

In the Privy Council.

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UNIVERSITY OF LONDON
W.C.1.
No. 32 of 1949. 28 MAR 1951
INSTITUTE OF ADVANCED
LEGAL STUDIES

INSTITUTE OF APPEAL FROM THE COURT OF APPEAL OF
LEGAL STUDIES, THE FEDERATION OF MALAYA

25, RUSSELL SQUARE,

LONDON,

W.G.1 SAMBASIVAM

BETWEEN

AND

THE PUBLIC PROSECUTOR OF THE FEDERATION
OF MALAYA

UNIVERSITY OF LONDON
W.C.1.
17 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

APPELLANT
RESPONDENT.

CASE FOR THE RESPONDENT

1.—This is an appeal from an Order, dated the 28th April, 1949, of the Court of Appeal of the Federation of Malaya (Willan, C.J., Bostock Hill and Spenser Wilkinson, JJ.), dismissing an appeal from a Judgment, dated the 22nd March, 1949, of the Supreme Court of Johore (Storr, J.) and two Assessors, whereby the Appellant was convicted of carrying a firearm which he was not duly licensed to carry contrary to reg. 4 (1) (a) of the Emergency Regulations, 1948, and was sentenced to death.

RECORD

p. 47

p. 40

2.—Regulation 4 (1) of the Emergency Regulations, 1948, reads as follows :

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“ Any person who carries or who has in his possession or under his control—

“ (a) any fire-arm, not being a fire-arm which he is duly licensed to carry or possess under any other written law for the time being in force ; or

“ (b) any ammunition or explosives without lawful authority therefor,

“ shall be guilty of an offence against these Regulations and shall on conviction be punished with death.”

3.—The Appellant was charged in the Court of the Magistrate at Muar, on the 13th February, 1949, with, on or about 10 a.m. on the 13th September, 1948, at Bukit Kepong, Panchor, having been found in possession of arms to wit one .38 Serviceable revolver and 10 rounds of ammunition without

p. 1,

ll. 24-27

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p. 2,
ll. 18-19 ;
p. 51

p. 4,
ll. 14-15

lawful authority. The prosecution produced a certificate of the Deputy Public Prosecutor, under reg. 7 of the Emergency (Criminal Trials) Regulations, 1948, certifying that the trial of the Appellant on these charges was a proper case for trial under the Emergency (Criminal Trials) Regulations. Accordingly, the learned Magistrate did not hold any preliminary enquiry, but committed the Appellant directly for trial before the High Court at Johore Bahru.

4.—The relevant portions of the Emergency (Criminal Trials) Regulations, 1948, read as follows :—

* * * *

2. In these Regulations, unless the context otherwise requires—

“ emergency procedure case ” means any case certified as a proper case for trial under these Regulations in accordance with Regulation 7 of these Regulations ;

“ Public Prosecutor ” includes a Deputy Public Prosecutor ;

“ Registrar ” includes an Assistant Registrar.

3. The provisions of these Regulations shall have effect notwithstanding anything to the contrary contained in any written law, but, except in so far as the same may be varied by these Regulations or by any other Regulations made under the Emergency Regulations Ordinance, 1948, the ordinary practice and procedure of the Courts shall apply to emergency procedure cases tried under these Regulations. 20

* * * *

7. Where a person is charged with any offence against any written law and the Public Prosecutor certifies in writing that the case is a proper one for trial under these Regulations, such case shall be tried and disposed of in accordance with the provisions of Regulations 8 to 12 inclusive of these Regulations.

8. (1) No preliminary inquiry shall be held in respect of an emergency procedure case, but the Magistrate or District Judge before whom the accused person is brought shall, upon production of the certificate referred to in Regulation 7 of these Regulations, and whether or not a preliminary inquiry has already been commenced, forthwith commit the accused for trial by the High Court at such place, whether within the same State or Settlement or not, and upon such charge as may be designated by the Public Prosecutor. 30

* * * *

11. In every emergency procedure case the prosecution shall, not less than two clear days before the date fixed for the trial of the case, furnish to the accused person or his advocate and 40

solicitor, if any, a copy of the statements made to the police during the police investigation of all persons whom it is intended to call as witnesses for the prosecution at the trial. RECORD
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* * * *

5.—In this case, the Deputy Public Prosecutor signed the certificate under Regulation 7 with the addition of the words “ for Solicitor-General.” This addition was unnecessary, because the Deputy Public Prosecutor had power to give the certificate on his own behalf under Regulations 2 and 7 of the Emergency (Criminal Trials) Regulations, and on the face of it the Document was the certificate of the Deputy Public Prosecutor himself. p. 51,
ll. 26-28

10 The Respondent further submits that the addition of these words would not, in any case, invalidate the certificate, because, under the Criminal Procedure Code of the Federated Malay States, s. 376 (ii), as amended by the Criminal Procedure (Amendment) Ordinance, 1947, s. 4, the Solicitor-General has all the powers of a Deputy Public Prosecutor, which powers include that of giving such a certificate as was given in this case. (The Criminal Procedure Code and the Criminal Procedure (Amendment) Ordinance are in force in the Federation of Malaya by virtue of Clause 135 of the Federation of Malaya Agreement, 1948.)

