

~~P.C.~~  
~~Cmb. 6.2~~

Judgment  
25, 1966

IN THE PRIVY COUNCIL

No. 5 of 1966

ON APPEAL  
FROM THE SUPREME COURT OF HONG KONG

B E T W E E N:

CHAN WAI KEUNG                      Appellant

- and -

THE QUEEN                              Respondent

C A S E    F O R    T H E    R E S P O N D E N T

Record

- 10    1. This is an appeal from a judgment of the Supreme Court of Hong Kong in its appellate jurisdiction (Rigby, Macfee and Huggins, JJ.) dated the 8th October, 1965, which dismissed the Appellant's appeal against his conviction on a charge of murder by the Supreme Court of Hong Kong in its criminal jurisdiction (Briggs, J. and a jury) dated the 11th August, 1965, upon which he was sentenced to death. p.239 & p.257
- 20    2. The Appellant was indicted upon the charge of murdering Leung Pui-chuen on the 12th May, 1965, in Hong Kong. The trial took place between the 4th and 11th August, 1965, before Briggs, J. and a jury. p.1  
pp.2-236
- 30    3. The critical evidence against the Appellant consisted of two statements made by him to police officers. The admissibility of these statements was challenged. After hearing evidence in the absence of the jury, Briggs, J. ruled that these statements were voluntary, and therefore admissible. The voluntary character of the statements was again challenged in the course of evidence subsequently given in the presence of the jury. The principal question in this pp.274 & 278

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appeal is that of the proper direction to be given to a jury in such circumstances. The law of Hong Kong is the law of England as it existed on the 5th April, 1843, with any modifications made by local statutes. The Criminal Procedure Ordinance, s.60 provides:

'If on a trial by jury of a person accused of an offence, a statement alleged to have been made by such accused person is admitted in evidence, all evidence relating to the circumstances in which the alleged statement was made shall be admissible for the purpose of enabling the jury to decide upon the weight (if any) to be given to the statement; and, if any such evidence has been taken in the absence of the jury before the admission of the statement, the Crown and such accused person shall have the right to have any such evidence retaken in the presence of the jury.'

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4. Evidence given for the Crown included the following:

(a) The deceased, Leung Pui-chuen, was employed as a night watchman at the Bonnie Hair Products Factory, 95A, Ha Heung Road, on the 9th floor. Above that floor, on the roof-top, was the TAT KWONG ELECTRIC BULB FACTORY, where the Appellant was employed until the 10th May, 1965, though he left those premises, having spent the night there, on the 11th May, 1965. The deceased was last seen alive at 11.05 p.m. on the 11th May, 1965, and his body was discovered at 8.30 a.m. on the 12th May, 1965, lying on a canvas bed inside his employer's premises.

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(b) Dr. Lee Fuk Kee gave evidence that the cause of death was shock and haemorrhage from multiple injuries to the head, such injuries being consistent with an attack with an iron rod similar to that recovered from the premises.

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p.114 1.24-  
p.115 1.4.  
p.57 1.29.

(c) The Appellant was seen by police officers at 9 p.m. on the 25th May, 1965, sitting on a rock in Reclamation Area, Lock Shan Road,

together with the witness Chan Pui. D.P.C. 4215, Wan Ming, who was accompanied by Det. Cpl. 1488, and D.P.C. 4463, Leung Shui Wing, informed the Appellant that he was making enquiries into the murder of the deceased and invited him to go with them to Hung Hom Police Station. To this the Appellant agreed.

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10 (d) On their arrival there at 9.10 p.m., the Appellant was taken into the office of the Officer-in-charge, Inspector Lau Kin Yeuk. Present in that room were D.P.C. 4463, D/Sgt. 1057 Tsang Kei, and the Appellant. The Appellant was questioned, inter alia, as to his movements on the night of the 11th/12th May, 1965, and his answers were recorded in a statement in narrative form by D.P.C. 4463.

