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40, 1954

IN THE PRIVY COUNCIL

No. 29 of 1954

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

B E T W E E N

CHAN KAU alias CHAN KAI Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

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Cursitor Street.
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MESSRS.CHARLES RUSSELL & CO.,
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Solicitors for the Appellant. Solicitors for the Respondent.

IN THE PRIVY COUNCILNo. 29 of 1954ON APPEALFROM THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)BETWEEN

CHAN KAU alias CHAN KAI

Appellant

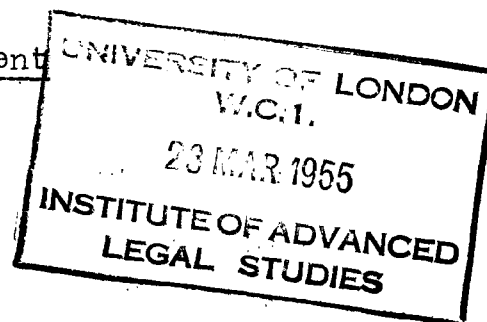
- and -

THE QUEEN

...

Respondent

38047

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but not printed

Exhibit Mark	Description of Document	Date
P.13	Grant of Pardon to Mak Hei	5th September 1953
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In the Supreme Court.

No. 2.

CAUTION TO ACCUSED

No. 2.
Caution to Accused.
15 Oct. 1953.

IN THE POLICE COURT AT KOWLOON IN THE COLONY OF HONG KONG

In Case No. K. 20809
Date 15th October, 1953.

REX v. CHAN KAU alias CHAN KAI.

Accused was cautioned in the following terms in Puntí dialect:

"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing and may be given in evidence upon your trial and you are clearly to understand that you have nothing to hope from any promise of favour and that you have nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of your guilt, but that whatever you say now may be given in evidence upon your trial notwithstanding such promise or threat". 10 20

Sgd. A.A.HUGGINS,
Magistrate.

The above was interpreted to me.

Sgd. CHAN KAU,
Accused.

Interpreted by - Sgd. LAWRENCE NENG.
Sworn Interpreter.

No. 3.

COURT PROCEEDINGS

IN THE SUPREME COURT OF HONG KONG
CRIMINAL JURISDICTION

December, 1953 Sessions
Case No.3

Transcript of the shorthand notes taken of the
evidence at the hearing of the trial of Regina
versus Chan Kau alias Chan Kai, charged with
Murder.

In the Supreme
Court.

No. 3.

Court
Proceedings.

21st December,
1953.

10

Date: 21st December, 1953 at 9 a.m.

Coram: Mr. Justice C.W. Reece.

Present: Mr. W.A. Blair-Kerr, C.C. for Crown.
Mr. W.K. Loo, for the accused.

Jury present in Court answer to names.
Accused present in Dock.
Charge on indictment read to accused and he is
asked to plead.
Accused pleads Not Guilty.

20 Jury empanelled as follows :-

1. Allan Knox Murray (Foreman)
2. Ma Sui Ping.
3. Ling William.
4. Pinna, Carlos Luis
5. Gutierrez, Carlos Alberto Antonio.
6. Liu, Philomena (Miss)
7. Chan, Nai Wing.

Accused has no objection to the jury.
Jury sworn or declared.

30 Accused given in charge to jury.

Indictment read and explained to jury by Clerk of
Court.

In the Supreme
Court.

No. 4.

LEUNG HANG

Prosecution
Evidence.

1. Leung Hang (d) in Punti Dialect. Examined by
Mr. Blair-Kerr.

No. 4.

Leung Hang.
21 Dec. 1953.
Examination.

Q. You are a Police Photographer attached to the
Identification Bureau, Police Headquarters?

A. Yes.

Q. Now, on the evening of the 23rd July last, you
went to Sai Yeung Choi St. with Inspector Jones
here? 10

A. Yes I did.

Q. And there on his instructions you took four
photographs?

A. Yes.

Q. Are these the four photographs you took (shown
to witness).

A. Yes, they are. (Marked Exhibits 1-4).

Q. Now, this one with the brightly lighted shop on
the photograph (Exhibit 1) that shows Sai Yeung
Choi St. and the brightly lighted shop is the
Kwong Wah Restaurant? 20

A. Yes, the brightly lighted shop is the Kwong Wah
Cafe.

Q. Now look at Exhibit 2. Now, that again shows
the position looking up Sai Yeung Choi St.

A. Yes.

Q. Taken from the pavement on the right hand side
of Sai Yeung Choi St. in a northerly direction.

A. Yes, looking to the direction of the police
station. 30

Q. Now on the 24th July, you accompanied Dr. Pang
to Kowloon Public Mortuary?

Q. There you took 5 photographs of a dead Chinese
male.

A. Yes.

Q. Are these the 5 photographs?

A. Yes. (Marked Exhibits 5-9).

Q. Now on the 29th July, you went to 59, Argyle
Street which is at the junction of Sai Yeung
Choi St. and Argyle St. 40

A. Yes.

Q. There you took two photographs?

A. Yes. (Marked Exhibits 10 and 11).

Q. Are these the two photographs which you took,
(Exhibits 10-11)?

- A. Yes.
- Q. And from that you made these copies. Of all these 11 photographs, you made 6 copies?
- A. Yes.
- Q. And you printed and processed all the photographs yourself?
- A. Yes.

(Copies handed to Court and Jury).

Cross Examination by Mr. Loo -

- 10 Q. Look at Exhibit 10. This is a breadstall isn't it?
- A. Yes.
- Q. On the right hand corner, do you see a knife there?
- A. Yes I do.
- Q. When you took this photo, was the knife there?

REECE, J: How could it possibly be in the photograph when it wasn't there when he took it?
Please ask him sensible questions Mr. Loo.

- 20 Mr. Loo: Yes, My Lord.
- Q. When you first went to see the place, did you see a knife there?
- A. I did not notice if there was a knife there or not then. I only took this picture under the direction of Inspector Jones.

No re-examination.

No. 5.

BRYN JONES

2. Bryn Jones (s) - Examined by Mr. Blair-Kerr.

- 30 Q. Now Inspector Jones, you are a Detective Sub-Inspector attached to Yaumati Police Station?
- A. That is correct.
- Q. Acting on information about 9.10 p.m. on the 23rd July, you went to Sai Yeung Choi St. in Argyle St.
- A. Yes.

In the Supreme Court.

Prosecution Evidence.

No. 4.

Leung Hang.

21st December, 1953.

Examination - continued.

Cross-Examination.

No. 5.

Bryn Jones.
21 Dec. 1953.
Examination.

In the Supreme Court.

Prosecution Evidence.

No. 5.

Bryn Jones.

21st December, 1953.

Examination - continued.

- Q. There was a crowd there?
 A. There was a large crowd present.
 Q. Opposite the Kwong Wah Cafe in the middle of the road you saw a pool of blood?
 A. Correct.
 Q. And that spot is shown in the photograph Ex. 1. where you saw the pool of blood?
 A. Photograph No.1 shows the Kwong Wah Cafe lighted up and the exact spot where I saw the blood would be approximately.

10

REECE, J: Just a minute please. Give the witness a pin and let him fix the spot on the photograph. (Witness does so).

A. That would show the approximate spot I found the blood.

Q. There was also blood on the walls of the cafe?

A. Yes.

Q. Photograph 3 shows that?

A. Yes.

Q. Now, as a result of what you were told, you went down Sai Yeung Choi St. to the junction of Fife St.

20

A. On information I followed a trail of blood along Sai Yeung Choi St. towards Fife Street where, in Fife Street, leaning against the wall of Mongkok Police Station, I found a Chinese male covered in blood, being held up by two detectives.

Q. Did you notice any particular wound on the man?

A. On the left side of his neck was a gaping wound about 6" long showing the muscles and blood vessels cut.

30

Q. You have got his name?

A. I have got the name and address of this Chinese male. His name is Chan Fook. I called for an ambulance and sent him to Kowloon Hospital and I took possession of one identity card from this person.

Q. This is the identity card?

A. This is the identity card, covered in blood, giving the name of Chan Fook and his photograph. (Marked Exhibit 12).

40

Q. Were you present when he died at Kowloon Hospital?

A. I was present in Kowloon Hospital at 21.35 hrs.

the same evening where the same Chinese male Chan Fook was pronounced dead.

Q. Later at Mongkok Police Station, where you handed this chopper by P.C.1381?

A. P.C.1381 handed me this chopper (Marked Exhibit 13). Later that same night, I directed the police photographer to take 4 photographs in Sai Yeung Choi St.

10 REECE, J: Just pass these photographs to Inspector Jones and let him identify them.

A. These are the 4 photographs (Exhibits 1-4).

Q. At 10 o'clock next morning, you were present at Kowloon Public Mortuary when photographs Exhibits 5-9 were taken by the same police photographer on your instructions?

20 A. At 10 o'clock next morning, I was present at Kowloon Public Mortuary when the same photographer took the photographs Exhibits 5-9 of the deceased, Chan Fook. I also in Kowloon Public Mortuary identified the body of Chan Fook in the presence of his wife Cheung Pak Mui and Dr. Pang.

Q. The wife was there to identify the husband?

A. That is correct.

Q. On the 29th July, you again took the same police photographer to Sai Yeung Choi St. and directed him to take photographs 10 and 11?

A. That is correct.

30 Q. Going back now to the 24th, you took possession of the dead man's shirt?

A. That is correct.

Q. And his handkerchief?

A. One white shirt, one handkerchief.

Q. His Royal Naval Dockyard pass?

A. One Royal Naval Dockyard pass.

Q. And his finger ring?

A. One finger ring.

Q. 4 ten cent coins?

A. Yes.

40 Q. And this fountain pen?

A. Yes. (Group of articles marked Exhibit 14).

Q. When you came on the scene on the 23rd July, in Sai Yeung Choi St., you also found this stool?

A. Yes, I found the stool on 23rd July in Sai Yeung

In the Supreme Court.

Prosecution Evidence.

No. 5.

Bryn Jones.

21st December, 1953.

Examination - continued.

In the Supreme Court.

Prosecution Evidence.

No. 5.

Bryn Jones.

21st December, 1953.

Examination - continued.

Choi St. approximately 10 yards from the scene where I found the spot of blood.

REECE, J: Is there any significance in that?

MR. BLAIR-KERR: Two spots of blood were found on it, my Lord.

Q. On the 27th you received from Inspector Hidden this white shirt?

A. Yes. (Marked Exhibit 15).

Q. Now, on the same day you handed certain things to D.P.C. 1326.

A. On the 23rd July, I handed to D.P.C. 1326 the articles I have mentioned, the Exhibits.

Q. You handed to this D.P.C. first of all the identity card Exhibit 12, the chopper Exhibit 13.

A. All the exhibits mentioned in Exhibit 14, the clothing and Exhibit 15, the white shirt.

On the 5th August I received back the same articles from D.P.C. 1326.

Q. Now lastly, you made a sketch plan of the area of Argyle St., Nathan Road, Sun Yeung Choi St. and Reclamation St., and Streets running parallel.

A. This is the plan I sketched (Marked Exhibit 16)

REECE, J: How many copies did you make?

A. I made about 10 copies, my Lord.

Q. Now, did you measure the distance from 25, Argyle St., to the junction of Sai Yeung Choi St., and Argyle St.?

A. Yes, it came to 266 yards.

Q. You measured the distance from the breadstall to where the pool of blood was?

A. From the breadstall to the pool of blood was approximately 17 yards.

Q. And from the pool of blood to the Kwong Wah Cafe?

A. From the pool of blood to the Kwong Wah Cafe, 11 yards.

Q. How far is it from the Sun Wah Theatre to where Mongkok Police Station is in Fife St.?

A. From the Sun Wah Theatre to Fife Street, Mongkok Police Station would be approximately 100 yards.

10

20

30

40

Cross-examined by Mr. Loo:In the Supreme
Court.

Q. Inspector Jones, when you saw the deceased leaning against the wall of the Mongkok Police Station and you asked him his name and he said Chan Fook, did you ask him any further questions?

Prosecution
Evidence.

A. Yes, I did.

Q. What other questions did you ask him?

No. 5.

Bryn Jones.

10

A. I asked him if he was of the opinion that he was dying. The reason was to see if I could take a dying declaration from him.

21st December,
1953.

Q. What did he say?

A. He did not answer.

Q. Did you ask him whether he had a fight?

A. Yes.

Cross-
Examination.

Q. What did he say?

A. He could not say definitely. He said he was attacked from the back and from the front.

Q. Did he say he was attacked by how many members of the gang?

20

A. By one Chinese male.

Q. Now, when you were handed the chopper by D.P.C. 1381, did you cause the chopper to be examined as to whether there was any print appearing on the knife?

A. Yes I did.

Q. Was any print found?

A. No. Apart from the finger prints of the D.P.C. who found it and other blurred smudges which could not be identified.

30

Q. On the night of the 23rd July, 1953, you also found a stool nearby, did you not?

A. That is correct. Near the scene of the blood. This is the stool I found.

Q. When you found this stool was it wrapped up in paper?

A. No.

Q. How far was this stool from the pool of blood?

A. I would say approximately 7 or 8 yards.

Re-examination by Mr. Blair-Kerr:Re-
Examination.

40

Q. Where was the exact location of the stool? Was it on the side of the road?

A. On the side of the road about a yard from the pavement. I can show the exact location from Photograph 2, (Witness marks with pin on photograph Exhibit 2). It would be directly behind that pillar marked there.

Q. And was it upright on the street?

A. Just lying upside down on the street.

In the Supreme
Court.

No. 6.

CHUNG CHO MAN

Prosecution
Evidence.

(3) Chung Cho Man (s) in English. Examined by Mr. Blair-Kerr.

No. 6.
Chung Cho Man.
21st December,
1953.
Examination.

Q. You are a Medical Officer attached to Kowloon Hospital?

A. Yes.

Q. On the 23rd July last about 9.15 p.m., you received and examined in the Casualty Department of that hospital a Chinese male?

10

A. Yes.

Q. Photograph 9 shows the man?

A. Yes.

Q. Brought in by Inspector Jones?

A. Yes.

Q. Now you gave the man an examination, what did you find?

A. He was brought in in a very critical condition. He showed signs of severe blood loss before arrival. He was suffering from profound shock.

20

Q. You tried to save his life but he died at 9.35 that night, is that correct?

A. Yes, he died at 9.35 p.m. on that night. I found several wounds on his body. One wound was on the left upper region of the neck.

Q. Is that shown in photograph 5?

A. Yes. It was very deep and it measured about 6" long. The second wound was on the upper part of the right ear. It was about 1" long.

Q. Look at Photograph 7.

30

A. The wound No.3 was about 2" long and was behind the right ear also shown in photograph 7.

Cross-
Examination.

Cross-Examination by Mr. Loo.

Q. You found three wounds on the body in fact.

A. Yes.

Q. Did you find any other split wounds on the body?

A. No, I did not find any other wound.

Q. As regards the first wound, the 6" long wound, did you think it was caused by much force as a medical doctor in your opinion?

40

A. Yes, it needs considerable force to cause that.

Mr. Loo: May it please your Lordship, the accused has just complained that he has a stomach pain. May we ask for an adjournment?

In the Supreme Court.

REECE, J: I can't grant you an adjournment, but we can adjourn for a few minutes and you can then let me know whether he feels better after that. Before we adjourn, have you any questions to put in re-examination Mr. Blair-Kerr?

Prosecution Evidence.

No. 6.

Chung Cho Man. 21st December, 1953.

MR. BLAIR-KERR: Yes, my Lord.

Cross-Examination - continued.

10 Re-Examination by Mr. Blair-Kerr.

Q. When you say you didn't find any other wound, he had a shirt on?

Re-Examination.

A. It was partly covered by the shirt. During the time of the examination I had to find the major condition first. If there is no sign of any serious condition I did not take off the shirt.

Q. It was obvious to you as a medical man that the terrible gash on the left hand side of the neck was the one that is going to cause death, if anything?

20

A. Yes.

MR. BLAIR-KERR: May the Doctor be excused my Lord?

REECE, J: Yes.

(Court adjourns and resumes at 10.45 a.m.).

No. 7.

No. 7.

TAM KAI

Tam Kai. 21 Dec. 1953 Examination.

4. Tam Kai (s) in English. Xn. by Mr. Blair-Kerr.

Q. Now, doctor, you are a Medical Officer at Kowloon Hospital?

30

A. Yes.

Q. Now, at 7.30 p.m. on the 28th July last, you examined a Chinese male, the accused Chan Kau.

A. Yes.

Q. He was brought to you by the police.

In the Supreme Court.

Prosecution Evidence.

No. 7.

Tam Kai.

21st December, 1953.

Examination - continued.

A. Yes.

Q. What was his condition, doctor?

A. His general condition was good. There were minor superficial abrasions over his body at the following sides: over the right ear lobe, the lobe itself, the front of the right side of the chest, the front of the left side of the chest, the front of the left armpit, over the back on the left side just below the left shoulder blade, over the instep of the left foot and over the left leg or shin.

10

Q. Any other abnormalities of any kind?

A. There was no other abnormality and no complaint from the patient.

Q. What was the age of these abrasions? How old?

A. I would say around 3-4 days.

Q. Did the patient tell you how he got the abrasions?

A. Yes, he said that he had the abrasions for 3-4 days and that confirmed my findings.

20

Q. Can you give us the probable cause of those abrasions, doctor?

A. Most probably due to a struggle or a fight or rubbing against any rough surface.

Q. For example the road, hard surface like the road.

A. Yes.

Q. There were no split or incised wounds or anything like that?

A. No.

30

No cross-examination.

No. 8.

Pang Teng Cheung.
21 Dec. 1953
Examination.

No. 8.

PANG TENG CHEUNG

5. Pang Teng Cheung (s) in English. Examination by Mr. Blair-Kerr.

Q. Now doctor, you are a Police Surgeon attached to Police Headquarters, Hong Kong.

A. Yes.

Q. You were present at Kowloon Mortuary on the 24th July?

A. Yes.

Q. When the body of C/M was identified by a lady called Cheung Pak Mui?

A. Yes.

Q. In the presence of Inspector Jones here?

A. Yes.

Q. How old would you say this dead man was?

A. About 34 years old.

Q. You directed the police photographer to take certain photographs, Exhibits 5-9?

10 A. Yes.

Q. That is the dead man there?

A. Yes.

Q. And at 9.50 a.m. that day you conducted a post-mortem examination on this dead man?

A. Yes.

Q. What were your findings?

20 A. The body was that of a thin built man, height 5'8". He was generally pale all over. There was one abrasion below the right knee cap $1\frac{1}{2}$ " long. The following wounds were then noted.

(1) A gaping cut wound, shelving downward, 6" long, 2" wide, situated over the left side of the neck.

REECE, J: Just demonstrate by putting your hand on the exact spot.

MR. BLAIR-KERR: Look at Photograph 5. Does that show the wound you are talking about?

30 A. Yes. Over the left side of the neck exposing cut muscles, blood vessels and the jaw bone; about 2" deep.

Q. The jaw bone was actually cut?

A. Yes actually cut. You could see fragments of the bone there.

Q. Fragments of the bone, on that photograph, sticking out?

A. Yes.

Q. It follows the line of the jaw bone?

A. Yes.

40 Q. In other words it was sloping slightly downwards and forward.

A. Yes, it is oblique from the angle of the jaw towards the back of the neck.

Q. Yes. Now the next one?

A. The next wound was a cut wound over the right side of the head

In the Supreme Court.

Prosecution Evidence.

No. 8.

Pang Teng Cheung.

21st December, 1953.

Examination - continued.

In the Supreme
Court.

Prosecution
Evidence.

No. 8.

Pang Teng
Cheung.

21st December,
1953.

Examination -
continued.

Q. Look at Photograph 7.

A. Splitting the right ear lobe and is 3" long and is oblique, it is fairly shallow.

REECE, J: Not a very serious wound?

A. No, my Lord.

Q. Now, that is wound No.2. Wound No.3?

A. No.3 is not shown in any photograph, but it is situated over the back of the right wrist. It is a split wound, not a cut wound. The first two wounds were cut wounds. No. 3 is over the back of the right wrist, 1" long and about an 8th of an inch wide. No.4 is another split wound over the outer aspect of the left arm shown on photograph No.6. This is a shallow wound, it is 1½" long and 1/8th of an inch wide.

10

Q. No.5? Look at photograph 8.

A. No.5. It is a split wound, a longitudinal split wound, up and down, also shallow, 2" long and 1/8" wide at the back of the right shoulder shown in Exhibit 8.

20

The last wound is a slightly curved wound, fairly shallow, 1" long and 1/8" wide across the left shoulder.

Q. There is no bruising around these split wounds is there?

A. No. I don't know what you mean. You mean along the edges?

Q. Yes.

A. They are split, you see.

Q. Now carry on with more of these 6 wounds. Can you express an opinion as to the probable position of the parties, that is to say victim and assailant, when wound No.1 was caused.

30

A. In my opinion when wound No.1 was inflicted, the assailant would be in front and slightly to the left of the deceased.

REECE, J: Please use Mr. Tsang, the Interpreter, to show the jury. (Witness does so).

A. I would be slightly in front and to the left of the deceased if I were the assailant. A blow shelving downwards; upwards and downwards direction.

40

Q. Are you in a position to say the probable position of the two parties when No.2 was caused, the one on the right hand side of the head.

A. The assailant could be slightly behind him in that way (demonstrates) and the deceased slightly bending forward. The deceased would be in a stooping or crouching position.

Q. This wound No.3 on the back of the Wrist, would that indicate to you as a doctor that the hand was raised at the time?

A. Yes, in a sort of defensive manner.

10

Q. Could this chopper Exhibit 13 have caused all these wounds?

A. It could of course if both sides of this weapon were used.

Q. I take it it is probable the sharp edge caused Wounds 1 and 2?

A. Yes.

Q. What about the degree of force as far as wound No. 1 was concerned?

A. It would be considerable force if that were the weapon.

20

Q. Both lungs were found adherent to the chest wall?

REECE, J: Let's hear what the doctor has to say as to the internal examination.

30

A. Internally, both lungs were found adherent to the chest wall. The tips of both lungs were filled with T.B. cavities and areas of calcification. Both lungs were pale. The heart contained several white patches on the surface. The valves on both sides of the heart were slightly thickened. The other internal organs show pallor with no other disease present. The skull was bigger than normal and no injury. The stomach was filled with rice meal with other meat present. The cause of death was from shock and haemorrhage from an open wound on the left side of the neck, that is, wound No.1.

Q. Now, you received certain articles from the police. D.P.C.1326 brought you certain things on the 27th July.

40

A. Yes.

Q. There was this white shirt (Exhibit 15).

A. Yes.

Q. What did you find on that?

A. There were 5 spots of thin human bloodstains over the right arm area, not sufficient for grouping, made from the outside in. There were 5. One has been removed for grouping.

In the Supreme Court.

Prosecution Evidence.

No. 8.

Pang Teng Cheung.

21st December, 1953.

Examination - continued.

In the Supreme Court.

Prosecution Evidence.

No. 8.

Pang Teng Cheung.

21st December, 1953.

Examination - continued.

Q. Exhibit 14.

A. This is copiously stained with human blood.

Q. It also has three cut holes in it over the right shoulder, left shoulder and left arm.

A. Yes.

Q. These correspond with certain wounds, doctor?

A. Yes, wounds Nos. 4, 5 & 6.

Q. And then you received on the same day from the same police officer the following articles: a bloodstained identity card?

10

A. Yes.

Q. And the handkerchief?

A. Yes.

Q. A finger ring and a fountain pen?

A. Yes.

Q. And you also received a chopper (Exhibit 13) from the same police officer?

A. Yes. The chopper contained human bloodstains on both sides.

Q. Which blood group doctor?

20

A. A-B.

Q. It is $14\frac{1}{4}$ " total length, 8 ozs. in weight, is that correct?

A. Yes.

Q. What sort of an edge has it got on the cutting side?

A. Fairly sharp.

Q. You also got this stool Exhibit 17?

A. Yes. The total weight of this stool is 1 lb. $4\frac{1}{2}$ ozs. One of the supports contained 3 drops of human blood, insufficient for grouping.

30

Q. You examined the deceased's blood for grouping. What is it?

A. Yes, also group A-B.

Q. This is the man you mentioned about having T.B. in the lungs?

A. Yes, he has T.B. in the lungs.

Q. How would this affect his general health, in particular his ability to run?

A. He would be easily out of breath.

40

Cross-Examination.

Cross-Examination by Mr. Loo:

Q. Dr. Pang, all the 6 wounds you gave in evidence, could all of them have been caused by the same instrument?

REECE, J: Mr. Loo, have you been listening to what has been taking place? He said yes if both sides of that instrument had been used. What is the point in asking the same question over and over again.

Mr. Loo: I am sorry, my Lord. Could such wounds be caused by any other instrument similar to that of this instrument?

A. Yes.

10 Q. By any sharp edged instrument?

REECE, J: You are going rather far with that. Do you mean a pen knife? That is a sharp edged instrument. When you say similar to that I can understand but when you say any sharp edged instrument, a pen knife is a sharp edged instrument. I don't know whether the doctor would agree but I would like you to be precise. The wounds could have been caused by any instrument similar to Exhibit 13.

20 Mr. Loo: Yes, my Lord. Now from the first wound; you just gave evidence that the wound was chopped downwards. Did you say that?

A. Yes, I said that.

Q. Cutting the jaw bone.

A. Yes.

Q. And the deceased, he was 5'8" tall.

A. Yes.

30 Q. If the assailant were to chop the deceased downwards, the assailant must be taller than the deceased. Am I right to say that?

A. Well, the arm is flexible and can be raised.

REECE, J: It doesn't follow that the assailant must have been taller than the deceased?

