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1967/21  
[4]

JUDICIAL COMMITTEE OF THE  
IN THE PRIVY COUNCIL Appeal No. 9 of 1967

ON APPEAL FROM

THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

B E T W E E N

LAW KIAT LANG alias  
LOW KIAT LONG Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
15 MAR 1968  
25 RUSSELL SQUARE  
LONDON, W.C.1.

C A S E FOR THE RESPONDENT

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| 10 | 1. This is an Appeal by Special Leave from the Judgment and Order of the Federal Court of Malaysia (Appellat Jurisdiction) (Thomson, Lord President, Malaysia, Ong Hock Thye, Ag. Chief Justice, Malaya, Suffian, Judge) dated the 28th day of December 1965 by which Judgment and Order the Appellant's appeal against his convictions and sentences by the High Court of Malaya at Muar in the State of Johore (Gill, J) on the 10th day of October 1965 upon 3 charges under  | 72<br>61 |
| 20 | the Internal Security Act 1960 (No. 18 of 1960) was dismissed and his said convictions and sentences were affirmed.  | 33       |
|    | 2. The Appellant was charged as follows:   |          |
|    | <u>1st Charge</u>  | 2        |
| 30 | "That you between 2.00 a.m. on the 2nd day of September 1964 and 12.00 noon on the 4th day of September, 1964 in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N. 245 of 17th August 1964, namely 2½ milestone Labis/Paya Merah Road, Labis, in the District of Segamat, in the State of Johore, consorted with members of the Indonesian Armed Forced who carried firearms and ammunition in contravention of the provisions of section 57 of the Internal Security Act, 1960, in circumstances |          |

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which raised a reasonable presumption that you intended to act with such members of the said Indonesian Armed Forces in a manner prejudicial to public security and that you thereby committed an offence punishable under section 58 (1) of the Internal Security Act, 1960.

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2nd Charge

"That you at about 2.00 a.m. on the 2nd day of September 1964 in a Security Area as proclaimed by the Yang Di-Pertuan Agong by Federal L.N. 245 dated 17th August 1964, namely 2½ milestone, Labis/Paya Merah Road, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession a firearm, to wit, a Sten gun, without lawful authority and that you have thereby committed an offence punishable under section 57 (1) (a) of the Internal Security Act 18/60.

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3rd Charge

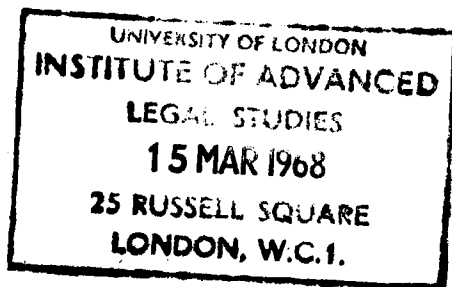
"That you at about 2.00 a.m. on the 2nd day of September 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong by Federal L.N. 245 dated 17th August, 1964, namely 2½ milestone, Labis/Paya Merah Road, Labis in the District of Segamat, in the State of Johore, without lawful excuse had in your possession ammunitions, to wit, 300 rounds of 9 mm ammunition and two hand grenades, without lawful authority and that you have thereby committed an offence punishable under section 57 (1) (b) of the Internal Security Act, 18/60.

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3. The principal questions that arise in this Appeal are:-

- (a) whether the Appellant was a prisoner of war within the meaning of the Geneva Conventions Act 1962 (No. 5 of 1962) and as such was entitled to protection under the Geneva Convention Relative to the Treatment of Prisoners of War (The Third Schedule to the Act).

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10 (b) whether in the circumstances of the case a burden lay upon the prosecution to prove that the Appellant was disentitled to be treated as a prisoner of war under the Act. It is submitted that it was for the Appellant to show that he was entitled to the protection of the Act. This he did not do and neither at his trial nor in the appeal before the Federal Court of Malaysia, made any claim to be so entitled.

(c) whether, if there was any onus upon the prosecution to show that the Appellant was disentitled to be treated as a prisoner of war under the Act, such onus was discharged.

20 4. The Appellant at his trial raised no question as to the jurisdiction of the Court to try him or as to his status and upon arraignment claimed trial on each of the 3 charges.

5. The case for the prosecution was thus outlined by the learned trial Judge:-

30 "The prosecution case was that on 1. 9.64 at about 4.30 p.m. a Hercules plane with 47 armed men under the command of Lieutenant Muda Sutikno Tjetrosumarto (P.W.7) in the Indonesian Armed Forces took off from Jakarta for Medan from where it took off at about 9 p.m. for Malaya, this destination being known only to the commander. At about 2 a.m. on 2. 9.64 the whole team of 48 men baled out from the plane and landed in the Kampong Tenang area, Labis, in the State of Johore. Of the 48 men, 34 were Indonesians and 14 Malayan Chinese. After landing they were unable to regroup themselves and apparently wandered about in the jungle either individually or in groups of two or three. One of the Chinese in the team was the accused. Two of the Indonesian soldiers were Tobi Tabrani bin Aban Sumitar (P.W.5) and Ahmad Surahman bin Israp (P.W.6).

