jury) (Mr. Mayne returns to Bar table).
- 30 Q. With regard to these stains, Doctor, did you make any tests with regard to these? A. Yes.
- Q. What group or groups did you find were -- A. Group B.
- Q. Group B? A. Yes.
- Q. That I think, again, is the group of the deceased? A. Yes.
- Q. Were the stains wet or dry? A. Dry.

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- Q. So I suppose we have the same position again, with regard to the time factor; it could be up to two months? A. Yes.
- Q. Now with regard to the handkerchief that was produced, the white handkerchief with green lines on it - Exhibit No.M? There are two handkerchiefs.
- CLERK: "M" and "N" - there are two handkerchiefs. 10
- MR. MAYNE: Can the witness have these, please? I also want the towel, which is Exhibit -? Oh, "N" is the towel, that's right. "M", first of all. A. "M"?
- Q. Well, would you take "M" out of this -- would you take that out of this package, Doctor, please? A. (Does so).
- Q. Yes, that's the one. Do you mind holding it up so that the Jury can see it? A. (Does so). 20
- Q. Thank you -
- Q. On that I think you found Group 'O' bloodstains? A. Yes.
- Q. That is as far as you know the most common blood group? A. Yes.
- Q. Taking "N", the hand towel, "N", that again I think you found 'O' bloodstains on? A. Yes.
- Q. With regard to the time factor for "M"? - With regard to the time factor of the bloodstains on "M", can you say what the outside limits were, Doctor? A. It was received in a wet condition. 30
- Q. Yes. A. In this particular item I will give it as one week or so.
- Q. One week? A. Maximum, yes.
- Q. Maximum, one week. Now how about "N", Doctor? A. The same applies.

Q. The same applied.

MR. MAYNE: Now can I have Exhibit No. "U", please? That's the knife, penknife.

Q. It is this knife here, Doctor. (Opens blade). A. Yes.

Q. I think your evidence is that you found no bloodstains on that at all? A. Yes.

10 Q. But I think your evidence was that you found no bloodstains on the two knives produced, Exhibit "H"? I think your view is with regard to this little knife that you feel that it has no relevamoe with regard to any injuries found on the deceased? A. No, I don't know.

Q. You don't know - it could or could not, is that it? A. It could or it could not.

20 Q. I see. Do you recall saying before the Magistrate that in your opinion this knife could not have caused the stab wounds on the deceased? A. To certain wounds, yes.

Q. Certain wounds. You didn't qualify that opinion before the Magistrate, did you? You said - correct me if I am wrong - if you don't remember, say so, but isn't what you told the Magistrate, in your opinion this knife could not have caused the stab wounds on the deceased? A. Yes, certain wounds, yes.

30 Q. At that stage in your evidence I think you had referred to all of the wounds that you had found on the deceased? A. Could not remember.

40 Q. You can't remember, I see. Now this is a question that I asked another witness - His Lordship felt that possibly a Doctor could help us on it. Possibly you can, possibly you can't, if you can't please say so, if you can please help us. The deceased, as you found him, both at the outset and during the aut psy, you found that he was very badly wounded, mutilated? A, Badly wounded, yes.

Q. Yes. Fron your experience of forensic medicine and pathology generally, would very savage wounds - first of all, would you describe the

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- wounds on the deceased as very
savage wounds) A. No.
- Q. You don't think so? A. No.
- Q. Having regard to what happened to
his neck and all the wounds every-
where else, you don't regard these
as savage wounds? A. It is very
hard to define "savage".
- Q. Well, that's why I asked you about it.
A. Yes, to me it is just cut wounds,
irregular cut wounds. 10
- Q. But they are very severe and plentiful
wounds that you found on the deceased?
A. In a way, yes.
- Q. Just take a look at the neck alone -
surely that is - wouldn't you describe
those wounds round the neck alone as
savage? A. Yes.
- Q. Well, can you help us here, Doctor -
from your experience and learning,
would you agree that where wounds on
an injured person or a deceased person
are of a savage nature, that there is an
inference of passion, some passion, anger
or hatred in the giver of the wounds?
A. No, I can't give an opinion on this. 20
- Q. You can't give an opinion either way?
I see. With regard to the clothing of
the first accused which you examined,
Doctor, you have been referred to it in
that way - in referring to Exhibit
Numbers. Do you know which of the clothing
is alleged to belong to the first accused?
A. Yes. 30
- Q. You do. With regard to the clothing
found on the first accused, is it
right to say that you found certain
bloodstains on certain of the items but
not on others? A. May I have the question
again? 40
- Q. Yes. Would it be right to say that you
found certain bloodstains on certain
of the items of clothing but not on
others? A. yes.

Q. Would it be also right to say that you didn't find any enormous quantity of blood on any item at all? A. No.

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Q. You agree? A. I would agree.

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Q. You agree. Does the same apply to the clothing of the second accused? A. Yes.

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10

Q. Now looking at the photographs of the deceased and remembering the injuries that he had - frightful injuries round the neck and terrible stab wounds, and the hands frightfully cut and so on - I presume - would you agree with me that while this - while the deceased was incurring those terrible wounds, blood must have been flowing very freely indeed? A. Yes.

Q. Yes, I suppose it must have been gushing out? A. Yes.

20

Q. But your evidence is that you did not find any large quantity of blood on the clothing of either one of the defendants? A. Yes.

Q. You mentioned finding bloodstains on the back of a wristwatch, that is this wristwatch, I think?

COURT: W.1 and W.10?

MR. MAYNE: Thank you very much, 10, yes.

Q. Which of the defendants did you understand this watch to belong to? Which of the defendants?

30

COURT: Which of those two watches are you referring to?

MR. MAYNE: W.10.

COURT: W.10.

MR. MAYNE: W.10, yes. It is the watch that was P.50 down below, my Lord.

Q. Now which of the defendants did you understand that watch belonged to? A. Could I have a look at the Exhibit)

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Q. Yes, of course. (handed to witness)
With regard to that one I think you
-- there were certain bloodstains
but not sufficient for grouping,
is that right, correct me if I am
wrong. A. Yes.

Q. So you can't say what group this
belonged to at all? A. No.

Q. There was another wristwatch - oh
yes, it is W.1. With regard to
this particular wristwatch (handed
to witness) who were you led to
understand owned this particular
watch?

10

MR. MAYNE: This is W.1, my Lord.

A. From the second defendant.

Q. I think in that particular -
inside of that particular watch
you detected bloodstains? What
group was that? A. Group O.

20

Q. It is not the group of the deceased's
group? A. No.

Q. Now with regard to the shoes that
you examined - first of all I think
X.7 - whose shoe did you believe that
one was? A. From the deceased.

Q. And I think you found - correct me
if I am wrong - you found certain
Group B on the surface and on the
sole? A. Yes.

30

Q. Yes - B, in Hong Kong, I think
as far as tests that were carried out,
I think that it is over 25% of the
tests? A. Yes.

Q. In India, as high as 30% A. That
is right, yes.

Q. And Y.3 - whose shoe you believe
that this one is? A. From the 2nd
defendant.

Q. I think you found Group O on the
surface of that? A. Yes.

40

- Q. Yes - not the group of the deceased? In the Supreme
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- Q. And the "O" is the most common of
groups? A. Yes.
- Q. I think it includes the 1st accused? Prosecution
A. Yes. evidence
- Q. Coming to Y.7, this one here - Y.7,
I think this is group O? A. Yes,
group O. No.21
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- 10 Q. Whose shoe? A. From the 1st. Cross-
examination
(Contd.)
- Q. That is his own blood group, is that
right? A. Yes.
- Q. Now I want you to go back a bit - I
should have asked you this first -
The pair of shoes, that is I.7 - Identity
2 here.
- CLERK: V.7.
- MR. MAYNE: Thank you - this pair of shoes
here - I think you mentioned in your
20 evidence that you saw a certain brand
on the surface there - on the sole -
take your time doctor, I don't want to
confuse you. A. Yes.
- Q. That is one of the pair? A. Yes, that is the
left one.
- Q. Left - dealing with the left one first -
whose shoe do you understand that to be?
A. The 2nd Defendant.
- 30 Q. No bloodstains on that particular shoe?
A. Yes, human Blood Group B.
- Q. That is the group of the deceased? A. Yes.
- Q. That is the left? A. The left.
- Q. How about the age factor in relation to that
particular shoe - the bloodstains are what,
can you say? A. I cannot tell.
- Q. Is it the same in respect of all shoes that
you cannot tell the age of the stains?
A. Yes.
- Q. Could be up to two months? A. Yes.
- 40 Q. The other shoe of the pair - I think that
was the left shoe you dealt with wasn't it?
A. The other one is the right shoe.

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Q. Yes - those are Biltrite shoes?

A. Both are.

Q. How about the right shoe?

A. There were also Group O
human bloodstains present.

Q. As regards to the age factor
the evidence is the same?

A. Cannot be determined.

Q. W.3 and 4 - take W.3 first -
with regard to that particular
shoe, doctor, whose shoe do
you understand that to be?

10

A. From the 1st defendant.

Q. Yes, and did you find anything
there? A. I beg your pardon?

Q. Did you find any bloodstains?

A. No, no bloodstains present.

Q. W.4 - any bloodstains there?

A. No.

Q. Thank you - now dealing first
with the clothing of the 1st
accused - you have mentioned
finding bloodstains on the
clothing - with regard to the
time factor, is your evidence
the same - could be up to two
months or more? A. Yes.

20

Q. Clothing of the 2nd accused -
same - bloodstains could be up
to two months or more? A. Same
yes.

30

Q. I don't want the jury to be
misled in any way, doctor on
this question of bloodstains
and so on - you had, in your
evidence in chief, I think,
mentioned a yellow woollen
sweater, which I think you said
had a great quantity of blood
on it and a number of cut holes,
is that right? A. May I see the
exhibit?

40

- Q. I think it is X.3 - Is this the sweater that you mentioned?
A. Yes.
- Q. Could you just take it out so that the jury could see it - a lot of blood there do you agree?
A. Yes.
- 10 Q. Could you understand that who was the owner of that garment as amongst the others? A. From the deceased.
- Q. Would that tend to confirm that at the time of the attack upon the deceased, if he was attacked, that there must have been a great deal of blood flowing - gushing out of his body? A. Yes.

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MR. MAYNE: Thank you, Doctor.

RE-XN. BY MR. MACDOUGALL:

Re-examination

- 20 Q. Doctor, the bloodstains which you found at the scene, were they all human bloodstains? A. Yes.
- Q. What is the highest degree pertaining in Forensic Medicine?
A. M.C. (Path).
- Q. Do you have that degree doctor?
A. Yes.
- 30 Q. Doctor, what did you think - what did you estimate as being the time of death of the deceased?
A. Mainly at 10.00 p.m. the previous night - a certain range could be given either way - I put it as 9.00 to 12.00.
- Q. Yes. Now doctor, my learned friend has suggested that you have agreed with

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him that the injuries which were found on the hands of both accused and the injury of the forehead of the 1st accused, could have been sustained between two and five days prior to your examination? A. Yes.

Q. When did you examine the accused - both accused? 10
A. In the afternoon of 13th February, 1965.

Q. About what time doctor?
A. About 1.15 p.m.

Q. So I think, therefore, with simple mathematical calculation, these wounds must, therefore, have been sustained between 1.15 on the 8th and 1.15 on the 11th of February, that is between five and two days prior to examination? A. Yes. 20

Q. When you examined the hands of the 2nd accused, did you see any ring?

MR. MAYNE: I object to that - it does not arise out of my cross-examination.

MR. MACDOUGALL: There is ground - I will let it rest - there is ground. No further questions. 30

BY COURT:

Q. When you carried out your

autopsy, doctor, was the body identified to you?

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A. Yes, my Lord.

Q. As whom?

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A. The body was identified to me as that of Said Afsal.

Q. By?

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A. By D.P.C. 517 and Dilber Khan.

Q. Can you spell that?

10

A. D-I-L-B-E-R K-H-A-N, and
Abdul Qayuem - A-B-D-U-L
Q-A-Y-U-E-M.

Q. Thank you - the wounds which are shown in Exhibit G.6 on the right hand - on the dorsum of three fingers - in your opinion could those have been caused by one blow with a sharp instrument?

20

A. It is unlikely, my Lord.

Q. Assuming of course sharp instrument is a straight one?

A. Yes.

Q. It is unlikely?

A. It is unlikely.

Q. Thank you. Thank you very much.

COURT: You don't need this witness any more?

30

MR. MAYNE: I have no objection to his leaving.

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No.21

Dr. George Tong
Re-examination
(Contd.)

Before my learned friend calls his next witness, there is one thing I should like to mention, to have it on record and with my learned friend's consent, it arises out of the cross-examination of Mr. Webster - you may recall that I suggested to Mr. Webster that in the trial within the trial he had given evidence to the effect that he had telephoned a senior officer. Now with careful check with the record, the word used by Mr. Webster was not telephoned but contacted. Accordingly I want to withdraw that suggestion and any inference that goes with it - I am indeed very happy that that was found ...

10

COURT: Yes, very well. Thank you.

MR. MACDOUGALL: My Lord, I would seek at this stage to recall Detective Inspector Chapman - I have spoken to my learned friend about this. He says he has no objection.

No.22

Vincent Francis
Derek Chapman
(recalled)
Examination.

No.22

Vincent Francis Derek Chapman
(recalled)

P.W.9 - Vincent Francis Derek Chapman -
On former Oath (Recalled).

20

FURTHER XN. BY MR. MACDOUGALL:

MR. MACDOUGALL: My Lord, I presume the Inspector is on his former oath.

COURT: Yes.

Q. Inspector, did you thoroughly examine all of the property of both accused? A. I did.

30

Q. When you examined this property, did you find any ring? A. I found no ring whatsoever - no finger ring at all.

Q. Did you examine the hands of the 2nd accused, Amanat Khan when you first saw him? A. I did, yes - at that time he was not wearing a finger ring of any description.

Q. He was not wearing. I have no further questions my Lord.

MR. MAYNE: No questions, my Lord.

40

COURT: Yes, thank you, I thank you my Lord.

MR. MACDOUGALL: I call Inspector Griggs my Lord.

Police Witness No.10 on page 14 of the deposition.

RONALD GEORGE GRIGGSP.W. 13 - Ronald George GRIGGS - Sworn.Prosecution
EvidenceXN. BY MR. MACDOUGALL:No.23Ronald George
Griggs
Examination.

10

Q. Your full name is Ronald George Griggs?
A. Yes, sir.

Q. And you are Chief Inspector attached to
the Identification Bureau, Police
Headquarters? A. Yes, sir.

Q. How many years experience have you had
Inspector in the Identification Bureau?
A. About 16 years.

Q. Do you recall the 13th of February this
year? A. Yes, sir.

Q. Did you see the photographer Leung Hung
on that occasion? A. Yes.

Q. Did you receive photographs from him?
A. I did.

20

Q. Will you examine these photographs - would
you tell his Lordship and the jury which of
those photographs were handed to you on that
occasion by Leung Hung? A. Yes I received
copies of these....

CLERK: Exhibit F.2.

COURT: The one in the middle? A. Yes, sir,
the photograph in the middle here.

COURT: Yes. A. And this photograph.

CLERK: F.3 and 4.

30

Q. Those were photographs depicting the heel
prints? A. Yes, sir.

Q. On the 25th of February this year, did
Detective Inspector Chapman hand you some
shoes? A. Yes, he brought me six
envelopes - sealed envelopes, each
containing a shoe, making three pairs in all.

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Ronald George
Griggs
Examination.
(Cont.)

Q. Do you identify these as one pair of shoes?

CLERK: Exhibit H.7.

A. Yes.

Q. Did you instruct the photographer to take photographs of those shoes? A. yes, in my presence he took photographs of the heel of that pair of shoes.

Q. Subsequently you received back from him photographs? A. Yes.

Q. Those photographs depict the scene which you instructed him to photograph?
A. They are, yes.

10

CLERK: F.1.

Q. And those are the photographs of that pair of shoes? A. Yes, sir.

Q. You identify these shoes?

CLERK: Exhibit Y.7 and Exhibit Y.3.

A. Yes.

Q. Did you instruct the photographer to take photographs of either one of these or both of these shoes? A. I instructed to take photographs of the right shoe only.

20

Q. Will you examine Exhibit F.3 Inspector - does that photograph depict the scene which you instructed him to photograph? A. Yes.

Q. And that is a photograph of that shoe?
A. Yes, sir.

Q. You did not have that shoe photographed Inspector - the other shoe? A. only the right shoe, not the left.

30

Q. You identify these shoes, Inspector?

CLERK: V.7.

A. Yes.

Q. Did you instruct the photographer to photograph those shoes?

A. Yes, he photographed both of them - the heels of both of them.

Q. Did you examine Exhibits F.2 and F.4?

A. Yes, sir.

Q. Does the photograph of the shoes there depict the shoes which you instructed to be photographed on that occasion? A. Yes, this is photograph of the left heel, photograph of the right heel of that pair of shoes.

10 Q. Now Inspector, having all these photographs before you, that is to say the photographs of the heels of the shoes and the photographs of the heel prints, what did you do? A. I subsequently made impressions of the heel of the shoe in F.4.

Q. What shoe was that that you made impression of Inspector? A. This shoe here on the left.

Q. Shoe on the left of F.4? A. On F.2 - sorry on F.4, yes.

20 Q. That is on F.2? A. It is on F.2 as well.

Q. Did you take any other impression? A. I did the impression of the heel of the shoe F.3.

Q. Of what shoe, did you make that impression upon Inspector? A. That was the shoe I made this impression with.

Q. Having made these impressions and having these photographs before you, what did you then do? A. I then compared them, mounted them as they are here.

30 Q. Yes? A. And then having compared them I marked off similarities in the photographs of the heels, the photographs of impressions found at the scene and the impressions of the heels I made in my office.

Q. Let's take them one at a time Inspector. Let's take F.1 first - can you find any comparisons between the heels of these shoes and the photographs of the heel prints that you received from Leung Hung? A. No, these two heels on F.1

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Ronald George Griggs Examination.

(Cont.)

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No.23

Ronald George
Griggs
Examination.
(Cont.)

were of a different pattern from those very impressions that were found on the scene - I therefore made no further comparisons on these.

- Q. Please examine F.2 - did you make any comparisons between these shoes and the heel prints of the photographs given to you by Leung Hung? A. Yes, on F.2 - I compared the heels with the portion of the heel print which was found on the scene and I marked off three similarities on three photographs. 10
- Q. Would you explain fully to his Lordship and the jury what those three points of similarity were. A. The point marked (1) is a small oval - small portion of oval pattern that is just visible on the impression found on the scene and is similar to the oval pattern which can be seen on the heels of the two shoes. No.2 - there is a visible impression found on the scene - portion of the trade name - the maker of the heel. Now that is similar to the trade name on the photograph of the two heels of the shoes. That was marked 2. No.3 - there are some small ridges visible at the top of the impression found at the scene which are similar to the small ridges which can be seen on the two heels. 20
- Q. I think Inspector, in truth you could not tell whether this print was made by the left or the - the left foot or the right foot? A. No, there was only a small pattern visible and it can be either left or right shoe in similar pattern. 30
- Q. Did you examine F.4 - what points of comparison did you make here? A. Having compared the photograph of the heel impression found at the scene and the impression I made in my office with the heel of that shoe I marked off six similarities on all three photographs. 40
- Q. Would you again explain to his Lordship and the jury these six points of similarity?

A. No.1 is a small portion - that is the centre photograph - of the impression found at the scene - there are small ridges running across marked (1) and they also can be seen on the photograph of the heel and also the photograph of the impression I made with that heel. No.2 - trade name of the heel - that again is partially visible in the impression found at the scene - can be seen in the photograph of the heel and also the photograph of the impression I made in my office with that heel. No.3 is an oval pattern, which can be seen - partially seen in the impression found at the scene - there is a similar oval pattern to be seen in the photograph of the heel and also the photograph of the impression I made with that heel in my office. No.4 is a scraped line - scraped bar across the impression found at the scene - now that is similar to the bar to be seen in No.4 of the photograph of the heel and also the impression I made with that heel in my office. No.5 is a half circular or backward circular pattern which is visible in the impression found at the scene that can be seen on the photograph of the heel marked 5 and also seen in the impression I made with that heel in my office. No.6 is an oval portion of the pattern which can be seen in the impression found at the scene and also can be seen in No.6 of the photograph of the heel and also No.6 in the photograph of the impression I made with that heel.

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(Cont.)

Q. Now would you examine Exhibit F.3 - did you also mark off points of similarity here Inspector?
A. Yes, I compared the three photographs and I marked off five points of similarity in all three. No.1 is a circular pattern which can be seen in the photograph of the impression found at the scene and also to be seen in the photograph of the heel and also in the photograph of the impression I made with that heel in my office. No.2, small ridges running down the shoe, can be seen in the impression found at the scene and also to be seen in the photograph of the heel of the shoe and also in the photograph of the impression I made with that heel in my office. No.3 is a channel which runs across and down on the heel that can be seen in the impression found at the scene and also in the photograph of the heel and also in the photograph of the impression I made with that heel

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(Cont.)

in my office. No.4 is a mark made where a nail has been hammered into the heel, that can be seen in the impression found at the scene, also in the photograph of the heel and the photograph of the impression I made with that heel. No.5, in the impression found at the scene, the outer end of the heel impression is missing and having compared the heel of the shoe itself and also the impression I made with that heel, that corresponds approximately with the wear mark of the heel.

10

Q. Now Inspector, it is apparent from examining these photographs, that the photographs of the heels of the shoes themselves appear to be back to front, as it were, to the photographs of the impressions and the prints? A. That is why it is marked beside the photographs of the heels, it is marked there left to right and the impression - sorry they are right to left, the impression I marked from left to right - when you turn the shoe over of course the pattern is reversed - the pattern made with it is reversed.

20

Q. Is there anything you wish to add? A. That would only apply in F.3 because in F.4 and F.2 these are identical heels.

COURT: You mean the left and the right.
A. Are exactly similar.

COURT: Exactly similar? A. Yes, they are.

Q. Is there anything you wish to add to your evidence Inspector? A. Well I can only say that with these impressions it is not possible to say definitely that the impressions found at the scene were made with the shoes because they are not sufficiently clear - I can say that in my opinion the patterns are the same - the heel patterns are the same - I cannot say they were made - actually made by these shoes because they are not clear enough.

30

MR. MACDOUGALL: I have no further questions.

40

Cross-
Examination.

XXN. BY MR. MAYNE:

Q. Mr. Griggs, I think you went up to the fourth

floor of these premises when the deceased was found - you went up yourself? A. Not at the time, sir, at a later date I had a look around.

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Q. Approximately what date? A. I think it was about ten days or a fortnight afterwards.

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Q. I beg your pardon? A. It was about ten days or a fortnight afterwards - I cannot remember the exact date I was asked to have a look around.

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Ronald George
Griggs . Cross-
Examination.
(Cont.)

10 Q. I see - the premises themselves, as I understand it, was in the course of construction, is that right? A. Yes, sir.

Q. There were no tenants in occupation? A. Not in the flat that I went into.

Q. That is the fourth floor - you did not see any tenants? A. The flat was completely empty - windows and doors and floors - no furniture.

20 Q. With regard to the - take the ground floor first, bearing in mind that this block was under construction - can you tell us, was it spick and span and clean or dusty or dirty when you saw the place? A. You mean the whole building?

Q. I am talking about the ground floor. A. Ground floor - the entrance to the block of flats?

Q. Yes - so that you won't be confused about the premises, if the witness could have the "C" group of photographs - these, looking at it this way
A. Yes.

Q. "E", I am sorry.

30 COURT: Could you speak up Mr. Mayne, I cannot hear you.

MR. MAYNE: I am very sorry, my Lord, I am confused about the number - the B group - this front one, my Lord. A. Yes.

Q. This is possibly not properly called the entrance, I suppose, this area around here? A. Yes, sir.

Q. Dusty and dirty? A. Well, the time I went up

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Ronald George
Griggs. Cross-
Examination.
(Cont.)

there, it was quite in a finished condition - I did not see anything which looked untidy - there were no police or sign of workmen at the time I went up.

Q. Was this pile of sand shown here - no?

A. No.

Q. That has gone? A. It was gone, yes.

Q. So the position apparently as far as this area was concerned was different from the time this photograph was taken? A. Yes - the whole was more complete then.

10

Q. More complete when you went up? A. When I went up - the ground floor appeared to have been cleaned up - more or less in a finished condition.

Q. It looked as if they were cleaned up? A. of the building material at the moment - building materials.

Q. It looked as if it had been recently cleaned up? A. All I can say it has the appearance of a newly finished building.

20

Q. Yes? A. I cannot say anything more than that.

Q. You cannot say - not prepared to say on the 10th of February whether any of the floors were dusty or dirty? A. No, I was not called - I did not go to the scene at that time.

Q. If the surfaces were dusty or dirty, I suppose prints of various kinds would be more readily obtainable? A. Shoe prints or fingerprints?

30

Q. Either? A. That is possible.

Q. Possible, I understand - now with regard to F.1. A. Yes.

Q. I think that these are shoes of the deceased? A. I believe they are, sir, yes.

Q. You did not find any of these footprints around at all? A. No, they have not been

submitted to me for examination, no, this part of the impression of this pattern....

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Q. I have forgotten, you weren't there at the early stage? A. No, not at the time the investigations were made.

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Q. You are not in a position to help us whether there were ever footprints of the deceased around on the premises on the night of the 12th?
A. No.

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Ronald George
Griggs. Cross-
Examination.

10 Q. Now take F.2 - now you have very fairly told us Mr. Griggs, that you cannot say from the footprint shown in the centre here that this shoe that you photographed was the shoe that made this?
A. I cannot say that that particular shoe made that impression - all I can say it was a similar pattern.

(Cont.)

Q. With regard to Biltrite shoes - do you happen to know where they are made - are they made in Hong Kong or elsewhere? A. I don't know, sir.

20 Q. You don't know. A. Where they are made.

Q. Have you made any enquiries about it? A. I believe enquiries have been made.

Q. But you don't know. A. I don't know.

Q. Are you not in a position to tell us this - do you know are they common or very common or otherwise in Hong Kong? A. It is rather difficult to say,

Q. You don't know, is that it? A. I cannot say definitely whether or not because - no I cannot say.

30

Q. You cannot say - they may not be very common - they may be? A. That is possible.

Q. With regard to the brand name in this F.2 - I think you gave three points of similarity that you marked with numbers - first point relates to the "T" which is similar to "T" on the photograph on the right, is that right? A. The point 2 - that already marked 2?

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Ronald George
Griggs. Cross-
Examination.
(Cont.)

- Q. In the centre of the photograph.
A. Point 1 is actually a very small portion - an oval pattern which is visible in the centre.
- Q. I am sorry I did not get that. A. The point marked "1" impression found in the centre is the very top edge of the oval pattern.
- Q. Oh, I see - something similar to this?
A. Yes. 10
- Q. There would be of course presumably something similar to this in Biltrite shoes generally - there is the tendency of marking shoes of a particular brand - there is a tendency to use the same brand marks, brand names?
A. It is, yes, and no need to use same name on different designs of heels made by the same people.
- Q. This mark above Biltrite on the photograph on the right appears to be some kind of trade mark relating to brand doesn't it?
A. Yes. 20
- Q. So that I suppose one is difficult to find that particular mark or circle on other Biltrite shoes? A. It is possible, I think probably the name Biltrite appears probably on all shoes made by that company - the actual pattern in the centre, I cannot say whether it is on all their patterns or not.
- Q. Now the second point on the left - (2) - is exactly what - what is the point you stressed? A. I was actually referring to the portion of the name visible in (2) which is one single letter. 30
- Q. Which is? A. Which is to the actual....
- Q. Trade name.... A. Biltrite - there are a number of letters visible in the impression found on the scene.
- Q. You would expect to find that same name on all Biltrite shoes? A. But possible not in the same position - I don't know other patterns. 40

Q. You don't know whether it is in the same position? A. Possibly in the same position.

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Q. With regard to the size of the trade name - are you distinguishing whether the trade name would be smaller in smaller size shoes, and bigger in bigger size shoes or would you expect to be similar on various sizes of shoes? A. That I cannot say.

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Q. You don't know? A. I cannot say.

Ronald George
Griggs. Cross-
Examination.

(Cont.)

10 Q. Therefore, you cannot, from the trade name, therefore cannot assume anything about the size of the shoe that made this particular mark - that is in the centre photograph? A. The size of the shoe?

Q. Yes. A. Well I did measure the actual size of the impression found in the scene with the size of the heel, and they are approximately the same size.

20 Q. What I am really asking you is the size of the trade name - you cannot say from that whether it would apply to bigger shoes or smaller shoes or whether the trade name, being larger or smaller, depends on the size of the shoe? A. Yes, on very small shoes, I have no doubt it would be smaller - all children's shoes of necessity producing the size of the trade name on the heel on the pattern.

Q. Those views would relate to children's shoes, not to grownups? A. Mostly, my Lord, yes.

30 MR. MACDOUGALL: I cannot imagine how Inspector is in a position to know the trade manufacturers to brands of shoes.

COURT: Counsel is entitled to ask whether he does know - he says he doesn't that is as far as he can go.

Q. With regard to these three points in the centre photograph - these are lines below the photograph in the word Biltrite? A. Mark 3?

40 Q. Yes. A. I think actually you are holding it the wrong way round.

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Ronald George
Griggs. Cross-
Examination.
(Cont.)

- A. This mark in the centre.
A. Yes.]
- Q. These parallel lines. A. Ridges - small ridges.
- Q. Yes, you would expect to find these lines, similar lines on Biltrite of this particular pattern? A. Yes probably - they probably also appear on some other makes of shoes, not exclusive type of pattern - small ridges.
- Q. There is no real importance in this particular mark? A. Not taking on its own - not by itself. 10
- Q. In that centre photograph there are bloodstains - if this is blood - seems to be rather deeper at the back, the heel end, than towards the toe end - would that be right? A. Well, I wouldn't be prepared to say that the black or the darker signs were made by the heel - they may have been made through some other cause. 20
- Q. I think.... A. The heel would not go that far back - it is just standing.
- Q. There is one factor which is of importance on this shoe that you see on the left and on the right of F.2 - there is a very definite kind of clip made at the back of the heel? A. Steel stud.
- Q. Steel stud? A. Yes.
- Q. You would ordinarily expect that steel stud with the name to cause an imprint wouldn't you - you agree? A. It depends on what is adhering to the shoe - whether there is anything on the shoe to leave an impression and also apparently the person standing - possibly impression.... 30
- Q. Possibly on the heel? A. Amount of weight on each and every part of the heel.
- Q. This would indicate, wouldn't it, this area - the portion of the Biltrite mark does indicate a certain amount of weight on the heel part 40

is made? A. Oh yes.

Q. And the distance between the Biltrite mark, say on this photograph here, and the steel stud fairly back above the name, is not very great. A. Well I can only - actually the only part I am able to identify as a heel mark at all are three parts that I marked off, 1, 2 and 3, and the outline of the inner end of the heel.

10 Q. Not quite an answer to my question - what is the distance between this steel mark and say the top of Biltrite on this photograph on the right? A.Yes.

Q. In terms of inches? A. Well I would say approximately two inches between the Biltrite and the steel stud.

Q. Two inches, yes.

COURT: I wonder if that is a convenient moment to adjourn?

MR. MAYNE: Yes, certainly, my Lord.

20 COURT: 2.30

1.02 p.m. Court adjourns.

2.30 pm. 3rd May 1965. Court resumes.

Both accused present. Appearances as before. Jurors answer to their names.

P.W.13 - Ronald George GRIGGS. o.f.o.

XXN. BY MR. MAYNE Continues:

Q. Mr. Griggs, we were still dealing with F2 A. Yes sir.

30 Q. And I was asking you questions about the position of this - I think you called it a metal -- A. Stud.

Q. A metal stud and the trade mark in respect of the work "Biltrite". A. Yes sir.

Q. Will you look at V.7. Is this the shoe actually

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(Cont.)

portrayed in the right hand photograph here
on F2? A. No, this is the shoe on the left
side. I am holding mine the opposite way up.

COURT: That is the correct way up.

Q. I wonder if I have confused the evidence
already because I have been referring to
the photograph in this way up to now.

A. Then it would be on the left, it would
be this side.

Q. Now would you be good enough to - First
of all, the fact that there is an impression
around this area does indicate that there
was pressure on the heel, does it not?

10

A. I cannot say - Which one? Yes, yes.

Q. At the top. A. Yes.

Q. Now I would like you to - Have you got a
ruler? A. No.

Q. Would you please measure the distance between
the nearest part of this metal thing at the
back -- A. The metal stud, yes.

20

Q. The metal stud and the nearest part of the
line around the trade mark as shown here.

COURT: Do you mean on the picture or on the
shoe itself?

Q. I am asking about the shoe itself. A. I
would say it is 1.3/8" approximately.

Q. 1.3/8". A. Yes.

Q. If there was pressure on the heel on the
print as shown in the middle of the
photograph, do you agree that it would be
likely that this metal disc at the back
would show? A. If there was any blood on
it, yes, it would possibly show, yes.

30

Q. But there seems to be blood around the
general area at the back of the trade mark
in the centre photograph? A. Yes.

Q. You agree that there is no sign at all of this metal disc which is in fact on that shoe?
 A. There is no trace of that on the floor, no.

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Q. Turning to the shoe on this side on which I think you also marked three points of identity- this is V7, the other shoe - to compare it I think with this heel print in the centre, now with regard to this particular shoe the points of identity I think that you have mentioned are the ring above the mark "Biltrite". A. Yes sir.

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 Examination.

(Cont.)

Q. And I suppose the same remarks apply to that ring as apply to the ring that we discussed earlier? A. On the other shoe. Yes, both the heels are the same, the pattern exactly the same on both of them.

Q. The other mark of identity I think you say is simply the trade name? A. The trade name, yes sir.

Q. And the third one which you have marked is what? A. That is the small ridge formation running across the heel at the top.

Q. Correct me if I am wrong, Mr. Griggs, with regard to both the left and the right shoes as shown in F2, the marks of identity are similar? A. They are, sir, yes. Except that in one the steel stud is not quite in the same position as it is on the other shoe.

Q. Yes, I was coming to that, but the points of identity are similar? A. Yes.

Q. And would you agree that they merely show a likelihood that this footprint was a "Biltrite" shoe? A. Yes.

Q. No more. A. Yes. Well, yes I would say that, yes.

Q. Coming to the metal part on the back of this photograph now, would you please measure the nearest part down here of the metal plate to the top of the line where the trade mark is.

COURT: That is the "Biltrite" trade mark?

MR. MAYNE: The line enclosing the name.

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(Cont.)

COURT: Yes, the "Biltrite" trade mark not the man in the oval.

MR. MAYNE: No, the line round the "Biltrite". The nearest point between the metal disc and this line here. A. I would say 1.1/8".

Q. 1.1/8". A. Yes.

Q. That is even closer? A. Slightly closer than the stud on the other one, yes.

Q. So that in this particular, with regard to this particular shoe, if there were pressure on the heel part of the shoe one would expect to find some indication of this metal thing at the back of the heel? A. Yes, if it was pressed on the floor and there was some blood on it it is quite possible there would be some impression of the stud also on the floor.

10

Q. Wouldn't it be more than quite possible? Wouldn't it be probable? A. Quite probable, yes.

20

Q. Can you tell from this footprint in the centre of F2 whether it is a left shoe or a right shoe? A. No, I cannot. It could have been either.

Q. F2 of course relates to the shoes which you took to be part of the property of the 2nd accused? Take your time about that, Mr. Griggs. A. Yes sir.

Q. Take your time. I don't want to confuse you. A. That is Amanat Khan. Yes sir.

30

Q. Now the other one that relates to the 2nd accused, I think, is F4. A. Yes sir.

Q. So we will deal with that next. Now here you have marked six points of identity in the centre photograph. A. Yes sir.

Q. Now the first one I think is the series of parallel lines underneath the trade mark? A. Yes.

Q. Now I think you have agreed that those lines you would expect to see in "Biltrite" shoes of this nature. A. Yes.

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Q. The second point I think is the trade mark itself? A. Yes sir.

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Q. The third point is the circle above the trade mark? A. Yes sir.

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Q. These are all, are they not, simply marks that you would expect to see on "Biltrite" shoes of this kind generally? A. With this type of heel, yes.

Ronald George Griggs. Cross-Examination.
(Cont.)

10

Q. Now the fourth point is a line here, I think going across the picture? A. A bar across, yes.

Q. There isn't any particular significance about that bar, is there? It is the kind of bar you would expect to find in "Biltrite" shoes of this kind generally? A. Well the reason I mention that is that particular point No.4 does fit in with the following two ones, 5 and 6. 5 and 6 follow on from that in appearance and position.

20

Q. So you would like to take 4, 5 and 6 together? A. Yes.

Q. Now with regard to 5, that has a relationship I think on this part of the heel here, this inside semi-circular part of the heel of the shoe? A. Yes sir.

COURT: Has a relationship?

30 MR. MAYNE: Yes. This point of identity which is No. 5, that relates, my Lord to this part of the heel which is the inside of the semi-circle, as you might say.

Q. Can you tell us or not, Mr. Griggs, this inside semi-circle as I call it, this part here, is that part of the original shoe do you know, or is it a later addition to the shoe? Or do you know? A. Well it is all part of the heel.

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Q. Possibly I haven't made myself clear. Did it appear to you to be part of the original heel as opposed to this thing? A. You mean it wasn't supplied with the shoes when they were new?

Q. Yes. A. Well that I cannot say because there might have been repairs to the shoes which would result in a different type of heel being put on them.

Q. Would you look at V7? Would you not agree that it looks more like the original part of the heel than any addition that came afterwards? Look at it carefully Mr.Griggs. 10

COURT: I am not quite sure whether we are at idem on this, Mr. Mayne. What I understand you are suggesting is not that this heel is exactly the original heel on the shoe but that this crescent is part of this heel. Whether whenever this heel was put on this crescent was put on then. 20

MR. MAYNE: That is what I am saying.

COURT: That is what you are saying.

A. I think it is all part of the same - I think the whole heel would have been put on the shoe at the same time.

Q. You cannot say whether this is ordinarily part - when I say the inner semi-circle, you cannot say one way or the other whether it is usual on a "Biltrite" heel or not?

A. I'm sorry, which part? 30

Q. This semi-circle. Does it appear to be part of the -- A. It may not be part of the original. It may be put in there before the heel was put on the shoe.

Q. Before the heel was put on the shoe?
A.Yes.

Q. So then if that were the case it would form part of the original shoe, is that right?
A. No, it is not the custom with shoes or boots of any kind that when a bit is replaced the whole heel is replaced completely. 40

10 Q. It doesn't necessarily follow that the whole heel is replaced, is that it? Maybe I could make it clearer this way, Mr. Griggs. You don't know whether "Biltrite" shoes have this heel with what I call the inside semi-circle on the heel originally or whether that could be an addition afterwards? A. It is possible. It is usual, but I cannot say for certain, that that is an original part of the heel as it comes out of the factory.

Q. When you say "it is usual" what do you say is usual. A. It is usual when heels are applied to the shoe for the whole heel complete to be put on the shoe, but I cannot say for certain

20 Q. Are we to take it then that you think it likely that this part here - I don't want to confuse you - this part here was part of the original heel? If you look where I am pointing, Mr. Griggs, this part here. A. Yes.

Q. Do you think that is likely to be part of the original heel? A. When you say the original heel, do you mean the heels that were on the shoe when they were sold as new shoes?

Q. Well we will take it that way, yes.

30 MR. MACDOUGALL: My Lord, is the witness qualified to answer this question? He is not an expert shoe maker, he is only an expert in identification, my Lord, and my learned friend is endeavouring to get him to give evidence as to the construction of shoes, how they are actually made. I feel this may be somewhat beyond the ken of this witness.

MR. MAYNE: Does your Lordship want me to reply to that?

COURT: No, I don't think so. I think you may proceed.

40 Q. Just to get it clear, Mr. Griggs, I don't want there to be any confusion, do you think this part here was part of the original heel when the shoe was sold new, or a later addition? A. Well I think the whole heel itself would be applied to the shoe as

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a complete unit.

- Q. I see, yes. Taking it the other way, supposing this heel was applied to the shoe - supposing the heel had worn out and was put on later as a whole, is it your view that this is part of the heel as a whole?
A. The whole heel, yes, I would say it is part of the whole heel.
- Q. How about this metal plate here? A. Well that is put on normally to preserve the shoes, to make them wear longer, and in some cases to afford a better grip when the shoes are being worn. 10
- Q. Is it that it might or might not appear on the original heel but you don't know?
A. No, I cannot say for sure, but it is not usual for this type of studs to be applied to the shoes when sold in shops. They are usually applied afterwards.
- Q. They are usually applied afterwards. That is what I wanted. There is no sign of such a mark on F4? A. No sir. 20
- Q. Would it be fair to sum up your six points of identity on F4 merely as six points merely showing one thing, that this mark here in the centre of F4 was made by some kind of "Biltrite" shoe? A. Well I would say that it was made with a heel of a similar pattern.
- Q. I see, but that is what the six points add up to? A. Yes. 30
- Q. So much for the shoes of the 2nd accused. I want you to tell us about the shoes of the 1st accused. Now have you got the appropriate photograph? It is F3.
A. F3, yes.
- Q. That is an enlargement of the photograph taken of the actual shoe, which you understood to be the shoe of the 1st accused. A. Yes. 40

Q. This just refers to a particular portion of this same shoe? A. That is an impression I made with that heel in my office.

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Q. And here you have marked five points of similarity? A. Yes sir.

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Q. The first one is this circle here. I think the first two relate to the circle, is that right? A. Yes, No.1

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10 Q. Points 1 and 2 A. Well 2 refers to the ridge, the small ridges running down below it.

(Cont.)

Q. I see, yes. So there is the circle and the ridges. Before we go any further, are you in a position to say at all from the footprint as to what brand of shoe this is? A. No, I don't know what brand of heel it is.

Q. Are you in a position to say how common this particular type or brand of shoe is in Hong Kong? A. No.

20 Q. It may be very common? A. That is quite possible, yes.

Q. The third point I think relates to this line, the corner of the line. Is that right, Mr. Griggs? A. Yes, the channel running down.

Q. The channel coming down that way? A. Yes.

Q. Point 4, what do you think that is, Mr. Griggs? A. That is a nail hole where a nail has been inserted into the heel.

30 Q. Look at the photograph of the shoe as a whole. There is a nail hole at that point on the shoe on the left, isn't that so? Will you look where I am pointing, Mr. Griggs? Just there. With regard to nail holes at the back of the heel I think on this shoe, I should think it is the first - There is on this portion four altogether? A. Yes.

Q. There would have to be on this type of shoe some kind of nail in the vicinity of your point 4, isn't that right, to keep the heel on? A. Yes.