6.—The Appellant was tried in the Supreme Court of Johore, before Laville, J. and two Assessors, on the 2nd and 3rd March, 1949. Both the Assessors found the Appellant “ Not guilty ” on both charges. On the first charge (of carrying a firearm) the learned Judge disagreed with the finding of the Assessors, and ordered a re-trial. On the second charge (of possessing ammunition) the learned Judge agreed with the finding of the Assessors, and acquitted the Appellant. p. 17,
ll. 21-24
p. 17,
ll. 25-26
p. 17,
ll. 27-28

7.—In thus ordering a re-trial the learned Judge acted in conformity with s. 198 (ii) of the Criminal Procedure Code, which reads as follows :

“ If the Court is unable to agree with the opinion of both assessors, or of the one remaining assessor as provided by Section 188 the proceedings shall be stayed and a new trial held with the aid of fresh assessors.” 30

8.—On the first charge the Appellant was re-tried before Storr, J. and two Assessors on the 21st and 22nd March, 1949. The following was the case for the prosecution. On the morning of the 13th September, 1948, three Malays were walking along a path to Bukit Kepong. They met, coming towards them, a party consisting of two Chinese and the Appellant. One of the Malays greeted one of the Chinese, whom he knew. The Chinese made a rude reply, and there followed a fight between the two parties, in which the Appellant produced a revolver. One of the Malays wounded the Appellant with a knife, and got the revolver from him. The Malays reported the matter to the Penghulu at Bukit Kepong, and handed the revolver to him. (In making this report to the Penghulu, the Malays acted in conformity with s. 13 (i) of the Criminal Procedure Code.) They returned p. 25,
ll. 10-19

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RECORD with the Penghulu to the scene of the fight, found the Appellant lying seriously wounded, and carried him to Bukit Kepong.

9.—Each of the three Malays gave evidence about the fight, and there was no material discrepancy between their accounts. Saebun Bin Kamat, who fought with the Appellant, said he saw the Appellant draw a revolver from his waist. Saebun rushed at him and stabbed him with a knife. The pistol fell to the ground, and Saebun, having disabled the Appellant, picked it up. Abdul Aziz Bin Tampok, who chased one of the Chinese, said that before doing so he saw the Appellant holding a pistol in his right hand and pointing it at Saebun : he saw the Appellant draw the pistol from his waist. 10
 The third Malay, Mohamed Said Bin Alam, fought with the second Chinese, so saw little of the fight between Saebun and the Appellant. Having killed the Chinese, Mohamed Said returned to find that Saebun had wounded the Appellant. Saebun was holding a revolver, which he said he had got from the Appellant's hand.

10.—Other evidence for the prosecution was given by the Penghulu and by police officers through whose hands the revolver (which was produced and identified) had passed. Abdullah Bin Mohamed Shah, Sergeant Major of Police at Muar, gave evidence that he had searched the Arms Register at Muar and found therein no mention of this revolver. 20

11.—The prosecution tendered in evidence a statement taken from the Appellant in Muar Hospital on the evening of the 13th September, 1948. The Senior Inspector who took the statement had the permission of the medical authorities to approach the Appellant, and satisfied himself that the Appellant was fit to make a statement and knew what he was talking about. The Appellant made his statement in Tamil ; an interpreter translated it into Malay, and the Inspector wrote it down in English. Part of the Statement was made voluntarily and part in answer to questions from the Inspector, but the prosecution tendered only the part which was made voluntarily. Counsel for the Appellant did not object to this part 30
 of the statement, and the learned Judge admitted it. The statement was made after the Inspector had administered a caution in compliance with Regulation 33 of the Emergency Regulations, 1948, which then read as follows :

33. (1) Where any person is charged with any offence against these Regulations or with any offence specified in the Schedule to these Regulations, any statement, whether such statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after such person is charged and whether in the course of a police investigation or not, by such 40
 person to or in the hearing of any police officer of or above the rank of Inspector shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence

and, if such person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit :

RECORD

Provided that no such statement shall be admissible or used as aforesaid—

10 (a) if the making of the statement appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient in the opinion of the Court to give such person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him ; or

(b) in the case of a statement made by such person after his arrest, unless the Court is satisfied that, before making such statement, a caution was administered to him in the following words or words to the like effect : “ It is my duty “ to warn you that you are not obliged to say anything, but “ anything you say may be given in evidence at your trial.”

20 (2) Notwithstanding anything to the contrary contained in any written law a person accused of an offence to which paragraph (1) of this Regulation applies shall not be bound to answer any questions relating to such case after any such caution as aforesaid has been administered to him.

(3) This Regulation shall apply in relation to any person tried after the commencement of these Regulations whether or not the proceedings against such person were instituted and whether or not the relevant statements were made, before such commencement.

