

No. 15 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

---

---

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

---

---

B E T W E E N :

TEH CHENG POH @ CHAR MEH

Appellant  
(Petitioner)

- and -

THE PUBLIC PROSECUTOR, MALAYSIA

Respondent  
(Respondent)

---

---

RECORD OF PROCEEDINGS

---

---

HATCHETT JONES & KIDGELL  
9 Crescent  
London, EC3N 2NA

STEPHENSON HARWOOD  
Saddlers' Hall  
Gutter Lane,  
London, EC2Y 6BS

Appellant's Solicitors

Respondent's Solicitors

No.15 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

---

---

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

---

---

B E T W E E N :

TEH CHENG POH @ CHAR MEH

Appellant  
(Petitioner)

- and -

THE PUBLIC PROSECUTOR, MALAYSIA

Respondent  
(Respondent)

---

---

RECORD OF PROCEEDINGS

---

---

INDEX OF REFERENCE

---

---

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT IN MALAYSIA AT PENANG</u>		
1	Amended Charges	15th November 1976	1
2	Notes of Proceedings	8th June 1976 16th November 1976	2
3	<u>RESPONDENT'S EVIDENCE</u>		
	P.W.1 Cpl. Sahab b. Ahmad	16th November 1976	5
	P.W.2 Cpl. Haji Mohamed bin Chu	16th November 1976	5
	P.W.3 Insp. Ku Yahya	16th November 1976	7
	P.W.4 Zachariah bin Mohd Hassan (Chief Armourer)	16th November 1976	8

No.	Description of Document	Date	Page
	P.W.3 Insp. Ku Yahya (recalled)	17th November 1976	9
4	<u>APPELLANT'S EVIDENCE</u>		
	Teh Cheng Poh alias Char Meh	16th November 1976	9
5	Submission by Defence	17th November 1976	10
6	Submission by D.P.P.	17th November 1976	11
7	Verdict	17th November 1976	12
8	Judgment	15th December 1976	13
9	Certificate of Sentence	17th November 1976	24
	<u>IN THE FEDERAL COURT OF MALAYSIA</u>		
10	Notice of Appeal	17th November 1976	25
11	Petition of Appeal	30th December 1976	27
12	Notes of Argument by Suffian Lord President	20th and 21st January 1977	29
13	Notes of Argument by Raja Azlan Shah F.J.	20th and 21st January 1977	42
14	Notes of Argument by Suleiman F.J.	20th and 21st January 1977	51
15	Judgment of Suffian, Lord President	26th March 1977	58
16	Order	26th March 1977	84
	<u>IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL</u>		
17	Order granting Special Leave to Appeal to His Majesty the Yang di- Pertuan Agung	19th December 1977	85

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
P1 (A)	Consent by D.P.P.	27th January 1976	86
P1 (B)	Consent by D.P.P.	27th January 1976	87
P.2	Amended Charges	15th November 1976	87
P.3	A Revolver	) Not trans- mitted or re- produced	
P.4	5 bullets (3 live and 2 expended)		
P.5	A Safety Helmet		
P.6	Copy of Charge Sheet of Case No. P(2) 255/76	16th November 1976	89

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

---

---

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN  
AT KUALA LUMPUR

---

---

B E T W E E N :

TEH CHENG POH @ CHAR MEH Appellant  
(Petitioner)  
- and -  
THE PUBLIC PROSECUTOR, MALAYSIA Respondent  
(Respondent)

---

---

10

RECORD OF PROCEEDINGS

---

---

No. 1

AMENDED CHARGES

---

In the  
High Court

No.1  
Amended  
Charges

Teh Cheng Poh @ Char Meh,  
c/o Penang Prison,  
Penang.

15th November  
1976

You are charged at the instance of the  
Public Prosecutor in the name of His Majesty  
the Yang Dipertuan Agung and the Charges against  
you are :-

20

1st Charge:

That you on the 13th day of January, 1976,  
at about 12.35 p.m., at the junction of Kampar  
Road and Ayer Itam Road, in the District of  
Georgetown, in the State of Penang, in a security  
area, proclaimed by the Yang Dipertuan Agung  
vide Federal Gazette No. P.U. 148/69, without  
lawful excuse did have in your possession a  
firearm, to wit, a home-made .38 Revolver,  
and thereby committed an offence punishable under  
section 57(1)(a) of the Internal Security Act,  
1960.

30

In the  
High Court

No.1  
Amended  
Charges

15th November  
1976  
(cont'd)

2nd Charge:

That you on the same date, time and place, in the District of Georgetown, in the State of Penang, in a security area, proclaimed by the Yang Dipertuan Agung vide Federal Gazette No. P.U. 148/69, without lawful excuse did have in your possession ammunitions, to wit, 5 round of .38 Special Revolver bullets, and thereby committed an offence punishable under Section 57(1)(b) of the Internal Security Act, 1960.

10

Dated at Penang this 15th day of November, 1976.

By Authority of His Majesty's  
Public Prosecutor

Sgd. Ghazali Ishak  
Deputy Public Prosecutor

In the  
High Court

No.2  
Notes of  
Proceedings

8th June  
1976

No. 2

NOTES OF PROCEEDINGS

IN THE HIGH COURT IN MALAYA AT PENANG  
(CRIMINAL TRIAL NO.1 OF 1976)

MISCELLANEOUS CRIMINAL APPLICATION NO: 4 OF 1976

20

THE PUBLIC PROSECUTOR

VS.

TEH CHENG POH @ CHAR MEH

In Open Court,  
This 8th day of June, 1976  
Before me,  
F.C. ARULANANDOM,  
Judge.

NOTES OF PROCEEDINGS

For P.P. : En. Ghazi bin Ishak  
For Accused: Mr. Karpal Singh

30

Charge No.1: Section 57(1)(a) I.S.A., 1960

Charge No. 2: Section 57(1)(b) I.S.A., 1960.

In the  
High Court

Karpal Singh states a question regarding these security cases are pending before the Federal Court.

No.2  
Notes of  
Proceedings

Court adjourned for D.P.P. to check with Attorney-General's Department. F.C.A.

8th June  
1976  
(cont'd)

Court resumes.

10 Ghazi reports that Justice Wan Hamzah referred questions in a matter where an accused was also charged with an offence under Section 57(1)(a) and Section 57(1)(b) of the Internal Security Act. Five questions were referred.

20 (1) Whether Essential (Security Cases) Regulations are inconsistent with certain provisions of the Constitution and Clause (6) of Article 150 of the Constitution does not extend to the Regulations on the ground that the Regulations are not such an Ordinance but subsidiary legislation under the Ordinance.

(2) When both Houses of Parliament have sat after the Proclamation of Emergency on 15th May, 1969, in contravention of Clause (2) of Article 150 which empowers the Yang Dipertuan Agung to promulgate Ordinances only until both Houses of Parliament are sitting.

30 Case adjourned to a date to be fixed after Fed. Ct. ruling. Accused to be remanded in custody till then.

F.C.A.

This 16th day of November, 1976  
(continued from 8th June, 1976)

Notes of  
Proceedings

Charges: Section 57(1)(a) & (b), I.S.A.

16th November  
1976

For Public Prosecutor: Encik Ghazi bin Ishak.  
For Accused: Karpal Singh (assigned).

Amended Charges P2.  
Consent P1.

1st Charge read and explained - Claims trial.

In the  
High Court

No.2  
Notes of  
Proceedings  
16th November  
1976  
(cont'd)

2nd Charge read and explained - Claims trial.

Karpal Singh wishes to raise preliminary  
objection.

- (1) Circumstances under which accused is being  
tried has led to contravention of Article 8(1)  
of the Constitution. Accused has been denied  
equal protection under the law. There are  
three laws governing a situation where  
person is found with a revolver. Proclamation  
declares whole Federation as security area,  
i.e. Malaysia. Person could be charged under  
I.S.A., or Arms Act or Firearms (Increased  
Penalties) Act. Any of the laws could apply.  
There is no criteria. Arms Act carries only  
seven years. Uncontrolled discretion given  
to Public Prosecutor. 10
- (2) There has been no proclamation of security  
areas under the Revised Act of 1972. Revised  
Act came into effect from 1.8.72. Internal  
Security Act of 1960 is superseded. Justice  
Harun's reason for holding Jinjang South is  
not a security area. Section 47 is only  
intended for specific areas and notice must be  
given. 20
- (3) Accused's case does not come under the  
provisions of Internal Security Act. It was  
for combating political subversion. I.S.A.  
Never intention to declare whole country a  
security area.
- (4) Accused has also been charged in Magistrate's  
Court for robbery. He can't be charged for  
both. 30

F.C.A.

Ghazi:

Re. Article 8.  
(1974) 2 M.L.J. 158. There is certain background  
to the case which is not disclosed to the Court as  
it would be prejudicial to the accused.

Objection overruled

F.C.A.

40



No. 3

RESPONDENTS EVIDENCE

In the  
High Court

No.3  
Respondents  
Evidence

16th November  
1976

P.W.1. Cpl.  
Sahad b.Ahmad

P.W.1. Cpl. Sahad b. Ahmad, 11950, a/s Malay :  
District Police Hq., Penang.

10

On 13.1.76 at 12.30 p.m. I was on duty. I was desk officer (Emergency) at District Hq. At that time I received a 999 call from a male Chinese. The information was that there was an armed robbery at 26 Lim Lean Teng Road, Penang. I instructed two patrol cars Whisky 18 and Whisky 33 to proceed to the scene. Whisky 18 was under the charge of Cpl. 12729 Haji Mohamed bin Chu (identified). Cpl. 25654 Ahmad bin Uda was driver (identified). I lodged a report 168/76. I informed Investigating Officer Ku Yahya (identified).

F.C.A.

XXnd.

Information was about armed robbery.

Cross-  
Examined

20

F.C.A.

ReXnd - Nil

F.C.A.

Re-  
Examination

30

P.W.2 Cpl. Haji Mohamed bin Chu a/s Malay:

Cpl. 12729 Mobile Patrol Car, Police. On 13.1.76 at 12.30 p.m. I was in a Radio Car at junction of Kampung Pisang and Jalan Thean Teik Road. There was a P.C. 25654 Ahmad bin Uda (identified). I received instruction of P.W.1 to proceed to 26, Lim Lean Teng Road where there was armed robbery. On arrival at scene I got down to see the owner who informed me he had been shot. I asked him if he could recognise the person who shot and he said 'yes'. I took a Chinese employee and an Indian and proceeded in the direction in which the armed robber had gone. Quek Kwang Hun and P.Subramaniam identified. Quek informed me that the person who carried a firearm had green shirt and red

P.W.2. Cpl.  
Haji Mohamed  
bin Chu  
16th November  
1976

In the  
High Court

No.3  
Respondents  
Evidence

16th November  
1976

P.W.2 Cpl.  
Haji Mohamed  
bin Chu

(cont'd)

helmet. I proceeded towards Ayer Hitam and  
Kampar Road Junction. On arrival both these  
persons pointed out a Chinese man walking with  
green shirt and carrying red helmet as the one  
who committed the robbery. I got down and made  
preparation to arrest the person. Myself and  
the driver proceeded to twenty feet from where  
the person was and challenged him to stop and  
raise his hands. He ignored my challenge. I  
issued a second challenge to stop and put up both  
his hands. He stopped and faced the road. The  
driver approached him from the right and I  
approached from the left. The driver caught his  
right hand. I caught his left hand. I then found  
a pistol tucked in his waist. I pulled it out.  
D.P.C. 41549 came and placed accused under arrest.  
I took this person with his helmet and proceeded  
to Police Hq. I can identify pistol. This is  
pistol (ID.3). There were five bullets inside  
the chamber - 3 live bullets and 2 expended  
bullets produced (ID.4). The person arrested was  
accused. The pistol was on left hand side of  
waist. At police station I lodged a report and  
handed over accused and pistol and ammunition and  
helmet to Insp. Ku Yahya.

10

20

F.C.A.

Cross-  
Examined

XXnd

Quek and Subramaniam came in the car. The  
patrol car stopped about 100 yards from accused.  
They could see what happened. My driver and I  
were armed. I had sterling sub-machine gun.  
Driver had revolver. I did not hit the accused  
with sub-machine gun. I did not use any violence.  
He did not fall down. There was no struggle. I  
deny I hit him.

30

Put : No gun was found on him.

Ans : I found this pistol.

Put : It was found subsequently.

Ans : No.

I did not take part in any other investigation  
in relation to the robbery. I don't know what  
happened after I handed over accused to Insp. Ku  
Yahya. It was a robbery when firearm was used.

40

F.C.A.

ReXn

This was the gun I found on the person of accused with bullets. It was tucked in his waist.

F.C.A.

In the  
High Court

No.3  
Respondents  
Evidence

16th November  
1976

P.W.2 Cpl.  
Haji Mohamed  
bin Chu  
(cont'd)

Re-  
Examination

P.W.3 Insp. Ku Yahya a/s English :

C.I.D., Georgetown

10 On 13.1.76 I was in the office. At about 2.30 P.W.2 handed over accused to me. He handed a revolver and 5 rounds of ammunition. This is the revolver (P3). This is the ammunition (P4), (two expended bullets tested by the armourer). I was also handed a red safety helmet (P5).

P3  
P4  
P5

Respondents  
Evidence  
P.W.3 Insp.  
Ku Yahya

16th November  
1976

On 14.1.76 at 3.35 p.m. I handed gun and bullets to armourer, Encik Zachariah, for testing.

Gun is a home-made .38 Special. Bullets are .38 Special bullets.

20 On 23.1.76 I took back revolver and bullets from armourer.

F.C.A.

XXnd

30 I was I.O. for this case and robbery. Three persons were arrested. Accused is being charged with others for armed robbery. Tan Key Ho is being charged with discharging firearm. P.W.2 told me the gun was tucked to the waist. The other was Khoo Teng Aun. No connection with subversion.

Cross-  
Examined

F.C.A.

In the  
High Court

ReXn. - Nil

No.3  
Respondents  
Evidence

F.C.A.

16th November  
1976

P.W.3. Insp.  
Ku Yahya  
(cont'd)

Re-  
Examination

P.W.4.  
Zachariah  
bin Mohd  
Hassan

P.W.4 Zachariah bin Mohd. Hassan a/s Malay:

Chief Armourer, District Police Hq., Penang.  
Have been 28 years an armourer.

16th November  
1976

On 14.1.76 P.W.3 handed over one revolver  
and five rounds of ammunition - P3 identified.  
Also five rounds of ammunition - P4 identified.  
I carried out tests and found out they are  
serviceable. It was a home-made revolver to  
fire .38 ammunition. On 23.1.76 I handed back  
exhibits to P.W.3.

10

F.C.A.

Cross-  
examined

XXn - Nil

F.C.A.

Case for prosecution.

Prosecution offers the following to defence:-

- (1) A.S.P. John Choo Hon.
- (2) Robert Yeoh Cheang Hock, D.P.C.5.
- (3) P. Subramaniam.
- (4) D.P.C. Khor Choon Ai.
- (5) Sgt. Sahad bin Lambak.
- (6) D.P.C. Abdul Khalid b. Mohd.
- (7) Inspector Yusof Shafie.
- (8) Lee Joon Kum.
- (9) Ahmad bin Udoh, P.C.
- (10) Ooi Kim Soon.
- (11) Quek Kwang Aun.
- (12) Ooi Teow Eng.

20

(Adjourned to 12.00 p.m.)  
(Court resumes at 2.30 p.m.)

F.C.A.

This 17th day of November, 1976  
(continued from 16th November, 1976)

In the  
High Court

P.W.3. Inspector Ku Yahya (recalled) a/s English:

No.3  
Respondents  
Evidence  
P.W.3. Insp.  
Ku Yahya  
(recalled)

17th November  
1976

10

I produce certified copy of Charge Sheet in Arrest Case P(2) 255 of 76 of Teh Cheng Poh @ Char Meh and Khoo Teck Aun @ Tuan Tham, P6. Khoo Teck Aun has been arrested and charged under Section 3 of the Firearms (Increased Penalties) Act and a Preliminary Inquiry has been fixed. The distance from the shop to where the accused was arrested is about three quarters of a mile. During the robbery it was alleged accused pointed a pistol at the owner.

F.C.A.

No. 4

APPELLANTS EVIDENCE

No.4  
Appellants  
Evidence  
Teh Cheng Poh  
alias Char  
Meh

16th November  
1976

Defence called

Accused put to his election.  
Accused elects to make a statement from the dock.