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- Q. So it would be correct to assume that shoes of this particular type have a nail hole at that particular point where you have got 4?
A. Yes.
- Q. Now the 5th point which you have pointed out, Mr. Griggs, is what? A. The 5th point is the wear. Actually the end of the heel is worn fairly well down and on the impression found at the scene there is no pattern visible there, and on the impression I made there is more or less the same area missing again. 10
- Q. Yes, but the absence of impression there on this photograph in the centre, it could be accounted for in just the same way you accounted for the absence of the steel clip on the other shoe, there might be no blood there? A. That is possible, yes.
- Q. So really the first four points of similarity, they go no further than showing that this heel print appears to be made by a shoe of this brand or type? A. Made with the same type of heel, yes. 20
- Q. But you have no idea as to how common that is? A. No.
- Q. You have told us already I think, Mr. Griggs - correct me if I am wrong - but if there were, if there was dust and dirt in the vicinity of the various floors of this building or on the staircase and so on, you would expect to find more heel prints, footprints generally? A. There was a possibility of them being found. 30
- Q. There is great likelihood, isn't there?
A. It depends a good deal on the type of dust and how thick it is and what the conditions are.
- Q. Before you go further, supposing the dust were the kind of dust that you associate with building material and, say, distemper and so on, if it were that kind of dust you would expect to find plenty of shoe prints, wouldn't you. A. Quite possibly, yes, or 40

marks on the floor, but unless somebody has stood there possibly not clear impressions of shoes and heels, but quite likely you would find some marks on the floor. In the Supreme Court of Hong Kong

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Q. Now if you would be good enough to look at the 'C' group of photographs. A. Yes.

Q. Have you got them there? A. Yes.

10 Q. Look at C1 for instance. That shows a door, I think the door of the premises leading into the 4th floor, and a passageway outside. A. Yes.

Q. You will agree with me that the passageway there does seem to be very untidy and dirty?
A. Yes, it is quite possibly dirty, but it is not possibly loose dust, it might be just dirt.

Q. You are not in a position to say it is loose dust but it is dirty? A. Yes.

Q. I think in C2 there is a lot of rubbish around there that looks dirty also? A. Yes sir,

20 Q. Take C3. That looks dirty also, doesn't it, the floor there? A. Yes.

Q. C4, a lot of marks and dirt generally in that area? A. Yes, the floor is dirty.

Q. C5, look around there. There are white marks and, would you agree, dirt generally? A. Yes.

Q. The floor in C6, would you agree it looks a bit of a shambles and also dirty? A. Yes.

Q. The same for C8. C8 looks very dirty, grimy and dusty, do you agree? A. Yes sir.

30 Q. Going back to C7, the same in that? A. Yes sir.

Q. C9, I think the same. Do you agree? A. Yes sir.

Q. C10, the same. Do you agree? A. Yes.

Q. Take the 'B' group of photographs. Have you got it Mr. Griggs? A. Yes, I have, sir.

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- Q. B1, that shows a lot of rubbish, what appears to be a pile of sand, bags of something? A. Yes.
- Q. Again it looks pretty, in fact very dusty and dirty, do you agree? Come to B4. Would you agree that around there it is dusty and dirty looking? A. It appears to be, yes.
- Q. B5 I think not only - Well I will put the question first. Would you agree it does look dusty and dirty? A. B5? 10
- Q. Yes, this one here. Have you got the same one? This one here. A. Yes.
- A. And there are areas there which appear to be damp and semi-damp? A. Yes sir.
- Q. Would you agree that as far as semi-damp areas, that they would be likely to retain footprints? A. It is possible. Possible. I cannot say likely. It is possible.
- Q. About 50%? A. Certainly if someone stood with wet shoes there it would leave a mark on the floor, but then it might dry out and leave no mark whatsoever. 20
- Q. It might or might not? A. It might or might not.
- Q. You may not be able to answer this, but would you say that the chances of the mark being still there say 12 hours after the wet footprint had been made, the chances would be better than 50% wouldn't they? A. You mean as a wet impression? 30
- A. No, not as a wet impression. As an impression. A. If it has been formed somewhere by dust, it may stay there indefinitely unless someone disturbed it.
- Q. Take B6, the photograph of the tap and the pipes and so on. Is that the kind of surface that you would ordinarily expect to find fingerprints if they were made?

A. On the walls, sir? It is possible.

Q. Now you probably remember the walls leading up to the 4th floor, the staircase, and passage, and so on. Do these walls appear to be freshly stippled? A. New walls, yes.

Q. What about the painting condition? What kind of paint was on them? A. Well I think it was whitewash on the staircase, colour wash of some description.

10 Q. Would freshly painted whitewashed walls of the kind you saw in these premises, would they be likely to retain fingerprints? A. They could retain fingerprints. It is possible.

Q. The chances would be very much greater I suppose if the fingers were bloodstained? A. Yes, the chances of finding a print would be greater, but it depends on how the fingers or hand were applied to the wall.

20 Q. Quite. But certainly if there were bloodstained fingers pressed against those freshly painted walls you would expect to see, if not a clear imprint, some kind of imprint? A. If they were covered with wet blood and they were applied to the wall, we would expect to see smear marks at least. Possibly not clear marks, but possibly smear marks, depending on the way the fingers were applied to the wall.

30 Q. It is more than a possibility, it is a probability isn't it, Mr. Griggs? A. No, I can only say a possibility.

Q. More than 50% A. No, I cannot say it is more than 50%

Q. 50-50? A. No, I cannot say that. It is very difficult.

COURT: It would depend on the way the fingers were applied to the wall? A. Yes.

Q. Did you examine the footprints that appear in the centre of F2, 3 and 4 against any other footprints other than the two defendants? A. No.

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- Q. You didn't? A. No.
- Q. You weren't, for instance, given any shoes belonging to other Pakistani gentlemen either from the Mandarin Hotel or elsewhere?
A. No, I haven't seen any similar shoes to these.
- Q. Mr. Griggs, are you the handwriting expert in the Police? A. No sir.
- Q. You are not? A..No.
- Q. Is it a subject you know something about? 10
A. No, I don't deal with handwriting at all.
- Q. But it is done in your particular branch?
A. It is, sir, yes.
- Q. Can you tell us this much about it?
Supposing a piece of paper, a document is writeen in pensil, is it possible to ascertain whether the whole document is written by the same pencil or the same type of pencil or not? A. I cannot answer that.
- Q. You agree that handwriting is a science well known to investigators? A. It is, sir, yes. 20
- Q. And where there is handwriting the police can learn a lot from the handwriting about the instrument used and the time of user in making the writing? A. Well it is only possible to say whether it was a thick or a thin pen or possibly whether it was a biro or a nibbed pen.
- Q. It is possible in certain circumstances to say whether one piece of handwriting belongs -- 30
- COURT: Mr. Griggs, have you any expert knowledge on this subject? A. No sir.
- Q. Are you Head of the Department that deals with this? A. I am in charge of the Identification Bureau, yes sir.
- Q. I leave it at that. Just one further question, Mr. Griggs. This deck chair here, would you bring it out so that his Lordship

can see it?

CLERK: Exhibit P.

Q. Put it so, on the middle rung. I would like you to demonstrate one thing first, Mr. Griggs. Will you try sitting down on that chair and getting up without holding on to the wooden parts of the chair?

COURT: What is the object of this, Mr. Mayne?

10 MR. MAYNE: The object is this, my Lord. Is it possible or even probable that a person could do so without handling the wooden parts of the chair.

MR. MACDOUGALL: My Lord, this could depend on many factors - the physical condition of the man, the age of the man, the position of the rungs.

COURT: Is this witness a person who is qualified to express an opinion on that?

20 MR. MAYNE: I merely asked him to demonstrate, my Lord, as a member of the human race, not as an expert, if he can do it. It is not a matter of expressing any opinion at all. I think it is of vital importance to see whether it can be done without difficulty or the quantum of difficulty.

COURT: Why should this witness be asked to do that?

MR. MAYNE: My Lord, I would have thought, with respect, that any witness could be asked to do this very thing.

30 COURT: If it is relevant as to whether he is able to do it or not, yes, but whether Mr. Griggs can do it or not seems to me to be irrelevant.

MR. MAYNE: Your Lordship will possibly appreciate the point I am getting at.

COURT: Perhaps you would like to demonstrate, Mr. Mayne?

MR. MAYNE: Yes certainly. Shall I disrobe or do it in wig and gown?

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COURT: I am not going to allow Mr. Griggs being forced to do this unless there is some purpose in his being asked to do it.

MR. MAYNE: The purpose, my Lord, is this. There is no evidence of any fingerprints on this wooden part of the chair. I think it is important to have a practical demonstration. Of course the jury can do this themselves to see if it is possible to sit down and get up from that chair from any reasonable position without holding on to the wooden part. If your Lordship wants me to leave that point, I will.

10

COURT: I don't think that it is proper that Mr. Griggs should be asked to do it.

MR. MAYNE: I thought, my Lord, since he is Head of the Identification Bureau he might possibly have some views to offer.

COURT: Some views, yes. By all means let us have views from Mr. Griggs if he is able to express them, but I don't see why he should be subjected to a physical test of this kind to see if he can get out of this chair without holding on to the sides.

20

MR. MAYNE: Your Lordship may take it from me that I am not trying to put Mr. Griggs in an undignified position.

COURT: I cannot see the point of his being asked to do it.

30

MR. MAYNE: Very well, my Lord, I will ask the jury to do it later. That is all I wish to ask him.

NO REEXN.. BY MR. MACDOUGALL.

BY COURT:

Q. Mr. Griggs, would you just look for a moment please at the two central photographs in F2 and F4? On F4 would you agree or would you not agree that the only substantial quantity of blood, if it

40

be blood, which appears is the print itself?
 A. On F4, sir, yes.

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Q. On F4. A. Yes sir.

Q. There are, of course, two ways of obtaining an
 imprint of a shoe, are there not? One is to
 apply a liquid to the shoe and then put it onto
 a clean surface. A. Yes sir.

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Q. The other way is to apply the clean shoe to a
 dirty surface. A. Yes sir.

10 Q. In both cases you might get a print? A. Yes sir.

Q. Would you agree on F4 that print appears to have
 been obtained by the first way, by applying a
 dirty shoe to a clean surface? A. Yes sir.

Q. Would you care to express an opinion as to the
 central picture in F2? A. On the same --

Q. On the same principle? A. Yes sir.

Q. Would you say that the whole of the impression
 there is the result of applying a dirty shoe to
 a clean surface? A. Yes sir.

20 Q. You would? A. Yes sir.

Q. The stud which appears on those two shoes in F2,
 there is no indication of that stud in the central
 picture? A. there is not, sir.

Q. Are you able to say whether if that stud had no
 blood on it, there is any chance of a mark having
 been left in that particular position? A. There
 is a possibility of a mark being left by the stud if
 there is no liquid on it, but that would depend on
 what sort of surface it was being applied to.

30 Q. This dark patch here, do you know what that is?
 A. No, I don't know.

Q. Are you able to indicate on that central picture
 where the stud would have fallen if it came from
 those two shoes? A. By measurement, yes.

Q. By measurement on the picture? A. By measuring
 the shoes and then measuring the picture. It would

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give the approximate position anyway.

Q. Would I be right in suggesting that if it were this shoe on the right, looking at the picture the right way up, the stud would come somewhere in this region possibly, on the edge of that board? A. Yes, just about there.

Q. At a place where the board is apparently clean? A. Yes.

Q. If it were the other side it would appear in this dark area here? A. Yes, a little further on. 10

Q. Did you examine this place when you went to the scene? A. I examined the floor, sir.

Q. Can you tell us whether or not there is a projection of the two floor boards above the level of the rest of the floor? A. No, I did not measure that, sir.

Q. There is a clear cut line at the corner of the lower of the two boards. A. Yes sir. 20

Q. Which would suggest, perhaps, that there was a difference in level, but you cannot say whether there was or not? A. No.

Q. Thank you. Thank you, Mr. Griggs, we needn't detain you any longer.

No.24

NO. 24

Kenneth Charles
Searle
Examination.

KENNETH CHARLES SEARLE

MR. MACDOUGALL: I call Kenneth Charles Searle. He is witness No.13 on page 22 of the depositions, my Lord. 30

P.W. 14. - Kenneth Charles SEARLE. Sworn.

XN. BY MR. MACDOUGALL:

Q. Your full name is Kenneth Charles Searle? A. Correct.

Q. And you are a doctor residing at 30 Tytan Road?
A. Correct.

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Q. I understand that you did practise at the
Mandarin Hotel? A. Certainly.

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Q. You no longer practise there? A. I still
practise there.

No.24

Q. On the 9th February this year did you see a
Pakistani male called Mawaz Khan? A. Yes,
I did.

Kenneth Charles
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(Cont.)

10 Q. Under what circumstances did you see him?
A. He reported sick on the morning of the 9th
February in the hotel staff clinic.

Q. Can you identify this man? A. It is the
prisoner on the left on my left.

Q. The extreme left? A. The man standing up.

Q. And he attended you - you attended him on that
occasion? A. Correct.

20 Q. Tell me, doctor, can you recollect seeing any
cut above his left eye on that occasion?
A. I have no recollection of seeing such a cut.

Q. Have you any recollection of seeing a boil over
his left eye on that occasion? A. No boil over
the left eye. He had a swollen left upper eyelid.

Q. What condition was this, doctor? A. He had an
infection of the conjunctiva of the left eye and
the left upper eyelid.

Q. That is conjunctivitis? A. Conjunctivitis.

Q. I have no further questions.

30 NO XXII. BY MR. MAYNE.

COURT: Thank you, we need not detain you any further.

MR. MACDOUGALL: I call Dr. KONG, police witness No.14
on the depositions.

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NO.25

KONG SAU-YUI.

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P.W.15 - KONG Sau-Yui. Sworn in English.

No.25

Kong Sau-Yui
Examination.

XN. BY MR. MACDOUGALL:

Q. Your full name is KONG Sau yui? A. Yes.

Q. You reside at Room 520, 5th floor,
Alexandra House? A. Yes.

Q. And you are a medical practitioner?
A. Yes.

Q. Do you recall the 11th February this year? 10
A. Yes.

Q. Could you tell the court what occurred about
13.00 hours on that day? A. I saw a patient
with a cut on the left little finger.

Q. Do you know the name of this patient?
A. He gave his name as Amanat Khan.

MR. MAYNE: I must object to this answer insofar
as it has not been established yet that it
is not hearsay.

Q. Can you identify the patient who attended you 20
on that day, doctor? A. I did not identify
the patient at the parade at the police
station.

Q. I am not asking you that, doctor. Can you
identify him now? Have a look around.
Take your time. A. I cannot identify for
sure, but I think the patient is in the dock.

Q. You think it is which one, doctor?
A. This one. (Indicates 2nd accused)

MR. MACDOUGALL: I take it my learned friend no 30
longer has any objection?

MR. MAYNE: Yes, I have, my Lord. In my
respectful submission the position is still
the same; it has not been established that
this conversation was not hearsay.

COURT: That is a matter for the jury to decide, is it not?

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MR. MAYNE: My Lord, it goes to the admissibility of evidence. Your Lordship has to rule that it is admissible; before you can rule it is admissible you have to be satisfied it is not hearsay. It is not for me to satisfy the court that it is hearsay, it is for the prosecution to prove it is not, and in my respectful submission they have not. This doesn't go to weight, it is a question of admissibility.

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Kong Sau-Yui Examination. (Cont.)

10

COURT: Have you any authority on this, Mr. Mayne?

MR. MAYNE: My Lord, I merely base my submission on the hearsay rule that until it is established that a conversation takes place, that something is said either by a person or in a person's presence, then until that is proved then any conversations are not admissible.

20

COURT: What I am asking for is authority as to where lies the burden of proof. Is it for the prosecution to prove that this is not hearsay or is it for you to show me it is hearsay?

30

MR. MAYNE: My Lord, with great respect I think it would be completely unreasonable, if I may say so, for the position to be otherwise than the person seeking to adduce evidence, it is for him to prove it is admissible before he adduces it. The onus, with the greatest respect, obviously lies on the person adducing the evidence. He is the person endeavouring to place evidence before the jury. Before he can do so, he must satisfy the court that the evidence is admissible. I will try to get your Lordship - If I may have one moment. Would your Lordship be good enough to give me 5 minutes?

COURT: I am not going to adjourn for this.

MR. MAYNE: Very well, my Lord. My Lord, Phipson, the 10th Edition, you have the general rule regarding hearsay at page 273, paragraph 631. There you have the general hearsay rule:-

40

"Oral or written statements made by persons who are not parties and are not called as witnesses are inadmissible to prove the truth

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No.25

Kong Sau-Yui
Examination.
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of the matters stated, except
in the cases hereinafter mentioned!"

Well I would, with respect, my Lord, say
that that simple statement is clear
authority to show that a person seeking to
adduce evidence has to prove that a
statement, oral or written, is made either
by a party or by a witness.

COURT: It says persons who are not a party.
Until it has been decided whether the
person that this practitioner saw is the
2nd accused we don't know whether he is a
party or not. 10

MR. MAYNE: My Lord, the witness cannot
identify, so that if he cannot identify
we don't know whether the person that he
spoke to is a party or otherwise. In
other words, until the evidence shows that
the conversation is with a person who is
a party, then anything said is not
admissible. I think, my Lord, it is basic,
if I may say so, it is for anyone seeking
to adduce any kind of evidence to show that
the evidence is admissible. I don't think
the hearsay rule is any different to any
other of the rules of evidence. Before you
can adduce any evidence of any kind one has to
show affirmatively that that evidence is
admissible. 20

COURT: Have you got again any authority for
that? If evidence is relevant, surely
prima facie it is admissible, unless it can
be excluded on certain specific grounds. 30

MR. MAYNE: My Lord, here, relating it to this
case, I would say that the evidence has
already excluded it because there has been
no identification. In fact there has been
a failure to identify, so that if there has
been a failure to identify it is excluded
by reason of what the witness has said
himself. That is all I wish to say, my
Lord. 40

COURT: Do you wish to say anything, Mr.
Macdougall?

MR. MACDOUGALL: My submission is this, my Lord. This is purely a question of fact for the jury as to whether or not they determine whether the 2nd accused did attend the doctor on that day. The doctor has already testified that he thinks this is the person in the dock, he says the name given was Amanat Khan, and there is one further question, my Lord, I wish to ask which would make the position clearer.

In the Supreme
Court of Hong
Kong

Prosecution
Evidence

No.25

Kong Sau-Yui
Examination.
(Cont.)

10 COURT: I realise that question. Perhaps you should ask that question before I rule.

Q. Doctor, would you examine photograph Exhibit G1? Would you tell my Lord and members of the jury whether you think this is similar or dissimilar to the injury you saw on that patient on that day? A. It is very similar.

20 MR. MACDOUGALL: My Lord, I would submit that the question of identification has been satisfactorily demonstrated, or at least it should be put to the jury for them to determine whether it is the 2nd accused or not.

MR. MAYNE I have nothing to say further, my Lord. This last matter does not take the matter any further. It is a matter of similarity, there is no question of identification.

COURT: I shall allow the questions.

Q. When you examined the witness did he say anything?
A. He said he had injured the finger with a knife during the cutting of some meat.

30 Q. He injured the finger with a knife during cutting up meat.

XXN. BY MR. MAYNE:

Cross-
Examination.

Q. Doctor, I think on the 16th February you attended an identification parade at Central Police Station? A. Yes, I did.

Q. That is 5 days after you attended this particular person who had an injury on his finger? A. Yes.

In the Supreme Court of Hong Kong

Prosecution Evidence

No.25

Kong Sau-Yui Cross-Examination. (Cont.)

- Q. How many persons were on the parade?
A. about 9 or 10. I have forgotten.
- Q. You are not sure? About 9 or 10. What race did they belong to? A. Pakistani.
- Q. All Pakistanis. Were you asked in effect to identify whoever had come to you for treatment? A. Yes.
- Q. And then 5 days after this treatment you were not able to pick out anybody from amongst the 9 or 10 Pakistanis?
A. I cannot be sure, because he only attended me for a short time.
- Q. You cannot be sure, but would you be good enough to answer the question. 5 days after this alleged treatment you were unable to pick out anyone from amongst the 9 or 10 Pakistanis?
A. No, I cannot point a finger at the one.
- Q. You weren't able to identify him. A. No

10

Re-Examination.

REXN. BY MR. MACDOUGALL.

- Q. At the identification parade, doctor, did you have an opportunity of inspecting the hands of all those in the parade?
A. No, I did not have the chance.

20

MR. MACDOUGALL: Thank you. My Lord, I have no further questions.

COURT: Yes. Thank you, we need not detain you.

No.26

Victoria Wong Examination.

NO. 26

VICTORIA WONG.

MR. MACDOUGALL: I now call Victoria Wong, My Lord. She is on the notice of additional evidence.

30

COURT: Yes.

P.W. 16 - Victoria WONG - Sworn in English.

In the Supreme Court of Hong Kong

XN BY MR. MACDOUGALL:

Prosecution Evidence

No.26

Victoria Wong Examination.
(Cont.)

Q. Your full name is Victoria Wong? A. Yes.

Q. And you reside at 169, Prince Edward Road, A. Yes.

Q. And you are a registered nurse employed by the Mandarin Hotel? A. Yes.

10 Q. At 9 a.m. on the 11th of February this year did you attend to a laceration on the left little finger of the 2nd accused, Amanat Khan? A. Yes.

Q. Did you make notes at the time when you attended to the injuries? A. Yes.

MR. MACDOUGALL: My Lord, I would like to ask for your Lordship's permission for the witness to look at her notes.

COURT: Very well.

20 Q. Would you kindly refer to the notes, Miss Wong? Would you tell his Lordship and the Jury what treatment was given to the 2nd accused, Amanat Khan, on that occasion? A. It was written down here: "Severe cuts on small finger...."

COURT: I'm sorry. You may refresh your memory from the notes which you made, you may refresh your memory from it, but you mustn't read it out word for word.

A. Well, he had cuts on the small finger and was treated and suggested to have them sutured by a doctor later on in the morning.

30 Q. Do you identify this photograph, Miss Wong?

CLERK: Exhibit G1.

Q. And would you indicate the injuries which were sutured? A. Yes, I think so.

Q. What treatment did you give to the individual in respect of that injury? A. I used a kind of Gelform to stop the bleeding.

In the Supreme
Court of Hong
Kong

Prosecution
Evidence

No.26

Victoria Wong
Examination
(Cont.)

- Q. Was there any other treatment or that was the only treatment? A. That's all.
- Q. On the same day did you also see the 1st accused, Mawaz Khan? A. Yes.
- Q. And would you refer to your notebook there and use it to refresh your memory as to what happened in relation to Mawaz Khan? A. He had multiple cuts on both hands and was dressed.
- Q. Who dressed him? A. I did.
- Q. Were any of these cuts sutured or not at that time? A. No, I don't think so.
- Q. You don't think so.

10

MR. MACDOUGALL: I have no further questions.

Cross-
Examination.

XXN BY MR. MAYNE:

- Q. Does that mean you are not sure, Miss Wong, whether they were sutured or not? A. I don't think so - that's all I can remember.
- Q. Does that mean you are not sure? A. I can't be sure.
- Q. You can't be sure.

20

MR. MAYNE: Thank you.

MR. MACDOUGALL: No further questions.

COURT: Thank you, Miss Wong. We need not detain you any longer.
A. Thank you.

MR. MACDOUGALL: I call Leung Kang-chuen, Police witness No.15, on page 23 of the depositions, my Lord.

30

LEUNG KANG-CHUEN

In the Supreme
Court of Hong
Kong

Prosecution
Evidence

No.27

Leung Kang-chuen
Examination.

P.W. 17 - LEUNG Kang-chuen - Affirmed in Puncti.

XN. BY MR. MAGDOUGALL:

Q. Your full name is Leung Kang-chuen?

A. Yes, my Lord.

Q. And you reside at 11 Prince's Terrace? A. Yes.

Q. You are a caretaker? A. Yes.

10 Q. Would you examine the photograph depicted in exhibit D6? Can you identify this man?
A. I cannot - I can, sir.

Q. You know who he is? A. He was our watchman.

Q. "He was our watchman"? A. Yes... Our building site night-shift watchman.

Q. Which building site? A. No.36B, Kennedy Road.

Q. Do you know his name? A. No.

Q. Did you know him by any name? A. No.

Q. Did you ever speak to him? A. Yes.

20 Q. What did you call him in conversation?
A. "Friend" or "Ah char".

Q. How often did you see Said Afsal? A. Not very often.

Q. I don't mean how often did you converse with him. How often did you see him? A. Not very often because he came at night time. When sometimes I went out I did not see him.

Q. When you did see him, did you or did you not exchange greetings? A. Yes.

Q. Do you recall the 10th of February this year at about 22.00 hours? A. Yes.

30 Q. Would you tell his Lordship and the Jury what you were doing at that time? A. It happened that

In the Supreme Court of Hong Kong

Prosecution Evidence

No.27

Leung Kang-chuen Examination. (Cont.)

after show I came back, after I bought a copy of newspapers and had eaten a bowl of noodle - "Wun Tun" noodles. Then I boarded No. 12A bus. Then I went back to the building site. After I alighted from the bus it seemed that I saw a person and that road was a little sloping, and one side of the road was without lights..

Q. I'm sorry. I did not understand what you said. What did you see when you alighted from the bus? A. I saw what it seemed that it was a person inside the garage, in front of the road bricks. 10

Q. Would you examine exhibit B1, and see if you can indicate by reference to that where you saw this man? A. Somewhere around here (Indicates).

Q. Can you describe this man? A. It seemed that he was rather slim, rather tall.

Q. Yes. Was there anything else? A. No. 20

Q. Did this man greet you? A. No.

Q. What happened when you passed the premises normally and when "Ah Char" as you called him was outside? A. Normally when I passed him, when we were near to each other, he always greeted me by addressing me, "Mister, come back!"

Q. Could you see the face of this man whom you described to us? A. No, I did not see his face - I am not clear. 30

MR. MACDOUGALL: I have no further question, my Lord.

Cross-Examination.

XXN. BY MR. MAYNE:

Q. I suppose you are a friend of "Ah Char". He only greeted you and talked to you if he happened to see you, is that right? A. Yes.

MR. MACDOUGALL: I have no re-examination, my Lord.

COURT: Thank you. You may go.

MR. MACDOUGALL: I call Jimmy WONG, my Lord, Police witness No.22, on page 26 of the depositions, my Lord.

In the Supreme
Court of Hong
Kong

Prosecution
Evidence

No.27

Leung Kang-
chuen
Cross-
Examination
(Cont.)

NO. 28

JIMMY WONG.

No.28

Jimmy Wong
Examination.

P.W. 18 - Jimmy WONG - Sworn in Mandarin

XN. BY MR. MACDOUGALL:

- 10 Q. Your full name is Jimmy Wong, and you live at flat 9A, Chung Wan Village? A. Yes.
- Q. You are a bar captain of Ocean Bar, Wanchai? A. That's correct.
- Q. Were you on duty at the Ocean Bar, Wanchai, on the 10th of February this year, the evening of the 10th of February? A. Yes.
- Q. What were your hours of duty? A. from 11 o'clock in the morning up to 11 o'clock in the evening.
- 20 Q. What was the business like that evening? A. That was a Wednesday, and in the evening it was very quiet.
- Q. During the hours in which you were on duty did you see any Indians or Pakistanis in the bar? A. That night it was very quiet, that is, business was very poor. And I did not see any Indian or Pakistani man in the bar. The business was very quiet that evening.
- Q. Have you ever seen either of these two men in the dock before? A. Not that evening. I did not see them that evening.

In the Supreme Court of Hong Kong

Prosecution Evidence

No.28

Jimmy Wong Examination. (Cont.)

Q. Apart from the proceedings in the magistrate's court, have you ever seen them before?

A. It is not possible for me to say because in some evenings when business was very busy it is impossible for me to tell from the crowd of people in the bar, that is.

Q. Let me ask you this: do you recall ever seeing them on any other occasion with the exception of the magistrate's hearing?

A. On Fridays and Saturdays our place usually was very crowded and it is not possible for me to pay attention to the patrons in the bar.

10

COURT: Would you just listen to the question please?

Q. Apart from the occasion in the magistrate's court, do you recall ever seeing these two men before - recall? A. Whenever there were a lot of customers in our place it is not possible for me to pay attention to them.

MR. MACDOUGALL: I won't pursue that point, my Lord. I wouldn't consider it important in any event.

20

Q. What are your duties in the bar? A. My duty was to handle the boys.

Q. Do you have any connection with the customers at all? A. Yes, sometimes I would take care of the customers myself besides the boys.

MR. MACDOUGALL: No further questions, my Lord.

Cross-Examination

XXN. BY MR. MAYNE:

30

Q. You say you were not busy in the Ocean Bar on the 10th of February last? A. That is correct. It was a Wednesday.

Q. I suppose the Fleet didn't come in, did they? A. That evening business was very, very poor.

Q. Tell me what's the visibility like in the Ocean Bar after sun set? Can you see as far as your nose? A. After 8 or 8o'clock in the evening usually we have very few customers.

40

Q. I am talking about the visibility. Can you see as far as your nose after sun set? A. In a bar usually the lighting is rather on the dim side, even when the lights were turned on.

In the Supreme Court of Hong Kong

Q. And sometimes they were turned off? A. No, in the evening we always switched on the lights.

Prosecution Evidence

No.28

10

Q. Can I put it this way. Roughly how many feet would you be able to see beyond your nose after sun set with the lights off? A. When the lights were on I could see - the lights are switched on day time as well as in the evening.

Jimmy Wong Cross-Examination. (Cont.)

Q. Yes. I asked you this - perhaps you didn't catch the question - how many feet would the visibility be approximately? A. You can see the walls of the bar with the lights on.

MR.MAYNE: Thank you.

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

20

COURT: Thank you, sir. We need not detain you any longer.

MR. MACDOUGALL: I call SO Kuk Chan, Police witness No.18 on page 25 of the depositions, my Lord.

NO. 29

No.29

SO KUK CHAN.

So Kuk Chan Examination.

P.W. 19 - SO Kuk Chan - Affirmed in Punt.

XN. BY MR. MACDOUGALL.

30

Q. Your name is So Kuk Chan? A. Yes.

Q. And you reside at 2B, May Tung Building, Paterson Street? A. No I have moved my address.

Q. What is your present address? A. Yes, I am now residing at I block, 17th floor, Nam Fong Mansion.

Q. And you are the Mamasan of the Ocean Bar? A. Yes.

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Court of Hong
Kong

Prosecution
Evidence

No.29

So Kuk Chan
Examination.
(Cont.)

- Q. Were you on duty at the Ocean Bar on the 10th February this year? A. Yes.
- Q. What were your hours of duty? A. My hours of duty were from 8 p.m. to 2 a.m. next morning.
- Q. What are your duties in the bar? A. To see, to ask and to talk.
- Q. To talk to whom? A. Yes, whenever customers came, then I served them.
- Q. Did you see any Pakistanis or Indians on that evening? A. Not on that day because on that day the business was quiet and the business was poor. 10
- Q. Have you seen either of these two men in the dock before? A. (Witness answers in English) Never seen before.

INTERPRETER: "I have never seen them before."

MR. MACDOUGALL: No further questions.

MR. MAYNE: No cross-examination, my Lord.

COURT: Thank you. We need not detain you, madam. 20

MR. MACDOUGALL: I call Kwong Hing Pun, police witness No.17, on page 26 of the depositions, my Lord.

No.30

Kwong Hing
Pun.
Examination.

NO. 30

KWONG HING PUN.

P.W.20 - KWONG Hing Pun - Affirmed in Punt.

XN. BY MR. MACDOUGALL.

- Q. Your name is Kwong Hing Pun? A. Yes.
- Q. And you live at hut 17, Kowloon Tsai Village? A. Yes. 30

- Q. And you are a waiter at the Ocean Bar?
A. Yes.
- Q. Were you on duty at the Ocean Bar on the 10th of February this year? A. Yes.
- Q. What were your hours of duty? A. From 1 p.m. to 4 p.m.
- Q. What was the business like on that day?
A. Very quiet.
- 10 Q. During your hours of duty did you see any Pakistanis or Indians in the Bar? A. No.
- Q. Apart from the magistrate's hearing have you ever seen either of these two men before?
A. No.
- Q. Witness, I want you to think carefully: what were your hours of duty on that particular day?
A. Yes, my hours of duty were from 1 p.m. up to 4 p.m. And then I had my supper. And after supper then my hours of duty continued up to 2 a.m. next morning.
- 20 Q. When did you commence duty after supper?
A. Some time after 5 p.m.

MR. MACDOUGALL: No further questions, my Lord.

MR. MAYNE: No cross-examination.

COURT: Yes. Thank you. We need not detain you.

MR. MACDOUGALL: I call Tsang Wai Keung, police witness No.18, on page 25, my Lord.

NO. 31

TSANG WAI-KEUNG.

P.W.21 - TSANG Wai-keung - Affirmed in Puncti.

30 XN. BY MR. MACDOUGALL:

Q. Your name is Tsang Wai-keung? A. Yes.

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Court of Hong
Kong

Prosecution
Evidence

No.30

Kwong Hing Pun
Examination.
(Cont.)

No.31

Tsang Wai-keung
Examination.

In the Supreme
Court of Hong
Kong

Prosecution
Evidence

No.31

Tsang Wai-keung
Examination.
(Cont.)

- Q. And you reside at 149, Hennessy Road?
A. Yes.
- Q. You are a waiter at the Ocean Bar?
A. Yes.
- Q. Were you on duty at the Ocean Bar on the
10th of February, this year? A. Yes.
- Q. What were your hours of duty? A. From
4 p.m. to 2 a.m. next morning.
- Q. What was the business like on that day?
A. Very quiet.
- Q. Did you see any Pakistanis or Indians on
that evening? A. No.
- Q. Have you ever seen either of these two
men in the dock? A. No.

10

MR. MACDOUGALL: No further questions, my Lord.

MR. MAYNE: No cross-examination, my Lord.

COURT: Thank you, sir.
(Witness released.)

MR. MACDOUGALL: I call Chow Kong Hing police
witness No.19 on page 26 my Lord.

No.32

Chow Kwong-hing
Examination.

NO..32

CHOW KWONG-HING.

20

P.W. 22 - CHOW Kwong-hing -

INTERPRETER: My Lord, the witness speaks
broken Cantonese.

COURT: Tell me, sir - where did you come from?
What part of China? A. I came from Shanghai.

COURT: And do you wish to speak in Shanghai
dialect? A. Yes.

COURT: (To interpreter): Do you speak that
dialect?

INTERPRETER: I am sorry, sir. I can't.

30

COURT: This witness is going to be the shortest of the others I take it. This is the last one of the Ocean Bar witnesses for the time being?

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MR. MACDOUGALL: Yes, my Lord.

Prosecution Evidence

COURT: I am sorry, Members of the Jury. I was not aware that we were going to have this difficulty.

No.32

MR. MACDOUGALL: My Lord, I do understand this man comprehends Punti. In fact he was affirmed in Punti in the lower court.

Chow Kwong-hing Examination.
(Cont.)

10 COURT: Well, the interpreter informed me that he was talking broken Punti. In no circumstances should he be allowed to give evidence in Punti as he has expressed the desire of speaking in his native dialect. I have always taken the view that it is desirable that a witness should give the evidence in his native dialect as always there is a possibility of proceedings for perjury if he were not telling the truth.

MR. MACDOUGALL: I agree entirely, my Lord.

20 (Another interpreter enters Court.)

P.W.22 - CHOW Kwong-hing - Affirmed in Shanghai dialect.

COURT: Thank you.

XN. BY MR. MACDOUGALL:

Q. Your name is Chow Kwong-hing? A. Yes, my Lord.

Q. Do you reside at 912, So Uk Village, Peony Block?
A. Yes, sir.

Q. You are a waiter employed by the Ocean Bar, Wanchai?
A. Yes, my Lord.

30 Q. Were you on duty at the Ocean Bar on the 10th of February this year? A. Yes, my Lord.

Q. What were your hours of duty on that day?
A. From 4 p.m. to 2 a.m. the next morning.

Q. What was business like on that occasion?
A. The business was very bad on that day, sir.

In the Supreme Court of Hong Kong

Prosecution Evidence

No.32

Chow Kwong-hing Examination. (Cont.)

- Q. Did you see any Pakistanis or Indians that evening? A. No, sir.
- Q. Have you seen either of these two men in the dock before, apart from the magistrate's court hearing? A. No, my Lord.

MR. MACDOUGALL: No further questions, my Lord.

MR. MAYNE: My Lord, I have no cross-examination.

COURT: Thank you. We needn't detain you. I think we might adjourn now until 10 o'clock tomorrow morning. Thank you.

10

4.30 p.m. Court adjourns

4th May, 1965 at 10.02 a.m. Court resumes.

Appearances as before. Accused present. J.A.N.

No.33

NO. 33

Farid Khan Examination.

FARID KHAN..

P.W. 23. - Farid Khan - Affirmed in Punjabi.

XN. BY MR. MACDOUGALL.

- Q. Your full name is Farid Khan? A. Yes, sir.
- Q. And you reside at 150 Waterloo Road, Kowloon? A. Yes.
- Q. And you are a watchman employed by Harilcla's? A. Yes.
- Q. And you come from the village of Haider in West Pakistan? A. Yes.
- Q. Do you recall an incident which occurred at a well in 1958 outside the village of Haider in West Pakistan? A. Yes.
- Q. Would you tell His Lordship and the Jury what happened on that occasion? A. (Witness speaks at some length)
- Q. Just tell what you actually saw. A. I saw Said Afzal killed Wasal Khan -

20

30

murdered Wasal Khan.

Q. Do you identify this photograph? (Shown to witness) A. Yes, I can say this is a photo of Said Afzal.

COURT: What's that? D6?

CLERK: D6.

Q. How did Said Afzal murder Wasal Khan?
A. Wasal Khan was demanding money from Said Afzal.

10 MR. MAYNE: My Lord, this would appear to be hearsay evidence.

COURT: I doubt whether it is hearsay, Mr. Mayne, but whether it is relevant is another matter.

MR. MAYNE: I would object on both points, my Lord. On the hearsay rule and also on the relevance aspect. Again I don't want to repeat what I said yesterday about hearsay. This time I will refer you, if I may, to what is said in Archbold, the 35th Edition at Page 440, paragraph 1071, under the section dealing with "Hearsay".

COURT: Perhaps before we go on - Mr. Macdougall, is this really relevant?

MR. MACDOUGALL: No, my Lord, I did not wish to intervene in what my learned friend was saying, but frankly I don't care whether this answer is given or not. All I want the witness to testify to is what he saw, not what he heard or what was said.

30 COURT: It is not hearsay, but I doubt if it is relevant. Very well. Counsel for the Crown is not pursuing it.

MR. MAYNE: My Lord, the evidence is in, so for that reason I would, with great respect, just ask that my objection be noted and ruled upon.

COURT: It is on the record.

MR. MAYNE: Yes.

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Kong

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Evidence

No. 33

Farid Khan
Examination.
(Cont.)

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Court of Hong
Kong

Prosecution
Evidence

No. 33

Farid Khan
Examination.
(Cont.)

COURT: But I have already indicated that in my view it is not relevant.

MR. MAYNE: May it please your Lordship.

Q. When you said that you saw Wasal Khan being murdered by Said Afzal, what did you actually see? A. Well, I saw Said Afzal holding a knife in his hand.

Q. Yes, and what else did you see? A. And he murdered Wasal Khan. And he stabbed Wasal Khan.

Q. He stabbed him? A. He stabbed Wasal Khan.

Q. Do you know from your own knowledge whether these two men in the dock were in the village at that time or not? A. Yes, they were. Yes, they were at that time in the village, but not on the actual scene.

MR. MACDOUGALL: I have no further questions, my Lord.

Cross-
Examination.

XXN. BY MR. MAYNE (Of P.W.23 - Farid Khan)

Q. Mr. Khan, your name is "Khan", is it? Your surname is "Khan"? A. Yes, Farid Khan.

Q. The "Khan" is the surname? A. Yes, but I am called Farid Khan.

Q. Now when you say that Said Afzal murdered Wasal Khan, can you tell us, was there any trial for murder? A. Yes, yes there was a trial.

Q. Was Said Afzal, was he present for the trial? A. Yes.

Q. He was. What was the verdict at the trial? A. Well, Said Afzal was sentenced to five years' imprisonment.

Q. Ah yes. Can you tell us what the charge was? A. Well, Wasal Khan - the charge was for killing Wasal Khan.

10

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- Q. Yes. Were you present in Court for the trial?
A. Yes.
- Q. Yes. Now what exact offence, can you tell my Lord and Jury, was it that Said Afzal was found guilty of? A. It was murder.
- Q. Murder, I see. He got five years for that?
A. Yes, five years.
- Q. I see. So what you are really saying is that there was a verdict of murder in respect of Afzal Khan (Said Afzal?) arrived at by a Court?
A. Correct.
- Q. Can you tell us this, if you were in Court, you have said that the charge was murder - I would like you to clarify that, if you can, - with regard to the verdict, was it murder or manslaughter or some kind of assault?
- INTERPRETER: And what is the rest?
- Q. Some kind of assault. A. Murder, sir, murder.
- Q. I see. As far as Said Afzal is concerned, have you met him since he came to Hong Kong?
A. Well, I was living far distant away from him, sir. Well, I am living at 150 Waterloo Road, Kowloon.
- Q. Yes. Possibly without unnecessary detail, if you could answer the question? - Have you met him since he came here? A. Well, I met him on the road, sir. I met him on the road accidentally, passing by we met each other.
- Q. You mean once or a number of times? A. Well, sir, well I can't say exactly for how many times I have seen him, but I have seen him on occasions.
- Q. Dating back to roughly when? I am not asking you the week or the month - approximately when was the first time that you saw him in Hong Kong in terms of months? A. Well, sir, I haven't got this record with me, how many times I met him or I saw him.
- Q. No, I am not asking you for that. Can you remember approximately when you first met him in Hong Kong?

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No.33

Farid Khan
Cross-
Examination.
(Cont.)

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Prosecution
Evidence

No. 33

Farid Khan
Cross-
Examination.
(Cont.)

INTERPRETER: The first time? "When did you first meet him?"

- Q. Yes. A. Yes, I saw him at 119 Lockhard Road when he first came into the Colony.
- Q. When was that, as far as you recall, the time that you met him in Lockhart Road?
A. Well, sir, this is the time he came fresh into this Colony. New.
- Q. Can you give us an approximate date? Would it be six months, a year, 18 months, two years or more? A. I can't say, I can't tell you, I can't answer this question. 10
- Q. You can't say. But according to your recollection it was about the time that he first came here? A. No, I can't tell and I can't remember.
- Q. I see.
Did you give evidence for the Prosecution in that murder case?

INTERPRETER: You mean in India? 20

Q. Yes, in Pakistan.

INTERPRETER: In Pakistan.

A. Yes.

- Q. You did? A. Yes, I was one of the witnesses.
- Q. Were there a lot of witnesses? A. Yes, there were many.
- Q. Now I think your evidence is that the two defendants, they were not present, they were not present at the scene of the alleged stabbing at all? A. No, they were not there at the scene of the attack. 30

MR. MAYNE: Thank you.

NO RE-XN. BY MR. MACDOUGALL (Of P.W.23 - Farid Khan)

(P.W.24 - Abdul Qayum is next witness)

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Prosecution
Evidence

No.33

Farid Khan
Cross-
Examination.
(Cont.)