p.115  
L.9

20 (e) In the course of this statement (exhibit 26), the Appellant said that from 3 p.m. to 7.30 p.m. on the 11th May he was at the Kung Fat Mahjong School. At 7.30 p.m. he left that Mahjong School and went to a stall for some coffee. He went on:-

p.275

30 "After taking coffee, I went to the Lai Chi Kok Amusement Park where I saw an opera. At 23.20 hours I took a Route No. 6 bus from the outside of the Lai Chi Kok Amusement Park to go to the Walled City and played a mahjong game in the Kai Kee Mahjong School. It was also a game of \$1-2. I played the game until 01.00 hours on the 12th May, 1965, when I left the Kai Kee Mahjong School. I was then still having \$32 left with me. After having left the Kai Kee Mahjong School I took a taxi to go to the Hing On Apartment at Shanghai street and hired Room No. 217. The rent was \$5 per day. I registered my name as Chan Ming on the apartment's register. The time was approximately 2.30 a.m. After I had hired the room I went downstairs to eat some Wan Tun noodle at a cooked food stall for which I paid \$1. After finishing eating I immediately returned to the apartment and after taking a bath I went to sleep in the room. I did not go out again that night. I was sleeping by myself".

p.275  
L.15

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Record  
p.276

The Appellant said in a later passage that he spent the next night (i.e. that of the 12th/13th May) at the hut of a friend named Pau Ying.

p.152 1.31-  
p.153 1.19

(f) Inspector Lau Kin Yeuk gave evidence that on the 25th May, 1965, at 9.45 p.m., he went into his office, in which he saw the Appellant, D.P.C. 4463 and Sgt. 1075, and remained there for about three minutes. Though he spoke to the officers, he did not speak to the Appellant.

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p.59 1.23

(g) The making of the statement made by the Appellant and written down by D.P.C. 4463 began at 9.25 p.m. By 10 p.m the Appellant had given an account of his whereabouts at the material time. At about 10 p.m. Sgt. 1075 left the room for approximately three minutes, instructing D.P.C. 4215 to bring to the Police Station four persons, one from each of the four addresses given by the Appellant. Sgt. 1075 then rejoined the Appellant and D.P.C. 4463.

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p.60 1.21  
p.106 1.31-  
p.107 1.9

p.115 1.29-  
p.117 1.33

(h) At 10.30 p.m. D.P.C. 4215 entered the room in which were the Appellant, Sgt. 1075 and D.P.C. 4463, and one by one introduced the four persons so that they might see the Appellant and confirm or deny his account of his movements as stated by him to D.P.C. 4463. These four persons were:-

1. CHOY CHUEN -A supervisor of the Kung Fat Mahjong School;
2. LAI YIN HUNG -Employee of the Kai Kee Mahjong School;
3. CHEUNG LAU KAN -The owner of the Hing On Apartments;
4. PAU YING -An acquaintance of the Appellant.

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(j) D.P.C. 4215 made a contemporaneous note of the times each person saw the Appellant. The first person was introduced at 10.30 p.m. and the last at 10.37 p.m. By 10.40 p.m.

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they had each seen the Appellant and denied in his presence having seen him on the 11th/12th May, 1965.

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- 10 (k) After the fourth person had left the room at 10.40 p.m., D.P.C. 4463 questioned the Appellant as a result of which the Appellant said words to the effect that the officer need not ask him so many questions: he was bored with them and he would tell what really happened. He was then cautioned. His caution was written down in continuation of the narrative statement, and the Appellant signed the caution signifying he understood it. p.87 1.25-  
p.88 1.39
- 20 (l) The Appellant then wrote his own confession, which was read back to him and signed by him and the two police officers. D.P.C. 4463 then, at 10.50 p.m., left the room taking the statement and showed it to Inspector Lau Kin Yeuk, who handed him an iron rod and gave him certain instructions. D.P.C. 4463 returned to the room, showed the iron rod to the Appellant and reminded him of the caution (which he wrote down again in continuation of the same statement). The Appellant again signed this caution. It was witnessed by D.P.C. 4463 and Sgt. 1075. The Appellant then wrote down a second confession. The statement, (Exhibit 26) containing his original alibi and the two confessions, was completed at 11 p.m., and this time was noted on the statement. p.89 1.4-  
p.92 1.21
- 30 (m) Sgt. 1075 then arrested the Appellant and left the room. He did not return again to that room. D.P.C. 4215 then joined D.P.C. 4463, and kept guard over the Appellant until 5.50 a.m., when they were ordered to leave the room on the arrival of Superintendent Jenkins, Insp. Lau Kin Yeuk and Mok Yim Tong. p.92 1.27-  
p.93 1.31
- 40 (n) D.P.C. 4463 denied that any inducement or threat was made to obtain either of the confessions, and said he did not know what the Appellant would write. p.100 1.26

