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CACC 510/2005

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

CRIMINAL APPEAL NO. 510 OF 2005
(ON APPEAL FROM DCCC NO. 571 OF 2005)

BETWEEN

HKSAR Respondent

and

KONG TING SHAN (干定山) Appellant

Before: Hon Stuart-Moore VP, Stock and Yuen JJA
Date of Hearing: 6 July 2006
Date of Judgment: 6 July 2006
Date of Reasons for Judgment: 21 July 2006

R E A S O N S F O R J U D G M E N T

Stuart-Moore, VP (giving the judgment of the Court):

Introduction

1. On 22 November 2005, the appellant was found guilty after a trial in the District Court before Judge Chua on charges 1, 2 and 3 of robbery, resisting arrest and handling stolen goods, respectively.

2. The appellant sought leave to appeal against conviction on all the charges. At the conclusion of the proceedings on 6 July 2006, we granted leave and, treating the hearing as the appeal, we allowed the appeal, quashing all the convictions and the sentences imposed on them. We now give our reasons for so doing.

The facts

3. In short, the prosecution's case was that on 28 April 2005 at about 10.30 pm, Chung Chi-wai (PW2) and his girlfriend Lau Ka-yi (PW3) were having a meal with others, including Chiu Yu-shing (PW4), at a cooked food stall in Yuen Long when they were robbed by a group of four men. A knife was held at PW2's neck which he noticed had a serrated blade. The mobile telephones belonging to PW2 and PW3 were taken. When the man who had been holding the knife had walked a distance of about 35 feet from the scene of the robbery, he turned his head around enabling PW2 to see his face.

4. Soon after the robbery, PW4 noticed a man who bore a resemblance both in appearance and from the clothes he was wearing to the robber who had been holding the knife. This man, who was carrying a mobile telephone in each hand, made his way to the Pak Tak Restaurant and police were informed.

5. On the arrival of the police, PW2 pointed to a man whose face he recognised as the person who had robbed him. The appellant was arrested by PC 2130 (PW6) after a fierce struggle. PW6 needed the assistance of three other officers to restrain the appellant. On a table near the entrance to the Pak Tak Restaurant, police found a knife measuring

about 17 inches in length with a serrated blade (Exhibit P3). PW2 later identified this as "similar" to the weapon used in the robbery.

6. When the appellant was searched, he was found to have a 'Home Visit Permit' in his wallet. This belonged to Tam Wai-keung (PW1) who, when traced, identified the permit as one which had been stolen from him in the course of a robbery in Yuen Long at about 10.20 pm that same night.

The Defence

7. The appellant gave evidence at his trial, testifying that he had been drinking red wine and beer at the Pak Tak Restaurant from 6.45 pm until the arrival of the police. He said that while he was inside the restaurant, he picked up the Home Visit Permit (the subject of the 3rd charge) and he intended to pass it onto the police.

Reasons for Verdict

8. The judge said that she "did not believe a word" of the appellant's evidence. In her Reasons for Verdict, she said:

> "The robbery and the identification
>
> 6. The sole issue on the charge of robbery is whether PW2 and PW3 [*sic*] had correctly identified the defendant. PW2 was seated in view of the rear lane. As four men approached he saw something silver glinting in the hand of one man but paid them little attention. 10 seconds later a knife was held at his neck. They were told not to report to the police, they only wanted money. From the corner of his eye he saw the knife. It was 12 inches long with a serrated edge.
>
> 7. He did not see the faces of anyone, just their backs as they left. He observed that the man who had the knife was wearing a *white sleeveless T-shirt*, black tracksuit trousers and he was tall.

