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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL 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 LOH KIAT LONG

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

RECORD OF PROCEEDINGS

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CLASS MARK

ACCESSION NUMBER

91340

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

(i)

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No.9 of 1965

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

B E T W E E N

LAW KIAT LANG alias LOH KIAT LONG

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

RECORD OF PROCEEDINGS

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(iii)

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IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

ON APPEAL FROM

THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

B E T W E E N :

LAW KIAT LANG alias LOH KIAT LONG
Appellant

- and -

10 THE PUBLIC PROSECUTOR Respondent

RECORD OF PROCEEDINGS

No.1

CERTIFICATE Under Regulation 4 of
Emergency (Criminal Trials) Regulations
1964 and charges

Emergency (Criminal Trials) Regulations 1964

Certificate under Regulation 4

Muar Emergency Criminal Trial No. 19 of 1964

PUBLIC PROSECUTOR

Vs.

LAW KIAT LANG @ LOH KIAT LONG

In the High
Court in
Malaya

No.1

Certificate
under
Regulation
4 of Emer-
gency
(Criminal
Trials)
Regulations
1964, and
Charges

I, Ajaib Singh, Deputy Public Prosecutor,
in accordance with provisions of regulation 4
of the Emergency (Criminal Trials) Regulations
1964, hereby certify that the above-mentioned
case in which Law Kiat Lang @ Loh Kiat Long

In the High
Court in
Malaya

No.1
Certificate
under Regul-
ation 4 of
Emergency
(Criminal
Trials)
Regulations,
1964 and
charges
9th October
1965 (contd.)

is charged is a proper one to be tried under
the aforesaid Regulations.

And in accordance with regulation 5 of the
aforesaid Regulations, I prefer the following
charges against the said Law Kiat Lang @
Loh Kiat Long to be tried in the High Court
Muar:

1st CHARGE

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
Indonesia Armed Forces who carried firearms
and ammunition in contravention of the
provisions of section 57 of the Internal
Security Act, 1960, in circumstances 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.

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
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.

3rd CHARGE

In the High Court in Malaya

No.1
Certificate under Regulation 4 of Emergency (Criminal Trials) Regulations, 1964, and charges
9th October 1965 (contd.)

10 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.D. 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 handgrenades, without lawful authority and that you have thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 18/60.

Dated this 9th day of October, 1965

Sd: (AJAIB SINGH)
Timbalan Penda'awa Raya

FEDERATION OF MALAYSIA

IN THE HIGH COURT OF MALAYA AT MUAR

IN THE STATE OF JOHORE

20 MUAR EMERGENCY CRIMINAL TRIAL NO.19 of 1964

PUBLIC PROSECUTOR

versus

LAW KIAT LANG alias LOH KIAT LONG

No.2

PLEA

No.2
Plea
9th October 1965

9th October, 1965

In open Court
before Gill, J.

Charges read over and explained to accused
Claims trial on all three charges

Inche Ajaib Singh opens case and calls evidence

In the High
Court in
Malaya

No.3

P.W.1 HARON bin OTHMAN

No.3
P.W.1 Haron
bin Otham
9th October
1965

I am 48 years old residing at Kampong Paya Merah, Labis, I am a kampong worker.

I remember 4.9.64. At about 9.30 a.m. on that day I left my house on a bicycle to go to Kampong Temayu. I was alone. On my way I saw a male Chinese coming from the opposite direction. He was walking in the direction of Kampong Paya Merah. He was wearing a grey sleeved singlet with round neck and a pair of black trousers. 10

When the male Chinese came near me I asked him from where he was coming. He replied that he did not know. I spoke to him in Malay. He passed me. I was not satisfied. I turned round, went up to him and asked him again to tell truthfully from where he came. He replied he came from Kuala Lumpur. I asked him how he came from Kuala Lumpur. He told me he came by bus. I became suspicious because there was no bus service on account of the curfew. He told me he wanted to go back to Pontian. 20

I invited him to come with me on my bicycle. He sat in front of me on the cross bar and I rode on. I then took him to Labis Police Station after leaving my bicycle at a mosque. The Chinese and I walked to the Police Station from the mosque. The mosque is about 10 chains from the Police Station. At the Police Station I handed over the Chinese to the Policeman in charge. There were several Policemen in the Police Station. 30

I cannot indentify that Chinese now. I had not seen that Chinese in that locality before. He appeared to be normal.