20

Teh Cheng Poh alias Char Meh, states in Hokkien:

30

On 13.1.76 about noon, I was returning home from Georgetown. I took a bus. After having alighted from the bus as I was walking home a few police personnel approached me. I was assaulted by them. I was taken to Patani Road Police Station. The same night I was asked to admit that the pistol and bullets belonged to me. I refused to admit. I was again assaulted. I did not admit. Then I was brought to face the charge I face today. The pistol and bullets were not recovered from my body. I am being falsely accused. That is all.

F.C.A.

Case for the defence.

Karpal Singh applies for an adjournment till tomorrow morning.

D.P.P. has no objection.

In the  
High Court

Adjourned till 9.30 a.m. on 17.11.76.

No.4  
Appellants  
Evidence  
Teh Cheng Poh  
alias Char  
Meh  
16th November  
1976  
(cont'd)

F.C.A.

No.5  
Submission  
by Defence  
17th November  
1976

No. 5

SUBMISSION BY DEFENCE

Karpal Singh submits :

Rule 17 of Essential (Security Cases)  
(Amendment) Regulations, 1975. Main thing is  
justice of the case. Court has power to amend.  
These charges under Section 57(1)(a) & (b)  
cannot stand.

10

(1) (a) As accused is charged under different  
Act Firearms (Increased Penalties) Act  
Section 3 which carries death. Accused  
under Section 3A.

(b) Where he was caught, was part of  
transaction of robbery, hence he can  
be only charged with armed robbery.

(c) Only one distinct offence.

Escaping is part of transaction.  
Robbery at 12.15 p.m.

20

Same transaction - Krishna Murthy v. Abdul  
Subban A.I.R. 1965 (Vol.52) Mysore p.128 at 130  
- proximity of time, continuity of series.

Banwarilal v. Union of India A.I.R. 1963  
(Vol.50) Supreme Court p.1620.

Section 163 of our C.P.C. is in pari materia

233 of Indian Criminal Procedure Code.

In the  
High Court

Accused should be acquitted on this charge when there is preliminary inquiry in lower court.

No.5  
Submission  
by Defence

10 (2) Was there any element of subversion?  
I.S.A. was not meant for common robber.  
There is already provision in Penal Code  
and Firearms (Increased Penalties) Act  
for such offences. Prosecution must show  
some element of political subversion.  
I.O. said no element of political  
subversion. So trial should go on under  
Firearms (Increased Penalties) Act where  
he would have the benefit of the jury.

17th November  
1976  
(cont'd)

Vasu's Commentary on the Constitution of  
India, 5th Ed. 287. Among equals, law should  
be equal. Also p. 291.

20 (3) Facts. Evidence of only one witness.  
Several other witnesses were not called.  
Prosecution not bound to call all  
witnesses. Evidence from the dock is  
still evidence.

F.C.A.

No. 6

SUBMISSION BY D.P.P.

No.6  
Submission  
by D.P.P.

D.P.P.

17th November  
1976

30 Accused is charged with Section 57 of I.S.A.  
Charge simply for possession. Re Essential  
(Security Cases) (Amendment) Regulations, Reg.18  
the charge has been proved by the Prosecution.

Powers are given to Public Prosecutor to  
frame charge. C.P.C. 165 - Trial for more  
offences more than one.

Here only charged for possession.

He was charged on 26.1.76 for this offence.

Article 7(2) of the Constitution and  
Section 302 of C.P.C. Here only one offence

In the  
High Court

No.6  
Submission  
by D.P.P.

17th November  
1976  
(cont'd)

Double jeopardy can only be raised in the  
lower Court.

Case of Long bin Samat & Ors. v. P.P.  
(1974) 2 M.L.J. p. 158.

Jeyakumar Constitutional Law Cases for  
Malaysia & Singapore, p. 105.

P.P. has exercised discretion in a proper  
manner.

Facts. Any number of witnesses can be  
called. Evidence of P.W.2 solid. He was  
unshaken. Defence bare denial - not tested by  
cross-examination. He should be found guilty  
and convicted thereof.

10

F.C.A.

Karpal:

Section 82 of Internal Security Act.

Re Section 165 of CPC. There should be  
one trial.

F.C.A.

No.7  
Verdict  
17th November  
1976

No. 7  
VERDICT  

---

20

Court:

Convicted on both charges.  
Proclamation read.  
Sentence of death passed.

F.C.A.



No. 8  
JUDGMENT

In the  
High Court

No.8  
Judgment

15th December  
1976

IN THE HIGH COURT IN MALAYA AT PENANG  
MISCELLANEOUS CRIMINAL APPLICATION NO.4 OF 1976

(CRIMINAL TRIAL NO. 1 OF 1976)

PUBLIC PROSECUTOR

VS.

TEH CHENG POH @ CHAR MEH

GROUND OF DECISION

10 In this case the accused was charged as follows :-

"1st Charge:

20 That you on the 13th day of January 1976, at about 12.35 p.m., at the junction of Kampar Road and Ayer Itam Road, in the District of Georgetown, in the State of Penang, in a security area, proclaimed by the Yang Dipertuan Agung vide Federal Gazette No. P.U. 148/69, without lawful excuse did have in your possession a firearm, to wit, a home-made .38 Revolver, and thereby committed an offence punishable under section 57(1) (a) of the Internal Security Act, 1960.

2nd Charge:

30 That you on the same date, time and place, in the District of Georgetown, in the State of Penang, in a security area, proclaimed by the Yang Dipertuan Agung vide Federal Gazette No. P.U. 148/69, without lawful excuse did have in your possession ammunitions, to wit, 5 rounds of .38 Special Revolver bullets, and thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960."

The case was fixed for hearing on 4th March, 1976.

In the  
High Court  
No.8  
Judgment  
15th December  
1976  
(cont'd)

The necessary consent of the Public Prosecutor was also filed under Section 80 of the Internal Security Act, 1960. Soon after the accused was committed for trial he applied under Miscellaneous Criminal Application No.4 of 1976 by way of Motion for the following Orders :-

- (1) The Honourable Court has no jurisdiction to try the applicant under the Essential (Security Cases) Regulations, 1975 and the Essential (Security Cases) (Amendment) Regulations 1975 as the said Regulations are purportedly made under section 2 of the Emergency (Essential Powers) Ordinance No.1 of 1969 which is null and void and of no effect. The said Regulations are accordingly void and inoperative; 10
- (2) The Honourable Court cannot legally try the applicant until there is a preliminary enquiry before a Magistrate in accordance with the provisions of Chapter XVII of the Criminal Procedure Code (FMS 6); 20
- (3) Any further or other order deemed fit by Honourable Court.

On the 28th February, 1976, the said Notice of Motion was filed and fixed for hearing on the same date. After considering all the arguments, the Court overruled the preliminary objections to the jurisdiction of this Court and the Court held that the Emergency (Essential Powers) Ordinance, 1969 (No.1 of 1969) was promulgated under the provisions of Article 150 (2) of the Federal Constitution, and by reason of that the Essential (Security Cases) Regulations 1975, and the Essential (Security Cases) (Amendment) Regulations, 1975, were not unconstitutional and not invalid. 30 40

The Miscellaneous Criminal Application No.4 of 1976 was dismissed and the Court held that the Accused's trial under the said Regulations was constitutional and lawful.

When the case came up for hearing again on the 8th June, 1976, Counsel for the Accused

10 informed the Court that certain questions regarding the Security Cases were pending before the Federal Court and requested for an adjournment. It was confirmed with the Federal Court that Wan Hamzah J. had referred certain questions in the matter where an accused was also charged for offences under Section 57(1) (a) & (b) of the Internal Security Act, 1960. In view of this Reference, the matter was adjourned, and in Federal Court Special Case No. 1 of 1976 (Kuala Trengganu Criminal Trial No.1 of 1975), the Federal Court, by a majority, gave the following answers to the questions raised. Suffian, L.P., in giving the majority decision said as follows :-

In the  
High Court  
No.8  
Judgment  
15th December  
1976  
(cont'd)

20 "I would therefore answer the question posed by the learned judge as follows:

The Essential (Security Cases) Regulations, 1975, and the Essential (Security Cases) (Amendment) Regulations, 1975, are valid:

- 30 (a) they are valid whether or not made when Parliament is sitting;
- (b) by virtue of subsection (4) of section 2 of the Ordinance, the regulations are valid notwithstanding that they are inconsistent with the constitution, but in fact the regulations enumerated by Mr. Wilson are not inconsistent with the constitution;
- 40 (c) it is lawful for His Majesty to delegate under section 2 of the Ordinance power to himself to make regulations inconsistent with the constitution;
- (d) the regulations do not have to comply with Article 149, as they are not made under the authority of that article but under the authority of Article 150;
- (e) Ordinance 1 has been properly and validly promulgated under clause (2)

In the  
High Court

No.8  
Judgment

15th December  
1976  
(cont'd)

of Article 150 for the reason  
given in N. Madhavan Nair v.  
Government of Malaysia (supra) (1);

(f) the regulations are not ultra vires  
section 2 of Ordinance 1."

The matter was then finally put down  
for hearing before me on the 16th November,  
1976. At the outset counsel for the accused  
wished to raise some preliminary objections. 10  
The objections were as follows :-

Firstly, that the circumstances under  
which accused was being tried has led  
to an infringement of Article 8(1) of  
the Constitution which guarantees equal  
protection under the law. He submitted  
that there were three laws under which a  
person could be charged when found with  
a revolver or committing an offence  
while armed, namely, the Penal Code, 20  
the Arms Act and the Internal Security  
Act.

He submitted that in charging the  
accused under the Internal Security Act  
he was not being given equal protection  
before the law. As the different Acts  
carried different punishments, counsel  
argued that there was no equal protection.

Secondly, that there had been no  
promulgation as to Security Areas under 30  
the revised Internal Security Act of  
1972, as under this Act promulgation by  
virtue of Section 47 must be made under  
Part III of the Act. Counsel relied on  
Harun J's reasons for holding that  
Jinjang South was not a security area  
in a recent case.

Thirdly, counsel urged that this was a  
security matter and that the Internal  
Security Act was intended for combating 40  
political subversion and that security  
areas were intended to be limited areas  
in the Federation and not the whole of  
the Federation.

(1) (1975) 2 M.L.J. 286.

Fourthly, counsel argued that as the accused had also been charged in the Magistrate's Court for robbery and a preliminary enquiry was pending, he could not be charged in the High Court for this offence, as this would mean that he would be in jeopardy twice.

In the  
High Court  
No.8  
Judgment  
15th December  
1976  
(cont'd)

10 I overruled all the objections. As far as the first objection is concerned, in Federal Court Special Case No. 1/76 (supra) the same arguments as those of counsel for the accused were advanced in the Federal Court about Article 8 of the Federal Constitution and Suffian, L.P. in his judgment says as follows :-

20 "Article 8 guarantees to all persons equality before the law and its equal protection. Regulations 6, 7, 13, 19, 20 and 21 prescribe rules of procedure and evidence different from those applicable under the Criminal Procedure Code and the Evidence Act and to that extent they are discriminatory, but as between all persons charged with security offences within the meaning of regulation 2(1) they are not discriminatory and do not therefore offend against Article 8. It would have been different if  
30 the regulations provide that some persons charged with security offences are to be subject to one set of rules and others charged with similar offences to another set of rules.

40 The principle underlying Article 8 is that a law must operate alike on all persons under like circumstances, not simply that it must operate alike on all persons in any circumstances, nor that it "must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons....for the purpose of legislation" Kedar Nath v. State of West Bengal (2). In my opinion, the law may classify persons into children, juveniles and adults, and provide different criteria

(2) A.I.R. 1953 S.C. 404,406.

In the  
High Court  
No.8  
Judgment  
15th December  
1976  
(cont'd)

for determining their criminal liability or the mode of trying them or punishing them if found guilty; the law may classify persons into women and men, or into wives and husbands, and provide different rights and liabilities attaching to the status of each class; the law may classify offences into different categories and provide that some offences be triable in a magistrate's court, others in a sessions court, and yet others in the high court; the law may provide that certain offences be triable even in a military court; fiscal law may divide a town into different areas and provide that ratepayers in one area pay a higher or lower rate than those of another area, and in the case of income tax provide that millionaires pay more tax than others; and yet in my judgment in none of these cases can the law be said to violate Article 8. All that Article 8 guarantees is that a person in one class should be treated the same as another person in the same class, so that a juvenile must be tried like another juvenile, a ratepayer in one area should pay the same rate as paid by another ratepayer in the same area, and a millionaire the same income tax as another millionaire, and so on.

It will be recalled that the definition of "security offence" by regulation 2(1) of the 1975 regulations empowers the Attorney-General to certify that an offence against any other written law affects the security of the Federation, in which event the person accused of that offence becomes liable to be tried in accordance with the rules of procedure and evidence prescribed by the 1975 regulations, and Mr. Wilson argues that this provision gives the Attorney-General an arbitrary power to discriminate against persons as to whom he has given such a certificate; but with respect I do not think that there is merit in this argument, because this power is consonant with the power expressly given to the Attorney-General by clause (3) of Article 145 which reads:

"(3) The Attorney-General shall have powers, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Muslim court, a native court or a court-martial."

In the  
High Court  
No.8  
Judgment  
15th December  
1976  
(cont'd)

10

This court has dealt at length with this discretionary power of the Attorney-General in Long bin Samat & Others v. P.P. (3). "

20

So it is clear that when a person is charged under the Internal Security Act on a security offence there is no violation of Article 8 of the Constitution. Regarding the second objection, in Public Prosecutor v. Soon Seng Sia Heng & 2 Others (Penang Criminal Trials Nos. 5, 6 and 7 of 1976) the Court had ruled that promulgation under P.U. (A) 148/69 was a valid proclamation by the Yang Dipertuan Agung of the whole of the Federation as a security area although that was done under Section 47 Part II of the Internal Security Act, 1960. That proclamation has not been revoked or annulled by Parliament and the whole of the Federation remains a security area.

30

And, furthermore, it is not for the Court to enquire why the Public Prosecutor had declared an offence a security offence for that itself may involve exposing security matters in open court and doing harm to the public.

Fourthly, as far as the objection that the accused would be in double jeopardy, I see no merit in it. The accused has not been tried for any offence yet. Section 302 (i) of the Criminal Procedure Code reads as follows :-

40

"302. (i) A person who has been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again

(3) (1974) 2 M.L.J. 152

In the  
High Court  
No.8  
Judgment  
15th December  
1976  
(cont'd)

for the same offence nor on the same facts for any other offence, for which a different charge from the one made against him might have been made under section 166 or for which he might have been convicted under section 167."

Article 7 clause (2) of the Constitution reads as follows :-

"7. (2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted." 10

In either case, a person has to be convicted or acquitted before he could be said to be in double jeopardy. As far as this Court is concerned, this is the first time the accused is being tried, and the Court is at liberty to convict or acquit him according to the facts presented by the prosecution. 20

The facts of the case were very simple. Police Corporal Haji Mohamed bin Chu (P.W.2) of Mobile Patrol Unit said that on 13.1.76 at about 12.30 p.m. he was in a radio car at the junction of Kampong Pisang and Jalan Thean Teik Road. He received instructions to proceed to 26, Lim Lean Teng Road, where there had been an armed robbery. The patrol car was driven by P.C. Ahmad bin Uda (identified). On arrival at the scene, he went in to see the owner who informed him that he had been shot. He asked him whether he could recognize the person who had shot him and he said 'yes'. Immediately he took a Chinese employee and an Indian named P. Subramaniam in the patrol car to go and look for the robber. They proceeded in the direction in which the armed robber had gone. Quek informed him that the person who carried the firearm was wearing a green shirt and a red helmet. The witness proceeded towards Ayer Itam and Kampar Road junction. On arrival at the junction both these persons pointed out a Chinese person, who was walking wearing a green shirt and carrying a red helmet, as the one who 30 40



had committed the robbery. He and the driver of the patrol car then proceeded towards the person and challenged him to stop and raise his hands. At first the accused ignored it but on the second challenge he put up both his hands. Witness approached the person and on searching him found a pistol tucked in his waist. He took possession of it and the person was arrested. The pistol was identified as a home-made revolver with five live bullets inside its chamber. The accused was taken to the police headquarters and a report was lodged. The Police Armourer (P.W.4) gave evidence that the pistol and bullets were serviceable. In cross-examination this witness was not shaken and although various suggestions were put to him by counsel for the accused that this pistol was not found on the person of the accused but found subsequently the witness did not waiver nor was his evidence shaken.

10

20

Prosecution witness, Insp. Ku Yahya (P.W.3), the investigating officer in this case, confirmed that at about 2.30 p.m. the corporal in charge of the said patrol car, Cpl. Haji Mohamed bin Chu (P.W.2) handed him the accused, the firearm and five rounds of ammunition. The revolver and ammunition were identified by him.