30 12.—In this statement, the Appellant gave an account of his movements from the 9th to the 13th September. On the morning of the 13th September he left Bukit Kepong with a Chinese named Ah Kow, whom he knew, and another Chinese whom he did not know. They walked along a track towards a jungle. Ah Kow handed over to the Appellant a revolver fully loaded and to the other Chinese a cut rifle, and told them to shoot anyone who tried to obstruct them. The Appellant put the revolver in his left hand trouser pocket. They then proceeded along the track for another mile, when they happened to pass three Malays coming along the path from the opposite direction, who, having passed them, turned and attacked the Appellant’s party. Before the Appellant could take the 40 revolver from his pocket to shoot him, one of the Malays knocked him down ; the Malay then took the revolver and cut the Appellant with a parang.

p. 54, l. 28—
p. 55, l. 15
p. 55,
ll. 15–37

13.—The Appellant gave evidence on affirmation. He gave an account of his movements before the 13th September different from the account in

p. 36, l. 47—
p. 37, l. 6

p. 35, l. 32— his statement. On the morning of the 13th he left Bukit Kepong with
 p. 36, l. 9 ; Ah Kow and another Chinese. The Appellant carried only a bag containing
 p. 36,
 ll. 24-27 clothing. They met three Malays, and the Chinese and the Malays, after
 exchanging a few words, began fighting. The Appellant walked on alone.
 He heard a shot and started to run, and then Saebun attacked him with
 a knife. He became unconscious, and regained consciousness in Muar
 Hospital two or three days later. He did not know whether he made
 p. 37,
 ll. 25-30 a statement on the 13th September or not, but denied that he ever made
 the statement given in evidence.

pp. 40-44 14.—The learned Judge summed up the evidence to the Assessors (as 10
 he is permitted, but not required, to do by the Criminal Procedure Code,
 p. 43,
 ll. 38-41 s. 197). He told the Assessors that they must satisfy themselves, as to the
 Appellant's statement,—in the first place, whether it was ever made,
 p. 44,
 ll. 11-16 secondly, if they thought it was made, whether it was true. If they thought
 it was true, they must see whether it was corroborated. The evidence of
 Saebun and Abdul Aziz, if the Assessors accepted it, provided corroboration.

p. 40,
 ll. 3-10 15.—Both the Assessors found the Appellant " Guilty," and the learned
 Judge, concurring in these opinions, convicted him and sentenced him
 to death.

p. 44, l. 25— 16.—The Appellant appealed to the Court of Appeal of the Federation 20
 p. 45, l. 19 of Malaya. His principal ground of appeal was that his statement was
 recorded in a manner and in circumstances which made it valueless and
 irregular. The Court (Willan, C.J., Bostock Hill and Spenser Wilkinson,
 p. 47,
 ll. 16-40 ; JJ.), on the 28th April, 1949, dismissed the appeal without calling on
 p. 45, l. 37 Counsel for the Public Prosecutor.

17.—The Respondent submits that the evidence of Senior Inspector
 Abdullah Bin Omar (set out in paragraph 11 hereof), who took the
 Appellant's statement, and of the interpreter who translated it makes it
 clear that the Appellant was at the time fit to make a statement and knew
 what he was saying. The statement was made after a proper caution had 30
 been given, and the Respondent submits that, although the Inspector did
 not understand the language, in which the Appellant spoke, the statement
 was nevertheless made " to or in the hearing of " the Inspector : the
 legislature of a country in which various languages are spoken must be
 taken to have contemplated the making of statements through interpreters.

18.—The Respondent submits that there was no need for a second
 certificate authorizing the re-trial of the Appellant under the Emergency
 (Criminal Trials) Regulations. The re-trial was a trial of the Appellant
 on one of the charges covered by the certificate which the Deputy Public
 Prosecutor had given. Once that certificate had been given, the case had 40
 to be " tried and disposed of " under the Regulations, and the Respondent
 submits that that process included both the trial and the re-trial of the
 Appellant.

19.—The Respondent humbly submits that the order of the Court of Appeal should be affirmed, and this appeal should be dismissed, for the following (amongst other)

REASONS

1. BECAUSE the certificate given under the Emergency (Criminal Trials) Regulations, 1948, s. 7 was in every respect a valid certificate :
2. BECAUSE that certificate authorized the re-trial of the Appellant as an emergency procedure case under the said Regulations :
3. BECAUSE the statement of the Appellant was properly admitted in evidence :
4. BECAUSE the trial of the Appellant was regular in every respect, the evidence fully established the Appellant's guilt of the offence charged, and the Appellant was rightly convicted.

J. D. CASSWELL.
J. G. LE QUESNE.

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No. 32 of 1949.

ON APPEAL FROM THE COURT OF APPEAL OF
THE FEDERATION OF MALAYA.

BETWEEN

SAMBASIVAM APPELLANT

AND

THE PUBLIC PROSECUTOR
OF THE FEDERATION
OF MALAYA RESPONDENT.

CASE FOR THE RESPONDENT

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