Cross-examined: The Chinese did not tell me that he came from Pontian. I made a report at the Police Station. I did not say in my report that the accused told me that he came from

Pontian. I do not remember whether I signed it. (Inche Rajah allowed to cross-examine on report. Report read out and explained to witness). Yes, I made this report (certified copy of report put in and marked "D.1").

In the High
Court in
Malaya

No.3

P.W.1. Haron
bin Otham
9th October
1965 (contd)

10 The Chinese had no firearm or ammunition when I met him. He did not tell me when he came to Labis. He did not tell me that he arrived at Labis on the previous night. I said in my statement to the Police, "I asked him when he arrived. He replied that he arrived at Labis the previous night by bus." That is correct. He never told me at any time that he arrived from Pontian. It is true he told me that he came from Kuala Lumpur.

No re-examination.

No.4

P.W.2 LIEW KOOI LOON

No.4
P.W.2.
Liew Kooi
Loon
9th October
1965

20 P.W.2 LIEW KOOI LOON, affirmed, states in English:

I am an Inspector of Police stationed at Segamat. In the month of September last year I was at Labis.

On 4.9.64 at about 11.10.a.m. I was at the Enquiry Office, Labis Police Station when a Malay man brought in a Chinese. The Malay man was P.W.1. The Chinese was Law Kiat Lang, the accused.

30 I searched the person of the accused and from his trousers pocket I recovered one Identity Card, cash of \$298/- in one-dollar Malayan currency notes and a compass attached to a whistle. I placed the accused under arrest.

On the same day at about 11.30 a.m. I handed the three exhibits to Inspector Yean Yoke Khin at Labis Police Station. I ascertained the

In the High Court in Malaya

name of the accused from the Identity Card which also had the alias Loh Kiat Long.

Cross-examined: It is not true that I did not find the compass attached to a whistle on the accused.

No.4
P.W.2.
Liew Kooi Loon
9th October 1965 (Cont.)

No re-examination

No.5

P.W.3 YEAN YOKE KHIN

No.5
P.W.3.
Yean Yoke Khin
9th October 1965

P.W.3 YEAN YOKE KHIN, affirmed, states in English:

10

I am an Inspector of Police stationed at Kluang Police Headquarters. In the month of September last year I was attached to C.I.D. Headquarters at Johore Bahru.

On 4.9.64 at about 11.30 a.m. I was at Labis Police Station. At that time Inspector Liew Kooi Loon (P.W.2) handed me this sum of \$298/- in one-dollar Malayan currency notes (put in and marked P.2), this Identity Card bearing the name of Law Kiat Lang alias Loh Kiat Long (put in and marked P.3) and this compass with a whistle attached (put in marked P.4). These were the exhibits handed to me by P.W.2 and they have been in my custody ever since.

20

P.2
P.3

No cross-examination.

No.6

P.W.5 TOBI TABRANI bin ABAN SUMITAR.

No.6
P.W.5
Tobi Tabrani bin Aban Sumitar
9th October 1965

P.W.5 TOBI TABRANI bin ABAN SUMITAR, affirmed, states in Malay:

30

I am 23 years old. I am an Indonesian. I am detained in Johore Bahru. In Indonesia I was in the Army as a Private Class II

I came to Malaya on 1.9.64 by a Hercules plane. There were 48 persons in the plane including myself. We were all in uniform. There were 14 Chinese amongst the 48 persons. I was carrying a G.3 gun, ammunition, 2 hand-grenades, rations and a parachute. I was also carrying civilian clothes. The others were also armed like myself. In the plane I was given money in Malayan currency in one-dollar notes.