- Record
- (o) Under cross-examination, D.P.C. 4463 -
- p.102 1.9 (i) agreed that all the four persons contradicted the Appellant's account of his movements on the night in question;
- p.102 1.19 (ii) denied saying to the Appellant, "Well, there is no alternative now. You will have to admit it";
- p.102 1.23 (iii) denied saying, "If you don't admit I will beat you up";
- p.102 1.30 (iv) denied the Appellant was ever handcuffed; 10
- p.102 1.38 (v) denied punching the Appellant in the chest;
- p.103 1.8 (vi) denied that Sgt. 1075 said to the Appellant, "Well, you have had a taste of this beating and you had better admit it because there is no other way for you";
- p.103 1.21 (vii) denied that Sgt. 1075 said to the Appellant, "Well, if you don't tell us we will not give you any food to eat";
- p.104 1.25 (viii) denied that he said to the Appellant, "You simply nod your head as I write and that will be enough"; 20
- p.104 1.31 (ix) denied dictating what the Appellant wrote himself; and
- p.105 11.3-11 (x) denied saying, "When you see the Superintendent remember you must also admit it", and also denied saying that if the Appellant did not do so he would be beaten again.
- p.112 1.17-  
p.113 1.17 (p) Sgt. 1075 corroborated the evidence of D.P.C. 4463 and denied the allegations of assault, threats and other matters put to him in cross-examination. He denied that the Appellant was handcuffed and said the statements were made voluntarily. 30
- (q) These two confessions, and also the confession made in answer to the charge, were the subject of a voir dire. The learned Judge ruled they were admissible in evidence, being satisfied

- beyond reasonable doubt upon the evidence adduced that they were voluntarily made. Record
- (r) D.P.C. 4215 deposed that he introduced the four persons between 10.30 p.m. and 10.40 p.m. and separately asked each in the presence of the Appellant whether they could substantiate the alibi of the Appellant. Each contradicted it. Shortly after 11 p.m., as a result of instructions from Sgt. 1075, he went into the room and kept guard over the Appellant with D.P.C. 4463 until nearly 6 a.m., when he and D.P.C. 4463 were told by Inspector Lau Kin Yeuk to leave. He denied seeing the Appellant in handcuffs. p.115 1.33-  
p.118 1.23
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- (s) Choy Chuen, a supervisor of the Kung Fat Mahjong School, said he had been on duty there from noon to midnight on the 11th May. He had seen the persons playing. He knew the Appellant, and the Appellant had not been to the School on the 11th May. p.121 11.7-  
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- (t) Lai Yin Hung, an employee of the Kai Kee Mahjong School, at which place the Appellant had told the police he was from shortly after 23.30 hours on the 11th May, 1965 until 01.00 hours on the 12th May, 1965, gave evidence that he was on duty there from 11 p.m. on the 11th May, 1965 to 9 a.m. on the 12th May, 1965, and though he personally came into contact with the players he did not see the Appellant. He further alleged he saw the Appellant's hands when he was introduced into the room on the 25th May, and noticed they were not handcuffed. p.126 1.7-  
p.128 1.30  
  
p.129 11.11-  
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- 30
- (u) Cheung Lau Kan gave evidence that he was the owner of the Hing On Apartment, where the Appellant stated he spent the night of the 11th May, 1965, after leaving the Kai Kee Mahjong School. He deposed that the Appellant never stayed at his apartment before the 19th May, 1965. p.135 1.27  
  
p.137 11.20-  
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- 40
- (v) Pau Ying said he had not seen the Appellant on the 13th May. He also gave evidence that when he was introduced to the Appellant at the Police Station on the night of the 25th May, 1965, he noticed the Appellant's hands, which were not handcuffed. p.142 11.5-  
18  
p.144 11.1-  
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p.152 1.21-  
p.155 1.13