30

The accused elected to make a statement from the dock. In his statement all he said was that after having alighted from a bus, as he was walking home, a few police personnel approached him, assaulted him and took him to Patani Road Police Station. Further he stated that he was asked to admit that the pistol and bullets belonged to him but had refused. He denied that they were recovered from his person.

40

Before coming to a conclusion on the facts of the case, counsel for the accused made further submissions. He again submitted that the accused should only be charged for armed robbery under the Penal Code, or under the Arms Act, or the Firearms (Increased Penalties) Act, one of the reasons being that the person caught with the present

In the  
High Court  
No.8  
Judgment  
15th December  
1976  
(cont'd)

accused was being charged under the Firearms (Increased Penalties) Act. He further repeated his argument that as the Internal Security Act was only intended for political subversion and as there was no evidence that accused had carried on any political subversion, the prosecution must show some element of political subversion before he could be charged under the Internal Security Act.

10

To deal with counsel's submission that it was a dreadful prospect for two men who had committed the same type of offence to be tried by two different modes of trial, depending on the whim and fancy of the Public Prosecutor, I would only refer to what is quoted by the author in "Constitutional Law Cases From Malaysia and Singapore" (page 105) from the judgment of Das J. in Kathi Raning Rawat v. State of Saurashtra (4)

20

" In my judgment, this part of the section, properly construed and understood, does not confer an uncontrolled and unguided power on the State Government. On the contrary, this power is controlled by the necessity for making a proper classification which is to be guided by the preamble in the sense that the classification must have a rational relation to the object of the Act as recited in the preamble. It is, therefore, not an arbitrary power.....If at any time, however, the State Government classifies offences arbitrarily and not on any reasonable basis having a relation to the object of the Act, its action will be either an abuse of powers if it is purposeful or in excess of its powers even if it is done in good faith and in either case the resulting discrimination will encounter the challenge of the Constitution and the court will strike down not the law which is good but the abuse of misuse or the unconstitutional administration of the law creating or resulting in unconstitutional administration of the law creating or resulting in unconstitutional discrimination"

30

40

(4) A.I.R. 1952 S.C. 123.

Again, as was pointed out by Suffian,  
L.P. in the case Long bin Samat & Ors. v.  
P.P. (5) :-

In the  
High Court

No.8  
Judgment  
15th December  
1976  
(cont'd)

10 " Anyone who is dissatisfied with the  
Attorney-General's decision not to  
prosecute, or not to go on with a  
prosecution or his decision to prefer  
a charge for a less serious offence when  
there is evidence of a more serious  
offence which should be tried in a  
higher court, should seek his remedy  
elsewhere, but not in the courts."

20 Sections 5 and 6 of the Essential  
(Security Cases) (Amendment) Regulations,  
1975, clearly give the Public Prosecutor  
discretion to frame the charge against  
persons and bring them up for trial before  
the High Court without a preliminary enquiry  
and the Courts are in no position to question  
the correctness of his decision. The  
Courts may be able to interfere if it is  
shown to the Courts that there has been an  
abuse of the powers vested in the Attorney-  
General. As far as this Court is concerned  
there has neither been any allegation nor  
evidence of abuse to that effect. Therefore,  
the Court can only decide on the facts of  
this case as to whether the charge against  
the accused has been proved.

30 On the evidence before me, after  
giving all due weight to the statement made  
by the accused from the dock, I came to  
the conclusion that the charges against the  
accused had been proved conclusively. There  
was no merit in counsel's submission on the  
law to affect the Court's decision. The Court  
therefore found the accused guilty of both  
charges against him.

40 I therefore convicted the accused on  
both charges and passed sentence of death.

Sd: F.C.ARULANANDOM,  
JUDGE,  
HIGH COURT, MALAYA  
Penang,  
15th December, 1976

(5) (1974) 2 M.L.J.152 at p.158

In the  
High Court

No.8  
Judgment

15th December  
1976  
(cont'd)

Counsel:

En. Ghazi bin Ishak, D.P.P., for the  
Public Prosecutor.

Mr. Karpal Singh for the Accused.

Notes:

Hearing on 8.6.76, 16.11.76 & 17.11.76.  
Sentence of death passed on 17.11.76.

No.9  
Certificate  
of Sentence  
17th November  
1976

No. 9

CERTIFICATE OF SENTENCE

IN THE HIGH COURT IN MALAYA AT PENANG

10

CRIMINAL TRIAL NO. 1 OF 1976

To: The Superintendent of Prisons,  
Penang.

This is to certify that the person named  
in the Schedule has been sentenced to the  
sentence set opposite his name in the said  
Schedule.

Dated at Penang this 17th day of November,  
1976.

Sgd. Noor Faridah bte.  
Ariffin

20

SENIOR ASSISTANT REGISTRAR,  
HIGH COURT, PENANG.

SCHEDULE

Name of Accused

Sentence

Teh Cheng Poh @ Char Meh

Sentence to death

Charge: Possession of Firearm and Ammunitions  
under section 57(1)(a) & (b) of the  
Internal Security Act, 1960.

c.c.

The Dy. Public Prosecutor,  
Penang.

The Magistrate,  
2nd Magistrate's Court,  
Penang.

Messrs. Karpal Singh & Co.,  
117-A Penang Street,  
Penang.

10

Registrar of Criminals,  
P.O. Box 248, Kuala Lumpur.

O.C.P.D., Georgetown,  
Penang.

In the  
High Court

No.9  
Certificate  
of Sentence

17th November  
1976  
(cont'd)

No. 10

NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO: OF 1976

Between

20

Teh Cheng Poh @ Char Meh

Appellant

And

Public Prosecutor

Respondent

(In the matter of Criminal  
Trial No.1 of 1976 in the  
High Court in Malaya at Penang

Between

Public Prosecutor

And

Teh Cheng Poh @ Char Meh)

In the  
Federal Court

No.10  
Notice of  
Appeal

17th November  
1976

In the  
Federal Court

NOTICE OF APPEAL

No.10  
Notice of  
Appeal  
17th November  
1976  
(cont'd)

Take notice that Teh Cheng Poh @ Char Meh, the appellant abovenamed, appeal to the Court against the decision of the Honourable Mr. Justice Frederick Christian Arulanandom given at the High Court, Penang on the 17th day of November, 1976 whereby the appellant was convicted of an offence under section 57(1)(a) and an offence under section 57(1)(b) of the Internal Security Act, 1960 and sentenced to death.

10

This appeal is against both conviction and sentence.

Dated this 17th day of November, 1976

Sgd:  
Solicitors for the Appellant .....  
Appellant

Received this 17th day  
of November, 1976

Sgd.

20

.....

Senior Assistant Registrar

To:  
The Registrar,  
The Federal Court,  
Kuala Lumpur.

And To:  
The Senior Assistant Registrar  
High Court,  
Penang.

30

The Public Prosecutor,  
Penang.

The address of the appellant is c.o. Messrs. Karpal Singh & Co., of No.76 Bishop Street, (1st Floor), Penang.

No. 11

PETITION OF APPEAL

In the  
Federal Court

No.11  
Petition  
of Appeal

30th December  
1976

IN THE FEDERAL COURT OF MALAYSIA  
(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO.46 OF 1976

Between

Teh Cheng Poh @ Char Meh Appellant

And

Public Prosecutor Respondent

10 (In the Matter of Criminal Trial No.1 of 1976  
In the High Court in Malaya at Penang

Between

Public Prosecutor

And

Teh Cheng Poh @ Char Meh)

PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE FEDERAL COURT

20 Teh Cheng Poh @ Char Meh, the Appellant above-  
named, appeals to the Federal Court against the  
decision of the Honourable Mr. Justice Frederick  
Christian Arulanandom given in the High Court,  
Penang on the 17th day of November, 1976 on the  
following grounds :-

- 30 (1) The learned trial Judge erred in law in not  
concluding the circumstances under which  
the Appellant was tried on charges under  
Sections 57(1)(a) and 57(1)(b) of the  
Internal Security Act, 1960 offended the  
provisions of Article 8(1) of the Federal  
Constitution. The learned trial Judge failed  
to note in consenting to the prosecution of  
the Appellant on the charges aforesaid, the  
Deputy Public Prosecutor was depriving the  
Appellant of the protection guaranteed to him  
under Article 8(1) of the Federal Constitution;

In the  
Federal Court

No.11  
Petition  
of Appeal

30th December  
1976  
(cont'd)

- (2) The learned trial Judge also failed to consider the Internal Security Act was intended for combating political subversion;
- (3) The learned trial Judge erred in law in not concluding there had been no promulgation of the place wherein the Appellant had allegedly been found with the firearm and ammunition referred to in the charges under Section 47 Part III of the Internal Security Act, 1960 (Revised 1972), and further, that the Legislature only intended limited areas of the Federal to be declared security area for purposes of Section 47 Part III of the Internal Security Act, 1960 (Revised 1972); 10
- (4) The learned trial Judge failed to consider, if at all, the Appellant was in possession of the firearm and ammunition, it was part of the transaction relating to the armed robbery proper for which the Appellant 20 had already been charged and was awaiting the preliminary enquiry, and the Appellant abovenamed therefore prays that the conviction and sentence on him be set aside or that such order be made as justice may require.

Dated this 30th day of December, 1976

Sd. Solicitors for the  
Appellant

The address for service of the Appellant 30  
is c/o his solicitors, M/s. Karpal Singh & Co.  
No.76 Bishop Street (1st floor), Penang.

Filed this 10th day of January 1977

Sgd. Abdul Hamid b Hj Mohamed  
Ag. Chief Registrar  
Federal Court, Malaysia  
Kuala Lumpur



No. 12

NOTES OF ARGUMENT BY  
SUFFIAN, LORD PRESIDENT

In the  
Federal Court

No.12  
Notes of  
Argument by  
Suffian  
Lord President  
20th January  
1977

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(Appellate Jurisdiction)

Thursday, 20th January, 1977

Coram: Suffian, L.P.  
Raja Azlan Shah, F.J.  
Wan Suleiman, F.J.

10

NOTES OF SUFFIAN, L.P.

FEDERAL COURT CRIMINAL APPEAL NO.39 OF 1976  
(Penang High Court Criminal Trial No.6 of 1976)

Between

Johnson Tan Han Seng                      Appellant

And

Public Prosecutor                              Respondent

Rajasingam for appellant  
Datuk Yusof for respondent

20

Rajasingam addresses

Appeal only against conviction, not  
sentence.

LAW

Ground 1

P.U. (A) 362 void.

"May 13 Before and After" by Tunku A.  
Rahman, p.44 onwards.

"May 13 Tragedy" published by Government,  
p.27.

30

Circumstances made necessary Proclamation  
of Emergency. But those circumstances have

In the  
Federal Court

No.12  
Notes of  
Argument by  
Suffian,  
Lord President  
20th January  
1977  
(cont'd)

ceased by time when P.U. (A) 362 made.

Agong on 13 May has been replaced by two  
Agongs including present one.

1964 emergency to deal with Indonesian  
confrontation. Then in 1966 another emergency  
declared to deal with Ningkan. Why necessary?  
See (1968) 1 MLJ 119. If necessary then,  
another Proclamation of Emergency also necessary  
now, as Proclamation of Emergency re 13 May was  
made for specific purpose which no longer exists. 10

Khong (1976) 2 MLJ 167.

Government has abused power by using 1969  
emergency for a collateral purpose not intended  
by Proclamation of Emergency of that year. I  
would have had no complaint if Government had  
revoked that Proclamation of Emergency and  
proclaimed another emergency. Government acted  
in fraudem legem.

Shrouds Words and Phrases Judicially  
Defined 1966 Vol. 2, p.95, supplement on fraud. 20

Halsbury's Laws of England, 3rd edition,  
vol.7, para. 403, 562. 1976 Supplement,  
para. 564.

Article 66.

Article 150 gives power to executive to  
legislate for a temporary period and purpose.

Article 40.

20.2.71 Parliament convened. After that  
article 150 (3) comes into play.

If no new Proclamation of Emergency is  
issued and old Proclamation of Emergency not  
revoked, by Parliament, judiciary should act. 30

Ordinance 1 P.U.(A) 146/69, s.2(4).

Ordinance 4/69 on 16.5.69 repealed on  
1.9.72.

Ordinance 1, s.2(2)(a)(c).

Delegate cannot delegate.

Khong (supra) p.174 B, 1st column to p.175, column 1, line D. I adopt those arguments of Ong F.J.

Mode of trial. No preliminary enquiry here. Other departures from ordinary law of evidence and procedure.

FACTS

Ground 2

10 Appeal record, p.32 D, Judge.

Ground 3

No evidence locus was in security area. Samivellu v. P.P. (1972) 1 MLJ 28.

Ground 4

Appeal record, p.11  
P.U.(A) 362, section 17.  
Appeal record, p.34 B, p.32.

20 This appellant was convicted solely on cautioned statement. But he was not allowed to give evidence that statement not voluntary.

B3 acquitted because no statement.

Inspector's evidence p.9 - statement recorded in Malay. Appellant's Malay poor.

P.19.

Ground 5

Ground 6

Ground 7

Appeal record, p.34, p.3.

30 FEDERAL COURT CRIMINAL APPEAL NO.40 OF 1976  
(Penang High Court Criminal Trial No.5 of 1976)

In the  
Federal Court  
No.12  
Notes of  
Argument by  
Suffian,  
Lord President  
20th January  
1977  
(cont'd)

In the  
Federal Court

No.12  
Notes of  
Argument by  
Suffian,  
Lord President

20th January  
1977  
(cont'd)

Between

Soon Seng Sia Heng @ Wong Soon Seng  
@ Chang Tik Kong @ Chan Teik Kong

Appellant

And

Public Prosecutor

Respondent

K.Y. Chew (assigned) for appellant.  
Counsel was present at request of court during  
arguments in Criminal Appeal 30/76.

Chew

10

In general I adopt Mr. Rajasingam's  
arguments in Criminal Appeal 39/76. I wish  
to add 2 points :

(1) as in Ground 2 in my petition of appeal.

First charge mentions security area.  
Prosecution should have brought evidence  
(and did not) that locus was in security  
area. Failure to do so fatal:  
Samivellu (1972) 1 MLJ 28.

(2) Cautioned statement (Exhibit P.11) should  
not have been admitted - in trial within  
trial judge did not allow appellant to  
give evidence to say that cautioned  
statement was not admissible.

20

FEDERAL COURT CRIMINAL APPEAL NO.46 OF 1976  
(Penang High Court Criminal Trial No.1 of 1976)

Between

Teh Cheng Poh @ Char Meh

Appellant

And

Public Prosecutor

Respondent

20

Karpal Singh for appellant.

Karpal Singh addresses

P.U.(A) 145/69. Circumstances then have  
changed - so by effluxion of time Proclamation of

Emergency has lapsed - and therefore proclamation P.U.(A) 148/69 dated 15.5.69 also lapsed. I adopt Rajasingam's arguments on this point.

In the  
Federal Court

No.12  
Notes of  
Argument by  
Suffian,  
Lord President  
20th January  
1977  
(cont'd)

Ref. Ground 1

Breach of article 8.  
Appeal record, p.28-9.  
P.U.(A) 148/69.

10 Appellant could have been charged under Internal Security Act, Arms Act 21 of 1960 (s.9 - maximum penalty 7 years or \$10,000), Act 37 of 1971 (s.8 - penalty 14 years and 6 strokes).

Executive act of D.P.P. electing to proceed against appellant under I.S.A. infringes article 8. Article 8 is aimed not only against law, but also against executive action.

20 Basu, vol. 1, on Indian article 14 (= our article 8) p.87, 291.

P.P. v. Datuk Harun (1976) 2 MLJ 116, 117, 2nd column, 3rd para. 118.

Article 145. Attorney-General's power and discretion subject to article 8.

Ground 2

I.S.A. not intended for ordinary criminals but to combat political subversion. See its preamble.

I.S.A. dated 1960.

30 Arms Act passed subsequently. Note preamble. It provides lesser law.

Act 37 of 1971 passed 11 years later.

Explanatory note to I.S.A. - Gazette 4.6.60, p.190, para. 1.

State (1963) A.I.R. S.C.1241, 1244.

In the  
Federal Court

No.12  
Notes of  
Argument by  
Suffian,  
Lord President  
20th January  
1977  
(cont'd)

Ground 3

Security area, promulgation of I.S.A.  
(revised) Act 82. Definition of security area  
in s.2.

S.47. Note "organised violence", not  
isolated violence. This section is in Part III,  
not in Part II as in Act 18 of 1960.