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MR. MACDOUGALL: My Lord, unfortunately the witness has been called but he is not in attendance. He was here yesterday. I can't understand why he is not present this morning. As I do not propose to call the other two witnesses on the back of the depositions, the indictment, perhaps your Lordship might grant a short adjournment so that we may ascertain whether this witness is here or where he is. He has been fully notified, my Lord, and he was here yesterday. I really can't understand why he is not present today.

MR. MAYNE: I have no objection, my Lord.

COURT: Has he been seen today, do you know, Mr. Macdougall?

MR. MACDOUGALL: No, My Lord, he has not been seen today.

20

COURT: Well, this is most unfortunate; I will adjourn for a short while. If you would be good enough to have enquiries made and to keep me advised as to what the position is?

MR. MACDOUGALL: I shall, my Lord.

10.25 a.m. Court adjourns.

10.37 a.m. Court resumes.

30

MR. MACDOUGALL: I must apologise, my Lord, for the delay, and I thank you for your indulgence, but unfortunately I find two of the Jurors are missing.
(Pause)

My Lord, as there was no time set for returning to Court, I don't think these two gentlemen realise --
(Two Jurors return)

10.40 a.m. Two Jurors enter Court.

COURT: Yes. (Abdul Qayum enters witnessbox)

COURT: I shall not delay matters at this stage, but later I shall require an explanation, sir, for your late arrival this morning. Tell him.

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INTERPRETER does so.

COURT: Very well. Yes, let him be sworn.

(Discussion between witness and Interpreter)

COURT: What is he saying? I must have everything translated, please.

INTERPRETER: My Lord, he is not understanding. I am asking him to follow what I am saying.

COURT: Very well.

INTERPRETER: And he is not understanding my point.

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No. 34

Abdul Qayum
Examination.

NO. 34

ABDUL QAYUM:

P.W.24 - Abdul Qayum - Affirmed in Punjabi

XN. BY MR. MACDOUGALL.

- Q. Your full name is Abdul Qayum (spelt)?
A. Correct.
- Q. And your address is c/o the Kowloon Mosque?
A. Yes.
- Q. You are a watchman? A. Correct, sir.
- Q. On the 12th of February this year, did you attend at the Victoria Public Mortuary with Dilbar Khan? A. Yes.
- Q. To whom did this body belong? A. That was of Said Afzal, my cousin.
- Q. Do you know where Said Afzal came from?
A. He came from Pakistan.
- Q. Which village? A. Haider, from village Haider. (spelt)
- Q. Do you know these two men in the dock here?

20

A. Yes, very well.

Q. Do you know where they come from? A. Also come from Haider.

Q. Now where do you come from? A. Also from Haider, sir.

MR. MACDOUGALL: No further questions, my Lord.

XXN. BY MR. MAYNE (Of P.W.24 - Abdul Qayum)

10 Q. Mr. Qayum, I think you said that you were - correct me if I am wrong - you are a cousin of the deceased, is that right? A. Yes.

Q. And can you tell us when you first saw your cousin, Said Afzal, in Hong Kong? When did you first see him?

INTERPRETER: "When you first saw him?"

Q. Yes. A. Well, sir, I can't give the exact date of his arrival in the Colony, but he came and stayed.

20 Q. Would it be one year or two years or three? A. That is about one year, sir. I reckon that is about one year.

Q. Is that a approximation? You can't say exactly? A. Yes, that is an approximate time I am saying.

Q. It could be more or it could be less? A. Well, nearly a year.

Q. I'm sorry? A. Nearly a year.

Q. Now when your cousin, Said Afzal, came to Hong Kong, did you see him at all or did you see him frequently?

INTERPRETER: "Did you see him...?"

30 Q. .. at all or did you see him frequently? A. (Witness speaks)

INTERPRETER: My Lord, he is making a statement. I have to take time - to take it down.

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No.34

Abdul Qayum Examination. (Cont.)

Cross-Examination.

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Prosecution
Evidence

No. 34

Abdul Qayum
Cross-
Examination.
(Cont.)

- A. When he was out of a job, when he was out of a job he used to pay me a visit two times or sometimes even three times a week.
- Q. I see. A. But when he got a job then he used to come once or twice a month. Once a month, sometime twice a month.
- Q. Yes. What kind of work did he do since he came to Hong Kong? A. Watchman job.
- Q. Watchman, yes. I notice that you gave your address as being c/o Kowloon Mosque? 10
A. Correct.
- Q. What is your actual position regarding the Mosque? Are you caretaker there, or do you live there? What do you actually do there? A. Yes, I stay there.
- Q. Yes, in what capacity? A. Well, sir, there are many other watchmen living there. I am also one of them.
- Q. You are a watchman? A. I am a watchman.
- Q. Is that the only Mohammedan Mosque in Hong Kong or are there others, can you tell us? 20
A. Yes, there are.
- Q. There are others? A. there are other Mosques.
- Q. Yes, I see. Well, is the Kowloon Mosque - is it used for prayer by a large number of the Moslem population in Hong Kong?
A. Yes.
- Q. Of the Moslem population in Hong Kong, I suppose a great many of these would be of the Pakistani population? A great many of these would be practising Moslems? 30
A. Correct.
- Q. I suppose a great many of these practising Moslems in Hong Kong would go along to the Kowloon Mosque? A. Yes, they go there.
- Q. Yes...from what you tell us, Said Afzal, I suppose he must have been at the Mosque quite a lot, since he came here?

A. When he was out of employment he used to go there.

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Q. Yes. Can you give us an idea -- A. Once or twice.

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Q. Well, you have told us I think when he was out of employment that he used to go to the Mosque or stay at the Mosque or visit the Mosque two or three times a week, is that right? A. Correct.

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Abdul Qayum
Cross-
Examination.
(Cont.)

10 Q. In the time that you were -- have known him in Hong Kong, has he been out of work pretty often? A. Said Afzal has another job as well - he used to do two jobs - he was also employed in one of the Chinese Banks as a watchman, and the second job was where he was murdered.

Q. Yes, I see. Now what I really asked you is -- if I can make it clearer - plainer -- Can you say roughly from what period of time he would visit the mosque two or three times a week? A. What period of time - day or night?

20 Q. You see (to Interpreter) he says that it was during the times when he was unemployed. I will try to get at it in another way. For what length of time approximately was he visiting the Mosque two or three times a week? A. Well, when he was out of a job, sir, he used to come every Friday, Sundays, and some other day when he finds time.

30 Q. Well, can we put it this way. Just roughly, could you tell us was he out of work, say, for -- in the time since you came to know him in Hong Kong, that he was in Hong Kong - would you say that he was out of work for one or two or four or six months or more - can you put it roughly that way? A. He was out of a job for nearly four months.

Q. Four months? A. For approximately four to five months - as a matter of fact I don't keep these dates here.

40 Q. Yes, I understand. So I take it he didn't lead any kind of secret life - he didn't live secretly or visit secretly the Mosque? A. No.

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Abdul Qayum
Cross-
Examination.
(Cont.)

Q. And he made no secret, did he, about his places of employment?

INTERPRETER: "He made no..?"

Q. He made no secret about his places of employment? A. No.

Q. So would it be right to suggest that during the time he was here he must have been seen by many Moslem Pakistanis at the Mosque, apart from anywhere else? A. Yes, but why not?

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Q. Yes. .. Yes, thank you.

NO RE-XN. BY MR. MACDOUGALL (Of P.W.24 -
Abdul Qayum)

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MR. MACDOUGALL: There are two further witnesses on the reverse side of the indictment I do not propose to call. My learned friend says that he does not wish them to be tendered. That accordingly is the close of the case for the Prosecution.

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COURT: Very well, step down, sir, please.

....

Yes, Mr. Mayne?

MR. MAYNE: May it please your Lordship, at this stage of the case there is a submission that I wish to make to your Lordship which I think has to be made in the absence of the Jury. With regard to the time estimate I should think half-an-hour or three-quarters of an hour would be ample.

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COURT: Yes. Members of the Jury, I think I must ask you to wait outside, if you would be good enough? You of course may go to the canteen if you so wish.

11.02 a.m. Jury leaves Court.

MR. MAYNE: May it please your Lordship, the submission that I wish to make to your Lordship is made on behalf of the defendants, who of course have to be treated separately, and it is a submission of no case to answer in respect of the particular charge before the Court.

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(Contd.)

10 For the purposes of the present case, my Lord, I think first of all, with regard to what are the ingredients of the offence, it is not necessary to elaborate to your Lordship, but I think for the purposes of this case there is no evidence to suggest that anybody went to the scene for the purpose of committing some felony and in the course of that felony the deceased got killed. I think it is one of these cases where it is a case of pure murder or nothing; and of course your Lordship is familiar with the definition of murder, the ingredients of
20 it are, I think, for the purposes of this case, the intentional killing by one person of another. Of course with regard to - there is one reference in Archbold which I think I should place before your Lordship, though I have no doubt you are very familiar with it. It is "Killing by several persons":

"Killing by several persons in circumstances where it cannot be known...."

COURT: I'm sorry, I can't hear you.

30 MR. MAYNE: (reading)
"Killing by several persons in circumstances where it cannot be known by whose hand the life was actually extinguished is murder on the part of each of the persons engaged in carrying out the common act of all..."

COURT: Where are you reading from?

MR. MAYNE: My Lord, this is the 34th Edition of Archbold, at Paragraph 2474.

COURT: Yes.

40 MR. MAYNE: So that where it is unknown as to whose hand actually did the killing, provided it is shown to be part of a common act by other persons, these are

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equally guilty as far as this particular offence is concerned, but in cases of this kind there must be evidence to show a common intent, and in this particular case it is my respectful submission that there is no evidence at all of any kind to show common intent. As far as the actual scene of the crime is concerned there are no witnesses at all - the evidence consists, indeed the whole of the evidence I think consists of circumstantial evidence, including of course the various statements made by the two defendants, which can only be regarded as evidence against the one making them - but as I say this is a case of circumstantial evidence. The fact that the defendants, either one of them, may have told lies about their whereabouts, his whereabouts, at the relevant times, is a factor, of course, but it doesn't of itself really go to tying up such a chain of circumstantial evidence as there is here. The expert evidence, far from showing what happened, goes towards showing at least an equal chance, if not more than that, of innocence on the part of either one of the defendants. It may indicate as far as the fingerprints (footprints) are concerned that a person with the same, with a similar brand of shoe was present - was present after a certain blood fall - we don't know when that blood actually fell - but with regard to the bloodstains generally, with regard to the age of them and the grouping of them, there is nothing nearly sufficient, in my respectful submission, from that aspect of the medical evidence, to show a prima facie case against either of the defendants.

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Now with regard to the injury aspect of the case, that does, I think, certainly indicate that some form of fight took place somewhere, in which one or both of the defendants became involved, and looking at it from its worst aspect with regard to the defendants, there may be evidence from the surrounding circumstances which might indicate that one or other or both of them were present at the scene. But my Lord, the wounds on themselves have been very fairly described by the Doctor who gave evidence here as being

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wounds which could well have been obtained in self-defence, by accident, by separating protagonists in a fight, and the wounds of themselves do not show in any way that either of the defendants was either the person who was engaged in any fight with the deceased or was one of the persons who was present or one of the persons who actually attacked him. We don't even know how many persons there were there, and on this aspect it is interesting to note that we have only, I think, one or possibly two shoe marks alleged to be made by the shoes of the deceased, who obviously was there. We don't know how many people were there - if there was a quarrel, if there was a fight, which side the deceased - even if they were there - was on.

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With regard to the circumstantial evidence, and it is in my respectful submission a case of circumstantial evidence, I think the law is very concisely stated in Simonds, Vol.10, Third Edition, at Page 722, para.1387. This, I think, is a very concise statement of the correct law as it is understood with regard to criminal cases. The learned author, in dealing with "Circumstantial evidence", has this to say:

"In murder, as in other criminal cases, a jury may convict on purely circumstantial evidence, but to do this they must be satisfied not only that the circumstances were consistent with the prisoner having committed the act, but also that the facts were such as to be inconsistent with any other rational conclusion than that he was the guilty person."

Now, my Lord, here on the evidence taken as a whole and with special regard to the expert evidence, there are a vast number of perfectly rational conclusions which could be arrived at by the Jury in respect of either of the defendants.

With regard to the test of no case to answer, I think, my Lord, the most recent authority on that is a practice direction by Lord Justice Parker, the Chief Justice, Lord Parker, which is contained in 1962, Weekly Law Reports, at Page 227. (Vol.1) It is a practice direction aimed, I think, especially I think for the guidance of Justices of the Peace, but I think it has equal application in all Courts of Law.

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Lord Parker says this:

"Those of us who sit in the Divisional Court have the distinct impression that justices today are being persuaded all too often to uphold a submission of no case. In the result, this court has had on many occasions to send the case back to the justices for the hearing to be continued with inevitable delay and increased expenditure. Without attempting to lay down any principle of law, we think that as a matter of practice justices should be guided by the following considerations.

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A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence to prove an essential element in the alleged offence;"

Now applying that to the present case, my Lord, it is my respectful submission that there is no evidence to show that there was any common intent by either of the defendants to embark upon a criminal enterprise of any kind on the night on which the deceased died. There is not the slightest evidence of that. It is not one of these cases where there is evidence of one person actually being in a premises and somebody else there as look-out, and so on, and the position is complicated by the fact that with regard to circumstantial evidence, that in most cases where the Crown relies on circumstantial evidence, one has a single defendant, not two defendants, so that by reason of the circumstantial evidence it really is boiled down to the fact that a single person must have been in a certain place and he alone must have done a certain thing. Here we have the -- far from any evidence of common intent, we are left completely in the dark - there is no evidence at all to suggest common intent. There is no evidence at all to show what either of the defendants, if they were in the premises at all, did, indeed the evidence, as I say, points as much to innocence as to guilt.

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The second part of Lord Parker's direction is, to put it in its context, that a submission of no case may be upheld -

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(b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it."

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10 Well, I am not relying upon that aspect of the case here. There is no case of the Prosecution witnesses being discredited. The only, I think-- and it depends on the first point not on the second point - I think it is manifestly clear from the expert evidence, that the evidence, even of presence by either of the defendants in the premises at the time of the alleged attack upon the deceased, is very, very slender.

20 COURT: Is the issue, not whether it is very, very slender, but whether there is evidence which the Jury could reasonably accept?

MR. MAYNE: Yes, I was going to read this passage from the practice direction. It is in the last paragraph, my Lord:

30 "Apart from these two situations a tribunal should not in general be called upon to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If however a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict."

40 In other words, it is an objective test, not a subjective test, and what your Lordship must weigh is, would, on this very ambiguous evidence, tending as I say, to show, looking at it at its very worst, a strong possibility of--assuming the person, the defendants were there at all, and were present - presence in itself of course, doesn't necessarily-- mere presence at the scene doesn't involve one in a crime nor does the failure to protect the person who has been attacked - but looking at the evidence as a

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whole it is my respectful submission that on the evidence as it stands now a reasonable Jury would not be entitled to convict either of the defendants because they simply don't know at all, there is no evidence before them upon which they could say what, if anything, either of the defendants did, even assuming they were present at the time.

So that, my Lord, is the burden of my submission to you now. As I say, it is a submission made in respect of both of the defendants - I don't say it has greater strength or force in respect of either of them - I think if one were to say that - greater strength in respect of the second accused - but I do say it has almost equal strength in respect of the first accused - and therefore I respectfully submit to your Lordship that this is a case where you should say that there is no evidence upon which a reasonable Jury could bring in a verdict, a verdict of murder, carrying with it the essentials of that very crime, the ingredients. Thank you, my Lord.

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COURT: Mr. Mayne, before you sit down, do I understand that the real substance of your submission is that there were two-- there are two accused in this case and that if the Jury were to find that they were present they could still not say what each of them did at the scene?

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MR. MAYNE: That is not the main point, my Lord. As I say, I am trying to approach each case separately. What I am saying is that there is no evidence to show that-- what either one did. There is no evidence to show that either one was committing any or all of the essential ingredients of the offence of murder.

COURT: What you say is, in effect, it is possible that one of them did, but we don't know whether one of them did murder the deceased, we don't know which, and therefore we must acquit both?

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MR. MAYNE: No. Another possibility is that there were other persons there altogether,

and that is backed up by the medical evidence - even if they were there there is nothing to show that they took part in any attack. Undoubtedly they incurred wounds which might or might not have taken place at that place at that time, but as the Doctor said, all of these wounds are consistent with defensive wounds or accidental wounds or--

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10 COURT: He didn't take all of them - that all 49 of them were consistent with being defensive - he said a number of them were.

MR. MAYNE: Possibly we are not referring to the same - that term "defensive wounds" you see the Doctor at one stage called them defensive wounds. I said also a warding-off or a clutching of the knife - with regard to warding-off.

20 COURT: What I saw was, Mr. Mayne, that the Doctor never suggested that all 49 wounds could have been in self-defence.

MR. MAYNE: Oh no, no. I am not suggesting that, my Lord. I am referring to the wounds -

COURT: That is I think what was said.

MR. MAYNE: No, I was referring to the wounds of the accused persons, my Lord, not upon the deceased. It is quite clear.

30 COURT: I beg your pardon?

MR. MAYNE: I was referring to the wounds upon the two deceased, wounds on the two accused, not on the deceased. As I say, each and every one of these was described by the Doctor as potentially defensive, either by way of warding-off, intervening, trying to separate persons and so on.

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So that my Lord, although we have a joint trial we have to look at it separately, and there has to be evidence to go to the Jury, in respect of each one of the defendants - that there is evidence that he has committed each of the ingredients of murder having due regard to the fact that all of the evidence is circumstantial and having regard to the fact - and this is the way that a reasonable Jury must face this task of deciding the case - if the facts are such as to be --

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"In murder, as in other criminal cases, a jury may convict on purely circumstantial evidence, but to do that they must be satisfied not only that the circumstances were consistent with the prisoner having committed the act, but also..."

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and here is the vital part, that a reasonable Jury has - there has to be evidence to - upon which - to go to a reasonable Jury --

".. but also, that the facts were such as to be inconsistent with any other rational conclusion..."

that really is the burden of my submission, my Lord, that is what a Jury must decide before it can convict. On the facts of this case, my Lord, it is my respectful submission that on the evidence as a whole and supported by the medical evidence particularly, and indeed Mr. Grigg's evidence, there are innumerable rational conclusions that a Jury would be entitled to come to other than the one that either individual defendant is proved, is shown, to have committed the essential

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ingredients in the charge of murder - that is what is lacking here, my Lord. As I say, in circumstantial evidence, - many, innumerable rational conclusions, therefore in the absence of proof of the ingredients there is in effect no evidence which in the words of Lord Parker, is such that a reasonable tribunal might convict. I think if they were to convict on this evidence they would essentially be selecting one, merely one of many rational conclusions, and that they are not entitled to do in a case depending on circumstantial evidence. Thank you, my Lord.

COURT: Very well. I don't think I need trouble you, Mr. Macdougall.

...

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I do not wish to say very much. The evidence, no doubt, is somewhat tenuous, but in my view this is not a case where I can properly withdraw, the count from the Jury. It is open to you, Mr. Mayne, to remind the Jury, if you see fit, that they have a right to stop the case if, for example, they came to the conclusion that the accused had not been proved to be present at the scene, and that they wished to hear no more. That is entirely up to you, but in my view there is evidence which a rational Jury could accept and find these accused guilty.

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MR. MAYNE: May it please your Lordship.

COURT: Very well. We will adjourn until 25 to 12.

This time the Jury can be warned when they should return.

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MR. MAYNE: Would your Lordship be good
enough to make it 20 to 12?

COURT: Any objection?

MR. MACDOUGALL: I have no objection at
all, my Lord.

COURT: Very well, yes.

MR. MAYNE: Thank, you, my Lord.

11.25 a.m. Court adjourns.

COUNSEL'S ADDRESS FOR THE PROSECUTIONIn the Supreme
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Kong10.45 a.m. Court resumes.

Both accused present. Appearances as before.
Jurors answer to their names.

MR. MAYNE: May it please your Lordship, it is not
intended to call evidence on behalf of the
defence.

COURT: Yes, Mr. Macdougall.

10 MR. MACDOUGALL: If it please you, my Lord, Mr.
Foreman, Members of the Jury, the time has now
come for me to deliver to you my final address
regarding this case. After I have told you
everything relating to the evidence, my learned
friend counsel for the defence will also address
you. At the conclusion of his address his
Lordship will sum up the facts and the law per-
taining to this case to you and you will then
retire and consider your verdict.

20 Now I propose at the present time to analyse
and review the evidence which has been given in
this trial. Well first of all the body of the
deceased, Said Afsal, was found on the fourth
floor of 36B Kennedy Road. Immediately a full-
scale police investigation swung into action.
Detective Inspector Webster testified that he
interviewed over forty witnesses prior to inter-
viewing the two accused. So that, therefore,
30 no allegation can be made in this case as it has
so often been made in so many criminal trials,
that the police seized upon the first people
whom they thought they could connect with the
crime, and anxious to obtain a quick conviction,
cooked up evidence against them. You have
observed the demeanour of the police witnesses
in the box, and I think it will be fair to say,
and I invite you to find and to arrive at your
conclusion that they were exceedingly fair in
the way in which they gave their evidence, and
40 in fact you may also think that some of them even
bent over backwards to be fair - I would speci-
fically mention Inspector Griggs, the Identifica-
tion expert who testified as to the heel prints.

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Counsel's
Address for the
Prosecution.

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Counsel's
Address for the
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continued.

Now Members of the Jury, he did not attend the scene of the crime at the time when the initial investigations were made. He testified that he visited the scene some ten or twelve days later. Now he was shown the photographs, and he was asked to see if there was any dust on the floor - any dirt. Some of these photographs, it is quite clear that there was dirt or shavings on the floor but not some of them, Members of the Jury. He says there was dirt - you may well think that you cannot see, but he was prepared to admit this, and you must consider that he is in exactly the same position as you are. He is merely looking at the photograph, not from his personal recollection of the scene, because he wasn't there. Anyhow I shall digress for a moment.

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You will recall that Senior Inspector Koh gave evidence relating to the identification aspects at the scene of the crime. On the morning in which the body was discovered he says that he found three heel prints. He did not find any fingerprints. Now it has been foreshadowed in cross-examination that the defence intends to make a great deal of this. It intends to attach tremendous significance to the fact that no fingerprints were found. Well my answer to that is simply this that Inspector Koh was in the witness box. He was available for cross-examination on that point, and he was not cross-examined on that point, so I think you may fairly conclude from that, that the defence acquiesce in the fact that it was reasonable, in view of the circumstances - the type of the wall, distemper of the wall, the rough nature of the doors and all the other objects in the uncomplete flat, that it would be highly unreasonable to expect to find any fingerprints. Nonetheless, Members of the Jury, you may well think that if there had been fingerprints, the police would have only been too willing to find them, but surely this would have accelerated the whole proceedings. This would narrow down the issues tremendously. It would have proved conclusively who was at the flat at a particular time. Now I don't propose to repeat to you the fairness of the police in what may have been your conclusion as to their attitude towards this case. If you really think that they suppressed evidence, that they deliberately failed to look around for fingerprints, well then I feel that you are not given any

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10 inkling of that - of course it may be alleged that
 the police did not know how to conduct their
 investigations. If this was so, why wasn't the
 point mentioned? Are we to suppose that the defence
 forgot to cross-examine Inspector Koh regarding
 fingerprints? Is this likely? The depositions
 are available for the defence well in advance of the
 case. They know who is going to give evidence, and
 they know what evidence is going to be given. If
 20 they feel that fingerprints ought to have been
 found, well then why weren't those questions asked?
 Furthermore, it is perfectly available to the defence
 at any time to call witnesses themselves to give this
 evidence - they can subpoena any witness they want to
 give evidence. Was this done? No, it wasn't done.
 Inspector Koh could have been recalled if the question
 had been forgotten. Was any application made? I
 wasn't asked. No application was made to his Lord-
 ship. The fact remains that no questions were asked
 30 of Inspector Koh regarding fingerprints. Of course
 there were questions asked of the Detective Inspector
 Webster regarding fingerprints. He admits that he
 is not an expert in that particular sphere, but of
 course you may well imagine he may know something of
 it. In any event he was treated as an expert
 because he was cross-examined, and his evidence is
 quite clear - the surfaces were rough - they were
 such that they wouldn't be conducive to the taking
 of fingerprints. Now, Members of the Jury, you
 40 can only go on the evidence before you, and that is
 the evidence. Nonetheless, despite the absence of
 fingerprints, Detective Senior Inspector Koh did
 find three heel prints at the scene. These three
 heel prints were made by way of bloodstains. He
 had these photographed, and they were then compared
 by Inspector Griggs with photographs which he
 instructed to be taken of shoes which were found in
 the possession of both of the accused, shoes which
 Amanat Khan, in his statement admitted he wore on
 the night of the crime, and in fact was the only
 pair of shoes which he had, and also of a pair of
 shoes which is admittedly owned by the 1st accused,
 Mawaz Khan, but in his statement he denies that he
 wore those shoes on that particular night. Members
 of the Jury there were bloodstains found on the
 shoes which he says he was not wearing on that
 night - Group "O" bloodstains, that is to say the
 same blood group as he himself possessed. Wouldn't
 you think that if his story is to be believed that

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there was in fact a brawl between himself and Amanak Khan, and that his hands were slashes in that brawl, if there were bloodstains, they would be on the shoes he wore at the time, not on the shoes which he says he wasn't wearing at the time?

In any event it may also be deemed significant by you that the keel print found - the double heel prints found at the scene conform in pattern to the pattern of the heel of the shoes which he says he wasn't wearing on the night, and it also had Group "O" bloodstains on it. I put it to you the conclusion is irresistible - he must have been wearing those shoes on that night.

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Now Inspector Griggs went to great pains to draw up these photographic comparisons - let's take for a start, Exhibit F.4 - first of all the photograph was taken of that shoe, Exhibit V.7 - V for Victory, 7 - it is compared with the photograph of a heel print found at the scene, and it is also compared with a photograph of a heel print made by this shoe. Now he has pointed out that there are six points of comparison here, and he says in fact that that heel print was made by a shoe which bore that pattern, that is to say, the pattern which appears on this particular shoe, Exhibit V.7. Of course he cannot positively state that that shoe made that print. In order to do this, there would have to be some singular distinguishing feature, such as a piece cut out of the sole - this would indisputably indicate that that print was made by that shoe. You can well imagine that if a hundred similar shoes could have been assembled and you took any one of them and made a heel print, you would not be in a position to know which of the 100 made the print, for this simple reason because they are all the same, but if you cut a piece out of the heel of one of them, and you made a print of that one, then you would be in a position to say definitely that was the shoe which made the print. In any event compare them yourself, Members of the Jury. You are laymen - you have eyes - you see the prints of similarity.

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Look also at F.2 - this also relates to the shoes found in the possession of the 2nd accused and which he admits belonged to him and which are his only pair of shoes, which he also admits he wore on the night of the crime.

10 Examine Exhibit F.3 - compare the prints made in ink and in blood with the heel of the shoe in that case - that is the shoe which was not admitted by the 1st accused to belong to him, and which he denies he was wearing on the night in question, but don't you find it remarkable that that heel print coincides with that heel? And don't you further find it extraordinary that there were bloodstains on this shoe - Group "O" bloodstains, which one would have thought would only have got there had he worn these shoes when he had had the brawl with Amanat Khan, the brawl which took place at approximately the time the murder was committed.

Exhibit F.1 of course refers to the shoes of the deceased, Said Afsal. These, you will observe, are entirely different in pattern, and could not be capable of producing the prints that you have seen in the blood.

20 But there is not only this feature, Members of the Jury. This is only the beginning of the coincidences in this case which you will be invited to believe - not only are the heel prints conforming to the pattern of the shoes owned by the accused found in the scene, but also there were bloodstains - Group "B" bloodstains on one of the shoes owned by the 2nd accused, Group "B" - the same blood group as the deceased. Don't you find it extraordinary that there should be Group "B" bloodstains on that shoe, when, if the story of the two accused is to be believed, they were fighting between themselves. How is Group B on the shoe? How did Group B get on that shoe, unless the wearer of that shoe was at the scene of the crime, made this print, and in fact managed to be contaminated by the blood of the deceased. And it is admitted by the 2nd accused that he wore those shoes that night.

40 Now Members of the Jury, I want you to examine those carefully. You have had them there before you the whole week, and undoubtedly, you have already made an extensive examination, but I do think when you consider your verdicts, you ought to go over those carefully to satisfy yourselves on this particular point.

Now there is not only the shoes. There is the other coincidence - Group B bloodstains found

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on trousers owned by the 2nd accused. Group B bloodstains found on the legs and on the left upper front - how can these possibly be found on the trousers of the 2nd accused, unless he was actually deeply involved in some sort of combat on that particular evening? Are we to suppose that on some prior occasion he inadvertently obtained human Group B bloodstains on his trousers, but nonetheless continued to wear bloodstained trousers out on social occasions? Has this struck you as likely?

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That is not the end of it - there was another coincidence. On the inside back of the jacket owned by the 2nd accused, there is another Group B bloodstain - you may wonder how that got there? Well that is a question of conjecture, but I would submit that in stressing that if indeed the 2nd accused was engaged in the hacking and slashing at the throat of the deceased, as I later will mention to you, that he would have got some Group B bloodstains on his hand, and if he is taking off his jacket, it would be quite conceivable that he would in fact get some on the inside of the jacket. There is also Group O bloodstains on the outside arm and back and inside, on the front which indicates that he was connected with the 1st accused, Mawaz Khan on that evening - he even admits that he even - there was a brawl between the two of them.

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Now we have another coincidence. Each of the three individuals involved had different and distinct blood groups. Mawaz Khan, the 1st accused, Group O; Amanat Khan, the 2nd accused, Group A; the deceased Said Afsal, Group B. Don't you also find it extraordinary that we do find three blood groups - these three blood groups - two of them only were found on the scene - the three blood groups were found altogether. It is highly significant, I suggest to you, that two of these blood groups were found at the scene. It is not surprising, of course that Said Afsal's blood was found here - he has died of shock and haemorrhage, lying in a pool of his own blood. That is not surprising, but it is surprising that if the 1st accused was not present at the scene on that night, that there would be bloodstains conforming to his blood group at the scene. It is possible, perhaps, that someone with Group O committed this crime, but then how is it that he associates himself with the 2nd accused, and the 2nd accused has

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Group B bloodstains on his shoes, on his jacket. Don't you also find it coincidental and extraordinary that there are slash wounds on the hands of the 1st accused, Mawaz Khan, and that there is a cut on the little finger of the 2nd accused, Amanat Khan. Now their story is that they obtained these wounds whilst fighting together, and they give the approximate time of their fight, a time which approximates the time of the murder. Don't you think this is a remarkable coincidence? Of course if indeed they committed the murder, which the crown says they did, and they obtained the slash wounds whilst attacking Said Afsal, they couldn't bring evidence into court to say we have slash wounds for a long time - there is no evidence of this at all - wouldn't you expect someone to come forward to say, 'Oh I saw these two accused several days before and they had cuts on their hands.' This does not appear. In fact you will observe that Dr. Searle, the doctor at the Mandarin Hotel, who attended to the 1st accused, Mawaz Khan the day before the crime, he says he did not notice a cut over the left eye. He does not notice the boil - Mawaz Khan in his statement said he had a boil there, that is how he explained the slash over his forehead. So all this conjecture about two and five days, really comes to nought. It is of no significance whatsoever. The doctor was fair when he said this. But why wouldn't Dr. Searle see the cut? Wouldn't you expect him to see the cut - he was treating him for conjunctivitis of the left eye, and he says he did not see a cut about that eye. Of course he would have seen it, if it had been there, so the conclusion I invite you to come to is there was never a cut there at that time, and that the cut in fact was sustained by the 1st accused when he savagely attacked Said Afsal.

Now the 2nd accused visited Dr. Kong the day after the murder, with a cut on his little left finger. Dr. Kong says that he gave his name as Amanat Khan - he thinks this man in the dock here - he identifies the injury and he says this that the 2nd accused told him, 'I sustained

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this injury whilst cutting up meat'. Well that may be creditable or incredible, depending on your definition of meat, but I suggest that what the 2nd accused meant was table meat, and it is in that light he has told another lie. He told a lie to Dr. Kong, because if the statement is to be believed, the statement he gave the police, he obtained that wound whilst fighting with Mawaz Khan.

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Of course we have another coincidence. You will undoubtedly form the opinion by this time that there is one coincidence upon another in this case. There is a ring found in the scene, Members of the Jury - this ring. Now I ask you all to carefully examine this ring, and to carefully compare it with the photograph taken of the 2nd accused, Amanat Khan, a photograph, mind you, which was taken some two months prior to the murder - the time given by the photographer was November last year - a recent photograph. Here we see quite clearly on the little finger of his left-hand a ring. Then examine the ring and the ring in the photograph and draw your own conclusion. Now don't you find it surprising that 2nd accused was not wearing the ring at the time when the police interviewed him? Detective Inspector Chapman says that he specifically examined his hands. There was no ring on his hand. They were asked at the hotel, were these all their possessions, they said they were, and their possession were carefully examined, but no ring was found. Where did the ring get to? I invite you to find that this ring got to the floor of 36B Kennedy Road, simply because in the flurry of the fight and the slashing blades, the flinging of the hands, some of the blows which were intended for the deceased were in fact collected both by the 1st and 2nd accused, and that it was not surprising that in view of the injury to that very small - little finger of the left hand, that that could have dislodged the ring - that accounts for its presence at the scene.

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Of course cross-examination is foreshadowed that the two accused were

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co-operative, and in fact did not dispose of their clothing. The inference to be drawn there then is that of course they are innocent men. Innocent men would keep bloodstained clothing, otherwise the first thing they would go into would be their clothing and destroy the bloodstained clothing. I have two observations to make about this. Firstly you may realise by this time that neither of these men are exceedingly educated. One, in fact Amanat Khan, is illiterate. He had to get Inspector Qureshi to write out the two statements - one in answer to the charge and one on arrest - so he could not write. Blood grouping is a rather sophisticated piece of knowledge. Would you expect these two men to understand the implications of blood grouping? I suggest to you that what they really thought was this - that blood is blood, and that one man's blood is indistinguishable from another, and if it is their explanation they had a brawl between themselves, of course they would get blood over this and that - blood on their clothing would be explained by the fact they they had this brawl. Now in order to destroy their clothing, to make that necessary, they would have to understand the implications of blood grouping. What I am suggesting is these men wouldn't have this sophisticated piece of knowledge. In addition, you may also have observed that their wardrobe is not what one would call an extensive wardrobe - it is not likely that they would have wanted to throw out clothes. In any event Amanat Khan had one pair of shoes - are we supposed to imagine he would go around bare-footed? If he purchased a brand new pair of shoes, lots of questions would be asked by the police then - 'Where is that pair of shoes? What did you do with the old pair of shoes? Suspicion still falls at any event.

Of course it may be suggested that this was too silly a mistake for anyone to make. I think I have sufficiently explained that, but I would draw your attention to the fact that crimes would never be solved, if criminals did not make mistakes. There would never be any convictions in

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court unless mistakes were made. These men are human just like any other person. They may make mistakes, and that is what in fact they did on this occasion.

I have not finished with the coincidences as yet - two knives were found at the Mandarin Hotel. Admittedly they were found quite some time after the offence. That is not surprising - 27 floors in the Mandarin Hotel - it would take a tremendous amount of investigation to go to every floor, and in any event, how can the police be certain that the knives would in fact be left there by the accused - from the evidence they are not stupid men - they would not leave knives lying around. It may well have been thought by the police they would throw these knives into the harbour which could have been anywhere. In any event you did hear the testimony by Detective Inspector Webster that a search was conducted in the dormitory and the other surroundings. Well, it has also been suggested that these knives were not big enough because the wounds which were found on the body of the deceased - one particular wound is singled out for this long cross-examination, that is the one on the upper left chest of the deceased - now there are several wounds which are 5 inches each in depth, but some of them, particularly the one on this portion of the anatomy - in the stomach region - surely no one is going to suggest that the stomach does not yield when pushed - the tissues would compress. There is an element of sponginess and resillience in the tissues, and if a blow is struck with a tremendous force, surely the tissues are going to collapse and the blade sink in deep, and in fact the flesh would concertina and come out again as the knife is withdrawn, but the wound up here - much emphasis was made of this wound, and the particular wound I am referring to is the one on the chest, because as obviously it is going to be argued the chest is a firmer structure, it would not yield as much, but the doctor has said quite clearly that the wound was

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sustained between the upper ribs, and that there is flesh between those ribs which is capable of resillience, and which does in fact give. He does not find in any way strange that there should be a 5" wound at that particular stage inflicted by a knife which has a blade $3\frac{1}{4}$ inches long.

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10 My Lord, it is also observed that the majority of the wounds on the body were of lesser magnitude than the 5" wound, which I will submit is more consistent with the fact that shorter blade knives were used than long blade knives, because if long blade knives had been used wouldn't you expect to find many deep injuries in many parts of the body?

20 So therefore we have this situation. There are two accused; there are two knives found concealed in the Mandarin Hotel underneath a box. Both accused work at the Mandarin Hotel as security guards.

30 Then again we have the evidence of the Chinese caretaker, Mr. Leung. He says that he passed by at the scene, 36B Kennedy Road, at about 10 o'clock on the evening of the crime. He says he saw a tall, slim man in the eastern garage at about the location of the deck chair. He pointed this out to you. This man did not greet him, and his testimony is that the invariable practice was for the deceased when he was there to greet him. But nothing was said on this occasion. A tall, thin man. Remember we must deal with tallness in relative terms. This is a Chinese giving evidence, and a tall man to a Chinese, I would submit to you, would be 5'11 $\frac{1}{2}$ " - 10 $\frac{1}{2}$ " I'm sorry. Does this not conform with the description of the 1st accused, Mawaz Khan - a tall, thin man, 133 lb., 5'-10 $\frac{1}{2}$ "? Presumably these measurements were taken in his bare feet, but let us assume they were taken in his shoes. That would still make him a tall man by Chinese standards.

40 Not only that, members of the jury, but this also fits in with the reconstruction of the case as I gave it to you in my opening address, that indeed the 1st accused after the killing had been carried out went downstairs to tend to the wounds on

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his hands and then sat in the deck chair waiting for the 2nd accused to come down after he had finished perpetrating these shocking injuries and mutilations on the body of the deceased. That is also borne out by the bloodstains, Group 'O', on the deck chair. Bloodstains which, if you will examine the deck chair carefully, appear principally on the left hand side, that is to say the side of the chair on which the worst wound of the 1st accused would be located. It is his left hand that required the stitching, that is the most severely wounded hand. Surely you would not find it surprising that if a man was sitting in that chair that these drops and drips of blood which you see down the wooden portion of the chair would be found at that particular location.

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Now my learned friend has suggested that you test your agility by sitting in that chair and attempting to rise out of it without touching the sides. Don't bother, members of the jury, because if you wanted to get out of that chair it is not necessary to grasp the side of it with your palm and your fingers. You can get out of it by putting the heel of your hand on the side, if you need to do that. The heel of your hand. Now isn't it sensible that a man who has lacerations on his hand would actually use the heel of his hand? It is not likely that he would aggravate the lacerations which he has by putting weight upon them. Wouldn't that be absurd of him? He would be trying to protect them, he would be trying to protect them, he wouldn't want to aggravate them in any way whatsoever. So, therefore, if indeed it is necessary to use your hands to get out of that chair, it isn't necessary to leave a great big, fat fingerprint, and you will bear in mind also that no cross-examination was directed towards the ability of this chair to take fingerprints. None whatsoever. If this had been an important feature, wouldn't you have expected it to have been brought out when the experts were in the box? I think you may draw your own conclusions from that.

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Now we have the evidence of motive. Now his

Lordship will direct you that in any event it is not at all necessary for the Crown to prove motive. You must concede that it is exceedingly difficult to get into the mind of any individual and understand why they do any particular act. Sometimes it is obvious, the motive is quite apparent. Other occasions there is no apparent reason. This is commonplace in the courts and thus recognised that it is not necessary for the Crown to prove motive, but we will endeavour to satisfy your curiosity in this regard. You will recall Farid Khan who gave evidence this morning. He gave evidence of a fight at a well outside Haider, a village in West Pakistan, from which both of these men in the dock originate. He said that Said Afsal, the deceased, in respect of whom these two men are being tried, knifed to death Wassal Khan. My learned friend quite conveniently brought out in cross-examination before me that Said Afsal was convicted - tried, convicted and sentenced to 5 years imprisonment. Now these two men were in the village at that particular time. Perhaps you may well think that they thought that 5 years imprisonment was scarcely adequate punishment for a man who has knifed another man and they may well have decided to take the law into their own hands and to exact vengeance. Simply because there was a fight at a well doesn't suggest anything, but when, members of the jury, we find in the possession of the 2nd accused this photograph with the words on the reverse side "Wassal Khan, West Pakistan" and what you may well think to be the mummified figure of a man in a coffin-like shape, why would the 2nd accused be carrying this around with him unless it would seem to be of some degree of importance to him, some significance, unless indeed he was pre-occupied with Wassal Khan and his fate? Is there not a very strong connection on top of all the other evidence?

Of course it is going to be suggested that Said Afsal has been in Hong Kong for 12 months, approximately 12 months, why wasn't he killed before? Well, members of the jury, there may be a thousand reasons why in fact he was not killed beforehand. Perhaps opportunity. On this occasion he is in an empty building. What an ideal opportunity to get a man and knife him to death, particularly as

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his screams are hardly likely to be heard. Perhaps this opportunity did not arise on another occasion. Perhaps the two accused themselves were unavailable when he was in the building alone. Perhaps some other incident occurred in Hong Kong which triggered this off. Who knows? But, members of the jury, the fact that this man was killed 12 months after he came to Hong Kong certainly does not signify that these two men could not have done it because they would have done it earlier. You must concede that these are many possibilities and I have endeavoured to give you some of them, and I would submit they are reasonable possibilities.

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I do wish to quote to you, members of the jury, the words of a learned judge in relation to circumstantial evidence, because undoubtedly you are going to hear my learned friend, Counsel for the defence, over and over again: "This is only circumstantial evidence. There are no eye-witnesses. There is nothing to tie them up except this circumstantial evidence". I will read first to you, members of the jury:-

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"It has been said that the evidence against the applicants is circumstantial: so it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by undesigned coincidence, is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial."

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And the learned judge in another case also said :-

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"This is a case of circumstantial evidence. One never knows quite what meaning these words convey to somebody else's mind. Circumstantial evidence is sometimes spoken of in the language of apology,

as if it were some minor or less compelling kind of evidence. Is that so? Circumstantial evidence, that is to say, the evidence of accumulated circumstances all pointing in one direction is contrasted with direct evidence, that is to say, the evidence of an eye-witness. But one cannot forget that an eye-witness may sometimes be mistaken; there may be a mistake about a person; there may be a mistake about an act; there may be inference of grudge or spite. Circumstantial evidence is free from these blemishes. Circumstantial evidence consists of this: that when you look at all the surrounding circumstances you find such a series of undesigned, unexpected coincidences that, as a reasonable person, you find your judgment is compelled to one conclusion.

If the circumstantial evidence is such as to fall short of that standard, if it does not satisfy that test, if it leaves gaps, then it is of no use at all."