(w) Inspector Lau Kin Yeuk deposed that during the course of enquiries into the deceased's death, 195 persons had been interviewed. At 9.45 p.m. on the 25th May, 1965, he went into his office, in which he saw the Appellant, D.P.C. 4463 and D/Sgt. 1075, and remained there for about three minutes. He did not speak to the Appellant. He further stated that at 10.50 p.m., at the police station, D.P.C. 4463 showed him the statement which the Appellant had just made and, after reading it, he handed to D.P.C. 4463 an iron pipe, giving him certain instructions. He saw D.P.C. 4463 re-enter the office. After he himself left that room at 9.48 p.m., on the 25th May, 1965, he did not go back until 5.50 a.m. on the 26th May, 1965, when he was accompanied by Superintendent Jenkins and Mok Yim Tong. On re-entering the room at 5.50 a.m. he told D.P.C. 4463 and D.P.C. 4215, who were still guarding the Appellant, to leave the room, which they did. He then charged the Appellant with the offence of murder and cautioned him. He spoke in English and this was translated for the Appellant by Mok Yim Tong into Punti dialect. The Appellant himself then wrote another statement admitting the offence. It was signed and counter-signed. Inspector Lau further stated he was present at 6.30 a.m. on the 26th May, 1965, when the Appellant was medically examined by Dr. Lee Fuk Kee, to whom the Appellant made no complaint of any bodily injury or pain.

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p.156 1.29-  
p.157 1.4

p.159 1.30-  
p.161 1.15

(x) Mok Yim Tong, a civilian employed by the police as an interpreter, gave evidence corroborating the charging and cautioning of the Appellant and the making of his statement in answer to the charge.

5. The Crown did not call Superintendent Jenkins as a witness at the trial. Though he was offered to the defence for cross-examination, he was not required by them.

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p.162 1.10  
p.163 11.11-  
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6. The Appellant in examination-in-chief said he was handcuffed on his arrival at the Police Station. He alleged he was punched, in the chest once only; told he would not get a meal unless he

	admitted the offence; and offered \$3000 to confess by Inspector Li and a police officer named Chan Kam Pui. He alleged further that he was told to nod his head whenever D.P.C. 4463 said anything to him; that he was taught how to make the statement, and told that when he saw the Superintendent he would have to sign the statement again in their presence. He denied having killed the deceased. He alleged that on the 11th May, 1965 he was at the	<u>Record</u> p.163 1.29
10	Lai Chi Kok Amusement Park from about 9 or 10 p.m. until 11.40 p.m., when he went to the Kai Kee Mahjong School until 1 a.m. on the 12th May, 1965. He then went to 63A, Tong Mei Road, where he slept on the roof-top until 8 a.m. He added that when he made his statement at the Police Station on the 25th May, 1965 his memory failed him and he believed he had spent the night at the Hing On Apartment.	p.164 11.7-20 p.165 1.5 p.165 11.7-33
20	7. Under cross-examination the Appellant stated that:-	
	(a) his hands were handcuffed in front of him when the four persons were introduced at the Police Station;	p.179 1.14
	(b) the assault and threats only began after the fourth person left the room;	p.179 1.29
	(c) that he felt pain from the blow to his chest even when giving evidence, which allegation he immediately retracted;	p.181 11.22-32
30	(d) that the threat to deprive him of food did not trouble him;	p.181 1.35
	(e) that he did not expect to receive the \$3000 offered to him to confess;	p.182 1.9
	(f) that he was threatened he would be beaten to death - which he immediately retracted;	p.182 1.31- p.183 1.11
	(g) that he did not memorise the words which D.P.C. 4463 told him he was to use to the Superintendent, but kept them in mind;	p.184 1.31
40	(h) that he was told to write the very words he actually wrote in his statement to Superintendent Jenkins after being charged, including the words that he had no intention of killing the	p.185 11.13-29