Act 18/60 revised, and superseded by  
Act 82.

Maxwell, 12th edition, p.18, last para. 10

Proclamation of security area under Act  
18 is subsidiary legislation for purposes of  
Interpretation Act. In view of Revision of  
Laws Act 1968, s.12, the proclamation appears  
to be still in force. See also s.35,  
Interpretation Act.

In Criminal Appeal 43/76 judge held (p.59)  
Proclamations of Emergency 1964 and 1969 have  
lapsed.

Willcock v. Muckle (1951) 2 KB 844, 855, 20  
headnote. Article 150 (3).

Ground 4

Krishna A.I.R. 1965 Mysore, 180, on "same  
transaction".

Basu, vol.2, p.461, article 76 on A.G.  
Friday, 21st January, 1977, in Kuala Lumpur.

Coram: Like yesterday.

FEDERAL COURT CRIMINAL APPEAL NO.43 OF 1976  
(Federal Territory Criminal Trial No.23 of 1976)

Between 30

Public Prosecutor

Appellant

And

Chea Soon Hoong @ Foo Soh Loh

Respondent

Datuk Yusof for appellant  
Jagjit Singh amicus curiae.

Jagjit Singh addresses

In the  
Federal Court

I adopt yesterday's legal arguments.

I wish to elaborate as follows.

(1) Subdelegation

P.U.(A) 320 and 362/75. S.2 defines security offence - consent to be given by A.G. Even under I.S.A. s.80 consent of P.P. must be obtained.

No.12  
Notes of  
Argument by  
Suffian,  
Lord President  
20th January  
1977  
(cont'd)

10 de Smith Judicial Review, 2nd edition,  
p.281.

Consent here was signed by D.P.P., not valid, should have been signed by A.G. himself. Statute gives power to A.G., he cannot subdelegate to his D.P.Ps.

What is bad faith? de Smith, p.303,  
p.316, p.319.

Bad faith here because gun exhibited defective, appeal record p.81.

S.21 (6), P.U.(A) 362/75.

20 Prosecution knew gun not serviceable - should not have proceeded under I.S.A. - this shows bad faith. I don't question integrity of D.P.P.

Armourer who tested gun, not called by prosecution, only tendered to defence.

Firearm includes component part of weapon. N.B. "discharge". So possession of (say) trigger alone is not enough.

30 Same definition in Firearms Act and Firearms (Increased Penalties) Act.

English cases against me :-

Moore v. Gooderham (1960) 3 AER 575, airgun a "lethal weapon".

Reed v. Donovan (1947) 1 KB 326, a signal pistol a firearm.

In the  
Federal Court

No.12  
Notes of  
Argument by  
Suffian,  
Lord President  
20th January  
1977  
(cont'd)

Chong Kim Seng (1949) MLJ 109, 111,  
definition of firearm in Emergency Regulations  
same as in I.S.A.

Tan (1966) 1 MLJ 150, F.C.

Very pistol a firearm, Lim Eng Kooi 1948-9  
MLJ Supplement 60.

Cases in my favour:

Lee (1976) 1 MLJ 82, 83, Hashim J.

A mere component part cannot be a firearm.  
Dickey v. Police 1964 NZLR 503, 504. No  
definition of firearm in New Zealand, but  
judge follows English definition.

10

Charging accused under s.57, I.S.A., when  
prosecution knew gun not serviceable, also A.G.  
subdelegating to D.P.P., show bad faith.

Ref. definition of P.P. in s.2(1), D.P.P.  
cannot sign, only A.G. can, D.P.P. can only  
appear in court.

My second point

Article 8.

20

Khong (1976) 2 MLJ 170, 2nd column D.

Three illustrations of discrimination to  
be pondered over by court:

- A. Right now 5 persons are charged with  
possession of firearms. Three charged in  
lower courts, but two under I.S.A. in  
High Court. This is discrimination.
- B. Informer sent to P. Jerejak. Person with  
gun charged under I.S.A.
- C. I.S.A. intended against terrorists, not  
against ordinary criminal.

30

Next point

Constitution is supreme law.

1975 regulations are subsidiary legislation.



They govern principal Act, I.S.A. - that is not legal.

1969 and 1975 regulations prescribe no offence, only procedure.

His Majesty cannot make subsidiary legislation to bind I.S.A. - he should have amended Criminal Procedure Code or enacted separate principal Act.

Last point

10 Khong (1976) 2 MLJ 169, 2nd column, B.

1969 regulations made when Parliament not sitting.

Under article 150(2) Agong cannot pass law when Parliament is sitting or in existence, Agong cannot make 1975 regulations because Parliament in existence, therefore they are void.

Brief adjournment.

20 Resumed. I address Court. (See notes taken down by Mr. Wong).

Datuk Yusof for P.P.

(A) D.P.P. has same power as P.P.

Three laws re possession of firearms.

S.80, I.S.A., requires consent of P.P., but not P.P. personally. D.P.P. has power of P.P. under s.376(III), Criminal Procedure Code.

Therefore consent by D.P.P. valid.

30 (B) A.G. has absolute power to choose under which law he is to be charged.

Article 145(3) here gives discretion to prosecute to our A.G., but in India under article 76 A.G. is only adviser to Government, does not mention prosecution.

Long (1974) 2 MLJ 152.

In the  
Federal Court

No.12  
Notes of  
Argument by  
Suffian,  
Lord President  
20th January  
1977  
(cont'd)

In the  
Federal Court

No.12  
Notes of  
Argument by  
Suffian,  
Lord President  
20th January  
1977  
(cont'd)

Khong (1976) 2 MLJ 167.

Viran (1947) MLJ 62.

(Article 8 not discussed in Long - M. Suffian)

P.P. v. Su Liang Yin (1976) 2 MLJ 128,  
Hashim J. Articles 8 and 145 discussed. P.130,  
1st column, line G. P.131, 2nd column, line H  
to p.132, 1st column, line C.

No bad faith on P.P.'s part.

(C) Subdelegation

Refers to (1976) 2 MLJ, Ong's judgment, 10  
p.174, column 2, the whole of it.

Mahadevan

Agung delegates power to himself, then he  
delegates to A.G. - Ong F.J. says not valid -  
I submit it is valid because 1975 regulations  
are valid.

Submit 1975 regulations can govern I.S.A.,  
as they can even be inconsistent with  
constitution.

(D) Component parts of firearm. 20

"adapted" - "component parts".

(E) Trial within trial. Judge did not allow  
accused to give evidence. Judge when admitting  
the statement acted under regulation 21 which  
is different from s.113, Criminal Procedure Code.

Under regulation 13 no need for judge to  
consider accused's explanation on the statement,  
before the close of the prosecution case.

Regulation 13 touched on in Khong (1976)  
2 MLJ 170, 2nd column, line D. 30

Refers to Facts in Criminal Appeal 39/76.

Evidence exists implicating accused, apart  
from cautioned statement.

Rajasingam replies.

P.U.(A) 148/69 empowers creation of offences, but did not allow subdelegation to A.G. or D.P.P. S.2(2) (a) and (c).

Regulation 21 of P.U.(A) 362 does not say that statements are admissible whether made voluntarily or not.

Submit my client in Criminal Appeal 39/76 has raised reasonable doubt.

Chew

10

Nothing to add.

Karpal Singh replies

S.80, I.S.A.

Indian provision re A.G. - article 76 - our article 145 - Indian article 165 gives power to prosecute to Advocate-General of each state. Basu, volume 3, p.272.

Jagjit Singh replies

Sanction different from discretion.

20

Criminal Procedure Code, s.376(3) refers to sanction.

S.80, I.S.A.

Under 1975 regulations it is a discretion. It is vested in A.G., so consent cannot be given by D.P.P.

C.A.V.

Signed (M. Suffian)

Certified true copy  
(Sgd)

30

Setia-usaha kepada Ketua  
Hakim Negara  
Mabkamah Persekutuan  
Malaysia  
Kuala Lumpur  
14 APR 1977

In the  
Federal Court

No.12

Notes of  
Argument by  
Suffian,  
Lord President

20th January  
1977  
(cont'd)

In the  
Federal Court

No.12  
Notes of  
Argument by  
Suffian,  
Lord President

21st January  
1977

21.1.1977 (11.20 a.m.)

FEDERAL COURT CRIMINAL APPEAL NO.43 OF 1976  
(Federal Territory Criminal Trial No.23 of 1976)

Tun Suffian, L.P:

Datuk Yusof, I mentioned some points.  
First we have divided the points into two parts:  
first part, points on which we don't want to  
call on the P.P.; the second part, points on  
which we would like to hear from you.

First point: we don't want to call on 10  
the Public Prosecutor on the following points -  
repeal by effluxion of time and by change of  
circumstances. We think that there is no merit  
in the argument based on this point because  
we feel that law can be repealed only by express  
repeal or by necessary implication.

No.2, Samivellu's case. We thought it  
was only decided where an area has been proclaimed  
to be a security area. It is enough if the 20  
gazette notification is referred to the judge  
either by counsel or by himself or by his  
secretary.....(inaudible) ....have been concluded.  
But later on we will elaborate on this appeal.

Next point relates to part two or a portion  
of part two of the old Act and part three in  
the new revised Act. This point was dealt with  
at great length by Mr. Justice Harun. Counsel  
here has not supported him. We think there is  
no merit on that point. So we won't call on  
the Public Prosecutor. 30

Next point, power of Agong to make the  
1975 Regulation. We think that Agong had power  
under the Regulation, subject to what will be  
stated on this point later on.

Now part two: these are points on which we  
would like to call on the Public Prosecutor.  
I will speak slowly so that Datuk Yusof and  
counsel can take notes.

First point: power of Attorney-General to  
discriminate in relation to Article 8. 40

Next point, consent of D.P.P. here in the appeal argued by Jagjit, the validity thereof.

Next point, sub-delegation. On the lines set out by Tan Sri H.S. Ong in his dissenting judgment in Khong's case (1976) 2 MLJ 170.

Next point. This is the last. Possession of component parts of firearms and service-ability. This one was dealt with at great length by Mr. Jagjit.

10

Taken down by me and seen by the Hon'ble Lord President.

(Sgd) W.Y.Ming  
(Wong Yik Ming)  
Secretary to Lord President,  
Federal Court,  
Malaysia,  
Kuala Lumpur

In the  
Federal Court

No.12  
Notes of  
Argument by  
Suffian,  
Lord President

21st January  
1977  
(cont'd)

In the  
Federal Court

No.13  
Notes of  
Argument by  
Raja Azlan  
Shah F.J.

20th January  
1977

No. 13

NOTES OF ARGUMENT BY  
RAJA AZLAN SHAH F.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO.46 OF 1976

Between

Teh Cheng Poh @ Char Meh Appellant

And

10

Public Prosecutor Respondent

(In the matter of Criminal Trial No.1 of  
1976 in the High Court in Malaya at  
Penang

Between

The Public Prosecutor

And

Teh Cheng Poh @ Char Meh)

Coram: Suffian, L.P. Malaysia  
Raja Azlan Shah, F.J.  
Wan Suleiman, F.J.

20

NOTES RECORDED BY RAJA AZLAN SHAH, F.J.

THURSDAY, 20TH JANUARY, 1977:

Jagjit made amicus curiae.

F.C.C.A. 39/76. Rajasingam for Appellant.  
Datuk Yusof for Respondent.

Rajasingam:

Appeal against conviction only.

P.U.(A) 145/69 non-existent. Purpose lapsed.

Two elections held. May 13. Before and after page 44 - By Tunku Abdul Rahman. May 13 tragedy - Agt. by N.O.C. page 27.

In the  
Federal Court

No.13  
Notes of  
Argument by  
Raja Azlan  
Shah F.J.

20th January  
1977  
(cont'd)

10

At that time Proclamation was valid. Can it now be said that after 20.2.1971 Proclamation is valid? Circumstances had been radically changed for the better. May 13 - emergency declared for a specific purpose. If another emergency exists, Government can make another proclamation. In 1964 emergency - Indonesian confrontation. Then Datuk Stephen Kalong Ningkan's emergency 14.9.1966; (1968) 1 M.L.J. 120.

P.P. v. Khong Teng Khen (1976) 2 M.L.J. 167 - Proclamation P.U.(A) 145/69.

Government by using P.U.(A) 145/69 for a collateral purpose, have abused their powers. Page 95 "Fraudulently". Words & Phrases by Rowland and Bry.

20

Halsbury's 3rd ed. Vol. 7 para.403; 562; Halsbury's Supplement 564.

Article 66, 150. If a new Proclamation is not issued and if existing Proclamation not annulled by Parliament, should the judiciary remain inactive. Ordinance 1, P.U.(A) 146/69 - section 2(4) - Emergency (Essential Powers) Ordinance, 1969.

Ordinance 4/69 w.e.f. 16.5.1969. Repealed 1.9.1972.

30

Section 2(2) (a) and (c) make provisions to make regulations etc. but does not make provisions for sub-delegation to P.P. etc.

(1976) 2 M.L.J. 174, D - 175 C.

Mode of trial - Preliminary Inquiry taken off under I.S.A. Judge bound to call for defence. Need not follow rules of evidence. Rules 10 onwards. Radical departure from ordinary law and procedure.

Ground 2:

Page 32 Appeal Record - miscarriage of justice.

In the  
Federal Court

No.13  
Notes of  
Argument by  
Raja Azlan  
Shah F.J.

20th January  
1977  
(cont'd)

Ground 3:

Charge did not contain even a statement  
"that you committed it within a security area".

Samivellu v. P.P. (1972) 1 M.L.J. 28

Ground 4:

Cautioned statement challenged by  
appellant. Trial within trial - pages 9-11.  
Judge did not allow appellant to go into  
witness box to rebut allegation. Rule 17  
P.U.(A) 362/75 cited by Judge. Cautioned  
statement only evidence against appellant 2;  
pages 34, 32 conflict. Cautioned statement  
recorded in Malay - page 9 - page 12. Same  
officer recorded statement within a period of  
1 hour; page 19.

10

Ground 7:

Page 34, 3G, 5

F.C.C.A. 40/76 - K.Y. Chew for Appellant  
(Assigned). Adopt Rajasingam's argument in  
general. Wish to add two points.

20

Ground (1) "in a security area". Prosecu-  
tion need to prove that. Judge erred in taking  
judicial notice of security area.

Samivellu v. P.P. (1972) 1 M.L.J.28.  
Appeal Record pages 34/35.

Ground (2)

Exh. P11. Cautioned statement should not  
have been admitted. No opportunity given to  
appellant to adduce evidence - page 14.

F.C.C.A. 46/76 - Karpal Singh for appellant

30

Adopt Rajasingam's argument.

P.U.(A) 145/69 does no longer exist because  
purpose has lapsed by effluxion of time.

Therefore P.U.(A) 148/69 has also lapsed.  
Proclamation of security area throughout  
Federation for purposes of Pt.11, I.S.A.



Ground (1):

Breach of Art. 8(1) Appeal Record page 2; pages 28/29 Consents of P.P. re. both charges. Appellant had been selected to be charged under I.S.A. P.U.(A) 148/69, section 47 (dated 15.5.1969). Other laws with which appellant could also be charged are Arms Act No.21/60, section 9, (lesser punishment); Firearms (Increased Penalties) Act 37/71, section 8 (lesser punishment).

10

Submit executive Act of D.P.P. to frame charge under I.S.A. infringes Art. 8(1) - (executive discretion).

5 ed. Basu, Vol. 1 page 287, 291.

P.P. v. Datuk Harun (1976) 2 M.L.J. 116, 117.

Submit no criteria by which appellant was charged under I.S.A. A.G. has discretion but subject to Art. 8.

20

Ground (2):

I.S.A. not intended for ordinary criminal. Intention of legislature? Other laws available. Explanatory statement of I.S.A. 1960.

(1963) S.C. 1241, 1244. Can look at objects and reasons.

Ground (3):

I.S.A. Act No.82/Revised - 1972, section 47 under Pt.III.

I.S.A. 1960 - section 47 under Pt. II.

30

12 ed. Maxwell on Interpretation, page 18.

Interpretation Act.

Proclamation of Security Area is 18/60 - subsidiary legislation.

Section 12, Revision of Laws Act, 1968.

In the  
Federal Court

No.13  
Notes of  
Argument by  
Raja Azlan  
Shah F.J.  
20th January  
1977  
(cont'd)

In the  
Federal Court

No.13  
Notes of  
Argument by  
Raja Azlan  
Shah F.J.

20th January  
1977  
(cont'd)

Willcock v. Muckle (1951) 2 K.B. 844,  
845 similar to Art. 150(3).