> PW1 [*sic*] said at 5 feet 7 he would only have come up to this man's ear. The man had short hair and a strong build. However, when he was about 35 feet away, as this man walked by another lit café, he turned around for a brief moment. There was enough light to see his face at that time.
>
> 8. PW3 [*sic*] saw the first man who approached them carried the knife. It was over 12 inches long with a width of about 2 to 2.5 centimetres It was similar to the ham knife, Exhibit P3.
>
> 9. That night when he made his statement to the police he had described the man with the knife as being about 25, about 5 feet 11 inches, strong build, *wearing a white vest* and dark coloured trousers.
>
> 10. He said that after the men left they quickly got up, paid the bill and headed in the opposite direction. When they arrived at a place between the City Mall and Fu Ho Building, he suddenly saw, opposite them about 3 to 4 metres away, a man entering the lane they were in, who bore a resemblance both in appearance and clothes to the main robber. In each hand he held a mobile phone. He spoke to PW2, who confirmed the phones were similar to their stolen phones. They watched as the man went up to the Pak Tak Restaurant in Sai Ching Street. Still frightened, they waited for the police to come to them.
>
> 11. PW2 went with the police towards the restaurant. There was a commotion at the entrance. In the group was a man of similar build and clothing to the robber, 'His face was the same as the one who had robbed me so I came to the conclusion that person was [the one] who robbed me', the one with the knife. Thus, between 15 to 20 minutes after the robbery, having recognised the robber, he identified the defendant to a police officer. Concerned for his personal safety, he had left the scene with another officer and did not witness the arrest.
>
> 12. Subsequently he was taken to a table near the entrance of the Pak Tak Restaurant where he identified a knife (P3) on that table (see Photo Album, P2 at page 3)." (Emphasis added)

Grounds of appeal (dated 20 June 2006)

(1) Mistakes in the Reasons for Verdict

9. The judge, in paragraphs 6 to 8 (which we have cited above) of her Reasons for Verdict, had described parts of PW2's evidence as

being evidence given by PW1 who had not been a witness to the robbery. She also referred to PW4's evidence as having been given by PW3. These obvious mistakes have given rise to the appellant's 1st ground of appeal in a notice dated 20 June 2006.

10. A further mistake in these passages relates to the judge's statement that "the sole issue on the charge of robbery is whether PW2 and PW3 [*sic*] had correctly identified the defendant". The reference to PW3 was clearly intended to be a reference to PW4 but PW4 had never purported to identify the appellant. PW4 had merely described the suspected robber's general appearance, based on build and clothing, and this was accepted by the judge as a description which was consistent with the appellant's appearance at the time of his arrest.

11. The judge adjourned the case for eleven days in order to prepare her Reasons for Verdict. It is surprising, therefore, to find references in the passages we have cited to PW1 and PW3 when the judge actually meant to say PW2 and PW4, respectively. This was a mistake she repeated later in the Reasons for Verdict at paragraphs 18 and 20 so far as PW4 was concerned. Nevertheless, we are satisfied that these errors are best described as slips of the tongue although they are not entirely without significance taken in the context of a separate homemade ground of appeal raised by the appellant (see: paragraph 32 below).

12. Later, we shall deal with the evidence in relation to identification when we turn more generally to that topic (at paragraph 27 below).

(2) No evidence to link the appellant to the robbery

13. The 2nd ground of appeal related to the appellant's complaint that the evidence failed to establish that he had been one of those involved in the robbery. His point, taken shortly, was that there were several people outside the restaurant when he was arrested. PW2 had not waited at the immediate scene to see who the police arrested and there had been, in the case of that witness, no subsequent identification parade (or dock identification). Thus far, the appellant had made a reasonable point. On the other hand, PW2 stated that he had identified the appellant at 10.53 pm when the police arrived at the restaurant and it seems that PW6 immediately went up to the appellant to arrest him.

14. A written submission provided by Mr Francis Lo for the respondent informed us that PW6 was able to recognise the appellant in the court below as the person who PW2 identified as one of the robbers. However, he had not sought to provide us with a transcript of this evidence and he had not checked the audiotape to find confirmation of this. That being so, and because of other failings in the response to this application, to which we shall later refer, we are unable to accept from him the accuracy of his submission. Its significance, according to Mr Lo, was that PW6's testimony provided the link which completed the chain of evidence necessary to establish a proper identification of the appellant by PW2. If there was such evidence, we have not been shown it.