A. Yes.

Q. You said chopped downwards, cutting the jaw bone.

A. Part of the jaw bone.

Q. Am I right to say that at least these two men would have been of the same height.

40 A. I don't think height becomes very important in this case but they could have been of the same height.

Q. You said the deceased was suffering from T.B.

A. Yes, both sides.

Q. Was he in a very serious condition?

In the Supreme Court.

Prosecution Evidence.

No. 8.

Pang Teng Cheung.

21st December, 1953.

Cross-Examination - continued.

In the Supreme Court.

Prosecution Evidence.

No. 8.

Pang Teng Cheung.

21st December, 1953.

Cross-Examination - continued.

A. Yes, both sides fairly advanced T.B.

Q. How long would you think he would last?

A. It all depends on how he conducts himself; medical treatment.

Re-Examination by Mr. Blair-Kerr:

Q. When it comes to the probable height of the assailant, are you in a position to express any opinion as to the likelihood of the man being taller, the same height or shorter?

REECE, J: The doctor has said that height would be unimportant in this matter. 10

Q. Are you in a position to express an opinion as to the relative positions of the two men?

A. When wound 1 was inflicted, and if they were both standing, then one would be in front of the other and slightly to the left.

REECE, J: But you cannot say in what positions they were, standing, sitting etc.

A. No, No.

Q. In your opinion which wound was inflicted last, of these 6 wounds? 20

A. I would say that wound 1 would be the last wound of all.

REECE, J: Why do you say that?

A. Because if wound 1 had been the first, he would not have got the other defensive wounds on the outer part of his body. It was quite a mortal wound.

MR. BLAIR-KERR: May the doctor be excused?

REECE, J: Yes. 30

(11.30 a.m. Court adjourns for a few minutes).
(11.45 a.m. Court resumes).

No. 9.

Lai Kim Hung.
21st Dec. 1953
Examination.

No. 9.

LAI KIM HUNG

6. Lai Kim Hung (s) in English. Examination by Mr. Blair-Kerr.

Q. Lai Kim Hung, you are a D.S.I. attached to the C.I.D. Eastern Police Station.

- A. Yes.
- Q. You were formerly attached to the C.I.D. Mong-kok Police Station?
- A. Yes.
- Q. Now, about 5.10 p.m. on the 28th July last, you went with a party of police to No.1 San Ka Lane, 2nd floor, Hong Kong?
- A. Yes, I did.
- Q. Who did you see there.
- 10 A. I saw the accused.
- Q. And what did you do?
- A. I approached him and asked for his name and he told me his name was Chan Kau.
- Q. And what else did you tell him?
- A. I told him who I was and that I was going to arrest him.
- Q. You told him you were a police officer?
- A. Yes. I told him I was going to arrest him for being the one who killed a man called Chan Fook at Sai Yeung Choi St. near Argyle St. at about 20 9.05 p.m. on the 23rd July.
- Q. And the next step you took was to do what?
- A. I cautioned him.
- Q. And did he speak after being cautioned.
- A. He elected to make a statement.
- REECE, J: How did you caution him?
- A. You are not obliged to say anything unless you wish to do so but whatever you say would be taken down in writing and may be given in evidence.
- 30 Q. What happened after that?
- A. He elected to make a statement.
- Q. How was that statement dealt with?
- A. I asked if he wished to write it down himself but he asked me to write it for him. So I wrote it down in Chinese characters.
- Q. Where did you write it down?
- A. I wrote it down in my pocket book, word for word as what he said.
- 40 Q. You continued to write as long as he spoke?
- A. But after I had written for a few lines, he wished to continue to write it himself.
- REECE, J: He asked you to allow him to write it himself?

In the Supreme Court

Prosecution Evidence.

No. 9.

Lai Kim Hung.
21st December, 1953.

Examination - continued.

In the Supreme Court.

Prosecution Evidence.

No. 9.

Lai Kim Hung.

21st December, 1953.

Examination -- continued.

A. Yes. So I allowed him to write. I handed him my notebook and pen and he continued writing it himself.

Q. What happened then?

A. On conclusion, he read it over himself, the whole thing - what I had written and what he had written - and I read it back to him once again - the whole lot.

Q. You read the whole thing and he read the whole thing?

10

A. Yes.

Q. What happened then?

A. He signed his name.

Q. Now, you signed too?

A. I signed as well at the end.

Q. This is your police notebook?

A. Yes.

Q. And the statement is recorded from pp.82-85 inclusive, is that right?

A. Yes.

20

REECE, J: Now, would you be good enough to show which part is your writing and which part is accused's? Just take a pencil and tick it off where he began so that I can follow it (Witness does so).

Q. You translated it into Chinese (English) afterwards. Whatever your translation was, you now see the official Court translation and you agree that it was the correct translation of the Chinese? I don't want to waste time really if your Lordship feels it is right.

30

REECE, J: Yes.

Q. You then took the accused back to Central Police Station?

A. Yes.

Q. And at 6.40 p.m. the same evening you handed the accused to Inspector Hidden here at the C.I.D. Office, Mongkok Police Station?

A. Yes.

Cross-Examination.

Cross-Examination by Mr. Loo:

Q. After you cautioned accused, did you ask him to be brief in his statement?

A. No.

Q. During the time he took down his statement, did

you ask him to be brief at that time?

A. No. While I was taking down his statement, I did not ask him to be brief.

Q. I put it to you that you did ask him to be brief with his statement.

A. No I did not.

Q. I put it to you further you told him that he would have plenty of time to explain himself in Court.

10 A. No, nothing was told him during the time he was making the statement.

Q. I am referring to his statement.

REECE, J: I have not admitted the statement yet Mr. Loo. I wanted to hear whether you attack it. Now you want to question him on the statement?

Mr. Loo: Yes, my Lord.

20 REECE, J: I will admit the statement now and let it go into evidence (Statement admitted and marked Exhibit 18). (Statement read by interpreter Tsang Tat Sing, first in Chinese and then in English. Translation Marked Exhibit 18A).

REECE, J: Mr. Loo, do you want to ask any more questions?

Mr. Loo: Yes, my Lord.

30 Q. I put it to you that after this sentence was written down "because Mak Hei, Manager of Hi Sheung Hi had been providing me with food for a long time, so he asked us to go and assault a man". Now immediately after this sentence, he wanted to explain himself but you told him "Oh that is nothing, you can explain it in Court" is that correct?

A. No.

Re-Examination - Nil.

MR. BLAIR-KERR: I have copies of the statement for the jury my Lord.

In the Supreme Court.

Prosecution Evidence.

No. 9.

Lai Kim Hung.

21st December, 1953.

Cross-Examination - continued.

In the Supreme
Court.

No.10.

CHAU YAM CHOI

Prosecution
Evidence.

7. Chau Yam Choi (d) - in English - Examination by
Mr. Blair-Kerr.

No.10.

Chau Yam Choi.

21st December,
1953.

Examination.

Q. Now, Chau Yam Choi, you are a C.I.D. interpreter
attached to Mongkok Police Station?

A. Yes sir.

Q. Now, at 6.45 p.m. on the 28th July last, you
were in the C.I.D. office Mongkok with the ac-
cused, Inspector Hidden, and Mr. Lowe. 10

A. Yes.

Q. Anyone else present?

A. No one else present.

Q. Now, the accused was charged with an offence at
that time.

A. Yes.

Q. You remember accused was charged with an offence
and I want you to describe the procedure during
the charging of accused with this offence.

A. I explained the charge of murder to the accused 20
in Punti dialect. I cautioned him according
to the form set out.

REECE, J: Let's hear what that form set out is.

Q. Is this the form you had in front of you at that
time?

A. Yes. "Do you have anything to say in answer to
the charge. You are not obliged to say any-
thing but whatever you say will be taken down in
writing and may be given in evidence".

Q. After you cautioned accused. what happened 30
after that?

A. I satisfied myself that he understood the
charge and the caution.

REECE, J: How did you satisfy yourself that he
understood?

A. He told me that he understood the charge.

Q. What happened after that?

A. Then he elected to make a statement which he
wrote down himself.

Q. Where did he write it? on that form you have in 40
your hand?

A. Yes.

Q. After he had finished writing, what happened after that?

A. He signed his name and I signed my name as well as Inspector Hidden and Mr. Lowe signed theirs.

Q. That is the document, the statement in answer to the charge which you have in your hand?

A. Yes, I now produce that statement.

Mr. Blair-Kerr: I have my learned friend's assurance that that statement may be read now.

10 Mr. Loo: Yes my Lord. I am satisfied as to the genuineness of the statement. (Statement marked Exhibit 19) (Interpreter reads statement in Chinese and English).

No Cross-Examination by Mr. Loo.

In the Supreme Court.

Prosecution Evidence.

No.10.

Chau Yam Choi.

21st December, 1953.

Examination - continued.

No.11.

WONG KWAI

No.11

8. Wong Kwai (d) - in Punti dialect. Examination by Mr. Blair-Kerr.

Wong Kwai.
21 Dec. 1953
Examination.

20 Q. Now Wong Kwai, you are police constable 1381?

A. Yes.

Q. Of Mongkok Police Division?

A. Yes.

Q. Now at 9.10 p.m. on the 23rd July last, you were on duty in uniform at the junction of Argyle St. and Tung Choi St.?

A. Yes.

Q. As a result of what you were told, you searched in Sai Yeung Choi St. and Argyle St.

A. Yes I did.

30 Q. The photograph No.11 shows the corner of Argyle St. and Sai Yeung Choi St.

A. This is Argyle St. and the one turning in is Sai Yeung Choi St.

Q. That white building you see in the photograph is the Sun Wah Theatre?

A. Yes.

Q. That is the one on the other side of Sai Yeung

In the Supreme Court.

Prosecution Evidence.

No.11.

Wong Kwai.

21st December, 1953.

Examination - continued.

Choi St.?

A. Yes.

Q. Now, did you find anything?

A. A knife.

Q. Is this the knife (Exhibit 13).

A. Yes.

REECE, J: Where did you find it?

A. I found the knife in front of house No.69 in Argyle St. by the side of the curb or the gutter.

Q. He has pointed out a spot on photograph No.11. Put a pin to mark the spot please where you picked up the knife. (Witness does so).

A. The knife shown to me is the one I found (Exhibit 13).

Q. Was there anything on the blade at the time you picked it up?

A. There was blood at the edge.

REECE, J: Just take the knife in your hand and indicate where you saw the blood to the jury (Witness does so).

A. Along the cutting edge.

Q. And you took the knife back to Mongkok Police Station and gave it to Inspector Jones?

A. Yes.

Cross-Examination.

Cross-Examination by Mr. Loo:

Q. You said you found the knife outside 69 Argyle St.?

A. Yes.

Q. Now, how far is it away from the corner of Argyle St., and Sai Yeung Choi St.?

A. Which direction, you mean, in Argyle St.?

REECE, J: From where you found the knife. You are asked how far is the spot where you found the knife from the junction of Sai Yeung Choi St. and Argyle St. If you didn't measure it, say so.

A. Between 7 and 8 yards from the junction of Argyle St. and Sai Yeung Choi St.

Q. Did you make any search on Sai Yeung Choi St. for a knife?

A. I did not.

10

20

30

40

Q. You did not make any search?
A. No I did not make a search on Sai Yeung Choi St. for knife.

In the Supreme Court.

Re-Examination by Mr. Blair-Kerr:

Prosecution Evidence.

No.11.

Q. The distance 7 or 8 yards is from the corner of the pavement to the spot where you found the knife, is that what you mean? Please take any pin and mark the spot and say whether it is 7 or 8 yards from the corner.

Wong Kwai.
21st December, 1953.

10 A. (Witness puts a pin on the plan).

Cross-Examination - continued.

REECE, J: It is just at the corner really; not on the corner.

Re-Examination.

No.12.

No.12.

HSU CHAK LEUNG

9. Hsu Chak Leung (d) in Punti dialect. Examination by Mr. Blair-Kerr.

Hsu Chak Leung.
21 Dec. 1953
Examination.

Q. You are D.P.C.1326?

A. Yes.

20 Q. You are attached to the C.I.D. Mongkok Police Station?

A. Yes.

Q. Now about 9 a.m. on the 27th July last, you received from Inspector Jones here, 6 sealed packages?

A. Yes.

Q. You took them and handed them to Dr. Pang at Police Headquarters, Hong Kong?

A. Yes.

30 Q. And on the 5th August you received those packages back from Dr. Pang and you took them back to Inspector Jones at Yaumati Police Station?

A. Yes.

No Cross-Examination by Mr. Loo

In the Supreme
Court.

No.13.

LAU YIU

Prosecution
Evidence.

No.13.

Lau Yiu.

21st December,
1953.

Examination.

10. Lau Yiu (d) in Punti dialect. Examination by
Mr. Blair-Kerr.

Q. Now Lau Yiu, you live at 11 King Shing St.
ground floor Wanchai?

A. Yes.

Q. You used to be a coxwain employed by the R.N.
Dockyard, Stonecutter's Island?

A. Yes.

Q. That was up to about 3 years ago.

A. Yes.

Q. And you are now employed by the Royal Naval
Dockyard, Wanchai.

A. That is right.

Q. While you were at Stonecutter's Island, did you
know a man called Ho Kai?

A. Yes.

Q. And a man called Chan Fook?

A. Yes.

Q. Ho Kai lives at 25 Argyle St., second floor, is
that right?

A. That is right.

Q. Now on the 23rd July last, you attended a party
at Ho Kai's house, 25 Argyle St., second floor?

A. Yes.

Q. You arrived there at what time?

A. About 7.10 p.m.

Q. Was Chan Fook there?

A. Yes, he was there. He was sitting there.

Q. And a woman called Lam Ng?

A. Yes, Lam Ng was introduced to me by him, Chan
Fook. Lam Ng is a woman.

Q. After the party, who did you leave the party
with?

A. After the party, I left with Chan Fook and Lam
Ng.

Q. Which direction did you walk in?

A. After I had got down into the Street, I crossed
the street to the opposite side where we walked
in the direction of Nathan Road.

Q. Did you cross over Nathan Road?

10

20

30

40

A. Yes we did; we crossed Nathan Road.

Q. Do you remember a picture house on the left hand side of Argyle St. just after you crossed Nathan Road?

A. Yes.

REECE, J: Do you know the name of that picture house?

A. Sun Wah Theatre.

10 Q. I believe something happened there and I would like you to tell us in your own words what happened.

A. Three of us were talking outside Sun Wah Theatre. Then suddenly a person came up and attacked Chan Fook.

REECE, J: Now, ask him if this person is a male or female.

A. A man.

Q. Yes, after this?

20 A. After this man had attacked Chan Fook, Chan Fook ran away.

REECE, J: Describe what you mean by attacking so that we can understand it, the nature of this attack.

30 A. The three of us were walking together in this position. I was on the extreme right, the deceased was in the middle and the woman was on the left of the deceased. The man attacked the deceased from behind. Having been attacked by this man, the deceased ran away and the assailant turned to me and attacked me. I was given a kick and I fell. Then I was hit on my left shoulder by something which seemed to me to be a pole or something else. I fell down and my right palm and right arm and also right upper arm was injured and also my coat was torn. During the course of my being attacked I shouted "Save life". There were about 3 or 4 attackers. Then the attackers ran away and I was left behind dazed by the blows. I then walked back to Ho Kai's house and then I had my wounds dressed, that is, the wounds on my left shoulder and my right arm. I rested for a while and then I went to the police station to report the matter. I was then taken to Kowloon Hospital by the policemen where I was examined. That is all.

40

(Court adjourns at 1 p.m. till 2 p.m.)

In the Supreme Court.

Prosecution Evidence.

No.13.

Lau Yiu.

21st December, 1953.

Examination - continued.

In the Supreme
Court.

21st December, 1953

2 p.m.

Prosecution
Evidence.

Court resumes
Accused present
Appearances as before
Jury answer to names.

No.13.

Lau Yiu.

Cross-examination.

21st December,
1953.

COURT: Mr. Loo, I don't know whether you appreciate to the full that this time this witness has not mentioned your client's name at all.

10

Cross-
Examination.

MR. LOO: No, my Lord.

Q. Now, you had a dinner at Ho Kai's house. Did you have any drinks?

A. No.

Q. Were any drinks served at all?

A. Beer was served, but I did not have any, I only drank aerated water.

Q. I asked you, were there any liquors or drinks served?

COURT: Beer contains a certain amount of alcohol.

20

MR. LOO: You said there was a certain amount of beer served?

A. Yes.

Q. What time did you leave the house?

A. About shortly after 8 p.m. I cannot remember the exact hour I left.

Q. Now, you said you saw the deceased was attacked by a male, and then you were attacked by him?

COURT: Did he say that?

MR. LOO: You were attacked by a person. Did the person who attacked Chan Fook also attack you? Was it the same person?

30

A. I was attacked by another man.

Q. Did you know the accused before?

COURT: He has not mentioned him.

MR. LOO: You say that you saw there were about three or four persons who took part in the fighting?

A. Yes, three or four persons set upon me.

Q. What sort of clothes did they wear?

A. The one who attacked Chan Fook was dressed in white.

Q. Did you see clearly who was the person who attacked Chan Fook?

A. I did not know those men. I did not know all of those men.

Q. Look at the accused here.

A. I do not know him.

Q. Did you see him there that night?

10 COURT: Mr. Loo, I am not trying to stop you, but if you listened to the witness, he has not mentioned that man. According to his evidence the man wasn't there at all. I am not trying to stop you.

MR. LOO: I want to make sure.

COURT: Making sure; you are doing your best to do injury to your client. First you establish that the man who attacked Chan Fook was dressed in white and that ties up with some evidence against your client.

20 MR. LOO: Did you know at the time there were two groups of people hostile to each other?

MR. BLAIR-KERR: That is admitted by the Crown.

COURT: There is a lot of evidence yet. This man, he has not mentioned any groups of anybody, just described a few simple incidents.

MR. LOO: Now, you said you were struck by a pole?

A. Yes.

Q. Was the pole wrapped in paper?

30 A. No. I did not see any paper wrapping. I saw it was a pole because after I fell down somebody came up to me and hit me with a pole.

Q. During the fighting, were there many people around, many people on the streets?

COURT: Did you hear one of the police officers; there was a huge crowd in the road.

MR. LOO: That was afterwards.

A. I shouted 'save life' and then many people crowded me.

Q. Was the place at the time brightly illuminated?

A. Not very bright and not very dark.

Q. Now, you reported the matter to the police station at what time?

A. Sometime after eleven o'clock.

Q. Thank you.

In the Supreme Court.

Prosecution Evidence.

No.13.

Lau Yiu.

21st December, 1953.

Cross-Examination - continued.

In the Supreme
Court.

Prosecution
Evidence.

No.13.

Lau Yiu.

21st December,
1953.

Re-
Examination.

Re-Examination.

MR. BLAIR-KERR: Now, that the question of drinks has been introduced, do you know whether Chan Fook drank anything that night?

A. I did not sit at the same table where Chan Fook sat, but when he talked to me I did not smell any alcohol from him.

No.14.

Lam Ng
21 Dec. 1953
Examination.

No.14.

LAM NG

11. Lam Ng (3) - Declared - Punji.

10

MR. BLAIR-KERR: You are 47 years of age?

A. Yes.

Q. A widow?

A. Yes.

Q. Living at 35 Battery Street, second floor, Yaumati?

A. Yes.

Q. You work at Stonecutters Island, Royal Naval Dockyard?

A. Yes.

20

Q. For the last two years?

A. Yes.

Q. Do you know a man called Chan Fook?

A. Yes.

Q. For the last two years, I believe?

A. Yes.

Q. Did he work on Stonecutters Island?

A. Yes.

Q. Did you attend a party at 25, Argyle Street on the evening of the 23rd July last?

30

A. Yes.

Q. That is Ho Kai's house?

A. Yes.

Q. Was Chan Fook at the party?

- A. Yes, he was sitting at the same table as I.
 Q. The last witness?
 A. He was at the party; he came in at a later time.
 Q. And after the party, did the three of you leave together?
 A. Yes.
 Q. And where did you go?
 A. Well, at the conclusion of the party Lau Yiu went up to Chan Fook and said to him.
 10 Q. Don't tell us all that.
 COURT: Don't bother with all that trimming.
 A. We went downstairs, got into the street, and the last witness said let's go to a cafe where we could have some coffee.
 MR. BLAIR-KERR: And did you walk along Argyle Street then?
 A. We walked along Argyle Street to the cafe named Hang Heung as suggested by the last witness.
 Q. And then?
 20 A. But Chan Fook did not agree to going there, and he led us to the side where the Broadway Theatre is. From there he led us to Kong Wah cafe, which he suggested would be a better place.
 Q. That is in Sai Yeung Choi Street?
 A. Yes.
 Q. Now, as you were approaching Sai Yeung Choi St. outside the Sun Wah Theatre something happened.
 A. Yes.
 Q. Tell us what happened.
 30 A. Outside Sun Wah Theatre, the three of us were walking abreast with Chan Fook in the middle, myself to his left and Lau Yiu to his right.
 Q. Tell us what happened.
 A. Then a person came from behind and hit Chan Fook on his left shoulder.
 Q. And after that?
 A. Chan Fook ran away shouting 'save life'.
 Q. And then?
 A. Then another person gave Lau Yiu a kick and Lau Yiu fell.
 40 Q. And after that?
 A. Chan Fook ran away and disappeared.
 Q. And what did you do?

In the Supreme Court.

Prosecution Evidence.

No.14.

Lam Ng.

21st December, 1953.

Examination - continued.

In the Supreme Court.

Prosecution Evidence.

No.14.

Lam Ng.

21st December, 1953.

Examination - continued.

Cross-Examination.

A. I was quite frightened then so I went to Ho Kai's house in Argyle Street.

Q. You did not know any of the people who attacked Chan Fook or Lau Yiu?

A. No.

Cross-examination

MR. LOO: Now, you said you said the deceased was hit by a person.

A. I saw the man give Chan Fook a stroke, a blow like this: only once. 10

Q. Was he hit with fist or by any object?

A. With an object like a book wrapped up in a piece of white paper.

Q. Did you notice whether that object was a hard one or a soft one?

A. I cannot say whether it was hard or soft.

Q. How many persons took part in the fight?

A. I don't know

Q. Was the place well illuminated at the time?

A. No, not very bright. 20

No Re-examination.

No.15.

Mui Wing Por.

21st December, 1953.

Examination.

No.15.

MUI WING POR

12. Mui Wing Por (4) - Declared - Punt.

COURT: I want you to pay very careful attention to what this witness says. Perhaps he is the most important witness in the whole case, Members of the Jury.

MR. BLAIR-KERR: Now, you are sixteen years of age?

A. Yes. 30

Q. You are a shoebblack?

A. Yes.

Q. Your pitch - where you black shoes is at Prince Edward Road?

A. Yes.

Q. Do you know a man called Chan Kau?

A. Yes.

- Q. Is that man in Court?
 A. (Witness identifies accused in the dock).
 Q. Now, prior to the incident on the 6th Moon this year, which took place at the junction of Sai Yeung Choi Street and Argyle Street, prior to that incident, how long had you known the accused, Chan Kau?
 A. Two or three months, after the 23rd of July.
 10 Q. Yes. Now, you mentioned the 23rd of July, it is towards the end of the 6th Moon?
 A. Yes.
 Q. Now, was that the day you went to Diamond Hill?
 A. Yes.
 Q. And you came back from Diamond Hill by bus?
 A. Yes.
 Q. And where did you get off the bus?
 A. I got off in Argyle Street, near Tung Choi Street.
 Q. Why did you get off the bus there?
 20 A. I intended to go back to my pitch.
 Q. And how were you going to get back to your pitch from there?
 A. Well, I would have walked back to my pitch along Argyle Street, by way of the Sun Wah Theatre.
 Q. You mean by walking up the street by the side of the Sun Wah Theatre?
 A. That's right.
 Q. Now, did you notice anything when you got off the bus that night? First of all, what time was this when you came back and got off the bus?
 30 A. Sometime after eight o'clock.
 Q. Before nine?
 A. It was sometime after eight o'clock and nearly nine o'clock.
 Q. Now, you noticed - something attracted your attention?
 A. Yes.
 Q. Tell us about it.
 A. I saw a fight.
 40 Q. Where was this fight?
 A. In Sai Yeung Choi Street, near Sun Wah Theatre.
 Q. And what did you do?
 A. I stood there and watched.
 Q. Where from?
 A. I stood by the side of the road near the bread stall.

In the Supreme Court.

Prosecution Evidence.

No.15.

Mui Wing Por.

21st December, 1953.

Examination - continued.

In the Supreme Court.

Prosecution Evidence.

No.15.

Mui Wing Por.

21st December, 1953.

Examination - continued.

Q. Is that the breadstall - look at photograph P.10, is that the breadstall you are talking about?

A. This is the very breadstall. I was standing here (left)

COURT: You cannot see where you were standing, on the extreme left, just outside the picture, is that right?

A. I was standing further on this side and which doesn't appear on the picture. 10

MR. BLAIR-KERR: Now, we want you to tell us what you saw.

COURT: Very distinctly, because these gentlemen can understand Chinese too, and they want to hear it first time. They will get a correct first impression.

A. I saw people fighting there; among the people I saw Chan Kau who was known to me.

Q. What did he do?

A. Before the fight began, he approached the bread stall and took a knife. 20

Q. Look at photograph 10 again, and show us where he took the knife from.

A. (Witness indicates) That is where he took the knife.

Q. Now, I recapitulate with regard to the last question, you said the accused Chan Kau took that knife. Was it during the fight or before the fight started, just to make it clear.

A. Before the fight began. 30

Q. What did he do with this knife?

A. He went back to the fight with the knife.

Q. Back to the fight with the knife - and what did he do with the knife in the fight?

A. He used it to chop.

Q. Does this look like the knife which Chan Kau, the accused, took, (Exhibit 13)?

A. Similar.

Q. Take something in your hand and demonstrate with Mr. Interpreter - when you saw Chan Kau chop someone - demonstrate with Mr. Interpreter how he used it. 40

INTERPRETER: He only said 'chopped', he did not say he chopped a person.