Ground (4):

Appellant also charged for armed robbery,  
under Firearms (Increased Penalties) Act.

"same transaction" Krishna Murthy v. Abdul  
Subban A.I.R. (1965) 128, 130.

no element of political subversion.  
Vol. 2 Basu page 461 onwards - Art. 76.

Inltd. R.A.S.

10

21st January  
1977

FRIDAY, 21st January, 1977

F.C.C.A. 43/76. Jagjit Singh as amicus  
curiae.

Adopts counsels' legal arguments. Wish  
to add. Sub-delegation. Regulation 2(b) the  
certificates must be signed by P.P. P.U.(A)  
362/69. Even under section 80 I.S.A. consent  
of P.P. necessary. De Smith 2 ed. page 281,  
303, 316. In present case consent signed by  
D.P.P. and not by P.P. If so, it is sub-  
delegation of power given to D.P.P. Ultra  
vires.

20

Bad faith exercised. In present case,  
gun was defective. Appeal Record 81.  
Regulation 21(6). Armourer offered to the  
defence. If P.P. found gun defective, he  
should not have charged respondent under  
I.S.A. Shows sign of bad faith. "Fire-arm"  
under I.S.A. Also same under Firearm  
(Increased Penalties) Act and Arms Act.

30

Moore v. Gooderham (1960) 3 A.E.R. 575 -  
airgun is a lethal weapon.

Read v. Donovan (1947) 1 K.B. 326 -  
signal pistol is a firearm.

[sic]

Chong Kim Seng v. P.P. (1949) M.L.J. 109,  
111 - definition of firearm same as definition  
of firearm in I.S.A.

Tan Hua Lam v. P.P. (1966) 1 M.L.J.150.

In the  
Federal Court

63 - Lim Eng Kooi v. P.P. (1948-49) Supplement  
buried pistol which needed to be cleaned  
is a firearm.

No.13  
Notes of  
Argument by  
Raja Azlan  
Shah F.J.

Lee Weng Sang v. P.P. (1976) 1 M.L.J.82 -  
under Firearms (Increased Penalties) Act.

21st January  
1977  
(cont'd)

Dickey v. Police (1964) N.Z.L.R. 503 a  
component part cannot be a firearm. A rifle  
from which the bolt and magazine are missing.

10 Charging accused under section 57 I.S.A.  
when prosecution knew firearm could not be  
used is a sign of bad faith.

Art. 8 - discrimination - breach.

170. P.P. v. Khong Teng Khen (1976) 2 M.L.J.

Right now 3 persons charged in lower court  
and 2 being charged in High Court.

20 1975 Regulations made under Ordinance 1/69  
cannot govern procedure of another Act, i.e.  
I.S.A. Whether Acts are of equal status,  
regulations of one parent Act cannot govern  
procedures of another parent Act.

Section 72 I.S.A., Sections 77, 80.

Both Ordinance 1/69 and 1975 Regulations  
prescribe procedure.

H.M. cannot make regulations to bind  
another parent Act.

(1976) 2 M.L.J. 169 B-F.

30 When Parliament is not sitting, H.M.  
cannot make Ordinances, still less regulations -  
Art. 150(2). Parliament is still sitting.

Datuk Yusof:

Points not called :-

Repeal by effluxion of time and change of  
circumstances.

In the  
Federal Court

No.13  
Notes of  
Argument by  
Raja Azlan  
Shah F.J.

21st January  
1977  
(cont'd)

Samivellu's case.

Pt. II in I.S.A. 1960 and Pt.III in  
Revised Act 1972.

Power of H.M. to make 1975 Regulations.

Points called:-

Power of A.G. to discriminate is relevant  
to Art. 8.

Consent of P.P. Validity thereof.

Sub-delegation on lines set out by Ong F.J.  
in Khong's case. Possession of component 10  
parts of firearms and serviceability.

Cautioned statement. Trial within a trial,  
accused not given opportunity to give evidence.  
Regulations 13, 17, 21.

Consent of P.P. under section 80 I.S.A.:-

Consent of P.P. to try appellant under  
I.S.A. contravened Art. 8. In support of his  
argument counsel pointed out to this Court  
that there are 3 laws dealing with cases of  
mere possession (unlawful) of firearms - Arms 20  
Act, Firearms (Increased Penalties) Act and  
I.S.A. The consent to prosecute as pointed out  
by Jagjit Singh was signed by D.P.P. consenting  
to the respondent or appellant to be prosecuted  
under s.57 I.S.A. in exercise of his power  
vested in him under section 80 I.S.A.  
Section 80 I.S.A. provides..... Material  
words are "P.P." word "personally" not there.  
D.P.P. is vested with power of P.P. not by  
virtue of delegation of powers, but vested in 30  
him by written law passed by Parliament, i.e.,  
section 376(3) C.P.C. Cap.6. Section 80 I.S.A.  
vested power to issue consent for any prosecution  
in P.P. exercisable by a P.P. Reading section  
376(3) C.P.C., it is only logical that word  
"P.P." in section 80 I.S.A. to be read to  
include D.P.P.

Art. 8:-

Art. 145 Constitution. In India there is

no equivalent provision. India A.G. power under Art. 76 - advisory capacity.

In the  
Federal Court

Long bin Samat v. P.P. (1974) 2 M.L.J.152, 155.

No.13  
Notes of  
Argument by  
Raja Azlan  
Shah F.J.

21st January  
1977  
(cont'd)

Any person found to be in unlawful possession of firearm can be charged under any law depending on the circumstances of each case. P.P. is conferred with absolute power to charge an accused under any law.

10 P.P. v. Su Liang Yu (1976) 2 M.L.J. 128 - Hashim J. page 130. Under 1975 Regulations there is no discrimination re person who are charged with security offences. They are tried under procedure prescribed under 1975 Regulations. If an accused is charged under Arms Act, he could not have committed a "security offence" unless P.P. certifies it under regulation 2(1).

Submit there is classification here. Does not offend Art. 8. Cites page 131.

20 Sub-delegation re Ong F.J.'s judgment in Khong's case. We must go back to the root of the matter. Whether this Court agree that Ordinance 1/69 is still in force.

Possession of component parts of firearms etc.

Rajasingham - Reply :-

30 P.U. (A) 148/69 makes provision for executive to create offences and mode of trial but did not sub-delegate power to D.P.P. Section 2(2)(a) and (c) of P.U.(A) 148/69.

Regulation 21 - admissibility - not the intention to include statements involuntarily made.

Chew: nothing to add.

Karpal Singh: Reply :-

Section 80 I.S.A. "or more" - should read as eiusdem generis imprisonment and not death penalty.

Indian art. 76 and Mal. art. 145. Concedes

In the  
Federal Court

No.13  
Notes of  
Argument by  
Raja Azlan  
Shah F.J.

21st January  
1977  
(cont'd)

India A.G. not in charge of prosecutions.  
Advocate-General of each State is in charge  
of (art.165) prosecution. Basu Vol.3 page 272.

Jagjit Singh: Reply :-

"Sanction" not to be confused with  
"discretion". Cites section 376(3) C.P.C. -  
refers to sanction and power. Section 80  
I.S.A. - more of a sanction. Power to vest  
in D.P.P. Where under 1975 Regulations,  
it is a discretion which cannot be delegated  
to D.P.P.

10

C.A.V.

Sgd. R.A.S.

Salinan yang di-akui benar.

(Sgd)

15.3.78

Setia uscha kepada Hakim  
Mahkamah Persekutuan  
Malaysia  
Kuala Lumpur

No. 14

In the  
Federal Court

NOTES OF ARGUMENT BY  
WAN SULEIMAN F.J.

No.14  
Notes of  
Argument by  
Wan Suleiman  
F.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

20th January  
1977

(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO.46 OF 1976.

Between

Teh Cheng Poh @ Char Meh                      Appellant

10

And

Public Prosecutor                                      Respondent

(In the matter of Criminal Trial No.1 of  
1976 in the High Court in Malaya at Penang

Between

The Public Prosecutor

And

Teh Cheng Poh @ Char Meh)

Coram: Suffian, L.P. Malaysia  
Raja Azlan Shah, F.J.  
Wan Suleiman, F.J.

20

NOTES RECORDED BY WAN SULEIMAN, F.J.

20th January, 1977:

Karpal Singh for appellant  
Datuk Yusof for respondent.

Karpal Singh: Associates himself with Rajasingam's  
arguments. By effluxion of time Proclamation of  
Emergency had lapsed and therefore Proclamation  
148/69 would also lapse (proclamation of security  
areas).

30

Gr. 1 -

Breach of Article 8.

P.U. 'A( 148/69 - the proclamation under I.S.A.-

In the  
Federal Court

No.14  
Notes of  
Argument by  
Wan Suleiman  
F.J.

20th January  
1977  
(cont'd)

all areas in Malaysia security areas.

Arms Act 1960 - s.9 - 7 years imprisonment.

Firearms Increased Penalty Act 37/71 -  
s.8 - Penalty - imprisonment 14 years -  
whipping 6 strokes.

Therefore 3 sets of laws - possession of  
firearms.

Basu's Constitution of India Vol.I,  
5th Edition Article 14 (in pari materia our  
Article 8).

10

P.291.

P.P. v. Datuk Harun Idris & Ors. (1976)  
2 M.L.J. 116 at 117 righthand column para. 3.

Exercise of A.G's powers under Article 145  
must be done with reason - and subject to  
Article 8 - I.S.A. never intended for common  
criminal but to control political subversion,  
(reads preamble), and does not apply to this  
lone robber.

Arms Act 21/1960 - passed in 1971

20

Act 37/1971 - passed about 4 years back.

Explanatory note to I.S.A. - Gazette of  
5th June 1960.

West Bengal v. Union of India (1954) S.C.  
1241 at 1244. Court can look at object and  
reasons - i.e. look at antecedents leading to  
introduction of the bill. Reads Explanatory  
Note.

3rd Ground:

S.2 - Definition of Security area - p.4.

30

Pt. II & III.

Maxwell on Interpretation 12th Edn. 18.

Proclamation of Security areas under Act  
18 of 1960 - sub-legislation for purpose of  
I.S.A.

In view of s.12 Revision of Laws Act 1968,



it would appear Regulation still in force.

Does not matter whether it is under P.II or P.III.

Harun J's supplementary judgment.

F.C. Cr.A.No.43/76 - Supplementary judgment by Harun J. p.59-60 - "the facts..."

Willcock v. Muckle (1851) 2 K.B. 844 Article 150(3).

Gr.4

10

"Same transaction.....A.I.R. (1965) Mysore 178, 180.

"No connection with subversion" - p.7.

Intd. W.S.

Power of A.G. in India - Basu's Vol.2, 461 - Art. 86.

Adjourned to 9.30 a.m. on 21/1.

Intd. W.S.

(This 21st day of January, 1977)

Criminal Appeal No.43/76.

21st January  
1977

20

Jagjit Singh (amicus curiae) for respondent.

I associate myself with the legal arguments of counsel for respondents in yesterday's appeals.

2 points in elaboration.

(1) Sub-delegation.

P.U.(A)320/75 as amended.  
Security offences - certificate of A.G.  
Even under I.S.A. consent of A.G.required.

30

Consent by D.P.P. is not sufficient - must be by A.G. - consent under s.80 an express power.

In the  
Federal Court

No.14  
Notes of  
Argument by  
Wan Suleiman  
F.J.

21st January  
1977  
(cont'd)

9 De Smith - p.281.

Bad faith - p.303 - exercise of power  
for an improper purpose.

P.316 (against me) - objection will not  
be considered unless expressly pleaded.

Gun in 43/76 defective. P.81 of record -  
can't be fired.

P.U.(A) 362/76 Reg.21(b) - knowing of  
defective gun, should not have proceeded under  
I.S.A. - Armourer not called - but offered  
to defence. 10

Definition of firearm in I.S.A. - identical  
with that in Firearms Act and Firearms  
(Increased Penalties) Act.

Cases against me:

Moore v. Gooderham (1960) 3 A.E.R. 575 -  
airgun - lethal weapon.

Read v. Donovan (1947) 1 K.B. 326 - signal  
pistol held to be firearm.

Chong Kim Seng v. P.P. (1949) M.L.J. 109 20  
at 111. Emergency Regulations 1949.

Tan Hua Lam v. P.P. (1966) 1 M.L.J. 150.

Lim Eng Kooi v. P.P. (1948-49) M.L.J.60 -  
which needed to be cleaned and would then be  
serviceable - held a firearm.

In my favour:

Lee Weng Say v. P.P. (1976) 1 M.L.J. 82 at  
83 - High Court, Ipoh - Hashim J.

Dickey v. Police (1964) N.Z.L.R. 503.

A mere component part can't be a firearm. 30

Sub-delegation by A.G. to D.P.P. bad faith  
has been exercised.

For purpose of proceedings in court, D.P.P.  
can act but the consent is a personal power,  
and D.P.P. can't sign consent.

Discrimination.

In the  
Federal Court

P.P. v. Khong Teng Khen & Anor. (1976) 2  
M.L.J. 170 (F.C.).

No.14  
Notes of  
Argument by  
Wan Suleiman  
F.J.

2nd Column D - reads.

5 persons charged with possession of  
firearms - but Lower and High Court...

21st January  
1977  
(cont'd)

Scope of I.S.A. being extended to cover  
non-security offence.

10

1969 Emergency Ord. procedure can't be  
used to govern I.S.A. offences - procedure  
under one parent act should not be made to  
govern procedure in another parent act.

I.S.A. 72 refers to C.P.C. - s.72,77.

Both 1969 Ordinance and 1975 Regulations  
only deal with procedure, create no offence.

Khong's case - 169 B/F.

If Agong can't pass Ordinance whilst  
Parliament is sitting, he can't pass regula-  
tions when it is sitting.

20

Agong can't make the 1975 Regulations  
because Parliament is in existence and there-  
fore they are void.

Intd. W.S.

Datuk Yusof replies:

Article 8: 3 laws dealing with possession  
of firearms.

30

Consent to prosecute signed by a D.P.P.  
under s.80 I.S.A. "P.P. personally" not specified.  
D.P.P. vested with powers not by delegation but  
by s.376 (ii) C.P.C.

No equivalent to Article 145(3) in Indian  
Constitution. In India it is Article 76 - a  
mere legal adviser - nothing about prosecution  
functions.

Long bin Samat v. P.P. (1974) 2 M.L.J. 158.

In the  
Federal Court

No.14  
Notes of  
Argument by  
Wan Suleiman  
F.J.

21st January  
1977  
(cont'd)

A.G. conferred absolute power to decide  
under which law offender to be charged.

Persons dissatisfied with exercise of  
this discretion should seek remedy elsewhere,  
not in court - Khong's case.

P.P. v. Su Liang Yin (1976) 2 M.L.J. 128  
per Hashim Sani J at 130 - lefthand column G -  
classification.

There is classification in the 3 cases  
Jagjit Singh refers to and therefore no conflict 10  
with the constitution.

All appellants charged under section 57(1)  
(a) & (b) of I.S.A.

Consent signed by D.P.P. in exercise of  
his powers under s.376 C.P.C. - can't be used  
in arguments about fides.

Khong's case - Ong F.J's judgment (1976)  
2 M.L.J. p.174 righthand column.

G/N 372/75.

Does this Court agree with Chang J in 20  
Madhavan's case, that the Emergency Ord. is  
bad law.

The delegation perfectly valid if....

Article 150 - action thereunder clear.

The 1975 Regulations should be deemed to  
have modified or supplemented the I.S.A. The  
regulations can be inconsistent even with  
provisions of constitution.

Component of firearms:

Definition of firearm under I.S.A. .... 30  
"which can be adapted".

Trial within trial and effect of Regulations 13  
and 17. Statement of 2nd accused admitted  
because of Reg. 21. Regulations 13 and 17.

Regulation 13 relevant.

So long as accused given opportunity to be heard before close of case, no injustice done.

In the  
Federal Court

Khong's case p.170 lefthand Column D.

No.14  
Notes of  
Argument by  
Wan Suleiman  
F.J.

Statement by accused, Rajasingam's client's case is connected with - knowledge inferred from statement.

21st January  
1977  
(cont'd)

Intd. W.S.

Rajasingam:

10 Sub-delegation - flowed from P.U. (A)  
148 - S.2(2) P.U.(A) 148.

Rule 21 - voluntariness shall determine admissibility.

Reasonable doubt raised - accused should have been given ..

Intd. W.S.

Chew: Nothing to add.

20 Karpal Singh: S.80 - no mention of death sentence  
Indian Constitution Article 76.  
A.G. in India not i/c of prosecution.  
Art. 165 - the State Advocate  
Generals are i/c or prosecution.

