

THE QUEEN v. FREDERICK PHILLIP SMITH

(Notes for Summing Up by Phillips, C.J.)

Delivered on 27th of July, 1956)

In this case the accused, Frederick Phillip Smith, has been charged on two counts of wilful murder, - the first, charging the wilful murder of Adela Woo on the 20th day of May, 1956, and the second, charging the wilful murder of Leo Wattermena on the 23rd of that month. It is alleged by the Prosecution that the two deceased were fatally attacked at the same place and on the one occasion but that, whereas Adela Woo died the day she was attacked, Leo Wattermena lingered on, unconscious, until he died three days later.

The Prosecution, having preferred these charges, has the onus of establishing, beyond all reasonable doubt, each and every element of the offences charged; there is no onus on the accused to prove his innocence. When wilful murder is charged, as here, the Prosecution has to prove that the accused killed another person, intending to cause death, and that the killing was unlawful: (S 301 Q.C.C.(adopted)). Killing is defined in the Code, (S 293), as causing the death of another, directly or indirectly, by any means whatever. Section 291 of the Code provides that it is unlawful to kill any person unless such killing is authorised or justified or excused by law. In certain strictly limited circumstances, a killing in self-defence is not unlawful; on the other hand, provocation does not render a killing lawful, although in certain circumstances it may reduce what would otherwise be wilful murder to murder to manslaughter, (S. 304, Q.C.C.(adopted)). Where wilful murder is charged, if the Prosecution fails to establish each and every element of that crime and to establish them beyond all reasonable doubt, the accused may not be convicted of, but must be acquitted of, wilful murder.

In the present instance, the case for the Prosecution has rested very largely on oral admissions and a written confession allegedly made by the accused to the police; and the Defence, early in the trial, objected to the admission of any evidence about these alleged admissions and that confession on the ground that they were not voluntary. After hearing evidence on the voir dire I ruled that such evidence was admissible. Although that ruling allowed evidence of the alleged admissions and confessions to be given, its weight and value were still questions for the jury. Consequently counsel for the Defence was perfectly entitled when the trial continued to cross-examine the police witnesses again about the circumstances in which the admissions and confession were made, and he was perfectly entitled to show by such cross-examination or by further evidence or by further argument that the alleged admissions were not in fact voluntarily made or had been unfairly or improperly obtained, and, therefore, that the Court should, as jury, disregard them. As was held by the Court of Criminal Appeal in England, in R. v. Murray (1950 2 All E.R., p.295,)

the jury, in considering the question of the weight and value of evidence as to alleged admissions and confessions, is entitled to form its opinion on the way it had been obtained. So, although I said a good deal on this matter when giving my ruling on the voir dire, I must again remind myself that, in the Territory of New Guinea, S. 15 of the Evidence Ordinance 1934 (as amended) provides that "No confession which is tendered in evidence on any criminal proceeding shall be received if it has been induced by any promise or threat by some person in authority, and every confession made after any such threat or promise shall be deemed to be induced thereby unless the contrary is shown". That section has a limited range: e.g., it only speaks of a "confession", not of an admission; and it speaks of "promise or threat" only, although there are many other forms of inducement, violence for one, that might cause a person to make an involuntary confession. However, the wider Common Law rule is, in my opinion, also in force in the Territory of New Guinea. "At common law a confession or statement made out of Court by an accused person may not be admitted in evidence against him upon his trial for the crime to which it relates unless it is shown" (and is affirmatively shown by the Prosecution) "to have been voluntarily made. This means substantially that it has been made in the exercise of his own free choice. If he speaks because he is overborne, his confession or statement cannot be received in evidence and it does not matter by what means he has been overborne": (McDermott v. The King: (1948) 2 A.L.R. 466, (at 469). "A statement need not be spontaneous or volunteered in order to be voluntary": Cornelius v. The King (1936) 55 C.L.R. 235, 251: and that case shows that in considering whether the conduct or words of a person in authority (such as a police officer) have induced an involuntary confession, the intention of the person in authority is immaterial; "what matters.... is the effect produced upon the 'person making the confession' ". If a person confesses out of remorse, that mere fact does not make his confession involuntary and inadmissible.

Mr. Jones, learned counsel for the Defence, has submitted that in murder cases, or where wilful murder is charged (as here), this Court should direct itself as jury that, although a jury may convict, it would be very dangerous for a jury to convict, on the confession of an accused, - especially where the accused had "retracted" that confession at the trial on oath - unless that confession is corroborated by evidence that satisfies the jury that the confession is true. He referred to Wills' "Principles of Circumstantial Evidence", to a paragraph on "circumstantial evidence" in Halsbury's "Laws of England" (2nd Ed.), to Roscoe and to Phipson. Insofar as the passages referred to by Mr. Jones related to circumstantial evidence they are not quite in point in a consideration of a confession made by the accused, for such a confession is "direct" rather than "circumstantial" evidence. And the passages cited by Mr. Jones were, I think, directed more to the question whether a confession, of itself, should be deemed sufficient for a conviction in a murder case, - e.g., where there was no evidence of a

killing or of a corpse except what was said in the confession, ordinary considerations of prudence and of common sense would compel a jury to refrain from convicting on such a confession alone. It would be far too dangerous to convict on such scanty material, for there are recorded cases of persons having confessed to killings they did not commit or to killings that were never committed at all; this Court has had experiences of such cases in this Territory. In the present case, as Mr. Jones has conceded, there is proof of the "corpus delicti", apart from any confession by the accused. Corroborative evidence, if believed, naturally tends to strengthen the evidence it corroborates and for that reason is desirable and is sometimes even required by the law. In Halsbury's "Laws of England", 3rd Edition, Vol. X at page 469, paragraph 860 is headed "Admissions or Confessions by defendant before Trial" and ends with the sentence:- "A defendant may be convicted on his own confession without any corroborating evidence"; but a footnote refers one back to page 438 of the volume and to the text and to note (c) on that page. There it is said, in the text:- "The prosecution must first give satisfactory proof of the corpus delicti, that is, it must prove that the offence charged has been committed by someone. In charges of murder or manslaughter a conviction can never, it seems, take place unless the body of the person whom the prisoner is accused of killing is found, or there is evidence, either direct or circumstantial, of the death of the person said to be killed". In footnote (c) on that page it is said "It is doubtful whether the corpus delicti must be established by some evidence other than the mere confession of the accused". In the present case, the corpus delicti has been established by evidence other than that of any confessional statements by the accused.

Mr. Jones has stressed that the accused has, on oath at this Court, retracted things allegedly said by him in his oral statements and written confession to the police, and has said that he made those statements and the confession because he was frightened and merely said in them what he thought the police wanted him to say: accused further said that they were untrue. It is not an uncommon occurrence for an accused to deny or repudiate, at the trial, confessional statements allegedly made by him before the trial. When that happens it is the duty of the jury to examine the repudiation and the alleged confessional statements with the greatest care and to decide whether, or not, in view of the repudiation, it is satisfied that those confessional statements were voluntarily made and were true. The jury must use its experience and common sense about this. If it has any reasonable doubt about the voluntariness and the genuineness of those alleged confessional statements, it should disregard them entirely.