In the High
Court in
Malaya

No.6
P.W.5

Tobi Tabrani
bin Aban
Sumitar
9th October
1965 (contd.)

The 14 Chinese in the plane were also in uniform and carried firearms. Amongst the Chinese I knew one, but I do not know his name. I can recognize him.

(Question: Look around the Court and say if that Chinese is here. Inche Rajah objects to the question. I allow the question.)

That Chinese was the accused. He was carrying a Sten gun, 2 handgrenades, clothing and ammunition. I do not know how many rounds of ammunition he was carrying.

Every one of us was given \$300 in Malayan currency one-dollar notes, including the accused.

The plane in which I came to Malaya left Halim in Jakarta at about 6 p.m. We left the Asrama (hostel or camp) at 2 p.m. The plane stopped at Medan and took off from there at about 9 p.m.

After we had been air borne for some time I baled out from the plane on orders. The accused jumped out before me. We all carried our arms, ammunition and rations when we jumped out. It was about 2 a.m. on 2.9.64 when I jumped out. I landed in a kampong. In the morning I walked from the place where I landed in search of my friends, but I failed to contact them. In the meantime I saw a stationery lorry. I got into the lorry and sat beside the driver. The lorry proceeded. On the

In the High
Court in
Malaya

No.6
P.W.5
Tobi Tabrani
bin Aban
Sumitar
9th October
1965 (contd)

way the Police stopped the lorry and arrested me.

I am quite sure that the accused was one of the Chinese in the same plane as myself and he baled out. I met him in Labis Police Station after I was arrested. After that I saw him in Johore Bahru prison. I have no grudge or ill feeling against the accused.

Cross-examined: I was not informed of my destination when I left Jakarta and Medan. 10
I was told that we were being taken for training somewhere in Indonesia. We were not told to which part of Indonesia we were going for training. We were told that we were going for training in parachute-jumping. My commandant gave me the orders. He was Lieutenant Grade 1 by the name of Soroso.

I know Lieutenant Sutikno. He also told us that we were going for training in parachute-jumping in Indonesia. When I got into the 20
plane I genuinely believed that I was going for training in parachute-jumping some where in Indonesia. I did not know either at Jakarta or at Medan that I was coming to Malaya. When I landed I thought that I had landed in some part of Indonesia. I came to know that I had landed in Malaya early in the morning when I saw the Malayan currency notes. I guessed. I came to know definitely that I had landed in Malaya at the time when 30
I boarded the lorry and was arrested. I asked the lorry driver some questions and I was satisfied that I was in Malaya. I was surprised that I was in Malaya. As far as I was concerned, my landing in Malaya was most unexpected.

Same orders were given to every one in the plane, to the Indonesians and to the Chinese. As far as I am concerned, my landing in Malaya was an accident and a misfortune. 40

When I was arrested I was in civilian clothes. I changed into civilian clothes at

the time when I wanted to come out from the place where I landed. I landed near a kampong. No one saw me land. I carried my firearm, handgrenades and ammunition together with me. I put my arms and ammunition into the lorry which I boarded. When I was arrested, the Police took possession of them.

In the High
Court in
Malaya

No.6
P.W.5
Tobi Tubrana
bin Aban
Sumitar
9th October
1965 (contd)

10 When the money was given to me in the plane it was wrapped up. At that time I did not know whether it was money or not. I put it inside my bag. It was wrapped up in plastic. I could see the notes inside. It was not very dark inside the plane. The plane was dimly lit. I did not see the money at that time. I just took it and put it in my bag straight away.

20 I know the accused by sight but not by his name. I first met him in Jakarta at the Asrama (camp) some time in the morning. I have forgotten the date. I first saw him in the Asrama two days before we took off from Jakarta.