Basu's Vol.3 p.272 - administration of justice a State subject. In lower courts certain powers vested in person of P.P.

Intd. W.S.

Jagjit Singh:

Sanction not to be confused with discretion. Under the 1975 Regulations it is a discretion, which must be exercised personally.

30

Intd. W.S.

C.A.V.

Intd. W.S.

Certified true copy  
(Sgd)  
Secretary to Judge  
Federal Court, Malaysia  
Kuala Lumpur.

14/1/78

57.

In the  
Federal Court

No.15  
Judgment of  
Suffian

26th March 1977

No. 15

JUDGMENT OF SUFFIAN,  
LORD PRESIDENT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR  
(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO.39 OF 1976  
(Penang High Court Criminal Trial No.6 of 1976)

Between

Johnson Tan Han Seng Appellant 10

And

Public Prosecutor Respondent

FEDERAL COURT CRIMINAL APPEAL NO.40 OF 1976  
(Penang High Court Criminal Trial No.5 of 1976)

Between

Soon Seng Sia Heng @ Wong Soon Seng  
@ Chang Tik Kong @ Chan Teik Kong Appellant

And

Public Prosecutor Respondent

FEDERAL COURT CRIMINAL APPEAL NO.43 OF 1976 20  
(Federal Territory Criminal Trial No.23 of 1976)

Between

Public Prosecutor Appellant

And

Chea Soon Hoong @ Foo Soh Loh Respondent

FEDERAL COURT CRIMINAL APPEAL NO.46 OF 1976  
(Penang High Court Criminal Trial No.1 of 1976)

Between

Teh Cheng Poh @ Char Meh Appellant

And

Public Prosecutor Respondent 30

Coram: Suffian, L.P.  
Raja Azlan Shan, F.J.; and  
Wan Suleiman, F.J.

In the  
Federal Court

No.15  
Judgment of  
Suffian

26th March  
1977  
(cont'd)

JUDGMENT OF SUFFIAN, L.P.

These four appeals were argued one after another in the combined hearing of all counsel involved, as some of the grounds of the appeal overlap.

10 In appeal No.40 the accused was sentenced to death for the offences of possession of firearm contrary to section 57 (1)(a) and of ammunition contrary to section 57(1)(b) of the Internal Security Act, Act 82 ("ISA"). Similarly, the accused in appeal No.46. In appeal No.39, the accused was sentenced to life imprisonment for the offence of consorting with the accused in appeal No.40 contrary to section 58(1) ISA. In appeal 20 No.43 the accused was acquitted of the offences of possession of firearm and ammunition contrary to section 57(1)(a) and (b) ISA.

30 Offences against sections 57 and 58 of ISA are security offences and cases against all the accused are therefore security cases, see regulation 2(1) of the Essential (Security Cases) Regulations, 1975 ("the 1975 regulations" or "the regulations"), published at P.U.(A) 320 and amended by P.U.(A) 362 in 1975, and so by virtue of regulation 3 of the regulations they were tried in accordance with the special 30 rules of procedure and evidence prescribed by the regulations.

Validity of 1975 regulations.

40 The first point taken on behalf of all the accused is that the regulations are void because the Emergency (Essential Powers) Ordinance No.1, ("the Ordinance") published as P.U.(A) 149/69, under authority of which the regulations were made, had itself lapsed and ceased to be law by effluxion of time and by force of changed circumstances.

To appreciate this argument it is necessary to state that under clause (1) of article 150 of the constitution if the Yang di-Pertuan Agong is satisfied that a grave emergency exists he may issue a proclamation of emergency and that

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.  
26th March  
1977  
(cont'd)

a day or two after the general election in 1969 there were serious riots in Kuala Lumpur and in one or two other areas and His Majesty acting on responsible advice proclaimed an emergency, see P.U.(A) 145/69 ("the 1969 proclamation"). That was on 15th May, 1969, and on the same day His Majesty also promulgated the Ordinance, inter alia, giving himself power to make essential regulations which he considers desirable or expedient for securing 10 the public safety, the defence of Malaysia, the maintenance of public order and of supplies and services essential to the life of the community, and it is in exercise of this power that in 1975 His Majesty made the regulations.

Counsel accept the validity of the 1969 proclamation at the time when it was made in view of the serious situation then prevailing, but submit that since then and by 1975 the situation has changed, is no longer serious, 20 that the then Agong has been succeeded by two other Agongs, that another general election has been held, and that in view of all this it cannot be said that there is any longer any necessity and basis for an emergency, and that if there is, then His Majesty should have been advised to issue a fresh proclamation, as he did in 1966 to deal with the political crisis arising out of the action of Datuk Stephen 30 Kalong Ningkan, see (1968) 2 M.L.J. 238, though there was already then the 1964 proclamation of emergency still in existence to deal with Indonesian confrontation. It is submitted that it was necessary to issue a fresh proclamation of emergency in 1966 because the 1964 proclamation had expired due to the normalization of relations between us and Indonesia, and that if in 1966 it was necessary to proclaim an emergency afresh to deal with the Datuk, then surely in 1975 it should have been necessary to 40 issue a fresh proclamation that year to deal with people carrying firearms, notwithstanding the existence of the 1969 proclamation, and the failure to do so invalidates the 1975 regulations.

Harun J. in the case out of which arises appeal No.43 is also of the view that the 1969 proclamation has lapsed and is no longer in force. He said :-

"It will be ridiculous in the extreme to prosecute any person to-day for an offence 50



under the Internal Security Act with  
reference to the 1964 Proclamation  
[to deal with Indonesian confrontation].  
In Willcock v. Muckle (1951) 2 K.B. 844,  
Lord Goddard, C.J. at p.851 said:  
'This Act [the National Registration Act,  
1939] was passed for security purposes;  
it was never passed for the purposes for  
which it was apparently being made. To  
use Acts of Parliament passed for  
particular purposes in wartime when the  
war is a thing of the past - except for  
the technicality that a state of war  
exists - tends to turn law-abiding  
subjects into lawbreakers, which is a  
most undesirable state of affairs.'

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

10

In the same case, Devlin, J. at p.853  
said :-

20

'I think that it would be very unfortunate  
if the public were to receive the impression  
that the continuance of the state of  
emergency had become a sort of statutory  
fiction which was used as a means of  
prolonging legislation initiated under  
different circumstances and for different  
purposes.'

30

If I am correct in holding that the 1964  
Proclamation has lapsed, the question  
arises whether the same can be said for  
the 1969 Proclamation. On the facts it  
is clear that the tragic events of 13 May  
1969 and the weeks that followed are a  
thing of the past. The occasion for  
which the Proclamation P.U.(A) 148  
[declaring all areas in the Federation  
as security areas for the purposes of ISA]  
was made was for particular purposes  
which no longer exist, at least not on  
9 February 1976, when this alleged offence  
was committed. It is now more than seven  
years after these unhappy events and I  
must hold that the 1969 Proclamation has  
also lapsed. In the Petition of the  
Earl of Antrim and Eleven Other Irish Peers  
(1966) 3 WLR 1141, Lord Reid at p. 1149  
said: 'A statutory provision becomes  
obsolete if the state of things on which  
its existence depended has ceased to  
exist so that its object is no longer  
attainable'."

40

50

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

With respect I do not agree that the 1969 proclamation and the Ordinance have lapsed and are no longer in force. In the words of clause (3) of article 150 "a proclamation of emergency and any ordinance promulgated under clause (2).....if not sooner revoked, shall cease to have effect if resolutions are passed by both Houses [of Parliament] annulling such proclamation or ordinance....", and in the words of clause (7) of the same article "At the expiration of a period of six months beginning with the date on which a Proclamation of Emergency ceases to be in force, any ordinance promulgated in pursuance of the Proclamation..... shall cease to have effect...". In my view these words mean -

10

(1) that a proclamation of emergency ceases to have effect only -

- (a) if revoked or
- (b) Parliament by resolution annuls it; and

20

(2) that an Ordinance ceases to have effect if -

- (a) revoked, or
- (b) Parliament by resolution annuls it, or further
- (c) if the proclamation in pursuance of which it was promulgated has ceased to have effect and six months have elapsed.

30

The 1969 proclamation has not been revoked nor annulled by Parliament. The ordinance has not been revoked or annulled. Therefore in my view they are still in force.

As regards the first case cited by Harun J, there the question was whether the National Registration Act, 1939, which provided by section 12(4) -

" This Act shall continue in force until such date as His Majesty may by order in Council declare to be the date on which the emergency that was the occasion of the passing of this Act came to an end...."

40

was still in force when in pursuance of the

Courts (Emergency Powers) (End of Emergency) Order, 1950, it was declared that 8th October, 1950, was the date on which the emergency which was the occasion of the passing of the Courts (Emergency Powers) Act, 1939, came to an end; and it was held that the Act had not come to an end, as there could be different aspects of the same emergency and that if the Crown had considered that a particular aspect no longer existed, so that the emergency which occasioned that particular Act to be passed had ended, it did not follow that all the Acts concerning other aspects of the same emergency were terminated. The remark quoted by Harun J. merely exhorted the authorities not to enforce the Act. It is not authority for the proposition that an Act of Parliament lapses by force of changed circumstances.

In the  
Federal Court  
No.15  
Judgment of  
Suffian L.P.  
26th March  
1977  
(cont'd)

10

20

With regard to the remark of Lord Reid in the second case cited by Harun J. in appeal No.43, again I do not think that it is authority for the proposition put forward on behalf of the accused. There the question was whether in 1965 the peerage of Ireland had under the Union with Ireland Act, 1800, the right to be represented in the House of Lords, and it was held that they did not, since that Act had ceased to be effective, not simply because of changed circumstances, but because of the passing of the Irish Free State (Agreement) Act, 1922, which split Ireland into two (the Irish Free State and Northern Ireland), and furthermore by the passing in 1949 of the Ireland Act, 1949 which declared that the Irish Free State (since renamed Eire) had ceased to be part of His Majesty's dominions. Lord Reid said at p. 1149 :-

30

40

" As a result of these changes it appears to me to be clear that Ireland as a whole no longer exists politically. On the other hand, there has been no statutory alteration of the position of the Irish peerage or the rights of Irish peers. So if the Irish representative peers were elected to represent Ireland I cannot see how there could now be an election of a peer to represent something which no longer exists politically."

50

Then Lord Reid added the words quoted by Harun J.:

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.  
26th March  
1977  
(cont'd)

" A statutory provision becomes obsolete if the state of things on which its existence depended has ceased to exist, so that its object is no longer attainable."

After that sentence Lord Reid explained what he meant by saying

"Or putting it another way, a statutory provision is virtually or impliedly repealed if a later enactment brings to an end a state of things the continuance of which is essential for its operation."

10

Here it cannot be said that a later enactment has brought to an end the state of things the continuance of which was essential for the operation of the 1969 proclamation and the Ordinance.

"In Scotland", according to The Dictionary of English Law by Earl Jowitt, pp.621-622, "an Act is said to fall into desuetude if, being of ancient date, it has for long been disregarded in practice. The Courts will not then give effect to it. The doctrine probably applies only to Acts of the Scots Parliament."

20

The position in England, however, is different. Maxwell on the Interpretation of Statutes, 12th edition, states at page 16 -

"A law is not repealed by becoming obsolete: there is no doctrine of desuetude in English law. So until 1844 it was an indictable offence to sell corn in the sheaf before it had been thrashed out and measured, and as late as 1836 insolvents in Scotland were bound to wear a coat and cap half yellow and half brown. The Profane Oaths Act, 1745, which punished profane cursing and swearing by fines graded according to the social degree of the offender, was still in force in 1966, as were the canonical requirements as to the colour and material of night-caps worn by clergy of the Church of England."

30

40

Support for this proposition may be found in The King v. Governor of Wormwood Scrubbs Prison (1). Thereby s.1(7) of the Defence of

(1) (1920) 2 K.B.305

the Realm (Amendment) Act, 1915, it was provided: "In the event of invasion or other special military emergency arising out of the present war, His Majesty may by proclamation forthwith suspend" the right of trial by jury in the case of offences committed against the regulations and leave the offenders to be tried by courts-martial, and it was held that when a special military emergency has once arisen and a proclamation suspending the right of trial by jury in Ireland has once been lawfully made, the operation of the proclamation is not limited to the duration of the emergency, but it remains in force till the end of the war unless revoked sooner. The Earl of Reading C.J. said at p.311:

In the  
Federal Court

No.15

Judgment of  
Suffian L.P.

26th March  
1977

(cont'd)

10

20

30

"...it was said that the proclamation suspending trial by jury in Ireland... had ceased to be operative, inasmuch as the 'special military emergency' which was the foundation of the power to make the proclamation had ceased to exist. The answer to that contention is that even if it is material to consider whether the military emergency has come to an end, it is not a matter which this court can consider: whether the emergency continues to exist or not it is for the executive alone to determine."

40

50

The law in India is the same as in England, as can be seen from a decision of the Indian Supreme Court in Bhut Natha Mate v. State of West Bengal (2). There the question was whether the detention of the petitioner Mate was lawful or not and it was argued that it was unlawful because of seven grounds, one of them being because, it was said, "the detention has been arbitrary and may continue indefinitely if the Proclamation of Emergency becomes a constant fact of constitutional life and must therefore be regarded as unconstitutional". Krishna Iyer J. delivering the judgment of the court said at p.811:

"16. We have to reject summarily [this] submission as falling outside the orbit of judicial control and wandering into the para-political sector. It was argued

(2) A.I.R. 1974 S.C.806

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

that there was no real emergency and yet the Proclamation remained unretracted with consequential peril to fundamental rights. In our view, this is a political not justiciable issue and the appeal should be to the polls and not to the courts. The traditional view...that political questions fall outside the area of judicial review, is not a constitutional taboo but a pragmatic response to the court to the reality of its inadequacy to decide such issues and to the scheme of the constitution which has assigned to each branch of government in the larger sense a certain jurisdiction... The rule is one of self-restraint and of subject-matter, practical sense and respect for other branches of government like the legislature and executive."

10

20

The learned judge then cited in support The King v. Wormwood Scrubbs Prison (1), The King v. Halliday (3) and a Privy Council decision on appeal from Malaysia, Ningkan v. Government of Malaysia (4).

With respect I would say that the law in Malaysia is the same as that in England and India, that is that it is a matter for the executive to decide whether a proclamation of Emergency should or should not be terminated, and not for the courts.

30

The validity of the 1975 regulations is attacked on another ground, namely sub-delegation. Mr. Rajasingam in appeal No.39 says that as to this he relies on a passage in the dissenting judgment of Ong F.J. in P.P. v. Khong Teng Khen & Another (5). That passage begins with the paragraph in the first column on page 174 commencing "I invited counsel for the defendants, etc." and ending with the paragraph in the second column on the same page commencing "Regulation 2(2) in both the 1975 regulations....". As I understand the argument it runs on the following lines: by the Ordinance His Majesty has delegated to himself power to alter the mode of trial of persons offending against the regulations (made under that Ordinance) and by the 1975 regulations,

40

- (3) (1917) A.C.260  
(4) (1970) A.C.379

regulation 2(2), His Majesty has sub-delegated this power to the Attorney-General. With respect I do not see merit in this argument. Even if it is true that there has been sub-delegation, which I do not think is the case, the 1975 regulations are intra vires the Ordinance, since, as explained by the majority judgments in Khong (5) they come within the language of regulation 2(1) of the Ordinance and in particular of paragraph (j) of regulation 2(2) which expressly provides that His Majesty may make essential regulations to -

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

10

"provide for amending any written law, for suspending the operation of any written law and for applying any written law with or without modification".

### Security areas

20

Under sections 47 and 57 ISA the acts committed by the accused are offences only if committed in a "security area" which means (section 2) an area proclaimed by His Majesty as a security area "for the purposes of this Part", meaning Part III of ISA in which the two sections 47 and 57 appear.

30

However by virtue of the proclamation P.U.(A) 148/69 His Majesty proclaimed all areas in the Federation to be security areas "for the purposes of Part II of ISA", "not of Part III. Because of this Harun J. acquitted the accused in appeal No.43. Since then, he states in his supplementary grounds of judgment, he has reconsidered this matter and is of the opinion that he was in error.

I agree that he was in error.

40

Originally ISA existed as the Internal Security Act No.18 of 1960 and there sections 47, 57 and 58 appeared in Part II. P.U.(A) 148/69 was proclaimed under that Act. In 1972 when ISA was revised (it is now Act 82) these three sections were put in Part III of the revised Act. By virtue of section 12 of the Revision of the Laws Act, 1968, Act 1, under authority of which the revision was made, references in P.U.(A) 148/69 to Part II must

(5) (1976) 2 M.L.J. 166

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.  
26th March  
1977  
(cont'd)

be read as references to Part III of the  
revised Act.