Record

deceased;

p.186 1.10

- (i) that these words had been taught to him by D.P.C. 4463 in the presence of Sgt. 1075 - i.e. before 11 p.m. on the 25th May, 1965;
- (j) that he was threatened for more than 20 minutes;
- (k) that he took 15-20 minutes in writing his statement contained in Exhibit 26;

p.187 1.2

- (l) that D.P.C. 4463 told him not to tell Dr. Lee Fuk Kee that his wrists were in pain;

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p.187 1.13

- (m) that he came to remember that he slept the night of the 11/12th May, 1965 at 63A, Tong Mei Road, and not at the Hing On Apartment, one week after he was arrested;

p.189 1.19

- (n) that never before had he followed the sequence of visiting the Kai Kee Mahjong School after the Lai Chi Kok Amusement Park, and he was able to recall doing so easily because this was the night of the day when he left the Tat Kwong Bulb Factory.

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8. There were no other witnesses for the defence.

p.220 1.37

9. In his charge to the jury, Briggs, J. said it was for the Crown to prove that the Appellant was guilty, and, unless the Crown satisfied the jury beyond all reasonable doubt that the Appellant had committed the murder, they were to acquit him.

p.223 1.41

Dealing specifically with the statements made by the Appellant, the learned Judge said two completely different accounts had been given of what had happened at the police station on the 25th May, 1965. After summarizing the evidence on this matter of the witnesses for the Crown, he told the jury that, if they had any doubt about the confessions, they must acquit. It was for them to give such weight and value to the confessions as they thought proper. They must consider each of the two confessions separately. If they thought both were obtained by duress or by inducements, they must acquit, because without the confessions there was insufficient evidence. If they thought one of the confessions was obtained by duress or by inducement, they must

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pp.224 1.1-  
227 1.20

p.227 11.20-  
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10	<p>put that one totally from their minds. In conclusion, Briggs, J. told the jury again that it was for them to decide upon the weight and value of the two statements separately, and if they thought either of them was induced by threats or inducements they were to put that right out of their minds. They were to weigh the evidence carefully, including the two statements, and were not to reach the conclusion that the Appellant was guilty unless satisfied beyond all reasonable doubt that the evidence inevitably brought them to that conclusion.</p>	<p><u>Record</u> p.231 1.6- p.232 1.4</p>
10	<p>10. The jury convicted the Appellant, and he was sentenced to death.</p>	<p>pp.235- 236</p>
20	<p>11. The Appellant applied for leave to appeal against his conviction. One of the grounds of his application was that Briggs, J. had misdirected the jury, or had not directed them adequately, about the burden of proof of the voluntary nature of the statements allegedly made to the police.</p>	<p>p.236 p.238</p>
20	<p>12. The appeal was heard by the Supreme Court sitting in its appellate jurisdiction (Rigby, Macfee and Huggins, JJ.) on the 3rd and 6th September, 1965. On the latter day the appeal was dismissed. Further argument was heard, at the request of the Court, on the 8th and 30th September, and judgment was given on the 8th October, 1965.</p>	
30	<p>13. Rigby and Macfee, JJ. delivered a joint judgment. After summarising the facts, and dealing with a point which does not now arise, they referred to the passages in Briggs, J.'s charge dealing with what they described as 'the vital issue' of whether the jury were satisfied that the Appellant's statements were not only true, but also freely and voluntarily made. Counsel for the Appellant had submitted that the jury had not been told what the position would be if they were left in doubt whether the confessions were free and voluntary, nor had they been told that they should disregard the statements entirely unless first satisfied beyond reasonable doubt that they had been freely and voluntarily made. The learned Judges referred to various English authorities, and held that, once a statement has been admitted, it is for the jury to consider whether they are satisfied both that it is true and that it was freely and voluntarily made, and standard of proof required on both these points is proof beyond reasonable doubt. They held further</p>	<p>p.239  p.246 1.33- p.249 1.14  p.248 1.25</p>
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Record

that Briggs, J. had failed adequately to direct the jury that the burden was on the Crown to satisfy them beyond reasonable doubt that the confessions were freely and voluntarily made, and, if they had any doubt about that, they should disregard the statements.

p.255 1.25-  
p.257 1.22

14. Rigby and Macfee, JJ. would, therefore, have been in favour of allowing the appeal, had it been open to the Court to do so. They held, however, that the oral pronouncement on the 6th September that the appeal was dismissed had rendered the Court functus officio, and the Court had no jurisdiction to alter that decision.