15. The way the judge dealt with this aspect of the case in her Reasons for Verdict was expressed in the following way:

> "Conclusion
>
> 18. The evidence left me in no doubt whatever that PW2 has correctly identified the defendant as the man who held the knife at his throat and [took] the mobile phones. The descriptions PW2 and PW3 [*sic*] have given matches the defendant I see before me. The 28-year-old defendant is singular looking. His belligerent face is not forgettable. He is tall at 6 feet and he is strongly built – big arms, big shoulders, big chest, with short hair.
>
> 19. It was not disputed at the time of arrest he had on a *sleeveless white T-shirt* paired with black trousers. In the witness box he said the trousers he was wearing is the one that he was wearing when arrested. This is neither the traditional jeans so-called by the arresting officer nor was it the bottoms of a tracksuit. The cut, however, is sufficiently generous for PW2 to misname it [as 'long sport trousers'].
>
> 20. Within minutes of the robbery PW3 [*sic*] had spotted him in the vicinity with two mobile phones [one] in each hand which were similar to the ones stolen, and again within minutes he is at the outside of a restaurant where close to him a knife, similar in appearance to the knife used in the robbery, is located. I am satisfied this ham knife did not belong the restaurant otherwise it would be in the kitchen. I am sure PW2 has correctly identified the knife as the one used in the robbery. This lends support to the correctness of the identification." (Emphasis added)

16. We shall return to these findings in regard to the general topic of identification but whether or not the chain of evidence was complete in regard to PW2's identification of the appellant, there were other justified grounds of appeal which render it unnecessary to delve further into this one.

(3) No contact evidence

17. The 3rd ground of appeal was that there was no contact evidence connecting the appellant to the knife in the form of either DNA or fingerprints and the stolen mobile telephones, allegedly in the appellant's hands shortly before his arrest, were not recovered by the police. Whilst

these points are perfectly correct so far as they go, the knife, as the judge observed, was on a table just outside the restaurant in which the appellant had been prior to his arrest, it was the same kind of knife that had been used in the robbery and normally it would have no place in a part of the restaurant to which its customers had access. So far as the absence of the mobile telephones is concerned, there had, on the prosecution's case, been others besides the appellant involved in the robbery.

18. Both of the points raised by the appellant in this ground were canvassed at trial and, in themselves, do not take this application much further forward although they serve to illustrate that there was no direct evidence of the appellant's participation in the robbery beyond the purported identification by PW2.

(4) Interruptions during cross-examination

19. In the 4th ground of appeal, which Mr Lo said he had missed because of inadvertence on his part, the appellant complained that the judge interrupted the proceedings to such an extent that this had resulted in an unfair trial.

20. We have been provided with the transcripts of the evidence given by PW2 and PW3. We need to make little comment about this ground beyond repeating a small portion of the "cross-examination" of PW2 who, on any view, was the main witness at trial. On him alone, the success of the prosecution depended. The extract (below) is representative of the whole of the transcripts before us and, beginning with the start of the cross-examination, the transcript reads:

"XXN BY MR BOK

Q. Mr Chung, am I correct to say that the café in the rear lane in fact is one of the shop units in the Fu Shing(?) Shopping Arcade in Yuen Long?

A. I don't know whether that was the Fu Shing Arcade or not.

Q. Yes. And am I right to say that the café is in the rear lane?

COURT: He's already said he was in the rear lane. I'm sorry, what is the point of these questions?

MR BOK: I wish to establish the localities of that...

COURT: You can establish -- can you look at the sketch where the café is related to where the defendant was arrested? If that's the purpose, yes. Otherwise I don't see any point in those questions.

MR BOK: Yes. I move to perhaps something next to the café, your Honour.

COURT: Why?

MR BOK: It's important, your Honour.

COURT: In what way?

MR BOK: Since this man has just told the court that...

COURT: Is it related to where the defendant was arrested?

MR BOK: No. It relates to the route where the man was running.

COURT: He didn't say 'running' either. He said 'walking'.

MR BOK: 'Walking', yes, very well. Allow me to...

COURT: I don't know whether...

MR BOK: Allow me to ask some questions...

COURT: So far I have heard you wanted to cross-examine when there was no need to cross-examine and this is why I don't want you to go on matters which are irrelevant to your case.

MR BOK: Yes. Perhaps one matter I wish the court to know, that the lighting is inadequate somewhere in the rear lane.

COURT: Maybe there are areas in the rear lane where the lighting is inadequate. What he said was at the point when the

person with the knife turned his head, it was outside a café just like his.