To turn now to the evidence that has been given in this case:-

It was of considerable volume and I do not propose to refer to every item of it in this summing-up; but I may say that I have had the task of writing it down and I have re-read it and given careful consideration to all of it.

It is clear that Leo Wattermena and Adela Woo spent Saturday evening, the 19th of May last, at the house in Malay Town, Rabaul, that has been referred to during the trial as "Mumma Alden's place", or "Palili's place" or "Tommy Alden's place". At that time the people ordinarily living at that house were Palili (or "Mumma Alden"); her sons Tommy, Eric and a younger one; her three small daughters; the accused; and the accused's brother and sister-in-law, Conrad and Rosaline Smith, both of whom were at Kokopo that weekend. During that Saturday evening, Palili and Adela Woo and Leo Wattermena and the accused were sitting on the grass outside the house, and they were joined by Tommy Alden, and later by Jack Yamashita who lived nearby in Malay Town. The group chatted and sang and some beer was drunk by the men, - five bottles in all apparently, shared between four: there was no suggestion that the accused was drunk that evening. There was some going and coming on the part of the men, e.g. Tommy and Leo and Jack Yamashita went to the Kombui Club and accused went to call on Peter Igasaki who lived at Jack Yamashita's house. Eric got back from the pictures and soon after went to bed. After that, at about midnight, or a little after midnight, Tommy Alden and Nack Yamashita again went off to the Club, leaving Palili, Leo Wattermena, Adela Woo and the accused chatting on the grass. Then Palili asked the accused to get her some betel-nut, and he left to get some from a native woman named Maria, who worked for a woman named "Georgina", at Georgina's house not far away: he had obtained betel-nut from Maria before, but never at so late an hour. He has said at this Court that, knowing Maria slept in the kitchen part of the house, which was also where she kept betel-nut, he went there and to the kitchen door and called out to Maria but without getting a response: so he returned to Alden's empty handed. Maria has given evidence that she was in Georgina's house when accused arrived that time and that she recognized his voice when he called out her name but that she did not reply; she heard him at the kitchen door; but she also said in evidence that he opened a window of the house and looked in and shone a torch on Georgina's baby - which accused has denied.

When, soon after, the accused returned without betel-nut to Alden's house, Leo and Adela were taking or took their departure. Palili and the accused have said that Leo and Adela called out "goodnight" to them, which they acknowledged; and that the accused then went to his bedroom and to bed, where, he has said in this Court, he slept till awakened by a caller, Peter Igasaki, at about six in the morning.

Palili, Tommy Alden, Jack Yamashita, and the accused, have all said in evidence that at no time, when they were with Leo and Adela that evening, were the relations between all of them other than friendly. Leo and the accused had known each other from their schooldays and Leo and Adela were boy-and-girl friends who had been going about together for about two years.

Evidence has been given by two people that they saw the accused in the early hours of Sunday morning.

bar Maria has said that, some time after the accused had visited Georgina's house unsuccessfully for betel nut, he came back in the "big night" and that he stood on the steps of Georgina's house and shone a torchlight in her face; that she got up, shone her torch on him and moved two chairs from the entrance to the house in case he wanted to come in and talk to her; that she noticed he was wearing no shirt but had one on his arm; that he turned and walked towards some bush, glancing back, for about 30 yards and that she followed him for about 22 yards; and that a taxi then drove up to Georgina's place and she went back to it and found European men in it who inquired of her where Georgina was. Maria also said that as she came back towards the taxi she noticed Leo and Adela on the path, behind a shrub as if avoiding the light from the taxi; she noticed that Adela was carrying a towel and wore a "red" dress - (other evidence confirms the towel and a red checked dress): and she said that Leo had his arm around Adela's shoulder, and that she heard him suggest that he and Adela should go to the Golf Course - or "place bilong cricket" as she called it). She also said that she lost sight of the accused as he went off in the bush. Mr. Jones has submitted that Maria's story, which, except for her evidence about accused's first visit for betel-nut, is denied by the accused, is incredible and untrustworthy: especially as she had admitted to him, in cross-examination, that she had told some natives next evening (Sunday) and had told accused's father on a later date, that her visitor had been a native wearing a black laplap. As to that - Maria said that she had falsely spoken of a native in a black laplap because she did not wish to mention the name of the real visitor to those natives or to Mr. Smith, Senior, who was inquiring for his Solicitor, although she was prepared to tell the name to authority such as a "kiap" or the police.

The other person who spoke of seeing the accused was Frederick Charles Matthias, who gave evidence that in the early hours of the morning - he was vague about the hour but it was, he thought, about 2 a.m. - he was driving in his jeep from Matupi towards Rabaul along the main road and was about to turn into the side road leading to his house at Malay Town when he saw the accused turn into that side road just ahead of him and then turn and face the jeep as it passed him. Matthias said accused had his left arm behind his back. The accused wholly denies that this encounter occurred. In cross-examination Matthias admitted to Mr. Jones that he had been very unfriendly towards the accused for some months because he suspected him of undue friendliness with his, Matthias', wife. Matthias also said that he had been to the Police Station that very Saturday morning, (May 19th) to complain of this to the Police but he had been told that they could do nothing. He also said that he went of his own accord to the Ellice Station on the morning of Monday, 21st May, and told the Police he had seen the accused on the road in the early hours of Sunday, 20th May.

Mr. Jones contended that Matthias' admitted hostility to accused made him an untrustworthy witness. Mr. Mallon, for the Prosecution, submitted that it did not follow, from such hostility, that Matthias would falsely and deliberately implicate the accused in a charge of murder.

Neither Maria's nor Matthias' evidence, were it accepted, amounts to corroborating evidence implicating the accused in the crimes of which he stands charged: (Baskerville's case). Suppose Maria and Matthias had seen the accused at the times and places they say they did, - that of itself would not prove that he was implicated in crimes that were apparently committed quite a distance from where Maria and Matthias say they saw the accused: he could have been there for quite another reason, some innocent reason. At most, their evidence contradicts accused's story that he went to bed that night. Maria's evidence about seeing Leo and Adela may, I think, be accepted; but I think it would be dangerous for the jury to accept her evidence or that of Matthias about seeing the accused in the early hours of Sunday, 20th May, without corroborative evidence.