Counsel before us do not seek to argue  
to the contrary but argue that the reference  
P.U.(A) 148/69 should have been quoted in  
the charges and the prosecution should have  
proved by evidence that the places in which  
these offences were supposed to have been  
committed were within security areas and the  
failure to do so was fatal, and for this  
proposition they rely on a decision of the  
High Court in Samivellu v. P.P. (6). With  
respect I do not think that this case was  
correctly decided. Under section 57(1)(a) of  
the Evidence Act, the court is bound to take  
judicial notice of all laws and regulations,  
which P.U.(A) 148/69 undoubtedly is, and  
therefore by virtue of section 56 of the same  
Act, P.U. (A) 148/69 need not be proved, nor  
the fact that the locus in every case was in  
the Federation. Azmi J. fell into error in  
Samivellu because he had overlooked this  
section 56. Ideally the prosecution should  
quote P.U.(A) 148/69 in the charges, to help  
the defence and the courts, but failure to do  
so is not fatal. It is enough if the court's  
attention is directed to it and the Gazette  
produced, or even if the court of its own motion  
finds it for itself and has regard to it when  
considering its judgment. In my opinion the  
accused in Samivellu should not have been  
acquitted.

10

20

30

#### Power of the Attorney-General

A person thought to be in unlawful possession  
of firearms may be charged under the Arms Act  
(Act 21 of 1960), for which the maximum penalty  
is seven years, or under the Firearms (Increased  
Penalties) Act (Act 37), for which the maximum  
penalty is 14 years, or under section 57 ISA,  
for which the penalty is death. It is argued  
that if three persons (say A, B and C) are  
thought to be in unlawful possession of firearms,  
to give the Attorney-General power to charge A  
under the first Act, B under the second and C  
under the third, would be in breach of article 8  
of the constitution which guarantees equality  
before the law in the following words:

40

(6) (1972) 1 M.L.J.28



"All persons are equal before the law and entitled to the equal protection of the law."

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

and counsel cited the decision of Abdoolcader J. in P.P. v. Datuk Harun bin Haji Idris & Others (7) in support, and submit that the decisions to the contrary of Ajaib Singh J. in P.P. v. Oh Keng Seng (8) and of Hashim Yeop A. Sani J. in P.P. v. Su Liang Yu (9) were wrong.

10

These three decisions were on the question whether or not the new section 418A of the Criminal Procedure Code was contrary to article 8 and therefore unconstitutional and void, and in considering the argument before us it is unnecessary for us to determine that question. Here we are asked to determine a different question, namely whether the Attorney-General may discriminate as between the three persons in the example given, or must he charge all three persons under the same statute. I am of the opinion that he may discriminate without contravening article 8.

20

A may have had a licence to possess his gun but delayed to renew it. It would have been proper for the Attorney-General to charge him simply under the Arms Act. B on the other hand never had a licence and has a criminal record. Must he also be charged under the Arms Act? I think that in today's conditions, when hardly a week goes by without some one being robbed by armed men, probably the Attorney-General would be accused of failing in his duty if he did not charge him under Act 37. C also may not have had a licence and may have had a very black record and have killed various people and terrorised witnesses so that few people are willing to come forward to report, let alone give evidence in open court against him. Should he also be charged only under the Arms Act simply because A is charged under that Act or under Act 37 like B or under ISA? I think that the choice is entirely the Attorney-General's.

30

40

- (7) (1976) 2 M.L.J. 116
- (8) (1976) 2 M.L.J.125
- (9) (1976) 2 M.L.J.128

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

The Attorney-General cannot name any particular magistrate, president or judge to try an accused nor direct that a court should convict or impose a particular sentence; but apart from this, he has very wide discretion under the Criminal Procedure Code and the constitution. Before merdeka Chapter XXXVII of the F.M.A. Criminal Procedure Code and the equivalent provisions of the S.S. Criminal Procedure Code set out his power. Today only the F.M.S. Code remains. Section 376(i) thereof provides generally that the Attorney-General in his capacity as Public Prosecutor shall have the control and direction of all criminal prosecutions and proceedings under the Code. The next nine sections particularize his powers. For instance, under section 381 he may enter a nolle prosequi after he had received the record of a preliminary enquiry. As noted by this court in Long bin Samat v. P.P. (10) there was ample judicial authority before merdeka to show that the Attorney-General enjoyed wide discretion in regard to criminal prosecutions. As section 376(i) of the Criminal Procedure Code was already in existence before merdeka our constitution-makers could have been content with relying on it alone to preserve after merdeka the Attorney-General's pre-merdeka power, and if they had done so then it might be arguable that after merdeka it must be read subject to article 8; but our constitution-makers were not content to do so. They deliberately wrote article 145(3) into our constitution, which reads :

"The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a native court or a court-martial."

The language of this provision is very wide, for it includes the word "discretion" which means liberty of deciding as one thinks fit. In view of the deliberate decision of our constitution-makers to write this provision into our constitution I do not think that it can be said that it must be read subject to article 8. Rather, in my view, the contrary: article 8 it is that must be read subject to article 145(3).

(10) (1974) 2 M.L.J. 152

The corresponding article 76 of the Indian constitution dealing with the Attorney-General in India does not contain a similar provision, merely providing by clauses (2) and (3) that

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

10           "(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India."

20           When reading decision of Indian courts on the effect of the equality provision, the absence of a provision similar to our article 145(3) should always be borne in mind.

30           In Smedlys Ltd. v. Breed (11) a House of Lords decision, there appear remarks which show that in England, when considering whether or not to prosecute, the Attorney-General should take into account the public interest. Viscount Dilhorne, a former Attorney-General, said at pages 32-3:-

"In 1951 the question was raised whether it was not a basic principle of the rule of law that the operation of the law is automatic where an offence is known or suspected. The then Attorney-General, Sir Hartley Shawcross, said:

40           'It has never been the rule of this country - I hope it never will be - that criminal offences must automatically be the subject of prosecution.'

He pointed out that the Attorney-General

(11) (1974) 2 All E.R.21

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

and the Director of Public Prosecutions only intervene to direct a prosecution when they consider it in the public interest to do so and he cited a statement made by Lord Simon in 1925 when he said :

'...there is no greater nonsense talked about the Attorney-General's duty than the suggestion that in all cases the Attorney-General ought to decide to prosecute merely because he thinks there is what lawyers call a case. It is not true and no one who has held the office of Attorney-General supposes it is.'

10

Sir Hartley Shawcross's statement was endorsed, I think, by more than one of his successors."

I am of the opinion that the position here is the same as in England, and further that our Attorney-General is permitted to take into account the public interest when deciding what charge or charges to prefer against an accused.

20

In Long bin Samat v. P.P. (10) we considered the question whether the Attorney-General may lawfully prefer a lesser charge when the evidence discloses a graver offence and we said that he can. There the evidence disclosed an offence of voluntarily causing grievous hurt by a dangerous weapon or means contrary to section 326 of the Penal Code, but the Attorney-General charged the accused with the lesser offence of voluntarily causing hurt by a dangerous weapon or means contrary to section 324 of the Penal Code, and we upheld his discretion. Indeed the Attorney-General could lawfully have charged the accused with even the much less serious offence of voluntarily causing hurt contrary to section 323. As we stated then, anybody who has a complaint against the Attorney-General for exercising his discretion in any particular way should direct it not to the courts but elsewhere.

30

40

The Attorney-General is in touch with the police and other investigating agencies, and he has information not available to the courts and on which to base his decision on whether or not

to prosecute and if so on which charge.  
If in a case of causing hurt he can elect  
to proceed under section 324 when the  
evidence would have justified him proceeding  
under section 326, I am of the opinion  
that he can also lawfully proceed on an  
enhanced charge instead of a reduced charge,  
and if he can do that I am further of the  
opinion that if say A, B and C join  
together to attack D, the Attorney-General  
can lawfully without breach of article 8  
of the constitution charge A under section  
323, B under section 324 and C under  
section 326 of the Penal Code, and if he  
can do that in regard to three provisions  
in the same statute he can do the same in  
regard to provisions in three different  
statutes.

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

10

20

30

40

In deciding that the Attorney-General  
is not constrained by article 8 when  
deciding whether or not to prosecute and  
if so on what charge, whether a lesser or  
a greater one, it must not be thought that  
he may act dishonestly. The public of  
whose interest he is the guardian has a  
right to expect him to act honestly,  
without fear of powerful national and local  
figures or of the consequences to him  
personally or politically, and without  
favouring his relatives and friends and  
supporters, his principal concern being to  
maintain the rule of law so that there will  
be no anarchy and to maintain standards  
in public life and the private sector; and  
if he did not do his duty honestly and  
properly the public would be able to show  
their disapproval not however in the courts  
but elsewhere and in the last resort by  
voting against the party of which he is a  
member. In England the Attorney-General's  
decision to withdraw the charge in the  
Campbell case in 1924 resulted in a change  
of government, see chapters 10 and 11 of The  
Law Officers of the Crown by Professor J.  
Ll.J. Edwards.

Next it is said that there has been  
mala fide when the Attorney-General elected  
to charge the accused in these appeals under  
ISA which, it is argued, was intended to deal

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

with subversive elements, when there is no evidence that these accused were in any way connected with subversive elements, and were at the most ordinary criminals. Reference is made by counsel to the long title and preamble of ISA which read :

"An Act to provide for the internal security of Malaysia, preventive detention, the prevention of subversion, the suppression of organised violence against persons and property in specified areas of Malaysia, and for matters incidental thereto. 10

West Malaysia - 1st August, 1960;  
East Malaysia - 16th September,  
1963 7

WHEREAS action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia -

- (1) to cause, and to cause a substantial number of citizens to fear, organised violence against persons and property; and 20
- (2) to procure the alteration, otherwise than by lawful means, of the lawful Government of Malaysia by law established;

AND WHEREAS the action taken and threatened is prejudicial to the security of Malaysia; 30

AND WHEREAS Parliament considers it necessary to stop or prevent that action;

NOW therefore PURSUANT to Article 149 of the Constitution BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Ra'ayat in Parliament assembled, and by the authority of the same, as follows:"

With respect I do not think that there is merit in this argument, and agree with the principle so lucidly set out by Abdoolcader J. 40

at page 85 in Re Tan Boon Liat (12) in  
the following words :

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

10

"Although the preamble is part of a statute, it is not an operating part thereof. The aid of the preamble can be taken only when there is some doubt about the meaning of the operative part of the statute. The preamble undoubtedly throws light on the intent and design of the enacting authority and indicates the scope and purpose of the legislation itself but it should not be read as a part of a particular section of that written law. Where the enacting part is explicit and unambiguous the preamble cannot be resorted to, to control, qualify or restrict it. The enacting words of the statute are not always to be limited by the words of the preamble and must in many instances go beyond it, and where they do so, they cannot be cut down.... by reference to it. It is....settled law that the preamble cannot restrict the enacting part of a statute though it may be referred to for the purpose of solving an ambiguity."

20

30

The same principle applies to long titles.

Here the enacting words of sections 57 and 58 ISA are very clear. They say "any person" etc., not "any subversive person" etc., and clearly the accused all come within the scope of the two sections.

40

Still on the power of the Attorney-General, Mr. Jagjit Singh (counsel in appeal No.43) complains that the certificate or consent for the prosecution should have been signed by the Attorney-General himself and the fact that it was signed by a mere D.P.P. shows mala fides on the Attorney-General's part. Frankly I do not see merit in this argument. Section 80 ISA says that a prosecution for an offence under the Act punishable with imprisonment for seven years or more shall not be instituted except with the consent of the

(12) (1976) 2 M.L.J. 83.

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

Public Prosecutor and section 376 of the Criminal Procedure Code says that, subject to certain exceptions, which do not apply here, a D.P.P. may exercise the rights and powers of the Public Prosecutor.

So on none of the above points of law argued on behalf of the accused, am I in agreement with their counsel.

I now turn to each case in detail.

Criminal appeals Nos. 39 and 40. The accused in these two appeals were tried jointly - the accused in appeal No.40, ("the first accused") was charged with unlawful possession of a pistol contrary to section 57(1)(a) and of ammunition contrary to section 57(1)(b) ISA and the accused in appeal No.39 ("the second accused") who was arrested at the same time with consorting with the first accused contrary to section 58(1) ISA.

10

I do not think that there is any merit in appeal No.40 and that appeal is accordingly dismissed. There the first accused was with the second accused and another in a car waiting to get on the ferry at Butterworth. The police ordered them to get out and they got out. The second accused and the third man were searched and nothing was found on them. While they were being searched, a detective (P.W.2) was frisking the first accused, suspecting that he had a gun, and the first accused tried to draw out a gun, but the detective grabbed him from the back and before anything serious could happen an Inspector (P.W.1) rushed out and disarmed the first accused. The first accused had, tucked into the waistband of his trousers, a .39 Colt Special with six live bullets in the chamber. On this evidence alone the learned judge was justified in finding the charges against him proved.

20

30

As regards the second accused, the prosecution had to prove among other things that he knew that the first accused had a gun. In evidence on oath he denied he knew. The only evidence that he knew was contained in a statement made under caution to the police by him and by the first accused. These statements were admitted by the learned trial judge under

40



regulation 21 of the 1975 regulations which read :

In the  
Federal Court

"21.(1) A statement made by the accused whether orally or in writing to any person shall be admissible in evidence notwithstanding that such statement -

No.15  
Judgment of  
Suffian L.P.

26th March  
1977

(cont'd)

10

(a) was made to or in the hearing of a police officer provided that such police officer is not below the rank of an Inspector; or

(b) was made whilst the accused was in police custody or in the custody of any other person; or

(c) was made to a person in authority; or

(d) was made in the course of a police investigation (whether or not wholly or partly in answer to a question); or

20

(e) was made with or without a caution being administered under any written law relating to statement made after the administration of a caution to the person making the statement; or

(f) would incriminate the accused; or

(g) contains an admission or confession of guilt, or amounts to an admission or confession of guilt...."

30

Regulation 21 does not say that a statement to a police officer is admissible whether made voluntarily or not, and so the prosecution must still prove that it was voluntarily made if they wanted to rely on it. As both accused hotly denied the voluntariness of their statements, there was a trial within a trial to decide this issue alone, and at the end of the prosecution evidence in this mini trial the learned judge made this note: "Court rules statements are admissible".

40

With all due respect we do not think that

In the  
Federal Court

No.15

Judgment of  
Suffian L.P.

26th March  
1977

(cont'd)

despite the language of regulations 13 and  
17 of the 1975 regulations which read as  
follows :

"13. When the case for the prosecution  
is closed, the court shall call on the  
accused to enter on his defence."

"17. The court shall decide on the guilt  
or innocence of the accused only at the  
conclusion of the case for the defence,  
and it shall so decide upon hearing and  
considering the evidence of both the  
prosecution and the defence as a whole,  
having regard to the justice of the case,  
without regard for the technicalities  
of the rules of evidence or procedure, or  
for any defect concerning the charge."

10

the learned judge has followed the right procedure.  
Notwithstanding these two regulations, he  
should not have ruled that these statements were  
admissible until he had heard the evidence of  
and on behalf of the two accused on this issue  
and considered their counsel's submission. If  
then he ruled that they were not admissible,  
that would be the end of the matter as far as  
the statements were concerned. If on the contrary  
he ruled that they were admissible, then he  
would have to consider the weight to be given  
to them in the light of the whole of the evidence.

20

As the only evidence that the second accused  
knew that the first accused had a gun was  
contained in his statement and that of the first  
accused, we think that it is unsafe to allow  
his conviction to remain and we therefore allow  
his appeal, quash his conviction and set aside  
his sentence.

30

As to the first accused, even without his  
statement there was ample evidence of his guilt  
and we leave undisturbed his conviction and  
sentence.

Criminal appeal No.43

40

As regards the accused in appeal No.43, here  
as already stated the accused was acquitted of a  
charge of unlawful possession of a pistol contrary  
to section 57(1)(a) and of ammunition contrary  
to section 57(1)(b) ISA and he was acquitted solely

10 on the ground that by P.U.(A) 148/69 His Majesty has proclaimed all areas in the Federation to be security areas for the purposes of Part II of ISA, whereas under section 47 of ISA power is given to His Majesty to so declare for the purpose of Part III of ISA. I have already stated that the learned judge on reconsideration admitted he was in error and that I agree with him. The learned judge also said in his supplementary grounds that he thought that the various proclamations in 1964 making various areas security areas and likewise the proclamation of 1969, P.U.(A) 148/69, have lapsed because of force of circumstances, and I have already given reasons why I think that here too the learned judge was in error.