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40 On 4. 9.64 at about 9.30 a.m. Haron bin Othman (P.W.1) a Kampong worker, left his

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house in Kampong Paya Merah, Labis on a bicycle to go to Kampong Temayu. On his way he saw coming from the opposite direction a male Chinese with whom he engaged in conversation and whom, on becoming suspicious, he took on his bicycle to Labis Police Station. They rode on the bicycle up to a mosque where P.W.1 left his bicycle. The two of them then walked to the Police Station where P.W.1 handed over the Chinese to the Policeman in charge. Inspector Lie Kooi Loon (P.W.2) received the Chinese whom he identified as Law Kiat Lang, the accused."

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6. The evidence of Haron bin Othman (P.W.1) who apprehended the Appellant and handed him over to the police, was that the Appellant was at the time of capture wearing a grey sleeved singlet with round neck and a pair of black trousers.

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The evidence of Inspector Liew Kooi Loon (P.W.2) the police officer to whom the Appellant was handed over, and of his colleague Inspector Yean Yoke Khin (P.W.3) was that, on being searched, the Appellant was found to have in his trousers pocket an Identity Card in his name, \$298/- in one dollar Malayan currency notes and a compass attached to a whistle. The Identity Card was produced in evidence at the trial as Exhibit P.3. It did not form part of the Record which was before the Federal Court on the hearing of the appeal, but from its description in the List of Exhibits (which was a document before the Federal Court) it appears to have been issued under the National Registration Regulations of Malaya.

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7. A statement made by the Appellant was admitted in evidence as Exhibit P.5. In this the Appellant said that he was born and educated in Pontian, Johore, became a member of the Labour Party of Malaya at the end of 1961 and on the 19th May 1964 went to Indonesia for military training at the invitation of a friend. He then went on to describe his training and his participation in the venture which led to his capture.

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8. The Appellant did not himself give evidence or call any witness in his own defence (except upon the separate issue of the admissibility of the statement).
9. On the 10th day of October, 1965 the learned trial Judge convicted the Appellant and sentenced him to death on each charge. 33
10. By Petition of Appeal dated the 2nd day of November 1965 the Appellant appealed against the said convictions and sentences to the Federal Court of Malaysia. No point was taken in any of the grounds of appeal as to the Appellant being entitled to be treated as a prisoner of war. 34
11. On the 28th day of December 1965 the Federal Court dismissed the Appellant's appeal. 71
12. It is respectfully submitted that the Geneva Convention Relative to the Treatment of Prisoners of War, which, when applicable, is given legislative effect by Act No. 5 of 1962, has no application to the facts of the present case. The Appellant was clearly a resident of and domiciled in Malaysia, where also the acts which were proved against him were committed. The Appellant was thus (assuming that there was an armed conflict to which Malaysia was a party) in the position of an inhabitant of an invaded country who lends assistance to the invader. Accordingly even if the Convention was otherwise applicable, nevertheless upon its proper construction, the Appellant was a defector to the enemy, and as such was not entitled to its protection. It is submitted that the long established principles of customary international law would clearly exclude the Appellant from the protection afforded to prisoners of war and that the Convention is to be interpreted in the light of these principles and as giving expression and effect to them. 20 30
13. It is further submitted that in any event and upon any view the evidence showed prima facie the commission of offences which fell within the ordinary jurisdiction of the Court and the only question left was whether the Appellant was entitled to an immunity or exemption from the general law by reason of his having a special 40

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protected status. The offences alleged were within the territorial jurisdiction of the Court as stated by S.22 (1) of the Courts of Judicature Act 1964 and the Appellant was a person subject to the enactment under which he was charged, that is to say, sections 57 and 58 of the Internal Security Act 1960.

These sections apply to "any person" of whatever nationality, citizenship or status, and, it is submitted, whether he be civilian or military, although in an appropriate case it may be open to an accused by virtue of other legislation to show that he enjoys some special protected status. That this so is shown, it is submitted, both by the express language and the manifest intention of the enactment, Section 58 makes it an offence to consort with a "person who is carrying or has in his possession or under his control any firearm, ammunition or explosive in contravention of section 57". If the members of an invading military force are to be excluded from the operation of section 57, then their carrying arms would not constitute a contravention of this section and no offence would be committed under section 58 by any person, whatever his nationality or allegiance, who consorted with them. This, it is submitted, would be contrary to and defeat the plain intention of the enactment, which would not operate to remedy the mischief aimed at where this was sufficiently open and blatant. It is submitted that section 57 applies to all persons who commit the offence therein defined, whatever their status may be, and that section 58 has the same application.

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Accordingly, prima facie the Court has its ordinary jurisdiction to try offences against these sections by whatsoever persons committed unless there is something to oust such jurisdiction. Where the Geneva Conventions Act 1962 is applicable, the effect of Article 84 of the 3rd Schedule would be to oust the jurisdiction of the Court, but it is submitted that for this consequence to follow, the facts making the Act applicable to the particular case must be clearly shown. In the present case no such facts were shown.