A little after seven o'clock that Sunday morning, golfers playing on the Sixth Green of the Rabaul Golf Course came upon the dead body of Adela Woo. This was reported to the police. While waiting for the police, the golfers heard a cough from a clump of bushes nearby and there they found Leo Wattamena lying, not dead but unconscious. The police arrived and, as the evidence of the police officers on this part of the case is not disputed, I shall summarise it. Two patches of blood-stained grass and earth were found on the Sixth Green and around them were numerous chippings in the ground that had evidently propelled earth over the blood-stains to some extent. A little over 20 yards in an easterly direction from these patches of blood was a clump of low bush, with a small clearing inside it, and Leo Wattamena was found lying there, "almost on" a square of cement. He had head injuries and there was blood on that cement and on the trunks of the small bushes around him. In line from his body to the blood patches on the green, the bushes at that edge of the clump of bush were freshly broken: and a mark that looked like a drag mark extended from just near the blood stains on the green to the freshly broken bushes in the clump of bush Leo was found in. He was clad only in a shirt. A pair of man's trousers and a pair of "briefs" (under-pants) and one white sock were hanging from the branch of a tree about ten feet from him. Nearby, a shoe, a belt and another sock were found. In another bush, about 147 feet in a south-easterly direction from the blood-stains on the green, Adela Woo's dead body lay, on its back, in a small depression or drain, and partly behind a tree trunk; her body was lying on a blood stained dress-length of cotton material, on top of which was a blood-stained towel. Adela had also received a head injury. The body was clothed but partly buried, buried up to about the knees, by soft earth and leaves readily available right by. Adela was wearing a red and white checked dress under a man's brown sportscoat, a blue brassiere torn on the right side and exposing the right breast, and a pair of blue bloomers that had been pulled up on her right leg.

Photographs taken by a local Chinese photographer of Adela Woo's body, the place where she was found, the place where Leo was found, and the blood-stains and chippings and marks like drag marks on or near the Sixth Green, had been tendered in evidence, (Exhibits "F1" to "F8").

A post mortem examination of Adela Woo's body was done that morning by Dr. Saave who observed a contused wound on the centre of her left hand, four punctured wounds on the back of her right hand, and a lacerated wound on her right ring finger. He discovered a bruising of the left cheek, also a penetrating injury of the skull, i.e. a depressed compound fracture of the skull. There he found a "punched out" defect of the skull cap in the middle of the skull cap but slightly off centre to the right: it was approximately 2 inches in diameter. Under that there was a lacerated wound of the brain, 3" x $1\frac{3}{4}$ " and 1" deep: and he considered that that injury was the cause of Adela's death: it would cause immediate loss of consciousness soon followed by death. He said that it would have required a good deal of force to cause that injury. He found no abnormalities of the internal organs except a scar on the wall of the vagina: and he found no male sperms in the vagina.

When Leo Wattermena died three days later, on the 23rd of May, Dr. Saave made a "post mortem" examination of Leo's body. Externally, he found numerous abrasions on the abdomen; a haematoma around the left eye; a circular contused wound approximately $1\frac{1}{2}$ inches in diameter near the left eye; and a penetrating injury of the skull 2 inches behind the right ear - which injury was a depressed compound fracture of the skull. Internally, he found a lacerated wound in the brain tissue, $2\frac{1}{4}$ " x $1\frac{3}{4}$ " x $\frac{3}{4}$ " and haemorrhage in lobes of the brain. There was a comminuted fracture of the left cheekbone. He considered it would have required a great deal of force to have fractured the skull as he had described, and he considered that the cause of Leo Wattermena's death was the brain injury that Leo had received a few days before he actually died.

There was evidence that talk of this tragedy spread rapidly, on Sunday 20th May, to Malay Town - and elsewhere - and that the accused heard of it although he stayed at home all that day. Mr. Jones has suggested that the accused's recollection of such talk may have been the basis of some of the accused's admissions next day. On the evidence, the gossip that day seems to have been of the vaguest character, and to the effect that the tragedy had occurred on the Golf Course and on the left side of it going towards the airport: some of it said that Leo was dead too.

Peter Igasaki, who woke the accused up at about six that Sunday morning, Palili who came to wake him up later, and others who saw him during the day, have given evidence, and all of them say they noticed nothing unusual about the accused or his conduct that day.

About 8 o'clock on Monday morning, 21st May, the accused was at Jack Yamashita's house. Peter Igasaki, Palili, Louisa Matthias and others were there too. A number of them decided to go and have a look at where the tragedy had occurred and they headed for the Golf Course. Some went ahead;

Igasaki and the accused were in the rear and halted at the road leading to the Native Cemetery. From here they could see Police, also native prisoners cutting grass, on the Golf Links about 400 yards ahead; and they saw the police turn the advance party back, so they came back. The Defence has put it that that view of the Golf Course and of where the police and prisoners were on the Golf Course that morning led the accused to say some of the things he said, and to point out things he did point out, later on during that day.

I come now to the evidence about certain interviews that occurred that Monday (21st May) between the Police and the accused - at the Police Station and later at the Golf Course.

The Police version of those interviews was as follows:

Inspector Carroll was in charge of the investigations and he has said that that morning he left his papers relating to this matter on his table, a small table in the Investigation Room at the Police Station. He told Mr. Jones that among those papers there was a 6" x 4" print of a photograph of the body of Adela Woo, as found - a smaller print of Exhibit "F2". Mr. Carroll also said that the print would not be visible as he left it among his papers when, after instructing Sub-Inspectors Young and Vonhoff to go and ask the accused to come to the Police Station, he (Carroll) left the Station to make some inquiries; on his later return, he said, he did not notice anything to suggest that his papers were not as they were when he left.

Young and Vonhoff have testified that they carried out Mr. Carroll's instructions, after finding the accused at Yamashita's house; and that they brought him to the Police Station, arriving there at about 10.20 to 10.25 a.m.; finding Inspector Carroll out, they asked the accused to wait and gave him a chair in the Investigation Room to sit on. That chair was at Carroll's small table, opposite the chair Carroll used to occupy. (Accused said he was questioned by Vonhoff at that stage, but Vonhoff has denied that he did that, and that denial was supported by Young's evidence).

At about ten minutes past eleven o'clock Carroll returned to the Police Station and, after greeting the accused, interviewed him in the presence and hearing of Young. Carroll says that he said to the accused: "We are making some enquiries into the death of Adela Woo. I believe you saw her on Saturday night. Will you tell us what you did and where you went that night?" that the accused replied: "I stayed at Tommy Alden's place"; that Carroll asked: "Were Leo and Adela there?" and accused said "Yes" that Carroll then asked: "What time did they leave?" and the accused said: "I think it was about half past ten"; that Carroll then said: "What did you do then?" and accused said: "I went to bed"; that Carroll finally asked: "Did you see Leo and Adela again that night?", and the accused replied: "No". Carroll's account of that interview was fully corroborated by Young in evidence. Carroll then left the Station to make further inquiries. He neither told accused to stay or go. Accused sat on.