A. I saw him chop twice with the knife, but I do

not know, or I cannot tell the manner he chopped.
 Q. What did you see exactly, did you see the knife
 being raised and coming down to chop on a per-
 son, or what?

A. Well, the knife was raised and then lowered.

COURT: You take that piece of paper and show ex-
 actly what you say you saw.

A. I did not see it clearly, but I saw him chop
 twice, but I could not see him chop clearly.

10 MR. BLAIR-KERR: Put it this way, which part of
 the person did Chan Kau chop this other person?

COURT: Just a minute, tell him I don't quite un-
 derstand what he says. If he saw the man
 chopped as he says, it must have made some im-
 pression. We are asking him to show to the
 Members of the Jury what the man did, that is
 all.

20 A. Well, actually I am not quite clear. As soon as
 he took the knife he went up there and chopped,
 and on this day there were a number of people
 there and I am not clear

MR. BLAIR-KERR: And did you see which part of the
 body he chopped this other person?

A. Well, he chopped the man once on the ear and
 once on his hand.

Q. And what happened to the man?

A. The man fell.

Q. After the chopping?

A. Yes.

30 Q. And then what did the accused do?

A. Chan Kau dropped the knife and then he ran away
 through a side lane. I was frightened and I
 went up to Nathan Road where I went up to my
 pitch.

Q. Just a moment, look at photograph No.3, is that
 the Kong Wah cafe?

A. Yes.

Q. Now look at the extreme right of the photograph,
 do you see a lane running up there, off Said
 Yeung Choi Street?

A. Yes.

Q. Is that the lane you were talking about?

A. Yes.

Q. The same lane is shown on photograph 2?

A. This is the lane, on photograph 2.

In the Supreme
 Court

Prosecution
 Evidence.

No.15.

Mui Wing Por.

21st December,
 1953.

Examination -
 continued.

In the Supreme
Court.

Prosecution
Evidence.

No.15.

Mui Wing Por.

21st December,
1953.

Examination -
continued.

Cross-
Examination.

Q. And, to tie up these two photographs....

COURT: Just a minute, show these photographs to the jury, Mr. Interpreter.

MR. BLAIR-KERR: You see the words "Greenspot" on the photograph?

COURT: Can he read English?

MR. BLAIR-KERR: (To Interpreter) You point out the word "Greenspot".

A. I see it.

Q. Is that the Kong Wah cafe?

A. Yes.

10

Cross-examination

MR. LOO: Now, you said prior to July 23rd of this year, you had known the accused two to three months?

A. Yes.

Q. How did you come to know him?

A. He used to go to my pitch.

Q. Was there any reason why he should go to visit you?

A. Everytime he came he asked for a few ten cents.

Q. Why did he ask you for money?

A. He told me he was a big shot, and since I was frequently beaten up by people

COURT: You were frequently beaten up?

A. Yes, he wanted to take me up as his protege.

Q. Did you ever pay him anything at all?

A. Yes.

Q. And how often did you pay him?

A. He came to me every two or three days, and I paid him each time he came.

Q. So he had squeezed money from you, and you never liked him?

A. I did not say that I did not like him.

Q. I put it to you that you hate him because he used to squeeze money from you from time to time.

A. No.

Q. You mean to tell the Court that you were willing to pay money, just love?

A. When he came to collect the money I was willing to pay him.

20

30

40

Q. Now, he never went to your pitch to have his shoes shined, did he?

A. No, he never came for shoe-shine, but most of the time he came to take me out for a stroll.

Q. Do you usually go to Diamond Hill?

A. No.

Q. Then why, on that very day, you went to Diamond Hill?

10 COURT: Do you usually go to the Peninsula Hotel? I might as well ask you why you go to the Peninsula Hotel on that day.

A. I don't often go there, but I do go sometimes.

MR. LOO: On the 23rd July you went to Diamond Hill, as you said?

A. Yes.

Q. Did you go there for any purpose?

A. I went to Diamond Hill because one Chau Shi had borrowed my shoe-shine kit, and I went there to have it back.

20 Q. Your beat is Prince Edward Road, as you said?

A. Yes.

Q. Now, returning from Diamond Hill, would it not be convenient for you to take No.13 or 14 bus?

A. I just boarded the No.9 bus at the airport inadvertently.

Q. Now, when you got off the No.9 bus, am I correct to say that the bus stop was in front of Tung Choi Street, just before you reach Tung Choi Street?

30 A. It seems so.

COURT: What do you mean 'it seems so'? I don't know where it is, but it either is or it isn't.

A. I cannot say offhand because I don't recall. It is in the vicinity.

MR. LOO: Am I correct to say that it is about 100 yards away from the bus-stop to the corner of Sai Yeung Choi Street and Argyle Street?

A. Yes.

40 Q. When you got off from the bus, did you immediately see the fighting?

A. No.

Q. Then you were walking along Argyle Street, and what place did you begin to see the fighting?

A. When I was about at the Chee Cheong Pawn shop I first saw the fighting.

In the Supreme Court.

Prosecution Evidence.

No.15.

Mui Wing Por.

21st December, 1953.

Cross-Examination - continued.

In the Supreme Court.

Prosecution Evidence.

No.15.

Mui Wing Por.
21st December,
1953.

Cross-Examination - continued.

Q. Apart from the accused, did you see any other persons fighting?

COURT: Mr. Loo, the man has said there were a lot of people fighting, do you mean anyone he recognised or what? He said he saw several.

MR. LOO: I am sorry, my Lord.

COURT: Ask him again if you want to, were there many people fighting there besides the accused?

A. I saw only Chan Kau whom I knew, and did not know the rest of them. 10

COURT: 'I saw Chan Kau whom I knew, and others, the rest of whom I did not know', is that what he said?

A. Besides Chan Kau there was nobody else.

COURT: He said 'I saw Chan Kau and others the rest of whom I did not know' and now he says 'there is only Chan Kau'. I don't understand.

A. I saw Chan Kau fighting there, and he used a knife to chop.

COURT: Those of you who understand the language know what he said, and when I intervened, he says Chan Kau was the only one there. 20

MR. BLAIR-KERR: Perhaps he does not understand the question.

COURT: Ask him again: was Chan Kau the only man fighting?

A. There were several other people whom I did not know.

COURT: Also fighting?

A. No. 30

MR. LOO: You said you saw Chan Kau fighting, and you said you saw a few others present there?

A. Yes.

Q. Did these other persons take part in the fighting?

A. No.

Q. And now you are contradicting yourself, because you admitted before there were others taking part in the fighting whom you did not know.

A. I only saw Chan Kau fighting there, but there were several people standing there, but they did not fight. 40

Q. So the others might have been merely bystanders?

A. Well, one of them held something wrapped up in newspaper.

Q. Now, did you see this one who wrapped something in a newspaper, did you see him fight with some other person?

A. No.

Q. Now, you said just now that before the fight began Chan Kau approached the breadstall and took a knife?

10

A. Yes, I said so.

Q. So before you saw Chan Kau took the knife you did not see any fighting at all?

A. No.

Q. You said you saw Chan Kau chop twice with a knife, but you could not tell how he chopped?

A. Yes.

Q. Because, you added, you didn't see clearly?

A. Yes.

20

Q. Now, later on you told the Court that you saw Chan Kau chop a man, once on the ear and once on his neck?

COURT: In all fairness, he said he did not see the manner clearly, but he saw the chopping, it was when he was being pressed how the man used the thing he seemed reluctant.

MR. LOO: I withdraw the question, my Lord.

Q. Can you read Chinese?

A. A little.

30

Q. Do you read the newspapers often?

A. Very rarely.

Q. The next day after this fighting took place, did you read a newspaper the next day

COURT: Which one? But why ask him?

MR. LOO: The point is I am putting to him, what I asked him, what he said was what he read from the newspaper.

COURT: If the man said he read the newspaper, you would tell the Jury he read it in a Chinese newspaper?

40

MR. LOO: I put it to you that you said you saw the accused chop him twice because you read it from the newspapers the next day.

In the Supreme Court.

Prosecution Evidence.

No.15.

Mui Wing Por.

21st December, 1953.

Cross-Examination - continued.

In the Supreme
Court.

Prosecution
Evidence.

No.15.

Mui Wing Por.

21st December,
1953.

Cross-
Examination -
continued.

A. No, I don't agree.

Q. I put it to you that you heard it from others,
who told you how the deceased was killed.

COURT: You are handling it every other conceivable
way other than the way he said. You are sug-
gesting that he read it in the newspapers, now
that others told him. You must be fair and
not put a vague question like that. If you are
suggesting that somebody told this man about
this incident, you must put it to him. You have 10
asked him already whether he read it in the
newspaper. Now you ask him, did somebody tell
him. Who is that somebody? It is for the
jury to believe whether he was a witness or not.
The point is this: if you are going to cross-
examine him, if you are suggesting that some-
body - who is this somebody?

MR. LOO: I drop this question.

COURT: Ask him, did anyone tell him about it?

MR. BLAIR-KERR: Counsel has dropped the question, 20
I understand.

COURT: All right.

MR. LOO: Now, you said after you saw Chan Kau
chop the man, chop the deceased, Chan Kau ran
away and threw away the knife, is that so?

A. Yes.

Q. Where did you see the accused throw away the
knife, where?

A. He threw away the knife at the scene of the
fighting. He threw the knife backwards to- 30
wards Argyle Street.

Q. Now, how far is it from the place where he
picked up the knife to the corner of Sai Yeung
Choi Street and Argyle Street.

INTERPRETER: He says that is the place next to
the Chee Cheong Pawn Shop.

COURT: Mr. Loo wants a measured distance. From
the breadstall to the corner of Argyle and Sai
Yeong Choi Streets.

A. About from here to the jury. 40

MR. LOO: Now, on what spot did you see the chop-
ping take place, in front of the Kong Wah cafe,
in front of the breadstall, or in the middle of
the road, of Sai Yeung Choi Street?

A. Quite a short distance away from the pavement, in the road.

Q. Is it near to the Kong Wah cafe, to the junction of Sai Yeung Choi Street and Argyle Street.

INTERPRETER: He said 'near the breadstall'. Earlier he said it is near the main entrance where the tickets are sold, near the Kong Wah cafe. Now I clarified it, and he says it is near to the breadstall.

In the Supreme Court.

Prosecution Evidence.

No.15.

Mui Wing Por.

21st December, 1953.

10 COURT: The importance?

MR. LOO: He said he threw the knife backwards towards Argyle Street. it is quite a difference.

COURT: 'Towards Argyle Street' is not in Argyle Street. This is the English language, not Chinese.

Cross-Examination - continued.

MR. LOO: You saw the accused throw away the knife. Where did you see the knife, was it in Argyle Street or Sai Yeung Choi Street?

20 COURT: Just a minute. Has he said he saw the knife after the man threw it away? You are asking him a question that implies that he saw the knife after it was thrown away. He said the knife was thrown towards. You have to ask him first "Did you see where the knife dropped?" and then go on to the next question.

MR. LOO: Did you see where the knife dropped?

A. No, I did not know where the knife fell because he threw it in this manner.

(Witness demonstrates: over his shoulder).

30 Q. Now, when he threw away that knife, where was he standing, running?

A. He was running towards the Kong Wah cafe when he threw the knife.

Q. So he was in Sai Yeung Choi Street at that time?

A. Yes.

Q. Did you report to the police station that night?

A. No.

Q. Thank you.

COURT: Any re-examination. Mr. Blair-Kerr?

40 Re-examination

MR. BLAIR-KERR: Just one point about the number of people fighting there. Is it your evidence that

Re-Examination.

In the Supreme
Court.

Prosecution
Evidence.

No.15.

Mui Wing Por.

21st December,
1953.

Re-examination
- continued.

when you used the word 'fighting', it was the accused and the man whom he struck, it was these two only that were fighting?

COURT: "I did not see the fighting immediately as soon as I got off the bus".

MR. BLAIR-KERR: You mean that Chan Kau and the man whom he was hitting, those two people - it takes two people to make a fight - were these the only two people that you saw?

A. Yes.

Q. What do you mean by 'fighting', do you regard fighting as chopping?

COURT: I don't like the way you have put it. Can you explain precisely what you understand by two people fighting? What part was this other man taking in the fight, if you like.

MR. BLAIR-KERR: I have reason to believe that he regards fighting as chopping.

Q. What do you mean when you use the word 'fighting'?

A. That means two come to blows. I mean two people coming up to fight against each other.

Q. You mentioned in cross-examination this pawnshop. Look at photograph 11. Can you see the Chee Cheong Pawn Shop in that photograph?

A. Yes, I do. (Witness points) This is the pillar in front of the Chee Cheong Pawn Shop.

Q. Look at P.10. You see the Chee Cheong Pawn Shop there?

A. Yes I do.

Q. Now, I just wanted to clear up one thing. In cross-examination you said you first saw the fight when you were opposite the Chee Cheong Pawn Shop. You also said earlier that you saw the accused pick up the chopper while you were standing at this side of the photograph, the left of the photograph P.10. Now, what we want to know is how does it come about that there was no fighting before the chopper was being picked up when you said you saw the fighting when you were beside Chee Cheong Pawn Shop.

COURT: (Not heard).

MR. BLAIR-KERR: The point being, my Lord, that he first saw the fighting when he was outside the

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Chee Cheong pawnshop. He says he saw the accused pick up the chopper...

In the Supreme Court.

COURT: Ask him, which direction did he come from when he got off the bus.

Prosecution Evidence.

A. This is Sai Yeung Choi Street. I came from Argyle Street.

No.15.

MR. BLAIR-KERR: And you first saw the fighting when you were opposite the doorway of the pawnshop?

Mui Wing Por.

21st December, 1953.

10 A. When I came to the doorway of the pawnshop, there was already a group of people watching.

Re-examination - continued.

Q. Watching what?

A. Watching the fight.

Q. Was that before the chopper was picked up?

A. Just before the chopper was taken.

Q. And then you told us that you walked past the breadstall and stood and watched the fight from a point just to the left of photograph 10?

A. Yes.

20 Q. And I just want to confirm that this was the point from which you saw the accused go to the breadstall and pick up this knife, is that correct?

A. Yes.

Q. Did he go to this spot to pick up the knife alone?

A. Yes.

Q. And then go back to the fight?

A. Yes.

30 Q. And it was then that you saw him chop this man twice with a chopper?

A. Yes.

Q. Thank you.

COURT: Mr. Foreman, is there any Member of the Jury who would like to ask the boy any questions relative to the evidence he has given. Perhaps it is not very clear to you about the relative positions. I would like this to be clear to you because this boy is really the kernel of this case

40

FOREMAN: We have no questions, my Lord.

In the Supreme Court

No. 16.

LAM HOK WING

Prosecution Evidence.

13. Lam Hok Wing (5) - Declared - Puntl.

No.16.

MR.BLAIR-KERR: Now, you are twenty years of age?

A. Yes.

Lam Hok Wing.

Q. You live at 67, Argyle Street, side door?

A. Yes.

21st December, 1953.

Q. You also have an address at 12, Shipyard Street?

A. Yes.

Examination.

Q. But you run a breadstall at the corner of Sai Young Choi Street and Argyle Street? 10

A. Yes.

Q. Is that your breadstall in photograph 10?

A. Yes.

Q. Now, in the course of your business, you use a knife. Is that correct?

A. Yes.

Q. Is that your knife, P.13?

A. Yes.

Q. Where did you normally keep that knife? 20

A. The place indicated in the photograph P.10.

Q. Now, on the 23rd of July last, in the evening, did you use that knife?

A. I used the knife in the daytime of the 23rd July. I did not use it in the evening.

Q. In the evening you were sitting doing your accounts?

A. Yes.

Q. In the manner shown in Exhibit 10?

A. Yes. 30

Q. That is you in that photograph there, that man?

A. Yes.

Q. Something attracted your attention at that time?

A. Yes.

Q. What time was the thing that attracted your attention?

A. About nine o'clock.

Q. What was it?

A. I heard shouts of 'save life'.

Q. You saw some people or heard some people? 40

A. Yes.

Q. Where?

A. Near the back door of the Sun Wah Theatre I saw people, and I heard the shouts come from there.

Q. There was a noise?

A. Yes.

Q. What happened then?

A. I then saw the emergency van come.

Q. Police van?

A. Yes. Shortly afterwards I saw a policeman holding a knife passing my breadstall. He took a piece of string from my breadstall and tied up the knife.

10

Q. Did you look at your stall at that time?

A. The knife seemed to be the one belonging to me, so I started looking round my stall.

COURT: Well, did you find yours?

A. I found it missing.

Q. You recognised the knife in the policeman's hand as your knife?

A. Yes.

20

Q. You did not actually see anyone take away the chopper earlier on?

A. No, I did not.

Q. You recognised this knife as your knife, you are quite sure?

COURT: He said so.

Cross-Examination.

MR. LOO: You said you recognised the knife as yours?

A. Yes.

30

Q. How could you tell it was yours?

A. First, this knife resembles mine, and secondly, there were characters engraved on it.

COURT: Show the characters to the Jury.

A. I recognised this knife by the characters Lau Sang Lee engraved on the blade.

Q. Lau Sang Lee is not the name of your shop, is it?

A. No.

40

Q. And I take it that this is the maker's name of this kind of knife?

A. Yes.

Q. When you were shown the knife it was full of blood, was it not?

In the Supreme Court.

Prosecution Evidence.

No.16.

Lam Hok Wing.

21st December, 1953.

Examination - continued.

Cross-Examination.

In the Supreme Court.

Prosecution Evidence.

No.16.

Lam Hok Wing.
21st December, 1953.

Cross-Examination - continued.

A. Not fully covered.

Q. And you mean to tell the Court that the name was not covered with blood when you were shown the knife?

A. I recognised that knife to be mine and so I reported it to the police station.

COURT: (To Interpreter) Just go back and tell him to answer Mr. Loo's question. Were the three characters covered with blood when he saw the knife in the policeman's hand?

10

A. I was not shown the knife.

COURT: You were not shown the knife that evening?

A. No. I recognised it and reported to the police.

Q. Now, apart from your own breadstall, are there many other breadstalls nearby?

A. Yes.

Q. Others nearby yours, in the vicinity?

A. Yes.

Q. So am I correct to say there is another breadstall just on the northwest side of Sai Yeung Choi Street, northwest corner?

20

COURT: We don't want to locate all of them. What is this leading to?

MR. LOO: I am leading that there are many other stalls nearby.

COURT: He said so.

MR. LOO: This kind of knife is commonly used for cutting bread, is it not?

A. I don't know, I use it to cut bread.

Q. Thank you.

30

No Re-examination.

No.17.

Ho Chu.
21st Dec. 1953
Examination.

No.17.

HO CHU

14. Ho Chu (14) - Declared - Punt.

MR. BLAIR-KERR: You are twenty five years of age?

A. Yes.

- Q. You assist your brother in running the Kong Wah cafe at 132, Sai Yeung Choi Street? In the Supreme Court.
- A. Yes.
- Q. About 9 p.m. on the 23rd July, you were at the counter of the cafe? Prosecution Evidence.
- A. Yes. No.17.
- Q. Suddenly, while you were there, you saw a man rush into the cafe? Ho Chu.
- A. Yes. 21st December, 1953.
- 10 Q. He was covered in blood and he was holding his hand to his throat? Examination - continued.
- A. Yes.
- Q. He was shouting 'save life'?
- A. Yes.
- Q. He turned, ran out and went away?
- A. Yes.
- Q. Turned right?
- A. In the direction of the police station.
- No Cross-examination.
- 20 MR.BLAIR-KERR: May this witness be excused.

No. 18.

CHEUNG PAK MUI15. Cheung Pak Mui (10) - Declared - Punt.

COURT: She can very nearly be tendered for cross-examination. All she does is identify the body.

MR.BLAIR-KERR: You are the widow of a man called Chan Fook?

A. Yes.

30 MR.BLAIR-KERR: I don't think I need embarrass the witness by showing her the photographs.

Q. Your husband was 39 years of age?

A. Yes.

Q. And you identified his body at Kowloon Mortuary at 9.30 on the morning of the 24th July last?

A. Yes.

No Cross-examination.

MR.BLAIR-KERR: May she be excused.

No.18.

Cheung Pak Mui
21 Dec. 1953
Examination.

In the Supreme
Court.

No. 19.

MAK HEI

Prosecution
Evidence.

16. Mak Hei (6) - Declared - Puntí.

No.19.

COURT: This is also an important witness, but only as what may be described as the background of this, leading up to the feud.

Mak Hei.

MR.BLAIR-KERR: You are also known as Wong Cheong?

21st & 22nd
December, 1953

A. Yes.

Q. You are twenty four years of age?

A. Yes.

10

Examination.

Q. Address, 116 Kilung Street. second floor?

A. Yes.

Q. You are a skilled labourer at Stonecutters Island?

A. Yes.

Q. You have received a pardon from the Government, pardoning you from all responsibility, if any, for the events that took place on the evening of the 23rd July at Sai Yeung Choi Street?

A. This document shown to me is the pardon.

20

Q. You also own a teashop called the Hei Siong Hai Teahouse, at Diamond Hill?

A. Yes.

Q. Now, do you know a man called Chan Kau?

A. I do.

Q. Is he in Court?

A. The accused in the dock.

Q. Known him for three years, I believe?

A. A long time.

Q. You were the principal tenant at 116, Kilung Street?

30

A. Yes.

Q. And he used to rent a bedspace from you?

A. Yes.

Q. Now, he ceased being a sub-tenant of yours, but you saw him from time to time after that?

A. Yes.

Q. You know Yau Chung Kong?

A. I do.

Q. And Leung Wai Hung?

40

A. Yes.

- Q. You know a man called Ho Kai?
 A. I do.
- Q. And do you know a man called Lau Yiu?
 A. I do.
- Q. And a woman called Lam Ng?
 A. I do.
- Q. All these people work on Stonecutters Island?
 A. Yes.
- 10 Q. You also knew a man called Chan Fook?
 A. I do.
- Q. Now, Ho Kai and you became bad friends a few months before July this year, is that correct?
 A. Yes.
- Q. And some took Ho Kai's side and some took yours, is that right?
 A. Yes.
- Q. With you were Yau Chung Kong and Leung Wai Hung?
 A. Yes.
- 20 Q. Now, there were certain others who went with Ho Kai. Was one of those Sin Leung Kai?
 A. Yes.
- Q. And Chan Fook?
 A. I don't know with whom he sided.
- Q. Lau Yiu?
 A. I don't know.
- Q. Now, there was a fight on one occasion on board one of the vessels going out to Stonecutters Island between your group and Ho Kai's group?
 A. Yes.
- 30 Q. And about two months later there was another fight with a man Li Hing who was one of Ho Kai's friends?
 A. Yes.
- COURT: Between Li Hing and whom?
 A. Yau Chung Kong.
- Q. And then there was a fight at Jordan Road about a week after that?
 A. Yes.
- 40 Q. That was the time that Li Hing and twenty men assaulted Yau Chung Kong and Leung Wai Hung?
 A. Yes.
- Q. Now, to come forward now to the 23rd July.

In the Supreme Court.

Prosecution Evidence.

No.19.

Mak Hei.

21st & 22nd December, 1953.

Examination - continued.

In the Supreme Court.

Prosecution Evidence.

No.19.

Mak Hei.

21st & 22nd December, 1953.

Examination - continued.

COURT: Just a minute. As a result of that fight, what happened, somebody was sacked.

MR.BLAIR-KERR: I was trying to cut it down a bit.

Q. As a result of the fight, I think Li Hing got the sack?

A. Yes.

Q. There were frequent incidents of that kind?

A. Yes.

Q. On the 23rd of July, you heard something concerning the intentions of Ho Kai's men?

10

A. Yes.

Q. And you, Leung Wai Hung and Yau Chung Kong came back from work that afternoon?

A. Yes.

Q. Where did you go?

A. We went to Tung Choi Street.

Q. That is the house of Leung Wai Hung?

A. Tung Choi Street, in a place near Leung Wai Hung's house.

Q. Did you know Ho Kai was holding a party that night?

20

A. Yes.

Q. He lives at 25 Argyle Street, on the other side of Nathan Road?

A. Yes.

Q. The accused was not there when you first went back to Tung Choi Street?

A. No, I did not see him.

Q. He does not work on Stonecutters Island?

A. No, he does not.

30

Q. Now you and Leung Wai Hung and Yau Chung Kong agreed on something that night?

A. Yes.

Q. You agreed to assault Ho Kai, Sin Leung Kai and Wong Chung?

A. Yes.

Q. Now, it was arranged that you should meet at eight o'clock that night?

A. Yes.

Q. Now, about 7 p.m. did the accused come and see you?

40

A. Sometime after six o'clock the accused came to see me.

Q. And he spoke to you. What did he say?

- A. He brought along two of his sons during the visit and he discussed with me about the debts which the shop owed.
- Q. Did you tell him you were going to a fight that night?
- A. No. I told him that I was too busy to talk with him. I did not mention to him that I was going to fight.
- 10 Q. Did you mention to him at all that night that you were going to fight?
- A. When he pressed me further I told him that I was going out to fight.
- Q. And did you mention that Yau Chung Kong and Leung Wai Hung were going out with you?
- A. I did.
- Q. And what did you tell him further about this fight?
- A. I further told him that Lau Bi and So Wing will also take part.
- 20 Q. Did you say who you were going to give a hiding to that night, did you say what you were going to do?
- A. No.
- COURT: You did not tell him what you were going to do?
- A. I told him that we are going out to fight.
- COURT: Did you name anyone you were going to fight?
- A. I did not mention the opposite party.
- 30 Q. Did you say you were going to Argyle Street, or where?
- A. I mentioned to him that we were going to Mongkok, I did not even name the street.
- Q. Did you go to Tung Choi Street at ten past eight that night?
- COURT: I think, if that is a convenient time, we will stop and start again tomorrow morning, unless you want to finish the examination-in-chief?
- 40 MR. BLAIR-KERR: I think that might be more convenient.
- Q. You went to Tung Choi Street at ten past eight that night?
- A. Yes.
- Q. As a result of what you heard at Tung Choi

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Mak Hei

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December, 1953

Examination -
continued.