Now, members of the jury, you have heard me list this astounding series of coincidences. Don't you feel compelled yourselves, drawn to one inevitable conclusion, that these two men were present at the scene and did in fact murder Said Afsal?

It has also been suggested by the defence in cross-examination that both accused co-operated with the police. Well --

COURT: I'm sorry to interrupt, Mr. Macdougall. Mr. Mayne cannot hear; could you speak up a little?

MR. MACDOUGALL: I'm sorry, my Lord. It was suggested by the defence in cross-examination that both of the accused co-operated to the fullest with the police in giving statements, going to the scene of the alleged fight in Harcourt Road, submitting to medical examinations voluntarily.

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Well, of course, members of the jury, they did have a lot to answer for and innocent people almost invariably give full statements to clear themselves. Undoubtedly both accused felt the necessity to simulate, to pretend innocence if indeed their story was to be believed by the police. They would have to appear to co-operate. If they had refused to tell their story to the police would it not only have heightened the suspicions of the police about them? They had a choice: either to walk the dangerous tightrope of telling a pack of lies to the police in the hope that their apparent co-operation and apparent air of innocence would clear them, or they could refuse to co-operate and make it appear as though they had something to hide. Well I put it to you that they obviously through that the dangerous path of walking the tightrope and telling these lies to the police was the safest and the best. It is the case of a classical dilemma. Neither alternative was pleasant, but the first one seems to be the most logical one.

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Now, members of the jury, I will refer you to the statements made by the two accused. You will undoubtedly have discovered by this time that they embody a remarkable series of contradictions when read in conjunction with one another. I suggest to you what happened in effect was this. Knowing they had slash wounds on their hands incurred in the savage attack upon Said Afsal, they realised they would have to concoct some sort of a story to give some air of likeliness to their activities on that night, so they said: "We will have a fight. We will say we have had a fight between ourselves." They had arranged a basic story, but of course you cannot cover every conceivable possibility when you arrange a story, there must be certain circumstances which can be enquired into and trip you up on your basic story.

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So my submission is this to you, that

they said: "We will say we had a fight, we went to the Ocean Bar, we bought a bottle of beer, we had an argument over it. This is how the slash wounds came about, that one of us brought out a small pocket knife" - mind you, a small pocket knife - "and attacked the other with that." Now, members of the jury, this pocket knife was examined, it was not found to have any bloodstains on it. Of course my learned friend immediately said: "Oh yes, but there were no bloodstains on the two knives found at the Mandarin Hotel." Well my suggestion to you is this. In the case of the two knives, surely they would wash the knives, that is very simple to do, but with a pocket knife which is used in a private attack between the two of them, would there be any need to dispose of any evidence in that regard? There would be no need to dispose of it at all. One would have expected to have found some blood on that knife, but was there any blood? No, members of the jury, none at all.

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The first accused's statement runs along these lines:-

"On my forehead there is a boil, it is not an injury."

The doctors says there was no boil, and indeed there is a cut on his forehead which Dr. Tong said was caused by a sharp, cutting instrument.

"With regard to my hands and these injuries I received these on 10.2.65 at about 21.00 hours when I quarrelled with another friend AMANAT KHAN near the Fire brigade at the old dockyard building. We were both drunk, and I was holding a bottle of beer."

"We were both drunk". And yet we have long statements here giving us an infinite variety of facts. They are replete with details. Are drunken men likely to remember all this? If you are well drunk you are not likely to remember all these facts. You may remember that you had a fight, but you don't remember all this. He then goes on to say:-

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"As a result, I received injuries to my hands. I hit him back with my fist and bottle and I think he received a cut on his finger."

"I hit him back with my fist and bottle". My learned friend very conveniently in cross-examination yesterday elicited from the doctor that in fact there were no other injuries on either of these two accused. None whatsoever. No bruising. Wouldn't you expect that if a hard blow had been delivered, and, mind you, later on this question is clarified, I will refer to it again as I move through it, members of the jury, but it was stated that a hard blow was delivered to the head of the 2nd accused. No bruises found. And wouldn't you think that if he was struck with a bottle there would be some mark on his body? No mark was found, members of the jury.

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"Then we sobered up,"

Well I will leave you to think about that.

"and realised that we had done something wrong, and I told him that I was on sick leave that night and that he was on the night shift so we should settle the matter between ourselves without bringing it to the notice of the No. 1"

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Now, members of the jury, these men admit they received their injuries on this night, so I would again like to draw your attention to the two to five days which was so laboriously brought out in the evidence of Dr. Tong. It means nothing in view of all this because even the two accused admit they received their injuries that night. Later on in the statement the 1st accused says:-

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"At about 11.00 hours on the morning of the 10th February, 1965 I went to see the hotel doctor about the boil on my left forehead".

A boil. You clearly heard Dr. Searle say that there was no boil, he saw no boil on the forehead of the 1st accused, and in fact he treated him for conjunctivitis of the left eye.

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"At about 12.00 hours I went back to my room at the Mandarin Hotel and had my midday meal. After my meal I lay on my bed reading, also in the room sleeping were KHAN BAZ, DILBAR KHAN, ZEB JAMAL KHAN, I remember only these three, they were all asleep. I went asleep, and I stayed in that room till about 18.00 hours when Amanat Khan came to me and ask me to go out for a walk. We left the hotel at about 19.00 hours and boarded a tram at the tram stop at Des Voeux Road Central opposite the Asia Bank."

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Remember that, members of the jury. Boarded a tram to go down, even indicating where the tram was boarded, at Des Voeux Road Central opposite the Asia Bank. Now when you examine the statement of the 2nd accused, he said they walked down the road. Surely they would be in a position to know how they got down there, if indeed they ever did go down there.

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"We travelled third class in the tram, and went in an easterly direction. We got off the tram near the Southern Playground I do not know the exact location. We then walked to the Ocean Bar. Outside the bar was a Chinese fat man."

Detail upon detail, members of the jury.

"We went into the bar, and sat at the second table behind the juke box."

Not the first or the third, but the second.

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"There were many other people in the bar"

You quite clearly heard five members of the Ocean Bar testify on oath in this court that business was very, very slack on that evening.

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"but we were the only two
Pakistani."

Members of the Ocean Bar said there were no Pakistanis or Indians in that bar on that evening and that in fact they had never seen either of these two men before.

"We entered the bar at about 19.30 hours. I do not know how long we stayed there but the bill we finally paid amounted to \$25. This bill was for whisky which both of us drank. Before we left the bar I bought one small bottle of San Miguel beer, and I carried it out of the bar with me."

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Well he went on to say that they walked back to the Mandarin Hotel. They reached the seafront road, crossed the road and walked along the left hand side of the road slowly at a normal speed towards the Mandarin Hotel.

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"I carried the bottle of beer" -

Mawaz Khan that is -

"I carried the bottle of beer which was unopened. We walked along the road, and when we reached opposite the dockyard, and where the Italian Exhibition had been before, Amanat Khan asked me to give him the bottle of beer to drink. I refused. He then tried to take the bottle of beer which I was carrying in my right hand away from me by force. At the same time he took a knife from one of his pockets, and tried to attack me."

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I ask you, members of the jury, does this sound logical? He is trying to take the bottle of beer from the 1st accused and at the same time he is rummaging around in his pockets for a knife - a pocket knife, mind you, a pocket

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knife to use on a friend. Now much more do you think he may have been inclined to use a knife on someone other than a friend?

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"As he attacked me I put up my hands and received injuries to my hands. I attempted to take the knife away from him, and got my fingers cut. I struck him on the right side of his face once with my right fist. The blow I gave him was quite head."

That was the passage I was referring to, members of the jury.

"I tried to hit him with the bottle but I cannot say whether I hit him or not."

Now he doesn't know whether he hit the 2nd accused with the bottle.

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"He was well brunk, and I was drunk. He then started to go away. I went up to him, and told him that even though I had cut my fingers with the knife we had better settle it between ourselves as if the No.1 came to know he had been drinking and fighting he would probably beat us up, and take other actions besides as drinking Wine is forbidden to us."

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Now, members of the jury, you heard the evidence of the four Inspectors - Webster, Mawaz, Chapman and Qureshi. They all visited this scene in Harcourt Road where this alleged fight took place, and in fact they were taken to two different spots by each of the two accused. A thorough search was made of the surroundings but not one sliver of glass was located. "What happened to the bottle of beer"?

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"I threw it away deliberately where we had the fight." He threw away the bottle which he had been fighting for. "Because the bottle got broken when I tried to hit Amanat Khan with it." If he had tried to hit Amanat Khan and doesn't know whether he did or not, how does he know the bottle got broken? "And it hit a wall at that place." How he indicated a wall on the opposite

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side of the carriageway. Amanat Khan in his statement says the bottle dropped to the ground when they were fighting on this side of the carriageway. Of course it had to be on this side as far as he was concerned because you will remember it is important for him that he fell down in the glass and cut his little finger. I would like you to examine the photographs of that cut, members of the jury. What do you think of it? Dr. Tong told us it was caused by a sharp, cutting instrument. What do you think by looking at it? Do you think it was caused by a knife or a piece of glass? Perhaps I can safely leave that with you.

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And of course in his statement Mawaz Khan, in answer to the question, "Have you ever been to 36B, Kennedy Road?" replied, "I have never been to 36B, Kennedy Road."

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He was also asked, "What shoes were you wearing on the evening of the 10th February, 1965?" The answer was, "This pair of black shoes." Now, Members of the Jury, you will remember that the black shoes are the pair of shoes belonging to him which did not have the blood stains on and which did not in fact conform in type and in pattern to those with the blood stains found on them.

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He was then asked, "When did you last wear your other pair of shoes, the brown ones?" He says, "On the 4th of February, 1965." This being the pair of shoes, Members of the Jury, with the blood stains on them and with the heel pattern which conforms in design to the pattern of one of the prints found at the scene.

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Let's examine the statement of the 2nd accused, Amanat Khan. What has he got to say for himself? He says, "On 10th of February, 1965 I went out at 20.00 hours with Mawaz Khan and we went

to Wanchai for a drink. We went to a bar somewhere in Lockhart Road. I do not remember the name of the bar. We had a few drinks together. We left the bar at about 21.00 hours. I bought a bottle of beer ... You'll remember Mawaz Khan said he bought a bottle of beer - they can't both buy the same bottle of beer, Members of the Jury. He says, "I bought a bottle of beer and Mawaz Khan took it with him." What's the normal procedure, Members of the Jury, when you buy a bottle of beer? Do you carry it yourself or do you give it to somebody else to carry it? "We walked along Harcourt Road and when near the Fire Brigade Building we started to have an argument. I wanted my bottle of beer back because I have paid for it," - there is no doubt both of them paid for it - "but Mawaz Khan refused to give it to me." They were friends; they have been drinking throughout the night. "We started to fight and I took out a knife. Mawaz Khan tried to grab the knife back. During these he received injuries on the palms of his hands. The bottle of beer fell on the ground and broke. We both fell on the ground and while we were rolling on the ground my left little finger was injured by a piece of broken glass, because the bottle was already broken." Presumably it could have been broken - that is the case. I think my previous remarks are sufficient in that regard.

Then he goes on to describe the bar. "The bar we went to was on the right hand side of Lockhart Road, going from west to east, and it was on a street corner. We sat down at the end of a row of tables to the right of the entrance. I sat facing the Gents toilet and Mawaz sat with his back to a toilet. Behind his seat was a short wall coming out at right angles from the one running from the door." Now, Inspector Chapman says he has examined Harcourt Road at the time immediately after the murder, and there was in fact only one bar situated on a corner of the southern side of Lockhart Road; and indeed the description which Mawaz Khan gives us in the statement conforms in description only to Ocean Bar. So therefore I can safely conclude, Members of the Jury, when they say they went to Ocean Bar - and you have heard a string of evidence from those employed by the Ocean Bar that none of these men was in fact seen at the bar during

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the night and indeed there were no
Pakistanis nor Indians - there can be
no doubt as to the question of identity.

"Q. When you went out that evening,
how did you go to Wanchai? A. We
walked from the Mandarin along
Connaught Road, Harcourt Road and
into Wanchai."

This is in direct conflict with what
the 1st accused says. He says,

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"We left the hotel at about 19.00
hours and boarded a tram at the tram
stop at Des Voeux Road Central
opposite the Asia Bank. We travelled
third class in the tram, and went
in an easterly direction. We got off
the tram near the Southern Playground
I do not know the exact location."

"Q. What clothes were you wearing that
night? A. I wore black leather shoes,
green and grey socks, dark patterned
trousers....."

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Now, the only shoes, Members of the Jury,
are the black leather shoes. He can scarcely
say the other shoes because he hasn't got the
other shoes. So he is well restricted in
that answer. In any event what emerges in
that is that he wore no other shoes that
night. He continued to mention other clothing.
This clothing does not reveal any blood stain,
but it cannot be expected that he was wearing
the bloodstained clothing.

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I suggest, Members of the Jury, that you
must come to the conclusion that these
statements are just a pack of lies from
beginning to end, and indeed they were made
with each other's co-operation, for the very
purpose of attempting to convey to the
police that they did not commit this murder,
whereas in fact they knew only too well that
they had in fact committed the murder. The
wording of these statements, Members of the
Jury, do you consider to be willing or un-
willing? My learned friend can't have the
best of both worlds: it cannot be suggested
that the police wrung them out of these

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accused; and it cannot be suggested in the same breath that they gave them involuntarily. I put it to you that the only sensible suggestion is that they did in fact give them voluntarily - this is indicated by the manner of the wording and by the inference, and that they gave them voluntarily for the very purpose of trying to convince the police that they were innocent and to appear innocent.

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Now, it has been suggested, in cross-examination, to Detective Inspector Webster that not all the witnesses who were in his original list of witnesses were called. Well, Members of the Jury, I appear for the Prosecution in this case; I determine what evidence is to be given for the Crown, not Detective Inspector Webster. He might give me information which he thinks could be relevant to me. But it is for me to determine what weight, what relevancy it has, what legal implications it has, otherwise we might as well not have lawyers; we might as well let the police do everything! In any event, Members of the Jury, there is ample judicial authority for the statement that the Prosecution is entitled to bring in what evidence he chooses in support of the case with one qualification, that if he does have in his possession any material evidence which could assist the Defence then he is bound to convey and communicate that evidence to the Defence. Well, Members of the Jury, I don't think for one minute my learned friend would suggest that I have deprived him of, or I have refrained from communicating to him, any evidence which is material to the Defence. If that is so I certainly want to hear it; but I don't think so, and indeed, Members of the Jury, if my learned friend thought this was the case why were not these witnesses called by the Defence? The Defence are perfectly entitled to subpoena any of them if they so wish. Was there any application made to his Lordship to have them produced before you? - no application made before me. So that you can safely come to the conclusion that these witnesses could add nothing to the Prosecution's case, nor could they in any way assist the Defence.

It was also suggested in cross-examination that the police took these statements from the two accused with indecent haste; at the same time it was suggested that the statements took an inordinate length of time. Now, the Defence can't have it both ways. Are we going too fast or too slow? Which is it? If the two accused are invited back to the station for the purpose of further inquiries what would you expect them to do? Sit around in

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the station? The police haven't got time to wait, assuming a crime has been committed, and they are anxious to get things moving as soon as possible. In addition, if the two accused had been kept waiting we would have heard the remark that the police have them waiting before taking the statement. So you can see, Members of the Jury, that no matter what the police do they can be criticised by anyone so minded. But I think as a reasonable individual you will note that these investigations were carried out with the utmost propriety. 10

I don't propose to tie you down by going through, even briefly, all these points again. I think the points have been made. I have endeavoured to sum up all the evidence which has been adduced before you, but to err being human there may be some points I have not addressed you on. But the course I can only guess that I have put before you what I consider to be the important aspects of this case. There are many other aspects that I can talk about for days, but of necessity I must confine myself to the essentials of the case. 20

Now, my address comes first. Of course my learned friend has the advantage of hearing what I have to say. He may comment upon it: he may indeed raise other points which I cannot foresee. I cannot make any observation about them, but his Lordship will address you subsequently, and if there is anything, any extreme difference between what I say and what my Lord says, perhaps he may think fit to comment upon it to you, because he is the judge and it is his function to see that justice and fairness is done. 30

Now, if you do have any doubt about anything you are perfectly entitled to ask his Lordship whether those doubts be on the law or on the facts. And if following your deliberations you find that you cannot arrive at any decision on a particular point and it worries you, you may return to the Court and ask his Lordship for his guidance and advice which he will give you within the framework of the evidence which has been adduced. 40

COURT: Would you like to break off now or would you like to finish it, Mr. Macdougall?

MR. MACDOUGALL: I should only take another two or three minutes at the very outside, my Lord.

So Members of the Jury, I think I have covered everything that could conceivably be covered which is relevant and important to this case. And it only remains for me at this stage to thank you for your attendance and attention. 50

COURT: Adjourned to 2.30.

1.00 p.m. Court adjourns

2.30 p.m. Court resumes.

2 accused present. Appearances as before. Jurors answer to their names.

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COURT: Yes, Mr. Mayne?

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MR. MAYNE: May it please your Lordship.

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Members of the Jury, this case is reaching its conclusion now, and as my learned friend has told you, the time will come soon now when you will have to reach a decision about the case. I imagine this will probably be a very difficult decision for you to make and certainly it is a vitally important decision - probably one of the most important decisions that you will be called upon to make during your life time.

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These serious cases, these serious criminal cases, they impose a great strain, tension and ordeal upon all the persons who are connected with them, possibly most of all upon the jury, but also upon the learned trial judge and also upon the counsel who represent the interests of their clients who are before the court. However, Members of the Jury, we all have to overcome as best we can this ordeal, and place you in a position whereby you will be in the best possible position to come to the correct verdict in a case.

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As you have heard from my learned friend, your particular function here is to decide what actually happened. It is usually put this way. You are the judges of the facts. Well that short word "facts" really means this, that you listen to the witnesses, you hear the evidence, you decide what evidence you are going to accept. There may be some evidence that you are not sure about and eventually you'll decide from the evidence that you have heard in the case. You'll remember that you are concerned only with the evidence in the case, not with anything that may have come to your knowledge other than in the case. You'll decide from the evidence what happened if you can do so. Of course, the other alternative may be that having heard all of the evidence in the case, you may be in such a

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position that you don't know what happened, and of course if that happens you would have to consider - if you don't know what happened - what your decision should be in the case.

The reason why cases of this serious kind are heard by jurors, laymen, as far as the law is concerned is this: it is felt under British justice that with regard to important cases of this kind, deciding the facts and deciding what happened is probably best decided by a jury drawn from different sections of the community. You all come here with your different experience of life, with your different jobs probably, different ways of living, and above all what you are asked to bring here and to use in coming to your decision is your common sense. It is felt, I think, that laymen, without the distractions of law and legal implications, if they use their common sense, then they are the best judges. And I should say that is why you are here. So I do ask you in arriving at your decision in this case to use your common sense. In other words, I am sure, looking at your experience as men and women of the world, that you will not be overawed in any way by, say, the architecture of the court, by the unfamiliar clothing, and by some of the phrasology that we used in courts. You'll get down to the bottom of the case and you wouldn't be distracted from using your common sense. If you were distracted from using your common sense then you would be failing in doing what you are here to do.

There are, I think, a number of things which I think I should ask you to guard against in arriving at your decision. You have heard the medical evidence about the injuries upon the deceased, and indeed you have seen these photographs showing the terrible injuries that he received. It is quite obvious this unfortunate man met a terrible death, probably a painful death, but there it is. You will not, Members of

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the Jury, by reason of that feel in any way,
 "Well, some one has to suffer because of this;
 this murderer can't go on unpunished." But
 this is the fact that you must put out of your
 minds altogether, because you must approach
 this case on that basis and on that basis along,
 taking the 1st accused first and taking the
 evidence against him as it has been proved
 to your satisfaction - I shall be talking about
 the standard of proof later - that he is
 guilty. If your state of mind is less than a
 feeling that it has been proved to the requisite
 satisfaction - that is the only matter for you
 to determine - if you feel it has been proved
 then of course there will be a verdict of guilty -
 but any state of mind less than that you must cut
 out extraneous matters altogether, including the
 very sad death of the deceased, and you must
 acquit the 1st accused in just the same way as you
 must approach the case against the 2nd accused
 and look at the evidence against him. If it is
 proved that he is guilty you must find him guilty,
 but if there is anything less than that proof then
 the verdict must be an acquittal.

Equally I must ask you to bear in mind that
 although this is a joint trial, you have got two
 separate human beings to try, so you must examine
 the case to see if it shows guilt or innocence
 quite separately in respect of each of them. They
 have been jointly tried, but that doesn't mean in
 any way that the verdict should be that they should
 be both convicted, or both acquitted. You are
 quite entitled to view the evidence, to convict one,
 acquit the other or vice versa, or acquit both.
 The question, as I say, is simply this: look at
 each defendant separately as far as the evidence is
 concerned and decide what admissible evidence
 against the particular defendant has actually been
 proved. So I do emphasize to you, Members of the
 Jury, that this is not a case of Darby and Joan.
 You have got two human beings before you whose
 innocence is presumed. Before you can convict
 them as against each one, there must be that degree
 of evidence which must prove the case, which I will
 mention to you in a few minutes' time.

There is another thing which I think you should
 guard against. The defendants in this case have not

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given evidence, and of course you don't know why they did not give evidence. Now, under our system of law an accused person is in no way under a duty to give evidence in a case. It is always, throughout a case of this kind, incumbent upon the prosecution to prove the guilt; it never falls on an accused person to establish his innocence. It is not for me to prove that he did not do the thing, that he probably did not do it, or to explain anything less likely. He is quite entitled not to give evidence. That is one of his rights under our law. So that you will not, by reason of the lack of evidence on behalf of the Defence, come to any false conclusion about that matter, although the fact that the accused persons have decided not to give or call evidence is - to put it quite fairly - a factor which you can take into account for what it is worth. But they don't have to, they didn't, they don't have to. We don't know - you don't know - why they decided not to give evidence. It is a matter for conjecture. It could range from any number of reasons as indeed in the rest of the case here there are many matters open to conjecture, such as this matter of failure to give evidence, open to conjecture. It might stem for instance, from a fear of a particular defendant incriminating himself; it might stem from a fear of a particular defendant incriminating another; it might even stem from a fear of incriminating some other persons who are not in this Court at all.

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It has been suggested to you that there can be motives from this area in Pakistan of vengeance, and so on. It is just one of the many factors which may or may not explain why a defendant from this area might decide not to give evidence: the implication of another person, if the Crown is correct on this question of vengeance, might result in drastic results.

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Now, with regard to the law in the case we all take our law - we have to take our law from his Lordship. So whereas I will point out to you certain aspects of the law which I consider to be correct and which applies to this case, you must understand that at all times anything I have to say concerning it is subject to correction by

his Lordship when he comes to sum up the case to you after I have completed my address.

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10 Like my learned friend, I should like to thank you for the very great attention you have given to the evidence in this case. It is quite clear that you have been following the case with the closeness that the case warrants and that you have been keeping up with the case all through. I would ask you, Members of the Jury, to be kind enough to listen to the factors which I would like to draw to your attention, because although I may have to be a bit longer than my learned friend in closing the case, you will note that my learned friend has had two opportunities of addressing you. Under our particular law in a case of this kind the only opportunity for the Defence to put the essence of their case before you comes at this time. In other words, this is my first and 20 last opportunity to address you on the case itself - not that I make any complaint about that, but that is simply the position. But it does necessitate possibly going into the case a little bit more fully than my learned friend did in his actual closing.

30 Members of the Jury, of course I don't think you have been told very explicitly as yet what this offence of murder consists of, as in the context of the evidence of this case. I think it would help if at this stage I indicated to you what in my view murder consists of here. Now, taking away the rather ancient words relating to the definition of murder by Lord Coke happened very many years ago indeed, I think for the purposes of this case it will be right to say that murder consists in the intentional killing of another person. It is not necessary that the killing should be premeditated; it is not necessary that a definite motive should be established; but there has to be proof that an accused person killed the deceased. 40 In other words, he, or together with another person, acting with the common intent to kill the deceased incurred injuries upon the deceased which caused the deceased to die. That is of some little importance here because, of course, at the time of any murder the person alleged to have been murdered must be alive. That might seem elementary to you, but it has

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a bearing on the medical evidence in this case, which I shall refer to you later. Of course, I just mention this very briefly now. Do you remember the doctor told you in his evidence that he couldn't tell you with all the scientific methods at his disposal whether the injuries on the body other than the neck injuries were incurred before or after death? I will be dealing in greater detail with the medical evidence later. But you'll remember that the doctor said that not only could he not say what blood stains came before other blood stains what injuries came before other injuries, but he could not even say whether mutilations, if you like, the injuries all over the body came before death. So that if any person were to cause an injury upon the person who is already dead that would not be murder.

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Now, there is another aspect of this law relating to murder, which I think it is proper to bring to your attention. It is this aspect where there is an alleged murder by more than one person. I think in simple language it can be summed up this way. Where a number of persons - two or more persons - engage in a plan to cause grievous bodily harm or to kill somebody else, then it doesn't really matter, provided there is this crime, this mental concert on the part of the parties, it doesn't matter who actually strikes the fatal wound, provided the killing is done by a member of the party that has planned to cause the deceased either grievous bodily harm or death, then it doesn't really matter as to which one of those persons struck the fatal blow: they are all just as guilty as the person who struck the fatal blow. But there is this enormous "but" about it. It has to be established to you, it has to be proved on the evidence that there is this common plan, this common design; there has to be evidence upon which you can say definitely there was this common design and you have to examine this case to see if there is any such evidence in the case. I respectfully submit there is not one bit. There is not the slightest evidence of

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preparation; there is not the slightest evidence of either of the defendants being seen even in the vicinity of this area where the deceased died; there is not the slightest evidence as to what either of them did or didn't do. Mark you, this is important again, Members of the Jury. The mere presence at a killing does not make you a co-murderer, I should say; equally a failure to rescue a person about to be killed by somebody else doesn't make you a co-murderer. Before you can be a murderer or a co-murderer you must either kill the person yourself or be a party to a common design or plan to kill the murderer - to kill the deceased which plan of course is successful. I shall be coming back to this again.

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Remember the evidence? You don't know how many people were in the premises in which the body of the deceased was found. You don't know how many people were there on the 10th of February. On the medical evidence you don't know even how many weapons were used. All you know is that there has been a struggle between one group and another group. There are of course the footprints which are shown in the exhibits F1 to F4, which show that there were at some time three persons in the room in which the deceased died, but there could have been any number more as is shown by the fact that there was only one, or possibly two footprints, of the deceased himself. Nobody is going to suggest that he flew to the place where his body was found. He walked there obviously or ran there. So that he covered his ground presumably - he walked about the places where he worked. So that the mere fact that there have been placed before you merely three footprints does not in any way establish that there weren't other persons present. You don't know!

There are no witnesses who can tell you, either from eyesight or scientifically; to put it bluntly, members of the Jury, you haven't got a clue what happened in there that night. The deceased, for all we know, may have been a member of a group that attacked another group. These are all possibilities - which you don't know - and you are not here to do guesswork. Before you can use circumstantial evidence it must tie together, as I will explain to you at a later stage. However that, I think, is all that I wish to say to you on the subject of what really consists

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of the crime of murder as it applies to the evidence in this case, and particularly murder by two or more persons. I do emphasize, and I don't want to repeat myself too much - mere presence is not enough. Mere failure to rescue is not enough. There must be either a killing by a defendant before you can find him guilty or you must find a plan to cause grievous bodily harm or to kill with another person or persons who inflicted the fatal injury.

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Now let us turn then to the onus and the standard of proof. Again, this is a matter of law, and if there is anything incorrect in what I tell you, His Lordship will direct you at a later time.

Now in civil cases, say disputes about money between individuals, the onus is of course upon the party seeking to prove something, to do so, but in civil cases all he has to do is to show that on the balance of probabilities he is correct. Now the thing is quite different, completely different, when it comes to the criminal law. It is not sufficient to show that an accused person is a person against whom there may be justifiable suspicions. It is not sufficient to show that he might or could have committed the crime. And here is a thing that I would like you to remember very much - it is not sufficient to indicate that he may be more likely than some other persons, before the Court or not, to have committed the crime. It is not sufficient to prove that in all probability he committed the crime. It is not sufficient to prove that he very likely committed the crime. All these things are insufficient. And the manner of directing Juries to explain this enormous onus and standard of proof on the Prosecution, is a matter which has undergone change in fairly recent years. It will be for His Lordship to explain this matter to you, what he thinks is the clearest form. In the old days, I can tell you that this standard of proof was very often referred to as "proof beyond reasonable doubt", but I think many lawyers and many Judges felt that that was not a

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satisfactory way of explaining this high, this extraordinarily high standard of proof, because once you mention "reasonable doubt" then you have to try to describe what a reasonable doubt is, and the usual formula for explaining a reasonable doubt in the old days was, "Well, it is a doubt for which there is a reason - a reason of sufficient force and importance that would cause you to do something or to decide something in any important matter concerning your own business lives or concerning your own private lives." That was the usual way of describing "reasonable doubt", and of course it was not at all satisfactory because simply looking at it this way, members of the Jury, how often have you members of the Jury in the face of information in your business affairs and in your private lives decided that a certain thing is so, or decide to do a certain thing on the basis that certain things had happened - how often have you found out afterwards that you make a mistake? Well, this is one time, members of the Jury, when you cannot afford to make a mistake, and it is for that reason that the Courts, I think, have decided to change this formula because the British criminal law is not there, it is not here for the purpose of allowing any possibility of mistakes being made in such a way as to-- that might result in a person not guilty of an offence being found guilty of an offence; because you will appreciate that there are many aspects to the administration of justice, - It is very right and proper and it is necessary for the protection of, the invoking of law and order, that where an offence is committed, if a person is proved to have committed that offence, then he should be found guilty, but that is how law and order is maintained, but there is the other side, upon which I think greater emphasis has always been placed in British justice, and that is this - it is more important - of course the most important thing always is to get the correct answer? if you can - but it is more important that a person who hasn't in fact committed an offence, that he should be acquitted if there is insufficient evidence, and it is more important that no person innocent should be convicted of an offence, that is more important than any other aspect of the administration

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of Justice.

Take your own position, members of the Jury, as citizens of Hong Kong. You will no doubt be anxious to assist the administration by bringing in a proper verdict according to your oath - if you are not satisfied that guilt has been proved - if there is any shadow of a feeling in your minds less than certainty, then you should acquit. You yourselves, some day, those whom you best love, might be in the dock. How would you feel - how would they feel - if innocent, they were to be convicted of an offence? That is the most dreadful prospect, I think, that can be imagined, and it is one that is to be avoided at all costs, and I think, it is for that reason I think that in modern times Judges, in describing the standard and onus of proof tend not to use the words "reasonable doubt" because, as I say, it is not satisfactory and we can't afford to make mistakes in these cases. You may possibly be able to afford the odd mistake in your own affairs, but in matters of this kind there can be no mistake, no possibility of a mistake, and it is for that reason in recent times -- my Lord, I am reading from Archbold, 35th Edition at Page 200. There the learned author of Archbold, which is one of the more or less, as you might say, Bibles of criminal law that we all rely upon - with reference to the decisions and summing-ups in various cases, and the decisions of the Court of Appeal - down towards the foot of the page, the second last paragraph - this is what the learned author says:

"It is better that a summing-up should avoid the use of the term 'reasonable doubt' and direct the jury that, before they convict, they must be satisfied by the evidence so that they can feel sure that the prosecution have established the guilt of the prisoner."

I think that is worth having another look at - "the jury must be satisfied". Now look at your Oxford Dictionary if you like and you can get it from the Library - "satisfied" means

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"certain", "sure".

".. satisfied by the evidence so that they can feel sure.."

10 The whole context means - you must be certain to that degree before you can convict any person of any crime. So I would, with respect, submit, subject to anything that my Lord directs you on this question of standard of proof, that unless you are sure or certain of guilt of either of the defendants, you must treat them separately, then you must acquit them - anything less than sureness, satisfaction, certainty, will not do. Of course when the learned Judges use that expression they don't envisage a Jury saying, "Well, I am not certain" just out of some frivolous - or if I may use the expression, just cussedness; but it is felt that you must be sure, satisfied or certain to this extent before you can convict any person of any crime.

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30 With regard to this particular crime of course it is a very serious one, which I think makes your decision more important, and there is a case which I think shows how the learned Judges at home feel again about this standard of proof. I am referring now, and I adopt, members of the Jury, an observation by one of our most eminent Judges, I think probably, of this century, Lord Justice Denning. My Lord, this is the case of Bater v. Bater, referred to in 1950 2 A.E.L.R. The report begins at 458 - I am quoting from the beginning of Lord Justice Denning's Judgment, which commences just about a quarter of the way down Page 459. It is noteworthy, members of the Jury, that this judgment was delivered back in 1950 before the Judges had decided on the avoidance of this very ambiguous and unsatisfactory phrase "reasonable doubt". The case of Bater v. Bater was a civil case, but in deciding what should be the standard of proof in this civil case the Court, and especially Lord Denning, applied their minds not only to the standard of proof in civil cases but also to how they felt the standard should be in criminal cases, and this is what Lord Justice Denning has to say. It is a very short passage that I wish to refer you to, members of the Jury, it

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is a long judgment but I am not going to encumber you with all of it. He says, at the outset of his judgment:

"The difference of opinion which has been evoked about the standard of proof in these cases may well turn out to be more a matter of words than anything else. It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case."

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He goes on to say this:

"In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear."

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There is no more enormous crime, I think, members of the Jury, than murder, and this is how this great Judge, sitting in the Court of Appeal in this case of Bater and Bater - that is how he felt about the approach, not merely to the onus of proof, and of course that is always on the Crown, they must prove that, but that is the standard, and I adopt what he says. I think it is probably - I think it is only reasonable that with the enormousness of the case, of the crime, of the offence, the alleged offence, so must there be an abundance of evidence before you can be satisfied; but as I say this was a case which was decided before the getting away from this formula of "reasonable doubt", but it reinforces the ideas that were going through the great Judges minds before that time and I think it clarifies that not merely is the onus of proof upon the Crown but it is their - and especially in cases of this kind, there must be enormous weight of evidence, such as would convince you so that you are satisfied and certain so as to be sure. So that is the burden which lies upon the Crown

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in all cases of this kind, and in this particular case. If your mind is left in any state by the evidence less than that clear certainty, then you must acquit.

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10 Now we have all had the advantage, members
of the Jury, of having Mr. Macdougall represent
the Crown in this particular case. As you have
seen, he has done - in a most able way, could
not be more able, most proper and fair way -
what he said that he was going to do at the
start of this case. In other words he told you
that he was going to adduce before you all the
evidence available which might tend to incriminate
the defendants, and indeed I think he has - I
would like to thank him for being helpful to the
defence in every way, in making available such
witnesses as were available to him, as might
possibly be available to the defence. In his
20 closing speech he did make certain observations
which might cause you to feel that in these cases
there was some aspect of personality involved
between Prosecutor and defendant, not in this case
but generally, but that is not the case. We at
Counsel's table were completely objective and
impersonal about these matters, and our duty is to
bring before you such matters as may assist you in
coming to the right decision. Mr. Macdougall did
express certain views about exhausting or exhaustive
30 nature of the cross-examination, but I am sure he
meant thoroughness because you may be quite sure
that it was not the intention of the defence at any
time to take up your time unnecessarily, although
I know how valuable your time is, you will all
agree, as we all here would agree, that particularly
in a case of this kind that it is better possibly
to be a few minutes longer and get to the right
result than to be a few minutes shorter and
possibly not get to the right result; and I think,
at least I hope that you will have been assisted in
40 arriving at your decision by this exhaustive or
thorough cross-examination which I made of certain
witnesses, because while there was absolutely no -
there would be no effort, and there never is in these
cases, effort to conceal evidence, I think and I
hope as a result of certain questions that I asked,
that you are in a position now to know more about the
case generally than you did know at the end of the
examination-in-chief. Some of these answers may help
you, I think, in deciding the case. The answers may

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tend one way or the other, that is a matter for you, but all of them, all of the questions that evoked these answers were asked for the purpose of clarifying and explaining and stressing evidence that had already been given, and also for the purpose of elucidating other factors which you had not up to that time heard about. In the opening address of my learned friend you may have thought that you were going to get some very exact, clear-sighted evidence from eye-witnesses or possibly a movie film of the whole affair, or at least some television flash-back, because here is how, this is the version of this alleged crime that was put to you, which was put to you and which you were asked to accept as what happened on the night in question. A brief summary can be put this way. The two accused visited the flat of the deceased to seek out the deceased or inveigled him there. Was he inveigled there? Apparently that is where he worked and lived. Both accused unleashed a murderous attack. Has there been any evidence of a murderous attack by either of the defendants? What happened next? The deceased tried to fend off this attack with his hands and there was a frantic struggle. Has anyone told you about this? It would be very helpful, I may say, if somebody could recall if it had happened - but there is no evidence of this at all. There is a further attack upon the deceased, this time on the back. During the fury of the attack; arms were wildly flaying, the first accused got injuries from the second accused, the second accused got injuries from the first accused. Blow by blow! The deceased retreated hurriedly and it was to become apparent that both of the defendants inflicted savage wounds upon the deceased. Have you heard any evidence about this? So that you are asked to come to the conclusion on this account of what happened, that the deceased was not merely murdered by the two defendants, but in that particular way !

Now how does that account tally with the evidence? Apparently, as you will see now, it was not based upon anybody's evidence or testimony, it was just a, with great respect to my learned friend, a theory, which I don't think can possibly be supported, and if it is a theory at all it is merely a theory, one of thousands;

because apparently this was all going to be proved, not by eye-witnesses, after all, who would give you a blow by blow account - it was going to be proved, I take it, from the medical evidence and the footprints and the injuries on the defendants themselves. Turning to the medical evidence first. You heard first of all that the time of death was 10 o'clock. Then it was sometime between 9 and 12, and then by adding a few quarters of an hour, it gradually went up to some time within a five-hour period. With regard to the injuries on the deceased, the Doctor, with all the science at his disposal, could not say what injuries came first, what injuries came second, what injuries, indeed, were caused before death or after death. With regard to the bloodgroups that were going to apparently not only identify the defendants but identify them doing particular acts at particular times - what do we find? There were only two blood groups found at the scene - and with the exception of the blood found underneath the body of the deceased, all of the blood was dry. The blood found underneath - the blood, I'm sorry, the blood found underneath the body of the deceased was of his own group; but when you come to identifying a person by a bloodgroup, really how far does it get you? We have heard that the first defendant belonged to Group O - and taking the figures in the United Kingdom and Hong Kong that we heard about - Group O is roughly two-fifths of the population. So if Group O stains were found elsewhere in the building, or outside the building, or on any clothing, shoes or anything else, it doesn't in any way prove that that blood was the blood of the deceased. If it proves anything it indicates that it belonged to the same bloodgroup as two-fifths of the population - I won't go into mathematics here because my mathematics are very bad - how many are there of you here - 7 - roughly about 3 of you are Group O, in all likelihood.

With regard to the second accused he apparently is Group A. Now in the United Kingdom Group A is 42%, Hong Kong 26% odd, and in India 26% odd - we don't know about Pakistan - but on these figures - and the Doctor, who as my learned friend said, gave his evidence fairly, as one expects witnesses to give their evidence in criminal cases, they almost invariably do - he agreed that it was fair to assume that there were a great number of Group A persons in

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Hong Kong. These figures would suggest that in all likelihood that -- something over 25%. With regard to Group B there is the interesting feature that in India, the nearest territory to Pakistan, figures there for Group B are 37.7%, nearly 40%, that is about two-fifths. That is all the bloodstains showed, that where there are bloodstains a person belonging to one or other of these large groups lost blood. With regard to the actual bloodstains around the premises, you can't, it is not a matter of being entitled to, you just can't, from the medical evidence, envisage or decide upon the course of movement of the persons who may have been engaged in this quarrel, because the Doctor says quite properly and frankly that he can't say with regard to any of the dried blood what age it is - which of the bloodstains come before later ones and so on - all of them apparently could be two months and over old. And here is a thing that apparently has been overlooked - it is no question of concealment at all - one would have imagined that on this construction site there might have been possibly evidence - if it had been sought - to show what blood, if any, was there or not there on the 8th of February, the 9th of February, the 1st of February. There is not a word about that. So any one of the bloodstains or any combination of the bloodstains, any group of the bloodstains, could well have been caused way back before the 10th February.

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4th May 1965 at 3.35 p.m.

This is one of the many matters that you just don't know about. I am not suggesting there is any flaw, any mistake in the prosecution case - it may be there was no such evidence available - it is just one of those things that you don't know about - not a thing in the evidence of this case - you don't know how long any particular bloodstain existed - you don't know how long it was there for - you are not entitled to say it must all have occurred the same night as the deceased was killed - you don't know. There might have been a number of fights that same day or previous days - just because there was no evidence on that, you are not entitled to say that it did not happen, and on the medical evidence, I repeat, apart from

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saying that there is quite a lot of blood around - it may have occurred the same time - different times - any time up to about two months period. You don't know. You cannot know how many persons were in the building - what they were doing there, if they were fighting which side they were on - what weapons were used. You are left in a complete state of lack of knowledge about all of these matters. Indeed, you are not even told that the deceased was on duty on the 10th or on the 9th. You have been told that this was a building under construction. Apparently the deceased was the watchman, which I suppose would suggest that the premises were, if not empty at night, comparatively empty at night, and anything might have happened in those days, on the 10th - between the 10th prior to night time - anything might have happened on the previous days. You are not entitled to assume anything, least of all you are entitled to assume that the bloodstains are the bloodstains of any particular individual or that they fell at any particular time or adhered to any object or piece of clothing at any particular time. You cannot guess about these various things, Members of the Jury.

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With regard to circumstantial evidence, in this case, which is a case of circumstantial evidence, the law, again subject to correction by his Lordship, is this - I am quoting now, my Lord, from Simonds, Volume 10, 3rd Edition page 722, paragraph 1387, which I adopt. Now there is a lot of law relating to circumstantial evidence, to its weight and so on, I think to be quite clear about the matter, it has been suggested by certain judges that in many cases, circumstantial evidence may be the most reliable, because if you got evidence from a witness, there is possibility of human error. Circumstantial evidence may lack that possibility of human error, but there is this aspect about it, which applies to every case, including this case - there are no eye witnesses here - the case for the prosecution has to be on the circumstances and they say that there were a series of coincidences coupled with injuries on the defendants and statements made by the separate defendants which may or may not be true, which I think was suggested to you as being untrue, so that this is a case of circumstantial evidence.

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Now this is what the learned author
Simonds says about circumstantial evidence.
He says :-

"In murder, as in other criminal cases,
a jury may convict on purely
circumstantial evidence, but to do
this they must be satisfied"

again the word "Satisfied" - look at your
Oxford Dictionary -

"not only that the circumstances were
consistent with the prisoner having
committed the act, but also"

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this is the vital part,

"that the facts were such as to be
inconsistent with any other rational
conclusion than that he was the
guilty person".