Carroll returned to the Station, he says, at about 1 p.m. and went to the Investigation Room: he asked the accused if he would like something to eat but accused said "No". Carroll says that he then asked accused some more questions in the hearing of Sub-Inspector Vonhoff who was in the immediately adjacent Muster Room, and only a few feet away. Carroll says that the following conversation occurred: - Carroll: "When you went to bed on Saturday night did you remain there until Sunday morning?" Accused: "No". Carroll: "What did you do?" Accused: "I was worried about Leo and I decided to get up and follow him". Carroll: "Do you mean you decided to follow Leo and the girl?" Accused: "Yes". Carroll: "Why were you worried about Leo?" Accused: "Leo had told us that a rat had pissed on his head and he was afraid he was going to have another accident". Carroll: "What kind of superstition is that?" Accused: "Once before Leo had told us that a rat had pissed on his head and that he had had an accident". Carroll asked accused whether anyone else had heard that; and accused replied that Palili had. Carroll also says he asked the accused - "Did anyone else see you when you got out of bed on Saturday night?" and that accused replied - "Yes, I went to Jack Yamashita's house, woke him up and asked him to come for a walk". Carroll's account of that particular interview was completely corroborated by Sub-Inspector Vonhoff in his evidence.

Carroll again left the Police Station to make further inquiries and, during his absence from the Police Station, he went to Alden's place and collected accused's suitcase and belongings and brought them to the Station, at approximately 3.30pm, where he opened the suitcase. He found a letter from Adela Woo to the accused and he went to the accused and, in the presence of Sub-Inspector Young, asked the accused whether he recognized the letter. The accused said - "Yes, it is from the girl". Inspector Carroll remarked, - "From it, it appears you were very friendly"; and accused said - "Yes we were good friends". The letter has been produced: it was not a love letter but a friendly newsy teenager's letter in which Leo was mentioned as much as the accused was. Inspector Carroll's account of what followed was this: He said to accused - "Inquiries reveal that you did not go to Jack Yamashita's house and wake him up: accused did not reply: Carroll asked accused - "What clothes were you wearing on Saturday night?" and accused replied - "These", referring to the ones he had on: Carroll asked - "What did you do when you got up?" and accused, Carroll says, said - "I followed Leo and Adela to the Green: I saw them lying on the ground. I went mad and I hit them". The, Inspector Carroll says, the accused broke down completely, put his head on his hands on the table and was very distressed. He grew more composed in about ten minutes. At that point Sub-Inspector Young came up to the accused and said to him: - "I want you to know that you will be charged with the murder of Adela Woo. Do you understand?" - to which accused replied, "Yes". Sub-Inspector Young said, - "Do you want to tell me about this trouble?" and accused said "Yes". Carroll says that Young said to accused "If you like I'll get

you pen and paper and you can write it down", and accused agreeing, Young brought pen and paper. Carroll says that Young then said to the accused - "Before you start, I want you to know that you need not say anything unless you wish. It makes no difference to me whether you write it down or not". The accused then proceeded to write out his statement, writing out a little, then stopping. He was sobbing as he wrote, (according to Young, who has fully corroborated Carroll's story of this interview). It took accused a little over an hour to write his statement. He said "That is all". Carroll read it back to him. He then asked the accused whether anyone had assaulted or threatened him in any way, - to which the accused said - "No". Carroll also asked whether accused had made the statement of his own free will, to which the accused replied - "Yes". Carroll then asked the accused, would he add that to his statement; and the accused then added these words: - "I have made this statement of my own free will. It is true no one has forced me to make this statement". The accused then signed the statement "F. Smith", and Carroll attested it. This written statement was tendered in evidence and in it, after describing the movements of himself and others on the Saturday evening, the accused wrote:- "so Tom and Jack went to the Club and Leo and his girl-friend so I followed them they went to the green and I went up and flog Leo because I was out of my mind. I beat him with an iron pag I found in the grass. The girl start to cry out so I hait her to and they bought (both?) lie on the ground so I took the girl and bery (bury) half of her. I cared (carried?) Leo into the buses and I trod (threw?) the pag away I went home to bed".

Police witnesses have said that about ten minutes after the accused made that written statement, the accused was taken by the Police to the Golf Course in a utility truck. Carroll was driving, accused was next to him and on the other side of the accused was Vonhoff; Sub-Inspector Young accompanied them but was on a motor cycle. Carroll and Vonhoff have said that when the truck got just past Malay Town, Carroll stopped it and told the accused that he was going to ask him further questions but that the accused need not answer them unless he wished: if he did answer, what he said might be used in evidence: accused nodded. Carroll, Vonhoff corroborating, says he then asked accused: - "Will you show us where this thing happened?" - to which the accused replied - "On the green". Carroll said - "Which green?", and accused pointed to the green which Carroll knew was the Sixth green. Carroll then drove the truck to near that green and he, Vonhoff, and the accused got out. Here they were joined by Young, and Vonhoff went off to where prisoners were cutting the grass. As to what happened then, Carroll and Young have given similar evidence: - Carroll asked the accused - "Will you show us where you saw Leo and Adela?" and accused pointed to the bloodstained patches on that green. Carroll then asked the accused - "Will you show us where you put Adela's body?", whereupon the accused walked a few yards in an approximately south - easterly direction and then stopped walking.

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The party then returned to the Police Station where the accused was charged with the wilful murder of Adela Woo and was placed in the cells.

Accused's version at this Court of his interviews with the Police at the Police Station and later at the Golf Course on Monday, 21st May, differs considerably from that of the Police witnesses.

(It will make things clearer if I mention first that Mr. Jones, when cross-examining Inspector Carroll, Sub-Inspector Young and Sub-Inspector Vonhoff, had asked them had any of them said such things to the accused as - "Bullshit! You should know something about it;" or "We've found out everything and we know you've done it", or "There are three witnesses who saw you pass Georgina's house that night", or "Look at the blood-stains on your trousers"; and each of them said they had not. They also said they had not heard the accused say - "What do you want me to say? That I killed her?").

Now, the accused has said at this Court that when he first reached the Police Station that morning, Vonhoff came with him into the Investigation Room and proceeded to question him as follows:- Vonhoff (to accused)

"You know that Adela is dead and that Leo is in hospital?" Accused - "Yes"
Vonhoff - "You were with them last night?" Accused - "Yes, we were
drinking together at Tommy Alden's place". Vonhoff - "Where did you go?"
Accused - "When they left I went to bed". Vonhoff - "You did not go to
bed. You followed them". Accused - "I did not follow them. I went to
bed". Vonhoff - "You should know something about it". Accused - "I
know nothing about it". Vonhoff - "Tell me the truth". Accused - "I
know nothing about it". Vonhoff - "Bullshit! You know something about
it". Accused - "No, I know nothing".