The accused was in my section. There were two other Chinese in my section. I could identify them, but they are dead now. I do not know the names of any of them. I only know the name of the girl who died. I called her Seong Mee. I do not know the name or nickname of the other Chinese.

30 I did not call the accused by name. I did not talk to him because he could not understand the Indonesian language. I am now speaking the Indonesian language. I understand the Interpreter very well. (Note: the Interpreter is a Malay). I did not speak to accused because of language difficulty.

40 I made a statement to the Police. (Counsel allowed to put statement to witness.) I said in my statement, "Amongst the armed Malaysian Chinese was one Law Kiat Lang alias Loh Kiat Long who is now in Prison Lock-up No. 58".

In the High
Court in
Malaya

No.6
P.W.5

Tobi Tabrani
bin Aban
Sumitar
9th October
1965 (contd)

When I was in the prison I came to know his name. His name is Lau Kiat Lang. I do not know whether he has another name. I only mentioned Lau Kiat Lang. I never said Loh Kiat Long. I came to know his name in Johore Bahru prison.

The accused was No. 17 to jump. I am very sure. I was No. 18 to jump. I am sure. The head of my section was Sutarga. He is dead. I can remember the number after a year. I know Ahmad Surahman. I do not know his number in the order of jump.

10

Ahmad Surahman was in the same plane as myself. He was not in my section.

After one year I can remember what firearm the accused was carrying, without any doubt. He was carrying a Sten gun. In my statement to the Police, I said "He was armed with a Sten gun if I am not mistaken when he was in the plane".

I said in my statement to the Police, "He may be the 12th man to jump out of the plane (on the left side) and I the 15th man". The evidence which I have given in this Court as to the order of jump is correct. The accused was No.17 and I No. 18. I got confused with the sizes of parachutes given to us. The measurement of the accused's parachute was 12 and mine 15. That is why I said that the accused was the 12th to jump and I the 15th.

20

The statement was read over to me after it was recorded and I confirmed it to be correct. At that time I did not realise the mistake I had made. That is why I did not get my statement corrected.

30

I was in the dock once like the accused. I was faced with three charges. I am not facing the charges now. They were withdrawn on 23.9.65. I have no more fear of being charged again. No promise was given to me before I came to give any evidence in this Court. I am not a free man now. I am treated as a prisoner of war. I am keen to

40

go back to Indonesia. I am not married. I have my parents and brothers in Indonesia. It is not true that I am giving this evidence to facilitate my speedy return to Indonesia.

In the High
Court in
Malaya

10 I met the accused at Labis Police Station after my arrest. I was arrested on 2.9.64. I saw the accused ten days after my arrest at Labis. I was in the same cell as the accused in Labis Police Station. I did not speak to him because of language difficulty. My language is the same as that of the Interpreter who is now speaking to me.

No.6
P.W.5.
Tobi Tabrani
bin Aban
Sumitar
9th October
1965 (contd)

20 When I saw the accused at Labis Police Station he looked pale and his legs were covered with mud. He was wearing a pair of inner short pants and a singlet. I cannot remember how many days I was with the accused at Labis Police Station. I cannot remember how many nights. I cannot remember whether he was with me only for one afternoon.

In connection with the charges against me, a caution was given to me in these words (words of caution under the Internal Security Act, 1960 read out to witness). As a result of that caution I made a statement. (Inche Rajah applies for a copy of that Statement to be supplied to him for purposes of cross-examining this witness. I disallow application.)

30 I made several other statements at the Police Depot, Johore Bahru. They were recorded. I do not know how many statements I made. I made a statement at Police Station, Labis

(Question: Did you in those statements mentioned the accused or other Chinese? I disallow the question).

40 (Inche Rajah applies for copies of statements to be supplied to him. I disallow the application as those statements were not made in the course of investigation into the charges against the accused.)

In the High Court in Malaya

Adjourned until 2.15.

Signed (S.S.Gill)

No.6
P.W.5
Tobi Tabrani bin Aban Sumitar
9th October 1965 (contd)

Resumed at 2.30 p.m.