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Court.

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Evidence.

No.19.

Mak Hei

21st & 22nd
December, 1953.

Examination -
continued.

Street from Lau Bi's friend, you went on to Ar-
gyle Street?

A. Yes.

Q. To near Ho Kai's house?

A. Yes.

Q. There you saw Yau Chung Kong?

A. Yes, I did.

Q. And others?

A. Yes.

Q. Lau Bi, Soa Wing and others?

A. Yes.

Q. Leung Wai Hung, did you see him there?

A. About ten minutes later I saw him passing with
his girl-friend.

Q. Then did you see Yau Chung Kong get up from
where he was sitting?

A. Yes, I did.

Q. And where did he walk?

A. He walked in the direction across Shanghai Street
and onward to Nathan Road.

Q. Were they following anyone?

A. I don't know whom he was following.

Q. Now, you did not see any fight yourself?

A. No, I did not.

Q. You went to 81, Fa Hui Village that night, later
on?

A. Yes.

Q. That is the residence of Tai Yan Fat?

A. Yes.

Q. Why did you go there?

A. I tried to locate those people.

Q. Which people.

A. That is to say, Tai Yan Fat, Lau Bi and Soa Wing.

Q. And did you meet Leung Wai Hung and Yau Chung
Kong there?

A. I did.

Q. And Lau Bi?

A. Yes.

Q. And Soa Wing?

A. Yes.

Q. And was the accused there?

A. He was there.

Q. They were all at Tai Yan Fat's place, 81, Fa
Hui Village?

A. Just outside the door.

10

20

30

40

COURT: (To Jury): What is coming now is important.

In the Supreme Court.

Q. Now, did you hear any conversation between these men? Tell us what you heard.

Prosecution Evidence.

A. I heard Yau Chung Kong ask Lau Bi, Soa Wing and others as to who had hit or struck the wrong person.

No.19.

Q. And then what happened after that?

Mak Hei

10

A. Yau Chung Kong remarked 'why was the wrong person hit or struck'.

21st & 22nd December, 1953.

Q. And who spoke then?

Examination-continued.

A. Then Soa Wing said Chan Kau had chopped that fellow once with a knife.

Q. And what did Chan Kau say?

A. Chan Kau was silent.

Q. Then, who spoke next?

A. Then there was conversation among people all over, and I could not hear clearly what was said.

20

Q. Did Chan Kau say anything further, later on?

A. Yes.

Q. What was that ?

A. Chan Kau said "there are so many people around here, we better not talk at random, let's go'.

Q. Anything else?

A. Well, then they left.

Q. You were the last to leave?

A. Yes.

30

COURT: We will adjourn now and you can start your cross-examination in the morning at nine o'clock.

22nd December, 1953 at 9 a.m.

Court resumes.

Jury answer to names.

Accused present.

Appearances as before.

16. Mak Hei - d - in Punti dialect. Cross-examination by Mr. Loo.

Cross-Examination.

40

Q. Now prior to the 23rd July, you said you had two fights with Ho Kai's group.

A. Yes.

Q. Did the accused take any part in any one of the fightings?

A. No.

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Cross-Examination - continued.

Q. Did Ho Kai, Lau Yiu or Sin Leung Kai take any part in these fightings?

A. Ho Kai took part in the fight but Lau Yiu and Sing Leung Kai were not seen in the fight.

REECE, J: That is prior to the 23rd July.

A. Yes.

Q. Did Wong Chung take any part in the fight?

A. Wong Chung took part in the fight and so did Li Hing.

Q. And that is why you proposed to assault Ho Kai, Sin Leung Kai and Wong Chung on the night of 23rd July, is it not? 10

A. Yes, and also Li Hing.

Q. Now apart from these four, did you intend to assault also Lau Yiu and the deceased Chan Fook?

A. I had the intention to beat Lau Yiu but had no intention to beat Chan Fook.

Q. How long have you known So Wing and Lau Bi

A. About 3 months before the 23rd July.

Q. And you asked them to go on that evening to assault these persons, is it not right? 20

A. Yes.

Q. Now, you and Leung Wai Hung and Yau Chung Kong, the three of you, you were instigators of the fight but why did you not take part in the fight?

REECE, J: One doesn't usually bark when he can get a dog to bark for him, Mr. Loo. Alright carry on.

A. I was afraid then that I might be recognised by the opposite party and I might be beaten up subsequently. 30

Q. Now you said that the accused went to visit you with 2 children at 7 p.m. on the 23rd July.

A. Yes.

Q. Did the accused go to see you earlier than 7 p.m. on another occasion?

REECE, J: On another occasion might have meant 2 years earlier.

MR. LOO: The same evening

40

REECE, J: Well, say so. (To Witness): Did the accused go to your house before 7 p.m. on the same evening?

A. I did not know because I was not home.

Q. I put it to you that he went there at 5 p.m. that evening and you were there; you were having dinner. Oh I am sorry, about 6 p.m.

A. Yes, he came to see me at about 6 p.m. I was home and I had dinner.

Q. I put it to you he went there and asked you to clear up some debts of your restaurant.

A. Yes, Chan Kau came on that occasion at 6 p.m. asking me to clear up the debts of my restaurant.

10

Q. And you were having dinner, so he left with his two children.

A. Yes.

REECE, J: That is the time you mean, now when he came with the two children?

MR. LOO: Yes my Lord.

Q. And then he returned again about 7 p.m. alone.

A. Well, I don't recollect well: I only saw him once at home.

20

REECE, J: The question then is, Mr. Loo wants to know whether he came subsequently alone.

A. I only saw him once at home. Whether he came alone or not again I do not know because I was not home.

Q. You told the Court that Chan Kau came to see you about 7 p.m. Do you mean to say that he stayed there all the time from 6-7 p.m.?

A. He left before 7.

30

Q. Now I put it to you that he went there on the second time at 7 p.m. and pressed you for payment of money.

A. Yes.

40

REECE, J: The man has already said this man came to his house and asked him for money at 6 o'clock and he left his house before 7 with his two children. As I understand it, he is saying he came once. First of all, he said at 7 o'clock and then you asked him if the accused went there before 7 p.m. and then he said accused came at 6 and asked him about those debts. Now you are putting it to him in a slightly different form "Are you saying that this man came at 7 o'clock and asked for money a second time?" and the man says "Yes". Three questions in one; that is not the way to cross-examine. You must put questions one by one. It could be a trick question.

MR. LOO: I don't think it is a trick question, my Lord.

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Cross-Examination - continued.

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Cross-Examination - continued.

REECE, J: You are not allowed to put three questions into one.

MR. LOO: Yes, my Lord.

Q. I put it to you that he did come on the second occasion at 7 p.m.

A. No. May I explain the circumstances then?

REECE, J: Yes, go on.

A. Sometime after 6 o'clock, I was having dinner at home and Chan Kau came with his two children. He did not mention anything to me while I was having dinner and, after dinner, I went to have a bath - which I did. While I was having dinner, he took his two children to my inmates, to my co-tenants in the cubicle next to mine and had a chat there. So, during the course of my dinner I did not see him, but after I came out from my bath, I saw him again.

10

REECE, J: It is quite a different thing as you can see, Mr. Loo, when it all comes out. The picture is perfectly clear.

20

Q. When you saw him again, did you see his children?

A. No.

Q. So the children must have left?

REECE, J: They were in the next cubicle. You had better ask him had the children left the premises, if that is what you want to find out.

Q. Yes my Lord. Had the children left the premises?

A. I did not know the whereabouts of his children. I did not see them at that time.

30

Q. I put it to you you went with him, both of you, to Tung Choi St. to Leung Wai Hung's house.

REECE, J: We have finished with the dinner party now.

MR. LOO: Yes and I now put it to him did he and the accused go together to Tung Choi St. to Leung Wai Hung's house.

A. No, he left first.

Q. I put it to you that during the fighting, you and the accused were both standing on the northwest corner of Argyle Street.

40

REECE, J: Can we get a little bit out of these expressions and get down to more concrete

expressions? What does this man know about a northwest corner. Does he have a compass to find out where the northeast corner is?

In the Supreme Court.

Q. Look at this spot here marked with a cross (plan handed to witness). I put it to you that during the fighting you and the accused were standing at the corner on Sai Yeung Choi St., and Argyle St.

Prosecution Evidence.

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Mak Hei

10 A. No, I did not stand at the spot marked by a cross on the map with accused during the fighting.

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Q. I put it to you you did stand there and you saw a policeman and you asked the accused to stop the fighting.

Cross-Examination - continued.

REECE, J: Just a minute Mr. Loo, that's two questions in one. Do you see what I mean?

MR. LOO: Yes my Lord.

Q. I put it to you that you saw a policeman there while the fighting took place.

20 REECE, J: Just a minute. You are putting it to him that he was standing here with the accused during the fight. He has denied that. "Did you see a policeman assuming that you were standing there?" which is the best I can do for you. Where do you mean that he was supposed to have seen this policeman? Either you have instructions that there was a policeman somewhere there or you don't. If you have instructions, you must have been given instructions as to where the policeman was.

30

MR. LOO: Yes. (Marks spot on the map).

REECE, J: Before you put this question to him, how many yards away was this man that you saw standing from the place where the fighting took place?

A. Approximately about 50 yards.

MR. BLAIR-KERR: The distance between those two streets is 125 yards.

40 MR. LOO: Did you see a policeman there at the spot I marked (at the junction of Fife St. and Sai Yeung Choi St.)?

A. No.

Q. Did you ever ask the accused to stop the fighting?

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Cross-
Examination -
continued.

A. No I did not. I never saw him.

REECE, J: You see, a little while ago you asked this man why he did not stay at the fight and he told you he was afraid. Now you ask him if he didn't ask the accused to stop the fight. If your question has any logical meaning, well and good; it must be rational. If you ask him why didn't he attend this fight, you must have implied to the jury that the man was not there because he replied "I did not attend the fight because I was afraid of being beaten up". Now you ask him whether he had stood at this corner with the accused and asked the accused to stop the fighting. I am only asking you to be a little more fair because you have implied, by asking the man why he did not attend the fight, you obviously took it for granted he was not there.

10

MR. LOO: But then I put it to him he was there later on.

20

REECE, J: Alright, carry on: it is your cross-examination.

A. (Repeated) I did not ask Chan Kau to stop the fight because I did not see him.

Q. You said you told the accused you were going to have a fight.

A. I did not tell the accused intentionally that I was going to have a fight but, during the course of his pressure on me for money, I told him that I was going to be busy that evening because I was going to fight.

30

Q. Now you further state that you did not mention to the accused with whom you were going to fight?

A. No I did not.

Q. Now, you gave evidence at the committal proceedings, did you not?

A. Yes.

Q. And in your evidence before the magistrate you said "I told accused 'we are going to give Ho Kai, Sin Leung Kai and Wong Chung a good hiding'."

40

A. I think I have said so in the magistracy. Since the thing has elapsed for a few months now.

Q. Did you say that or did you not say that?

REECE, J: He says he thinks. Several months have

elapsed and he cannot rely on his memory. Well you can go on and ask but I think it is emphatic as it is. The man has already said that thinks he said so. Anyway, you can put it to him.

Q. Is it true or not you told the accused who are the persons you were going to give a good hiding. (No answer)

10 REECE, J: You now have been reminded of what you said before the magistrate. Will you agree that what the magistrate recorded is in fact what you did say or are you saying now that you cannot remember or that the magistrate is wrong?

A. I did tell the magistrate.

Q. I am taking you now to the conversation at the Fa Hui Village after the fighting.

A. Yes.

Q. Did you see among them Ah Hong?

A. I do not know Ah Hong.

20 Q. You gave evidence at the committal proceedings and you said "Then Ah Hong said 'It seems to me that So Wing was the one who used the chopper'."

A. Honestly, it has happened a few months already and I cannot say whether I can remember correctly or not the evidence I have given.

30 REECE, J: Having been reminded that you did say before the Magistrate "Then Ah Hong said 'it seems to me that So Wing was the one who used the chopper'." do you still say that you do not know a man called Ah Hong?

A. I know someone called Ah Hon, not Ah Hong.

REECE, J: That might have been a mistake made by the Magistrate, not being familiar with the tones of this language. It is possible that the Magistrate might have made a mistake in writing down this name. Tell this man then the name of Ah Hon instead of Ah Hong.

A. Well, of course I said so otherwise the Magistrate would not have written it down.

40 Q. You said you saw the accused leave Fa Hui Village?

A. Yes.

Q. Did you notice what dress he was wearing?

A. He was dressed in black.

Re-Examination - Nil.

In the Supreme Court.

Prosecution Evidence.

No.19.

Mak Hei

21st & 22nd December, 1953.

Cross-Examination - continued.

In the Supreme
Court.

YAU CHUNG KONG

Prosecution
Evidence.

Yau Chung Kong - d - in Punti dialect. Examination
by Mr. Blair-Kerr.

No.20.

Yau Chung Kong
22nd Decomber,
1953.

Examination.

Q. You are 27 years of age?

A. Yes.

Q. And you live at 72 Old Bailey St., Hong Kong?

A. Yes.

Q. And you are a driver employed at Stonecutter's
Island?

A. Yes.

Q. You have also received a pardon from the Govern-
or pardoning you in respect of offences com-
mitted by you on the 23rd July, 1953?

A. Yes.

Q. You sometimes sleep in 116 Kilung St., 2nd
floor?

A. Yes.

Q. That is Mak Hei's - the last witness - home?

A. Yes.

Q. Do you also sometimes sleep at 81 Fa Hui Vil-
lage, that is, the house of Tai Yan Fat?

A. Yes.

Q. You have known Mak Hei since 1948?

A. Yes.

Q. You also know Leung Wai Hung?

A. Yes.

Q. Do you know Ho Kai?

A. I do.

Q. Do you know Lau Yiu?

A. I do.

Q. He is a friend of Ho Kai's?

A. Yes.

Q. And Lam Ng?

A. Yes I do.

Q. She is a friend of Ho Kai's too?

A. Yes.

Q. Sin Leung Kai, do you know him?

A. I do.

Q. He works in Stonecutter's too?

A. Yes.

Q. And is a friend of Ho Kai's?

A. Yes.

10

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30

40

- Q. Do you know the accused?
 A. I do.
- Q. Where did you meet the accused?
 A. In Mak Hei's home.
- Q. About 2 months prior to the 23rd July?
 A. Yes.
- Q. He became a friend of yours?
 A. Yes.
- 10 Q. You agree that there were 2 parties in Stone-
 cutter's Island that are at loggerheads with
 one another?
 A. Yes.
- Q. You belong to Mak Hei's party?
 A. Yes.
- Q. Lau Yiu, did he belong to Ho Kai's party?
 A. Yes.
- Q. Do you know a man called Chan Fook?
 A. Yes.
- 20 Q. He is dead now?
 A. Yes, I now know he is.
- Q. Now, there have been many disagreements between
 Ho Kai's party and your party?
 A. Yes.
- Q. Do you remember Li Hing being dismissed from
 Stonecutter's?
 A. Yes I do.
- Q. Because it was alleged that he stole your pass?
 A. Yes.
- 30 Q. Li Hing - after he was dismissed - assaulted
 you at Jordan Road Ferry; he and ten other
 people assaulted you at Jordan Road Ferry; is
 that correct?
 A. Yes.
- Q. As a result of that assault, what did you de-
 cide to do?
 A. Well, I decided to return blows to him.
- Q. To whom?
 A. That is to say, Sin Leung Kai, Ho Kai and Wong
 Chung.
- 40 Q. Now, after work on the 23rd July, you went to
 Tung Choi St., the house of Leung Wai Hung.
 A. Yes.
- Q. And Mak Hei was there
 A. On my arrival there, I did not see Mak Hei.
- Q. Was Leung Wai Hung there?

In the Supreme
 Court.

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 Evidence.

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Yau Chung Kong.

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 1953.

Examination -
 continued.

In the Supreme
Court.

A. Leung Wai Hung was in.

Q. Anybody else there?

A. Lau Bi, So Wing, Lau Yan Chuen.

Prosecution
Evidence.

Q. Anybody else?

A. And Chan Kau.

No.20.

Yau Chung Kong.

Q. Wait a minute. We are talking about the first meeting at Leung Wai Hung's home in Tung Choi St.

22nd December,
1953.

A. On the first occasion, those persons were myself, Mak Hei, Leung Wai Hung, So Wing.

10

Examination -
continued.

REECE, J: Did you go alone to this house or did somebody go together with you. If so, who?

A. After I got off work, I went there together with Mak Hei and Leung Wai Hung.

Q. Did you come to any agreement, you three? What did you agree to do.

A. We agreed to give Ho Kai a beating.

Q. Ho Kai and who else?

A. Sin Leung Kai and Wong Chung.

Q. And it was agreed to meet later on in Tung Choi St.?

20

A. Yes.

Q. And did you meet in Tung Choi St. later?

A. Yes.

Q. Now on the second occasion in Tung Choi St., who was there?

A. Those present during the second occasion were So Wing, Lau Bi, Lau Yan Chuen, Chan Kau, Ah Hon. That is all.

Q. Mak Hei was not there on this occasion?

30

A. No, I did not see him during the second occasion.

Q. When you say they were there, do you mean they were altogether in one party?

A. Well I would say that was a group of us there then; we were just standing there in the street at irregular spaces.

Q. How long were you there in Tung Choi St. on the 2nd occasion?

A. Not very long.

40

Q. And then you all went somewhere. Where did you go?

A. We went to Argyle St.

Q. Before you left, did you hear the accused say anything?

- A. Well he said "You people go first". That is all he said.
- Q. What was Chan Kau wearing at that time?
- A. He was wearing a white shirt and a pair of khaki European trousers.
- Q. So he said "You people go along first".
- A. Yes.
- Q. What happened then?
- A. Then we went down to Argyle St.
- 10 Q. And you stopped outside which house?
- A. In the vicinity of Ho Kai's house.
- Q. After a time, did you see anyone leave Ho Kai's house?
- A. Then I saw Lam Ng and Lau Yiu and the deceased coming out from Ho Kai's place.
- Q. And you said something to the party you were with.
- A. Yes.
- Q. What was that?
- 20 A. I said to the group "Now, these are Ho Kai's men".
- Q. What happened after that?
- A. Well, then the group followed these people onward towards Nathan Road.
- Q. And did you follow behind?
- A. I followed behind Lau Bi and So Wing and others.
- Q. Did you see the groups cross Nathan Road?
- A. I don't recollect clearly if I saw them crossing Nathan Road.
- 30 Q. Do you remember something happening outside the Sun Wah Theatre?
- A. Yes.
- Q. What did you see happening there?
- A. When I was near the new Hongkong and Shanghai Bank Building, I looked towards the direction of the Sun Wah Theatre and I saw Lau Yan Chuen kick Lau Yiu. Immediately after, Lau Yiu fell on to the ground. Then Lau Yiu picked up something from the ground and ran away. Then I kept on walking until I reached the junction of Sai Young Choi St. and Argyle St.
- 40 Q. What did you see there?
- A. I looked into Sai Young Choi St. I saw a man hitting at another man with an object.
- Q. What kind of an object?
- A. I was quite a distance away and I could not tell what object it was

In the Supreme Court.

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No.20.

Yau Chung Kong.

22nd December, 1953.

Examination - continued.

In the Supreme Court.

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No.20.

Yau Chung Kong.

22nd December, 1953.

Examination - continued.

Q. Who was hitting who?

A. Well, when I looked into Sai Yeung Choi St., I just saw the man holding an object hitting another man.

Q. Who was the man who was doing the hitting? Did you recognise him?

A. When I looked into this street, I could not see it clearly who the man was and then I saw the other man, the deceased, was covered with blood.

Q. Who do you mean by deceased? 10

A. At that time I did not know who he was but I now know.

Q. Are you talking about Chan Fook?

A. Well, the next day I learned from the newspapers that he was Chan Fook.

Q. You saw three people walk up together. You saw Lau Yiu attacked and you saw another man covered in blood. Are you referring to the deceased or not?

REECE, J: I don't think that is a fair way to put it because what he said is that he could not recognise this man but subsequently he learned it was Chan Fook. It would not mean that he knew at the time it was Chan Fook. 20

Q. Did you know at the time who the man was?

A. At that time I did not know who the man was.

Q. When you say he was hitting him, can you demonstrate in what way he was hitting this other man?

A. (Demonstrates - holding an object in right hand and hitting from upward position to down). 30

Q. Several times or once?

A. I only saw once.

Q. How was the man who was doing the hitting dressed?

A. Dressed in a white shirt.

Q. And trousers?

A. Khaki colour.

Q. And you say you didn't recognise who this man was?

A. Yes. 40

REECE, J: Did you form any opinion?

A. At that time I suspected it was the accused.

REECE, J: Why did you suspect that?

A. Because this man's dress resembled that worn by the accused on that evening.

Q. Anything else which made you suspect it was the accused?

A. And also his build; his physical appearance was more or less the same as that of the accused.

Q. And the man who was being hit?

REECE, J: Just a minute. How far away were you from these men at this stage?

10 Q. When you witnessed this man hitting the other man, you said you were standing at the corner of Sai Yeung Choi St. and Argyle St.

A. In the middle of the intersection; of Argyle St. and Sai Yeung Choi St.

Q. So, you were in the middle of Argyle St. then. So you were in the middle of Argyle St. in the intersection.

A. Yes, in the middle of Argyle St. in the middle of the intersection.

REECE, J: How far were these other men away from you at that time?

20 A. Over 50 yards.

Q. What happened to the man who was struck?

A. The man who was struck was covered with blood. The man who was covered with blood supported himself against a pillar with his hands.

Q. Is that all you saw of the fight?

A. Yes.

REECE, J: What happened to the other man?

A. The man, the attacker, ran away towards the direction of Mongkok.

30 Q. And where did you go after that?

A. I was frightened then, so I went back to Fa Hui.

Q. 31 Fa Hui Village?

A. Yes.

Q. Who did you see there?

A. Well I saw Lau Bi, So Wing, Chan Kau, Ah Hon and Lau Yan Chuen.

Q. Some conversation took place between these men, can you tell us what it was?

40 REECE, J: Just a minute. When you got there, did you notice anything about this man Chan Kau?

A. On my arrival, I did not pay any attention to him yet.

In the Supreme Court.

Prosecution Evidence.

No.20.

Yau Chung Kong.

22nd December, 1953

Examination - continued.

In the Supreme
Court

Prosecution
Evidence.

No.20.

Yau Chung Kong.

22nd December,
1953.

Examination -
continued.

Q. You didn't notice what he was wearing?

A. At the time, on my arrival, I noticed that he was wearing a white shirt.

Q. And khaki trousers?

A. Yes, and a pair of khaki trousers.

Q. Well, there was some conversation between these men, tell us what it was in your own words.

A. Lau Bi said "Chan Kau chopped a person once".

Q. And what did Chan Kau say to that?

A. Lau Bi was saying that to me then. Chan Kau did not make any reply. 10

REECE, J: Was Chan Kau present? Did Chan Kau hear it?

A. Well, it was not said in the presence of Chan Kau but Chan Kau was around; but I am unable to tell whether that was within his hearing distance.

Q. How far away was Chan Kau?

A. From here to there.

REECE, J: But you did not know whether he was listening or whether he heard or not. 20

A. Yes.

Q. Did anyone speak to the accused?

A. I did not notice who was talking to Chau Kau then. At that time I was busy talking with Lau Bi.

Q. Did you hear the accused say anything?

A. When Chan Kau was going, I heard him talk.

Q. What did he say.

A. He said "Oh, it is very complicated here. Let's go". 30

Q. Did So Wing say anything to the accused?

A. I heard So Wing say to Chan Kau "Now Chan Kau, you have chopped a person".

Q. What did Chan Kau say to that?

A. Chan Kau said "It's too bad. We have to pull out this time".

Q. Then Chan Kau left.

A. Yes.

Q. What was he wearing on this occasion when he left? 40

A. He was wearing a white vest.

REECE, J; Not the shirt which he had on before?

A. No, at that time I did not see him wearing that white shirt. I only saw him wearing a white vest.

Cross-Examination by Mr. Loo:In the Supreme
Court.

Q. Now, prior to 23rd July, your group had two fights with Ho Kai's group.

A. Yes.

Q. Was Chan Kau present in any of these fightings?

A. No.

Q. Is Chan Kau a member of your gang?

A. No.

10 Q. When you saw the fighting on the evening of the 23rd, did you see any of the participants holding any object?

A. At that time I could not see if any was taking up or holding objects in the fight.

Q. Did you see a pole being used or an object wrapped in paper being used?

A. No.

Q. You said you were standing about 50 yards away from the scene?

20 MR. BLAIR-KERR: Your Lordship asked this witness for the distance, but he did not measure it.

REECE, J: He has not said he measured it but that is the distance he gives. Later if you want to, I can take the jury to the spot and we can have the distance measured but, at the moment, that is the distance he gives.

MR. LOO: You told the Court you were standing about 50 yards away from the scene.

A. It is quite a long distance then, about the breadth or width of several shops.

30 Q. And you said you could not see clearly who the man was who was doing the hitting.

A. Yes.

Q. But you guessed it could be Chan Kau because he wore a white shirt and because of his general build.

A. Yes.

Q. Now, there were others who were present at the fight, So Wing, Lau Bi and Lau Yan Chuen and Ah Hon.

40 A. Yes.

Q. What dress were they wearing? What were the colours of the dress they were wearing?

A. Well they were dressed either in sport shirt or Hawaiian shirt and European trousers or in shirts and European trousers.