So coincidences, suspicions, may cause
in one's mind a feeling that a certain thing
is likely, but in a case of circumstantial
evidence, that is not enough. You may - you
would be entitled to, on certain types of
circumstantial evidence convict but not in
any case where the circumstances were
consistent - where the facts were such -
I am sorry I broke my line of thought there -
you would on purely circumstantial evidence
of the case be entitled to convict on
circumstantial evidence, but you would have
to be satisfied, not only that the
circumstances were consistent with the prisoner
having committed the act, but should also have
to decide, be certain that - also that the
facts were such as to be inconsistent with any
other rational conclusion than that he was the
guilty person. Think about that in relation
to the present case, Members of the Jury, in
the light of the evidence very fairly given by
Dr. Tong and by Mr. Griggs.

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Dr. Tong tells you that after his
thorough examination of the deceased, after
his thorough examination of the two defendants,
in effect he cannot tell you what happened.

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Take the injuries on each of the defendants. They could, in the doctor's view, have been received in self-defence, in warding off an attack upon the individual, and indeed he went so far as to say, in both cases the injuries could from the medical view point, have been received in defence of the deceased. He does not know how many people were there - how many weapons there were. Do those facts of themselves not show you how many different circumstances could have happened - if you were to count them, I think you would require a computer, I imagine, to gather together the number of possible rational circumstances that could have happened on that particular night, even assuming the defendants were present there before or at the time or after the time. And remember, that the only evidence to show that they were there at all, are these footprints, which were found on certain bloodstains. We don't know when these bloodstains were made - we cannot jump to the conclusion that they were made on the night of the 10th, at the time of this attack, because they could well have been made earlier that day or indeed two months back. It is not, of course, admitted in any way that the footprint evidence shows that the defendants were there at all, but even if you were to find that they were there, on the evidence you cannot say when they were there - you can merely say they were there, if you decide they were there, after certain blood had fallen at some time, two months prior to the death of the deceased. And jurors, another matter about which you have been left very much in the dark, and I would purport that it may possibly help you, of course it may not, but the position is you are in the dark, and nobody can take you out of it now.

The evidence with relation to the shoe prints on the premises - that evidence, and this applies to both of the defendants - did not at all show that the prints were made by the particular shoes of the defendants. Mr. Griggs very properly told you himself, all he could say was that certain marks showed that prints had been made by shoes of similar type or brand. Again remember that I have said you don't know whether these prints were made on blood that was there after the deceased died, before the deceased died or two months before he died, but this is not an identification of a particular shoe

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of either of the defendants. This is just an identification of a brand, but I would have thought that we might have known this much, anyhow, in relation to that one of its brands that had its name on it, as to where this kind of shoe was made - if made in Hong Kong what the production rate is like - how many of that kind of shoe are likely to be in the Colony. We are left completely in the dark about that, but there is one significant thing about that particular shoe that I have in mind - Biltrite - you will remember that at the back of each shoe there was a metal strengthener, if I may call that, with nails on to strengthen it, to hold them on. You will see it in the photographs. There is definite evidence that there was sufficient pressure on the heel to cause an imprint of the heel, but there is a complete absence of any sign of that distinctive mark that can be accounted for in many different ways, but is it to be ignored? There was pressure on the heel sufficient to show a lot of the features of these heels but not one indication of the one distinct feature that might belong to the accused person concerned. Now if the shoe isn't made in Hong Kong, I am sure it comes through their agents - How many? When? What size? You don't know. I don't know.

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The same applies with possibly less force to the other shoe. Could it not have been identified as being one of a particular brand, and some idea given to you as to how common that type of shoe was in Hong Kong? You are left in this position, Members of the Jury - I don't know whether any of you are wearing either of these types of shoes, but for all you know the rest of the community may be - that is an aspect that - there is no question of concealment - but you are left without knowledge of this very important matter. You are asked to identify a certain person by a certain shoe by a certain heel. You have not got one clue as to how many similar shoes or heels there are in Hong Kong. How can you identify that person that way?

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I was talking about the various complications that might have occurred up there that night - the number of persons that might have been present,

and even assuming the two defendants were present, supposing they were the only ones - as I have told you there is no evidence here to suggest any common design, common purpose, couldn't it just as likely - were there a murder - to have been a murder by one of them - one or the other, possibly with efforts of separation being made by the other - isn't there that possibility? Can you rule it out? The injuries do not rule it out. The number of injuries on the deceased do not rule it out. Had all been made by one person? Had all been made before or after death - but there could have been a struggle - we don't know whether the deceased was armed or unarmed. There could have been efforts by one or the other, or of any other person present in the separation - these injuries could, as the doctor told you, have been incurred in this, what he called, defensive way of warding off or even could have been struck accidentally by stray blows. Boil it down just to that level - suppose you made up your minds that both of the defendants were there - I don't see how you can - at the relevant time, can you say which of them did what if anything? Can you say what the other one did? There is no evidence to show what either of them did in the way of attacking the deceased. If you don't know it, what must your verdict be?

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As I say, you have got two accused - if it is common design, common purpose and there is definite complete evidence which you accept along these lines, it doesn't matter who delivers the blow, but in the absence of such evidence, it matters all the way. If you cannot say, 'Well I completely rule out the possibility of the 1st accused trying to intervene the fight between the 2nd accused and the deceased,' or if you cannot rule out the possibility of the 2nd trying to intervene, to prevent the 1st and the deceased - are all these quite rational possibilities? If they are rational possibilities, come back to this old testament on circumstantial evidence - in other words if there is a possible rational conclusion other than a guilty person, you must acquit.

I am putting that proposition to you, Members of the Jury, on the basis that you have accepted, I

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think, up to the fact that actually both men were there together, alone with the deceased - even if you got that far - on the night in question, is the case proved? The answer is no.

My learned friend foresaw that I would address you on this question of circumstantial evidence - of course he did, because it is vital to the case, and it would be wrong if you did not know it. You ought to know if fully.

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With regard to Mr. Griggs evidence, my learned friend suggested that he bent over backwards to be fair. I think you have made up your minds about Mr. Griggs that he has an honest, fair mind - I don't think he had to bend in order to tell the truth. I don't think anyone, either from the defence or prosecution, is going to suggest that he told anything other than the truth. He, the expert, told you what exactly the position was, as he saw it - there is no bending in any direction.

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As I say, you have evidence about certain specific footprints, but it is quite clear that whatever happened in the room on the day in question or on the previous days, there must have been footprints left by various persons - there must have been other footprints made by the deceased himself. So merely to say that because you have the footprints on F.1 to F.4 before you - even to suggest that they were the only feet that crossed the various pieces of flooring between the ground floor and the fourth floor and the staircase, it just does not hold water - there could have been any number of persons there.

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Equally with the fingerprints - if there were fingerprints of either of the defendants, that would probably be about the first thing you would have heard about - is it wrong in some way or distorting the picture, unfair to point out to you that there weren't any fingerprints of the defendants there? If it is evidence which may help the prosecution case in some way, the absence is surely relevant here, and here we have

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no expert evidence as to whether the various surfaces in this building have been examined for fingerprints. My learned friend suggested that one could ask Mr. Koh about it. I did endeavour to ask the Officer in charge of the case, and indeed the Officer in charge of the Identification Bureau, but I will ask for his Lordship's help in this matter, because in case there should be any unfair or wrong conclusions based upon the failure to cross-examine Mr. Koh, there is not one word on the depositions to suggest Mr. Koh could have helped one way or the other on this question of fingerprints.

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At any event, it is not for the defence to prove the prosecution case for them. The evidence is relevant whether fingerprints are present or absent. You have got no expert evidence to show that the various surfaces where there could have been fingerprints on, did not in fact have prints on them - fingerprints of other persons. There is the general opinion of Mr. Webster, a very thorough police officer, who is admittedly not an expert on this subject, and no amount of questioning by anyone can make him an expert, he did express the view that certain surfaces were rough - that is as far as you have it. Whether there were fingerprints in this building you don't know. How old were they, if they were there, you don't know. Again this is a matter which might have helped you in deciding who was there - how many people were there and so on, but that is just one other of the matters about which you know not in this case. You are not here to guess. It is not a guessing game - it is not who has done it - it is not Agatha Christie or Perry Como (Mason). This is life and death.

Now what are the coincidences upon which the crown bases its case, which it seeks to say that such a case of circumstantial evidence as it can admit of no other reasonable finding but of the guilt of both the defendants? Well I think the first one is this question of the shoes. I think it might be helpful, before I go through these coincidences in particular, if I might suggest a possible way that you might start looking at this case, because as you see it now, there are a whole

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lot of loose ends, and it is hard to know where to start and where to finish. I may suggest that probably a good way to do it, a practical way would be to decide, first of all, are you satisfied as to be sure that the defendants or either of them were present in the room where the deceased's body was found at the time of his death - just that point first. Were they there at the time? Of course if they were not there at the time that is the end of it. Now what have you got to show, which might tend to show that they were there at the time? Of course we are not concerned whether they were there before - we are not concerned with whether they were there afterwards, nobody can murder a dead man - so let's look at it that way Members of the Jury, for a start. What is there? There is the shoes. Now I think I have said all that I have said with regard to the shoes, and the blood groups, and I don't think I need repeat it, but there is this factor which must be abundantly clear, that even assuming that it has been shown with any proper degree of proof, that the shoe prints found in the premises were the shoe prints of the accused, for instance, even assuming that, when were these prints made? Has that been proved? It hasn't. Obviously they were made after some Group O blood had fallen on that floor, but we are concerned, as far as these prints are concerned, with that particular blood which was either on the shoe or on the floor that time. Mark you, it doesn't necessarily mean that it is the deceased's blood. This Group O blood, it is this common group. Has it been proved by the footprints that the accused persons were up on the fourth floor of these premises at all or anywhere else in the premises. Mark you, there is no sign of them anywhere else. If they were there, when were they there? If you don't know, how can you be sure about anything? That blood may have been lying there for 2 months for all you know. That blood could have come from any one of about two fifths of the population.

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What is the next factor? It is the - I think I would be right to say that my learned friend relied upon the blood grouping, but that doesn't show identity it just shows the group.

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10 Now the next factor, I think, was this question of the ring. Well we don't know whose ring it was, we haven't been told. We have the photograph, of course, which shows that the 2nd defendant was wearing a ring on the small finger, and a point is made by the prosecution that the ring would only fit on to the small finger of the deceased. Is the accused the only man who wears a ring on his small finger? You know for yourselves. That very photograph itself shows that other people do wear rings. I think you are going to have a look at the ring, members of the jury, and please take your time in doing so. As I say, this is not a matter where we should seek to save seconds or minutes. Now we don't know whose ring that was, though undoubtedly you will probably feel that it has a similarity to the ring shown in the photograph. But when did it come to be in the premises, even assuming it is the ring of the 2nd accused? There is no evidence of that. It might have come to be on the premises days, weeks ago further back. It might have come to be there after the deceased died. Does it prove anything, even in conjunction with the other factors?

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30 Now the next factor of coincidence was the knives found at the Mandarin. I think there is a lot that one can say and think about the finding of these knives in the Mandarin. You know at the time that they were found the defendants had been charged with this crime, they had been in custody for a long time. We know that there is quite a large Pakistani community in Hong Kong, even apart from any other persons who might or might not wish to do the defendants harm. Is it a likely place for a murderer to hide a knife that is used for murder, in the very same building that he works in? Remember also that there are apparently over 20 Pakistanis employed in the Mandarin alone, but on the evidence this knife was found on information over two months after the defendants had been taken into custody in a room apparently devoted to some kind of engineering plant in the Mandarin. My learned friend has suggested well - more or less - well the Mandarin might be a good place to hide a thing, there are 27 floors. It is rather a bad place for an employee of the Mandarin as a hiding place.

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Have you considered this factor though? Wherever this room is where this engineering plant is, is this room never cleaned? Is the engine never attended to? Is it never serviced, looked after, worked? If those knives had been lying there where they were found on information for over 2 months, isn't it a very odd thing that nobody had come across them before? We are not told about how this room or the Mandarin indeed generally is cleaned. Again we could have been told about that. We are not told about this particular machinery plant - we could have been told about that. We could have been told about who attended it, how often, where and when, what places he looked, the persons looked for or looked to, what places in this room or what places in the machinery would normally come to the attention of the persons whose duty it was either to look after the room or the machinery. Isn't it a very odd thing that on information these knives are found there after a couple of months if they had been there all the time?

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We are told that, certainly by inference, that Pakistan is a place where there may be enmities, persons may seek revenge. If that is so, if there is feuding and the like - of course there is nothing concrete about that - but if there is, might not these knives have been planted by persons who did not like the defendants? It seems very strange to me that they could have gone undiscovered if they had been in that place for that length of time, and after all the defendants weren't on bail, they were in no position to keep them hidden there for that length of time. I think with great respect, members of the jury, that the evidence as to the finding of the knives, it tends to cast suspicion on the prosecution case rather than on the defence case. I think it looks - I submit that I think with regard to all of the circumstances that I have mentioned to you that on the face of it it looks more like a plant than a hiding by the defendants. But anyhow, the case standing as it is, you are

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left again completely in the air. Again I am not blaming the investigation in any way, but if there is this room in the Mandarin and this machine surely there is somebody who could have helped you and helped the defence, helped the prosecution, helped the court generally. We don't know about this. It is just one other of the many factors about which you have not got any evidence and which is a matter of complete surmise, and I do think it need not be, but at any event you are not entitled to say on this evidence, in my view, that it was the defendants who hid the knives up there.

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Although the Crown does not have to prove a motive for murder, some kind of a motive has been suggested to you - revenge. According to a Mr. Khan, a name which can be used by many persons in Pakistan and is used by many persons in Pakistan, he tells you that way back - let us get the evidence for you so that I won't be inaccurate - he tells you that the deceased murdered somebody by the name of Wassal Khan - it is the same name as the witness and a whole lot of other people apparently - and apparently was punished for it. There is not the slightest evidence to suggest to you that there is any reason why the defendants should take it upon themselves to do anything about this matter. Apparently they were in the village, they were not there at the scene. What interest did they have in it? If this is the motive, there is just as much a motive for the witness or any of the other members of this village. The Crown has attempted to prove a motive, but in my respectful submission has not done so.

And take the time factor. Apparently the deceased has been living in Hong Kong for a considerable time, spending a lot of time in a place where he would come in contact with this quite close-knit Pakistani group in our population. No secret about his being here apparently, no secret about where he was at any time. If people felt hatred and revenge to such an extent as is suggested here, would they wait for this period of time to carry out their very foul attack? There is no reason suggested to you why they should wait on the evidence.

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So coming back to the evidence upon which you would be entitled to say for sure that the defendants, either of them, were present in the premises where the deceased died at the time of his death, there is absolutely nothing reliable, except one possible factor which you could take into account if you decide that in the statements made by the defendants to the police they told lies. You may well ask yourselves well what was the reason for telling lies? But apart from these footprints that could be any age before or after the death or the attack, that is the only other thing which shows, which might tend to show that either of the defendants were at the scene at the time of the crime. And that is not enough, members of the jury. The defendants are not being charged with giving false information to the police, they are not being charged with telling lies, and we have it from Mr. Webster in his experience that in this Colony, apart from defendants or suspects, apparently the police get a large quantity of lies from mere witnesses who apparently have nothing to fear, nothing to lose, nothing to fear at all. Are these lies of such great significance? Put yourself in the position of the defendants - two Pakistani employees of the Mandarin, apparently of completely good character, only shortly in Hong Kong, and having come from another area that we don't know probably, all of us, very much about. We don't know about police methods, we don't know about the courts of law, we don't know about how justice is arrived at, but is it not if witnesses can and do tell lies when they have nothing to gain or lose, nothing to fear, how about defendants? What is the difference? 10 20 30

I think you will all agree - I don't know if any of you have had the doubtful pleasure of being in any of our police stations here, they are not really happy-looking places. There is a great air of formality, and police officers very properly - not the members of the C.I.D. of course - but the rank and file that one finds in the police station, gun on one side, good truncheon on the other side. A newcomer, might he or might he not feel "Look here, the police 40

want me to say something so I will say something whether it is true or false", especially if there is some suspicion of the particular person being in a scrape that might either cause him to lose his employment or worse? Supposing he was aware of certain facts which, if he gave them away, might cause reprisals? These are all things that may have been in the mind of these men at the time that they made these statements.

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I am not going to labour the truth of the statements too much because I think you will probably have decided rightly that the statements are not fully accurate anyway, but, as I say, the fact that the statements are not accurate, although it is a factor which should be borne in mind, the fact that a man has told lies - there can be many reasons for a man telling lies and it doesn't by any means necessarily follow that the reason is he is guilty of murder. There could be a whole computation of reasons, again to be quite fair, ranging from fear of incriminating himself to fear of incriminating other persons. Take the two defendants. Even fear of incriminating each other or one or the other, or even worse still, incriminating someone who might take drastic action at another time.

If you find that these statements are untrue, that isn't the end of the matter. It isn't even near the beginning of the matter. It is a small factor, especially having regard to the fact that the persons from whom statements were taken obviously are not accustomed to our methods of administration of justice. How are we to say what was going through their minds at all? You may suppose that persons coming from certain territories may feel that the best thing they can do in any particular set of circumstances is to either say something very far-fetched - some thing they might even have to confess because they might get off lightly. There are 101 reasons why persons might tell lies to the police, as I say, by the fact that witnesses do, not just merely defendants.

My Lord, I am afraid in order to cover the rest of my argument it will take some time. I

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don't want to weary the jury with too long a session, and for my part also I think it might be desirable if we were to adjourn here until to-morrow.

COURT: Yes, 10 o'clock.

MR. MAYNE: May it please your Lordship.

4.33 p.m. Court adjourns.

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10.03 a.m. Court resumes.

2 accused present. Appearances as before.
Jurors answer to their names.

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MR. MAYNE: May it please your Lordship.

Members of the Jury, yesterday I have been addressing you on a possible approach, which I thought you may take, to this case. In other words, the 1st step, is there evidence to justify the suggestion that the case has been proved to the extent which I told you it must be proved, that either of the defendants were in the premises where the deceased died at about the time the deceased received these injuries from which he died? And I was submitting to you that there was no really cogent evidence even on this aspect. I think I boiled the suggestions - I may be incorrect - of the Crown in this respect, down to the foot prints. And as I have told you, they don't prove anything about the time factor; they don't prove anything really about either of the defendants. They just show that a person with shoes - we don't know how many shoes there are, of these kinds, that are on the Colony at some time in the last two months - made foot prints with blood on the 4th floor. Just on that aspect there is one feature which I think I didn't mention to you with regard to any distinguishing marks on the shoes. Of course, as you will remember, the evidence of the expert is he can't say those are the same shoes as the defendants; he can merely say

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they are the same type or brand.

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I think on this aspect it is useful for you to look at F4, if you have that before you. You will see the centre photograph there where it is quite plain that there was sufficient pressure on the heel for one or two things to happen -- either for the heel to make a mark on the blood on the floor, or for the blood on the heel to make a mark on the clean floor. Look at how far back behind "Biltrite" that print goes. Look at the shoe on the left-hand side. Look at the centre photograph. Look at the trade mark "Biltrite" - right back behind that to what you might say the cross-line here, go back behind that again to the area still further back which has the resemblance to this part of the heeling which the expert felt was either part of the original heel or part of a whole heel which has been put on a shoe at a later stage. Again look at the centre photograph and see how far back behind that the mark goes. Look at the centre photograph and see for yourselves, Members of the Jury, how near that comes to what was obviously a prominent feature of the back of the heel, which would make one wonder whether the blood was on the floor or whether the blood was on the heel. But if that metal object projecting above the heel proper, if that had been on this shoe is it not likely that there would have been some sign of it here? But there is none. However, it was that aspect of the foot prints which, I do respectfully submit, proved nothing, much less proved to the degree that is required.

Look at the statements as I have told you. It has been suggested that they are in whole or in part untrue, and you may well think that is the case. As I told you yesterday, we have it from an experienced inspector that witnesses very often tell lies. What is the police evidence about those statements? At the time these statements were made - when I say the statements, I mean the long ones that were referred to at length by my learned friend in his closing address - the defendants at that time, they hadn't been told that they were under arrest. They weren't even told they were suspects. They weren't cautioned in any way. It wasn't suggested to them that they were some persons other than

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witnesses. What is the difference in statements made by these persons who were at that time, according to the police evidence, in the same position as witnesses? What is the difference between those statements and the lies contained in other statements made by potential witnesses? As I say, there may be a lot of reasons for persons in police stations who have no fear for telling lies or even those who have something to fear for telling lies. It is a matter for conjecture.

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In just the same way as the absence of the Defence evidence, there are a number of very rational possibilities for persons in certain cases - and I am dealing with this case - for telling lies to the Police. Again, taking it from its aspect least favourable to the defendants, the reason may be fear of incriminating themselves, but there can be a whole lot of other reasons too. There can be fear of one incriminating the other or vice versa, or incriminating the other persons, with the possible result of revenge or reprisal, such as might leave them in a safer position in your hands, Members of the Jury, or in the hands of the police than there might be if they gave somebody away. Those were the possibilities which you must bear in mind, as I think you will find that there are certain inadequacies in the statements. But there is one thing that you must guard against, and it is one of the reasons why I have felt that there was a danger of a joint trial in this case. His Lordship, in his discretion, has decided on a joint trial. But in a separate trial you would only have the statement of the particular defendant.

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Now, you have, I am afraid, - I am sure it is through oversight - been invited expressly or by inference to compare these long statements of the defendants with each other to show how they are similar for the point of view of showing that the defendants concocted the story. And your attention has been drawn to dissimilarities to show you,

"Well, if you want to concoct stories it is very difficult - you can't get away from it". That is one of the things that you must be very careful about in this case, and which I want you to be completely clear in this particular case. You are not entitled, Members of the Jury, to look at the statement of one defendant and use it in any way against the other defendant. That applies to the 1st defendant and to the 2nd defendant. You can't compare the statement of the 1st defendant with that of the 2nd defendant for similarity or dissimilarity in order to draw certain or any conclusions. You were addressed at length on this subject - you may well have got it in your head - but that is exactly what you mustn't do. But as you see, my Lord will tell you, according to our laws of evidence, statements made by one defendant in the absence of the other is evidence for or against the person who makes it, but it doesn't touch on the other defendant at all; it can't be used as evidence for or against him. Same, of course, applies to statements of the 2nd defendant - they can't be used for comparison purposes or any other purposes.

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COURT: Mr. Mayne, that is not for you to tell Members of the Jury. I haven't stopped you so far, but I am not going to direct Members of the Jury that they are not going to use them for comparison purposes.

Mr. MAYNE: May it please your Lordship. Anything I say will be subject to your Lordship's correction.

What I do stress is this: you can't use the contents of one statement in any way in the case against the other defendant, and vice versa.

Now, there is one possible exception to what I say in my view, and in my respectful submission, and that is the conversations which took place in the dormitory of the Mandarin Hotel. Now, there it appears that conversations took place within the hearing of each defendant. Now, in that case what one defendant said and what they have said is, of course, evidence against him and it is evidence against the other person, but only to this

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extent - to his reaction to what's being said. That applies both to anything said by the 1st accused in the Mandarin Hotel and to the 2nd accused in the Mandarin Hotel; anything they say individually is evidence in the case against them. But as far as the statements there are concerned the only initial matters that you may take into account are the reactions, verbal or visible, of the other defendant. On the question of the statements in answer to the charge there was an immediate denial on the part of the defendants. So much for the statements, Members of the Jury. You may well consider they are not accurate or true, but you must and you can give if they are true, that matter - it is a factor for your consideration. But there are many, many reasons why statements made to the police can be untrue and it is by no means a decisive factor in this case. Subject to what my Lord will tell you on this matter, it is my submission to you that since a statement made in the absence of another person is inadmissible against that other person, you are not entitled to compare the statements so made for comparison purposes.

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You have heard, of course, of the evidence of blood stains on certain articles of clothing of the two defendants and it is quite clear that they have become involved in some way in some dispute in which sharp instruments were used. There is no doubt about that. When? Where - We don't know. We don't know whether it was before the death, after the death, or at the time of the death of the deceased. We don't know what part, if any, either of the defendants took in any struggle in which the deceased was involved. As the medical evidence shows, these wounds, these blood-stains on the clothing of the defendants, could they have got them in self-defence? They could have been obtained in the defence of the deceased; they could have been obtained in an attempt to separate the persons who were fighting, as we went over the ground yesterday. We don't know how many persons were fighting. And it is certainly impossible to say how the blood stains were

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10 incurred, how the injuries were incurred. The doctor says as far as the injuries on the defendants were concerned, they are just as consistent with self-defence or prevention of struggle as with any other course. And if that is so, Members of the Jury, this being a circumstantial evidence case, how could you say that the only rational conclusion, the only conclusion is that these blood stains and injuries were incurred in the process of either or both of the defendants murdering the deceased?

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20 Now, I mentioned to you yesterday a number of factors that you must be very careful to put out of your minds altogether, if you can, in arriving at your decision in this case. One of the factors was the frightful injuries of what must have been a very shocking and painful death of the deceased. You might feel that here is a horrible crime. Somebody must pay for it. But unless either one of the defendants is proved to have committed this crime, you can't approach the case in this way. I mention this particularly, Members of the Jury, because this case started last Monday week, shall we say 10 days ago. And in my learned friend's opening he gave you a purported description of what occurred in the most inflammatory language, a language which, I think, must have caused you to feel, "Well, now we are

30 going to have evidence to show that all this happened!" And I think already having heard that opening you must have had feelings of "Well, these defendants if they did this..." - and after all you have been given a blow by blow description of what they are supposed to have done - "if they did this thing, they must be absolutely vicious, terrible men" And I think it must be that you have carried these thoughts which have been conveyed to you in this inflammatory language, butchery and the rest,

40 through many days of the case, and may still be there subconsciously even though there has been no evidence adduced to show that either of the defendants did either of the things they were alleged to have done when the case was opened to you.

Now if it is possible, members of the Jury, - I know we are all human - it may be impossible to

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rid your memories of such things - but if it is possible I ask you as firmly as I can to rid your minds of anything that may have been said at Counsel's table at the commencement of the case which has not been placed before you in evidence.

There are other, two other things which must be avoided, if justice is to be done. Now depending on the view that you take of the truth of the statements, depending on the view that you take of the absence of Defence evidence, you might be inclined, if you were not warned about it, to think something along this way, "Well, there is some evidence against these defendants, we think.." I am putting myself in your position, ".. we think that if, even if they didn't do it, they know more than we have been told about it. Maybe they are shielding somebody and in that way defeating the course, the ends of justice." Looking at it carelessly, as I am sure you won't, you might feel, "Well, if they are shielding such a terrible, vicious attacker as the murderer obviously was, if they are protecting him from justice, well, let them take the rap for it." Again, that is an approach to be very careful about.

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Now that is all that I wish to say for the time being regarding the aspect as to whether you can even be satisfied that the defendants were present at the scene at the time of the murder - the time which could be five hours one way or the other - when I say one way or the other - five, five hours in all, sometime between a total period of five hours.

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Now before I come on to deal with the next step which you would take if you were satisfied to that degree which is necessary, that the defendants were present, I want to deal with some of the matters which have been suggested to you by the Crown as matters which should be taken into account regarding the evidence. My learned friend suggested to you that the Defence were anxious or might be anxious, to what he called, have it both

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ways, about certain things. That is not the case. But the evidence is this. There was a lot of blood on the clothing of the defendants, and they must have known about it, and mark you, they had plenty of time to get rid of any clothing or to wash it, that had bloodstains on it. It has been suggested to you that they didn't do that because they were too ignorant - it has also been suggested to you that they didn't take the blood off the various clothes because they were so clever! I am not having it both ways - the Crown is.

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With regard to the knives, you will remember, of course, that there was an enormous number of injuries on the body. With regard to six of these injuries the Doctor felt that the most likely sized blade to cause the injuries which were over 4 inches and up to 5 inches was a blade of 4 inches in length. There isn't one here. Taking all factors into account, he thought that the range of the blade - might in certain very special circumstances be caused by a blade of between 3 inches and 5 inches. Well, that is his evidence. The largest blade we have here is - correct me if I am wrong - I think it is $3\frac{1}{4}$ inches. So there you have it from the Doctor, that there is no blade here which is most likely to have caused six of the injuries - does that factor alone not suggest some other weapon is likely to have been used - and if some other weapon, who knows who was using it? As we know, we have no idea how many people were there, and all those that were there, what they did!

The next matter which you were asked to take into consideration was this question of the caretaker, a Chinese gentleman who gave evidence here, and as far as I remember his evidence was that the person that he saw in the dusk or darkness was a tall man. Well, it has been seriously suggested to you that because he is an Asian, a Chinese, "tall" to him means, I haven't got the exact figure, I think either 5 feet $10\frac{1}{2}$ inches or 5 feet $11\frac{1}{2}$ inches. Well, there is a touch of both Gilbert and Sullivan and neo-Colonialism about that suggestion - if anyone wanted to give an approximation of the height, all anyone had to do was to ask him. Anyone could have asked him, "Well, with regard to

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this tall man that you think you saw, can you give an estimate as to what height he was?" The answer would have been, "Well, I can't give an approximation", or "It was too dark, I couldn't see", or if he could see, obviously he would have given what the height was. But it is absolutely absurd members of the Jury, to suggest to you because a Chinese witness, and after all, Chinese perhaps range from great heights down to low heights, because a Chinese witness says "tall" that means 5 feet 10½ inches or 5 feet 11½ inches - if it means that it could mean, I suppose, six feet - that's me - I don't think I have an alibi for that night!

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The blood on the deck-chair was mentioned to you next. Again, we have no idea when that blood got there. It may have been there for a very long time indeed. It has been suggested to you that if you do as I suggested, in other words, try getting into the chair yourself and getting out of it without using your hands, what you really should do is to do some gymnastics, I think; get in by your elbows - I don't mind if you get in by your elbows or stand on your hands, as long as you retain your commonsense, and I know you will do that. The injuries on the hands of the first accused are suggested to you as being the reason why the first accused, if he used that chair at all, wouldn't use the palm of his hands. Well, take a look at this photograph. I will get the number for you now - thank you - G.5. Have a good look at that photograph. Are there any injuries of such a terrible kind there as would in any way encourage a person suffering from these injuries on the palm of his hands or his fingers from jumping into the chair or getting in by his elbows or falling over the top backwards - is there anything there that would even cause any person to think, "Well -", or to feel, "Well, it would be uncomfortable, let alone painful, to do what one would normally do getting in and out of that chair." Try it yourselves, members of the Jury, in a normal fashion, having regard to the injuries on the palms of those particular hands that were alleged to have been used, alleged to be the person who sat in this chair.

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Now the next thing which was brought up was this photograph. It is the photograph of the pretty lady, and on the back of it there are certain words printed in the - when I say "printed", capital letters, on the back of it. I'm sorry for the delay, my Lord (obtaining photograph). Here it is, members of the Jury, this one here (held up). I imagine for anyone who likes pin-ups a pleasant photograph to have, but coming to the back, upon which so much emphasis is placed, this card is alleged to have been in the possession of the second accused, who we know from the evidence is illiterate. Well, either he wrote this or he didn't. A person who is illiterate of course can copy writing in any language, or try to copy it. You will see the writing here first of all "Wasal Khan" at the top, then "West Pakistan", and then down below a figure which has been alternately described as a "mummy" or a "coffin". Well I really think, stopping at that point alone, it is a bit of wishful thinking. Did you ever see a mummy with hands sticking out of it? Did you ever see a coffin with hands sticking out of it? Did you ever see either a mummy or a coffin with legs protruding? Is it in fact anything more than a doodle? It might look like, a bit like a beetle. I am not referring to the gentlemen who sing with great success, but the animal. Does that show anything at all -- but here is a thing that again we don't know anything about, because apparently nothing has been done about it. We all know from our common knowledge there is such a thing as a handwriting expert. Handwriting can be checked, inks can be checked, pens can be checked - a whole lot of things of that kind can be checked - and it is possible - and it is possible - you have no evidence before you at all in this matter - that if this matter had been checked one might have found out who had put all or any of this writing on this photograph and when they did it and with what kind of an instrument. That is just one other of the matters which you are left completely in the dark about.

Now again I remind you that I am not complaining in any way that anything has been concealed from you. What I am worried about is that so many things have

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been left in the air which might not have been. You really are left in a very difficult position. If all these various matters that I have discussed with you had been gone into the result might well be that these men might not be in the dock at all, may be some other persons would. That is my only worry. And it must be your worry too. Because if you are adducing a case of circumstantial evidence you must tie it up completely. Now don't imagine for a moment that you are entitled to assume or that you will assume that if these matters had been tied up they would have pointed towards the guilt of the accused. You just don't know. They might well have pointed towards the guilt of other persons altogether, and they might well have completely exonerated the defendants.

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Of course, members of the Jury, I am not asking you in any way to look at the case that isn't before you. You must judge the case that is before you, but with regard to the matters that have been left in the dark, if any one or a combination of these things leave you in doubt, apart from the other matters that may leave you in doubt, then you must do what your duty is, if you are in doubt, give the benefit of that doubt to the defendants.

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You had, as I say, the statements read to you at length, in fact, verbatim with a commentary - that is to say, even if you don't think the truth is there it is a small factor having regard to the many reasons there were for the truth not being there.

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Now having dealt with these observations that were placed before you, I would like now to ask you to apply your minds to the position that you might have reached if you decided on all of the evidence that the defendants were definitely there in the premises at the time of the death of the deceased. Now I am going to assume that you have reached that stage, that the evidence proves that they were there at that time, I say at that time, not before, not afterwards

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at that time. Now can you say what either of them did if they were there? Did they take part in any way, either of them? You must take them individually, and take into account that there may have been others there as well, others who may have well been helping the deceased, as well as persons who may have been helping his attacker. Now assuming you found that they were there at the time, and at the time is the vital matter, do any of you know for certain what either of the defendants did? You have the medical evidence. The injuries received could be self-defence, the injuries received could have been accidental, received from any source, because the type of weapon, apart from being a sharp weapon, has not been indicated to you at all. I am talking about the injuries on the defendants, and it goes this far. These very injuries might, on the evidence in this case, have been caused in trying to defend the deceased or another alternative, and it is just as possible, one or other of the defendants might have been trying to restrain either the other defendant or the deceased, if there were only the three of them there. What evidence have you got to go on against either defendant to show that either defendant either did the killing or was party to a common design to do the killing? What evidence have you got? Members of the Jury, I would submit that you have none. It is a matter of complete conjecture. But I remind you again that before you can convict either of these defendants you must be sure on the evidence of his guilt, not just the likelihood or probability, possibility, it must be proved so that you are satisfied as to be sure what each defendant did - in other words, that either he killed the deceased or that the deceased became - was killed by one or the other as a result of common design. There is no evidence of common design, and here is a thing that you must be very careful about - if it is suggested to you that the statements, which you may not accept, show a similarity of defence, that is not evidence of common design with regard to the alleged murder. The defendants may well have thought for one reason or another that - if it is thought by you it was, as you might say, the defence, it is not really the defence, it is that the statements have been concocted between them - that is not evidence

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of common design - it is quite consistent with an endeavour to get either or both of the defendants off or not to incriminate some other persons.

So there you are, members of the Jury, even if you were to reach the well-nigh impossible decision of saying that the defendants, either of them, were at the scene at the time of the death, you are left in this position, that you don't know a thing about what went on up there on the fourth floor. Now that is not to suggest that murder cannot be proved unless there is an eye-witness, it can, in many ways, and in different circumstances. But not here. If there are no eye-witnesses then the circumstantial evidence must be such that there is no other rational conclusion other than guilt as opposed to the first and to the second accused, treating them separately, as you must.

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There is just one other matter which I should mention to you, and His Lordship - and which he will mention to you no doubt, that for even greater security in this particular type of case your verdict has to be unanimous. Now in reminding you of this particular matter, don't think for one moment that one is guarding, or hoping that there might be a lack of unanimity between you. It might go one way or the other. Some of you might think, "Well, either of the defendants is guilty." Some of you might think, innocent. And of course in deciding this question and discussing the matter between yourselves, you will give due weight to the views and opinions of each other, but what you cannot do is, if you in your own consciences believe the verdict to be guilty or not guilty, as the case may be, in respect of either of the defendants, what you cannot do, if that is your firm view, in conscience, having discussed the matter at large, what you must not do is say, "Well, there are three or four others here and they don't agree with me so I will, for that reason I will abandon what I know in my conscience the true decision should be."

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It is a matter for you collectively and individually.

10 So that is all, members of the Jury, that I wish to say to you about this case. I am very grateful for the attention that you have paid to such matters which I have raised before you. These matters, I hope, - they were certainly intended to help you in approaching the case, and I hope that they will have done so. The verdict is for you, members of the Jury. I have every confidence that whatever verdict you bring in will be the true verdict according to your consciences. Thank you very much.

COURT: Thank you, Mr. Mayne.

(COURT suns up to Jury without adjourning - 11 a.m.)

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mean that you are bound to find these men guilty so that whoever did cause those wounds shall be punished, because we don't know as yet whether these are the men who caused those wounds and it is for you to decide whether they did. You have to decide upon the evidence which has been given in this court and only upon the evidence in this court. If you have heard anything outside the court you must disregard it. I say you must decide the case upon the evidence. Observations had been made upon the opening of learned counsel for the Crown, in which he drew a picture for you of what he suggests was the manner in which this man met his death. He was asking you to draw these inferences from the evidence which he proposed to lay before you. You may or may not accept that those are proper inferences to be drawn. That is entirely a matter for you. You should not accept what learned counsel for the Crown said unless you are satisfied in your own minds that that can properly be deduced from the evidence.

This case, as in most cases of murder, is based upon circumstantial evidence- there were no eye witnesses to the death of Said Afzal. Nevertheless, the Crown ask you to find that certain facts have been proved and they ask you to draw inferences from those facts which point to the guilt of these accused men. And so your duty lies in two parts - first you must find the facts - decide what of the evidence you believe - and then you must ask yourselves, "what inferences ought we to draw from those facts". Sometimes inferences may be strong, sometimes they may be weak. Perhaps if I were to give you an example it might assist you. Suppose there were a stack of inflammable materials in a field, and supposing that stack of materials were to catch fire and at that time a man was seen to run from the stack with a flaming torch. You might well, Members of the Jury, draw the inference there that this man with the torch set fire to the stack. Then imagine a man was seen running away from the blazing stack with a box of matches in his pocket. The inference, Members of the Jury, is not so strong: there is perhaps some pointer towards the fact that he was the person responsible, but it is, I think you will agree, not so strong as where a man runs away with a blazing torch. You may then find a man running

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away with nothing which could have caused the fire. Again the inference is weakened. And finally, to reduce the matter almost to an absurdity, you might find beside that blazing stack an unconscious man with a wound on his head. No sane man would suggest that there was any inference which could be drawn to connect that man with the firing of the stack - rather perhaps is there some slight inference to be drawn that perhaps he was trying to stop the man who did fire the stack. And so here, it is not enough for you to say that a certain inference is possible. You have got to be satisfied that the only rational inference to be drawn from the evidence is that these men are guilty of the murder of Said Afzal. If you are not so satisfied, it is your duty to acquit them of the charge against them. We are not concerned here with suspicion: you have got to be satisfied. There is no one fact which has been given in evidence which by itself is enough to point towards the guilt of the accused with that degree of certainty but what the Crown ask you to say is this, that there are so many coincidences that, taken all together, there is only one rational conclusion: and it is for you to decide whether you accept that submission or not, for counsel for the defence very properly submits to you that the inferences are too weak and that there are other possible inferences which can be drawn from the evidence which would not point to the guilt of the accused. 10
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Now I have said you have to be satisfied. Members of the Jury, in a criminal trial in our courts the onus of proving the guilt of an accused person is fairly and squarely upon the prosecution. There is nothing in this case at all which it is for the accused to prove: every single thing has to be proved by the prosecution. You have been told that certain courts have expressed disapproval of the phrase 'proof beyond reasonable doubt'. I will put this matter to you in two ways, Members of the Jury. I say first that you do have to be satisfied beyond all reasonable doubt that these men are guilty. We are not concerned with fanciful doubts. There are a few things which are so certain in this life that there is never any conceivable possibility of mistake. That pen, Members of the Jury, I may believe to be mine - I may have been using it day in and day out for weeks. 40

I may have carried it with me to the court this morning. It is just possible that it is not my pen, that somebody else has exchanged their pen with mine and that I am using somebody else's pen. You might think that was perhaps a fanciful doubt. But I will also put it in another way: you have to be satisfied that you are sure these men are guilty.

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When you are considering a matter, Members of the Jury, the degree of proof which you would require will naturally depend upon what is at stake and what is the risk of error. Look at it this way. If you were going to pack a suitcase for the week-end, you would not pack that case with the same care that you would pack a wooden box containing priceless china. In the second case more is at stake: the risk of damage is greater; and therefore, you would obviously take more care. But in each case you would want to be satisfied that the contents were safe, but because more is at risk you would take greater care in the second case. Here, Members of the Jury, it is sufficient for me to say that a great deal is at stake and the risk of error is high. Therefore you will ensure before reaching your decision that you are satisfied (if you are going to find these men guilty) that you are sure they are guilty.

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It is your duty to consider the evidence against these men separately. Although they are tried together, they are on trial as individuals. You **must** consider your verdict, and bring in a verdict, separately against each of them. You must consider the evidence against each and, as has been very properly stated, there is certain evidence in this case which is not evidence against both of them. Now for the most part the evidence which has been given in the witness box here is evidence which you can consider against both these men (and, of course, for both these men) but there are certain written statements. I shall have to talk to you further about those statements, and you will have to make up your minds, Members of the Jury, whether you intend to give any weight whatsoever to these statements. A statement which is made by an accused person in the absence of the other is not evidence against the other. It is evidence against the maker of the statement but against him only. The principle, of course, I think is obvious that the second man has no

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opportunity to deny what is said by the maker of the statement if he is not there. If he is there and does not contradict that may be some evidence against him, but it is otherwise when he is not there, and consequently the stories which appear in the statements of these two accused persons are not evidence against the other. But my direction to you is this. The Crown's case here is not that these statements are true and that what one says ought to be considered as evidence of what actually happened. What the Crown says is that these statements have been shown to be a tissue of lies and that they disclose an attempt to fabricate a joint story. Now, Members of the Jury, if you come to that conclusion then the fabrication of a joint story would be evidence against both. It would be evidence that they had co-operated after the alleged crime.

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I say you will have to consider what weight, if any, you are going to give to these statements and in this case there are two matters which you have to consider. First, were these statements correctly recorded? Secondly, were they voluntary statements? Firstly, then, did these accused persons say what has been recorded in the two statements - the two question and answer statements, in particular, which have been put before you. The only other statements I think you can not exactly disregard ... but are of no real importance: one of them you will remember does deny any connection with the murder, but I am dealing principally with the two long statements which are relied upon in this case. They are in question and answer form. You have been told why they were put in question and answer form: Mr. Webster says that he was instructed to take them in that form, although that was not the more usual form. Mr. Chapman says that he was not given any such instructions even by Mr. Webster: he did it on his own initiative in that form. Do you find any significance in the form of the statements? It is admitted that there were certain introductory matters which were not recorded. Do you find any significance in that? Do you think that the police have been trying to hide something - something which was perhaps of assistance to the accused? If so, of course, you will no doubt think that these statements should be given no weight at all. Again, there are other things which were not recorded:

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there were certain questions put to the accused which quite clearly do not appear in the written document. It is suggested that the reason for this was "clarification", but I think you may well come to the conclusion, Members of the Jury, that there was something more than mere clarification and that there was something in the nature of "amplification" - that the accused had not sufficiently identified certain places and articles and that they were asked to identify them and the further questions were not recorded. But, on the other hand, the police witnesses do say that what the accused said was fully recorded. You have to make up your minds, Members of the Jury, whether you are satisfied that they really did say what appears in the document and whether it appears in a form which fairly represents what they meant, having regard to the absence of the questions leading to them. In that connection, of course, you may remember that the witnesses one of the witnesses said that it is rather more usual not to record a statement in question and answer form at all, so that if any questions were put they would not appear in any event. But this is entirely a matter for you, Members of the Jury, to consider the statements as a whole, having considered the witnesses who gave evidence relating to them, and whether you think that these are a correct record of what the accused said.