P.W.5 TOBI TABRANI bin ABAN SUMITAR (on former oath):

Re-examined: I made a statement to the Police in connection with this case on 9.11.64. The charges against me were withdrawn on 23.9.65. I was told on that day that the charges would be withdrawn against me.

10

Lieutenant Sutikno was in over-all command of the 48 persons. He told us that we were going for parachute-training somewhere in Indonesia. There were 6 persons in my section including myself. The instructions to us were through our section commander. It was the platoon commander Sergeant Mayur Aching who told me that we were going for training somewhere in Indonesia.

20

My instructions on landing were to re-group and look for our Commandant. I would have obeyed whatever orders my Commandant gave. I am a trained paratrooper. Prior to this jump I had made five practice jumps previously. On those practice jumps I carried arms. On previous practice jumps there were about 25 of us. During the practice jumps we were not given money, and we did not carry civilian clothes. On this occasion we were given no instructions about civilian clothes. I do not know why we were given civilian clothes on this jump.

30

When I jumped I was in uniform. Since after looking at the money I came to realize that I was on Malayan soil, I became frightened and therefore changed into civilian clothes.

On landing I walked to look for my

commander. Having failed to find my commander I changed into civilian clothes.

I cannot remember exactly how many days after my arrest I met the accused in Labis Police Station. From Labis I was taken to Segamat and then to Johore Bahru, but I cannot remember how many days I was in Labis and how many days in Segamat.

10 If I am not mistaken, this was my third jump from a Hercules plane.

By Court: I was carrying a compass. All of us carried compasses. I carried a whistle to give warning.

No. 7

AHMAD SURAHMAN bin ISRAP

P.W.6 ARMAD SURAHMAN bin ISRAP, affirmed, states in Malay:

20 I am 25 years old. I am a member of the Indonesian Armed Forces, now a prisoner of war in this country. I was four years in the armed forces before I became a prisoner. I was a private.

I came to Malaya on 2.9.64 at about 2 a.m. I came by a Hercules plane. There were 48 soldiers in the plane under the command of Lieutenant Muda Sutikno. Our plane took off from Halim airport at Jakarta at about 4 p.m. on 1.9.64. The plane stopped at Medan and took off again at 11 p.m.

30 There were some Chinese in the group of 48 persons. There were about 14 Chinese. We were all in uniforms, and we Indonesians carried G.3 guns, ammunition, handgrenades, knives and some other equipment including rations. As regards the Chinese, some carried Sten guns and some Bren guns, ammunition, 2 handgrenades each and some other things in bags.

I can identify two of the Chinese in the

In the High Court in Malaya

No.6

P.W.5.

Tobi Tabrani
bin Aban
Sumitar
9th October
1965 (contd)

No. 7

P.W.6.

Ahmad
Surahman bin
Israp
9th October
1965

In the High
Court in
Malaya

No.7

P.W.6.

Ahmad
Surahman bin
Israp
9th October
1965 (contd)

plane, but I do not know their names.
(Witness asked to look round.) The accused
was one of the Chinese in the plane. I saw
that he was carrying a Sten gun, two hand-
grenades, ammunition and other equipment.
I do not know how many rounds of ammunition
he carried.

I was given a bundle in the plane. When
I was in the plane I did not know what it
was. I came to know when I landed. It was
money, Malayan money. Every one was given
a bundle. 10

I jumped out from the plane at about 2 a.m.
My parachute got caught in a tree. I got down
from the tree in the morning. On 3.9.64 I
met two of my friends from the plane inside
the jungle about two miles away from where
I had landed. I remained in the jungle with
my two friends for 15 days. Then I was
captured. I buried my firearms and ammuni-
tion in the jungle on the morning of the
day on which I was arrested. Until then I
had my firearm and ammunition. 20

I next met the accused at the Police
Depot, Johore Bahru and then in the Johore
Bahru prison.