MR BOK: Yes.

COURT: And you can see from these photographs that this is well lit.

MR BOK: Yes.

COURT: Not only inside but there are two lights at the top.

MR BOK: Yes. But some distance away, for example, a distance of 35...

COURT: Yes. He's not basing it on the lights of this café. He said the man was outside a café similar to the one he was in.

MR BOK: Yes. But the matter is, I just wish to point out that the lighting is...

COURT: Well, then you just ask about the lighting, you don't have to ask whether it's part of this shopping centre or anything.

MR BOK: No, no. Just next to the café. Some location away from this...

COURT: We're not interested in 'some location away'. We're interested at the point where this person turned his head.

MR BOK: Yes. That's...

COURT: All right. Then tell him.

MR BOK: ... the point I wish to...

COURT: At the time the person turned his head you can explore the lighting there.

MR BOK: Yes.

COURT: But let's not go round and round the mulberry bush.

MR BOK: Certainly so.

Q. Mr Chung, am I right the man you saw running away from the café ...

COURT: He did not run.

> Q. … walking away from the café, is walking in the direction to Sai Yi Street.
>
> INTERPRETER: 'Sai Yu Street'?
>
> MR BOK: Sai Yi Fai, in Chinese.
>
> COURT: Do you have a sketch, Mr Hoosen, and does the sketch show this or is it a very concentrated sketch?
>
> MR HOOSEN: The sketch doesn't show very much...
>
> MR BOK: He mentioned it in his police statement.
>
> COURT: Is there a helpful sketch?
>
> MR HOOSEN: It shows on -- the rear lane pavement, it shows Sai Ching Street, it shows the location of the Fu Shing Building and the café where the robbery took place.
>
> COURT: So that's not helpful.
>
> MR BOK: It will be of very good assistance for this court to understand the localities.
>
> COURT: Well, get one of those Hong Kong – I'm going to adjourn now - my clerk has one of those maps - that book. You find the book, we will make enlarged photocopies.
>
> MR BOK: I would be most grateful, your Honour.
>
> COURT: I do not know why this was not done before. There is one in my chambers. Can I have a look at your sketch. This isn't very helpful." (Appeal bundle pp. 30-32)

21. There was then a 21-minute break before the proceedings continued in the same vein as before.

22. Clearly, defence counsel had, most unfortunately, been prevented from carrying out his task. Before the break in cross-examination, counsel had been able to ask only one question to which he had received a complete answer. This was his first question. Sadly, he was stifled from start to finish and, in the result, counsel was effectively stopped from pursuing the matters which doubtless he felt it was his duty

to pursue. In this sense, there was a material irregularity and, albeit we are sure that the judge was not intending to be unfair to the appellant, we were satisfied that this trial could not be regarded as having been fairly or properly conducted.

23. Mr Lo's initial stance was that he could see nothing inappropriate in what had taken place. Later, when his attention was directed to page after page of interruptions from the bench, he changed his position altogether and agreed that the judge had gone too far. This was a startling about-turn as Mr Lo accepted that he had read the twenty-eight pages of transcript in the appeal bundle when preparing the case and had noticed the inordinate number of interruptions yet, despite this, and in the knowledge that the appellant was not legally represented, he had failed to draw this to our notice.

Original homemade grounds of appeal

24. Just as Mr Lo had not attempted to make any kind of reply to the last ground until we called upon him to do so, he failed also to cover any of the additional points raised by the appellant in his original Notice of Application for Leave to Appeal (Form XI) dated 9 December 2005. Some of these points are dealt with below.

(5) Hearsay evidence used to support conviction

25. In regard to the finding of the serrated knife which was similar to the one used in the robbery, the appellant commented (in what we shall call his 5th ground of appeal) that the knife was on a table where many other restaurant implements were found including cups and plates.

This contention is borne out by the photographs produced by the prosecution at trial. The appellant suggested that just as the knife might be expected to be in the kitchen, as the judge had observed, so also might the other articles on the table. Furthermore, in this regard, the appellant complained that the judge had relied on hearsay evidence to determine that the knife did not belong to the restaurant. This was a reference to a passage in the Reasons for Verdict, supporting the appellant's complaint, where the judge stated:

> "14. PW8, DPC 53919, said PW2 identified the knife, P3, outside the Pak Tak Restaurant. Before he seized it he made inquiries to make sure it was not the property of the restaurant."