Prosecution
Evidence.

No.20.

Yau Chung Kong.

22nd December,
1953.Cross-
Examination.

In the Supreme
Court.

Prosecution
Evidence.

No.20.

Yau Chung Kong.

22nd December,
1953.

Cross-
Examination -
continued.

REECE, J: What merely was the colour of the plain shirt?

A. Some of them are white and some of them are in checks.

REECE, J: Can you be a little more precise in that?

Q. Did you notice any particular kind of colour of shirt So Wing was wearing.

A. I did not pay much attention to that.

Q. But you said that apart from the accused, there were others who wore white coloured shirts, am I right? 10

A. Yes.

Q. You saw a person hit another person once?

A. Yes.

Q. And you thought this person could be Chan Kau, isn't it so?

A. I suspected that person who was hitting to be Chan Kau.

Q. You didn't see him hit twice or six times, did you? 20

A. I only could see once.

Q. I am taking you to Fa Hiu Village now. You said you saw Chan Kau there.

A. Yes.

Q. I put it to you that Chan Kau was not there at all.

A. Well, I saw him inside there.

Q. You said when Chan Kau left Fa Hui, he was wearing a white singlet. 30

A. Yes.

Q. When he left, was Mak Hei there?

REECE, J: You had better ask him whether Mak Hei was there at all while these conversations were going on.

Q. Was Mak Hei there?

A. Yes. he was there.

Q. When Chan Kau left, was Mak Hei still there?

A. Mak Hei and I myself and several others were outside the door of No.81. 40

REECE, J: What Mr.Loo wants to know is, when the accused left, was Mak Hei still there?

A. Mak Hei was still there when Chan Kau left.

Q. Would you agree with me if I say that when Chan Kau left, he was dressed in a black dress?

A. I did not see him wear a black dress or, I did not see him dressed in black when he left.

Re-Examination by Mr. Blair-Kerr

In the Supreme
Court.

Q. This fight you witnessed, where did it take place?

A. In Sai Yeung Choi St.

Q. Would it be correct to say that it was very near to the corner of Sai Yeung Choi St. and Argyle St.?

A. The fight taken up by Lau Yan Chuen took place around the corner of the Sun Wah Theatre.

10 Q. When you saw someone hitting someone else with something held in his hand, where was that?

A. It is inner in Sai Yeung Choi St.

Q. But how far out?

A. About several shops' breadth.

Q. Do you know the Kwong Wah Cafe?

A. I do.

Q. Was it near there?

A. Near there.

20 REECE, J: You say that more than one of these men were dressed in a white shirt. I am not trying to catch you; just answer my question.

A. Yes.

REECE, J: How many were dressed in khaki trousers if there were any others dressed in khaki trousers besides the accused man?

A. At that time I was not clear.

30 REECE, J: You saw these men again at Fa Hui Village that you have described, Lau Yan Chuen, Lau Bi, So Wing, Ah Hon and this man Chan Kau. Five of them you have described. You saw them all again after the fight at Fa Hui Village. You saw them before the fight. You said that this man was wearing a white shirt and khaki trousers. You said that some of them were wearing Hawaiian shirts and European trousers. Was there anyone of them, other than the accused, wearing khaki trousers? You had several opportunities to observe them.

40 A. Some of them wore striped trousers and some of them even wore shorts because it was summer then.

REECE, J: But still that doesn't answer my question. What was this accused wearing? Shorts or long?

A. Long trousers.

Prosecution
Evidence.

No.20.

Yau Chung Kong.

22nd December,
1953.

Re-Examination.

In the Supreme
Court.

Prosecution
Evidence.

No.20.

Yau Chung Kong.

22nd December,
1953.

Re-Examination
- continued.

REECE, J: Let's take them one by one. What was Lau Bi wearing? Long trousers, short trousers or what?

A. I cannot say for sure but I think he wore shorts then.

REECE, J: What about So Wing?

A. I cannot recharge my memory as to whether So Wing was really wearing shorts or long.

REECE, J: What about Ah Hon? Can you remember what he was wearing?

A. I cannot say definitely but I think he was wearing a Hawaiian shirt and each of them wore dresses so differently that I cannot say off-hand and correctly.

REECE, J: What about Lau Yan Chuen?

A. I think he was wearing a Hawaiian shirt and a pair of shorts.

10

No.21.

Leung Wai Hung.
22 Dec. 1953
Examination.

No.21.

LEUNG WAI HUNG

Leung Wai Hung - d - in Punti dialect. Examination by Mr. Blair-Kerr.

20

Q. You live at 140 Tung Choi St. ground floor?

A. Yes.

Q. You have also been pardoned by the Governor in respect of any offences which have been committed on the 23rd July last.

A. Yes.

Q. You were present at your house together with Mak Hei and others when it was agreed to beat up Ho Kai and his friends?

30

A. It was not really at my house but it was just outside in the street, after we came back from work.

Q. Did you agree to beat up Ho Kai and his friends that night?

A. I agreed but I did not take part in the fight

Q. I didn't say you took part. Just answer the question. Who did you agree to beat up?

A. I agreed to beat up Wong Chung, Ho Kai, Lau Yiu (identifies in Court).

- Q. Did you agree to meet later in Tung Choi St.?
 A. Yes.
- Q. Did you meet later in Tung Choi St.?
 A. Later they went; I did not take part because I went out.
- Q. Did you meet later in Tung Choi St.? I am not suggesting that you took part.
 A. Yes I did.
- Q. Who was present at that meeting?
 10 A. Well when I came up from the house I saw Lau Bi and So Wing and several others of his friends whom I did not know.
- Q. Was the last witness there?
 A. No, I did not see Yau Chung Kong at that time.
- Q. Do you know a man called Chan Kau?
 A. I do.
- Q. Was he there?
 A. At that time he was not there but after the party had left and was about at Mongkok Road or
 20 near Mongkok Road, I saw Chan Kau pass.
- Q. Did he speak to you?
 A. He came up and asked me "The fellows are going to have a fight tonight. Are you going?" I said "No, I am going out with my girl friend to-night".
- Q. What did he do after that?
 A. He then told me "I am now going out".
- Q. Where did he go?
 A. Well I did not know where he was going. He
 30 walked in the direction towards Mongkok Road.
- Q. Behind the party that had just left?
 A. I saw him walking in the direction of Mongkok Road.
- Q. Is that the same direction in which the party had gone?
 A. Yes.
- Q. You yourself didn't see the fight then?
 A. No.
- Q. But you went to Si Fa Hui Village later on.
 40 A. Yes.
- Q. Who did you see there?
 A. I saw So Wing and Lau Bi and several others whom I did not know.
- Q. You didn't hear any conversation?
 A. Well I heard a little bit of the conversation and I heard that wrong man was assaulted.
- Q. Was the accused present?
 A. No, I did not see him.

In the Supreme Court.

 Prosecution Evidence.

No.21.

Leung Wai Hung.

22nd December, 1953.

Examination - continued.

In the Supreme Court.

Prosecution Evidence.

No.21.

Leung Wai Hung.

22nd December, 1953.

Cross-Examination.

Cross-Examination by Mr. Loo

REECE, J: This man really doesn't know anything about this thing.

Q. While you met outside your house in Tung Choi St., did you notice what clothes were the others wearing, say, So Wing, Lau Bi?

A. Some of them dressed in Hawaiian shirt, some of them dressed in shirts.

(Interpreter: when he says a shirt he means an ordinary shirt).

Q. Did you notice what Chan Kau was wearing that night?

A. I saw him dressed in a shirt and a pair of khaki trousers.

Q. Apart from Chan Kau, was there any person who wore khaki trousers?

A. I am not clear if there were any other person dressed in khaki trousers.

Q. Apart from Chan Kau, was there any other person who wore a white shirt?

A. So Wing wore a white shirt (witness corrects) So Wing wore a Hawaiian shirt which was a grayish white in colour, and then there were 2 or 3 who were dressed in white shirts but I could not tell what kind of trousers they had on.

Q. Now I take you to Fa Hui Village. When you were there, was Mak Hei there?

A. Yes he was.

Q. Was Yau Chung Kong there?

A. Yau Chung Kong was there.

Q. Did you leave before Mak Hei or did Mak Hei leave before you?

A. Mak Hei and I left at the same time, with me following behind.

Q. Did you tell the Court you didn't see the accused there?

REECE, J: He said so, the accused wasn't there. That is why I say you are wasting time. You can ask questions one time too many sometimes, Mr. Loo. I gave you a hint.

No Re-Examination.

(Court adjourns at 11.20 and resumed at 11.35)

Jury answer to names.

Accused present. Appearances as before.

10

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No. 22.

TAI YAN FATIn the Supreme
Court.

Tai Yan Fat - d - in Punti dialect. Examination
by Mr. Blair-Kerr.

Prosecution
Evidence.

No. 22.

Tai Yan Fat

22nd December,
1953.

Examination.

- 10 Q. Tai Yan Fat, you are 29 years of age?
A. Yes.
Q. You live at 81 Fa Hui Village, Shamshuipo?
A. Yes.
Q. You are a watchman of the fire brigade Association, Fa Hui Village.
A. Yes.
Q. You know a man called Chan Kau?
A. I do.
Q. Is he in Court?
A. Yes, the accused.
Q. Do you know a man called Mak Hei?
A. I do.
Q. Who introduced you to Mak Hei?
A. Chan Kau.
20 Q. You know Yau Chung Kong?
A. I do.
Q. You knew him in Canton sometime ago?
A. Yes.
Q. You met him again where?
A. I met him again in Kilung St.
Q. With the accused?
A. Yes.
Q. And you know Leung Wai Hung?
A. I do.
30 Q. Who introduced you to him?
A. Chan Kau.
Q. You know Lau Bi, So Wing?
A. Yes.
Q. The accused sometimes visits you at 81 Fa Hui Village?
A. Yes.
Q. And did Yau Chung Kong sometimes sleep there?
A. Yes.
40 Q. Now, take your mind back to the 23rd July this year.
A. Yes.
Q. You went to bed that night about after 8 p.m.?
A. Yes.

In the Supreme
Court.

Prosecution
Evidence.

No.22.

Tai Yan Fat.

22nd December,
1953.

Examination -
continued.

Q. You awakened sometime later?

A. Yes.

Q. After 9 p.m.?

A. Yes.

Q. Who did you see when you woke up?

A. I saw Yau Chung Kong, Mak Hei, Leung Wai Hung.

REECE, J: Where were you sleeping and where did you see these people?

A. I was sleeping outside the doorway of hut 81.

When I awoke, I saw these men outside the doorway under a shed. 10

Q. Now tell us which men?

A. Yau Chung Kong, Mak Hei, Leung Wai Hung, Chan Kau, So Wing, Lau Bi, Lau Yan Chuen and Ah Hon.

REECE, J: "Under a shed". What sort of a shed?

A. This is a sort of lattice-work or bamboo.

Q. Did you hear any conversation between these men?

A. Yes, I heard.

Q. Tell us what you heard.

A. I heard somebody say "Ah, Chan Kau had chopped a person once". 20

Q. Where was Chan Kau when this was said?

A. Chan Kau was sitting there.

Q. What did he say in reply when this was said?

A. Then I heard Chan Kau said "Damn it, it is So Wing".

Q. What happened after that?

A. Then I heard So Wing talk back "Your mother's such and such curse, don't say things at random". 30

Q. Talking to the accused when he said this?

A. He said this to the accused.

Q. When So Wing said with a curse "Don't say things at random", did Chan Kau say anything more?

A. Chan Kau then said "I am afraid the police will come. Let us leave here".

Q. Then what happened after that?

A. Then Chan Kau took off his white shirt and held it in his hand and walked out of the shed and gave the shirt to Ah Hon. Then Ah Hon took the shirt and gave it to me saying ... 40

Q. Just a moment, was the accused there at the time?

A. When Ah Hon said this to me that Chan Kau wanted to deposit the shirt with him, Chan Kau was this

distance away from the witness-box to me. I don't know whether he could hear. I then told Ah Hon to hang up the shirt on the bamboo of the shed.

Q. What was the colour of the shirt?

A. A white shirt.

Q. Did it look like this one here?

A. This is the very one (Exhibit 15).

10

Q. Do you know what kind of trousers he was wearing that night, the accused?

A. A khaki trousers, long trousers.

Q. What happened after that?

A. I then took the shirt inside the hut and hung it up because I was afraid that it might be stolen.

Q. Then you went to sleep?

A. I then went to bed at about 10 p.m.

Q. And you were wakened up later on in the early hours of the morning.

20 REECE, J: Ask him to say what happened next.

A. Then about 3 o'clock in the morning the next day, the police came.

Q. And took you down to Mongkok Police Station?

A. Yes.

Q. And did you wear a shirt when you went down to the Police Station?

A. When the police came to take me, I was asked who was the owner of the shirt and I was asked to put it on.

30 Q. So you went down to Mongkok Police Station with that shirt on.

A. Yes, where I handed the shirt over to Inspector Hidden. (Identifies Insp. Hidden in Court).

Q. You handed the shirt over to Inspector Hidden?

A. Yes.

Cross-Examination by Mr. Loo:

Q. Now on that evening, there were many persons present; did you notice what dress they wore? I mean, Lau Bi, So Wing and others.

40 REECE, J: Did you notice what dress these men whom you had mentioned were wearing?

A. Leung Wai Hung was wearing a black coat and a pair of European trousers.

Q. So Wing?

In the Supreme Court.

Prosecution Evidence.

No.22.

Tai Yan Fat.

22nd December, 1953.

Examination - continued.

Cross-Examination.

In the Supreme Court.

Prosecution Evidence.

No.22.

Tai Yan Fat.

22nd December, 1953.

Cross-Examination - continued.

A. So Wing was dressed in a kind of green coat and a pair of blue jean trousers.

Q. And Lau Bi?

A. I am not clear about him.

Q. Ah Hon?

A. White shirt and khaki trousers, short or long I don't know.

Q. Just now you told the Court you saw Chan Kau take off his white shirt and held it in his hand.

10

A. Yes.

Q. Did you particularly notice that he wore a white shirt?

A. Yes.

Q. You gave evidence at the committal proceedings, did you not?

A. Yes.

Q. And you told the Court "While he was talking, Chan Kau was wearing khaki trousers but I cannot remember what else. He had some kind of a shirt but I don't remember the colour". Did you say that?
(No answer).

20

REECE, J: Did you tell the magistrate so or not, that is all you are asked.

A. Yes I have.

Q. Now, if you could not remember the colour at that time, how could you remember the colour now?

A. At the time when I was at the Kowloon Magistracy I could not remember well and afterwards, when I got home, I recalled that the shirt which Chan Kau had taken off and held in his hand was the shirt.

30

Q. Further down on your depositions you said "I was told it was Chan Kau's shirt". Did you say that?

A. Yes I said so in the magistracy that I was told it was Chan Kau's shirt.

Q. So I put it to you that actually you did not know the colour of Chan Kau's shirt but you were told that this shirt was Chan Kau's.

40

A. No, I know the shirt belongs to him.

Q. If you knew the shirt belonged to him, why should you say "I was told it was Chan Kau's shirt?"

A. Because Ah Hon took the shirt up to me and told me it was Chan Kau's shirt so I said so.

Re-Examination by Mr. Blair-Kerr

Q. Did you see Chan Kau take off his shirt or not?
 A. I did not see him taking off his shirt but I saw him holding his shirt.
 Q. Did you see him hand it to Ah Hon?
 A. Yes.

In the Supreme Court.

Prosecution Evidence.

No.22.

Tai Yan Fat.

22nd December, 1953.

Re-Examination.

No.23.

JAMES EVELYN HAROLD HIDDEN

James Evelyn Harold Hidden - s - Examination by
 Mr. Blair-Kerr.

10

Q. About 9 o'clock on the morning of the 24th July, you received that white shirt from last witness at the Yaumati Police Station (Exhibit P.15)?
 A. That is correct. Tai Yan Fat.

No Cross-Examination.

Mr. Blair-Kerr: There is one more witness but my learned friend has said that he does not require him to be tendered by the Crown for cross-examination. That being the case, that is the case for the Crown.

20

REECE, J: Yes Mr. Loo?

MR. LOO: I call the accused.

No.23.

James Evelyn Harold Hidden.

22 Dec. 1953

Examination.

No.24.

CHANG KAU

Chan Kau - d - in Punti dialect. Examination by
 Mr. Loo.

Q. Your name is Chan Kau alias Chan Kai?
 A. Yes.
 Q. And you are 26 years of age?

Defence Evidence.

No.24.

Chang Kau
22 Dec. 1953
Examination.

In the Supreme
Court.

Defence
Evidence.

No.24.

Chang Kau.

22nd December,
1953.

Examination -
continued.

A. Yes.

Q. Where were you born?

A. In Hong Kong.

Q. Did you receive any education?

A. I was still short of middle school; at the graduation of middle school.

Q. How long have you known Mak Hei?

A. 16 years.

Q. Were you employed?

A. Yes I was.

Q. What was your job?

A. I was a clerk at the restaurant or eating-house workers' Union.

Q. Did you have any job apart from this job?

A. Yes I had. Also a clerk in the Hi Cheung Hi Restaurant.

Q. And Mak Hei is the proprietor, isn't he?

A. Yes.

Q. Do you belong to Mak Hei's group?

A. No, I did not belong to any group.

Q. Did you know Ho Kai?

A. I don't.

Q. Did you know the deceased Chan Fook?

A. No.

Q. Or Lau Yiu?

A. No.

Q. Now tell the Court what happened on the day before 23rd July, 1953, that is, 22nd July, 1953.

A. On the day in question, I was at the Hi Sheung Hi Restaurant. There was a number of creditors coming to the restaurant pressing for debts in respect of goods such as pork, beef, fuel etc. sold to the restaurant.

Q. What has that got to do with you?

A. There were two shops belonging to my relatives. These two shops, through my introduction, sold beef, pork and fuel to the restaurant.

Q. Anything happened that day?

A. The people from these two shops came to demand for payment of money.

Q. What happened?

A. At that time Mak Hei was not in the restaurant and the people pressed upon me. These people informed me that

REECE, J: What the people told you is not evidence. What did you do?

10

20

30

40

- Q. The next day, on the 23rd July, did you go to see Mak Hei?
 A. Yes, I did.
 Q. Why did you go to see him?
 A. Because the accounts with these people should be settled.
 Q. What time did you go to see him?
 A. The first time, sometime after 5 o'clock in the afternoon.
 10 Q. Did you go alone?
 A. No, I went with my two children.
 Q. And was Mak Hei there?
 A. He was.
 Q. Did you ask him for payment of the debt?
 A. I did not ask him for payment of the debt because he was having dinner.
 Q. What did you do then.
 A. I told him I would come back at a later time and asked him to wait for me.
 20 Q. Did you go to see him later on in the evening?
 A. I did.
 Q. What time was it?
 A. Sometime between after 7 and before 8.
 Q. Was he in?
 A. He was.
 Q. Then what happened?
 A. I said to him "Ah Hei, the debt is due". He told me "You tell them to wait for a few more days". I said "No. They are threatening to remove the Frigidaire or ice-box".
 30 Q. Then what happened?
 A. Mak Hei told me "In fact I am very busy. I am going to have a fight".
 Q. Did he tell you with whom he was going to fight?
 A. At that time yes, he did.
 Q. Who were they?
 A. He did not mention who.
 Q. Did he ask you to go to fight?
 A. No, he did not.
 40 Q. What time did you leave Mak Hei's house?
 A. About 5 or 10 minutes after 8 p.m. after I had finished my conversation with him, I went together with him downstairs.
 Q. And after you went downstairs, where did you go?
 A. Mak Hei and I went together to catch a vehicle, a bus.

In the Supreme Court.

Defence Evidence.

No.24.

Chang Kau.

22nd December, 1953.

Examination - continued.

In the Supreme
Court.

Defence
Evidence.

No.24.

Chang Kau.

22nd December,
1953.

Examination -
continued.

Q. And the number of the bus you took?

REECE, J: He has not said he caught a bus; he said he went to catch a bus but he did not say he caught one.

Q. Did you take any bus at all?

A. Yes.

Q. Did you take a bus alone, yourself?

A. Together with Mak Hei.

Q. What number of the bus did you take?

A. We boarded on a bus at Laichikok Road and I am not clear about the number of the bus. 10

Q. Where did you get off from the bus?

A. We stopped ahead of the Mongkok Police Station.

Q. What road is it?

A. Nathan Road.

Q. Did you get off the bus alone?

A. I got down off the bus together with Mak Hei.

REECE, J: You did not put any of this to Mak Hei about boarding any bus or anything of this sort.

MR. LOO: I put it to him that he was (accused) there together with him. 20

REECE, J: Yes I know. I said that you have not put a single question to Mak Hei about boarding any bus. You did not ask Mak Hei anything about boarding a bus and now you blurt it out when the man isn't here to hear it. I shall have to tell the jury that.

MR. LOO: I am sorry, my Lord.

Q. After you got off the bus, where did you go?

A. Then I went into Tung Choi St. together with Mak Hei. 30

Q. Can you tell the Court what place you went to in Tung Choi St.?

A. To the outside of House No.151, in the street.

Q. What did you do there?

A. Mak Hei went to a group of people there and told Yau Chung Kong an address.

Q. You said Mak Hei did you ask you to go to the fight, why should you go with him to Tung Choi St.?

40

A. My aim was to press him for debt.

Q. Well, outside 151 Tung Choi St. what happened?

A. After Mak Hei had given the address to Yau Chung Kong, he and I squatted at a place by the

side of the gutter about 4 or 5 shops away from the group of people.

Q. Then what happened?

A. He and I kept on discussing about the statement of accounts.

Q. And then?

10 A. Previous to that, I did not believe that he was going to fight. I thought he was making a pretext of going to fight in order to avoid payment of the debt. At that time I believed he was going to fight. I then said to Mak Hei "Brother Hei, if that is the case you are going to fight, then I am going to leave. I am going back to the shop".

Q. What happened?

A. I then asked him what time would he come to the shop and he replied that he could not say definitely. He then said to me "Anyway, you have come. How about walking with me for a distance?"

20 Q. And what did you say?

A. By accompanying him to walk for a distance, he meant that I was going to accompany him to fight.

Q. Then what did you say?

A. I then told him that I am a weak man and I could not stand to fight. He said "I don't need you to fight. I got plenty of men myself".

Q. Did he tell you at that time with whom he was going to fight?

30 A. Well, from beginning to end, he did not mention any names but I only knew that he was going to fight.

Q. Then did you walk with him?

A. Up to this stage, Mak Hei was called by someone whom I did not know and who did not take part in the fight.

Q. And then what happened?

40 A. Then Mak Hei walked together with this man towards the direction of the junction of the street. Mak Hei told me in words to this effect "Ah Kau, go and tell those people to go ahead and you wait for me here".

Q. Then after that?

A. I related this message to Yau Chung Kong. Then I saw Leung Wai Hung. Leung Wai Hung asked me first where I was going. I said to him "I am going to fight. Aren't you going?". I then ignored him and went inside the ground floor of

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house No.151 and obeyed a call of nature. When I came out from the house, I found the people had already gone. That time, Mak Hei was still talking to his friend over there and I walked up to them. Mak Hei then parted with his friend and went with me to Argyle St.

Q. Which part of Argyle St. did you go to?

A. That is the section of Argyle St. near Canton Road, that is the section beyond the Broadway Theatre.

10

Q. Then what happened?

A. Then Mak Hei ignored me and I myself sat at a stool having some seeds. That is a sort of green bean soup. It is a seed.

Q. While you were having your pea soup there, what happened?

A. I then saw a group of people following three persons walking onwards along Argyle St.

Q. What happened next?

A. Yau Chung Kong was following this group of people and I and Mak Hei were walking in the rear.

20

Q. Now, you said Mak Hei ignored you and you had pea soup there yourself, isn't it?

A. Yes.

Q. How come Mak Hei walking with you again?

A. Even though Mak Hei did not pay attention to me, but I paid attention to him.

Q. How did it happen that you and Mak Hei walked together again?

30

A. Because Mak Hei did not follow those people and I went up to Mak Hei.

Q. What happened after that?

A. The procession was in this manner. In the front were three people, and then a group of 5 or 6 persons following them, and then Yau Chung Kong and then Mak Hei and myself in the fourth position.

Q. Then what happened?

A. Then Mak Hei and I went over to the south side pavement.

40

Q. Where was the south side pavement, what road?

A. Of Argyle St.

Q. Were you there alone?

A. With Mak Hei.

Q. What happened then when you arrived there?

- A. Then the three persons turned into Sai Yeung Choi St., around the corner by the Sun Wah Theatre. Mak Hei discovered that there was a policeman around in Mongkok Road. He mentioned to me "Ah Kau, there is a policeman over there. Hurry, hurry, tell them not to start fighting". I approached the group of people. When I was on my way to them, they had already started fighting. I saw 3 or 4 persons setting upon another.
- 10 Q. Did you see anybody holding anything?
 A. Yes I did.
 Q. What did you see?
 A. I could not tell what it was but I saw something wrapped in newspaper.
 Q. Then what happened?
 A. Then this man ran and the other people ran after him. This person ran and the other people ran after him.
- 20 Q. Who do you mean by "this person"?
 A. The person from the opposite party.
 Q. Did you know him?
 A. No.
 Q. And what happened?
 A. When this person was about near the Kong Wah Cafe, he turned around and fought with the group of pursuers. I then went up to these people and said "Policeman, So Wing". The several people stopped setting upon this person. I wanted to go. This person came up and grabbed me with both of his hands. (In the manner as demonstrated by the witness in the box - gripped by the chest). Then he held me with his left hand and hit me with his right hand (demonstrates).
- 30 Q. When he hit you, did you notice whether he was injured or not?
 A. Yes, I think he was suffering from minor injuries.
- REECE, J: You think?
- 40 A. No; he had a little quantity of blood on his person.
 Q. What happened then?
 A. He kept on beating me and I wanted to give him an explanation. I said "You hit the wrong man. I have nothing to do with it". At that time this man was really ferocious and so I had to resist. I had a chance and I freed myself from

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him. I started to run. He ran after me and hit my back. Well, I was acting on good intention to go up and tell the people not to set upon him but, when he hit me, I felt that I was very angry. I ran up to a stall which I have said to be a candy stall but which I now say is a bread stall and, at that moment, I was haywire. He was taller and bigger than I am and I had to resort to something in my resistance. I did not know that there was a knife in that place. As a matter of fact, I tried to get a pole or a bottle or things like that. I was given no chance for consideration and I picked up a knife blindly. This man squatted and was looking for something. I continued to run and he ran after me into the street. He hit my head at the back.

