Privy Council Appeal No. 32 of 1949

Sambasivam - - - - - - - - - - - *Appellant*

v.

The Public Prosecutor, Federation of Malaya - - - *Respondent*

FROM

THE SUPREME COURT OF THE FEDERATION OF MALAYA

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH MARCH, 1950

Present at the Hearing :

LORD SIMONDS
LORD MACDERMOTT
LORD REID
SIR JOHN BEAUMONT
SIR LIONEL LEACH

[*Delivered by* LORD MACDERMOTT

This appeal is from an Order dated the 28th April, 1949, of the Court of Appeal of the Federation of Malaya (Willan C.J., Bostock Hill and Spenser Wilkinson JJ.) dismissing an appeal from a judgment dated the 22nd March, 1949, of the Supreme Court of Johore (Storr, J.) whereby the appellant was convicted of carrying a firearm under Regulation 4 (1) (*a*) of the Emergency Regulations, 1948, and sentenced to death.

On the morning of the 13th September, 1948, the appellant, who is an Indian Tamil clerk, was travelling on foot in the State of Johore in the company of two Chinese. They met a party of three Malays and a fight ensued in the course of which one of the Chinese was killed, and the appellant was seriously wounded. The other Chinese escaped and has not, apparently, been heard of since. The Malays, who were armed with knives, alleged that they had been fired upon by the Chinese and that the appellant had drawn and pointed a revolver at one of them before he had been wounded and disarmed. In connection with this incident the appellant was later charged with carrying a firearm and being in possession of ten rounds of ammunition. These charges were preferred under Regulation 4 (1) of the said Regulations (hereinafter referred to as the Emergency Regulations) which reads as follows:—

> "4.—(1) Any person who carries or who has in his possession or under his control—
>
> (*a*) any fire-arm, not being a fire-arm which he is duly licensed to carry or possess under any other written law for the time being in force ; or
>
> (*b*) any ammunition or explosives without lawful authority therefor,
>
> shall be guilty of an offence against these Regulations and shall on conviction be punished with death."

By the Emergency (Criminal Trials) Regulations, 1948 (hereinafter referred to as the Trials Regulations) provision was made for a simplified procedure without any preliminary enquiry in the case of certain offences within the Federation. The applicability of the Trials Regulations, in so far as material, depends upon a certificate being given under Regulation 7 thereof which is in these terms :—

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

By Regulation 2 the expression " Public Prosecutor " includes a Deputy Public Prosecutor. On the 25th November, 1948, Mr. McCall, admittedly a Deputy Public Prosecutor, purported to issue a certificate under Regulation 7 relating to the offences charged against the appellant. It will be convenient to quote this document fully for its terms are important and it specifies the charges on which the appellant was subsequently tried. It was signed by Mr. McCall and ran thus:—

> " The Emergency (Criminal Trials) Regulations, 1948.
>
> I, WILLIAM MARTIN MCCALL, Deputy Public Prosecutor, in accordance with the provisions of section 7 of the Emergency (Criminal Trials) Regulations, 1948, hereby certify that the trial of Sivam alias Sambasivam s/o Narayanasamy on the following charges, namely :—
>
> 1. That he at about 10 a.m. on the 13th September, 1948, at Bukit Kepong, Muar, in the State of Johore, carried a .38 revolver which he was not duly licensed to carry, and he has thereby committed an offence punishable under Regulation 4 (1) (*a*) of the Emergency Regulations, 1948 ; and
>
> 2. That he at about 10 a.m. on 13th September, 1948, at Bukit Kepong, Muar, in the State of Johore, had in his possession ten rounds of .38 ammunition without lawful authority therefor and he has thereby committed an offence punishable under Regulation 4 (1) (*b*) of the Emergency Regulations, 1948.
>
> is a proper case for trial under the said Regulations and I hereby designate Johore Bahru as the place where such trial shall be held.
>
> Dated at Johore Bahru this 25th day of November, 1948.
>
> (Sgd.) W. MARTIN MCCALL,
> Deputy Public Prosecutor for
> Solicitor-General."