26. On its own, this would not have been a sufficiently substantial point on which to grant leave but it served to lend some support to the argument that when things went wrong at trial they were to the appellant's disadvantage. All that Mr Lo could say, after taking instructions and having apparently not given any consideration to the appellant's point beforehand, was that no one at the restaurant had been willing to make a statement.

(6) Identification evidence

27. The next matter raised by the appellant, which for convenience we shall call the 6th ground, was the fact that none of the three civilian witnesses who had given evidence at trial had formally identified him as the culprit. The nearest any of the robbery victims had come to making an identification was when PW2 pointed out the appellant to PW6. As to this, as the judge had observed (in a passage referred to in paragraph 8 above), PW2's purported recognition of the appellant was based upon the

clothing he was wearing, the appellant's build and the fact that "when he was 35 feet away, as [he] walked by another lit café, he turned around *for a brief moment*. There was enough light to see his face at that time".

28. The point raised by the appellant was a substantial one. The ground was set out in layman's language but, had the appellant been legally represented, it would doubtless have alleged that the guidelines in *R v Turnbull and Ors* [1976] 63 Cr App R 132 at 137 appeared not to have been taken into account by the judge either explicitly or implicitly. This was not, of course, a trial by jury where a full direction as to the dangers of a mistaken identification had to be given, followed by the usual direction as to all the circumstances calling for close examination. The judge did, however, need to make it sufficiently plain from her Reasons for Verdict that the whole exercise of examining the 'identification' evidence had been carefully undertaken. In *Turnbull's* case, Lord Lane CJ (at page 137) said:

> "Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.
>
> Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise

> someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.
>
> All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger."

Later in the judgment, the Lord Chief Justice (at page 139) went on to say that:

> "A failure to follow these guidelines is likely to result in a conviction being quashed and will do so if in the judgment of this Court on all the evidence the verdict is either unsatisfactory or unsafe."

29. We do not, in the present case, intend to rehearse the numerous shortcomings and weaknesses in the evidence adduced at trial on this topic. It suffices to say, that the appellant, on the prosecution's case, was wearing nothing particularly unusual and although, as we have seen for ourselves, he may be taller than average, we saw nothing special about him, despite the judge's less than kind description of him, which could otherwise be said to mark him out in a crowd. More importantly, the correctness of the identification was dependent on PW2's account alone and this, as we have said, defence counsel was effectively prevented from testing in cross-examination. At best, PW2 had seen the suspected robber's face at a distance of 35 feet "for a brief moment" to use the judge's phraseology. PW2 was not asked to attend a subsequent identification parade and those who did attend apparently failed to pick out the appellant. The only other evidence which possibly lent some support to the allegation was that a knife, similar to the one used in the robbery, was found on a table outside the restaurant where the appellant was

arrested and that his clothing and build generally matched the robber's description.

30. In our opinion, the evidence relating to the identification and, with respect, the judge's handling of it, was unsatisfactory. Having regard to the obvious importance of this ground, it was all the more extraordinary that the respondent's counsel should have made no attempt whatever to address the issue in advance of these proceedings. In effect, he merely repeated before us the judge's finding that she had been left in no doubt about the correctness of the identification. He also reminded us that when PW2 had a momentary glance at the suspect's face, the judge had said: "There was enough light to see his face." The judge had also referred to the knife as giving support for the correctness of the identification. This, Mr Lo suggested, was sufficiently indicative that the judge had kept the guidelines in *R v Turnbull* in mind.

31. As we have already indicated, we have not been left satisfied at the way in which the evidence about identification was approached. Great care in such cases is needed and we consider that the appellant's complaint is made out.

(7) General complaints

32. We can deal generally with the appellant's last complaints ('ground 7'). Having emphasized the absence of any scientific evidence to connect him to the robbery and the failure by the police to recover the mobile telephones which had supposedly been in his hands shortly before his arrest, the appellant suggested that the carelessness demonstrated by the number of mistakes made by the judge when setting out the facts had led to

his conviction on the charges because of "her inaccurate comprehension [of the facts] and without concrete proof".