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There is a further difficulty in this connection, because these statements were not recorded in Urdu, which is the language in which they were given. There is nothing improper about that, Members of the Jury, although one may perhaps say that it is unfortunate. It is unfortunate in this sense that we are unable to check the accuracy of the translation - the interpretation. You have heard the two officers who acted as interpreters and you have to make up your minds whether you are satisfied that what they translated into English was a correct translation of what these men said. You have to be satisfied as to that to the extent that you are sure that this is a correct record, because of this is not a correct record, Members of the Jury, that is the end of the matter: you can clearly attach no weight to these statements at all. But let's assume for the moment that you are satisfied these are correct records of the statements made by the accused. I have said you

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must be satisfied that they were voluntary statements. What does that mean? It means that you must be satisfied the police offered no inducement to these two men - no promise of some benefit if they made a statement or offered them a threat of something which might happen to them if they did not make a statement. And why must you be so satisfied? Because, Members of the Jury, if a man makes a statement under an inducement there is a very grave danger that what he said is untrue. Take an extreme example - if a statement is extracted from a man under torture, is he not as likely to say something which is untrue to stop the pain which he is suffering as something which is true? Therefore the rule is, and I must direct you, that unless you are satisfied that no inducement was held out to these two men to make a statement you should disregard it. The evidence of the police is that they agreed to go to the Police Station and that they agreed without objection to make these statements. There is no evidence to the contrary but it is for the prosecution here, as throughout, to satisfy you until you are sure that these statements were voluntary. The only matter further which I wish to mention in this connection is the time that was taken in obtaining these statements. You will remember that in one case the statement took $3\frac{1}{4}$ hours and in the other case it took two hours to record the statement. There was at least opportunity, you may think, for some form of pressure to be put upon the accused, but this is a matter for you. Opportunity does not necessarily mean that pressure was used and, Members of the Jury, you say I think it was three Pakistani witnesses in the witness box during the course of the trial. You may think that it was more difficult for us to obtain their evidence than it was from some of the Chinese speaking witnesses: it took a little longer, you may think, to obtain the translation of what they said, but this is entirely a matter for you: I just mention it, that that might possibly be a contributing factor, as the police say that there was nothing in the form of delay during the course of the taking of these statements. I can help you no further on that. You must make up your minds whether you think that there was inordinate delay and if there was inordinate delay whether that was caused by pressure being brought upon these accused. Unless you are satisfied that the

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statements were voluntary then you should attach no weight whatsoever to them.

The allegation by the Crown is that these accused have lied. It is for you to decide whether you are satisfied that they have lied, but you must go further than that. You have to ask yourselves why did they lie? Learned counsel have suggested a variety of reasons why these men should have told lies. Among them was the possibility that they wished to shield others. Accused persons sometimes tell lies out of sheet panic. In either of these two cases, of course, the mere fact of lies is of no significance whatever. The question is, (if I assume that you are satisfied that they did lie) did they lie out of a sense of guilt? If, Members of the Jury, you are satisfied that they lied and that they lied out of a sense of guilt then that is a matter which you may properly take into account in coming to your conclusion in this case. If that was not the reason that they lied (assuming always they did lie) then the lies are of no significance in this case.

A further matter I ought to mention in connection with the statements - the evidence relating to the statements was given in part by two police officers who acted as interpreters. Each of them admitted in the witness box that before coming to the court he had refreshed his memory from a notebook. I must tell you, Members of the Jury, (in case you should think otherwise) that there is no rule against that. Now don't misunderstand me. Of course the whole object of viva voce evidence in court would be lost if witnesses were to learn their evidence off parrot-wise, but that is not necessarily the reason why a witness would refresh his memory before coming to court and in fact these two witnesses say that they refreshed their memory in order to make sure that their evidence was going to be correct. It is true, Members of the Jury, that there is a rule that witnesses in court can, by consent of the Judge, be allowed to refresh their memory, but suppose a witness comes into the court thinking that he has a clear recollection of what took place and gives his evidence and then goes out and looks at his proof of evidence and suddenly realises that in all innocence he has given false information to the court, is that not a serious matter, and is it not justifiable

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in certain circumstances that a witness should look at his proof of evidence or at his notes before he goes to court just to make sure that he does not mislead the court innocently? Whether you think in this case there is anything sinister in the fact that these two witnesses refreshed their memory before they came to court is entirely a matter for you.

It has rightly been pointed out to you that the accused are not obliged and were not obliged to give evidence in this court. There was a time when accused persons were not allowed to give evidence in court. Today they are allowed to, if they see fit, but they are under no obligation whatsoever to do so. They are entitled, as has been done in this case, to remain quiet and say, 'It is for you, the prosecution, to prove that I am guilty. You get on with it. I am not going to help you.' They are entitled to do that. All I would say is this: You may think it strange, in the present case, that if the suggestion that these two men may have been acting in self-defence or have been trying to stop others from fighting - if that suggestion is to be taken seriously, then it is perhaps a little strange that no evidence to that effect has been given. It does not mean to say that it is for the accused to prove their defences of self-defence or that they were trying to prevent a felony. The burden is on the prosecution to negative any possibility that they were acting in self-defence.

The charge before this court is one of murder. I accept the definition which has been advanced to you from the Bar. For our purposes murder consists of an unlawful assault with intent to kill or to cause grievous bodily harm, that assault causing death. "Unlawful" assault, Members of the Jury, I will deal with in a moment, because there are certain possible defences. There must be an intent to kill or to cause grievous bodily harm, and there is no magic in the words 'grievous bodily harm' - it merely means really serious harm. There are defences which can be raised to a charge of this kind and, as I have just indicated, although we call them defences they are not defences in the sense that it is for the accused to prove them. It is for the prosecution to negative them. The first answer to a charge of murder is that the killing was accidental. An unintentional killing, Members of the Jury, when one is doing nothing unlawful -

nothing unlawful which might be expected to cause injury - this is not a matter which comes within the ambit of our criminal law. You have heard the medical evidence and you have seen the pictures. Is it possible, Members of the Jury, that the fatal wounds in this case were caused by accident?

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10 Secondly, it has been suggested that the accused may have been acting in self-defence. What is the defence of self-defence? If a man is attacked he is not obliged to allow himself to be struck: he is entitled to prevent the attack from doing him harm. There are certain limitations. He has a duty to retreat if retreat be possible. If retreat be impossible he is allowed to use reasonable force to protect himself, force which is commensurate with the nature of the attack upon him. If a man attacks me with his fists I am not allowed to take a knife and stab him to death. If he attacks me with a knife or a gun, I may very properly retaliate with a weapon. Do you consider, Members of the Jury, that there is any possibility in this case that the accused were acting in self-defence and caused the death of Said Afzal? If you think there is any possibility of that the Crown have not discharged the burden which is upon them and you will find these men not guilty. You have to consider the evidence as a whole and say whether you think it is a reasonable possibility, whether (drawing such inferences as you may properly do from the evidence) they may have been acting in self-defence. Similarly, if a man sees another about to commit a violent felony, making a murderous attack upon another man, he is entitled (indeed he is obliged at law) to intervene and try to prevent it. It was suggested at the Bar that the accused or one of them at least may have been trying to separate the deceased from an attacker. Do you think, on a consideration of the whole of the evidence, that that is a rational possibility?

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If you do, you will acquit the accused; only if you are satisfied that that is too-far-fetched to be worth considering will you be satisfied that the defence is not open.

There is no suggestion in this case, Members of the Jury, that the accused caused the death of Said Afzal as a result of provocation by Said Afzal. My direction to you is this, that there is no evidence here which could, at law, be regarded as sufficient provocation to justify an attack such

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as that which was obviously made by somebody on
Said Afzal.

I do not, members of the Jury, propose to
treat you to a detailed analysis of the evidence
in this case. Learned counsel in the execution
of their duty have very properly drawn your atten-
tion to the minutiae of the evidence - all the
small details which are material for you to decide
what evidence you should believe. However, I
propose to put for your consideration certain
questions and I shall deal broadly with the evidence
which has been given. The first question I think,
which you have to ask yourselves is, 'Did the
deceased Said Afzal die of the wounds which have
been described to us and of which we have pictures?'
Members of the Jury, I don't think that you will
have any difficulty in this matter. You have the
evidence of Dr. Tong. He is a practitioner of
8 years practice. He has the highest qualifica-
tion which is obtainable by a Forensic Pathologist
and he obtained that three years ago. He is now
serving with the Hong Kong Police Force as Forensic
Pathologist. Are you satisfied that he is a person
who is properly qualified to satisfy you in the way
that he sought to do as to the cause of death? He
tells us there are 49 wounds on the body - 49 wounds
which may have been caused by 49 or more blows.
He says the cause of death, in his opinion, was
shock and haemorrhage from wounds in the neck and
the chest. If you accept that evidence, then you
will be satisfied that the deceased did die of
these wounds. In connection with Dr. Tong's evi-
dence I should perhaps just mention one thing at
this point. He was asked to estimate the time of
death and in the court before us he estimated the
time of death at 10 o'clock at night. It was
pointed out that before the magistrate he had given
a slightly different evidence, in that he had given
two times between which the death might have
occurred. Members of the Jury, you may well think
that that is not really a variation between the
evidence which he gave in the two courts; that it
is in substance the same evidence. Before us he
went further than he did below and he agreed in
cross-examination that the death might have occurred
at any time during a period of 5 hours. His opinion
was, however, that the most probable time was 10
o'clock. It is up to you, Members of the Jury, to
decide whether you think that, as a result of the

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questions which were put to him, Dr. Tong was shaken as an expert witness and whether or not you think his evidence on the material matters in this case ought to be accepted.

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10 Well now, if you are satisfied that the deceased did die of these wounds the next question which you must consider is, did these accused or either of them cause those wounds? It is suggested by the Crown that they had a motive for doing that and that they had an opportunity. The motive which is suggested is the murder in Pakistan in the village of Haider in 1958 of Wassal Khan by the deceased, Said Afzal. Now Farid Khan gave certain evidence as to the cause of the assault which was made in Pakistan. We are not concerned, Members of the Jury, you need not concern yourselves at all, with why there was a murder in Pakistan. All we are concerned with is, first of all, do you accept the evidence of Farid Khan that Said Afzal murdered

20 Wassal Khan and, secondly, do you think that the present alleged murder has anything to do with that previous murder? The evidence was that Said Afzal was charged before a court in Pakistan with murder, that he was convicted of murder, that he was sentenced to 5 years imprisonment for that offence and it is suggested that these two accused persons, being in some way connected with Wassal Khan and believing that justice had not been done or sufficiently done, have taken it upon themselves to

30 wreak vengeance upon Said Afzal. We have no indication, Members of the Jury, of any relationship between the accused and Wassal Khan. We know that they all three were Khans, but so were all those who were concerned. Both the murdered man and the murderer in the previous case were Khan, both these accused are Khan. We can draw, you may well think, no conclusion from that.

40 But we do have this photograph. This is the photograph which, it is said, was found in the property of the 2nd accused and there is written on the back of it, apparently, the name of "Wassal Khan". The suggestion is that this was in the nature of a reminder to the 2nd accused that he had something to do when he met the deceased, to carry out revenge. Counsel for the Crown has pointed out that we have no evidence as to who wrote what is on the back of this picture, but I think, Members of the Jury, you may well ask yourselves does it really matter who

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wrote it? Will it make any difference whether it was written by the accused or by somebody else? What is suggested (and this is entirely a matter for you) is that he had this in his possession and it is a pointer towards some connection between the 2nd accused and Wassal Khan; and you are asked to go one step further and to say that this offence is therefore connected with the previous murder. There has been no explanation of this document but, as I say, the accused is under no obligation to go into the witness box in order to explain.

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The only other thing as to motive which you might bear in mind is the nature of the injuries. Do you think that the suggestion of revenge may perhaps to some extent be borne out by the very violent nature of the injuries which were inflicted upon the deceased?

Counsel for the accused has pointed out that on the evidence Said Afzal, the deceased, came to the Colony 12 or 15 months ago. It was not until the 10th February this year that he was murdered. He made no secret of his whereabouts: some of the witnesses who have given evidence knew he was here. He was apparently to be seen at the Mosque in Kowloon. Therefore, it is suggested, if there were any question of revenge it is probable that these accused, if they were going to do it, would have done it before. That is a matter for you, Members of the Jury. What do you think? Do you think that that is a sound argument or do you think that it would be explained simply by the fact that they were biding their time until a convenient moment?

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Of course when considering this matter of motive you should bear in mind that we have here two accused men who, so far as we are concerned, are men of exemplary character. They have, we are told, been co-operative with the police throughout the investigations. Whether that, again, is a matter to which you should attach a very great deal of weight is entirely a matter for you. The 1st accused identified himself as soon as Mr. Webster arrived at the Mandarin Hotel to make his enquiries and he admitted that that was his name. But Mr. Wilson was there, of course. Had he not admitted it, presumably Mr. Wilson would have been able to point him out. They had no objection to their

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clothing being taken, going to the police station, to making statements, to visiting Harcourt Road, or to undergoing medical examination. Undoubtedly, Members of the Jury, that is a matter upon which you could place a favourable construction. It is a matter for you to decide just what construction you think it is proper to be attached to it.

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10 Motive and opportunity, then, I have dealt with. The second matter which the Crown rely upon as connecting these two accused with the wounds which you have seen are the bloodstains. I am not going through them, as I say, in detail. There were stains of blood of two groups found at the scene, Group 'O' and Group 'B', the groups of the 1st accused and of the deceased. There was no blood of Group 'A' (which is the 2nd accused's blood group) at the scene. We have had medical evidence of the domination of Group 'O' blood by Groups 'A' and 'B'. It is for you to say whether you think 20 this has any significance at all. If you mix Group 'O' and Group 'A' blood or Group 'O' and Group 'B' blood, the 'A' and 'B' come out on top. Is it perhaps possible that there was blood of Group 'O' which doesn't appear because it has been dominated by Group 'B'? As I see it, it makes no difference at all in this case. There is no suggestion that the Group 'A' blood of the 2nd accused could have been dominated by the other blood. There was no blood of the 2nd accused at the scene. 30 We have a lot of evidence, Members of the Jury, about the extent of the various blood groups. I think you may well come to the conclusion that we need not consider this in any great detail. The fact is that there are many people, thousands if not hundreds of thousands in Group 'O' and in Group 'B' and in Group 'A'. Therefore it is not suggested by the prosecution that there is any positive identification of these accused by their blood groups. There are many people who could 40 have left blood at this scene. You or I, Members of the Jury, are probably in one of those three groups. But what the Crown say is that we have a coincidence of blood found on certain clothing. We have evidence that Group 'B' blood was found on the shoes and the clothes of the 2nd accused. The 2nd accused is not of Group 'B'. He accounts for this blood by saying that he was in a fight with the 1st accused. The 1st accused is not of Group 'B'. How then did this blood get on to the clothes

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of the 2nd accused? It may, Members of the Jury, be Group 'B' blood from any one of 100,000 or more people, but the Crown ask you to say that looking at the evidence as a whole the only rational conclusion is that this was from a particular person with Group 'B' blood, namely the deceased.

The doctor told us that it is impossible to assess the age of the stains which he found accurately. He went further than that and he said it was totally impossible to trace the course of events by the stains of blood, to say that that on one side of the room was caused before that on another side of the room and therefore to say that the deceased person went from point A to point B and back again. The dry blood could have been there up to 2 months. It could have been there, Members of the Jury: the prosecution ask you to infer from all the circumstances that it had not been there for anything like 2 months. The wet blood could have been there for up to a week - that which was found near the tap.

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I have said there was none of the 2nd accused's blood at the scene. There was no Group 'B' blood on the 1st accused. If he was involved in a struggle with the man, whose picture we see, lying on the floor, do you think that it would be probable that blood would come from the deceased on to the 1st accused? There was none. A great deal was shed but there was none on him. That you will consider very carefully in his favour. On the other hand, as far as the 1st accused is concerned there was some Group 'O' blood on a pair of shoes. That is his own blood group. There is nothing specially significant about the grouping of the blood but he tells the police, if you accept the statements, that this blood got there as a result of the fight which he had with the 2nd accused. But he also told the police that he was not wearing those shoes on that night.

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Finally, as regards these bloodstains, you will remember there are heel marks in this flat. The Crown ask you to say that they

were made by shoes belonging to the 1st and the 2nd accused. If that be correct, you may well come to the conclusion that those marks must have been made at a time while the blood was still wet.

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10 The heel marks are the third matter. It is conceded by the Crown that these are not conclusive. There must, you must, you may well think, Members of the Jury, be
100 hundreds if not more of heels similar to these which we have in this case. We have no evidence upon it, but approaching the matter as men and women of the world, surely you will come to the conclusion that a manufacturer doesn't turn out one of such heels. He will turn them out in large quantities and therefore there is no question of any positive identification. The accused say that they were together on this night and
20 we find, if you accept the evidence, that in this flat there were two heel prints each of which bears similarity to shoes owned by the two men. This is not just a heel print of one man, it is heel prints of two men - unless of course they were wearing odd shoes, which you may think unlikely. Therefore the Crown say "Here you have a double coincidence" and that is a matter which you ought to bear in consideration when you decide whether the accused were at the
30 scene and caused these wounds.

40 Then we have the evidence, fourthly, that the accused themselves each had injuries. Both admit that they received injuries on their hands on the night in question and they have a very plausible explanation of it: they say they they were engaged in a fight between themselves and that that is how these injuries were caused. It is for you to say whether you accept that explanation or not. The 1st accused says that he had no injury on his forehead. Dr. Tong says he had. The 1st accused said he had a boil. Dr. Tong said there was no boil. On top of that Dr. Searle saw the 1st accused on the 9th, the day before the alleged crime, and he says that he examined the left eye of the 1st accused in which he had conjunctivitis and he saw no wound or boil above the left eye.

And what of Dr. Kong? You will remember there was evidence that he saw a Pakistani on the 11th.

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The first question which is absolutely vital before we go on with his evidence is, are you satisfied that he saw the 2nd accused or was it possibly some other person? If you are in any doubt that Dr. Kong was talking to the 1st accused - I beg you pardon, the 2nd accused - if you have any doubt whether he was talking to the 2nd accused, you should disregard his evidence entirely. 10
The doctor was asked at an identification parade apparently, to identify the patient that he had seen and he failed. What he says was he was not sure of his identification; he knew the name the man had given and when shown a picture of the wound which was on the 2nd accused he said "That was the wound that I saw." Are you satisfied that that --

MR. MACDOUGALL: My Lord, I hesitate to interrupt, but I don't think the doctor did say that. He said it was a similar wound. 20

COURT: I am much obliged to you. He said "It was similar to the wound I saw." I am much obliged to you, Mr. Macdougall. And the question is whether you are satisfied that the similarity in the wound, the giving of the name and the rather hesitant identification that he thought that did appear that did look like the man, whether that is sufficient to satisfy you that Dr. Kong saw the 2nd accused. If not, as I say, disregard the evidence, but if it was the 2nd accused then we have the fact that the 2nd accused told him that he injured his finger while cutting meat. If he said that, was it a lie? He himself admits that he did not get it cutting meat: he says he got it from a fight. Why should he lie? Again, I have already told you what you must consider in relation to lying: did the lie move from a sense of guilt? That is the only relevance which a lie could have. 30 40

Fifthly, we have what I think you will consider is not a very strong point in favour of the Crown's case, Mr. LEUNG

10 Kang-chen's evidence of a tall slim man, a man who was apparently sitting in a place where the deceased was wont to sit and a man who failed to greet him. Could there not have been 101 reasons, Members of the Jury, why there should be no greeting on this occasion, even if it was the deceased who was sitting in that chair? However, it is a matter which you can throw into the scale if you think fit and attach such weight to it as you think proper.

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20 Perhaps somewhat stronger is the evidence of the ring, the ring which was found in the corridor outside the room where the deceased man was found. There was no ring of any kind found in the property of the 2nd accused, but we have a photograph of the 2nd accused taken comparatively recently (on the 27th November 1964) in which he was wearing a ring. It is suggested that this is the same ring and that this ties the 2nd accused up with presence at the scene. It is for you, again, to decide how much weight you can attach to these pieces of evidence.

30 There were the knives which were found on the 7th April, a matter of months after the date of the alleged offence, knives which were found, I think, on the 3rd floor of the Mandarin Hotel - it matters not exactly which floor it was, but it was not in the area searched by the police, which was the basement - on information. We do not know what information it was. Mr. Wilson, the Chief Security Officer, went to this place where there was engineering plant and underneath a wooden case he found two knives. The suggestion is that they may have been planted there and information given in order to damage these accused persons. It is a possibility which you must consider very carefully. The Crown say that here we have 40 two knives found in the place where the accused worked, the Mandarin Hotel, and this at least ties up the crime with persons at the Mandarin Hotel. There is, of course, no significance at all to be attached to these knives, unless you think that these were the knives which caused the injuries. As to that, you have the evidence of Dr. Tong. He says quite frankly that he would have expected the deeper wounds on the deceased to have been caused by a knife with a somewhat 50 longer blade, but his expert opinion was, if you

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continued

accept it, that although the bigger of the two knives was on the short side to cause these wounds it was possible that they could have caused the wounds. I am not going into his reasons for that opinion: you heard him and you must make your minds up as to whether you accept that these were knives which are connected with the alleged crime.

Finally, the Crown say there are statements before you which are false and that the making of these false statements indicates a sense of guilt by each of these accused persons. Very briefly let me recapitulate the points that were made which, it is suggested, show that these are false statements. First it is said that the accused the statements say the accused were drunk, but Counsel for the Crown says if they were drunk they appear to have remembered a remarkable amount of detail. As against that, members of the Jury, don't overlook the fact that the first accused said that quite early in the proceedings they sobered up and realised the difficulties they were in with the No.1 at the Mandarin Hotel and that they then took certain precautions to hide the fight from him. It is for you to say whether you think the allegation that they were drunk and the detail which appears in the statements is of any significance. They both say in their statements that they themselves bought the bottle of beer. The 1st accused says he bought it: the 2nd accused says he bought it. There is a direct conflict. The 1st accused says that he hit the 2nd accused with his fist quite hard in the face. No sign of any injury was found when the doctor examined the 2nd accused. I have already referred to the boil which the 1st accused refers to and which the doctors say they did not see. The two accused in their statements do not agree as to the method of travel to Wanchai. One says they walked, the other says they went by tram. The 1st accused says there were many people in the bar. One of the matters which you have to decide, Members of the Jury, is, when

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10 they described the Ocean Bar is that the bar they really meant? Mr. Chapman has told us that the description which was given in one of the statements of the bar that the accused say they went to fits the Ocean Bar. As against that I think I ought to remind you that Mr. Chapman did make an error in his evidence. He was asked - and I have checked this - he was asked how many bars there were on the 10th February on the south side of Lockhart Road. He said three. Later in his evidence he corrected that to one and he said that he misunderstood the question on the first occasion. It is for you to say whether you think that he was in any way trying to mislead the court and whether his evidence should therefore be viewed with suspicion. If the accused went to the Ocean Bar, do you 20 accept the evidence of all the members of the staff, who were called one after another to say that business was slack and they did not see the accused or any Pakistani in the bar on that evening? They say that with unanimous voice. Do you accept it? Of course if there is a possibility that the accused made a mistake in the naming of the bar and that they went somewhere else and that their statement is true, then there is no question 30 of lie.

The two men were taken to Harcourt Road and asked to identify the scene of the fight which they described. I think the places they indicated were not identical. Do you think that the difference could be attributable to the fact that when they were there at night time and, secondly, to the fact that they say - I say "a fact" - if it is a fact - that they were drunk? On the other hand the police say that they did not 40 search just this immediate vicinity; they searched an area on each side of the places pointed out to them and they looked for signs of glass. They found none. They say that the road did not appear to have been swept. Do you think that the road had been swept or could possibly have been swept after the time of the alleged fight and that such dust or dirt as they saw there was subsequent dust and dirt, because if that is a possibility you must give the benefit of the doubt to the accused and say that the 50 absence of glass is of no significance.

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And finally, as to the statements, it was I think suggested that the suggestion that the 2nd accused would take out this tiny penknife which he had to attack the 1st accused in the manner which he suggests is improbable. I leave that to you.

The defence say that all this, Members of the Jury, is not enough to point irresistibly to the presence of the accused in this flat and to their having caused the wounds. They emphasise the absence of any finger prints at the scene, but you may well think that that does not help you: that is for you to decide. You must make up your minds whether you are satisfied you are sure that having regard to all these factors which I have briefly enumerated you are satisfied that these two men or either of them was present at the scene and caused the fatal wounds. Looking at the whole of the evidence, is it an irresistible inference that they were responsible? If there is any other rational possibility then you must acquit them, but if you find yourselves driven inexorably towards this conclusion that they were there and caused these wounds then we have to pass on to a further question. How did the wounds come to be caused? That is to say, in what circumstances were the wounds caused? The Crown say that the only inference from all this evidence is that this was a deliberate attack, probably out of revenge, with intent to kill or at least to cause grievous bodily harm. If you agree with that, this case of murder has been proved.

Now it is not enough, Members of the Jury, (and you will I am sure appreciate this) for you to say "one of them is clearly guilty of murder but we don't know which, therefore we are going to convict both." Rather in such circumstances must both be acquitted and the guilty one must have the benefit of the doubt as to which it was. But again the Crown ask you to draw an inference here

that there was a common intent between these two men to kill or at least grievous bodily harm, which resulted in the death. The Crown ask you to find as a fact that these two men were present at the scene. They ask you to find that subsequently they told lies of a similar nature, which suggests that they cooked up a common story to cover their common guilt. At the same time they say the two accused told individual lies - for example, the 1st accused as to the boil and as to the shoes that he was wearing and the 2nd accused as to the cutting of the meat, if you believe that evidence. And the Crown say that these individual lies point to the individual sense of guilt of the two men.

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Then they say here we have two men who both had injuries. They ask you to find that those injuries were not received in the manner which the accused say they were received and that the probability in fact the inevitable conclusion is that these wounds were received at the scene of the alleged murder.

It is pointed out that both these men were at Haider in Pakistan at the material time when the murder of Wassal Khan was committed and that therefore they would know at least at close quarters what had happened. That perhaps is a very weak point, but it is something which you may think proper to take into account.

Neither of the two men, Members of the Jury, suggested to the police that there was anything in the nature of self-defence provocation, preventing a violent felony, separating others from fighting. If either of them had been defending himself or preventing a felony, would you have expected them to have told the police that? It is up to you to say whether you think that in all the circumstances they might still not have told the police. But if you think that it is extremely strange that if they were defending themselves or if they were separating a fight that they did not say anything to the police, that is a matter which you will throw into the balance.

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And finally it is said that there were two knives found at the Mandarin Hotel. Two knives. Was one used by each of the accused? Are you satisfied, Members of the Jury, that these were the property of the accused and that they put these knives there - that these were the knives that were used at the scene? Again you have got to be satisfied that you are sure that these two men did go to the scene and intentionally kill or cause grievous bodily harm or intend to cause grievous bodily harm to Said Afzal. I should add it is not necessary for you to make any finding that both these men, if they were present, actually struck a blow. If you are satisfied that they were there together with a common intent, that one of them struck the blow while the other looked on, kept watch, or was there present close enough to render assistance if assistance were necessary, then both of them would be guilty of murder. 10

Now I have mentioned these suggestions of self-defence and prevention of violent felony. If you think that either of these is possible, then it follows that the Crown has not established an unlawful assault with intent to kill or to cause grievous bodily harm and this is not murder. 30
In those circumstances you will find the accused not guilty. But if you are satisfied that these two accused or either of them wounds in self-defence or preventing a felony but using excessive violence, it is possible that you could bring in a verdict of manslaughter. I do not think I need labour this point, Members of the Jury. I have had grave doubts whether to leave this possibility to you at all. There is really no suggestion here that there was any excessive violence used in the course of self-defence. There is really no evidence that they were acting in self-defence. But if you were to come to that conclusion, then the accused might be guilty of manslaughter, if they used more violence than was necessary. I venture to think that on the evidence in this case you will have little difficulty in saying, as I think Counsel for the defence was disposed to say, that this is a case of murder or 40 50

nothing. The question which you have to make up your minds is: did these accused commit the murder? As to that you have to be satisfied that you are sure that with intent to kill or to cause grievous bodily harm they killed Said Afzal. I repeat for the last time: it is for you to decide what facts you believe and then what inferences you think it is proper for you to draw from those facts. If you are driven irresistibly to the conclusion that the accused or either of them - for you must consider them separately - is guilty, then your duty is clear; you must bring in a verdict of guilt. But if you are not satisfied that you are sure it is equally clear that these two men are entitled to an acquittal at your hands.

All that remains for me to say is this: you are required to return a verdict of guilty or not guilty of murder. In reaching that decision you have to be unanimous. You must all be satisfied that these men are either guilty - I say "satisfied" - you must come to the conclusion that they are guilty or not guilty. If you are unable to agree, Members of the Jury, on that point, you must tell me. I need hardly emphasize the unfortunate situation which would arise if you were unable to reach a verdict: this case would have to be tried again by another jury. That does not mean that you must in any way be unfaithful to the oath which you have taken. It means simply this: that you must approach this case together and hear the opinions of each other. Be prepared to be persuaded that your initial conclusion was wrong. But if you come to a firm conclusion one way or the other then you are bound by your oath to stick to it. Naturally if six of you were to be firmly of the opinion one way and the 7th were not firmly of the opinion of the other, but rather hesitating, he could properly be persuaded. But that is as far as it goes. Each must make up his or her mind according to conscience; and you must return a unanimous verdict as to guilty or not guilty of murder. In what I suggested was the perhaps unlikely event that you were to come to the conclusion that this was manslaughter, then you could reach that conclusion upon a majority of verdict of 5 - 2, or 6 - 1. It is not necessary then for you to be unanimous, but I hasten to add that

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this does not mean that a verdict of man-slaughter is a compromise because you are unable to agree on murder. You must first make up your mind whether you are satisfied you are sure these two men are guilty of murder.

I have nothing more to say to you, Members of the Jury. I hope that what I have said may have been of some assistance to you. We will now adjourn and you will please inform me when you are ready to give your verdict.

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MR. MAYNE: My Lord, there are just three matters which I feel it is my duty to draw to your attention. One matter is a slightest slip on the question of fact, but the other two matters are matters which I think I should mention to your Lordship in the absence of the Jury. As your Lordship knows it is my duty to - if I feel there is any possible inadequacy - to draw to your Lordship's attention

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COURT: Well, the jury ... the bailiff must be sworn - the court clerk must be sworn, because otherwise we cannot release the jury. They must be taken to the Jury Room and I will then hear what you have to say, and they will be asked to come back again. Yes?

MR. MACDOUGALL: I would ask, my Lord, that lunch be provided to the Jury.

COURT: They will all be provided with lunch. Yes?

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(Usher takes oath).

COURT: Very well. Members of the Jury, if you will go to the Jury Room. You may start discussing the matter amongst yourselves, but I will perhaps have something further to say to you afterwards.

(12.37 p.m. jury leaves Court).

MR. MAYNE: Thank you, my Lord. The first matter which, I think, is probably a small matter - it may be in favour of the Crown or the Defence - relates to this alleged murder in Pakistan. In summing up this matter to the Jury, your Lordship, as far as I can

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hear, said that the murder was of one person called Khan by another person called Khan.

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COURT: I beg your pardon. Yes.

MR. MAYNE: I think the evidence was as far as

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COURT: You are quite right. I have your point. You are quite right, Mr. Mayne. I am sorry: I was in error.

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continued.

10 MR. MAYNE: I would like, in connection with this matter - especially this is a matter for you- to recall the evidence that the witness who gave this evidence is himself called Khan, and that there are many persons who use the word "Khan" in Pakistan, can use it or do use it.

COURT: Yes, very well. Yes?

20 MR. MAYNE: The second point, my Lord, is the matter - it is not a matter of correction of your Lordship's summing-up. But in my address I may have confused you or possibly the Jury with regard to my remarks concerning injuries on the defendants being consistent with self-defence. What I had in mind - what I was trying to convey is this, that these injuries were consistent with being inflicted in self-defence from any person, not the accused - in other words, we don't know how many people were there; we don't know what happened, but the doctor says that the injuries could have been caused in self-defence. So they were not narrowed down to the question of self-defence from any attack from the deceased.

30 The third point, my Lord - your Lordship may feel it unnecessary, but I think it is desirable in the interest of justice - a great deal of emphasis has been placed in this case on the statements. Now, although your Lordship has very fully and very adequately dealt both with the onus or burden and the standard of proof, I think it would be desirable, my Lord, with great respect, if the jury were left in no doubt at all that the case was not
40 a matter of deciding between two stories - the circumstantial story, I might say, of the Prosecution and the stories of the defendants as given to the police - in other words, it is

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not a matter of comparing which of these is true or more probable, but which is proved to be impossible, shall I say. However, the jury, regardless of whether there were any lies in whole or in part nevertheless, it is not a matter of comparing the story. Of course, that is a factor. But on this question of standard of proof it is not a matter of comparison on the stories; it is a matter of an overall, taking all the evidence into consideration, an overall standard of proof to the extent which you must leave the jury satisfied to be sure of guilt.

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Thank you, my Lord. That's all that I wish to add.

COURT: Do you wish to add anything, Mr. Macdougall?

MR. MACDOUGALL: Nothing, my Lord, except I should merely say that the exhibits should be left available to the Jury in the course of their deliberation.

COURT: Very well. Let's have the Jury back.

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USHER: Yes, sir.

(12.42 p.m. Jury enters Court.)

COURT: Members of the Jury, I am sorry. I made an error in addressing you, on a question of fact and I want you to be quite clear what is the true position. The deceased of course was of the name Said Afzal: he was not a "Khan". Therefore the murder in Pakistan was not of one "Khan" by another as I suggested. The evidence of this murder in Pakistan was given by a Khan, Farid KHAN. There are, according to the evidence, many Khans in Pakistan. It is a name which is used by many families. Although the witnesses were disinclined to accept the word "common", I think you may well come to the conclusion that it is a common name

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Secondly, I am asked to add two things. The first is that Counsel for the Defence in his address to you was not, of course, saying that the wounds on the accused's hands were possibly obtained in defending themselves against the deceased and only the deceased. What he

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suggested was that they were wounds received in self-defence on some occasions and defending themselves against some persons - that that was a possibility. He was not, and I hope I did not suggest that he was, confining himself to the possibility that they were in defence against Said Afzal.

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Secondly, again I hope I did not give a contrary suggestion - it is pointed out by Counsel that this is not a case where you are asked to balance the story which appears in the statements against the story put forward by the Crown. What you are asked to say is, "Do you ... are you convinced that the story of the Crown is true?" It matters not whether the statements themselves are true; if the stories which appear in the accused's statements are entirely false, that in itself does not mean that the accused are guilty. You have to be satisfied on the whole of the evidence that the accused are guilty of this offence.

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MR. MAYNE: I am very much obliged, my Lord.

COURT: That's all, Members of the Jury. Thank you. (Clerk confers with Judge.) Just one minute, would you please. I am told that the Jury Room is not available, and we shall have to leave the Courtroom. Members of the Jury, would you please stay here and I will direct that some refreshment be brought to you.

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12.48 p.m. Court adjourns, pending Jury's decision.

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VERDICT AND SENTENCE

Verdict and Sentence.

11.00 a.m. Court sums up to the Jury.

12.43 p.m. Jury retires, using same Courtroom. Court adjourns pending verdict of the Jury.

5th May 1965.

1.00 p.m. Jury returns.

1.05 p.m. Court resumes.

Accused present. Appearances as before. J.A.N.

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CLERK: Mr. Foreman, will you please stand up? I am going to ask you to return your verdicts.

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Verdict and
Sentence.

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continued.

Now as against the first accused, Mawaz Khan,
have you agreed upon your verdict?

FOREMAN: We have.

CLERK: Are you unanimous?

FOREMAN: We are unanimous.

CLERK: How say you-

FOREMAN: Guilty.

CLERK: ..do you find the first accused guilty or
not guilty?

FOREMAN: Guilty of murder with a recommendation
for mercy. 10

CLERK: Now as against the second accused, Amanat
Khan, have you agreed upon your verdict?

FOREMAN: We have.

CLERK: Are you unanimous?

FOREMAN: We are.

CLERK: How say you, do you find the second accused
guilty or not guilty of murder?

FOREMAN: Guilty with a recommendation for mercy.

CLERK: I see, thank you. 20

CLERK: Will everybody please stand up?
(Everybody rises).

COURT: Mawaz Khan, Amanat Khan.

You have been found guilty of the offense of
murder. The sentence of the Court is that you
suffer death in the manner authorised by law.
The recommendation of the Jury will be passed
to the proper quarter.

...
Take them away. 30

COURT: Members of the Jury, it only remains for me
to thank you for the very careful consideration
which I am sure you have given to this case. As
I have indicated I will pass your recommendation
to His Excellency.

...
And you, gentlemen - I am much obliged to you for
your assistance.

1.09 p.m. Court rises.

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NO. 40

GROUNDS OF APPEAL, MAWAZ
KHAN

In the Supreme
Court, Appellate
Jurisdiction

No. 40

CRIMINAL PROCEDURE ORDINANCE

(Chapter 221 of the Revised Edition)

Grounds of
Appeal, Mawaz
Khan
13th May 1965

Notice of Application for Leave to Appeal
against Conviction

MAWAZ KHAN alias
FAZAL KARIM Appellant

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-and-

THE QUEEN Respondent

(Appellate Jurisdiction)

(Criminal Appeal No. 237 of 1965)

To the Registrar, Courts of Justice, Hong
Kong.

20 I, Abdoola el Arculli, Solicitor for
the above-named Appellant Mawaz Khan alias
Fazal Karim who having been convicted of the
offence of murder and being now prisoner
in the Stanley Prison at Stanley in the
Colony of Hong Kong do hereby give you
notice that I desire to apply to the Full
Court on behalf of the said Mawaz Khan
alias Fazal Karim for leave to appeal to the
said Court against the said conviction on
the following grounds:-

In the Supreme
Court, Appellate
Jurisdiction

No. 40

Grounds of
Appeal, Mawaz
Khan
13th May 1965
(Continued)

1. The verdict was wrong in law and in fact.
2. There was no evidence or no sufficient evidence to justify a verdict of conviction.
3. The Learned Trial Judge erred and did not exercise his discretion on correct legal principles in deciding despite objection to hold a joint trial.

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(Sd.) A. el ARCULLI

Solicitor for the Appellant.

Dated this 13th day of May, 1965.

Particulars of Trial and Conviction

Date when conviction passed.....5th May 1965.

533.

NO. 41
ADDITIONAL GROUNDS OF
APPEAL
MAWAZ KHAN

CRIMINAL PROCEDURE ORDINANCE

(Chapter 221 of the Revised Edition)

In the Supreme
Court, Appellate
Jurisdiction
No. 41

Additional
Grounds of Appeal
Mawaz Khan
28th July 1965

Notice of Application for Leave to Appeal
against Conviction.

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MAWAZ KHAN alias FAZAL KARIM
Appellant

and

THE QUEEN Respondent

(Appellate Jurisdiction)

(Criminal Appeal No. 237 of 1965)

To the Registrar, Courts of Justice, Hong Kong.

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Please note that at the hearing of the above application for leave to appeal to this Honourable Court against conviction the following further grounds of appeal will be relied upon and argued on behalf of the above named Appellant:-

4. The Learned Trial Judge misdirected himself in law and in fact in ruling and directing the jury that the statements in writing of an accused person (made in the absence of a co-accused) could be used for any purpose, or in any way, against the other accused person.

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5. The Learned Trial Judge misdirected himself in law and in fact in ruling and directing the jury that the oral statements of one accused person (made in the absence of a co-accused) could be used for any

In the Supreme
Court, Appellate
Jurisdiction

No. 41

Additional
Grounds of Appeal
Mawaz Khan
28th July 1965
(Continued)

purpose, or in any way, against the other
accused person.

6. A fortiori the Learned Trial Judge
misdirected himself in law and in fact in
directing the jury that the statements of
one accused person (made in the absence of
the other) could be used by the jury (more
especially, if they found them to be a
"tissue of lies") against the other accused
person; by comparison of statements, or
otherwise, for the purpose of showing (a)
that the said statements disclosed "an
attempt to fabricate a joint story" or (b)
that the two accused persons "had co-
operated after the alleged crime" or (c)
that either or both of the Defendants "lied
out of a sense of guilt".

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7. The Learned Trial Judge failed to warn
and direct the jury that the contents of any
statement made by one accused person in the
absence of a co-accused could not be used in
any way as evidence against the other one.

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8. Although the Learned Trial Judge did warn
the jury to deal with the case of each
accused separately from the evidential
point of view; the great bulk of the
Summing-up on fact, in effect dealt with
the evidence as a whole against both
Defendants as opposed to each Defendant
individually. And by reason of the phrase-
ology and the content of the Summing-up of
the facts as a whole, it cannot but have
had the effect of causing the jury to group
the case against both accused persons
jointly, with the over riding effect that
the jury must have felt that they should
bring in an "all or nothing" verdict of
guilty or not guilty in respect of both of
the accused persons; more especially having
regard to the points raised in grounds 4,
5, and 6. Reference will be made to the
Summing-up of the Learned Trial Judge as
to its full effect in this respect.

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9. The Learned Trial Judge misdirected and
misled the jury in describing to the jury
an accused person's right not to give evidence

in Court. In saying as he did "They are entitled, as has been done in this case, to remain quiet and say, 'It is for you, the prosecution, to prove that I am guilty. You get on with it. I am not going to help you.' They are entitled to do that". This comment and phraseology was wrong and highly prejudicial to both accused persons, and conveyed to the jury that in fact both of the accused persons were guilty; and that if either of them gave evidence it would necessarily have the effect of enabling the prosecution to prove their guilt more fully to the jury.

In the Supreme
Court, Appellate
Jurisdiction

No. 41

Additional
Grounds of Appeal
Mawaz Khan
28th July 1965
(Continued)

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10. The Learned Trial Judge failed to direct the jury fully on the law relating to circumstantial evidence as it applied to the evidence in this particular case and in particular to the expert evidence concerning the wounds, blood stains, foot prints and time factors and other evidence tending to show that there could be many rational and reasonable inferences to be drawn from the evidence other than that each or either of the accused persons were guilty of murder. The Learned Trial Judge's analogies on the question of circumstantial evidence were confusing and misleading, in the particular circumstances of this case, in that they did not clearly express the legal position on circumstantial evidence in a case in which there was more than one person on trial.