On the 2nd March, 1949, the appellant was tried under the emergency procedure prescribed by the Trial Regulations on both these charges in the Supreme Court at Johore Bahru before Laville J. and two assessors. On the second charge—that relating to the possession of ammunition and framed under Regulation 4 (1) (*b*) of the Emergency Regulations—both assessors returned a verdict of not guilty and, the learned Judge agreeing with this finding, the appellant was duly acquitted. On the first charge—that relating to the carrying of a firearm and framed under Regulation 4 (1) (*a*)—the assessors also found the appellant not guilty but Laville J. disagreed with this finding and ordered a re-trial. This was done under section 198 (ii) of the Criminal Procedure Code which provides :

> " If the Court is unable to agree with the opinion of both assessors . . . the proceedings shall be stayed and a new trial held with the aid of fresh assessors."

The re-trial on the first charge took place on the 21st and 22nd March, 1949, before Storr J. and two different assessors. They found the appellant guilty and he was sentenced to death in accordance with Regulation 4 (1) of the Emergency Regulations. The appellant appealed against his conviction but on the 28th April, 1949, the Court of Appeal dismissed his

appeal without calling upon counsel for the prosecution and, so far as the record shows, without pronouncing any reasoned judgment. In this connection it should, however, be observed, first, that the grounds of appeal to the Court of Appeal were confined to points bearing on the value and weight of the evidence, the main ground being that " the statement of the accused was recorded in a manner and in circumstances which makes this statement valueless and irregular," and secondly, that many of the submissions on behalf of the appellant which their Lordships have had to consider were not advanced before either the Court of Appeal or the trial Judge.

The second trial, like the first, was held without a preliminary enquiry on the basis that the relevant Trial Regulations continued to apply. The certificate given by Mr. McCall on the 25th November, 1948, was produced by the prosecution and relied upon as justifying this procedure. The first point made on behalf of the appellant before the Board was that this certificate was then spent and no longer effective to authorise a trial under the Trial Regulations. It was contended that " the case " to which it related was not the case dealt with at the second trial, that the acquittal on the charge of being in possession of ammunition had produced a new situation which was substantially different from that considered by the Deputy Public Prosecutor when he certified, and that the second trial was irregular and without jurisdiction in the absence of a further certificate given after the acquittal and directed solely to the charge of carrying a firearm.

In the opinion of their Lordships this point is without substance. " The case " in respect of which Mr. McCall certified is defined in his certificate as the trial of the appellant upon the two charges therein specified. Regulation 7 of the Trial Regulations directed that the case thus certified should " be tried and disposed of in accordance with the provisions of Regulations 8 to 12 inclusive of these Regulations." Their Lordships cannot regard the first trial as disposing of more than a part of the case as certified. The re-trial of the first charge was ordered according to law and the second trial was, in the view of the Board, as plainly within the words " shall be tried and disposed of " as was the first trial. Different considerations would arise if, on its true interpretation, Regulation 7 only enabled a certificate to be given in respect of a single charge. Their Lordships cannot, however, so construe the Regulation. They see no reason why it should not apply to a case in which several charges may properly be joined for trial together. There is nothing in the Trial Regulations to cast doubt on this view ; on the contrary it finds strong support in Regulation 8 (4) which empowers the Public Prosecutor in any emergency procedure case—that is a case certified under Regulation 7—to alter or redraw the charge *or charges* or to frame an additional charge or charges.

The next point taken on behalf of the appellant was that Mr. McCall's certificate was from the beginning invalid and of no effect. This submission was based entirely on the words " for Solicitor-General " which appear below Mr. McCall's signature and following the description " Deputy Public Prosecutor." It was urged that the certificate could not be regarded as that of Mr. McCall as he had purported to sign, not on his own account, but for the Solicitor-General, and, further, that it could not be treated as the certificate of the Solicitor-General as there was nothing to show that Mr. McCall had authority to act on his behalf.

Their Lordships think this objection ill-founded. They are satisfied from the opening words of the certificate that it was given by Mr. McCall in his capacity as a Deputy Public Prosecutor, and not as agent for the Solicitor-General, and that this appears so clearly that the words " for Solicitor-General " may properly be regarded as mere surplusage and incapable of vitiating the document.