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

20 The learned judge acquitted the accused at the end of the prosecution case without calling on him for his defence. With respect here too I think he was in error, because what he did is flatly opposed to regulations 13 and 17, reproduced above.

30 The armourer's report states that he tested the pistol in question and found that the ammunition inserted in it "did not fire off", and Mr. Jagjit Singh on behalf of the appellant argues that this also showed mala fide on the part of the Attorney-General when he elected to charge the accused under ISA. With respect I do not see merit in this argument. With regard to serviceability of the pistol Mr. Jagjit Singh argues that in the words of the definition in section 2 ISA, it must be a "lethal barrelled weapon from which any shot, bullet or other missile can be discharged," and that the prosecution has failed to prove this in light of the  
40 armourer's report. But the definition of firearm does not stop at the words reproduced, but goes on, "or which can be adapted for the discharge of any such shot, bullet or other missile.....and includes any component part of any such weapon as aforesaid."  
Four cases were brought to our attention:  
Sulong bin Nain v. P.P. (13), Ismail bin Haji Ibrahim v. P.P. (14), P.P. v. Muniandy (15)

- (13) (1947) M.L.J. 139  
(14) (1949) M.L.J. 139  
(15) (1963) M.L.J. 147

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

and Lim Eng Koi v. P.P. (16). As stated by  
Willan C.J. in the fourth case the question  
whether an article comes within the definition  
of firearm is a question of fact which has to  
be decided in each individual case, and here,  
first, the definition says that a component  
part of a weapon is also a firearm and we have  
all the necessary parts of the pistol, and  
secondly, the armourer explained in his report  
that the weapon was in good condition except  
that the firing pin was broken at the forward  
end and the pistol could not fire because of  
the broken pin, that the pistol was not  
serviceable "in its present condition" but  
"if the firing pin is replaced with a good one,  
the pistol will be serviceable." So in my view  
it is certainly a weapon which can be adapted  
for the discharge of a bullet and therefore  
firearm within the meaning of section 2. In  
any event, under regulation 21(6) the firearm  
and ammunition the subject of these charges  
are deemed to have been serviceable. 10 20

One last point. At the beginning of this  
appeal, we wondered whether in the absence of  
the accused who had not been served with  
the notice of appeal, with the appeal record  
nor with the notice of hearing we had  
jurisdiction to hear it. Datuk Yusof for the  
Public Prosecutor says that we can under section  
60(1) of the Courts of Judicature Act, 1964,  
and Mr. Jagjit Singh, counsel for the accused  
in the lower court on whom the appeal record  
and notice of hearing have been served and who  
has no instructions and whom we appointed  
amicus curiae to assist us, made no objection,  
and accordingly we heard argument on the basis  
that it was proper for us to hear this appeal  
in the absence of the accused in the circumstances  
described. 30

Our order in this appeal is that the appeal  
is allowed, the order of acquittal and discharge  
is set aside, and that the accused be retried  
before another judge. 40

Criminal appeal No.46

We have dealt with such points of law as are  
relevant to this appeal.

(16) (1948-9) M.L.J. Supp.63.

10 The evidence here was that there was a robbery on 13th January, 1976 at about 12.30 p.m. in Penang, a police corporal in a radio car was instructed to go to 26 Lim Lean Teng Road, that on arrival the driver of the radio car was given a description of the robber by the victim who had been shot, that the police driver took the victim's employee and an Indian to look for the robber, that on arrival at the Ayer Itam and Kampar Road junction the two persons pointed out a Chinese (the accused), that the accused was asked to stop and raise his hands, but he refused, but that on the second challenge he put up his hands, that the police then searched him and found, tucked in his waist, a home-made revolver with five live bullets in the chamber, that the accused was then arrested. The accused in a statement from the dock denied having a gun and ammunition. 20 In my opinion there was enough evidence on which if believed the learned judge who saw and heard the witnesses could have founded a guilty finding, and I would therefore dismiss this appeal.

In the  
Federal Court

No.15

Judgment of  
Suffian L.P.

26th March  
1977

(cont'd)

M. Suffian  
(Tun Mohamed Suffian)  
LORD PRESIDENT, MALAYSIA

30 Delivered in Kuala Lumpur  
on 26th March, 1977.

Certified true copy  
(Sgd) W.Y.Ming

Setia-isaha kepada Ketua Hakim Negara  
Makkamah Persekutuan  
Malaysia  
Kuala Lumpur

Notes

A. Appeal No.39

40 1. Arguments in Kuala Lumpur on 20th  
January, 1977.

2. Counsel:

In the  
Federal Court

No.15  
Judgment of  
Suffian L.P.

26th March  
1977  
(cont'd)

For appellant - Mr. R.Rajasingam of  
M/s. R. Rajasingam & Co., Penang;

For respondent - Datuk Yusof, bin  
Abdul Rashid, D.P.P.

3. Authorities cited:

- (1) (1968) 1 MLJ 119.
- (2) Khong (1976) 2 MLJ 167.
- (3) Samivellu v. P.P. (1972) 1 MLJ 28.

B. Appeal No.40

1. Arguments in Kuala Lumpur on 20th January, 1977. 10

2. Counsel:

For appellant - Mr. Chew Kar Meng of  
M/s. Chew & Co., Kuala Lumpur (assigned);

For respondent - Datuk Yusof bin Abdul  
Rashid, D.P.P.

3. Authorities cited:

- (1) Samivellu (1972) 1 MLJ 28.

C. Appeal No.46

1. Arguments in Kuala Lumpur on 20th January, 1977. 20

2. Counsel:

For appellant - Mr. Karpal Singh of M/s.  
Karpal Singh & Co., Alor Star;

For respondent - Datuk Yusof bin Abdul  
Rashid, D.P.P.

3. Authorities cited:

- (1) P.P. v. Datuk Harun (1976) 2 MLJ 116, 117.
- (2) State (1963) A.I.R. S.C.1241, 1244.
- (3) Willcock v. Muckle (1951) 2 KB 844, 855. 30
- (4) Krishna (1965) A.I.R. Mysore 180.

D. Appeal No.43

In the  
Federal Court

1. Arguments in Kuala Lumpur on 21st  
January, 1977.

No.15  
Judgment of  
Suffian L.P.

2. Counsel:

26th March  
1977  
(cont'd)

For appellant - Datuk Yusof bin  
Abdul Rashid, D.P.P.

For respondent - Mr. Jagjit Singh  
of M/s. Jagjit Singh & Co.,  
Kuala Lumpur.

10

3. Authorities cited:

(1) Moore v. Gooderham (1960) 3 A.E.R.  
575.

(2) Read v. Donovan (1947) 1 KB 326.

(3) Chong Kim Seng (1949) MLJ 109,111.

(4) Tan (1966) 1 MLJ 150, F.C.

(5) Lim Eng Kooi (1948-9) MLJ  
Supplement 60.

(6) Lee (1976) 1 MLJ 82, 83.

20

(7) Dickey v. Police (1964) NZLR 503,  
504.

(8) Khong (1976) 2 MLJ 170.

(9) Long (1974) 2 MLJ 152.

(10) Viran (1947) MLJ 62.

(11) P.P. v. Su Liang Yin (1976)  
2 MLJ 128.

E. Wan Suleiman, F.J. concurs.

Separate concurring judgment by Raja Azlan  
Shah, F.J.

In the  
Federal Court

No.16  
Order

26th March  
1977

No. 16

ORDER

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT  
KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO.46 OF 1976  
(Penang High Court Criminal Trial No.1/1976)

TEH CHENG POH & CHAR MEH                      APPELLANT

VS.

THE PUBLIC PROSECUTOR                      RESPONDENT                      10

CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT,  
MALAYSIA;  
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT,  
MALAYSIA;  
WAN SULEIMAN, JUDGE, FEDERAL COURT,  
MALAYSIA.

IN OPEN COURT

THIS 26TH DAY OF MARCH, 1977

O R D E R

THIS APPEAL coming on for hearing on the 20th and 21st day of January, 1977 in the presence of Encik Karpal Singh of Counsel for the Appellant and Encik Mohd. Yusof bin Abdul Rashid, Deputy Public Prosecutor on behalf of the Respondent AND UPON READING the Record of Appeal herein AND UPON HEARING Counsel for the Appellant and the Deputy Public Prosecutor IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming on for Judgment this day in the presence of Encik Karpal Singh of Counsel for the Appellant and Encik P.M. Mahalingam, Deputy Public Prosecutor on behalf of the Respondent IT IS ORDERED that this Appeal be and is hereby dismissed.                      20  
30

GIVEN under my hand and the seal of the Court this 26th day of March, 1977.

Sgd. Abdul Hamid b Hj Mohamed  
ACTING CHIEF REGISTRAR,  
FEDERAL COURT, MALAYSIA.                      40



No. 17

ORDER GRANTING SPECIAL LEAVE  
TO APPEAL TO HIS MAJESTY THE  
YANG DI-PERTUAN AGUNG

---

In the Privy  
Council

No.17  
Order granting  
Special Leave  
to Appeal to  
His Majesty the  
Yang di-Pertuan  
Agung

19th December  
1977

L.S.

AT THE COUNCIL CHAMBER WHITEHALL

The 19th day of December 1977

REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL TO THE YANG DI-PERTUAN  
AGONG

10

WHEREAS by virtue of the Malaysia  
(Appeals to Privy Council) Orders 1958 to  
1969 there was referred unto this Committee  
a humble Petition of Teh Cheng Poh alias  
Char Meh in the matter of an Appeal from  
the Federal Court of Malaysia between the  
Petitioner and The Public Prosecutor  
Respondent setting forth that the Petitioner  
prays for special leave to appeal from the  
Judgment of the Federal Court of Malaysia  
dated the 26th March 1977 dismissing the  
Petitioner's Appeal against his conviction  
under section 57(1)(a) and (b) of the Internal  
Security Act 1960 by the High Court in Malaya  
at Penang: And humbly praying Your Majesty  
to grant the Petitioner special leave to  
appeal against the Judgment of the Federal  
Court of Malaysia dated the 26th March 1977  
and for further or other relief:

20

THE LORDS OF THE COMMITTEE in obedience  
to the said Orders have taken the humble  
Petition into consideration and having heard  
Counsel in support thereof and in opposition  
thereto Their Lordships do this day agree  
to report to Your Majesty as their opinion  
that special leave ought to be granted to the  
Petitioner to enter and prosecute his Appeal  
against the Judgment of the Federal Court of  
Malaysia dated the 26th March 1977:

30

AND THEIR LORDSHIPS do further report  
to Your Majesty that the proper officer of  
the said Federal Court ought to be directed

40

In the Privy  
Council

No.17

Order granting  
Special Leave  
to Appeal to  
His Majesty the  
Yang di-Pertuan  
Agung

19th December  
1977  
(cont'd)

to transmit to the Registrar of the Privy  
Council without delay an authenticated copy  
of the Record proper to be laid before the  
Judicial Committee on the hearing of the Appeal  
upon payment by the Petitioner of the usual  
fees for the same.

E.R. MILLS

EXHIBITS

P.1.(A)  
Consent by  
D.P.P.

27th January  
1976

EXHIBIT  
P.1.(A)

CONSENT BY D.P.P.

10

C O N S E N T

UNDER SECTION 80 OF THE INTERNAL SECURITY ACT,  
1960 (ACT 82; REVISED - 1972)

In exercise of the powers conferred upon  
me by Section 80 of the Internal Security Act,  
1960 (Act 82; Revised - 1972), I, Ghazi bin  
Ishak, Deputy Public Prosecutor, Penang, do  
hereby consent to the prosecution of TEH CHENG  
POH @ CHAR MEH (L), I/C No. 0285344) for an  
offence under Section 57(1)(a) of the said Act  
alleged to have been committed on 13th January  
1976 at 12.35 p.m. at the junction of Kampar  
Road/Ayer Itam Road, in the District of  
Georgetown, in the State of Penang.

20

Dated this 27th day of January, 1976

Sgd. Ghazi bin Ishak  
Deputy Public Prosecutor,  
Penang.

EXHIBIT  
P.1(B)  
CONSENT BY D.P.P.

EXHIBITS  
P.1 (B)

Consent by  
D.P.P.

27th January  
1977

C O N S E N T

UNDER SECTION 80 OF THE INTERNAL SECURITY  
ACT, 1960 (ACT 82; REVISED - 1972)

10 In exercise of the powers conferred upon  
me by section 80 of the Internal Security Act,  
1960 (Act 82; Revised - 1972), I, Ghazi bin  
Ishak, Deputy Public Prosecutor, Penang, do  
hereby consent to the prosecution of Teh Cheng  
Poh @ Char Meh (L), (I.C.No.0285344) for an  
offence under Section 57(1)(b) of the said  
Act alleged to have been committed on 13th  
January, 1976 at 12.35 p.m. at the junction  
of Kampar Road/Ayer Itam Road, in the  
District of Georgetown, in the State of  
Penang.

Dated this 27th day of January, 1976.

20 Sd: Ghazi bin Ishak,  
DEPUTY PUBLIC PROSECUTOR,  
PENANG.

EXHIBIT  
P.2

P.2  
Amended  
Charges

15th November  
1976

AMENDED CHARGE

Teh Cheng Poh @ Char Meh,  
c/o Penang Prison,  
Penang.

30 You are charged at the instance of the  
Public Prosecutor in the name of His Majesty  
the Yang Dipertuan Agung and the Charges  
against you are :-

EXHIBITS

P.2  
Amended  
Charges  
15th November  
1976  
(cont'd)

1st Charge:

That you on the 13th day of January, 1976, at about 12.35 p.m., at the junction of Kampar Road and Ayer Itam Road, in the District of Georgetown, in the State of Penang, in a security area, proclaimed by the Yang Dipertuan Agung vide Federal Gazette No. P.U. 148/69, without lawful excuse did have in your possession a firearm, to wit, a home-made .38 Revolver, and thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act, 1960.

10

2nd Charge:

That you on the same date, time and place, in the District of Georgetown, in the State of Penang, in a security area, proclaimed by the Yang Dipertuan Agung vide Federal Gazette No. P.U. 148/69, without lawful excuse did have in your possession ammunitions, to wit, 5 rounds of .38 Special Revolver bullets, and thereby committed an offence punishable under Section 57(1)(b) of the Internal Security Act, 1960.

20

Dated at Penang this 15th day of November, 1976.

By Authority of His Majesty's  
Public Prosecutor

Sgd. Ghazali Ishak  
Deputy Public Prosecutor

EXHIBIT  
P.6

COPY OF CHARGE SHEET OF  
CASE No. P(2) 255/76

C H A R G E

MAGISTRATE'S COURT AT GEORGETOWN  
PENANG ARREST CASES P(2) 255/76

D/Kramat Rpt.  
168-73/76

EXHIBITS  
P.6

Copy of  
Charge Sheet  
of Case No.  
P(2) 255/76  
16th November  
1976

10           That you jointly with another still at  
large, on the 13th day of January, 1976, at  
about 12.15 p.m. at shop No.26, Lin Lean Teng  
Road, in the District of Georgetown, in the  
State of Penang, being accomplices of  
one, TAN KHENG HO @ AH PHONG (m) who discharged  
a firearm, to wit, a pistol, with intent to  
cause death to one, ONG KIM SOON @ NG POO (m),  
in the commission of a Scheduled Offence, to  
20           wit, Robbery of cash of about \$200/- and  
cigarettes valued at about \$100/-, the  
properties of the said ONG KIM SOON @ NG POO(m),  
and that you have thereby committed an offence  
punishable under Section 3A of the Firearms  
(Increased Penalties) Act, 37/71.

For and On behalf of the  
Deputy Public Prosecutor

SALINAN YANG TELAH DISAHKAN

Sgd. Abdul Manaff b. Abd. Hamid  
Pengadil  
Mahkamah Randah  
Pulau Pinang  
16.11.76

30

No. 15 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

---

---

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

---

---

B E T W E E N :

TEH CHENG POH @ CHAR MEH

Appellant  
(Petitioner)

- and -

THE PUBLIC PROSECUTOR, MALAYSIA

Respondent  
(Respondent)

---

---

RECORD OF PROCEEDINGS

---

---

HATCHETT JONES & KIDGELL  
9 Crescent  
London, EC3N 2NA

STEPHENSON HARWOOD  
Saddlers' Hall  
Gutter Lane,  
London, EC2Y 6BS

Appellant's Solicitors

Respondent's Solicitors