When the plane took off at Jakarta and
later at Medan I did not know where I was
going. I was not told my destination at all.

I had no instructions as to what I was to
do on landing, but I started looking for my
friends who were in the plane. 30

There were two Chinese in my section.
There were 6 persons in my section including
myself. I was looking for my friends from
my section. I walked in the jungle in search
of them. I had a whistle to attract
attention. I had a compass to guide me as
to direction.

P.4 (Shown P.4). The compass and whistle issued to me were similar to this compass and whistle.

In the High Court in Malaya

If I had met my commander I would have carried any orders he gave.

No.7
P.W.6

The accused was not in my section. I am quite certain that I met the accused in the plane and that he was carrying the arms I have described. I have no grudge or ill-feeling against him.

Ahmad
Surahman
bin Israp
9th October
1965 (contd)

I lost my bundle of money. I saw the bundle with my friend and that contained \$300/- in one-dollar notes.

P.4. Cross-examined: (Shown P.4). This compass is empty. Nothing inside. With the help of this I cannot find my direction. I do not know whether it is made in Indonesia.

I walked with my friends in the jungle for 15 days. My friends were Sadikon and I'id Surjani, Indonesians. I did not meet any of the Chinese in the jungle. I met the Chinese only in the plane.

Of the Chinese I met in the plane I can identify two Chinese. Both of them did not belong to my section. I do not know the name or nickname of any of the Chinese. Now I know his name. His name is Lau Kiat Lang as given in the Subpoena. I came to know his name from the Subpoena. If not for the Subpoena I would not know his name. P.W.5 also received a Subpoena with a similar name.

I did not know the accused's name at the Depot or in the prison at Johore Bahru. I am sure, as sure of the accused's identification. I am positive.

I made a statement to the Police. I did not say in my statement, "Amongst the armed Malaysian Chinese volunteers was Law Kiat Lang alias Loh Kiat Long". I have no doubt that the

In the High
Court in
Malaya

No.7
P.W.6

Ahmad
Surahman
bin Israp
9th October
1965 (contd)

accused carried a Sten gun. I did say in my statement that "if I am not mistaken he was armed with a Sten gun". I did not mention in my statement that the accused carried handgrenades and ammunition. I was having some doubt as to whether he had handgrenades and ammunition because he was not in my section. I said that the accused carried handgrenades and ammunition because we were all given ammunition and handgrenades at Jakarta. This was on 1.9.64 the day when we took off.

10

This was not the first time I boarded a plane. I boarded a plane seven times before this for training purposes. On my earlier practice jumps I carried a firearm, ammunition and handgrenades. I did not carry firearms and ammunition for every practice jump. I carried arms and ammunition three times, on the last three occasions. On all occasions I was told I was going for training somewhere in Indonesia. On the three occasions the handgrenade was not used. The firearm also was not used.

20

On the last two jumps prior to coming to Malaya I fully believed I was going for training somewhere in Indonesia, and it was so.

When I left Jakarta on 1.9.64 I was not told my destination, but I was told that we were going for training. I was not told where we were going for training. I believed I was going for training somewhere in Indonesia. I was not told what to do on landing. As far as I knew, I was going for training in Indonesia.

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I came to know I was on foreign soil when I was arrested. When I was in the jungle I thought I was in Indonesia. When I found myself in Malaya I did not think I was deceived. As a soldier I obey. The soldiers who arrested me told me that I was in Malaya.

40

I was very surprised when I found myself in Malaya. I was shocked. I never expected to come to Malaya.

In the High
Court in
Malaya

I first met the two Chinese, whom I can identify, in Jakarta on 1.9.64 when they were in the plane. Now I say I met them when we lined up outside the plane and when arms and ammunition were issued, before the take-off. I saw firearms being issued to each section.

No.7
P.W.6.
Ahmad
Surahman
bin Israp
9th October
1965 (contd)

10 There were two Chinese in my section. I do not know their names. I saw them at the Police Depot after my capture. Even after meeting them in Johore prison I did not come to know their names.