Another submission on behalf of the appellant, which may be conveniently considered now, was directed to the nature of the offence of carrying a firearm of which the appellant was convicted. It was contended that an intent to use the firearm in question as an offensive weapon, or to

have it so used, was an essential ingredient of this offence and that the evidence fell short of establishing such intent. Several decisions of Indian Courts were cited in support of this argument, but they relate to different enactments and their Lordships do not find them of assistance in determining the present point which must depend on the true construction of Regulation 4 (1) of the Emergency Regulations. The material words are:—"Any person who carries . . . any fire-arm, not being a fire-arm which he is duly licensed to carry . . . shall be guilty of an offence. . . ." It was conceded on behalf of the Crown—and rightly in their Lordships' opinion—that "carries" here means "carries to his knowledge" and that the carrying of a firearm by a person who did not know what he carried would not constitute an offence under this provision. But the Regulation says nothing of any special intent and their Lordships are unable to find any ground upon which such an intent should, as a matter of implication, be regarded as an element of the offence. The Emergency Regulations form a drastic code designed to meet a state of grave disorder and their Lordships see no reason to suppose that Regulation 4 (1) was not intended to strike at the carrying of firearms *simpliciter*, if engaged in knowingly and without lawful authority.

Another of the grounds of appeal to their Lordships' Board arose out of a ruling given by Storr J. in the course of the second trial. It is thus stated in the appellant's printed case:

> "the said Judge was in error in forbidding, during the course of the cross-examination of an important prosecution witness, the appellant's counsel to mention the fact that this was a re-trial, and in thus preventing the veracity of that and other witnesses being tested by reference to the earlier statements they had made."

The incident so referred to occurred during the cross-examination by Mr. Charry, the counsel assigned to the appellant, of one Abdul Aziz Bin Tampok, the third of the Malays to give evidence on behalf of the Crown. The relevant part of the learned Judge's note is as follows:—

> "*Cross-examined—by Charry*—The pistol in the Indian's hand came from his waist. I thought it was definitely a pistol. I cannot say if he drew something from his left hand trouser pocket. I did not see. As far as I know I did not see if he took out anything from his left trouser pocket. I did not search him. I saw him draw the pistol from his waist. I did not see well if there was anything wrapped around the pistol when he drew it from his waist.
>
> (Charry mentions this is a re-trial. I inform him he must not mention such a thing. Intld. P.S.)"

In relation to this aspect of the case their Lordships were referred to the evidence of the same witness as recorded at the first trial and he seems then—that is some nineteen days earlier—to have been positive that he had seen the appellant draw the revolver with his left hand from his left trouser pocket. It can hardly be doubted that Mr. Charry's cross-examination was conducted with the witness's previous testimony in mind and with a view to ascertaining how far he would adhere to it. The witness having departed from his earlier evidence as to what he saw the appellant do, Mr. Charry was entitled to cross-examine as to what the witness had said at the first trial so as to demonstrate to the Court the fact and extent of the discrepancy. If this was what the learned Judge intended to stop he was wrong and his intervention (which appears to have ended the cross-examination) may have prevented a full testing of the witness's credibility and powers of observation. But it is not clear that this was the nature of the ruling. The mere fact that there has been a previous trial is usually irrelevant and therefore inadmissible on a re-trial. This does not mean that it is never permissible to refer to an earlier trial for it may well be necessary to do so in order to establish some relevant fact as, for example, in identifying the occasion on which some particular statement or admission was made. But it may be that Mr. Charry had made, or that the learned Judge thought he had made, some

unjustifiable reference to the fact that the trial was a re-trial. The note does not settle the matter. The context suggests that Mr. Charry was working up to a reference to what the witness had sworn previously, but the words of the note—"Charry mentions this is a re-trial" are capable of referring to more than this. Their Lordships find it impossible to be certain as to the precise nature of this incident which was not mentioned in the grounds of appeal to the Court of Appeal and on which therefore they have not the benefit of the views of the learned Judges who formed that Court. But even assuming that the learned Judge intervened wrongly and so as to prevent this witness's credibility from being more fully tested, their Lordships are not satisfied, in the circumstances, that they would be justified in interfering with the verdict on this ground alone. Had it been felt at the time that the ruling had led or contributed to a miscarriage of justice their Lordships cannot but think that it would have been complained of on appeal to the Court of Appeal.

The remaining submissions advanced before the Board on behalf of the appellant all relate to a statement alleged to have been made by the appellant to the police on the 13th September, 1948, which was put in evidence by the Crown at the second trial. This is the statement already mentioned in referring to the main ground of appeal to the Court of Appeal. For an understanding of the issues raised regarding it the relevant facts and circumstances must now be stated in more detail.