10

Q. With what did he hit you?

A. I don't know what it was but it was wooden.

Q. Did you see the object?

A. I did not.

20

Q. And then what happened?

A. I wanted to run but I was out of breath and, besides, I had flinching pains in both my loins. I was still beaten by him then, so I turned around (in a manner as demonstrated) and did this (demonstrates). I could not remember whether I struck once or twice. Then I ran along Sai Yeung Choi St.

Q. What did you do with the knife?

A. Through some unknown reason, I just could not tell how I threw it away.

30

Q. Did you throw away the knife before you ran away?

A. I threw away the knife in the course of my running.

Q. Do you know a fellow called Mui Wing Por?

A. Yes I know him, but he has a grudge against me.

Q. What grudge has he?

A. About a week before the 23rd July, I went up to him for a shoeshine. Having got my shoeshine, I didn't have any small change. I gave him a \$10 note. He then made a remark to me "You think I am a millionaire here and I have plenty of small change? You only have a shoeshine and you give me a \$10 note and expect change?" I then told him "How about I will pay you tonight" He refused to accept my offer and a quarrel between him and me ensued. At that time I was a

40

little bit overmade and I gave him a slap. Then I bought something and got some small change out of the \$10 note. He grugged as a result of this incident.

Q. Now, after you ran away, where did you go?

REECE, J: I think that would be a convenient place to stop and we could come back this afternoon.

(Court adjourns at 1.10 till 2.10 p.m.)

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2.10 p.m.

Court Resumes.
Accused present.
Appearances as before.
Jury answer to names.

CHAN KAU U.F.D.

Examination-in-Chief (Continued.)

MR. LOO: After the fighting, where did you go?

A. I went to Diamond Hill.

Q. Did you go to Fa Hui Village?

A. No.

Q. Now, when you picked up the knife, at that moment did you intend to cause grievous bodily harm to the deceased?

A. No.

Q. Thank you.

Cross-Examination.

MR. BLAIR-KERR: Now, Chan Kau, did you tell your Counsel all that you have said in the witness-box this morning and this afternoon?

A. Yes.

Q. Now, what is your defence in this case, Chan Kau, tell me simply, what is your defence?

A. I have a very substantial ground for my defence.

Q. Well, we want to know what it is.

A. I don't know which point.

Q. The position is this: we want to know whether or

COURT: Mr. Blair-Kerr, I don't think that is a fair thing to ask. The defence is being conducted by Mr. Loo.

MR. BLAIR-KERR: I think I will put it on a fact basis.

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continued.

COURT: On a fact basis, yes.

Q. Do you admit that the injuries on this man were caused by you or not, the man you were struggling with that night?

A. I chopped him and I admit it, but where I chopped him I do not know.

Q. All right, we will start at the beginning with your story, take you through a few points. You told the Court that the debt which you were asking Mak Hei for, asking him to pay, the debt in question was one owing by Mak Hei's restaurant, not by you personally. Is that correct?

10

A. Yes.

Q. Now, you discharged your duties to the restaurant as an employee by telling Mak Hei that the creditors had called; you discharged your duty that evening at six p.m.

A. Well, at that time Mak Hei tried to evade payment and those two shops belonged to my relatives and Mak Hei refused to go to Diamond Hill.

20

Q. He was your employer?

A. Yes.

Q. Well, what more did you hope to gain by hanging on to him that night after he refused to pay?

A. In fact I did not know there was such an incident like this took place.

Q. If he refused to pay, why didn't you go home?

A. Before I got a satisfactory answer from him I still have to take up the burden, otherwise I would be blamed by others.

30

Q. Do you mean by 'taking up the burden', pestering your employer all evening after he had refused?

A. But when I went back I would be blamed by the creditors; I have to furnish them with a full explanation even though the debt is not paid.

Q. You knew that he would not pay.

A. Well, he said he was going to pay.

Q. But you wanted a fuller explanation?

40

A. Yes.

Q. Now, you have known Yau Chung Kong quite a long time?

A. Several months.

Q. Leung Wai Hung, how long have you known him? Make the time prior to the 23rd July.

A. Three years prior to the 23rd July.

- Q. And Lau Bi and Soa Wing, how long have you known them?
- A. I cannot remember the time as to how long I have known them; I have known them under special circumstances, and I was not introduced to them.
- Q. Tai Yan Fat?
- A. Several months.
- Q. You slept at 81, Fa Hui Village on several occasions?
- 10 A. Yes.
- Q. And did Yau Chung Kong sleep at 81, Fa Hui Village on several occasions?
- A. I am not clear.
- Q. Leung Wai Hung, his home is 140, Tung Choi Street, ground floor?
- A. I do not know.
- Q. You don't know. Now, you say that you came down the stairs
- 20 COURT: Just a minute. He said that he had never seen Yau Chung Kong sleep at Fa Hui Village. He says he is not clear. I would like that clarified, to find out whether the man slept there at all.
- Q. Do you know whether Yau Chung Kong ever slept at 81, Fa Hui Village?
- A. I have never seen him sleep there, but I heard that he slept there.
- Q. You said you heard Mak Hei in Tung Choi Street tell Yau Chung Kong an address. Which address did he tell him?
- 30 A. I heard it was Argyle Street, but I don't remember the number.
- Q. Now, it was at that point in Tung Choi Street that you believed genuinely that Mak Hei and others were going to fight that night?
- A. Yes.
- Q. Why did you not go home then?
- A. I said I wanted to go home.
- Q. Then why didn't you go?
- 40 A. At that time he wasn't asking me to go to fight, and as everyone has a sense of curiosity, I don't think it was an offence walking with him for a while.
- Q. You know it is against the law to fight in the street?
- A. Yes.

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Q. Why did you want to get embroiled in a brawl in the street? Why did you go there deliberately, knowing you might be involved in the fight in the street?

A. He asked me to go out and said that there was a policeman, and that was really a good intention.

Q. You told them that you were a weak man and could not fight, is that correct?

A. Yes.

Q. Why did you tell him that, all he was doing was asking you to go and walk with him, why tell him that? 10

A. In our Chinese custom, when you are asked to accompany somebody on a walk, it means that you are being asked to go to a fight.

Q. So it is a fact when you agreed to go with him that you well know you might be getting into this fight?

A. I am not involved in that because I do not participate in the fight. 20

COURT: You are being asked if when this man asked you to go for a walk, didn't you know then - regarding what you have just said - that you were going to fight.

A. Mak Hei had plenty of places to go, and I would have difficulty in locating him, and if I let him go I would never find him.

MR. BLAIR-KERR: It would save a lot of time and a lot of work for his Lordship if you answer the questions that are put to you by my learned friend and I. Is it not the case, if you understood that by Chinese custom that by the fact that you were going with Mak Hei, that you were going to a fight and take part in it? Say yes or no. 30

A. Mak Hei said he did not need me to fight, he had plenty of men to fight.

Q. I put it to you that you agreed to take part in the fight with Mak Hei and his friends. Yes or no? 40

A. No.

Q. Now, you go to Argyle Street with Mak Hei. That is correct, is it?

A. Yes.

Q. Mak Hei was standing where did you say?

A. Mak Hei was standing in Argyle Street, near Canton Road.

- Q. And how far was Mak Hei away from you?
 A. He was several foodstalls away from me.
 Q. Yau Chung Kong, where was he standing or sitting?
 A. Yau Chung Kong had changed many positions.
 Q. How many times did he change position?
 A. I am not clear, he just bustled to and fro.
 Q. Leung Wai Hung, where was he?
 A. I did not see him.
 10 Q. So there were four parties eventually walked up
 Argyle Street towards Nathan Road?
 A. Yes.
 Q. There were three people in the first one?
 A. Yes.
 Q. Two men and a woman?
 A. Yes.
 Q. Did you see them? Could you recognise any of
 them?
 A. No, I cannot.
 20 Q. Why did you leave Mak Hei at all while waiting
 outside 25 Argyle Street?
 COURT: He said Mak Hei sent him with a message.
 MR. BLAIR-KERR: No, I am still in Argyle Street.
 Q. Why did you leave Mak Hei?
 A. Well, Mak Hei was the man who was looking after
 his forces, and he had to go round and see his
 own people, and I had nothing to do with it.
 Q. Who are his own people?
 A. By his people I mean the people who fought.
 Q. Or were going to fight?
 30 A. Yes, going to fight.
 Q. So we have a situation where Mak Hei is looking
 after the people who are going to fight, and
 you are pestering for a debt due from his firm.
 A. No, at that time I was eating green pea soup.
 Q. Now, you walked with Mak Hei up Argyle Street
 and stopped at Sai Yeung Choi Street?
 A. Yes.
 Q. You saw the three people in party No.1 turn in-
 to Sai Yeung Choi Street?
 40 A. Yes.
 Q. This time you were the other side of Argyle
 Street, at Sai Yeung Choi Street?
 A. Yes.
 Q. Now, you know that Fife Street runs parallel to
 Argyle Street?

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continued.

A. That's right.

Q. And then Mongkok Road is also parallel to this,
but further away from Argyle Street?

A. That's right.

Q. And Mongkok Police Station is in between Mongkok
Road and Fife Street?

A. Yes.

Q. And it is also bounded by Nathan Road and Sai
Yeung Choi Street?

A. Yes.

Q. Now, did you see this policeman you were talk-
ing about this morning?

A. Of course I saw him.

Q. Was he walking in Mongkok Road?

A. He was standing there, talking to someone.

Q. Standing in Mongkok Road?

A. Yes.

Q. He did not start coming down Sai Yeung Choi
Street?

A. He was standing there talking

Q. So your story is that Mak Hei sent you across
to this group of people in Sai Yeung Choi Street
to tell them to stop fighting?

A. Yes.

Q. At this time you saw a group of people chasing
another man?

A. Yes.

Q. Now, you eventually told one of that group of
attackers that there was a policeman.

COURT: He says he told him.

A. Yes.

Q. And they immediately ran away?

A. They were fighting and they just released.

Q. Did they run away or not?

A. I don't know whether they ran away or not, they
did not say.

Q. They released this man they had been attacking?

A. Yes.

Q. And they did not attack him again?

A. No.

Q. Now, he grabbed you here with his hands, his
two hands. Where was this blood that you saw
on his body? You said you saw blood on his
person, where was it?

A. All over his chest.

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Q. Demonstrate with your finger exactly how much blood there was on his chest.

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COURT: Where was it and how much was it, that is exactly what we want to know.

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A. At that time I was very agitated, and I could not be very concentrated. I only saw red spots on him. Actually, this man's clothes were white and there were red spots on them.

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Q. How many red spots?

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10 A. All over here (indicates).

COURT: All over his chest?

Cross- Examination - continued.

A. Blotches here and blotches there.

Q. How many spots?

A. I am not quite clear. I think just three or four.

Q. Small ones?

A. Very small.

Q. That was the only injury you saw?

A. Yes.

20 Q. How old are you?

A. 26.

Q. You suffering from any disease?

A. Where?

Q. T.B. or anything of that kind?

A. I have never been examined.

Q. You don't know?

A. No.

Q. This man held you with one hand and punched you with the other. Is that correct?

30 A. Yes.

Q. What were you doing at this time with your hands when he held you with one hand and punched you with the other?

A. Trying to ward them off.

Q. Were you successful in warding him off?

A. Yes. I could not on some occasions.

Q. On some occasions you could manage to ward him off?

A. Yes.

40 Q. Did you want to fight?

A. At that time all I wanted was to run away.

Q. But, when you wanted to run away, why didn't you run?

A. I ran.

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Q. Ran where?

A. As soon as I got myself free I just ran straight ahead.

Q. This took place opposite the Kong Wah Cafe, this assault by this man?

A. Not yet up to the Kong Wah cafe, short distance before you reach the Kong Wah cafe.

Q. Nearer Argyle Street?

A. Still a short distance before the Kong Wah cafe.

Q. Nearer Argyle Street?

A. Yes.

Q. Near the breadstall?

A. Yes.

Q. Now, which direction did you run? Why didn't you run into Argyle Street when you warded this man off?

A. When I ran away, I could not run fast enough.

Q. He caught you up?

A. Well, he hit my back.

Q. What with?

A. Fists.

Q. And then, what did you do?

A. I ran.

Q. Was it then you made up your mind to go to the breadstall and arm yourself with a bottle or something?

A. Yes, at that time I wanted to get a piece of firewood or a bottle.

Q. How long did you look for a bottle at the breadstall?

A. No, I did not look for it, I took immediately.

Q. Did the breadstall look like that, P.10?

A. I did not see it looked like that, but at that time I cannot say whether that one was the one in the photo.

Q. But it looked like that?

A. Yes.

Q. It is one on the corner of Sai Yeung Choi Street and Argyle Street we are talking about?

A. Yes.

Q. So you could not find a bottle, and you found the knife?

COURT: He has already said he picked up the knife off the breadstall.

Q. Did the knife look like this?

A. Like this.

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- Q. How far behind you was the vicious man at this stage?
- A. About from here to there (indicates).
- Q. And he was stooping down to pick something up?
- A. Yes, he squatted, but I do not know what he was doing.
- Q. You did not know what he was doing?
- A. No.
- Q. Why didn't you run to Argyle Street then?
- 10 A. Well, when he was squatting he had a new intention. I could not run because there were plenty of people over there and you could not run through.
- Q. You have just told us you did nothing else but run so far.
- Q. Now "from here to there" about five or six feet. Now, you had a chopper in your hands, what did you do next?
- A. I ran.
- 20 Q. Where did you run, you said you could not run for the
- COURT: He said that he picked up this knife, turned back and saw the man. Nothing about running.
- Q. After you picked up the knife, where did you run, in which direction?
- A. Ran into the street.
- Q. What caused you to swing your arm round like this?
- 30 A. He hit me.
- Q. Where?
- A. On the head.
- Q. Hard?
- A. I received several blows. I don't know whether I felt painful or not.
- Q. Was your head injured in any way?
- A. No.
- Q. How many times did you swing this knife round to the side like this?
- 40 A. I cannot remember whether I have swung the knife once or twice in the manner just demonstrated.
- Q. And you were running all the time when this was going on?
- A. At one time I was fighting.

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Q. What do you mean by 'fighting' did you turn round and face him?

A. That is before I took up the knife and he assaulted me.

COURT: This is what the man said: "I did not see the object. He hit my head in the back with something wooden. I wanted to run but was out of breath and besides had pinching pains in both loins. I was still beaten by him and turned around and struck out. I cannot remember whether I hacked once or twice. Then I ran along Sai Yeung Choi Street. Through some unknown reason I cannot tell how, I threw it away."

10

Q. And, up to this point, the only people taking part in this fight were you and this other man?

A. Yes, so far as this stage was concerned, yes, but prior to that, no.

Q. Now, will you look at your statement, the first one.

Q. You made this statement?

20

A. Yes.

Q. And signed it?

A. Yes.

Q. Now, you say in that statement: "Because he had quarrelled with the workmen of his former factory". How did you know that?

A. It is printed in the newspaper and circulated.

COURT: Who is this "he"?

MR. BLAIR-KERR: The deceased.

A. By "he", I mean Mak Hei.

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Q. It is not clear in the statement, Mak Hoi. You say in that statement:- "Because Mak Hei, manager of Hi Sheung Hi, had been providing me with food for a long time, so he asked us to go to assault a man". Did you say that?

COURT: Mr. Blair-Kerr, he admits he made the statement.

Q. Next question "so he asked us to go to assault a man". Is that correct, did you in fact go to assault a man?

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A. I wrote so.

Q. And it is true?

A. But I have explanation.

COURT: That is the whole trouble. He said it.

- Q. What is your explanation?
- A. Well, I just wrote this meaning that Mak Hei asked me to go to a fight. If I had to write in accordance with what I had stated, it would be too long for me to write it down here.
- Q. Was the deceased reeking of liquor?
- A. Well, I do not know whether he was reeking with liquor, but the violent state he was in make me to take him as being drunk.
- 10 Q. Did you know the deceased had been to a dinner party that night?
- A. I did not know.
- Q. Now, you say "We quarrelled with him". What do you mean by that?
- A. By "we" I mean there were other persons.
- Q. What do you mean by "quarrel"?
- A. By 'quarrel' I mean 'fight', and by 'fight' I mean 'quarrel'.
- 20 Q. "He relied upon his stoutness and quarrelled with us". What do you mean by that?
- A. When he was facing me, in fact. he was tall and big.
- Q. "And so I took up a knife from a candy stall nearby and I chopped with the knife and removed one of his ears". How do you know you did that if what you say is true?
- A. One of his ears was removed because it was printed in the newspaper the next day.
- 30 Q. "I still did not know so chopped with the knife again". Did the papers say you didn't know?
- A. The newspaper the next day printed that he had one cut here and one of his ears was removed. Since I was the only one who had taken up that knife, so they charged all this to my account.
- Q. These wounds were charged to your account?
- COURT: He said so.
- 40 Q. Tell me what the newspaper meant when it said this. Did the newspaper say "He was wounded, so I ran away"? Did the newspaper say "Chan Kau ran away"?
- A. No.
- Q. How did you know he was wounded?
- A. Even the newspaper mentioned that he had died. If I had not read the newspaper, how could I know he was dead. I wrote down here that he was dead too.

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Defence Evidence.

No.24.

Chang Kau.

22nd December, 1953.

Cross- Examination - continued.

In the Supreme
Court.

Defence
Evidence.

No.24.

Chang Kau.

22nd December,
1953.

Cross-
Examination -
continued.

Q. Will you look at the other statement. I just want to ask you one thing about that. Look at the statement, about two-thirds of the way down "I took up a knife readily from a candy shop nearby and facing him I chopped him on the shoulder".

COURT: Don't you think you had better leave that alone. There it is on the statement, not questioned, not contradicted, admitted by him.

MR. BLAIR-KERR: I will put one other question to him. 10

Q. Did you make that statement?

A. Yes.

Q. And signed it?

A. Yes.

Q. Now, I am going to put some questions to you, and don't enter into long explanations, just answer yes or no.

I put it to you that you were told by Mak Hei the full details of the fight that was going to take place that night in Argyle Street? 20

A. No.

Q. But you tied yourself on to Mak Hei's party and intended from the word go to take part in the fight?

A. No, I don't agree.

Q. That you took part in the fight.

A. So I have.

Q. And in the middle of the fight you went to this candy stall and armed yourself with this knife and used it against a completely unarmed man. 30

A. No.

Q. And that you, far from accidentally hitting out, so armed, you deliberately faced him and chopped him on the neck and shoulders and arms with the knife?

COURT: Mr. Blair-Kerr, it is impossible for me to write down an answer that is coherent. You ask this man about six questions wrapped up in one. We are going over the same ground. He gave an answer "no" which is obviously not correct. 40

Q. And at no time was this victim armed with anything in his hand at all.

A. Oh yes, he held something, finally.

Q. And that you used considerable force to inflict that wound on the left side of the neck?

A. Where I don't know.

COURT: Where does he mean? Don't bother, if a man can't get a wound like that without considerable force, I don't know. Any questions, Mr.Loo?

MR. LOO: Just one or two.

Re-Examination.

MR. LOO: Now, you just said, in your statement, the first statement, 18, look at 18; "So I chopped with the knife and removed one of his ears". You said that?

10 A. Yes.

Q. On the very evening, did you notice he lost one of his ears?

A. No.

Q. And you said you saw it in the papers the next day?

A. Yes.

COURT: Wait a minute. What is this?

MR. LOO: This is a newspaper.

20 COURT: You must approve it first, Mr. Loo, you ought to know better than that.

MR. LOO: That is all.

COURT: Mr. Foreman, do you wish to ask him any questions?

FOREMAN: No questions just now, my Lord.

COURT: Any witnesses, Mr. Loo?

MR. LOO: No.

COURT: That is the defence?

MR. LOO: Yes, that is the case for the defence.

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No.24.

Chang Kau.

22nd December, 1953.

Cross-Examination - continued.

Re-Examination.

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Court.

No. 25

No.25.

Summing up by
Mr. Justice
Reece.

23rd December,
1953.

TRANSCRIPT OF A WIRE-RECORDED SUMMING-UP
DELIVERED BY THE HONOURABLE THE PUISNE
JUDGE, MR. JUSTICE C.W.REECE, DURING THE
HEARING OF THE TRIAL OF REG. v. CHAN KAU
alias CHAN KAI, CHARGED WITH MURDER.

Members of the Jury,

You have been called away from your respective duties to come here to take part, perhaps the major part, in this trial in the administration of justice. This is a very serious matter for all of us who are concerned in this trial and you will no doubt approach it with the seriousness which the situation demands. 10

The accused is charged with the murder of Chan Fook. Mr. Loo in his concluding remarks told you properly and very correctly and referred to the law where it required the prosecution to establish the case against the accused; it is called for the sake of shortness the onus of proof. He very properly pointed out that the burden of proof was on the Crown and that you must be satisfied by the Crown beyond all reasonable doubt of the guilt of the accused. Mr. Blair-Kerr touched upon the question of provocation and Mr. Loo also touched upon questions of excusable homicide, self-defence, accidental killing and the necessity for the corroboration of accomplices. Those were matters that were very properly brought to your notice by Counsel concerned, and I mention that now because anything which the Counsel said which appealed to you, you will give to it the necessary weight which it desires. But it is nevertheless, in spite of the fact that both Counsel have touched upon the legal aspects of the crime, it is nevertheless my duty to tell you what the law is, and it is your duty to take the law from me. You can ignore for the time being anything that either Counsel said with respect to the law, although they very properly told you what it was; it is my duty to direct you on the law and you must take it from me. 20 30 40

As to the facts of the case, you are the judges of the facts. You and you alone. Nothing that either Counsel may have said to you, nothing that I may say to you in the course of this summing up as to any expression of opinion on the

facts which have been put before you by the several witnesses that have passed through this witness stand need make the slightest difference to you, unless you agree with those expressions of opinion. I cannot too strongly stress the fact that you, the Members of the Jury, are the judges of the facts and no one else. If you do not agree with anything which I may say, ignore it, it is your privilege and right to ignore it.

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10 Now, it has been said that the burden of proof is on the Crown. It is the duty of the Crown to prove the case against the accused to your complete satisfaction, that is to say, you must be satisfied beyond all reasonable doubt of the guilt of the accused before you can find him guilty. It is not for the accused to prove his innocence. In a criminal trial, the accused need say nothing. He may remain silent throughout the entire trial and if at the end of the case for the prosecution you are not satisfied about the guilt of the accused, 20 then it would be your duty to find him not guilty. But an accused person may give evidence if he so desires and in giving evidence he may do one of three things. He may convince you completely of his innocence; he may leave you in such a state of doubt as to his guilt, that you will have to say that you are not satisfied and that the Crown has failed to prove the case against him or he may, as a result of having ventured into the witness stand he may bring evidence before you which may bolster 30 up or fill in the missing links, if there are any to be filled in, in the Crown's case. I mention that because I want you to appreciate fully the position of an accused person during a criminal trial. He need not give evidence, but if he gives evidence then it has the three possibilities just mentioned.

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continued.

40 Now the charge is one of murder. Murder has been defined to you as the unlawful killing of a being by another person with malice aforethought. Malice aforethought is a technical expression, but all that it does mean is unlawful killing without any justification; it does not of necessity imply any premeditation but it does imply an intention to do the act which resulted in the death of the person. If you remember that then I do not think you will have any difficulty with this expression 'malice aforethought'.

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Intention, you will appreciate, all it means is this, foresight and desire. If a person intends to do a thing he must have thought about it beforehand, and he must desire to bring about the result of the acts that he has done and that must be quite obvious to anyone who reflects upon it for a moment. You cannot intend a thing without having thought about it and desiring the result that flows from it. It must not be confused with motive. Motive is quite a different thing. Why you do a thing is one thing, your intention in doing it is another. The motive is only your reason for doing it and you will take it from me that in a case of murder motive is completely unnecessary, it is not necessary for the prosecution to establish motive in a trial of murder. I will put it to you this way, that is the law and you must accept that. Motive is not necessary in a murder trial or any criminal trial. You see it may happen in criminal cases that the evidence for the prosecution is weak, it may happen that there may be an extremely strong motive underlying the particular offence and it often happens that the prosecution will come before a jury and present the strongest evidence of motive but the weakest possible evidence to establish the crime, and you will see from that, that it can very easily happen that the establishment of motive can be a most dangerous process in a criminal trial, because it may tend to make you move your minds away from the evidence which is necessary to establish the offence and make you concentrate upon the motive. In other words, you cannot substitute motive for the evidence which goes to establish the offence that you are dealing with. So to be very particular and to come to this case with which we are dealing, you can forget any question of motive. I deal with that aspect of it now because I shall not revert to it again. Yesterday your foreman mentioned this question of motive in the payment of a debt, and I want to say that whether or not there was any motive behind this man's going for his debt or the refusal of the man Mak Hei to pay at the time is completely immaterial to this case. It is completely immaterial. But if you were searching for a motive in this case, you might think from all the evidence that you have heard that there was a pretty good motive, if not to kill the unfortunate man who got killed, at least to attack some particular member of the group of Ho Kai,

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because the evidence before you is that all of these men belonging to the Mak Hei group had assembled with a specific purpose of going to attack Ho Kai and other members of his group. So if you were looking for a motive for the attack upon anybody, you've got it, the motive here is revenge because of the previous rows which these people have had which finally culminated in the man Li Hing being dismissed from his duty. So there is evidence of motive if you were looking for a motive for this attack, not necessarily against the unfortunate deceased man because he had nothing to do with these people and he was as innocent a victim of this tragedy as any of you might have been had you been walking along that street that night with your wives or children. So I am not asking you to pay over great consideration to the question of motive, but you will see from the evidence that underlies this whole case that there was some motive behind it all and that that motive was the worst of all possible motives - revenge. That is the evidence which has been put before you. But I say, and I stress it, it was not revenge against the unfortunate man who got killed and that makes this crime with which you are dealing all the more tragic in the circumstances, because you are dealing with or investigating into the circumstances attending the death of a perfectly innocent man in no way connected with these rows, walking with a couple of friends after a small and harmless party along a public thoroughfare where he was pounced upon, completely unsuspecting and unguarded and done to death in the manner which you have seen in the pictures in the photographs. So you will see that while it is completely unnecessary for the prosecution to establish any motive in this crime, it cannot be said that a motive for this attack was absent.