At that point, accused has said, Mr. Carroll came into the Investiga-
tion Room, and Vonhoff remained there during the interview that
followed. The accused has said that after Carroll had passed the time of
day with him the following conversation took place:- Carroll - "You know
Adela is dead and Leo is in hospital?" Accused - "Yes". Carroll - "You
were with them that night?" Accused - "Yes, I was with them. We were
drinking together at Tommy Alden's place". Carroll - "Where did you go?"
Accused - "I went to bed after they left". Carroll - "We know you did not
go to bed, you followed them." Accused - "I did not follow them. I went
to bed". Carroll - "There are three witnesses who saw you pass Georgina's
house that night". Accused - "I did not go past Georgina's house".
Carroll - "The three witnesses are coming to point at you and say that
you passed Georgina's house". Accused - "I did not go past Georgina's
house". Carroll - "If you did it, tell us the truth". Accused - "I know
nothing about it".

Then, according to the accused, Inspector Carroll handed him the
photograph and said - "Do you recognize this?" - to which the accused
replied - "That is Adela Woe". (Carroll had been cross-examined by Mr.
Jones about this and had denied ever having shown that photograph to
accused. As already mentioned, he said that he had left it in his pile
of papers, but not visible, on his table before he left the station that
morning to make enquiries. Mr. Jones has suggested that the accused,
who was admittedly seated at that small table within a couple of feet
of the papers for about five hours, "would not have had the temerity"
to have looked through those papers. The accused may or may not have
had the temerity, and he may or may not have had the curiosity, to look;
it is not possible to say, on the evidence. After hearing and seeing
both Carroll and accused give evidence at this Court, I am not prepared
to accept accused's statement that Carroll showed the photograph to him.
Nor does the evidence show conclusively, in my opinion, whether accused
saw the photograph at that time or heard of it at that time or heard of
it between then and this trial. He himself said he saw it that Monday).

Accused has said that a Police Officer, whose name he does not know,
then asked him for his shoes, and he took off his sandshoes - (his only
pair of shoes, he says) - and gave them to the officers and that Carroll
left the room at this point.

Then, accused says, Vonhoff again proceeded to question him, saying:-
"Tell us the truth, Freddie", - to which the accused said - "No, I didn't
do it". He says Vonhoff then said - "Bullshit! You know something about
it", and also said - "If you don't tell us the truth, you won't go home
until you do tell us the truth. Now, tell us the truth", - to which he
replied - "What do you want me to say? That I killed her?" (Here it
should be mentioned that Vonhoff was asked by Mr. Jones, in cross-
examination, whether he had asked accused some questions after the
accused had arrived at the Police Station that Monday morning and Vonhoff
said, "No". But Vonhoff was not specifically asked by Mr. Jones whether
he had said to the accused: "If you don't tell us the truth you won't go
home until you do tell us the truth. Now, tell us the truth". The Crown
Prosecutor had earlier asked Vonhoff, generally, whether he had
threatened the accused in any way or had promised the accused anything,
and Vonhoff replied "No").

Continuing his story, the accused said that Mr. Carroll came back to
the Police Station then and another officer gave him a change of clothes,
taking away the ones the accused was wearing. Then Mr. Carroll, accused
says, came into the Investigation Room and said - "We know you did it".

There was a stain of blood on your shoes", - to which accused says he replied - "I did not do it". Then, according to the accused, this is what happened:- Vonhoff said - "Tell me the truth, Freddie! I'm tired, talking to you. I should be at home looking at books and listening to the radio". - Accused said - "What do you want me to say? That I killed her?". Vonhoff, (accused says) then said:- "If you did, tell us the truth". Accused said :- "Then I said - 'Yes, I did it'. Then Mr. Vonhoff went out and Mr. Young came in. He gave me a pen and paper. He said - "Write it out". I wrote it out". The accused says that Young and Vonhoff were present when he wrote his statement, not Carroll; and that Vonhoff dictated the last two sentences on that piece of paper. Accused was asked, by his counsel, how long it took him to write that statement and said - "About half an hour to one hour". And his counsel asked him was it true that he was distressed and sobbing when he wrote it; accused seemed reluctant to reply, and did not reply at once to that question; but he presently said - "Yes". He was asked by his counsel whether it was true that he had killed Adela Woo. He said it was not true. His counsel asked him why had he said that if it was not true; and the accused replied:- "I was frightened because Mr. Vonhoff said-'If you don't tell us the truth you won't go home till you tell us the truth'. I thought the Police wanted me to say I did it. I was frightened and I said I did it". Accused also said that his written statement was not true, not all of it; that is, the portion I have already quoted - what I may call the "confessional part" of the statement - was not true; but (he said) he had written that because he was frightened of what Vonhoff had said, i.e., Vonhoff's alleged remark that accused would not go home until he had told the truth.

Accused also told Mr. Jones that, after he had made the written statement, Carroll and Vonhoff had taken him in the police utility to the Golf Course and had "stopped a little while" on the side of the road beyond Malay Town and towards the Golf Course, but that nothing was done or said during that halt. He told Mr. Jones that the utility then drove on to near where Adela had been found and that this is what then happened:- "We got out and stood up on the grass where I saw a patch of blood. Jack Carroll asked me - 'Is this where you hit Adela and Leo?' I said 'Yes'. Then we turned towards the bush and he said - 'Where did you put Adela's body?' I did not say anything. He said - 'Did you put it there', pointing, 'or there?' pointing again. I looked and saw a paw-paw tree standing there and I said - 'There', pointing to the paw-paw tree. Then he said - "Which side did you put Adela's head?" I did not say anything. Then he said - 'Did you put it this side or that side', indicating right or left. I said - 'This side,' and indicated the right side. He then said - 'Where did you put Leo's body?' I looked around and saw a patch of bush there and saw some broken branches among the bush and I said, pointing to the broken branches - 'In there'. He then said - 'Where did you put his clothes?' I said - 'chucked it in the bush', and pointed to where the broken branches were." (Inspector Carroll, in his evidence, had said that by the time of that Monday afternoon's visit to the Sixth Green, the grass-cutting operations had cut down the broken bushes where Leo had been found on the Sunday).

Mr. Jones then put the following questions to, and received the following answers from, the accused:-

Q. Why did you say these things to Mr. Carroll?

A. I was frightened and I knew that the Police wanted me to say them.

Q. Why did you point to the pawpaw tree?

A. I saw the pawpaw tree in the photograph Mr. Carroll showed me at the Police Station.

Q. Why did you say Adela's head was lying to the right?

A. Because I saw in the photograph that her head was lying to the right side.

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Q. Why did you point to the clump of bushes?

A. I had heard people talking earlier about Leo being found in a clump of bushes and when I saw those bushes broken, I pointed to them.