The affray in which the appellant was wounded occurred about 10 a.m. on the 13th September, 1948. His injuries were not the subject of medical testimony but it was not disputed that they were of a grave nature. At the second trial the Malay who disabled him described the wounding thus: "I stabbed him many times. The first time I stabbed on his left forehead. The second time on the back, the third time in the abdomen. By that time he was almost hopeless." And on cross-examination: "After I had stabbed three times the accused fell down. After he fell down I stabbed him some more." The appellant was left at the scene of the fight until the Malays returned with the Penghulu. He was then carried to Bukit Kepong and thence to the police station at Lenga where, according to the police evidence, he arrived about 4.30 p.m. From there he was taken to the hospital at Muar and there he remained until February, 1949, when he was fit enough to be brought before a magistrate. At the first trial on the 2nd March, 1949, the Crown led evidence on both charges. The principal witnesses were the three Malays, two of whom swore to seeing the appellant with a revolver. Saebun, the Malay who stabbed the appellant, said he had examined the revolver and that it was loaded with six bullets. He also deposed that four more bullets were found in a bag which he said the appellant was carrying. There can be no doubt that the charge in respect of the ten rounds of ammunition was based on the view that the appellant had possession of what was alleged to have been found in the revolver and in this bag. A police inspector named Krishnan was also produced to prove a statement taken from the appellant at Muar hospital on the 20th September, 1948, *i.e.*, a week after the date of the alleged offences. The original of this statement was not forthcoming and Laville J. refused to admit a copy in evidence. No other statement of the accused was referred to by the prosecution during the course of this trial, including the cross-examination of the appellant who gave evidence on his own behalf. At the second trial the principal witnesses were again the three Malays, but no attempt was made to prove the alleged statement of the 20th September, 1948. Instead, a statement purporting to have been made by the appellant on the 13th September, the day he was injured, was put in evidence for the first time and two new witnesses, Abdullah Bin Omar, a senior inspector of police stationed at Muar, and Kasipellai Raja, a constable interpreter, were produced to prove it. According to these witnesses they visited the appellant in Muar hospital about 9 p.m. on the 13th September with the permission of the medical authorities. He was in bed and was described by the inspector as clear minded and knowing what he was talking about. He was cautioned by the inspector and then was said to have made the statement quite voluntarily and without questioning. Later he was questioned and his

answers were written down. (These answers were not relied upon by the Crown and do not form part of the record. They need not be mentioned again and references to the statement must be read as excluding them.) The statement was signed by the inspector, but not by the appellant. The evidence, however, was to the effect that after it had been made and recorded it was read back to the appellant who agreed that it was correct. The appellant speaks Tamil but the inspector did not understand that language and the course pursued, according to his testimony and that of the interpreter, was that the latter translated what the appellant said into Malay and the inspector then wrote it down in English. The statement is a document of considerable length. It contains a detailed account of the appellant's movements from the 9th September, 1948, and of his contacts with the Ah Kow, the Chinese who was killed. It then proceeds to deal with the events of the 13th September, 1948, and becomes to all appearance a frank confession not only of carrying a firearm but of being in possession of ammunition. As the terms of this statement were much canvassed it may be set out fully. It reads thus:—

"MALAYAN POLICE.

STATEMENT DURING INVESTIGATION.

Report No.: 11/48	Police Station: Lenga
Statement of: Sivam	Father's name: Narayanasamy male
Nationality: Indian	Place of birth: India
Age: 27 years	Occupation: Ex-Tamil School
Address: LU Club, Segamat	Teacher J. L. Estate
	Taken by: Sr. Inspr. Abdullah

at Hospital on 13th September, 1948, at 9.00 p.m.
Interpreter: D.P.C. 823 from Indian-Malay into English.

Before taking the statement Sivam was warned under the Emergency Regulations, 1948 that whatever statement given will be used as evidence for his trial.

I was a clerk in the L.U. Segamat. When it was closed I was left unemployed. About 1½ months ago I went to S'pore to visit a friend whose name was Malachasamy, a labourer of Municipal S'pore. He was staying at Block No. 28 Anderson Rd. I stayed with him for 4 days. Then I went to B.P. to see a friend by the name of Kolandasamy. He was staying at the L.U. Club B.P. On the same day I went to Muar and met Mr. Parrerra at the L.U. Club Muar. I slept at the Club for a night and then I went back to Segamat for some days.