The next aspect of the law with which I shall deal here is the question of the accomplices. Three of these men while they gave evidence told you that they have received pardons from the Governor for any part which they might have played in this offence. They were Mak Hei, Yau Chung Kong and Leung Wai Hung. Mr. Loo very properly told you that these people were accomplices in this crime. All that an accomplice means is that the person was a participant in the crime. Mr. Loo used a Latin expression in describing these men, I

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don't like to use these expressions, but it is brief and is: "participes criminis", and it means participants in a crime, that is all. But the law says that when you are dealing with people who are complicated in crime, you cannot or rather, I am sorry, I shouldn't have used the expression "cannot", you should not accept their evidence without corroboration. I say "should not" because there is no rule of law which says that you the Jury cannot accept the evidence of an accomplice if you are satisfied that it is a truthful account of what took place, but, and this will be very obvious to you, a man who is a participant in a crime and is, shall I say, lucky enough not to find himself by the side of the accused person, may have some very strong motive for not telling the truth and that motive may be to try and save himself from punishment resulting on a conviction, and so very naturally, in the interests of justice, a rule of law has been built up whereby judges warn juries not to accept or act upon the evidence of accomplices without warning themselves and without corroboration.

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Now corroboration means that there must be some evidence other than the evidence of the accomplice which not only connects him with the crime but tends to show that he was the person who committed the crime. That is all that is required because if you needed anything further than that, it would mean that you wouldn't want the evidence of the accomplice at all, because you would have all of the rest of this independent evidence establishing the crime. You must look for the corroboration not from the evidence of fellow accomplices. Mr. Loo very properly told you that you were not to find corroboration in the evidence of the other two men or of one man supporting the other. But remember this, if you are satisfied that each of those men told the truth when he came into that witness stand you are at liberty to accept that evidence as being perfectly true even if there were no other evidence to support it. To summarize, you need not convict upon the uncorroborated evidence, you are warned not to, but you can if you are satisfied that the evidence is truthful. While you cannot find corroboration in the evidence of fellow accomplices there is nothing whatever which says that you cannot find corroboration in the evidence of the accused person

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himself, and that is why I said that when an accused person undertakes to give evidence, he may do himself far more harm than good because his evidence is general evidence in the case, and you are entitled to analyse it and search it, and see if in it you can find anything which corroborates the evidence of any accomplice who might be one of the witnesses called for the prosecution, and if you do find in the evidence of the accused person any corroboration that is perfect corroboration in the eyes of the law. I mention that because that is the law. As I go through the evidence, I shall point out to you that even without the evidence of these accomplices you may feel that there is ample corroboration of everything which you have heard spoken before you during the course of this trial.

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Now in order to bring home this case against the accused the prosecution must satisfy you of two things. Malice and death as a result of the voluntary act of the accused. I have already stated that malice afcerothought does not necessarily imply premeditation. Malice may be inferred from the circumstances attending the act which resulted in death, and the law allows you where a person uses an instrument which is likely to cause death and does in fact result in death, the law allows you to imply malice from the use of that instrument. By that I mean if a person struck another one with a stick, it is an instrument less likely to do injury than if a person has struck another one with an instrument such as the one that we have before us in this case, and where a person uses an instrument which, I suggest to you, you will have no difficulty in considering to be a lethal instrument, where a person uses such an instrument with that force which your own common sense, Members of the Jury, (irrespective of any medical testimony, you don't want a doctor to tell you that that neck injury required considerable force), where a person uses a lethal instrument such as that, with the degree of force required to produce the injuries which you have seen, the law allows you to imply the necessary malice from that, that is the position in law with respect to malice.

Now every person is presumed to intend the consequences of his action and where a person uses an instrument of that description with the force necessary to create an injury of the description

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you have seen, you are entitled to say that he presumed to bring it about because that could be no accident, and I shall revert to that later on in the course of this trial. No one could produce an injury of that description by accident. Having got to that stage, the presumption that a person intends the consequences of his acts, you are entitled to say that when that accused person used that instrument he intended to create the injuries which you see. From that you are entitled to imply the necessary malice to satisfy one ingredient in the crime of murder. You must also be satisfied of course, that the accused person is the person who did it, hence I have explained to you the voluntary action resulting in the death and caused by the accused person. If you keep those three things before your minds your problems will be simple. A voluntary action resulting in death and caused by the accused, those are the things you have to be satisfied of by the prosecution before you can say that this man is guilty. If, of course, the accused person is able to satisfy you that he was provoked - and I shall come to the question of provocation later - if, I say, he is able to satisfy you that he was provoked into inflicting the wound which resulted in death, then the offence is reduced from that of murder to manslaughter, but failing that and failing the other defences, shall I call it, which Mr. Loo mentioned, that is to say, accidental and excusable homicide, killing in self-defence, all of which I shall refer to, once you have got death resulting from a voluntary act on the part of the prisoner which is intentional and unprovoked, Members of the Jury, that is murder in the eyes of the law.

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Now, I will pass to the evidence. I do not propose to go through all of this evidence in all of its details because that is completely unnecessary. It is not my duty to do so and I feel myself that to do that with a Jury composed of people such as yourselves would be an insult to your intelligence and I am not going to do it. You have heard the evidence. You will decide for yourselves which of those witnesses who passed through this witness stand, (having seen their demeanour, having seen the manner in which they have stood up to the cross-examination), you will decide for yourselves the degree of credit of which you think they are deserving. That is one of your functions,

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and a very important function too, determining the credibility of the witnesses who passed through this stand before you.

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Now in this case we have had three witnesses come before us and give what I would describe as the historical background behind this case. They were all workers at Stonecutter's Island. They worked in two groups and they had their quarrels which have been described to you. As a result of these quarrels, these workmen split into Mak Hei's group and Ho Kai's group, and, as they have already observed, as a result of a third row which culminated in the dismissal of a man Li Hing, the members of the Mak Hei group decided that they would beat up (was one of the expressions used) the members of the other group and on the evening of this unfortunate incident, they got together and decided that they would go to the house of Ho Kai and await him and others. You will remember that the evidence is that they knew that there was going to be a party at that house. Now they met and they went, some of them, to a street outside the premises of Ho Kai and waited. You have been told that the accused had been to Mak Hei's house in the early evening; there was some, shall I use the expression dispute, as to whether it was 6 o'clock or 7 o'clock or 8 o'clock, whether he went twice or once, but it is certain that he went, and it is certain I think you will agree, that when he left that house he knew that these men in the Mak Hei group whose names you have heard called had agreed between themselves to waylay and beat up Lau Yiu, Ho Kai and others of his group. Here I will pause to say that there was some dispute as to whether or not he left the house with Mak Hei, but that, for the immediate purpose which I am bringing to your notice, is somewhat beside the point. The point that I am making now is that he knew, on his own showing, that these men were going to beat up people of the other group and he went with them and there is evidence that he told Leung Wai Hung that he was going to a fight and asked him if he was going, and this man Leung Wai Hung told him: "No, I am going for a walk with my girl friend". That is his own evidence. So there is no question about his knowing, I suggest to you, what the purpose of their going was, and he went along. When they got there they waited from a position where they could see into the house of Ho

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Kai. They saw three people come out of that house, Lau Yiu, Lam Ng and the deceased Chan Fook.

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continued.

Now Members of the Jury, from the evidence which has gone before, you will have no doubt in agreeing with me, that these three people knew nothing whatever of the presence of this group of men waiting outside for them to beat them up; that is their own evidence. Three innocent people coming out of a house from their friend where they have been having a dinner party, and when they came out to go and have a drink - Lau Yiu in his evidence said that they were going to have a drink as it was suggested by Chan Fook that they should go and have a drink - that is evidence which you are entitled to take to show you that there could not have been any intoxication in that house, and no quantities of alcohol served, because why should they leave the house to go and have a drink, if they have already had it? You are entitled to assume that. Anyway, they came out, the three of them to go and have this drink. Completely unsuspecting they start to walk along the street, cross the road, and started to go towards Nathan Road. You might be disposed to say that fate laid its hand upon the shoulders of this man Chan Fook because it was suggested by Lau Yiu that they should go to a tea shop nearest to the place in Argyle Street or nearer to the place, but Chan Fook said "No, let us go to the Kwong Wah Cafe" which took him further away and in fact brought him actually to the place where this incident occurred. But they walked along the street the three of them, you were told, Lau Yiu on the right, Chan Fook in the middle and Lam Ng on the left, and suddenly, says the evidence of both Lau Yiu and Lam Ng, suddenly they were attacked from behind by a man who kicked Lau Yiu and threw him on the ground and also attacked the man Chan Fook. Both of them tell you that when Chan Fook was attacked he ran away shouting "Save life". At that stage those two witnesses passed out of the picture altogether, they know nothing more, but from that you will see, and I suggest that you will agree, that it is perfectly clear that it was a most unwarranted attack up to that stage. There is no evidence that either of these people had anything in their hands; they were walking, as I said before, perfectly peacefully along, as any of you might have been doing or any of us for that matter, along a public

thoroughfare to go to a cafe, we might have been going along Des Voeux Road or Queen's Road to the Cafe de Chine, or any other place when suddenly out of Wyndham Street let us say, three or four people pounce upon you and hew you to death. That is the first picture which I ask you to accept from the evidence. Three people walking innocently along, suddenly attacked by three or four from behind, one man is knocked down, the other one runs along shouting "Save Life", and if you believe the old lady or the elderly middle-aged woman, she told you one of these men had something wrapped in a piece of paper. She does not make the slightest effort to go further and tell you that it was a knife or anything, therefore I suggest to you, that you would have no reason for saying, and it has not been suggested to you by Counsel for the defence, that those two people are not to be believed in their testimony.

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continued.

20 Then the next part of the case for the Crown is taken up by the little boy who gave evidence - the shoe-black - Mui Wing For. Again, it is for you to say whether you believe the story as told by this lad. He has been attacked by Mr. Loo and Mr. Loo has invited you to say that he is not a credible witness - not reliable, and that you should ignore him. Now you will have to examine his evidence, contrast it with anything which was said by the accused, to see whether or not you

30 think he is worthy of your credence. If I may express an opinion on the manner in which he gave his evidence, it would seem to me that he was perfectly straightforward, he answered all of the questions, he didn't try to fence or prevaricate or hodge, but remember, Members of the Jury, I have told you that if I express any opinion in any way upon the facts, you are entitled to ignore it. I only express opinions to assist you as far as I can in arriving at an honest conclusion upon the

40 evidence which is before you. This lad tells you that he had been to Diamond Hill and he came back on a bus, and he got off at Argyle Street and walked along until he got near to the Kwong Wah Cafe, at the junction of Tung Choi Street, that was when he saw a fight as he was walking along by a pawnshop - something Che pawnshop - there he saw a fight and, not only youthlike, but I dare say like every other person, he was curious and he stood up to watch, and this is the picture that he tells

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continued.

you he saw. He saw the accused - the man whom he has known - and he gave you his reasons why he has known him, and it is not suggested by the defence that he did not know this man - and know him perfectly well - therefore you are entitled to say that there was no question of mistaken identity on the part of this lad. Now what did he tell you. He saw this man leave the fight, he saw a lot of people in the street, saw this man leave, run to a shop, pick up a knife, run back and make two chops, and he described the manner - he demonstrated the manner of chopping to you, and then he saw the accused man run away and throw away the knife - again he indicated the manner over his shoulder - and disappeared. And in his evidence he told you that he saw two blows, one on the ear on the right side, and the blow on the left.

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Now Members of the Jury, those statements are incontrovertible facts because you have the pictures of the deceased man which show you the two injuries, one on the left and one on the right ear, so you may be disposed to think that when this boy told you that, he was telling you what he did in fact see. He told you he saw the man throw away the knife and a knife was found in the direction where he said it was thrown away, that is a circumstance corroborating that lad's evidence. So the case for the Crown up to there is an unwarranted attack by three or four people upon these three innocent people, then the accused man using a knife which the boy saw him pick up from the bread stall and inflict two chops upon the deceased. The knife has been identified as belonging to the owner of that shop. The accused himself has told you that he picked the knife up and I shall come to that later.

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Now Mr. Loo has asked you to say that this young man is not worthy of your credit. Why? Because he and the accused are at enmity. What is the enmity? The young man was cross-examined and he said "This man tried to get a few ten cents", is the way it was described, "out of me at my stall when he comes to get his shoes cleaned" and he said he gave him. He said he didn't like it, but he also said he didn't hate him because he had to give it. Now the accused's story is that the reason why this young boy should come in here and tell a lie on him - for that is what it amounts to - tell a deliberate lie inviting you Members of the Jury

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to find him guilty of a horrible murder to say the least of it, the reason that he gives is, on one occasion when he went to get his shoes shined at this boy's pitch, he tendered a \$10 note and the boy said to him: "What! You take me for a millionaire, you expect me to have change for \$10. - to give you out in return for a payment for twenty cents?" Well I will only ask you to consider this aspect of that. Even assuming that it was true, even assuming that you believe every word the accused said with respect to that incident, do you think that that is any sufficient reason why any normal human being, such as that young boy you saw, a boy of 16 years old, would come in here and commit perjury, not in a trifling matter which would perhaps involve the imposition of a fine or a flogging, but a matter involving the life and death of a fellow citizen? Members of the Jury, that is a matter which you have to ask yourselves. Do you think any normal human being like that lad or any other would do that, merely because a man handed him a \$10 note in payment of a ten cent piece of work? How often has it not occurred, even if it may not have occurred to any of you yourselves, that when one goes into a shop to buy, may be a packet of cigarettes, if you happened to be an early customer and you tender a piece of money that the shopkeeper or the shop assistant is unable to give you the rest of the change. Those are circumstances in life that happen daily to people I can assure you, and I do not feel that you would be justified in saying that that boy had animus against the accused to the extent that he would come and give perjured evidence in a matter of this sort merely because of that single isolated incident, remember that is the accused's story - a single isolated incident. But Members of the Jury, that is a question for you and for you alone, you must decide whether or not you believe that boy's story. If you believe it you have this, that the accused is the man who went and attacked the deceased or attacked a man whom the boy said he saw covered in blood. Now there was only one person covered in blood there that night and that was the unfortunate deceased man, so it would seem to me that up to that stage the prosecution has established that this man made an unlawful and unjustifiable attack upon these three people and that he was the one who was seen to use a knife on the deceased person and the deceased person sustained injuries such as you have seen.

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continued.

Now I will stop here to direct your attention to the evidence of the injuries as given by Dr. Pang just to refresh your minds about or on it again. Dr. Pang said he conducted the post-mortem examination and there was a slight abrasion below the right knee. Well, you have been told by some of the witnesses that when the deceased man received the injuries he fell down. You have been told by Lam Ng and Lau Yiu that when these people attacked him (the deceased), he ran away. You've got a wound - a gaping wound - sloping downwards six inches long two inches wide situated on the left side of the neck, that is the wound exhibited in Exhibit 5 - quite obvious. A second wound, cut over the right side of the head shown in the photograph Exhibit 7, splitting the right ear lobe and cutting the back of the head, three inches long. Then you get the split wounds which follow:- No.3 was a split wound over the back of the right wrist, No.4 another split wound over the outer upper aspect of the left arm, shown in Exhibit 6, No. 5 a longitudinal split wound at the back of the right shoulder and lastly a slightly curved split wound one inch long across the left shoulder. And Dr. Pang expressed the opinion that these wounds were caused by an instrument such as that knife and I will read his evidence because that will clarify the question which your foreman asked yesterday afternoon.

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"There was no haematoma around these wounds. In my opinion when No.1 was inflicted, that is the severe wound on the left side of the neck, the assailant would be slightly in front and to the left of the deceased". (And he demonstrated the position to you). "The 2nd wound would in my opinion have been inflicted with the assailant slightly behind the attacked person in a stooping position. No.3 would indicate that the hand was raised in a sort of defensive manner. Exhibit 13, the chopper, could have caused the wounds if both sides have been used. The sharp edge caused wounds No. 1 and 2." And then the doctor says: "If Exhibit 13 was the weapon used, the degree of force required to cause wound No.1 would have been considerable." As I have already said, Members of the Jury, you don't want the doctor to tell you that, you have seen the nature of the injuries for yourselves and you must be satisfied that it was caused by a considerable force, and he told you that the cause of death was from shock and

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haemorrhage resulting from those wounds. With that evidence you will be satisfied that the Crown has proved another ingredient in the offence, namely, that death resulted from the injuries inflicted, for if that is not established, well then, of course, the case could never be proved. But that is the doctor's evidence and I take it you will agree with him that that was the cause of death, that huge wound on the left side of the man's neck.

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Reece.

10 Mr. Loo in his cross-examination asked him if the wounds could have been caused by any instruments similar to No.13 and he said "Yes". What the purpose of that question was I do not know, but I am in a position to tell you now that, after the accused had given the evidence which you have heard him give, there is no question of any other instrument but Exhibit 13 having been used, because the accused himself in his evidence from the witness stand told you that he ran to that shop and took up that knife and chopped the man. Therefore, if there was any doubt in your minds as to what instrument caused death and who used it, if there was any doubt, the accused by his evidence has removed that doubt from you by telling you that he ran and picked up that knife and chopped the man with it. So that is clear. And in answer to me Dr. Pang said "I would say that wound No.1, that is the gaping wound across the side of the neck, would have been inflicted last, because if wound No.1 had been inflicted first he would not have sustained the other defensive injuries." In other words what Dr. Pang is telling you is that that injury was of such a nature that any man who has got it would have been unable physically to raise his arm and defend himself in the manner which he described resulting in the other wounds. Those other four wounds are on the man's body and you are entitled to say, having regard to the medical testimony, that when he was attacked the deceased attempted to defend himself as best he could but was hewn down with a blow across his neck.

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23rd December,
1953 -
continued.

So you've got the evidence up to the time of the boy describing the attack as he saw it. Now there is another lot of evidence, that is the evidence brought to you by the Crown, the evidence of the conversation at No.18 Fa Hui Village after this attack took place, and this is where Mr. Loo invited you to say that the evidence of those three

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men, Mak Hei, Yau Chung Kong, and Leung Wai Hung should not be accepted because these men were accomplices. I am not going to repeat what I said about accomplices other than to say this. If you believe their stories whether they are accomplices or not, you may accept it. They described those conversations and they were to this effect that when these men all got back there Lau Bi, Soa Wing, Mak Hei, Leung Wai Hung, Yau Chung Kong, when they all went back to this house after the incidents and were talking this thing over, Soa Wing is alleged to have said "Someone chopped the wrong man, someone used a chopper, who was it?" And they all said: "The accused Chan Kau". Soa Wing said it was the accused Chan Kau; he did not reply at first. That was the evidence given by one man. The evidence given by another man is that he (the accused) tried to put the blame upon Soa Wing. And you will remember the cross-examination as to the nature of the clothing being worn by the accused. Now Members of the Jury, there could only have been one purpose for the cross-examination relative to the clothing worn by the accused, that is a white shirt and khaki trousers, and were not others of those men wearing khaki trousers? There could only have been one purpose for that, and that one purpose was to establish that the accused was not the man who actually used the chopper. But when that man Leung Wai Hung gave his evidence, I suggested to Mr. Loo that the witness had not said anything which implicated his client in the crime. Mr. Loo, however, did cross-examine Leung Wai Hung, and what did he get out? He got out this: "Soa Wing was dressed in a Hawaiian greyish-white shirt". Now Members of the Jury, you know, as well as I do, what a Hawaiian shirt is; it certainly could not be confused with a plain white shirt. So if one thing is certain as a result of that cross-examination, I suggest to you it is this, that Soa Wing was not the man who used that chopper that night. I mean that is apart from all of the rest of the evidence. Suppose the case was hanging on that thread alone you have it established that Soa Wing was not the man, but that is not the case, you see. When I come to the defence I shall endeavour to point out that this man was trying by this conversation to put the blame upon some other person, but he has forgotten two things; one, that he has made a statement and, second, that he was going to give evidence, because, forgetting all of

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this conversation, he gave evidence, and he said
 he was the person who used the knife, and further
 he said "I was the only person who used the knife
 that night", that is his evidence; those were his
 last words to Mr. Blair-Kerr, "I was the only one
 who had taken up the knife and that is why they
 laid these charges to my account", that is his
 evidence. So you see although those three men who
 gave the evidence of that conversation are accom-
 10 plices you have the corroboration out of the mouth
 of the accused man himself that he was the person
 who used the chopper. But apart from that, there
 is the man Tai Yan Fat about whom nothing could be
 suggested, this man was fast asleep in his bed at
 8 o'clock, he was the watchman of the Fire Precau-
 tions Association. He was fast asleep in his bed
 when he was awakened by a conversation outside un-
 der a bamboo shade and he described the conversa-
 tion and this is what he said: "I went to bed about
 20 8 p.m. I was awakened after 9. I was sleeping
 outside the doorway of my hut, when I awoke I saw
 Yau Chung Kong, Mak Hei, Leung Wai Hung, Chan Kau,
 Soa Wing, Lau Bi, Yau Yeung Chung and Ah Hong un-
 der a shade. I heard a conversation between them.
 I heard someone said 'Chan Kau had chopped a per-
 son once.' Chan Kau was sitting. I heard Chan
 Kau said 'Damn it Soa Wing'. Soa Wing replied with
 a curse and said 'don't say things at random'. Soa
 Wing was talking to the accused and then the ac-
 30 cused Chan Kau said 'I am afraid the police will
 come, let us leave here and go'. Chan Kau took off
 his white shirt and held it in his hands and passed
 it over to the man Ah Hon and the shirt was passed
 to the man Tai Yan Fat. Then there was a cross-
 examination relative to the shirt which I suggest
 to you is completely immaterial having regard to
 the rest of the evidence which Mr. Loo established,
 that the man Soa Wing was wearing this greyish-
 white shirt. So Members of the Jury, if you were
 40 looking for any corroboration of this evidence you
 have it in the man Tai Yan Fat. You also have it,
 I have said, in the evidence of the accused himself;
 no question about that because all along he has
 said "I chopped that man, I was the only person
 who used that chopper that night", that is the
 evidence. But the accused for some reason or other
 best known to himself, and you must consider this,
 said "all these men who gave evidence about that
 conversation are liars, I never went there that
 50 night at all after this incident" and you will

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Court.

No.25.

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continued.

remember he told you he went somewhere else. You will have to consider that. Why should this man have told what is obviously, or at least I had better put it this way, because it is not for me to express any opinions on the facts, what must for you be an obvious lie? Are you going to believe that he did not go back there in the face of the evidence of those four people? And I am not asking you to take the three men as any evidence, one corroborating the other, the three accomplices. You have the evidence of Tai Yan Fat himself which is sufficient corroboration if you believe it. What reason would you have for not believing? Nothing has been suggested against him that he had any emity or that he is lying against this man. Tai Yan Fat told you "I was fast asleep and these people came and woke me up at 9 o'clock in the night and that is the conversation which took place outside my house".

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So Members of the Jury, that really is the case put by the Crown against the accused apart from the statements. Now suppose the case rested on that evidence alone, I suggest to you that on that evidence as it stands, if you believe it, there could only be one possible verdict which you could return and that is that it was the accused who attacked this man without any justification, that is the evidence for the Crown, without any justification, and that he inflicted the wounds on the deceased which caused his death. And if you believe that evidence, then, Members of the Jury, in the absence of anything which you may find in the evidence which reduced the crime to a lesser one it would be your bounden duty to return a verdict of guilty of murder. But it doesn't end there. The accused made two statements. He made a statement to the Detective Inspector Lai Kim Hung very soon after this thing took place, and you will remember that the detective told you that he told this man that he was going to charge him with murder. Remember, the same evening, and I emphasize that, for reasons which you will soon appreciate, and the detective asked him if he wanted to make a statement. He cautioned him in the usual manner, you have heard the caution. The accused elected to make a statement and asked the witness to write it down for him and he started to write it down in his notebook. When he had written some lines of it, (here is the evidence of the detective) the

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accused called for the notebook and completed the statement himself. I will read the statement to you as it is translated. "I did not know the deceased, because he had quarrelled with the workmen of his former factory. On that night before the incident occurred I had no intention of going because Mak Hei manager of Hei Siong Hai had been providing me with food for a long time, so he asked me to go to assault a man. As we had been treated with favour by him for such a long time, so went with him. On that night shortly after 8 o'clock, the deceased and two persons went out to drink and he was reeking with liquor. They quarrelled with him, he relied upon his stoutness and quarrelled with us, so I took up a knife from a candy store nearby, he intended to return the blow so I chopped with a knife and removed one of his ears. I still did not know, so chopped with a knife again. He was wounded so I ran away. I did not expect that through mistake of the hand he died". I would like to apologise, Members of the Jury, for having said that this statement was taken the same night, it was not, it was taken on the 28th. Please accept my apologies for making that error. Now when this man was cross-examined he attempted to give some explanations for his having made the statement. Explanations or no explanations, if you believe that this was a free voluntary statement made by the accused then I suggest to you that out of his own mouth this is a confession, a complete confession of the crime and that even standing by itself it would be sufficient to warrant your finding a verdict of guilty of murder against him in the absence of anything which he might say to explain away the circumstances of the offence. He has attempted to say that he wrote this because he had seen it in the newspapers. Now, Members of the Jury, I ask you, could you possibly be gulled into believing that a man confronted with a charge of murder would write down what is tantamount to a confession of the crime merely because he had seen it in a newspaper? Members of the Jury, it is for you, but remember this, no challenge has been made to this statement as to the manner in which it was taken and the second statement to which I shall direct your attention. You will remember that when it was tendered in evidence I asked Mr. Loo if he wanted to challenge it, he said no, he was perfectly satisfied with its genuineness. Not a single question has been laid or put to any of the Crown

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continued.

witnesses about any newspapers, the man himself never said anything about any newspaper when he gave his evidence in chief. When he was confronted, he said yes he wrote it. They are free and voluntary statements, both of them, which, I submit to you, it is a matter for you to say, but standing by themselves alone without anything else I say you will be entitled to say that they are confessions of guilt.