(On re-reading my notes of the evidence, I think there may have been a genuine misunderstanding when Carroll asked the accused at the Sixth Green to indicate which way Adela's head was lying. Carroll may have meant - which way was the head end of the body lying; but accused may have thought that he meant the head itself: accused indicated, to the right: in the photograph, Exhibit "F2", Adela's head is shown turned to her left, but to a viewer of the photograph it would be turned to the viewer's right).

The accused agreed that he was taken back from the Golf Course on that occasion to the Police Station and there was put in the cells.

In cross-examination, accused was asked by Mr. Mallon whether Mr. Carroll had not asked him, after he had changed his clothes at the police station that afternoon, the following question: "Inquiries have revealed that you did not go to Jack Yamashita's house or wake him up on Saturday night. What did you do?" Accused's reply to Mr. Mallon was - "I don't know. I don't remember."

Mr. Mallon asked accused - "Do you remember saying to Inspector Carroll: - 'I followed Leo and Adela to the green. I saw them lying on the ground. I went mad and hit them'." Accused replied: - "I said that because I was frightened".

Mr. Mallon also referred accused to what was said in his written statement about following Leo and Adela to the green and hitting them with an iron peg, and reminded accused that he had pointed out to the Police, a little later that Monday afternoon, the two different places in which he indicated he had put Adela and Leo; Mr. Mallon then asked accused: - "What made you think, when you made your statement, that those two had been killed together on that green?". To that question, which appeared to nonplus the accused, accused made no answer for some time - indeed, for some minutes; at length he said: "Mr. Vonhoff said to me, after I had said that I had followed them, 'Where did you follow them? Up to the green or where?' So I said - 'Up to the green'. He asked me - what green? the Fifth, Sixth or Seventh?' I said - 'I don't know what green'. He said - 'Is it the Sixth or Seventh?' I said - 'The Sixth'. He said - 'The side one or the middle one?' I said - 'The middle one'. (That talk, the accused said, occurred at the police station on the Monday afternoon). The accused then offered a further explanation - "I thought they would have been killed together because they were boy-and-girl friends and I thought they would be sitting together when they were killed."

Mr. Mallon also asked accused whether it was true that he had broken down and sobbed at the Police Station that Monday afternoon, just after saying he had followed and attacked Leo and Adela; and he replied, "I did break down, but I was telling a lie". Accused denied that Inspector Young had "cautioned" him before he made his statement; indeed, the accused told the Court that neither Mr. Young nor any other police officer had given him a "caution" at any time.

Mr. Mallon then brought the accused to the time when he and Carroll and Vonhoff went towards the Golf Course in the police utility shortly after accused had made his written statement on the Monday afternoon. Accused was asked whether, when Carroll stopped the car en route, Carroll had "cautioned" him; accused said he did not remember. He also said he did not remember Carroll's asking

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him, at that time, where this thing had happened; and he denied that he had replied to Carroll - "On the green". He said Carroll did not ask him, when they got out of the truck near the Sixth Green, where he had seen Leo and Adela. Mr. Mallon then asked him whether he remembered Carroll's asking him, on that green, - "What made you do this?" Accused replied to Mr. Mallon - "I knew the Police wanted me to say something, so I said it". Then he said Carroll had not asked that question. Mr. Mallon then asked accused:- "Do you remember yourself saying - "I saw him lying on top of her and I hit him. The girl cried out so I hit her too."? Accused answered:- "I said it because I knew the police wanted me to say something, so I made it up."

The accused told Mr. Mallon that he had told Carroll that he picked up Leo's clothing and had thrown it into the bush; but that he had said that to Carroll because he was frightened and also because he had thought, from the gossip he had heard, that Leo's clothing had been thrown into the bush.

Coming now to Tuesday, 22nd of May:- In the afternoon Carroll and Vonhoff had accused went to the Sixth Green at the Golf Course. Both officers say that Carroll reminded accused that he had been charged with the murder of Adela Woo and that Carroll then gave accused the usual "caution" before asking accused whether he could remember what he had done with the iron peg. Those officers say (and the accused agrees) that accused shook his head and then pointed to the crater lake behind the Golf House. They all went there but drew blank there. Vonhoff has said, in evidence, that they were about to return to the Police Station when he heard the accused say - "I think I took that piece of iron back to the house"; that thereupon Vonhoff and accused went to Yamshita's house, driven by native driver Rupen; that the house and yard were searched without result and that they were about to depart when Rupen produced an iron ash-scraper (Exhibit 'B') that he said he had found in some kunai grass near by. Vonhoff says that accused was shown that scraper and that accused said it was the piece of iron he had used. The accused, on the other hand, said in evidence that he did not remember saying that he had thought he had taken the piece of iron back to the house, but that Vonhoff just went there; in cross-examination, he said he had told Vonhoff it was the piece of iron he had used, but that he had only said that because he was frightened.

Mr. Mallon asked the accused why he was frightened at that stage; and accused said - "Mr. Vonhoff had told me, the day before, that I wouldn't go home till I had told the truth; so I said this because I was frightened". Accused then told the Court that he thought that, if he said that that scraper was the piece of iron he had used, he would be allowed to go home. He was then asked by the Court:- "Do you mean that you thought, although you had admitted on the previous day that you had killed someone and had attacked Leo too, that if you said that you had used the scraper you would be allowed to go home?" The accused replied "Yes", an answer that seemed remarkable in view of the fact that accused had been lodged in the cells the previous evening on the charge of having wilfully murdered Adela Woo.

Very late in his evidence the accused said that the iron peg he had referred to in his written statement was a tent peg, and that he had mentioned an iron peg in his statement because Mr. Carroll had shown him such a peg at the Police Station before accused made that statement. Accused said he had forgotten to mention this incident before. That piece of evidence obviously took his own counsel by surprise, and Mr. Jones asked that Mr. Carroll be recalled so that he could be specifically asked about this. Mr. Carroll was recalled and he denied ever having shown the accused such a peg at any time at the Police Station or anywhere else; and he said that he did not even know if there were any such pegs at the Station.

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According to the police evidence, the accused, at the 1 p.m. interview at the Police Station on Monday, 21st May, had volunteered the information that he had followed Leo because he "was worried about Leo", and that he was worried about Leo because Leo had said that "a rat had pissed" on his head and Leo thought this meant he would have another accident. As accused had not mentioned such a conversation when giving evidence in chief or under cross-examination, the Court asked the accused whether the police witnesses were correct when they gave evidence of that conversation. The accused replied that he had said that to the police, but that he had forgotten to mention this in his earlier evidence.

On Wednesday 23rd May, after Leo Wattermena had died, Inspector Carroll and Vonhoff took accused to the Mortuary at the Native Hospital where, these officers say, Carroll told the accused he was going to show him a body and ask him further questions. Carroll cautioned accused that he need not answer. Accused was then shown the body of Leo Wattermena and identified it. He said he had known Leo since they were boys. Carroll asked accused when he had last seen Leo and accused replied - "Saturday night". Carroll says, and Vonhoff confirms, that Carroll said to the accused - "Where was that?" and that accused replied - "At the Golf Course"; that Carroll then asked accused - "Was he alive then?", but accused did not reply and did not reply when the question was repeated. The accused was then taken back to the Police Station and formally charged with the wilful murder of Leo Wattermena.