33. Although we shall not cover every point that the appellant went on to make, he stated in one of them:

> "When I was arrested, I wore [a] white basketball-wear with a number on my chest and on my back and black jeans. My clothes were photographed during my detention, during the formal ID parade and in the complaint office. Nonetheless, the prosecution did not submit any of them in court at all."

The appellant added during the proceedings before us that the number '23' was plainly visible at the front of his basketball shirt and on the back was written the name 'Jordan'. This was not something which was canvassed at trial but, clearly, this was an assertion of potential importance and needed to be properly looked into. On the prosecution's case, there was nothing distinctive about the suspected robber's white T-shirt. Mr Lo, however, failed to make any enquiry into the allegation the appellant had made prior to the hearing.

34. In court, therefore, considerable time was wasted on this issue when we attempted to investigate it. Only the photograph taken in the police station after the appellant's arrest was eventually made available to us but this turned out to be of no value as it was simply in the style of a criminal record picture of the appellant's face. The 'complaint' photographs to which the appellant had referred were taken by officers attached to the Complaints Against Police Office who were investigating an allegation made by the appellant of an assault upon him following his arrest. It was not possible to obtain these before the court adjourned. The

video-recording of the identification parade was similarly not available. We called for these at the conclusion of the proceedings on 6 July 2006.

35. It follows, therefore, that what we have been able to observe from these two items, which were subsequently supplied to us together with a covering letter from Mr Lo, did not form any part of the argument in court. All that we can properly say at this stage, in a case where PW2, who had mainly viewed the *back* of the suspect and had described the suspect's upper clothing as "just an ordinary T-shirt but with no sleeve", is that this was obviously a matter which should have been fully investigated before the appellate proceedings commenced. This failure is most disturbing particularly as this was a case involving an unrepresented appellant where, amongst other things, the evidence of identification had been called into serious question. The appellant, in this complaint, had made it abundantly plain, well in advance of the proceedings, that his T-shirt was highly distinctive. If that assertion was true, it supported the contention that a miscarriage of justice had occurred.

36. Counsel for the prosecution, whether at the trial stage or in appellate proceedings, has a clear duty to the court to present a fair and balanced case. Where there are shortcomings, these must be made apparent and, whereas normally this duty will be accomplished by disclosure to the legal representatives for the defence, in the case of person who is unrepresented there should be disclosure to the court. The greatest concern of all who are genuinely interested in the proper administration of criminal justice is that every effort should be made, so far as it is humanly possible, to ensure that no one who is or may be innocent is incarcerated for a crime he has not or may not have committed.

37. Sadly, we have to say in the present case, where the unrepresented appellant was imprisoned for 5 years and 3 months, and where there were a number of serious complaints made about the conduct of the trial and the quality of the evidence which was called, counsel for the respondent has singularly failed to carry out his responsibilities to the court. We have been much concerned by the fact that Mr Lo failed to address key complaints raised in the appellant's homemade grounds of appeal yet nonetheless in his written reply of five pages sought to uphold the convictions.

38. A further concern is that the Department of Legal Aid also failed to recognise at least the potential merit of some of the grounds which the appellant had put forward, even *after* the Department been alerted to them by the appellant himself in his Form XI. Legal aid was refused on 8 March 2006, by which time the Department had had the advantage of studying the papers for approximately ten weeks. At that time, the appeal bundle only contained nineteen pages. Leaving aside the 'identification' issues, we observe that the Department made no attempt to obtain any of the transcripts despite the complaint that the judge's constant interruptions had led to an unfair trial. These had to be ordered by this court on 2 May 2006.

39. All in all, the series of calamities to which we have referred paints an unedifying picture and must be regarded as a cause for considerable disquiet.

Conclusion

40. It was plain to us that none of the convictions could stand. For the reasons we have given, the appeal was allowed. There will be no retrial.

(M. Stuart-Moore)	(Frank Stock)	(Maria Yuen)
Vice-President	Justice of Appeal	Justice of Appeal

Mr Francis Lo, SADPP, of the Department of Justice, for the Respondent.

The Appellant, in person.