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11. The Learned Trial Judge misdirected the jury on fact and on the evidence in emphasizing that any lies told by either of the individual accused persons pointed strongly towards their joint or individual guilt. In the circumstances of the case he failed to give the jury any or adequate warning that there could well be a good reason for either of the Defendants to tell lies to shield other persons (including a co-accused); more especially since it was the Crown case that this alleged murder had a

In the Supreme
Court Appellate
Jurisdiction

No.41

Additional
Grounds of Appeal
Mawaz Khan
28th July 1965
(Continued)

background of tribal feuds between Pakistani tribes or clans. Further reference will be made to this aspect of the Summing-up on the hearing of the appeal.

12. The Learned Trial Judge omitted to put the defence adequately, or at all, to the jury on many matters including:-

- (a) The manifold uncertainties and possibilities which emerged rather reluctantly in cross examination of the prosecution witnesses especially the expert witnesses. 10
- (b) The many unknown factors in the case.
- (c) The complete lack of evidence of how many persons were present and what happened at the time that the deceased incurred his fatal injuries.
- (d) Assuming the accused persons were present at or about the time that the accused incurred his fatal injuries, the complete lack of evidence of how the accused persons came to be there, what they did if they were there, and what anybody else did who might have been there. 20
- (e) The uncertainty as to when the accused met his death. The uncertainty as to when any particular blood stain, or foot print, came to be present in any part of the premises. The uncertainty as to when the fatal blow was struck (before or after the deceased received his other injuries). 30
- (f) The unlikelihood of any of the knives found normally causing certain of the injuries found on the accused (particularly one).
- (g) Playing down the time factor between the arrival in Hong Kong of the Defendants and the time of the attack upon the deceased while at the same time suggesting to the 40

jury that some urgent feeling of revenge might to an extent be borne out by the very violent nature of the injuries which were inflicted upon the deceased.

In the Supreme Court, Appellate Jurisdiction

No.41

Additional
Grounds of Appeal
Mawaz Khan
28th July 1965
(Continued)

10

(h) The clear record of each of the accused persons.

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(i) That before either of the accused persons could be found guilty of murder the jury would have to be satisfied from the evidence that he had committed each and every ingredient of the offence of murder, and that in order to make such a finding the jury must find facts such as to pin point what murderous acts that accused person had performed be he either a principal in the first degree, in the second degree, or that he had acted jointly with such persons as murdered the deceased, (that must be proved on the evidence before the jury could be satisfied, as to be sure, of his guilty participation).

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(j) The Learned Trial Judge did not deal adequately or at all with any of the rational inferences that could be drawn from the evidence (other than guilt); and failed altogether to distinguish the case against the first accused from the case against the second accused in the light of the law relating to circumstantial evidence.

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13. The Learned Trial Judge misdirected the jury on fact in advising them of the finding of knives in the Mandarin Hotel necessarily tied up the crime "with persons at the Mandarin Hotel".

14. The Learned Trial Judge must have

In the Supreme
Court, Appellate
Jurisdiction

No.41

Additional
Grounds of Appeal
Mawaz Khan
28th July 1965
(Continued)

misled the jury as to the law in stating to them "Similarly, if a man sees another about to commit a violent felony, making a murderous attack upon another man, he is entitled (indeed he is obliged at law) to intervene and try to prevent it". Without further advice on this aspect of the case. The jury may well have thought that the failure of an accused person to prevent a murderous attack upon another man was sufficient to constitute the offence of murder. In this context it will be argued that the Learned Trial Judge misdirected the jury by non-direction in that:-

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(a) he failed to direct the jury that a mere participation "in the act" without a felonious participation "in the design" would be an insufficient finding upon which the jury would find either of the accused persons guilty of murder.

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(b) that he failed to direct the jury that conduct which might be sufficient to establish proof of one or other of the accused persons being an accessory after the fact of murder would be an insufficient finding on which the jury could find either of the accused persons guilty of murder.

15. The Learned Trial Judge failed completely to direct the jury on their verdict should they find that either of the accused persons was present at the scene in any innocent capacity. Indeed the burden of the Summing-up was to the effect that if either of the accused persons was at the scene at or about the time of the attack upon the deceased a verdict of guilty must almost necessarily follow.

30

16. The verdict was unreasonable in that there was no evidence, or no sufficient evidence, against either of the accused persons that they were guilty of murder.

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17. The trial was unsatisfactory as a result

of the individual grounds of appeal set forth above, individually and collectively.

In the Supreme Court, Appellate Jurisdiction

Dated the 28th day of July, 1965.

No. 41

(Sd) A. el Arculli.

Solicitor for the Appellant.

Additional Grounds of Appeal
Mawaz Khan
28th July 1965
(Continued)

NO. 42

GROUND OF APPEAL, AMANAT KHAN

CRIMINAL PROCEDURE ORDINANCE

No. 42

Grounds of Appeal, Amanat Khan
13th May 1965

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(Chapter 221 of the Revised Edition)

Notice of Application for Leave to Appeal against Conviction.

AMANAT KHAN

Appellant

and

THE QUEEN

Respondent

(Appellate Jurisdiction)

(Criminal Appeal No. 237 of 1965)

To the Registrar, Courts of Justice, Hong Kong.

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I, Abdoola el Arculli, Solicitor for the above-named Appellant Amanat Khan who having been convicted of the offence of murder and being now prisoner in the Stanley Prison in the Colony of Hong Kong do hereby give you notice that I desire to apply to the Full Court on behalf of the said Amanat Khan for leave to appeal to the said Court against the said conviction on the following grounds:-

1. The verdict was wrong in law and in fact.

In the Supreme Court, Appellate Jurisdiction

No.42

Grounds of Appeal, Amanat Khan
13th May 1965

2. There was no evidence or no sufficient evidence to justify a verdict of conviction.

3. The Learned Trial Judge erred and did not exercise his discretion on correct legal principles in deciding despite objection to hold a joint trial.

(Sd.) A. el ARCULLI

Solicitor for the Appellant.

Dated this 13th day of May, 1965.

Particulars of Trial and Conviction.

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Date when conviction passed ----- 5th May, 1965.

No. 43

Additional Grounds of Appeal, Amanat Khan
20th July 1965

NO. 43

ADDITIONAL GROUNDS OF APPEAL,
AMANAT KHAN

CRIMINAL PROCEDURE ORDINANCE

(Chapter 221 of the Revised Edition)

Notice of Application for Leave to Appeal against Conviction.

AMANAT KHAN

Appellant

and

THE QUEEN

Respondent

20

(Appellate Jurisdiction)

(Criminal Appeal No.237 of 1965)

To the Registrar, Courts of Justice, Hong Kong.

Please note that at the hearing of the above application for leave to appeal to this Honourable

Court against conviction the following further grounds of appeal will be relied upon and argued on behalf of the above named Appellant:-

In the Supreme Court, Appellate Jurisdiction

No. 43

Additional Grounds of Appeal,
Amanat Khan
20th July 1965
(Continued)

- 10 4. The Learned Trial Judge misdirected himself in law and in fact in ruling and directing the jury that the statements in writing of an accused person (made in the absence of a co-accused) could be used for any purpose, or in any way, against the other accused person.
- 20 5. The Learned Trial Judge misdirected himself in law and in fact in ruling and directing the jury that the oral statements of one accused person (made in the absence of a co-accused) could be used for any purpose, or in any way, against the other accused person.
- 30 6. A fortiori the Learned Trial Judge misdirected himself in law and in fact in directing the jury that the statements of one accused person (made in the absence of the other) could be used by the jury (more especially, if they found them to be a "tissue of lies") against the other accused person; by comparison of statements, or otherwise, for the purpose of showing (a) that the said statements disclosed "an attempt to fabricate a joint story" or (b) that the two accused persons "had co-operated after the alleged crime" or (c) that either or both of the Defendants "lied out of a sense of guilt".
- 40 7. The Learned Trial Judge failed to warn and direct the jury that the contents of any statement made by one accused person in the absence of a co-accused could not be used in any way as evidence against the other one.
8. Although the Learned Trial Judge did warn the jury to deal with the case of each accused separately from the evidential point of view; the great bulk of the

In the Supreme
Court, Appellate
Jurisdiction

No. 43

Additional
Grounds of
Appeal,
Amanat Khan
20th July 1965
(Continued)

Summing-up on fact, in effect dealt with the evidence as a whole against both Defendants as opposed to each Defendant individually. And by reason of the phraseology and the content of the Summing-up of the facts as a whole, it cannot but have had the effect of causing the jury to group the case against both accused persons jointly, with the over riding effect that the jury must have felt that they should bring in an "all or nothing" verdict of guilty or not guilty in respect of both of the accused persons; more especially having regard to the points raised in grounds 4, 5, and 6. Reference will be made to the Summing-up of the Learned Trial Judge as to its full effect in this respect.

10

9. The Learned Trial Judge misdirected and misled the jury in describing to the jury an accused person's right not to give evidence in Court. In saying as he did "They are entitled, as has been done in this case, to remain quiet and say, 'It is for you, the prosecution, to prove that I am guilty. You get on with it. I am not going to help you.' They are entitled to do that. This comment and phraseology was wrong and highly prejudicial to both accused persons, and conveyed to the jury that in fact both of the accused persons were guilty; and that if either of them gave evidence it would necessarily have the effect of enabling the prosecution to prove their guilt more fully to the jury.

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10. The Learned Trial Judge failed to direct the jury fully on the law relating to circumstantial evidence as it applied to the evidence in this particular case and in particular to the expert evidence concerning the wounds, blood stains, foot prints and time factors and other evidence tending to show that there could be many rational and reasonable inferences to be drawn from the evidence other than that each or either of the accused persons were guilty of murder. The Learned Trial Judge's analogies on the question of circumstantial evidence were confusing and misleading, in the particular circumstances of this case, in that they did not clearly express the legal position on circumstantial

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evidence in a case in which there was more than one person on trial.

In the Supreme
Court, Appellate
Jurisdiction

No.43

Additional
Grounds of
Appeal,
Ananat Khan
20th July 1965
(Continued)

10 11. The Learned Trial Judge misdirected the jury on fact and on the evidence in emphasising that any lies told by either of the individual accused persons pointed strongly towards their joint or individual guilt. In the circumstances of the case he failed to give the jury any or adequate warning that there could well be a good reason for either of the Defendants to tell lies to shield other persons (including a co-accused); more especially since it was the Crown case that this alleged murder had a background of tribal feuds between Pakistani tribes or clans. Further
20 reference will be made to this aspect of the Summing-up on the hearing of the Appeal.

12. The Learned Trial Judge omitted to put the defence adequately; or at all, to the jury on many matters including:-

- 30 (a) The manifold uncertainties and possibilities which emerged rather reluctantly in cross examination of the prosecution witnesses especially the expert witnesses.
- (b) The many unknown factors in the case.
- (c) The complete lack of evidence of how many persons were present and what happened at the time that the deceased incurred his fatal injuries.
- 40 (d) Assuming the accused persons were present at or about the time that the accused incurred his fatal injuries, the complete lack of evidence of how the accused persons came to be there, what they did

In the Supreme
Court, Appellate
Jurisdiction

No. 43

Additional
Grounds of
Appeal,
Amanat Khan
20th July 1965
(Continued)

if they were there, and what anybody else did who might have been there.

- (e) The uncertainty as to when the accused met his death. The uncertainty as to when any particular blood stain, or foot print, came to be present in any part of the premises. The uncertainty as to when the fatal blow was struck (before or after the deceased received his other injuries). 10
- (f) The unlikelihood of any of the knives found normally causing certain of the injuries found on the accused (particularly one).
- (g) Playing down the time factor between the arrival in Hong Kong of the Defendants and the time of the attack upon the deceased while at the same time suggesting to the jury that some urgent feeling of revenge might to an extent be borne out by the very violent nature of the injuries which were inflicted upon the deceased. 20
- (h) The clear record of each of the accused persons.
- (i) That before either of the accused persons could be found guilty of murder the jury would have to be satisfied from the evidence that he had committed each and every ingredient of the offence of murder, and that in order to make such a finding the jury must find facts such as to pin point what murderous acts that accused person had performed be he either a principal in the first degree, in the second degree, or that he had acted jointly with such persons as murdered the deceased, (that must be proved on the evidence before the jury could be satisfied, as to be sure, of his guilty participation). 30
- (j) The Learned Trial Judge did not deal adequately or at all with any of the rational inferences that could be drawn from the evidence (other than guilt); 40

and failed altogether to distinguish the case against the second accused from the case against the first accused in the light of the law relating to circumstantial evidence.

In the Supreme Court, Appellate Jurisdiction

No. 43

Additional
Grounds of
Appeal,
Amanat Khan
20th July 1965
(Continued)

10

13. The Learned Trial Judge misdirected the jury on fact in advising them of the finding of knives in the Mandarin Hotel necessarily tied up the crime "with persons at the Mandarin Hotel".

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14. The Learned Trial Judge must have misled the jury as to the law in stating to them "Similarly, if a man sees another about to commit a violent felony, making a murderous attack upon another man, he is entitled (indeed he is obliged at law) to intervene and try to prevent it. Without further advice on this aspect of the case. The jury may well have thought that the failure of an accused person to prevent a murderous attack upon another man was sufficient to constitute the offence of murder. In this context it will be argued that the Learned Trial Judge misdirected the jury by non-direction in that:-

30

(a) he failed to direct the jury that a mere participation "in the act" without a felonious participation "in the design" would be an insufficient finding upon which the jury would find either of the accused persons guilty of murder.

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(b) that he failed to direct the jury that conduct which might be sufficient to establish proof of one or other of the accused persons being an accessory after the fact to murder would be an insufficient finding on which the jury could find either of the accused persons guilty of murder.

15. The Learned Trial Judge failed completely to direct the jury on their verdict should they find that either of the accused persons was present at the

In the Supreme
Court, Appellate
Jurisdiction

No. 43

Additional
Grounds of
Appeal,
Amanat Khan
20th July 1965
(Continued)

scene in any innocent capacity. Indeed the burden of the Summing-up was to the effect that if either of the accused persons was at the scene at or about the time of the attack upon the deceased a verdict of guilty must almost necessarily follow.

16. The verdict was unreasonable in that there was no evidence, or no sufficient evidence, against either of the accused persons that they were guilty of murder. 10

17. The trial was unsatisfactory as a result of the individual grounds of appeal set forth above, individually and collectively.

Dated the 20th day of July, 1965.

Sd. A. el ARCULLI

Solicitor for the Appellant.

No. 44

Judgment of
Hogan C.J.
16th August
1965.

NO. 44

JUDGMENT OF HOGAN C.J.

IN THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION) 20

CRIMINAL APPEAL NO. 237 of 1965.

B E T W E E N:

1. Mawaz Khan alias Fazal Karim
2. Amanat Khan Appellants

and

The Queen Respondent

Coram: Hogan C.J. _____
Rigby and Briggs, JJ.

JUDGMENT OF THE CHIEF JUSTICE

The facts of this case are set out in the judgments of Rigby and Briggs, JJ. I turn at once to the grounds of appeal. Several are stated in the 30

two documents dated 13th May, 1965 and 20th July, 1965 but the main weight of counsel's argument has been placed on grounds 4 to 7 of the latter.

In the Supreme
Court, Appellate
Jurisdiction

No. 44

Judgment of
Hogan C.J.
16th August
1965
(Continued)

10 Briefly these claim that the learned judge having first directed - and Mr. Mayne says correctly directed - the jury that "A statement which is made by an accused person in the absence of the other is not evidence against the other" went on to nullify the effect of that warning, by directing the jury that they could take account of a statement made by each accused in the absence of the other for the purpose of finding, from the fact that such a statement was made and from the falsity of its contents, that the accused had jointly fabricated a story to cover their movements at the time in question and had done so because of their sense of guilt.

20 The statements in question were those in which each of the defendants separately told the police of their activities on the night of the 10th/11th February and endeavoured to explain how they came by the wounds on their hands etc. The Crown relied on these statements as showing that each of the accused had made a statement which was shown by other evidence to be false, thus giving an untrue, but similar, account of their movements on that night.
30 Because untruths in these statements were so similar in form and character, the Crown asked the jury to conclude that they must have resulted from an agreement between the two accused to fabricate a story in this form so as to explain their movements on the night of the killing, and that this joint fabrication of an exculpatory story indicated a joint participation in the crime which occurred that night.

40 Counsel for the appellant has argued the judge was wrong in so doing, because each of these statements should have been ruled out as evidence against the other accused, by the hearsay rule or, failing that, by the best evidence rule or, failing that, by the application of a further rule which counsel claimed to have been authoritatively endorsed by the decision

In the Supreme in R. v. Rudd⁽¹⁾, where the judgment contains the Court Appellate following passage:-
Jurisdiction

No. 44

Judgment of
Hogan C.J.
16th August
1965
(Continued)

"Ever since this Court was established it has been the invariable rule to state the law in the same way - that, while a statement made in the absence of the accused person by one of his co-defendants cannot be evidence against him, if a co-defendant goes into the witness-box and gives evidence in the course of a joint trial, then what he says becomes evidence for all the purposes of the case including the purpose of being evidence against his co-defendant." 10

When pressed for further authority on this point, counsel produced nothing more cogent but submitted that statements such as that made by Mr. Justice Humphreys, when delivering the judgment in R. v. Rudd⁽¹⁾, frequently appeared in textbooks such as Archbold.

The first thing to be observed about this passage is that the reference to statements outside the witness-box has no higher status than an obiter dictum. The issue which the court had to decide in the Rudd case (1) was whether the evidence given by an accused in the witness-box at the trial was or was not admissible against his co-accused and the statement made by Mr. Justice Humphreys was made merely for the purpose of indicating a distinction between such statements and statements made outside the trial by either co-accused. In such circumstances, it could hardly be expected that he would have been concerned with defining precisely and accurately the exact limits of the prohibitions which apply to such statements. In the overwhelming majority of cases they would no doubt be excluded by the Hearsay Rule and I think there can be little doubt that this is what Mr. Justice Humphreys had in mind when talking about "evidence against him" and making the somewhat sweeping and unguarded statement which has been given so much prominence in the headnote: a headnote which is indeed quoted from time to time in textbooks such as Archbold. A little reflection will show that the statement is not entirely and 20 30 40

(1) 32 C.A.R. 138 at 140.

literally true. Clearly there are well established instances in which such statements would be admissible, e.g. if part of the Res gestae or if made by a co-conspirator in furtherance of the common design. Mr. Justice Humphreys' statement took no account of such instances. If not literally true it cannot be of any great help to the appellant. A fair reading of the decision would appear to indicate that Mr. Justice Humphreys was describing what generally happened in the overwhelming majority of cases where such a statement was adduced in evidence against the person who made it, but could not be relied upon as evidence of its truth against a co-accused. There is nothing in the case to suggest that he was handing down some new and otherwise unrecognized rule. If there is, or ever was, such an absolute prohibition as his statement, taken from its context and considered without regard to the purpose of its making, would seem to suggest, then one would expect to find, at least, a case in which the matter was directly in issue.

Moreover, one would hardly expect to find a rule formulated in terms such as these; terms which appear to confine its application to those cases where there are co-accused and to leave undetermined the position which would arise when there are separate trials or where, for any other reason, the other accused is not before the court.

To my mind it is clear that the court in R. v. Rudd (1) was merely referring to results which follow, in the great majority of trials, from the application of the Hearsay Rule.

Counsel for the appellant was somewhat reluctant to undertake the task of formulating this much misunderstood and not infrequently misapplied principle; indeed, so much misunderstood that some would content there is no such principle or rule but merely an accepted collection of disparate instances and it is not without significance that so comprehensive a work as

(1) 32 C.A.R. at 140.

In the Supreme
Court, Appellate
Jurisdiction

No. 44

Judgment of
Hogan C.J.
16th August
1965
(Continued.)

In the Supreme Court, Appellate Jurisdiction

No. 44

Judgment of Hogan C.J.
16th August 1965
(Continued)

Archbold does not attempt to define the meaning of hearsay. When pressed, counsel seemed disposed to state it in the wider and less accurate terms to which Phipson on Evidence (10th Ed.) draws attention in paragraph 634: terms which ignore the purpose for which the alleged hearsay or statement is adduced. Phipson's work indicates that the more accurate form is that contained in paragraph 631, which says:

"631. Oral or written statements made by persons who are not parties and are not called as witnesses are inadmissible to prove the truth of the matters stated, except in the cases hereinafter mentioned."

10

Stevens' formulation of the rule in his Digest of the Law of Evidence follows a similar form and so do the more modern textbooks, such as that of Cross on Evidence (2nd Edition p.3), which gives a preliminary definition of the rule in these words:-

20

"Oral or written assertions of persons other than the witness who is testifying are inadmissible as evidence of the truth of that which was asserted."

Wignore on Evidence (3rd Ed. Vol. 6 p.178) is to the same effect. It says:-

"The prohibition of the Hearsay Rule, then, does not apply to all words or utterances merely as such. If this fundamental principle is clearly realized, its application is a comparatively simple matter. The Hearsay Rule excludes extrajudicial utterances only when offered for a special purpose, namely, as assertions to evidence the truth of the matter asserted."

30

Halsbury (3rd Ed. Vol. 15 p. 294) is to the same effect; adding that "the term 'hearsay' imports a purpose and not a quality".

These formulations of the Rule now have the very authoritative endorsement of the Privy Council in the recent case of Subramanian v. Public Prosecutor (2), where the Board said:-

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(2) (1956) 1 W.L.R. 965 at 970.

"Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made."

In the Supreme
Court, ~~Appellate~~
Jurisdiction

No. 44

Judgment of
Hogan C.J.
16th August
1965
(Continued)

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Counsel for the appellant sought to avoid the consequences of that statement by arguing that it was made in a case where the accused was seeking to establish duress and in respect of an offence created by emergency regulations. A perusal of the authority shows quite clearly that neither of these factors in any way limited the generality of proposition so clearly stated by the Privy Council. Since the Crown in the present case was seeking to introduce these statements, not for the purpose of proving the truth of the assertions contained in them but for the purpose of asking the jury to hold these assertions false and to draw certain deductions from the fact that such false statements were made, and made in particular terms, I do not think they were inadmissible as Hearsay.

At first sight I felt some anxiety as to those passages in which the judge directed the jury's attention to the contradictions in the statements - and there were some contradictions. If he had done so for the purpose of suggesting that one statement was true and the other false these passages might well have been open to question but on re-reading them I think the purpose was to direct attention to dissimilarity of a type which one might find in a fabricated statement where the general terms of the fabrication had been agreed but every detail had not been concerted.

The suggestion that the statements should have been ruled out because they offended against the best evidence rule is untenable. There can be no better evidence that a statement was made

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than the testimony of a person who heard it made, or, in the case of a written statement, by the production of the written document.

It is not without interest to note that very similar statements were admitted at the trial in England of Field and Gray which took place on the 13th December, 1920 at the Sussex Assizes. According to the verbatim account of Mr. Justice Avory's address to the jury, appearing in the Notable British Trials series, the jury was directed (p.279) in terms very similar to those followed by the judge in the present case. No objection to this was taken on the appeal. 10

Of course, in order that any such statement may be admitted as evidence at a trial, it must be relevant. The relevance as against a co-accused in the present case would depend on a series of findings and deductions which the Crown asked the jury to make on, or draw from the evidence adduced before them, i.e. that each accused made a statement which is demonstrably shown by other evidence to be false in material particulars; that these falsities appear in terms in both statements which carry on the face of them a clear indication that those who made them were acting in concert and that such concert indicated the existence of a common guilt, since there was no other rational explanation for the making of such statements. On this basis it seems to me the statements were relevant. 20 30

As a further argument against excluding the statements the Crown contended they were admissible as acts or declarations made by co-conspirators in furtherance of a common design. Some question arose as to whether evidence of acts or declarations in furtherance of a common design can only be given on a charge of conspiracy or whether it is admissible when the charge is one of a crime committed in pursuance of a conspiracy, irrespective of whether the indictment contains a conspiracy count or not. Archbold (35th Ed. para. 4074 p.1576) states that it is admissible in such circumstance and quotes three cases for this proposition; R. v. Jessops (3); R. v. Charles (4); R. v. Desmond (5). These are in some ways not 40

(3) 16 Cox 204 (4) 17 Cox 499 (5) 11 Cox 146.

very satisfactory authorities though they would seem to lend a considerable measure of support to the propositions stated in Archbold.

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10 Further argument arose as to whether these statements were made in furtherance of the crime of murder or merely for the purpose of escaping its consequences. Again this does not appear to have led to the exclusion of similar statements in the Field and Gray case, but in view of the conclusion which I have reached about the Hearsay Rule, I do not think it is necessary to make any pronouncement on these arguments about conspirators.

20 The rules of evidence are basically rules of exclusion. Facts that are relevant are admissible unless there is some recognised rule or principle excluding them. The making of these statements and their falsity were, I think, relevant to the charge against each accused. They were not excluded by the "Hearsay" rule or the "Best Evidence" rule and I know of no other principle which would exclude them. Consequently I think grounds 4 to 7 cannot be sustained.

The remaining grounds, despite the ability and address with which they have been argued, call for little comment.

30 Complaint is made in ground 8 that, although the judge had warned the jury to deal with the case of each accused separately from the evidential point of view, his summing-up in fact grouped the cases against each so closely that the jury must have felt they should bring in an "all or nothing" verdict of Guilty or Not Guilty in respect of both the accused. There is no doubt that in his direction to the jury he did deal with much of the evidence as it affected the accused jointly but, the nature of the evidence being what it was, I see no objection to this course. I do not think that it detracted from the force of the injunction given to the jury by the judge about dealing separately with each accused when reaching their verdict of Guilty or Not Guilty (p.4 of the

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transcript) or that it was in any way unfair to the accused.

The 9th ground of appeal refers to the judge's direction to the jury about the right of an accused person to decline to give evidence, where he intimated that, in effect, the accused could say "It is for you, the prosecution to prove that I am guilty. You get on with it. I am not going to help you.". Counsel argued that the last words of this passage would have implied to the jury that the accused were guilty and that if they gave evidence it was likely that that evidence would have helped the prosecution. The words in question referred to accused persons in general and I don't think that they would fairly be regarded as conveying a reflection on the accused but at worst, even if they did, they are only comment by the judge which, as he clearly warned the jury at the outset, they were quite free to reject or accept in accordance with their own view of the evidence. 10 20

The 10th ground complains that the trial judge failed to direct the jury fully on the law relating to circumstantial evidence as it applied to the evidence in this particular case. Counsel argued that that evidence could have lead to many rational and reasonable inferences other than an inference of guilt and consequently that it did not pass the test by which alone circumstantial evidence could justify a verdict of guilty. He argued that the judge's analogies on the question of circumstantial evidence were confusing and misleading, in the particular circumstances of this case. 30

There is nearly always room for argument as to whether the analogies chosen by a judge to illustrate the principles about which he is talking to the jury are or are not the most suitable for the purpose. Others might have chosen different analogies but I see nothing in the analogies chosen by the judge which would have been likely to mislead the jury in the present case. The essence of the Crown case in the present instance was that the possibility of two other people being present at the scene of the crime on the night in question, wearing shoes 40

capable of making the same heel prints that were found at the scene of the crime and which corresponded with shoes belonging to the 2 accused, was supremely remote; and that when there was added to this, the cuts and wounds on the hands of the 2 accused, for which they endeavoured to account by stories that were demonstrably false, and other incidents to which the prosecution witnesses testified there had come into existence a series of events which left room for no rational explanation other than that of a killing with malice aforethought by the 2 accused. Any other explanation, it was submitted, would involve a series of coincidences so incredible and so fantastic that human reason must reject its possibility. I think that on this basis the nature of the issues facing the jury were put to them with adequate clarity and precision by the judge, who told the jury quite categorically:-

"And so here, it is not enough for you to say that a certain inference is possible. You have got to be satisfied that the only rational inference to be drawn from the evidence is that these men are guilty of the murder of Said Afzal. If you are not so satisfied, it is your duty to acquit them of the charge against them."

Ground 11 complains that the judge should have pointed out to the jury that either of the accused might have told lies to shield other persons, but I see no reason why, on the evidence in this case, the judge should have entered into any such theory.

The 12th ground complains that the learned trial judge omitted to put the defence adequately or at all and instances a number of particulars in which it is said that he failed to do this. The accused gave no evidence and called no witnesses. The issues which arose in the circumstances from the prosecution evidence and the arguments adduced at the trial were I think put adequately to the jury by the judge and I think there is nothing in

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this lengthy ground of appeal.

Ground 13 complains that the judge mis-directed the jury as to the effect of the finding of two knives in the Mandarin Hotel but, at the hearing of the appeal, counsel indicated that on further reflection he was inclined to think that the judge's direction of which he had complained was merely a repetition of the prosecution's argument on this aspect of the matter and he did not pursue this point.

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Ground 14 refers to the position of a man who sees another about to commit a violent felony but, here again, counsel at the hearing of the appeal accepted the suggestion of the prosecution that what the judge was dealing with at this point was the right of a person to intervene and try to prevent the commission of a violent felony on another and that this direction was given for the purpose of indicating that, if the jury thought one or the other of the accused had taken this course, he should not be convicted of murder.

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Ground 15 complains that the judge failed to direct the jury on the verdict which would follow if the jury found that either of the accused persons was present at the scene in an innocent capacity. Nothing on the face of the evidence suggested that the accused or either of them was present at the scene in an innocent capacity and I see no reason why the judge should have directed the jury to consider any such defence.

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Grounds 16 and 17 say that the verdict was unreasonable and the trial unsatisfactory; neither of these contentions could, I think, be sustained.

Of the grounds set out in the earlier document dated the 13th May, 1965 signed and filed by the solicitor for the appellant, the only one that calls for comment is the suggestion that the judge did not exercise his discretion correctly in deciding to hold a joint trial. I see no justification for interfering with the exercise of the judge's discretion in this respect.

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Consequently, I see no reason for interfering with the decision of the jury in the court

below. I would, however, add that the main point raised by the appellants on this appeal appears to me to be one of importance and difficulty which might well merit attention by a higher tribunal, particularly as there is a dissenting judgment in this court.

Michael Hogan
President

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JUDGMENT OF RIGBY A. J.

IN THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)
CRIMINAL APPEAL NO.237 OF 1965

No. 45

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B E T W E E N:

- 1. MAWAZ KHAN alias Fazal Karim
- 2. AMANAT KHAN Appellants

- and -

20

THE QUEEN Respondent

J U D G M E N T

The two appellants were convicted of murder; they now apply for leave to appeal against their convictions.

The facts may be briefly stated.

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On the morning of the 11th of February 1965 the dead body of a man was found lying on the 4th floor of a room of a partially constructed flat at 34B Kennedy Road. The body was that of a Pakistani watchman, aged 49. There were no less than forty-nine wounds on his body and the evidence all pointed to the fact that he had been savagely stabbed and hacked to death.

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Medical evidence estimated that the time of death was about 10 p.m. the previous night. As a result of the investigations made by the Police, on the 12th of February, they interviewed the two appellants, both of whom are Pakistanis and both of whom were, at the material time, employed as "security officers" by a certain well-known hotel in Hong Kong. Both of them were observed to have cut wounds on their hands and the 1st appellant, in addition, had what appeared to be a small cut on the left side of the forehead. Before any question of their arrest on any charge arose they were invited to make statements as to their whereabouts on the evening of 10th February and both made individual statements, in the absence of each other, stating that they had gone together to a bar in the Wanchai District, where they had spent the evening drinking together. When asked to account for their injuries both of them, in their statements, said that after they had left the bar an argument arose as to a bottle of beer in the possession of the 1st appellant. The argument developed into a quarrel during the course of which the 2nd appellant drew out a small knife. The 1st appellant tried to seize the knife and in the course of so doing received the cuts found on him as shown on his hands and fingers. The bottle of beer fell to the ground and broke and whilst they were struggling on the ground the 2nd appellant cut his fingers on a part of the broken bottle.

At the scene of the crime the police found a number of shoe impressions, three of which were sufficiently clear for photographs of them to be taken. One of these impressions clearly corresponded with the "Good rich" rubber heel of the shoes the deceased was wearing. The premises occupied by the two accused were searched and their belongings taken away. Amongst the belongings of the 2nd accused was a pair of rubber-heeled shoes with the trade mark "Biltrite" on those heels. A comparison of the heel impressions found at the scene of the crime with the heel impressions of each of the shoes found in the possession of the 2nd appellant showed six similar points of comparison including, in particular, the impression "Biltrite" relatively clearly marked on the floor where the body was

found. The police officer who made such impressions was, however, unable to say whether the heel impression found at the scene of the crime corresponded with the left or right heel of the pair of shoes taken from the 2nd appellant since he said that the heels themselves were identical in shape and pattern.

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10 Again, an enlarged photographic comparison of a third heel impression found at the scene of the crime with the right heel impression of shoes taken from the 1st appellant showed five points of similarity. Of particular significance was an impression - clearly visible in the enlarged photograph - on the floor corresponding in pattern and position with a nail hammered into the right heel of this pair of shoes belonging to the 1st appellant.

20 The blood group of the deceased was Group B; that of the 1st appellant Group O; and that of the 2nd appellant Group A. Blood stains found at the scene of the crime were of Group B and Group O. Group O blood stains - his own blood grouping - were also found on the shoes and clothing of the 1st appellant. However, Group B and Group O blood stains - both foreign to his own grouping - were found
30 on the shoes and part of the clothing of the 2nd appellant.

A small oval shaped metal ring was found at the scene of the crime. A photograph taken of the 2nd appellant about a month before the incident shows him wearing a small ring on his signet or small finger. The 2nd appellant was not wearing a ring when interviewed by the police and when shown the ring found at the scene he denied that it belonged to him.
40 Finally, when taken into custody the 2nd appellant had in his possession a photograph of a girl. Endorsed on the back of the photograph is a crude, almost childish, drawing apparently depicting a person lying in a box or square with the words "Wassal Khan" recorded beside the drawing.

Evidence was adduced by the prosecution

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that about seven years ago the deceased had stabbed to death in Pakistan, a man named Wassal Khan, for which crime he was sentenced to five years imprisonment. After serving his sentence he came to Hong Kong and had been here for about a year before his death. There was evidence that both the appellants were in Pakistan at the time of that killing, living in the immediate vicinity or district where the killing took place. It was the suggestion of the prosecution that the two appellants killed the deceased in revenge for the fact that the deceased had himself killed Wassal Khan. 10

In its broad outline such was the case put forward against the accused. From the out-set of the case the prosecution sought to show that the alibi put forward in the statements made individually by both accused both to account for their presence elsewhere at the time of the incident and to account for the injuries found on their hands, was deliberately false and intentionally fabricated. They sought to do this in two ways: first, by positive evidence of witnesses called from the particular bar - identified as the Ocean Bar - in which the two appellants alleged they spent their evening; the effect of such evidence being to refute or negative the statements of the accused that they were in that bar that night. Secondly, they sought to disprove the alibi by referring to the contents of the statements themselves, comparing them with one another and pointing out the inherent inconsistencies and contradictions contained therein. So much for the facts. 20 30

The substantial grounds of appeal are twofold; first, that the trial judge failed to exercise a proper discretion in refusing to order separate trials, and secondly, that the trial judge misdirected the jury in telling them that in certain circumstances they would be entitled to use the unsworn statements, both oral and written, made by each accused, in the absence of the other, not only as evidence against the maker of that statement but also against his co-accused. What the Learned Judge said was this: 40

"A statement which is made by an accused

person in the absence of the other is not evidence against the other. It is evidence against the maker of the statement but against him only. The principle, of course, I think is obvious that the second man has no opportunity to deny what is said by the maker of the statement if he is not there. If he is there and does not contradict that may be some evidence against him, but it is otherwise when he is not there, and consequently the stories which appear in the statements of these two accused persons are not evidence against the other. But my direction to you is this. The Crown's case here is not that these statements are true and that what one says ought to be considered as evidence of what actually happened. What the Crown say is that these statements have been shown to be a tissue of lies and that they disclose an attempt to fabricate a joint story. Now, Members of the Jury, if you come to that conclusion then the fabrication of a joint story would be evidence against both. It would be evidence that they had co-operated after the alleged crime."

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It is the latter part of that paragraph, commencing from the words "But my direction" to the conclusion of the paragraph itself, to which objection is taken on the ground that it is a grave misdirection of the law. The following passages, in relation to the statements made by the 2 appellants, also appear in the judgment at p.7:-

"The allegation by the Crown is that these accused have lied. It is for you to decide whether you are satisfied that they have lied, but you must go further than that. You have to ask yourselves why did they lie? Learned counsel have suggested a variety of reasons why these men should have told lies. Among them was the possibility that they wished to shield others. Accused persons sometimes

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tell lies out of sheer panic. In either of these two cases, of course, the mere fact of lies is of no significance whatever. The question is, (if.... I assume that you are satisfied that they did lie) did they lie out of a sense of guilt? If, Members of the Jury, you are satisfied that they lied and that they lied out of a sense of guilt then that is a matter which you may properly take into account in coming to your conclusion in this case. If that was not the reason that they lied (assuming always they did lie) then the lies are of no significance in this case." 10

Again, at p.16:-

"Finally, the Crown say there are statements before you which are false and that the making of these false statements indicates a sense of guilt by each of these accused persons. Very briefly let me recapitulate the points that were made which, it is suggested, show that these are false statements. First it is said that the accused ... the statements say the accused were drunk; but Counsel for the Crown says if they were drunk they appear to have remembered a remarkable amount of detail. As against that, Members of the Jury, don't overlook the fact that the first accused said that quite early in the proceedings they sobered up and realised the difficulties they were in with the No. 1 at the Mandarin Hotel and that they then took certain precautions to hide the fight from him. It is for you to say whether you think the allegation that they were drunk and the detail which appears in the statements is of any significance. They both say in their statements that they themselves bought the bottle of beer. The 1st accused says he bought it: the 2nd accused says he bought it. There is a direct conflict. The 1st accused says that he hit the 2nd accused with his fist quite hard in the face. No sign of any injury was found when the doctor examined the 2nd accused. I have already referred to the boil which the 1st accused refers to and which the doctors say they did not see. 20 30 40

The two accused in their statements do not agree as to the method of travel to Wanchai. One says they walked, the other says they went by tram. The 1st accused says there were many people in the bar.

.....
 If the accused went to the Ocean Bar, do you accept the evidence of all the members of the staff, who were called one after another to say that business was slack and they did not see the accused or any Pakistani in the bar on that evening? They say that with unanimous voice. Do you accept it? Of course if there is a possibility that the accused made a mistake in the naming of the bar and that they went somewhere else and that their statement is true, then there is no question of lie".

And at p.18:-

"And finally, as to the statements, it was I think suggested that the suggestion that the accused would take out this tiny penknife which he had to attack the 1st accused in the manner which he suggests is improbable. I leave that to you."

It is of further importance to observe that when Mr. Mayne, who appeared for both accused at the trial and who now argues the appeal on their behalf, was making his final address to the jury, he pointed out to the jury that a statement made by one accused in the absence of the other was only admissible as against the maker of the statement and he sought to stress the fact that the statements of the two accused could not be used one against the other, for purposes of comparison or for any other purpose. However, he was stopped by the learned judge, at page 259 of the record, in the following terms:-

"Mr. Mayne, that is not for you to tell Members of the Jury. I haven't stopped you so far, but I am not going to direct Members

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of the Jury that they are not going
to use them for comparison purposes."

The vital and important question in this case was whether the learned judge was correct in law in telling the jury that although each statement was evidence only against the person who made it, yet they were entitled - and, indeed, invited by the learned judge - to compare the two statements and if they came to the conclusion that those two statements were false and that they had been jointly concocted out of a sense of guilt, then that would be evidence that they had co-operated after the alleged crime and they could properly take that factor into account in coming to their conclusion in this case. Mr. Mayne bases his contention upon the general proposition stated in Archbold, 35th Edition p.470, para. 1127 that:- 10

".... a statement made in the absence of an accused person by one of his co-prisoners is not and cannot be evidence against him". 20

In support of this generally accepted proposition, Mr. Mayne referred to the dicta of Humphreys, J. delivering the judgment of the court in the case of Rudd (1), in the course of which he said:-

"Ever since this Court was established it has been the invariable rule to state the law in the same way - that, while a statement made in the absence of the accused person by one of his co-defendants cannot be evidence against him, if a co-defendant goes into the witness-box and gives evidence in the course of a joint trial, then what he says becomes evidence for all the purposes of the case including the purpose of being evidence against his co-defendant." 30

He also referred to the general statement of the law made by Lord Goddard, delivering the judgment of the Court in the case of Gunewardene (2), in the course of which he said:-

"If no separate trial is ordered, it is the duty of the Judge to impress on the jury that 40

- (1) (1948) 32 C.A.R. 138 at p.140
(2) (1951) 35 C.A.R. 80

the statement of the one prisoner not made on oath in the course of the trial is not evidence against the other and must be entirely disregarded".

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10 Mr. Mayne submitted that the correct test is: if the appellants had been tried separately, would the statement made by one accused, in the absence of the other, be admissible in evidence as against that other accused? He maintained that the answer to that question is in the negative, and he argued that the same principle and line of reasoning must follow where there are separate trials. He contended that such a statement, as against a co-accused, is inadmissible because it is hearsay, and it is hearsay because it is an unsworn statement tendered in evidence against a person who was not present when it was made and has had no opportunity to cross-examine upon it.

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I must confess that upon first considerations I was much impressed by the force of Mr. Mayne's argument and I am bound to say that it accorded with what I had always understood to be the rule as to hearsay evidence and the admissibility - or rather the inadmissibility - of statements made by one accused, in the absence of his co-accused, as evidence against that co-accused. But upon further consideration I am satisfied that the fallacy of Mr. Mayne's argument lies in the correct interpretation as to what in fact constitutes "hearsay evidence". The learned judge was careful to point out that the Crown was not seeking to put in these statements as truth of their contents, but precisely the converse. To my mind, therein lies the answer to Mr. Mayne's contention. Whilst the term "hearsay" is widely and erroneously applied to "all statements by unexamined persons for whatever purpose tendered" its true meaning should strictly be confined to unsworn statements used to prove the truth of the facts declared (see Phipson on Evidence, 10th Edition p.274, para. 634 and Stephen's Digest of the Law of

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Evidence, 12th Edition p.28).