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p.257  
p.258 1.7

15. Huggins, J., who delivered a separate judgment, said that, when the Crown sought to put a confession in evidence, the Judge had to decide whether it should be admitted. For this purpose the burden was on the Crown to satisfy him that the confession was voluntary, the standard of proof required being proof beyond all reasonable doubt. The learned Judge then referred to various authorities dealing with the proper approach of the jury to a confession once admitted. He held that the true principle was set out in certain Australian and Canadian cases, not in the decisions of the English Court of Criminal Appeal; it was that the question for the jury was not whether the confession was voluntary, but whether it was true. Once a statement had been admitted, the question whether it was a voluntary statement ceased to be vital. Whether there had been any inducement was a material point for the jury to consider, but the question for them was what weight (if any) should be given to the statement.

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p.271 1.34

16. Had it been necessary for the jury to decide as a separate issue whether the Appellant's statements had been voluntarily made, Huggins, J. would have agreed that they had not been given a sufficient direction; but he concluded:

'In my view, however, the question for the jury was whether the accused was guilty and that question in its turn depended on whether the confessions (or either of them) were true. It was made abundantly clear that on these questions the jury must be satisfied beyond all reasonable doubt, having regard to the

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allegations of inducement, and I would dismiss the appeal.' Record

10 17. The Respondent respectfully submits that on the view, taken by Rigby and Macfee, JJ., that it was necessary for the jury to be satisfied beyond reasonable doubt both that the Appellant's statements were voluntarily made and that they were true, there was no misdirection of the jury nor any failure to direct them adequately. What Briggs, J. said made it sufficiently clear to the jury that they had to be so satisfied of both these matters.

20 18. The true view of the function of the jury in this case was, in the Respondent's respectful submission, that taken by Huggins, J. The function of a jury is always to decide upon the weight, as opposed to the admissibility, of evidence. The consideration whether a statement has been voluntarily made is, as a matter of law, decisive of its admissibility; it is not, as a matter of fact, decisive of the statement's truth, and the Respondent respectfully submits that there is no rule of law compelling a jury to accept that consideration as decisive of a statement's truth. It is the duty of the jury to consider all relevant evidence, including any evidence of inducement, in order to decide what weight they should give to a statement. If upon such consideration they are satisfied beyond reasonable doubt that the statement is true, they are entitled to act upon it, even if they are left  
30 in doubt whether it was voluntarily made.

19. The Respondent respectfully submits that upon the view taken by Huggins, J. there was no defect in Briggs, J.'s charge to the jury.

20. If, contrary to the arguments set out above, the charge to the jury was in any way misleading or inadequate, then, in the respectful submission of the Respondent, the proper order would be that there should be a re-trial.

40 21. The Respondent respectfully submits that the decision of the Supreme Court of Hong Kong in its appellate jurisdiction was right and ought to be affirmed, and this appeal ought to be dismissed for

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the following (among other)

R E A S O N S

1. BECAUSE it was the duty of the jury to consider whether they were satisfied beyond reasonable doubt that the Appellant's statements admitted in evidence were true:
2. BECAUSE the jury, if so satisfied, were not obliged to consider also whether they were satisfied beyond reasonable doubt that those statements had been voluntarily made: 10
3. BECAUSE the direction to the jury was correct and adequate both upon the view taken by Rigby and Macfee, JJ. and upon the view taken by Huggins, J:
4. BECAUSE of the other reasons given by Huggins, J.:
5. BECAUSE no reasonable jury properly directed could have arrived at a verdict different from that in fact returned.

J.G. LE QUESNE.

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FRANK ADDISON.

No. 5 of 1966

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BETWEEN:

CHAN WAI KEUNG      Appellant

- and -

THE QUEEN      Respondent

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C A S E  
FOR THE RESPONDENT

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