On 9th of Sept. 1948 I went to Muar and then by bus to Pagoh. I arrived Pagoh at 6.00 p.m. on the same evening. While I was standing on the five foot way in front of a Chinese coffee shop on the left side towards Lenga, I happened to meet a Chinese whose name was Ah Kow. He was known to me as a member of L.U. Club at Segamat. I did not know his official duty of being a member at the Club but I happened to meet him there always. On meeting me he enquired me as to why I came to Pagoh. I told him that I was looking for a job. He asked me to stay at Pagoh that night as he wanted to find me a job in a chetty estate at Segamat. After meeting me for a quarter of an hour he then left and proceeded to Muar. Before leaving he informed me that he would come and see me at Pagoh on the 11th Sept. 1948. So that night I slept on the five foot way at Pagoh village.

At about 9.00 a.m. 11/9/48 Ah Kow came to Pagoh and met me at the same place where I first met him. He said that he wanted to go to Segamat on 13th Sept. 1948. He invited me whether I like to accompany him to Segamat. I replied that I agreed to accompany him. After telling me this he went away. At about 3.00 p.m. 11/9/48 he came again to see me again and asked me to accompany him.

I followed him by way to the right side of Pagoh village through rubber estate and then came to a river. From here he hired a sampan manned by an unknown Malay. We then arrived at Bt. Kepong at 9.00 p.m. 11/9/48. When arrived at Bt. Kepong we slept at a vacated hut in the village. The next morning we went to a Chinese coffee shop at Bt. Kepong. He told me to stay at the coffee shop as he wanted to go to his house for his private business. As there was no Indian in the village, I went round the Malay Kampong for sight seeing and after that I came back to the same coffee shop to drink. At about 12.00 n. Ah Kow came to see me. He told me that he wanted to leave for Segamat on 13.9.48. He then went away. I then returned to the same vacated hut for the night. Ah Kow did not turn up on 12th Sept. 1948. At 9.00 a.m. 13th Sept. 1948 he came to see me at the corner of the village taking with him a guni sack containing something. He was accompanied by an unknown Chinese. We then walked through a track towards a jungle for a distance of one mile and there stopped. Ah Kow took out a revolver fully loaded and handed over to me for my possession. He had also given me another 6 rounds of life ammunitions as an extra and at the same time he took out two cut rifles of which one was given to the Chinese who had accompanied him, and the other cut rifle was used by Ah Kow himself, I did not whether the two cut rifles were loaded but I saw about 30 rounds of .303 life amms in the guni sack. After giving the arms Ah Kow warned us to shoot anyone who tried to obstruct our way. I put the revolver in my left hand trouser pocket. The two cuts rifles were hung on each of their shoulders while they were carrying, and could easily be seen by anyone passing by. We then proceeded on the track for another one mile where we happened to pass three Malays who came from the opposite direction. After passing us five or six steps the three Malays rushed on us. The three Malays were armed with parangs. One of the Malays rushed on Ah Kow who then tried to shoot him. The Malay then cut him with his parang. The other two Malays attacked me and the other Chinese. Before I could pull out my revolver from my trouser pocket to shoot him I was punched by the Malay several times. I felt giddy and fell down. The Malay took possession of my revolver and then cut me with his parang several times. I did not know what had happened to the other Chinese. The Malays had taken the guni sack and escaped.

At about 3.00 or 4.00 p.m. some Malays came to the scene and arrested me. I was then taken to Muar Hospital.

(Sgd.) ABDULLAH 13/9,

C.R.O. Muar."

The appellant gave evidence and was the only witness called for the defence. His testimony amounted to a denial of carrying the revolver and of making the statement in question. He said that he lost consciousness on being stabbed, regained it two or three days later and did not know what happened after he got to hospital. No evidence was called from the hospital staff as to the appellant's condition on admission. It is to be observed that counsel on either side referred to this in their addresses to the trial court at the conclusion of the evidence, Mr. Charry commenting on the fact as a defect in the Crown case and Mr. McCall replying that Mr. Charry could have called a doctor for the accused.