Mr. Jones formally asked the accused, at the end of his examination in chief, had he killed Adela Woo or Leo Wattermena and the accused said "No".

Motive:- There was no direct evidence of motive in this case: but although the Prosecution may bring evidence of motive, just as the Defence may bring evidence of lack of motive, there is no onus on the prosecution to prove a motive. In this case the Defence stressed the absence of direct evidence of a motive for the killing.

As to the instrument(s) that caused Adela Woo's and Leo Wattermena's injuries:- Dr. Saave considered that Adela Woo's fatal injury could have been caused by an instrument that had a circular striking edge but that was cupped or hollow inside the circumference of that striking edge, e.g., by the ringed end of the iron scraper (Exhibit 'B') or some such thing. Dr. Saave thought that the injury on Leo's left cheek, which was a circular one, could have been similarly caused: but he doubted if the fatal injury behind Leo's right ear would have been inflicted by anything such as the ringed end of Exhibit 'B': he thought that that injury would have been inflicted by something with a sharper edge, possibly something such as the other end of Exhibit 'B', i.e. the scraping end. But scientific tests done to detect blood-stains or human organic matter on Exhibit 'B' had negative results: the opinion of the medical witnesses was, that had such blood-stains or matter been on Exhibit 'B', it would have been possible to have removed them but difficult to have done so effectively enough to defeat microscopic and sensitive tests. The accused first said, in his written statement, that he had used an "Iron peg"; later, and, (he says) because he was frightened, he said he had used the iron scraper, (Exhibit 'B'); at this Court he has said he did not attack the two deceased at all. As Mr. Jones said in his closing address, it would be simple in Rabaul, with war debris everywhere about, to get rid of a lethal instrument. In the present case, I do not think there is evidence upon which a jury could safely find that some particular instrument was used: I consider that, on the evidence here, it is only open to a jury to find some instrument was used, and used with the considerable force requisite to inflict the injuries seen on Adela Woo and Leo Wattermena.

Counsel's addresses:- In his able closing address for the Defence, Mr. Jones submitted that the jury should first consider the

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circumstances leading up to accused's alleged admissions and confession: the accused was a young man and of mixed blood and of little education and would be prone to wish to please police authority he had been at the Police Station for five hours before he made the alleged admissions and written confession: the jury should be concerned with accused's allegations about being shown the photograph and being shown an iron peg at the Police Station before he made his written statement, and by the last two sentences in that statement which really were not "his". Mr. Jones said he did not wish to attack the police but pointed out that they would realise that the accused's confessional statement practically constituted the case for the prosecution, and therefore, if any indiscretion had been committed by the police, they would be likely "to forget to give evidence of it or embellish evidence to make it more acceptable". Mr. Jones remarked that, according to the police evidence, the police had been "very polite" and "scrupulous" throughout. Secondly, the jury could infer, from the internal evidence of accused's written statement, that the phrases used showed that he was saying what he thought the police wished him to say and adopting words they had used or that he was incorporating in his statement gossip that he had heard and deductions he had drawn from the photograph he said he had seen. These things could also account, Mr. Jones submitted, for accused's inability to point out, later, on the Monday afternoon, the sites near the Sixth Green where Leo and Adela had been found. Thirdly, the jury should consider the accused's alleged confessional statements in relation to external facts:- the fact that there was no evidence of any but friendly relations between the accused and the two deceased; the fact that there was no direct evidence of motive; the fact that no witness had said that he or she had noticed anything abnormal or unusual about accused's conduct or about the accused himself on the very Sunday of the tragedy; the fact that there was no corroboration of accused's confession and no physical corroboration, no physical "clue" at all, implicating the accused. In all the circumstances, he submitted, the jury should disregard the alleged confessions and find that the evidence as a whole was insufficient to establish accused's guilt of either charge.

Mr. Mallon, closing for the Prosecution, conceded that the case for the Prosecution rested almost wholly on the alleged confessional statements of the accused. Confessions should be regarded with caution; but the accused had not suggested that the Police had used force to get those admissions. How was the accused, who at the time he made the written confession had had no opportunity of getting near the Sixth Green and seeing what was there, able to anticipate the Prosecution's hypothesis that the bloodstains on the green, the "drag-marks", etcetera, showed that Adela and Leo had both been attacked on that green and had then been dragged or carried to different parts of the nearby bush? Accused's statement at the Police Station on the Monday afternoon, that he had seen Leo lying on top of Adela, was, Mr. Mallon submitted, remarkably consistent with the fact that Leo had suffered a fatal injury on the back of his head and that his body was found minus part of his clothing. Mr. Mallon suggested that the jury might find it difficult to believe that a person of accused's degree of sophistication would be so frightened of, or so desirous of pleasing, the police that he would falsely confess to the killing of Adela Woo and to the attack on Leo. The police evidence, he submitted, gave a logical account of events and was more credible than the accused's account. He submitted also that the deaths of Adela and Leo were due to the violence inflicted on them and that it was for the jury to decide, with the aid of the legal presumption about intent, what intent such violence showed- if an intent to kill, there was wilful murder; if an intent to do grievous bodily harm only (yet which resulted in death) there would be murder only. He lastly submitted that the evidence as a whole established accused's guilt on both charges.

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Findings of Jury:-

It is now my duty, as Jury, to consider all the evidence that has been given in this case and all the inferences that may fairly be drawn from that evidence, and to consider the arguments put by learned counsel; and then, remembering always that the onus is on the Prosecution to prove every element of the offences it has charged against the accused, to arrive at my findings and verdicts. In that task I have had the advantage of hearing all the evidence as it was given and also of seeing and observing the way it was given.

There can be no reasonable doubt on the evidence, and the Defence concedes, that Adela Woo met her death in the early hours of Sunday, 20th May, last, as the result of violence, namely, the brain injury I have already described. Nor can there be any reasonable doubt on the evidence that Leo Wattermena was attacked in the early hours of that same Sunday morning and suffered violent injuries from one of which, the one that penetrated to the brain, he died on the 23rd of May last.

But does the evidence establish, beyond reasonable doubt, who committed those fatal assaults on Adela Woo and Leo Wattermena?