Now what is the defence? If the Crown had satisfied you that the death was caused by the voluntary act of the accused with that necessary intention to do it from which malice is implied then you are at liberty to find the accused guilty of the charge laid unless you can find something in the evidence of the Crown or in the evidence which has been put before you by the accused to reduce that crime from murder to the lesser crime of manslaughter or to reduce it altogether to such a set of circumstances as would warrant you in law to say that he is not guilty. And now I will come to the defences that have been advanced on his behalf by Mr. Loo one after the other. The first thing was that Mr. Loo invited you to say that you cannot return a verdict of murder against this man because when he defended himself and picked up a knife he never intended to cause grievous bodily harm. Members of the Jury, I think I have said enough about that already on this question of intent, not to make it necessary for me to say any more upon that. It is sufficient for me to say or to repeat that when a man uses an instrument such as that chopper in a manner in which it must have been used to cause the injuries that you have seen, he must have intended to cause grievous bodily harm or bodily harm because the law presumes, I have said this to you already and I repeat it, the law presumes that a man is responsible for the consequences of his action, and if you believe that he used it, and I suggest to you on the evidence you cannot do otherwise but believe him, because apart from anything else he told you he used that knife, then if he used that knife he was responsible for those wounds and he intended to cause them; that is the law as to the question of intent to cause the injuries. No man can use an instrument of that nature with the force that he must have used and produce an injury like that and then come and ask you to say "I didn't intend

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to do it, it was an accident." Accidents don't occur in that way. Then Mr. Loo asked you to say it was excusable homicide. Excusable homicide! What is the evidence to support any excusable homicide? Members of the Jury, it is all very well and good to take up text books and read passages from them to you, but you cannot decide cases on passages of law read from text books, you've got to decide this case on the evidence which has been put before you and on that and that alone. You must form your opinions upon the evidence such as has been put before you, and no matter how serious it may be, it is your bounden duty to come to your conclusion upon that evidence; for that is the oath which you took when you walked into that jury stand. that you would return a verdict in accordance with the evidence without fear or favour so help you God. That was the oath you took, and that is all that I am asking you to do in this case.

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continued.

20 There is no evidence whatever to support in this case, any defence of excusable homicide if you believe the witnesses for the Crown. If you believe that man Lau Yiu, if you believe that woman Lam Ng, and if you believe that boy Mui Wing Por, you can only come to the one and one only conclusion that this man was attacked unsuspecting, walking along innocently on his normal lawful vocation. What excusable homicide could there possibly be in that evidence, I ask you members of the Jury? But it is a matter for you. If you find that there was excusable homicide, that the evidence supported any such thing, it will be your duty to find the accused not guilty. What evidence has been brought out by the defence to warrant you to say that there was any excusable homicide? What evidence is there that this man who unfortunately met his death had any instrument in his hand at all, much less an instrument whereby an attacking person would be justified in using an instrument such as that knife to hack him to death? And that is the only case in which a person can talk about excusable homicide. Members of the Jury I say to you that there is no evidence in this case to warrant a finding of excusable homicide. Then jumping along, turning the pages of the book, you come to the passage of killing in self-defence and you are asked to say he was killed in self-defence. What evidence is there that this injury was inflicted in self-defence? On the contrary, all the evidence

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continued.

shows that the accused person ran away from the fight to this bread stall, picked the knife up and hacked the man to death; that is not evidence of self-defence. The accused, it is true, himself told you that he couldn't get away from him, that this man was a bigger man than him and that he had pains in his groins. Dr. Pang has told you that the deceased man was a thin built man of 5 feet 8 in height, suffering from advanced tuberculosis. You must consider the evidence, these are matters for you, but it is my duty to bring to your notice such evidence as it is to assist you to appreciate the defences that are put, such defence is a defence in law, certainly, if the facts warrant it.

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I just want to read a short passage here from the same text book that Mr. Loo was so frequently directing to your attention yesterday on this question of self-defence, so that you will have it in as clear a picture as it could possibly be brought and in as simple language as possible. Listen to it: "But there is another question, did he use the weapon in defence of his own life? Before a person can avail himself of that defence he must satisfy you that the defence was necessary, (he the accused must satisfy you that the defence was necessary), that he did all he could to avoid it, and that it was necessary to protect his own life, or to protect himself from such serious bodily harm as would give a reasonable apprehension that his life was in immediate danger. If he used the weapon having no other means of resistance and no means of escape, in such case, if he retreated as far as he could, he would be justified". You may take it from me that that is the law on self-defence. Apply that to the facts in this case and what have you got? You haven't got the beginning of a defence of self-defence here on these facts. There is not a bit of evidence to show that that man was in immediate danger, that that man retreated as far as he could, that that man had no other way of resisting any alleged attack, and I used the word "alleged" advisedly on the evidence. All of the evidence points to the fact - and the accused man himself tells you - that he ran away to the stall, picked up the knife and went back. Up to this minute, the accused person himself has not said that he was attacked by this man with anything else but his fist. He has said that he was attacked by the man who struck him in his back

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with his fist, but the law is, even if you believe him that he was attacked with his fist, it is no self-defence to use an instrument such as that - this is no self-defence, and I tell you that on the evidence there is no warranty for the defence of self-defence here.

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1953 -
continued.

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Then again you are asked to say it was an accidental slashing of the deceased on the body by the accused man in warding off a blow. What evidence is there, if any, that this man was being attacked by the deceased other than his own statements that the man came and held him on his chest? But even if it was, can you believe that injuries of that nature could be caused by an accident?

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Would a man, according to him, do that accidentally? According to him he only inflicted one blow accidentally when he did that (demonstration) and slashed back. How does he explain the wounds on the man's right side of his neck which nearly decapitated him, - left side, I beg your pardon - which nearly decapitated him and which from the medical evidence was obviously inflicted to the left in front. Standing in front, getting him on the left side this way, and slashing him that way, could that be any accident? Of course accidents

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happen with dangerous instruments, a man may be using a pen-knife and he may be doing something and a person gets cut, but you don't get cut that way accidentally, Members of the Jury. But still, those are matters for you. If you find that he acted in self-defence, if you find that those injuries were inflicted accidentally, then it is your duty to find him not guilty. But before you can come to any conclusion, you must be satisfied on the evidence that such a conclusion is justified, and I suggest to you that there is not a tittle of evidence to suggest any accidental cutting or any cutting in self-defence. Now the last of the legal defences which Mr.Loo brought to your notice was

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provocation. Now what is provocation? Provocation however violent it may be can never reduce a crime of homicide to justifiable or excusable homicide. I am going to read what is now considered by the Lord Chief Justice of England to be almost a classical definition of provocation to you; It is very simple and it gives you a complete picture of the legal requirements of provocation, as clearly as anyone could put it, so much so, that this is what the Lord Chief Justice said about it. He said:

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"This is as good a definition of the doctrine of provocation as it has ever been my lot to read and I think it might well stand as a classic direction to the jury in a case in which the sympathy of everyone would be with the accused person and against the dead man, and it was essential that the Judge should see that the jury had an opportunity of indicating the law." This is the definition. "Provocation is some act, or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind." And there is one other short passage to which I would direct your attention:- "Similarly, as counsel for the prosecution had told you, circumstances which induce a desire for revenge, or a sudden passion of anger, are not enough. Indeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that a person has had time to think, to reflect, and that would negative a sudden temporary loss of self-control which is of the essence of provocation."

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Members of the Jury, it is the duty of the accused person to satisfy you either from his own evidence or from circumstances of the evidence of the prosecution that he was so provoked as to use the instrument which he did use and which caused the death of the deceased. What is the evidence before you either from the Crown or from the accused person which would justify you in saying that this man was actuated by a sudden provocation in the eyes of the law? In my opinion there is none. Moreover, in dealing with provocation the instrument used must have some relation to the measure of provocation. In this case you have admittedly an instrument of an extremely dangerous kind being used in an almost herculean manner upon what provocation. What is the provocation which, if there is any, the accused tells you that he had? The evidence for the Crown is that these people were attacked as they were walking along the street without any provocation, unsuspecting, after having been to a friend's house for a small dinner party and on their way to go to a cafe to have a cup of coffee. That is the evidence. What evidence is there of provocation? Members of the

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Jury, I tell you there is no evidence whatever, and I will give this to you as a direction in law, that it is my duty, where the evidence does not warrant a finding of manslaughter on the ground of provocation, it is the duty of a Judge to tell the Jury to ignore the defence of provocation and I tell you that in this case there is no evidence to justify a finding on your part of provocation in law and you are to ignore it. If I make a mistake in giving you that direction then there is a remedy, but on this evidence I tell you that there is in law no justification for a finding on your part of provocation on the evidence which has come before you.

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I think I have put all of the defence to you. You heard the man give his evidence; you heard him describe what he called the attack; you must take it into consideration; you have heard the evidence from both sides. If you have any reasonable doubt in your mind as to the guilt of this man, you must give him the benefit of that doubt, but remember, when Mr. Loo addressed you he asked you not to return a verdict of sympathy. You are not here to return verdicts of sympathy one way or the other. You are here to return a verdict in accordance with the evidence which has been laid before you and in accordance with your oath. You owe a duty to society as well as to the accused and you are invited to return your verdict in accordance with the evidence alone that has been laid before you in this Court.

Members of the Jury, you will have the two statements of the accused, you will have any of the exhibits which you wish, and I now ask you to retire to consider your verdict and remember the verdict must be an unanimous one, it must be an unanimous verdict. Will you please, Members of the Jury, retire and consider your verdict.

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1953 -
continued.

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Court.

No. 26.

PROCEEDINGS AND SENTENCE

No.26.

23rd December, 1953 at 9 a.m.

Proceedings
and Sentence.

Accused present. Appearances as before.
Jury answer to names.

23rd December,
1953.

REECE, J: Mr. Foreman, are there any questions
you would like to ask?

FOREMAN: There is one question and that is, is
there any medical evidence going to indicate the
degree of intoxication, if any, of the deceased
at the time of the fight. 10

REECE, J: There is evidence by one man that he
did not smell any alcohol on this man and there is
also evidence by Lau Yiu, who was at the party,
that he never saw Chan Fook drink any alcohol dur-
ing the course of this party.

MR.BLAIR-KERR: And there is also the evidence of
Dr. Pang to you covering the contents of the stom-
ach and he said there was no evidence of alcohol
present. 20

REECE, J: Do you agree Mr.Loo that there is no
evidence that the deceased was drunk? In fact
your own client said that he knew the deceased was
not drunk but that he presumed that he was drunk;
he had no reason to assume that the deceased was
drunk. No mention whatever was made by Dr.Pang
of the presence of alcohol in the stomach contents
and so from that you are entitled to assume that
there was not visible alcohol. That is about all I
can say on that score. 30

FOREMAN: Thank you, my Lord.

9.05 Judge sums up.

FOREMAN: May I just be quite clear about one other
point of the evidence. I would like to revert to
the evidence of Lau Yiu. What was the precise spot
on the plan at which the first attack took place?

REECE, J: This is what he said "The three of us
were walking outside the Sun Wah Theatre, then
suddenly a person came up and attacked Chan Fook.
The person was a man. The 3 of us were walking
together. I was on extreme right, deceased in
middle and woman to left of deceased. The man
attacked deceased from behind. When the deceased 40

was attacked he (deceased) ran away and the assailant turned to me and attacked me. I was given a kick and fell. Then I was hit on my left shoulder by something which seemed to me to be a pole or something else". That was right in front of the Sun Wah Theatre in the first attack

FOREMAN: As regards possible verdicts, may we have it quite clear as to what the possible alternatives are?

10 REECE, J: In this case, I have told you that there is no room for provocation. Therefore, there is no room for a verdict of manslaughter. I give you that as a direction in law and you have got to take that from me. I have told you that on the evidence there is in my opinion - you may think otherwise - no question of a verdict of acting in self-defence, no question of excusable homicide. So, you have got two alternatives, a verdict of murder or not guilty. If you agree that this man acted in self-defence or, if you think the evidence warrants it that he acted in justifiable homicide, then the verdict is not guilty. If you don't, and if on the evidence you are satisfied that the verdict should be one of murder, then your verdict is murder. I have taken away from you the possible verdict of manslaughter because, in my opinion, there is no evidence to justify a finding of provocation in law.

10.40 Jury retire. 11.55 a.m. Jury return

Jury answer to names.

30 Accused present. Appearances as before.

CLERK OF COURT: Mr. Foreman, will you please stand up? (Does so). have you agreed upon your verdict?

FOREMAN: Yes, we have.

CLERK OF COURT: Are you unanimous?

FOREMAN: Yes, we are unanimous.

CLERK OF COURT: How say you? Do you find the accused guilty or not guilty?

40 FOREMAN: We find the accused guilty of murder but with a recommendation to mercy on the ground that he had no prior intention of killing.

(Death Sentence pronounced by the Court on the accused in solemn form).

Jury exempted from further service for the period of 3 years.

In the Supreme Court.

No.26.

Proceedings and Sentence.

23rd December, 1953 -

continued.

In the Supreme Court.

No.26.

Proceedings and Sentence. 23rd December, 1953 - continued.

To the best of our knowledge and ability. we certify that the foregoing is a true transcript of our shorthand notes taken on the hearing of the above murder trial.

(Mrs. E. M. Sletcher) Court Reporter.

(Mr. F. A. Gutierrez) Court Reporter. 8.1.1954.

In the Supreme Court of Hong Kong.

No.27.

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NOTICE OF APPEAL

Appellate Division.

THE CRIMINAL PROCEDURE ORDINANCE (Cap. 221 of the Revised Edition)

FORM VII.

No.27.

Notice of Appeal.

23rd December, 1953.

Notice of Application for Leave to Appeal against a Conviction under Section 78 A (1) (b).

(Here state the offence, e.g. larceny, murder, forgery, etc.)

To the Registrar, Courts of Justice, Hong Kong.

I, Prisoner No.4256 CHAN KAU alias CHAN KAI having been convicted of the offence of MURDER and being now a prisoner in the H.M. Prison at STANLEY and being desirous of appealing against my said conviction do hereby give you Notice that I hereby apply to the Full Court for leave to appeal against my said conviction on the grounds hereinafter set forth.

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(Signed) ... Chinese Characters Appellant.

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Signature and address of Witness attesting Mark.

(Sgd.) L. J. McTAVISH, Supt. of Prisons.

Dated this 23rd day of December 1953.

(Fill in all these particulars)

Particulars of Trial and Conviction

In the Supreme Court of Hong Kong.

1. Date of Trial. 23rd December, 1953.
2. Sentence - Death.

Grounds for Application

Appellate Division.

No.27.

Notice of Appeal.

23rd December, 1953 - continued.

10 (Here state as clearly and concisely as possible the grounds on which you desire to appeal against your conviction).

That I was wrongly convicted in that I did not intend to murder the deceased person.

You are required to answer the following questions :-

Yes.

20 (was only a clerk)

1. If you desire to apply to the Full Court to assign you legal aid on your appeal, state your position in life, amount of wages or salary, etc. and any other facts which you submit show reason for legal aid being assigned to you.

No.

2. If you desire to be present when the Full Court considers your present application for leave to appeal, state the grounds on which you submit that the Full Court should give you leave to be present thereat.

30 Everything will be in the hands of my solicitor.

3. The Full Court will, if you desire it, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally. If you desire to present your case and argument in writing set out here as fully as you think right your case and argument in support of your appeal.

40 Yes.

State if you desire to be present at the final hearing of your appeal.

In the Supreme Court of Hong Kong.

No. 28.

GROUPS OF APPEAL

Appellate Division.

Re: Criminal Appeal No. 211 of 1953.
Chan Kau alias Chan Kai v. The Crown
Case No. 3 of December, 1953 Session

No. 28.

Grounds of Appeal.

1. That the verdict returned by the jury with a rider of "no prior intent of killing" amounts to a verdict of not guilty of murder.
2. That the finding of the jury is ambiguous in that they have negated by their finding the existence of prior intent of killing. 10
3. In the alternative:
 - (a) That the learned Judge wrongly directed the jury that there was no evidence of provocation and therefore ruled out manslaughter in his summing up.
 - (b) That the learned Judge misdirected the jury that revenge was the motive.
 - (c) That the learned judge wrongly directed the jury that the statement of the accused alone amounted to a confession which would be sufficient to warrant the finding of a verdict guilty of murder. 20

No. 29.

No. 29.

Decision.

DECISION.

5th March 1954. PRESIDENT: In our view, having carefully considered the record of proceedings in this case and the submissions of counsel, there is no substance in any of the grounds of appeal which have been argued before us. The appeal is therefore dismissed. 30

No. 30.

In the Privy Council.

ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO APPEAL.

in forma pauperis.
(L.S.) AT THE COURT AT BUCKINGHAM PALACE
The 24th day of June, 1954.

No.30.

Order in Council granting special leave to Appeal in forma pauperis.
24th June 1954.

PRESENT:

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT	MR. BOYD-CARPENTER
LORD PRIVY SEAL	SIR REGINALD MANNINGHAM-BULLER
10 EARL DE LA WARR	MR. DEAKIN

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 2nd day of June, 1954 in the words following, viz :-

20 "WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Chan Kau alias Chan Kai in the matter of an Appeal from the Full Court of Appeal of the Supreme Court of Hong Kong between the Petitioner Appellant and Your Majesty Respondent setting forth (amongst other matters); that the Petitioner desires special leave to Appeal in forma pauperis to Your Majesty in Council from a Judgment of the Full Court of Appeal of the Supreme Court of Hong Kong in the Criminal Jurisdiction delivered on the 5th March, 1954 dismissing his Appeal against his conviction on a charge of murder in the Supreme Court of Hong Kong on the 23rd December, 1953: that the Petitioner was first arrested and tried at the November 1953 Criminal Sessions of the Supreme Court of Hong Kong on an indictment of having on the 23rd July, 1953 in the Colony of Hong Kong murdered one Chan Fook and the jury did not agree upon a verdict: that the Petitioner was subsequently re-tried at the December 1953 Criminal Sessions of the Supreme Court of Hong Kong on that indictment: that on the second trial the jury returned a verdict in the following terms:- "We find the Accused guilty of murder but with a recommendation to mercy on the ground that he had no prior intention of killing": that the Petitioner submits that there was a misdirection

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In the Privy
Council.

No.30.

Order in
Council
granting
special leave
to Appeal. in
forma pauperis.

24th June 1954
continued.

of the jury as to the burden of proof: that the defence of provocation having been set up the burden of satisfying the jury was upon the prosecution and as the verdict of murder was sought the onus was always upon the prosecution to prove that the offence amounted to murder and not manslaughter: that further the learned trial Judge was wrong in taking away from the jury the question of manslaughter: that as to the terms of the verdict of the jury the Petitioner submits that the verdict amounts to a finding of not guilty of murder in that in all the circumstances of the case malice is negatived: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal in forma pauperis against the Judgment of the Court of Appeal of the Supreme Court of Hong Kong dated the 5th March 1954 and for other or further relief:

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Full Court of Appeal of the Supreme Court of Hong Kong dated the 5th day of March 1954:

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"And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of 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 and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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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.

E X H I B I T S

Exhibits

Exhibit No. P.26.

CHARGE AND REPLY AND TRANSLATION OF
STATEMENTS BY ACCUSED.

Ex. P.26
Charge and
Reply and
translation
of Statements
by accused.
28th July,
1953.

P.M.K./129.

Case No. K.

C.I.D. Office Mong Kok CHARGE ROOM.

OFFICER IN CHARGE OF CASE J. Hidden.

INTERPRETER'S NAME Chau Yam Choi

10 TIME AND DATE 18.45 hrs. 28.7.53.

NAME OF DEFENDANT Chan Kau alias Chan Kai
is charged Murder.

Under { Proclamation No..... Article.....
{ Ordinance No.....of.....Section.....
Common Law.

in that :-

CHAN KAU alias CHAN KAI, you are charged that
on 23rd day of July, 1953 at Mong Kok, Kowloon in
this Colony, you did murder CHAN FOOK.

20 Defendant was cautioned in the following terms in
Punti Dialect.

Do you wish to say anything States:-
in answer to the charge?

You are not obliged to say
anything unless you wish to do
so, but whatever you say will
be taken down in writing and
may be given in evidence.

(Translation of Exhibit No. P.26)

30 States:-

Originally the deceased and I did not know
each other. However, I had been maintained by
Mak Hai, manager of the Hi Sheung Hi eating House
for a long time. On that night he asked us to
go to take part in a fight, I then went with him.
At that time deceased was walking along with two
persons. We had a dispute with him. Deceased
was conditionally large and powerful, moreover, was

Exhibits

Ex. P.26
Charge and
reply and
translation
of Statements
by accused.

28th July 1953
- continued.

drunk with strong smell of wine. I intended to go away but he still did not stop, so (I) in convenience, took up a chopper from a confectioners shop in the vicinity and chopped him on the shoulder. He dodged and the aim was missed. I did not know that he ear had received a stroke. Upon the second stroke he was bleeding. I was greatly frightened and ran away, but I did not know he was dead.

Sd. CHAN KAU.

Sd. CHAU YAM CHOI.
Interpreter.

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Sd. J.HIDDEN D.D.I.Y.
28.7.53.
18.35 hrs.

TRANSLATION OF STATEMENT OF ACCUSED
FROM NOTE BOOK OF D.S.I. LAI KIM HUNG

17.12.hrs. 28.7.53. Arrested C/M Chan Kau, 26 yrs. of Chung Shan, at No.1, Sam Ka Lane, 2/F.

I am Sub Inspector Lai Kim Hung of the Police Department. I now arrest you because you are suspected to be the murderer of Chinese male Chan Fook who was chopped to death at Sai Yeung Choi Street near Argyle Street, Mongkok, Kowloon at 9.05 p.m. on the 23rd inst. You are not obliged to say anything unless you wish to do so yourself, but whatever you say I shall take down in writing which may be given in evidence.

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(Sgd.) CHAN KAU.

(Sgd.) K. H. LAI, D.S.I.

28.7.53. 17.22 hrs.

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Witness (Sgd.) LUI LUK.

I did not know the deceased. Because he had quarrelled with the workman of his former factory. On that night before the incident occurred, I had no intention of going. Because Mak Hai, Manager of Hi Sheung Hi, had been providing me with food for a long time, so he asked us to go to assault a man. As we had been treated with favour by him for such a long time so went with him. On that night shortly after 8 o'clock the deceased and two

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(other) persons went out to drink and (he) was reeking with liquor. We quarrelled with him. He relied upon (his) stoutness and quarrelled with us. So I took up a knife from a candy stall nearby. He intended to return (the blow), so I chopped with the knife and removed one of his ears. I still did not know, so chopped with the knife again. He was wounded, so I ran away. I did not expect that through mistake of the hand he died.

Exhibits

Ex. P.26
Charge and
Reply and
translation
of statements
by accused.

10 The above words are written by me.

(Sgd.) CHAN KAU.

(Sgd.) K.H.LAI, D.S.I.

28.7.53. 17.34 hrs.

28th July 1953
- continued.

Witness (Sgd.) LUI LUK.

I hereby certify the foregoing to be the true translation of the Chinese document marked

(Sgd.) Illegible,

Court Translator,

6.11.53.

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TRANSLATION OF ANSWER OF ACCUSED TO CHARGE.

Previously, the deceased and I did not know each other. But I had been treated with favour by Mak Hei, manager of the Hi Sheung Hi eating house, for a long time. On that night he asked us to go to fight, so I went with him. At that time the deceased was walking along with two (other) persons. We quarrelled with him. The deceased relied upon (his) stoutness, braveness and strength and also (he) was drunk and reeking with liquor. I intended to go away but he still would not stop, so (I) took up a knife readily from a candy shop nearby and facing him (I) chopped (him) on the shoulder. He dodged, so (the blow) missed (him). I still did not know that his ear had already been hit once by the knife. (I) hit with the knife again and he was bleeding. I was greatly frightened and in a flurry and ran away. But I did not know he had already died.

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(Sgd.) CHAN KAU.

Exhibits

Ex. P.26
Charge and
Reply and
translation
of Statements
by accused.

28th July 1953
- continued.

(Sgd.) CHAU YAM CHOI, interpreter.

(Sgd.) J. HIDDEN, D.D.I.Y.

28.7.53.

18.53 hrs.

(Sgd.) P. LOWE, A.D.C.I.K.

28.7.53.

I hereby certify the foregoing to be the true
translation of the Chinese document marked

(Sgd.) Illegible.

Court Translator.

6.11.53.