This last matter leads to a consideration of one of the two grounds on which their Lordships were asked to hold that the statement of the accused was inadmissible in law. It was said that Regulation 11 of the Trials Regulations had not been complied with by the prosecution in that no statements of the evidence to be given by inspector Abdullah and the

interpreter had been furnished to the accused or his advisers before the second trial. Regulation 11 reads as follows:—

> "11. In every emergency procedure case the prosecution shall, not less than two clear days before the date fixed for the trial of the case, furnish to the accused person or his advocate and solicitor, if any, a copy of the statements made to the police during the police investigation of all persons whom it is intended to call as witnesses for the prosecution at the trial."

Their Lordships will assume, in dealing with this argument, that the witnesses in question made statements to their superiors as to the taking of a statement from the appellant. If so, the case would seem to fall within Regulation 11 for, as was indeed conceded, its terms are wide enough to apply to police witnesses. Their Lordships will also assume that, as regards these witnesses, the prosecution failed to comply with this Regulation. There is nothing in the record to indicate that it did comply. It is true that the learned Judge's note shows that at the commencement of the trial Mr. McCall stated that he proposed putting in a statement of the accused taken by a police officer and had served Mr. Charry with a copy, and Mr. Charry is recorded as saying, "I have duly received a copy". This, however, does not refer to the statements of those in a position to depose as to the circumstances in which the accused made his statement and, apart from any question of length of notice, cannot be regarded as satisfying the requirements of Regulation 11.

On these assumptions two questions arise. The first is whether, as counsel for the appellant contended, compliance with Regulation 11 is a condition precedent to the reception of the evidence concerned. In the opinion of the Board it is not. Their Lordships consider the Regulation to be directory in character and not such as to preclude the trial Judge, in the exercise of his discretion, from admitting testimony in respect of which the requisite notice has not been given. That, it must be added, is not to say that the provisions of the Regulation are to be regarded lightly or that failure to comply therewith cannot imperil a verdict favourable to the prosecution. Regulation 11 was obviously intended for the protection of an accused person against surprise and to afford him at least some of the advantages provided under the normal procedure by the preliminary enquiry. While failure to observe the Regulation is to be regarded as an irregularity rather than a fundamental defect, evidence tendered in breach of its requirements ought not to be admitted readily or so as to deny the accused any real benefit which compliance would have conferred. The second question is whether this irregularity can in itself be said to have caused a miscarriage of justice. The appellant has not satisfied their Lordships that it had this result. It was submitted that had due notice been given the defence might have produced medical or other evidence to show that the accused was not in a fit condition to make a statement on the evening of the 13th September or that no statement had then been taken. In the somewhat unusual circumstances of this case it is regrettable that the Court had not before it some evidence from the hospital as to the appellant's mental and physical state on the evening of the day on which he was injured and during which he must, on any view, have suffered a very considerable degree of exhaustion and shock. But their Lordships are not in a position to say whether such evidence was available or could have been obtained by the time of the second trial. Half a year had then elapsed since the crucial date and local conditions may have been far from normal. It may or may not be the case that both prosecution and defence were faced with similar difficulties in this respect. But it is certainly not clear that compliance with Regulation 11 would have enabled the appellant to muster witnesses for this purpose. And, apart from that, it must be observed that the admission of the statement does not appear to have been resisted on this ground. Nor was any adjournment sought by the defence, or any point based on a breach of Regulation 11 taken before the Court of Appeal.

Once again their Lordships cannot but feel that had the irregularity aroused any substantial sense of grievance at the time the matter would have been ventilated at a much earlier stage.

The next submission as to the admissibility of the statement was based on Regulation 33 (1) of the Emergency Regulations which, in so far as material, is as follows:—

> "33.—(1) Where any person is charged with any offence against these Regulations or with any offence specified in the Schedule to these Regulations, any statement, whether such statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after such person is charged and whether in the course of a police investigation or not and whether or not wholly or partly in answer to questions, by such person to or in the hearing of any police officer of or above the rank of Inspector shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence and, if such person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit: "

The contention here was that the statement had not been made "in the hearing of" Inspector Abdullah as he was unable to understand the language spoken by the appellant, and consequently, that it should not have been received in evidence. Their Lordships are of opinion that this argument must fail. They do not find it necessary to consider the precise meaning of the words referred to as those which immediately precede them provide an alternative, and they are satisfied on the evidence that if the statement was made it was made "to" the inspector and none the less so because he required the services of the interpreter to follow what was said.

