thinking that D2's statement was evidence that the victim had in fact been raped. With respect I disagree, the words of the summing up are clear. The judge stressed that the statement could not be used against any other accused. It was a little unfortunate that the judge should refer to this statement at all, for it was not even evidence against D2 who was not charged with rape but only with false imprisonment. In the end, however, in my view no harm was done.

Next I come to Mr Ramanathan's Ground 2, on the evidence of D1's attempted escape. The passage in the summing up complained of reads: -

> " There is one piece of evidence which is not capable of amounting to corroboration but which is nevertheless relevant. That is the police evidence that upon opening the door of Chatham Court, at seeing the police and the girl and upon hearing her point him out, the 1st defendant tried to run away and was chased, caught and arrested. ..... It is not corroboration, but it is nevertheless something which you may take into consideration as revealing a consciousness of guilt on the part of the 1st defendant about something unless, of course, you feel that the 1st defendant simply ran out of panic or that there is some other explanation for his conduct."

Counsel argued that there was no nexus between the charge which D1 faced, namely, rape, and his flight. There was no evidence that D1 knew the victim had made a report to the police. The judgment of Power, JA (as he then was) in R v. LAM Yau-tim (1991) Crim. App. No. 556 (unreported) was cited in support: see also R v. CHAN Kwok-keung (1990) 1 HKLR 359, 363 A-C. However, as Mr Cross for the Prosecution pointed out, here there was a strong nexus. The victim in the early hours of the 30 December 1990, less than 24 hours after the alleged offences, brought the police to D1's home and pointed him out. If anything the judge's direction was unduly favourable to the defence.

Next, Mr Ramanathan complained that the judge's direction in respect of D3 on counselling was wrong.

In R v. Coney (1882) 8 QBD 534, Hawkins, J, said (at p. 557): -

> "..... In my opinion, to constitute an aider and abettor some active steps must be taken by word, or action, with the intent to instigate the principal, or principals. Encouragement does not of necessity amount to aiding and abetting, it may be intentional or unintentional, a man may unwittingly **encourage** another in fact by his presence, by misinterpreted words, or gestures, or by his silence, or non-interference, or he may **encourage** intentionally by expressions, gestures, or actions intended to signify approval. In the latter case he aids and abets, in the former he does not. It is no criminal offence to stand by, a mere passive spectator of a crime, even of a murder. Non-interference to prevent a crime is not itself a crime. But the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition to it, though he might reasonably be expected to prevent and had the power so to do, or at least to express his dissent, might, under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged and so aided and abetted. But it would be purely a question for the jury whether he did so or not."

The passage was cited with approval in R v. Clarkson (1971) 55 Cr. App. R 445, at PP. 449-450. On the dictum of Hawkins, J. there was clearly evidence upon which the jury could convict D3.

In my judgment, none of the Grounds of Appeal, taken individually, was sufficient to upset the verdicts. The next question is whether taken cumulatively, I have such a feeling of unease and doubt that should lead me to say that the verdicts were unsafe and unsatisfactory. I must confess that, having regard to all the circumstances of the case, and bearing in mind the weaknesses in the victim's evidence, I do not entertain "a lurking doubt".

I would dismiss the application by the three appellants for leave to appeal against conviction.

(TL Yang)

Chief Justice

Macdougall, V.-P.:

It is not necessary for me to repeat all of the factual detail that has been referred to in the judgment of my Lord, the Chief Justice.

As he observed, there were a number of inconsistencies and weaknesses in the complainant's testimony. These were fully explored in cross-examination, and the judge in his summing up drew the jury's attention to the more important of them. I would not be disposed to allow this appeal solely on the ground that was argued on behalf of all of the applicants that the complainant's testimony was so flawed and inherently incredible that the convictions are unsafe and unsatisfactory.

However, the matter does not end there. The defence case was that the complainant had come to and had remained at the flat at Chatham Court of her own free will and that such acts of intercourse that occurred were consensual.

In cross-examination the complainant admitted that she had previously been working as a prostitute for one Ah Ho but that the 2nd applicant, Yuen King-lok, had taken her away from Ah Ho and had her work for him. She further admitted that on the afternoon of the day prior to the alleged rapes she had gone to her sworn brother's home; that Ah Ho and two other men were present there; that Ah Ho was seeking help from the complainant's sworn brother to get the