On the one hand, the Prosecution has tendered evidence of oral admissions and a written confession which were allegedly made by the accused to the police on Monday 21st May last, and which, if true, would show that the accused was the person who attacked Adela and Leo. On the other hand, the accused has sworn at this trial that those admissions and the confession were false and were made by him because he was frightened of, and wished to please, the police. There have been, as I have shown in this summing-up, many conflicts between the evidence given by the police witnesses and that given by the accused. Paying due regard to what Mr. Jones has said or inferred about police evidence, I think that the police witnesses Carroll, Young and Vonhoff gave their evidence straightforwardly and fairly, and it must be admitted that none of their evidence was shaken in the slightest in cross-examination. The evidence of each police witness was fully corroborated by other evidence. The police evidence was consistent, plausible, and gave a rational account of events: it "made sense" whereas accused's account so often did not. Carroll frankly stated that, after he had asked the accused whether he had been threatened and the accused had replied "No" and after he had asked accused whether he had made a statement of his own free will and accused had said "Yes", he asked the accused to add words to that effect to his written statement. That incident showed a naivete and lack of acumen on Carroll's part but not, I find, anything sinister in this particular instance.

The accused in the witness box struck me as being confident, self-possessed and not unintelligent; but, making every allowance for his being of mixed blood and of limited education, I found his evidence at times impossible to accept as truthful. Some of his denials of evidence given by the police witnesses were so extravagant as to surpass belief: e.g., I do not believe his statement that at no time did any police officer caution him, or his statement that nothing was said or done in the utility late on the Monday afternoon when it stopped near Malay Town on the way to the Golf Course. He says he made false admissions and confessional statements on the Monday because he thought the Police wanted him to say such things and that he said them because he was frightened by Vonhoff's alleged remark that accused would not be allowed to go home until he had told the truth. As already noted, the Defence did not give Vonhoff the express opportunity of saying whether or not he had made such a remark; but, in answer to a more general question, he had replied that he had not said more to the accused than what he had given evidence of. As for accused's statement that he believed, on the Tuesday afternoon, that if he admitted that the iron scraper was what he had used to attack Leo and Adela he would be allowed to go home: - that seemed to me to

been an incredible statement, seeing that he had, on the previous evening, been charged with the murder of Adela Woo and then lodged in the cells. At this Court, he did not appear to me to be the sort of person who would entertain such an illusory belief, or to be the sort of person who in some such belief and with the idea of saying what he thought the Police would like to hear, would falsely confess on that Monday afternoon that he had attacked Leo and the dead Adela. According to the police evidence, it was just after Carroll had told the accused, that Monday morning, that it had been discovered that accused's earlier story - (that he had been to Jack Yamashita's house and woken him up on a Saturday night) - was not correct, that accused said he had followed Leo and Adela to the green, seen them lying on the ground and hit them; and immediately after that the accused had broken down, sobbing bitterly. But when Mr. Mallon asked the accused whether Carroll had not taxed him with having falsely stated that he had been to Yamashita's house on the Saturday night - the accused's reply to Mr. Mallon was - "I don't know" - "I don't remember". There is strong circumstantial evidence that Leo and Adela were attacked on the Sixth Green at a moment when they were about to indulge in sexual play of some sort: - the evidence about the pools of blood on that green; about Adela's bloomers being off one leg and pushed up on the other; about her torn brassiere and exposed breast; about Leo's body being found dressed only in a shirt; and about the fatal wound behind his right ear. There is strong circumstantial evidence, from the marks like drag-marks seen, that Leo's body was dragged from that green to the clump of bushes which lay to the east of that green and in which he was found; and that Adela's body was dragged and then carried to the depression south-eastward from the green in which her dead body, buried to the knees, was found. It is not disputed that at the Police Station on Monday afternoon, 21st May, the accused made certain admissions (whether true or false); there was the oral one - "I followed Leo and his girl to the green and when I saw them lying on the ground I went mad and hit them"; and that was followed soon after by the written statement in which he said that he had followed Leo and Adela to the green; had attacked them with an iron peg, after which they were both lying on the ground; had taken Adela and buried "half of her"; had carried Leo to the bushes; and had thrown the peg away. He made that oral admission and written confession that afternoon before he had had the opportunity of visiting the Sixth Green; and those confessional statements are not inconsistent with the circumstantial evidence so closely and I particularly observed accused's demeanour when giving those explanations in his evidence. They did not, in my opinion, ring true. The tempo of his evidence slowed appreciably, with frequent pauses, whenever he was on controversial ground and giving an account that contradicted that which had been given by the police witnesses. He could find no answer, for quite some minutes, to Mr. Mallon's question as to why he should have thought, on the Monday afternoon and before he had been near or been taken that day to the Sixth Green, that Leo and Adela had both been attacked at one and the same spot; when, at length, the accused did reply, his answers (already quoted by me) were unconvincing to a degree. He was not, in my opinion, a reliable or trustworthy witness.

The request made by Carroll to the accused, when accused had written down his statement, was a foolish, though not a sinister action, in my view. Generally I find, on the evidence, that the police conducted their investigations in this case with propriety.

I also find that accused's admissions and confession of the 21st May were not obtained from him by means of any threat or promise or other inducement made or held out to him by the police or by unfair or improper means employed by them. I find that those confessional statements were voluntary and that, insofar as they related to the attack on Leo and Adela, they were true. In other words, I find that the accused attacked both Leo and Adela in the early hours of Sunday, 20th May 1956, and inflicted injuries on them of which Adela Woo died that day and Leo Wettemena died on the 23rd of May, 1956.

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THE QUEEN v. FREDERICK PHILLIP SMITH (Summing-up) (Continued)

There remain the questions:- With what intent did the accused attack Adela Woo and with what intent did he attack Leo Wattemena? In determining with what intention a person has done an act, not only his words but his actions must be looked at; his oral explanations may or may not be true and his deeds may speak louder than his words. There is a legal presumption that a person may be taken to intend the natural and probable consequences of his voluntary acts; but that presumption is rebuttable and, "if, on all the facts of the case, it is not the correct inference, then it should not be drawn". In this case, there is, in my opinion, insufficient evidence to enable me to find with any certainty what implement was used to inflict the injuries suffered by Adela Woo and Leo Wattemena. Whatever it was, it was used with considerable force - force sufficient to smash in the skulls, and inflict fatal injuries to the brains, of Adela and Leo, apart from the other injuries I have described as respectively suffered by them. On the evidence of the injuries suffered by Adela Woo, I feel no reasonable doubt that the accused's intention was to kill Adela. There is no evidence whatever to show that that killing was "authorised or justified or excused by law" or that there was "provocation" for it such as might reduce that killing to manslaughter. It was an unlawful killing and a wilful murder. On the evidence of the injuries suffered by Leo Wattemena I feel no reasonable doubt that the accused's intention was to kill Leo. There was no evidence to show that that killing was "authorised and justified or excused by law" or that there was "provocation" for it such as might reduce that killing to manslaughter; it also was wilful murder.

For the reasons I have given, I find the accused, as to the first count in the indictment, "Guilty", and I find the accused, as to the second count in the indictment, "Guilty".

(Sgd) F.B.P.