The remaining submissions advanced on behalf of the appellant related to the weight to be attached to the statement he is alleged to have made. It may truly be said that the circumstances already mentioned were such as to provoke comment and even suspicion about the taking and content and belated production of this important part of the prosecution case. But the weighing of evidence is essentially a matter for the trial court and it is not the practice of their Lordships' Board, in the exercise of its criminal jurisdiction, to usurp this function or to interfere with a verdict reached after a satisfactory trial merely on the ground that evidence sufficient to permit of the verdict ought not to have prevailed. Their Lordships have no desire to depart from this practice which recognises the difficulty of assessing evidence at a distance from the scene and without the intimate knowledge of local conditions possessed by the responsible courts of the country concerned. But there is one feature of the present case which must now be mentioned and which, though it bears directly on the weight to be accorded to the statement under discussion, involves an important principle of the criminal law to such an extent that, in the opinion of the Board, the conviction appealed from ought not to be allowed to stand.

The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim "*Res judicata pro veritate accipitur*" is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any step to challenge it at the second trial. And the appellant was no less entitled to rely on his acquittal in so far as it might be relevant in his defence. That it was not conclusive of his innocence on the firearm charge is plain, but it undoubtedly reduced in some degree the weight of the case against him for at the first trial the facts proved in support of one charge were clearly relevant to the other having regard to the circumstances in which the ammunition and revolver were found and the fact that they fitted each other.

These considerations do not appear to have received the attention they deserved at the second trial. Thus one of the police witnesses (P.W.5) was re-examined so as to elicit the fact that the revolver concerned was loaded with 6 rounds; and in his summing up Storr J., in reference to a point made by Mr. Charry, told the assessors to dismiss the question of ammunition from their minds, though it would seem that Mr. Charry's submission was, in effect, a suggestion that the person responsible for the ammunition might well be the person responsible in respect of the revolver that could fire it; and that, whatever may be said of its cogency, was an argument which the acquittal had made a possible line of defence. More important than these matters, however, was the reliance of the prosecution upon the statement of the 13th September which, if accepted as the truth, went to prove the appellant guilty of the charge of which he had been acquitted as clearly as it proved him guilty of the offence the subject of the second trial. This circumstance might well have been made a ground for excluding the statement in its entirety for it could not have been severed satisfactorily. But the point was not taken and the statement was left to the assessors, with ample warning, it is true, of the dangers of acting upon a retracted confession, but without any intimation that the prosecution could not assert or ask the Court to accept a substantial and important part of what it said. The fact appears to be—and the Board must judge of this from the record and the submissions of counsel who argued the appeal—that the second trial ended without anything having been said or done to inform the assessors that the appellant had been found not guilty of being in possession of the ammunition and was to be taken as entirely innocent of that offence. In fairness to the accused that should have been made clear when the statement had been put in evidence, if not before. Their Lordships do not attempt to attribute or apportion responsibility for the omission. They do not know how far, if at all, the learned Judge's earlier ruling as to mention of the fact that the trial was a re-trial may have discouraged counsel from referring to the previous proceedings: and they are uncertain from the record whether the learned Judge was himself aware of the acquittal. But they cannot avoid the conclusion that the effect of the omission was to render the trial unsatisfactory in a material respect. Had the assessors realised that only a part of the statement could be relied upon they might have attached greater weight to the other criticisms regarding it and rejected it altogether. And had they done so it by no means follows that they would have been prepared to accept the testimony of the Malays in preference to that of the appellant. What they would have done had the statement been excluded from evidence or its effect qualified by an unequivocal direction as to the appellant's acquittal and the effect thereof must, of course, remain a matter of conjecture. But the uncertainties are sufficiently reasonable to jeopardise the verdict reached and to justify the view, already expressed, that it ought not to stand.

For these reasons their Lordships have humbly advised His Majesty that the appeal should be allowed and the conviction and sentence set aside.

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In the Privy Council

SAMBASIVAM

v.

THE PUBLIC PROSECUTOR,
FEDERATION OF MALAYA

DELIVERED BY LORD MACDERMOTT

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