It is to be observed that in neither of the cases - Rudd (1) and Gunewardene (2) - relied upon by Mr. Mayne, was the Crown seeking to put in evidence statements made, prior to trial, by one accused against the other. In Rudd's (1) case the appellant was convicted largely upon the evidence of a co-defendant given upon oath at the trial. It is, I think, apparent that in making the statement upon which Mr. Mayne relies, Humphreys, J. was seeking, in general terms, to contrast the position of a defendant who makes an unsworn statement in the absence of his co-defendant, and the position where that same defendant subsequently goes into the witness-box at the trial and gives evidence implicating his co-defendant. It is the latter part of that contrasted position with which Humphreys, J. was directly concerned and the importance of which he sought to stress. 10

In Gunewardene's (2) case, the appellant was jointly tried for manslaughter with a woman named Hanson. Prior to the trial, Mrs. Hanson had made a statement the contents of which incriminated the appellant to a high degree. In summing-up to the jury Hilbery, J. had carefully warned the jury to disregard that statement as evidence against the appellant. On appeal, it was urged that that part of Mrs. Hanson's statement implicating the appellant should have been entirely excluded and not put before the jury. In rejecting that submission, Goddard, L.C.J. gave expression to the passage upon which Mr. Mayne has relied. But the statement of Mrs. Hanson was clearly hearsay - and the warning as to its inadmissibility against her co-defendant therefore vitally necessary - because it sought to establish the truth of the highly incriminating allegations made against the appellant. For such a purpose it was hearsay and inadmissible against the appellant, and it was therefore necessary to warn the jury to that effect. In my view, the judgment of Goddard, L.C.J. referred to in the passage quoted is only relevant to that extent and cannot be taken as an authority for the further proposition upon which Mr. Mayne seeks to rely. 30 40

- (1) (1948) 32 C.A.R.138
(2) (1951) 35 C.A.R. 80

The proposition that a statement to a witness by a person who is not himself called as a witness need not necessarily be hearsay is authoritatively supported by the decision of the Privy Council in the case of Subramaniam v. Public Prosecutor(3) In the course of their judgment, their Lordships said, at p.970:-

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"Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made."

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Turning now to the argument advanced by Mr. Mayne that the correct test is: if the appellants had been tried separately, would the statement made by one accused in the absence of the other have been admissible in evidence against that other accused, and vice versa? Without attempting to answer that question postulated by Mr. Mayne, I am far from satisfied that that is in fact the correct test in this case. There was independent evidence from which it could be inferred that the two appellants were jointly concerned in the commission of this offence and both present at the time the fatal blows were struck. In those circumstances, it was perfectly right and proper that they should be jointly charged with, and tried for, the commission of this offence. Nor am I able to see any grounds upon which it can properly be contended that the learned judge, upon the depositions before him, improperly exercised his discretion in failing to order separate trials. This was not one of those cases where an earlier statement made by one accused strongly incriminated his co-accused to an extent so prejudicial as might justify a judge, in the

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(3) (1956) 1 W.L.R. 965.

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exercise of his discretion, in ordering a separate trial. On the contrary, the defence severally put forward was that of an alibi. In those circumstances it was, in my view, eminently a case for a joint trial. In this connection it is, I think, relevant to refer to the case of Grondkowski (4) (cited with approval in the case of Buggy (5) where Lord Goddard, L.C.J., delivering the judgment of the court, said:-

"The discretion (i.e. to order separate trials) must be exercised judicially, that is, not capriciously. The Judge must consider the interests of justice as well as the interests of the prisoners. It is too often nowadays thought, or seems to be thought, that 'the interests of justice' means only 'the interests of the prisoners'." 10

There are certain advantages - and possible disadvantages - inherent to a joint trial one of which is, of course, that a co-prisoner may give evidence on oath favourable - or unfavourable - to his co-defendant. 20

In this case, both statements, independently made by each accused, were before the court. In my view the learned judge correctly and properly warned the jury that they must consider each statement as against each accused. Each statement consisted of an alibi, the purpose and effect of which was to show that both accused were together elsewhere at the material time at which the crime was committed. The prosecution sought to show that each statement, individually made, was untrue and the alibi was false:- 30

"From the very earliest times, long before an accused man could give evidence on his own behalf, the law has recognised that, in considering whether a man is guilty of the crime charged against him, one of the most relevant matters is this: What explanation did he give when he was asked about it? Was that explanation true or not? If he gives a true explanation, it tells in his favour. If he gives a false explanation, it tells against him. The prosecution have, therefore, always been entitled, as part of their own case, to 40

(4) (1946) 31 C.A.R. 116 (5) 1961) 45 C.A.R. 298.

give evidence of any explanation give
by the accused and of its truth or
falsity.....

.....
'The recourse to falsehood leads
fairly to an inference of guilt',".

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No.45

Judgment of
Rigby A.J.
23rd August
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(Continued)

10 If the jury was satisfied that each
statement was false and the contents
therein were fabricated, it was inevitable
that they should compare - and proper that
they should be invited to compare - the
contents of each statement - and the
remarkable similarity of each statement - for
the purpose of asking themselves whether or
not they were satisfied that the two accused
had put their heads together for the purpose
of fabricating an untrue statement to provide
a false alibi - and to give a false explanation
for the injuries on their hands. If the jury
came to the conclusion that the statements
20 were jointly fabricated, then they were
entitled to ask themselves why the accused
should wish to make false statements and, in
conjunction with the rest of the evidence in
the case, to draw their own conclusions there-
from. There was no question of the statements
being put in, the statement of one accused
against the other accused, to prove the truth
of the contents of those statements. It was
precisely the converse. In my judgment, the
30 direction to the jury as to the manner in which
they could, and should, consider the statements
made by the two appellants was not only in
accordance with every principle of plain
commonsense, but it was also in conformity with
the rules of evidence relating to the
admissibility of such statements for the
purpose for which they were in fact produced in
evidence.

40 I would accordingly dismiss these two
grounds of appeal raised by Mr. Mayne as to the
alleged misdirection by the learned judge and
the alleged wrongful exercise of his discretion
in failing to order separate trials.

As to the remaining grounds of appeal
put forward, I have had the advantage of reading
the judgment of the President of the Court and

In the Supreme Court, Appellate Jurisdiction

I agree with the reasons given by him in that judgment for dismissing those remaining grounds of appeal.

No. 45

I would accordingly dismiss this appeal.

Judgment of Rigby A.J. 23rd August 1965 (Continued)

The substantial ground of appeal in this case was whether or not the statements of each accused, made before trial and in the absence of each other, could properly be used against each accused in the manner in which the prosecution, and later the judge, invited the jury to consider those statements. Despite the conclusion I have reached, the point raised is one of very considerable practical interest. In the absence of any clear and specific authority in law to guide this court I would, indeed, be sorry if I thought that this court were to be the final arbiter in a case of such grave and weighty importance and I do most profoundly hope and trust that the propriety of this decision on a matter of law of such gravity and importance will be tested in, and determined by, a higher tribunal. 10 20

I.C.C. Rigby
Appeal Judge.

23rd August, 1965.

No. 46

NO. 46

Judgment of Briggs A.J. 23rd August 1965

JUDGMENT OF BRIGGS A.J.

IN THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 237 of 1965

B E T W E E N:

30

1. MAWAZ KHAN alias Fazal Karim
2. AMANAT KHAN Appellants

- and -

THE QUEEN Respondent

J U D G M E N T

It is with some regret that I find myself

in disagreement with the judgments of the other members of the Court in this case. After mature consideration it has been decided that this is one of those rare cases where a dissenting judgment in a criminal appeal should be delivered.

In the Supreme Court, Appellate Jurisdiction

—————
No.46

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1965
(Continued)

10 The facts in this case are as follows: The deceased Said Afzal was a Pakistani who in February of this year was employed as a watchman on certain uncompleted premises at No. 36B Kennedy Road, Hong Kong.

20 On the morning of 11th February, 1965, his dead body was found on the fourth floor of those premises. An examination of the body was made by Dr. Tong, a Forensic Pathologist, who found that the deceased had suffered very severe injuries indeed. There were multiple cut and stab wounds on the face, the neck, the front, and back of the trunk, both hands, the thigh, the scrotal area and the buttocks. There were 49 wounds in all, all inflicted apparently with a sharp instrument or instruments such as a knife or knives. It was estimated that the time of death was about 10 p.m. the previous night.

30 Upon the discovery of the body, the Police at once began an investigation. The appellants were arrested at 9 p.m. on 12th February, 1965, and charged with the murder of the deceased.

The appellants, Mawaz Khan otherwise known as Fazal Karim and Amanat Khan are also Pakistanis. They were employed in an hotel as security officers.

40 A witness named Farid Khan testified that in 1958 in his village of Haider in West Pakistan he had seen the deceased stab and kill one Wassal Khan. At that time the witness said that the two appellants, who are also from Haider were residing in the Village, though they were not present at the killing. The deceased was sentenced to imprisonment for five years, which sentence he had served

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before coming to Hong Kong where he had been for about one year at the time of his death. The police found a photograph of a girl among the possessions of the second appellant. The name 'Wassal Khan' and the words 'West Pakistan' and a drawing were inscribed on the back.

The suggestion of the prosecution is that a possible motive for the killing of the deceased was revenge for his having killed Wassal Khan in Haider Village in 1958 at a time when the appellants were residing there.

10

The Police found a great quantity of blood in the room where the body lay. There was blood on the floor and also outside in the passage-way outside that room. There was also blood on the floor of the garage which was on the ground floor of the premises, and on a deck chair which was standing there. There was a tap on the ground floor and it appeared to the Police that it had been used recently by somebody to wash away blood-stains from himself or his clothes. The Police also noticed in the blood which was on the floor of the room in which the body was found, certain marks which appeared to be the prints of the heels of shoes. The Police took photographs of these prints and they were compared with the heels of the shoes belonging to the appellants. One print could have been made by a shoe belonging to the first appellant and two other prints could have been made by a shoe or shoes belonging to the second appellant. Photographs of these prints were exhibited to the Court. A photograph of one heel print showed five points of similarity between it and a shoe belonging to the first appellant. A photograph of a second heel print showed six points of similarity between it and a shoe belonging to the second appellant. A photograph of a third heel print showed three points of similarity between it and a shoe belonging to the second appellant though the Police witness who produced the photographs in evidence was unable to say whether this print was of a left or of a right shoe.

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The Forensic Pathologist took samples of the blood of the deceased and of each appellant. The group of the deceased was Group 'B'; that of

the first appellant was Group 'O'; and that In the Supreme
of the second appellant was Group 'A'. At Court, Appellate
the scene of the crime only blood of Groups Jurisdiction
'B' and 'O' was found. There was no
blood of Group 'A' there. Blood of Group
'C' and Group 'B' was found on certain
clothing and shoes of the second
appellant. And blood of Group 'O' was
found on a shoe and other clothing of the
first appellant including his handkerchief
and his watch-strap.

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In the passage-way outside the room
where the body was found the Police found
a white metal finger ring. The second
accused was not wearing a finger ring when
he was interviewed by the Police. But a
photograph of him was produced in evidence,
which shows him wearing a finger ring which
was similar to that ring; though the size
of the photograph detracts from the
importance of this piece of evidence.

The Police first interviewed the two
appellants at their place of work on 12th
February at about 11.30 a.m. They were
interviewed by Detective Inspector Webster
and Inspector Rab Nawaz who acted as his
interpreter. The Detective Inspector at
once noticed that each of the two appellants
had suffered injuries to his hands. When
these were examined by the Forensic
Pathologist it was found that the first
appellant had slight wounds on the back of
three fingers of his right hand; while on
his left hand, there was a cut on the ball
of the thumb and abrasions and cuts to the
back of the hand, one of which was sutured.
The Pathologist also found what he described
as a cut on the forehead above the left eye-
brow of the first appellant.

Upon examination of the second appellant
it was found that he had a cut on the little
finger of his left hand and four shallow cuts
or scratches on the thumb of his right hand.
There was also a minor abrasion on his left
elbow.

When the Detective Inspector asked how these

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injuries had been caused the first appellant said "I had a fight with a friend. We were drunk. He had a knife. When I tried to take it away from him he cut my hand". He said the friend to whom he referred was the second appellant. The second appellant said that his injuries were caused by a fight with the first appellant.

The Police then examined the possessions of the two appellants who, at the request of the Police changed their clothing. The two appellants then went to the Central Police Station where a statement was taken from each of them but not in the presence of each other. 10

The statement taken from the first appellant is in the form of a series of questions and answers and covers a period from 11 a.m. until late at night on the 10th of February.

The first appellant said that he had a boil on his forehead, not a cut as was alleged in evidence by the Pathologist, and went to see a doctor in the Hotel about this at about 11 a.m. on the 10th of February. The doctor attended him said in evidence that he had treated him for conjunctivitis and that he saw no sign of a boil or of a cut on his forehead at that time. At about 7 p.m. on the same evening the first and the second appellant left the Hotel. They went by tram to a place near the Southern Playground and entered a bar called the Ocean Bar which was well patronised at the time. There they remained drinking spending about \$25. 20 30

The first appellant said that later, they decided to walk back to the Hotel. He was carrying a bottle of beer which he had bought. And they were both drunk. On the way back near the Fire Brigade at the old dockyard building, they had a quarrel. The second appellant demanded the beer and attacked the first appellant with a small pen-knife. It was in this way that he the first appellant received the injuries to his hands. He retaliated by striking the second appellant in the face with his fist and he suggested that he might have hit him with the bottle. Anyway the bottle broke and he threw it away at the scene of the fight. Because they were afraid of losing their 40

positions at the Hotel, they composed their differences and he and the first appellant concealed their injuries.

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The first appellant said he knew the deceased and had known him in Pakistan. When shown the ring found near the scene of the crime he said he had never seen it before.

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10 He described the clothes he wore on the night of the 10th of February including the shoes which he said he had on on that night. This pair of shoes could not have made the prints found by the Police at the scene of the crime. It was another pair of shoes belonging to the appellant and which were later found in his possession, which the Police say could have made such prints.

20 After taking this statement the Police were taken to the place where the first appellant said the fight had occurred. They were looking for the broken glass of the beer bottle but found nothing.

The statement taken from the second appellant was taken by another Inspector of Police. Again it was in the form of question and answer. The first appellant was not present.

30 The second appellant in his statement said that he and the first appellant had walked to Wanchai at about 8 o'clock in the evening of the 10th of February. They went to a bar the name of which he did not remember. They left the bar at about 9 p.m. and the first appellant took away with him a bottle of beer which he, the second appellant, had purchased. They had an argument on some waste ground near the Fire Brigade Building in Harcourt Road. The second appellant said he wanted the beer as he had paid for it. A fight began, the second appellant took out a knife and the first appellant injured the fingers of his hand when he tried to grasp the knife.

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The bottle of beer fell on the ground and broke. The two appellants fell to the

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ground and while rolling on the ground the second appellant cut his little finger on the broken bottle. The two returned to their quarters in the Hotel and the second appellant received treatment for his injuries the next day.

The second appellant said he knew the deceased who was a fellow villager but when shown the ring found near the scene of the crime stated he had never seen it before. He was not asked any question about the photograph which shows him wearing a ring. 10

A search was made at the place where the second appellant said the fight had occurred, but no sign of a broken bottle was found. This place was slightly different from the place pointed out to the Police by the first appellant.

The staff of the Ocean Bar were called and deposed that no Pakistanis were customers in their bar on the night in question.

As part of their evidence the Prosecution produced two knives which it was said could have inflicted the wounds found on the body of the deceased. They were found hidden in the Hotel in which the two appellants worked some two months after the date of the crime. It is enough to say that there is nothing to connect those two knives with the appellants other than the Hotel where they were so found. 20

Neither of the appellants gave evidence at the trial. And no witnesses were called on their behalf. 30

In his summing-up to the jury the Trial Judge pointed out that a statement made by one accused person in the absence of the other is not evidence against him. It is evidence against the maker of the statement but against him only.

But he went on to say this:

"But my direction to you is this. The Crown's case here is not that these statements are true and that what one says ought to be considered as evidence of what actually happened. What the Crown 40

say is that these statements have been shown to be a tissue of lies and that they disclose an attempt to fabricate a joint story. Now, Members of the Jury, if you come to that conclusion then the fabrication of a joint story would be evidence against both. It would be evidence that they had co-operated after the alleged crime."

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And later he added these words:-

"The allegation by the Crown is that these accused have lied. It is for you to decide whether you are satisfied that they have lied, but you must go further than that. You have to ask yourself why did they lie? Learned counsel have suggested a variety of reasons why these men should have told lies. Among them was the possibility that they wished to shield others. Accused persons sometimes tell lies out of sheer panic. In either of these two cases, of course, the mere fact of lies is of no significance whatever. The question is, (if.... I assume that you are satisfied that they did lie, did they lie out of a sense of guilt? If, Members of the Jury, you are satisfied that they lied and that they lied out of a sense of guilt then that is a matter which you may properly take into account in coming to your conclusion in this case. If that was not the reason that they lied (assuming always they did lie then the lies are of no significance in this case."

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And finally this:

"Finally, the Crown say there are statements before you which are false and that the making of these false statements indicates a sense of guilt by each of these accused persons. Very briefly let me recapitulate the points

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that were made which, it is suggested, show that these are false statements. First it is said that the accusedthe statements say the accused were drunk, but Counsel for the Crown says if they were drunk they appear to have remembered a remarkable amount of detail. As against that, Members of the Jury, don't over-look the fact that the first accused said that quite early in the proceedings they sobered up and realised the difficulties they were in with the No. 1 the Mandarin Hotel and that they then took certain precautions to hide the fight from him. It is for you to say whether you think the allegation that they were drunk and the detail which appears in the statements is of any significance. They both say in their statements that they themselves bought the bottle of beer. The 1st accused says he bought it: the 2nd accused says he bought it. There is a direct conflict. The 1st accused says that he hit the 2nd accused with his fist quite hard in the face. No sign of any injury was found when the doctor examined the 2nd accused I have already referred to the boil which the 1st accused refers to and which the doctors say they did not see. The two accused in their statements do not agree as to the method of travel to Wanchai. One says they walked, the other says they went by tram. The 1st accused says there were many people in the bar.....If the accused went to the Ocean Bar, do you accept the evidence of all the members of the staff, who were called one after another to say that business was slack and they did not see the accused or any Pakistani in the bar on that evening? They say that with unanimous voice. Do you accept? of course if there is a possibility that the accused made a mistake in the naming of the bar and that they went somewhere else and that their statement is true, then there is no question of lie." 10 20 30 40

It is obvious from the above extracts from the

10 summing-up that the Trial Judge considered that the evidence as to the written statements made by each appellant was of prime importance to the case for the prosecution. During the course of the trial counsel for the appellants submitted to the jury that the statement made by one appellant could not be received in evidence against the other appellant as it was not made in his presence. However, the trial judge stopped him and indicated that he would direct the jury that the statements could be compared the one with the other in order to decide whether there was evidence to support the contention of the Crown that the two appellants had concocted a joint story.

One of the grounds of appeal is that the trial judge misdirected the jury on this point.

20 The leading case is R. v. Rudd (1) in which the judgment of a very strong court was delivered by Humphreys, J. At page 140 of the Report he states the rule to be that a statement made in the absence of the accused person by one of his co-defendants cannot be evidence against him, though the position is different if a co-defendant gives evidence in the witness-box. It is the first part of this proposition with which we are here concerned.

30 The matter is dealt with in paragraph 1127 of Archbold (35th Edition). The authorities there given are authorities dealing with confessions made by one accused which implicate another accused and which are made in his absence and which therefore are not admissible against him.

40 Counsel for the prosecution stated that the correct rule is that statements made by one accused which implicate another accused and which are made in his absence are not admissible to prove the truth of the matters stated therein but are otherwise admissible. And he distinguished Rudd's case on this ground. He quoted the cases of Subramanian v. The Public Prosecutor (2) and R. v. Willis (3) in support of this.

(1) 32 C.A.R.138 (2) (1956) 1 W.L.R.965
 (3) (1960) 44 C.A.R. 32.

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However, he said, in the present case, the Crown was not trying to prove the truth of what was written in the statements. Far from it. The purpose of the evidence was to show a common design and also to show that the appellants lied to the police and that because of the discrepancies in the stories the individual story of each appellant is not to be believed. The reliance on these statements for these purposes, says the Crown does not violate the rule against the in-admissibility of hearsay evidence. It is only when it is sought to prove the truth of such a statement that it comes within the hearsay rule.

10

Counsel for the prosecution also relied upon paragraph 4074 in Archbold where it is said that whether an indictment contains a count for conspiracy or not the declarations of any of the conspirators in furtherance of the common design may be given in evidence against any other conspirator. It was suggested that the common design of the appellants in this case was to murder the deceased and to escape punishment: and that the two statements were made in furtherance of the common design and are hence admissible evidence not only against the person making the statement but against the other appellant as well. Of the cases there referred to the case which is nearest to our purpose in R. v. Jessops. (4) The prisoner in that case was the survivor of a suicide pact. Evidence was given of what the deceased had said to a chemist when buying the Laudanum which was to be used as the method of suicide. This was allowed in to prove the existence of the suicide pact, the common purpose. The report of this case is most unsatisfactory: no authority was quoted for admitting such evidence and the case was decided on another point.

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30

Counsel for the appellants distinguished this line of cases from the present. Before, he said, this rule can be invoked the Crown must lay down a foundation, there must be some evidence of a joint design. Here the only evidence of the joint design comes from the contents of the statements themselves.

40

I am of opinion that this line of cases and the principle enunciated in paragraph 4074 of

(4) 16 Cox 204.

Archbold is not applicable to the facts of the present case. If there was a common design in this case it was a common design to murder. But the statements cannot be said to be in furtherance of a common design to murder. I would also express a doubt whether the proposition contained in this paragraph of Archbold in so far as it refers to indictments which do not contain a charge of conspiracy is good law so far as statements made by an accused in the absence of a co-accused are concerned.

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It is my view that leaving aside indictments charging conspiracy the correct principle to apply is that most clearly laid down in R. v. Rudd (1). The reason this evidence is inadmissible is because it is hearsay and it does not fall within one of the exceptions to that rule. The general rule was well expressed in the old case R. v. Drury and Benson (5). In that case Drury and Benson were indicted for larceny and Drury pleaded guilty. When arrested he admitted his guilt but said nothing which could have implicated Benson. It was proposed to put in his statement not for the purposes of implicating Benson but to prove that there had been a larceny. It was held that Drury's statement was "not receivable for any purpose". It was neatly expressed by counsel for the prisoner: he said "The rule was not limited but was general and express, that no statement of one prisoner should prejudice another".

40

In Subramanian v. Public Prosecution (2) the question was whether certain words spoken to the appellant by a person who was not called as a witness were admissible in evidence. The appellant wished to give evidence of certain threats which had been uttered to him by that person. He was in fact setting up the defence of duress, a part of that defence was the uttered threats.

(1) 32 C.A.R. 138
(5) 1 Cox 228.

(2) (1956) 1 W.L.R. 965.

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The judicial Committee said that this evidence was clearly admissible, because the object of the evidence was to establish the fact that the threats were uttered. If the object had been to establish the truth of the words uttered, it would be inadmissible evidence.

I do not read this case as being authority for the proposition that evidence of statements of persons who are not called as witnesses is admissible in all cases provided that it is not sought to prove the truth of such statements. In my view the general rule is that statements made by persons who are not called as witnesses are inadmissible. But there are exceptions to that general rule. One such exception is where it is proposed to establish the fact that the statement was made. There may be other exceptions: for example "in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made". Those words are taken from the judgment in Subramanian's case. It will be noted that it is not there suggested that the mental state and conduct of persons who were not present when the statements were made can be proved by such statements. 10 20

In any event the Subramanian case is very different from the case at present before us. The truth of the statements in this case is not in issue except of course that each statement indicates that each of the two appellants were in each other's company at the material time. And those statements were not received in evidence to establish the fact that the statements were made. 30

They were used for the purpose of negating an alibi and to prove that the appellant lied to the Police. There is no question here of an appellant seeking to establish a defence for example of duress as in Subramanian's case. The Crown are seeking to say that the statements prove the appellants were together but that the statements otherwise are a concoction of lies. 40

If statements of this nature were allowed in evidence it will be difficult to know where to draw the line. For many statements are a mixture of truth and fiction: in such a case would the

correct procedure be to separate the wheat from the tares and only permit the tares to be produced as evidence.

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10 Again, if the first appellant in the present case had been tried alone and convicted, could his statement be given in evidence in the subsequent separate trial of the second appellant if he himself were not called as a witness? I think not. But if I understood him rightly, Counsel for the Crown did not suggest that this would be possible, on the ground that it would be admitting hearsay evidence. It is difficult to see why if such evidence is not admissible against the second appellant in a separate trial it is admissible against him in a joint trial. If such evidence is hearsay in one trial I should have thought it was hearsay in the other trial.

20 I do not think it can be doubted that the statement made by each appellant in this case implicated the other appellant. In my view the trial judge gave the correct direction to the jury when he warned them that the statements were only evidence against the actual person who made them and not evidence against the other appellant.

30 However, he negatived this warning when he invited the jury to examine the statements in the way that he did. It is unnecessary for me to repeat what he said. It is written above. In effect he said that the statements were admissible not to prove their contents but to show that the appellants were liars and perhaps lied from a sense of guilt.

40 In R. v. Rhodes (6) a similar situation arose. There the correct warning was given to the jury but it was negatived by further directions from the judge. The facts of that case are not on all fours with the facts of this case but the manner of the summing-up is very like.

As I have said these statements played a great part in the trial and were very fully dealt

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with in the summing-up. They were an essential part of the case for the prosecution. I am of the opinion that they were wrongly admitted in the form in which they were admitted. Apart from the statements the other evidence is not very strong against the appellants. And I am unable to reach the conclusion that if the jury had been properly directed as to this matter they must have inevitably reached the conclusion they did.

10

It is unnecessary for me to deal with the other matters raised by the appellants. I would allow this appeal.

G.G. Briggs
Appeal Judge

23rd August, 1965

In the Privy Council

NO. 47

No. 47

Order granting Special Leave to Appeal to Her Majesty in Council in forma pauperis 31st January 1966

ORDER GRANTING SPECIAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL IN FORMA PAUPERIS

20

AT THE COURT AT BUCKINGHAM PALACE

The 31st day of January, 1966

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President
Earl of Longford
Mr. Secretary Ross

Mr. Wigg
Miss Bacon

W H E R E A S there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 18th day of January 1966 in the words following, viz.:- 30

"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 Mawaz Khan alias Fazal Karim and Amanat Khan in the matter of an Appeal from

the Supreme Court of Hong Kong (Appellate Jurisdiction) between the Petitioners and Your Majesty Respondent setting forth that the Petitioners desire to obtain special leave to appeal in forma pauperis to Your Majesty in Council from the Judgment of the Court of Appeal of the Supreme Court of Hong Kong dated the 23rd day of August 1965 whereby the said Court dismissed the Petitioners' Appeal against their conviction and sentence to death by the Supreme Court of Hong Kong on the 5th day of May 1965 for the offence of murder: And humbly praying Your Majesty in Council to grant them special leave to appeal in forma pauperis from the Judgment of the Court of Appeal of the Supreme Court of Hong Kong dated the 23rd day of August 1965 or for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and Counsel for the Respondent not opposing Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal in forma pauperis against the Judgment of the Court of Appeal of the Supreme Court of Hong Kong dated the 23rd day of August 1965:

"AND Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced upon the hearing of the Petition ought to be accepted as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof

In the Privy Council

No. 47

Order granting Special Leave to Appeal to Her Majesty in Council in forma pauperis 31st January 1966
(Continued)

In the Privy Council

No.47

Order granting Special Leave to Appeal to Her Majesty in Council in forma pauperis
31st January 1966
(Continued)

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.

W.G. Agnew.

EXHIBITS

J.

Statement by accused, Mawaz Khan
12th February 1965

EXHIBIT J.

10

STATEMENT BY ACCUSED,
MAWAZ KHAN

HONG KONG POLICE

Central Police Station.

Name of informant: MAWAZ KHAN alias FAZAL KARIM.

Age: 21. Sex: P/male.

Address: 119, Lockhart Road, 3/Fl.,/Mandarin Hotel.

Occupation: Watchman, Mandarin Hotel.

Nationality and dialect: Pakistani/Urdu.

Taken by: D/Insp. B. Webster in Urdu language
at 1225 hours on 12.2.65 at
OC/C.I.D./C. Office.

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Interpreter: P/Insp. Rab Nawaz U.B./B.V.

States:-

Told I am making enquiries into the murder of a Pakistani watchman called SAID AFZAL.

Q. You have received certain injuries on your hands and forehead. Can you tell me how you

EXHIBITS

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Statement by
accused,
Mawaz Khan
12th February
1965
(Continued)

- 10 A. received those injuries?
On my forehead there is a boil, it is not an injury. With regard to my hands and these injuries I received these on 10.2.65 at about 2100 hours when I quarrelled with another friend AMANAT KHAN near the Fire Brigade at the old dockyard building. We were both drunk, and I was holding a
- 20 bottle of beer. Amanat Khan asked me to give him the bottle of beer. As he was drunk he started trouble with me, and attacked me with a small knife. As a result, I received injuries to my hands. I hit him back with my fist and bottle and I think he received a cut on his finger. Then we sobered up, and realised that we had done something wrong, and I told him that I was on
- 30 sick leave that night and that he was on the night shift so we should settle the matter between ourselves without bringing it the notice of the No. 1 because if he came to know we had been drinking and fighting he probably would dismiss us and we would lose our job. We settled it between ourselves and we went back to the Mandarin Hotel. Up till now we never told anyone at all.
- I have been hiding my injured hand with a towel. No one had asked me about the injury so I think no one has noticed. That night I stick adhesive tape over the injury, and went to bed, and the following morning I went to see a doctor in Wanchai at the Hong Kong Laboratory in Hennessy Road, 5/F1. That's all.
- 40 Q. Where were you all day and the evening of the 10th February, 1965, and who did you see? Also who were you with at various times?
- A. At about 11.00 hours on the morning of the 10th February, 1965 I went to see the hotel doctor about the boil on my left forehead. At about 12.00 hours I went back to my room at the Mandarin Hotel and had my nidday meal. After my meal I lay on my bed reading, also in the room

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Statement by
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(Continued)

sleeping were KHAN BAZ, DILBAR KHAN, ZEB JANAL KHAN, I remember only these three, they were all asleep. I went asleep, and I stayed in that room till about 1800 hours when Ananat Khan came to me and asked me to go out for a walk. We left the hotel at about 19.00 hours and boarded a tram at the tram stop at Des Voeux Road Central opposite the Asia Bank. We travelled third class in the tram, and went in an easterly direction. We got off the tram near the Southern Playground I do not know the exact location. We then walked to the Ocean Bar. Outside the bar was a Chinese fat man. We went into the bar, and sat at the second table behind the juke box. There were many other people in the bar but we were the only two Pakistani. We entered the bar at about 19.30 hours. I do not know how long we stayed there but the bill we finally paid amounted to \$25. This bill was for whisky which both of us drank. Before we left the bar I bought one small bottle of San Miguel beer, and I carried it out of the bar with me. 10

We then walked back to the Mandarin Hotel. When we came out of the bar and walked along the road leading to the waterfront. I am not sure which side of the road we walked but I think it was on the right hand side pavement. When we reached the seafront road we crossed over the road, and walked along the left side of the road slowly at a normal speed towards the Mandarin Hotel. I carried the bottle of beer which was unopened. We walked along the road, and when we reached opposite the dockyard, and where the Italian Exhibition had been before, Ananat Khan asked me to give him the bottle of beer to drink. I refused. He then tried to take the bottle of beer which I was carrying in my right hand away from me by force. At the same time he took a knife from one of his pockets, and tried to attack me. As he attacked me I put up my hands and received injuries to my hands. I attempted to take the knife away from him, and got my fingers cut. I struck him on the right side of his face once with my right fist. The blow I gave him was quite hard. I tried to hit him with the bottle but I cannot say whether I hit him or not. He was well drunk, and I was drunk. He then started 30 40

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Statement by
accused,
Mawaz Khan
12th February
1965
(Continued)

- 10 to go away. I went up to him, and told him that even though I had cut my fingers with the knife we had better settle it between ourselves as if the No. 1 came to know we had been drinking and fighting he would probably beat us up, and take other actions besides as drinking wine is forbidden to us. He is a very strict man and does not like people to drink. We then walked back to the Mandarin Hotel and went into the hotel by the side entrance from Connaught Road Central. On our way in we passed FAKIR MOHAMMED at the Connaught Road side entrance, and then also MOHAMMED SHARIF at the Charter Road entrance. Fakir Mohammed did not talk to us but I exchanged greetings with Mohammed Sharif. As we went in I kept my left hand in my left hand trouser pocket wrapped in a handkerchief and my right hand wrapped in toilet paper in my right hand trouser pocket. We then went
- 20 downstairs to our room. Then I applied adhesive tape to my hand, and I went to bed. Ananat Khan went to duty. When I entered the room in the basement everyone was asleep. There were no persons awake, and I spoke to no one. Asleep in the room were ZIARAT KHAN, KHAN BAZ, SAJAWAL KHAN, there may have been others but I cannot remember.
- 30 Q. What happened to the bottle of beer?
A. I threw it away deliberately where we had the fight because the bottle got broken when I tried to hit Ananat Khan with it and it hit a wall at that place.
- Q. What clothes were you wearing that night?
A. Same vest, same underpants, white shirt, dark grey trousers, same jacket as I am now wearing, these same socks and shoes and my wrist watch.
- Q. Where is the handkerchief you used to bind your hand?
40 A. I threw it in the litter box at the Hotel second floor at about 22.00 hours on the 10th February, 1965.
- Q. Where is the remainder of the clothing that you state you were wearing?
A. At the hotel where I sleep.

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J.

Statement by
accused,
Mawaz Khan
12th February
1965
(Continued)

- Q. Do you know a Pakistani by the name of SAID AFZAL was murdered?
A. Yes.
- Q. Did you know him?
A. Yes.
- Q. Can you tell me that you know of him?
A. My village is HAIDER and his village was CHALARA and known as HAIDER CHALARA. There are in fact two separate villages about two furlongs apart. He used to be my class fellow in primary school of the Shadi Khan Middle School in Shadi Khan Village. We studied in the same class, the fourth class for one year. When we took the final exan. I passed and he failed. That is all I know about him. 10
- Q. When did you last see him in Hong Kong?
A. I last saw him on the 5th February, 1965 at about 19.00 hours at 119 Lockhart Road the day following the Eide festival. I shook hands with him and we exchanged greetings. I stayed there until 21.00 hours when I left I did not see him there when I left. I have not seen him since that time at all. 20
- Q. To whom does this ring belong?
A. This is not my ring, I have never worn any kind of ring. I do not know whom it belongs to. I have never seen it before.
- Q. You have shown me a bloodstain on your under-pants. Can you fully explain this?
A. Perhaps when I was taking off my clothes the night I received my injuries I touched my under-pants. 30
- Q. Are you willing to give me all of your clothing for further examination?
A. Yes I an.
- Q. What clothing was Amanat Khan wearing on the evening of 10th February, 1965?
A. I do not remember.
- Q. Have you ever been to 36B, Kennedy Road?
A. I have never been to 36B Kennedy Road. 40

Q. What shoes were you wearing on the evening of 10th February, 1965?

A. This pair of black shoes.

Q. When did you last wear your other pair of shoes the brown ones?

A. On the 4th February, 1965.

Q. Where do you keep your brown pair of shoes?

A. Underneath my bed where I sleep.

10 Q. When did you last see your brown pair of shoes?

A. I last saw them on the 9th February, 1965 and then today. They were still there over my suitcase under my bed. The last time I saw my shoes they were on the suitcase. Today they were on the floor I do not know who put them there.

20 This statement has been read over to me in Urdu and is correct with the alterations that I have asked you to make and signed.

(Sgd) B. Webster
1540 hrs. on 12.2.65

(Sgd) Mawaz Khan
12.2.65

(Sgd) Rab Nawaz
12.2.65

EXHIBIT T

STATEMENT BY ACCUSED,
AMANAT KHAN

30 HONG KONG POLICE Station
STATEMENT/REPORT

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J.

Statement by
accused,
Mawaz Khan
12th February
1965
(Continued)

T.

Statement by
accused,
Ananat Khan
12th February
1965

Report No.

Name of informant/witness: Amanat Khan.

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T.
Statement by
accused,
Ananat Khan
12th February
1965
(Continued)

Age: 20. Sex: M.

Address: C/o Mandarin Hotel.

Occupation: Watchman at Mandarin.

Nationality & dialect: Pakistani/Punjabi.

Taken by: D.I. V.F.D. Chapman in English language.

At 12.50 hours on 12/2/65 at (Place) C.I.D./C.

Interpreter: Mohammed Nawaz Qureshi.

States:-

I have been in Hong Kong for one year and 5 months. I came from the Compcellpare District, Haider Village in Pakistan. I understand the Punjabi dialect.

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Q. How did you get your injuries?

A. On 10.2.65 I went out at 20.00 hours with Mawaz Khan and we went to Wanchai for a drink. We went to a bar somewhere in Lockhart Road. I do not remember the name of the bar. We had a few drinks together. We left the bar at about 21.00 hours. I bought a bottle of beer and Mawaz Khan took it with him. We walked along Harcourt Road and when near the Fire Brigade Building we started to have an argument. I wanted my bottle of beer back because I have paid for it, but Mawaz Khan refused to give it to me. We started to fight and I took out a knife. Mawaz Khan tried to grab the knife back. During these he received injuries on the palms of his hands. The bottle of beer fell on the ground and broke. We both fell on the ground and while we were rolling on the ground my left little finger was injured by a piece of broken glass, because the bottle was already broken. We made up the argument and went back to the Mandarin Hotel. We got back to the Mandarin at about 22.00 hours.

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I then changed my clothes and went on duty at midnight. At about 13.30 hours on 11.2.65 I went to see a Chinese doctor who lives and works on a building two blocks away from the Mandarin Hotel. I do not know the name of the

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doctor or the building in which he works. He treated my finger and put some plaster on it. He also gave me an injection. I paid him \$25-H.K.

EXHIBITS

T.

Statement by
accused,
Amanat Khan
12th February
1965
(Continued)

10

The bar we went to was on the right hand side of Lockhart Road, going from west to east, and it was on a street corner. We sat down at the end of a row of tables to the right of the entrance. I sat facing the Gents toilet and Mawaz sat with his back to a toilet. Behind his seat was a short wall coming out at right angles from the one running from the door.

The actual spot where we had the fight was on some waste around just past the Fire Brigade Building.

Q. Did anyone see you out on that evening?
A. No, I did not see anyone I knew.

20

Q. When you went out that evening, how did you go to Wanchai?
A. We walked from the Mandarin Along Connaught Road, Harcourt Road and into Wanchai.

Q. When you returned to the Mandarin did you see anyone?

30

A. Yes, I saw Mohammed Sheirif on duty at the rear gate of the Mandarin. When we went down to the quarters I saw Khan Bahadar. He was awake and sitting on his bed. Apart from him there was also Junna Khan, Anayat Ullah, Jan Khan and Khan Baz. All these persons I saw in one of the two rooms. They were all awake. In my room only Khan Bahadar and Junna Khan were awake. There were a number of others sleeping, but I do not remember who they were.

40

Q. What clothes were you wearing that night?
A. I wore black leather shoes, green and grey socks, dark patterned trousers, an off white shirt, a yellow pullover with brown pattern. I did not have a tie or a coat.

EXHIBITS

T.

Statement by
accused,
Ananat Khan
12th February
1965
(Continued)

- Q. Did you know Said Afzal?
- A. Yes. We belong to the same village. I knew him fairly well though I was not more than a casual friend of his.
- Q. Why did you not go to the Mandarin doctor to treat your hand?
- A. Because I did not want No. 1 Ziarat Khan to know that we had been fighting.
- Q. I now show you a finger ring. Have you ever seen it before?
- A. No.

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The above has been read over to me and is correct.

(Sd) V.F.D. Chapman 14.50 hrs.

(Sd) Mohammed Qureshi

(Sd) Ananat Khan.

K.

EXHIBIT K

Statement by
accused,
Mawaz Khan
13th February
1965

STATEMENT BY ACCUSED, MAWAZ
KHAN

C.I.D. Central

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OFFICER IN CHARGE OF CASE: Mr. B. Webster D/I
OC CID/C

INTERPRETER'S NAME: P/Insp. Rab Nawaz of
B.V. (U.B.)

TIME & DATE: 10.50 hours on 13.2.65

NAME OF DEFENDANT: Mawaz Khan alias Fazal
Karin, 21 yrs.

is charged MURDER.

Under { Proclamation No. Article.....

{ Ordinance No. ofSection.... 30

{ Common Law.

in that:-

EXHIBITS

Mawaz Khan alias Fazal Karim, you are charged that you did, together with Ananat Khan, on or about the 10th day of February, 1965, at No. 36B Kennedy Road, 4th floor, Hong Kong, in this Colony, murder Said Afzal.

K.

Statement by
accused,
Mawaz Khan
13th February
1965
(Continued)

(Sd) B. Webster.

10 Defendant was cautioned in the following terms
in Pakistani Dialect

Do you wish to say
anything in answer to the
charge?

States:-
(Statement written
in Urdu).

You are not obliged to
say anything unless you
wish to do so, but
whatever you say will be
taken down in writing and
may be given in evidence.

I have not committed
this murder. Neither
I know anything about
it.

(Sd). Mawaz Khan

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I hereby certify that
the foregoing is a
true translation of
the Urdu statement in
answer to charge.

(Sd) Hussain.

Court Translator.
9.3.65.

Received a copy of this document
at 10.50 hours on 13.2.65

30

(Sd) Mawaz Khan.

Received a copy of this document
at 11.10 hours on 13.2.65

(Sd) Ananat Khan.

EXHIBITS

EXHIBIT L

L.
Statement
by accused,
Amanat Khan
13th February
1965

STATEMENT BY ACCUSED, AMANAT
KHAN

C.I.D. Central

OFFICER IN CHARGE OF CASE: Mr. B. Webster D/I.
OC. CID/C

INTERPRETER'S NAME: P/Insp. Rab Nawaz of
U.B./B.V.

TIME & DATE: 11.00 hours on 13.2.65.

NAME OF DEFENDANT: Ananat Khan, 21 yrs. 10
is charged MURDER.

Under { (Proclamation No.....Article.....
{ Ordinance No.of.....Section..
{ Common Law

in that:-

Ananat Khan, you are charged that you
did, together with Mawaz Khan alias Fazal
Karin, on or about 10th day of February,
1965, at No. 36B Kennedy Road, 4th floor,
Hong Kong, in this Colony, murder Said
Afzal.

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(Sd.) B. Webster.
13.2.65.

Defendant was cautioned in the following terms in
Pakistani Dialect.

Do you wish to
say anything in answer
to the charge?

States:-

(Statement written in
Urdu).

You are not obliged
to say anything unless
you wish to do so, but
whatever you say will

Whatever I have said
yesterday is my story. I
accept whatever punishment
the Inspector wants to
give me. I am innocent.

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be taken down in writing
and may be given in
evidence.

God will punish
the fellow whoever
accused me.

(Sd) Ananat Khan

I hereby certify
that the fore-
going is a true
translation of the
Urdu statement in
answer to charge.

(Sd) Hussain

Court Translator
9.3.65.

Received a copy of this
document at 11.11 hours
on 13.2.65.

(Sd) Amanat Khan

Received a copy of this
document at 11.14 hours
on 13.2.65.

(Sd) Mawaz Khan.

EXHIBITS

L.

Statement
by accused,
Ananat Khan
13th February
1965
(Continued)

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IN THE PRIVY COUNCIL

No. 4 of 1966

ON APPEAL FROM THE
SUPREME COURT OF HONG KONG,
APPELLATE JURISDICTION

B E T W E E N:

1. MAWAZ KHAN
alias FAZAL KARIM

2. AMANAT KHAN

Appellants

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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

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

Solicitors for the Appellants

Solicitors for the Respondent