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14. It is submitted that, the prosecution having proved by the evidence it adduced all the ingredients of the offences charged and that they were committed within the territorial jurisdiction of the Court, it was for the Appellant to prove the facts which gave him a protected status or conferred on him an immunity or exemption or ousted the ordinary jurisdiction of the Court. This he did not do. On the contrary, he adduced no evidence as to his status or allegiance and at no time during his trial did he raise the defence that he was a prisoner of war or challenge the jurisdiction of the Court.

15. It is respectfully submitted that there was no evidence before the Court that the Appellant was entitled to be treated as a prisoner of war within the meaning of the Geneva Convention (The Third Schedule of the Geneva Conventions Act 1962). There was in particular no evidence, that, if there was either a "declared war" or an "armed conflict" between Malaysia and any other Power, that other Power was a "high Contracting Party" or had accepted and applied the provisions of the Geneva Convention so as to make the Government of Malaysia bound by it and so give the material provisions of the Third Schedule any legislative force.

16. It is submitted that if any duty lay upon the prosecution to show that allegiance was owed by the Appellant to Malaysia, it did this upon the evidence. This established that the offence was committed in Malaysia where, it is submitted, the Appellant was shown to be domiciled and ordinarily resident, and from which he had only temporarily been absent before the offences were committed. His possession of an identity card issued under the National Registration Regulations of Malaya was some evidence that his allegiance was to Malaya and hence to Malaysia, for this showed not only where he lived but also that he claimed to be lawfully in the country. In any event it is submission of a civilian identity card issued in Malaysia instead of the kind of identity card which by the Geneva Convention is required to be furnished to persons "liable to become prisoners of war" was some evidence that the Appellant's status was not such that upon capture he became a prisoner of war.

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17. In the further submission of the Respondent, whatever the position as to onus of proof or the allegiance owed by the Appellant, the evidence before the Court showed clearly that the Appellant was not a person to whom, pursuant to Articles 2 and 4 of the 3rd Schedule, the provisions of the Convention therein contained were applicable. The Appellant was not engaged in an armed conflict and did not comply with provisos (b) and (c) of Article 4 (2). On the contrary he was engaged in a mere mission of sabotage, in the course of which and at the time of his apprehension he had disguised himself by putting on civilian clothing and had concealed his arms.

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61 18. The Respondent respectfully submits that this Appeal should be dismissed and the Judgment and Order of the Federal Court of Malaysia of the 28th day of December 1965 dismissing the Appellant's appeal against his convictions and sentences by the High Court of Malaya on the 10th day of October 1965 should be affirmed for the following among other

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R E A S O N S

1. BECAUSE the Appellant was not a prisoner of war within the meaning of the Geneva Conventions Act 1962.
2. BECAUSE the Appellant was a defector to the enemy and as such was not entitled to be treated as a prisoner of war.
3. BECAUSE the Appellant was in breach of his duty of allegiance to His Majesty the Yang di-Pertuan Agong and was accordingly upon a proper construction of the Geneva Conventions Act 1962 and by the law of nations to which such Act gives expression and effect not entitled to the protection of the Act.
4. BECAUSE it was for the Appellant to show that he enjoyed the status and privileges of a prisoner of war and this he did not do.
5. BECAUSE no facts or circumstances were shown to oust the Court's jurisdiction to try the offences charged according to the ordinary processes of law.

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6. BECAUSE there was no evidence that if there was either a "declared war" or an "armed conflict" between Malaysia and any other Power, that other Power was a "High Contracting Party" or had accepted and applied the provisions of the Geneva Convention so as to make the Government of Malaysia bound by it and so give the material provisions of the Third Schedule any legislative force.
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7. BECAUSE the evidence showed on the contrary that there was not an armed conflict within the meaning of Article 2 of the 3rd Schedule but that the Appellant was merely taking part in a mission of sabotage.
8. BECAUSE the evidence showed that the Appellant was not a person who fell within the definition of a prisoner of war contained in Article 4 of the 3rd Schedule and accordingly neither by the express terms of the Article nor by the law of nations to which it gives expression and effect was he entitled to be treated as such.
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9. BECAUSE if there was any onus upon the prosecution to prove that the Appellant owed allegiance to His Majesty the Yang di-Pertuan Agong, it discharged such onus.
10. BECAUSE if there was any onus upon the prosecution to prove that the Geneva Conventions Act 1962 had no application, it discharged such onus.
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11. BECAUSE the judgments of the Federal Court of Malaysia in the cases of Teo Boon Chai alias Tey Ah Sin v. Public Prosecutor and Lee Hoo Boon v. Public Prosecutor in which it was held upon broadly similar facts that the Geneva Conventions Act was not applicable, were correct for the reasons therein stated.
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12. BECAUSE the trial Court had jurisdiction and was competent to try the Appellant in the manner in which it did and rightly convicted the Appellant on the charges

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against him and the Federal Court of Malaysia rightly affirmed the said convictions.

MONTAGUE SOLOMON.

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B E T W E E N

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Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

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