I am very keen to go back to Indonesia if I am lucky. No promise was given to me as to when I will go back to Indonesia. I am now a prisoner of war. The arms I buried in the jungle were recovered.

20 I was charged in Court. The charges have now been withdrawn. I am not a free man in this country.

(I disallow question by Inche T.T. Rajah as to whether witness made any other statement to the Police about the Chinese).

(Question: Did you make any statement to the Police at Labis after your arrest? Disallowed).

(Question: Did you make any statement at Johore Bahru Depot? Disallowed).

30 (I further disallow a question as to whether the witness made a cautioned statement.)

Re-examined: During my earlier jumps I did not carry rations or civilian clothes or a compass or a whistle. I was not given any money on the occasion of those jumps.

The compass which was issued to me had a similar case as P.4. with an instrument inside.

In the High Court in Malaya

P.4 is in a damaged condition. It is broken on one side with a portion missing.

Court adjourned and resumed after 10 minutes.

No.7
P.W.6.

Ahmad Surahman bin Israp
9th October 1965 (contd)

No.8

P.W.7 SUTIKNO TJETROSUMARTO

No.8
P.W.7.

Sutikno Tjetrosumarto
9th October 1965

P.W.7. SUTIKNO TJETROSUMARTO, affirmed, states in Malay:

I am 40 years old. I am Lieutenant Muda in the Indonesian Armed Forces, now a prisoner of war in Malaya. 10

I first joined the Indonesian Armed Forces in September 1945. I was transferred to the Indonesian Air Force in 1950. I became Lieutenant Muda in 1962.

In 1964 I was assigned a special job. In February 1964 I was given training in connection with Indonesian confrontation of Malaysia.

On 1st September, 1964 at about 1 p.m. I received an order to proceed to Malaya. I was to lead a team of 47 persons. There were 34 Indonesians including myself and 14 Malaysian Chinese in my team. 20

I left with my team from Jakarta on 1.9.64 at 4.30 by a Hercules plane. From there we proceeded to Medan. At about 9 p.m. we took off from Medan.

All 48 of us were armed. I was armed with a revolver. The other Indonesians carried G.3 light automatic guns. Some of the Chinese carried Sten guns and some carried Lee Enfield rifles. Each of us wore a camouflage uniform and carried, apart from the firearm, ammunition, 2 handgrenades and other equipment including rations. We also carried civilian clothes. 30

In the plane the pilot gave each of us money, \$300 in Malayan currency one-dollar notes.

The purpose of our coming to Malaya was to liberate the people of Malaya from British imperialism and to do sabotage work in order to crush the economy of Malaya.

In the High Court in Malaya

No.8
P.W.7.
Sutikno
Tjetrosumarto
9th October
1965 (contd)

10 I received orders from Jakarta that I must keep the purpose of our coming to Malaya a secret. I did not tell my men our destination. I did not inform any of the section leaders about our destination.

We took off from Medan in the direction of Malaya. At 2 a.m. on 2.9.64 I reached over the territory of Malaya. Just before 2 a.m. a red light signal was given for us to bale out. I was the first to bale out after the crates containing ammunition, rations, medical supplies and implements for digging. The other 47 men were to follow me.

20 The instructions to my men on landing were to look for me on the 350 degree route. They were to come from the opposite direction towards me. Each person was given a compass to guide him, a torch light and whistle. I had a Verrey Pistol to draw the attention of my men towards me.

30 I first met my team at about 1 p.m. on 1.9.64. I can recognize each one of my men. I was responsible for my team. P.W.5, P.W.6 and the accused were among my men in the plane.

I landed in Kampong Tenang, Labis, about 50 to 75 yards from the kampong near a school. I was arrested on 21.9.64. I remained in hiding until then. During that period I met only one of my men named Sali. Sali was with me when I was captured. My pistol was confiscated.

Adjourned to 9.15. a.m. tomorrow.

Signed (S.S. Gill)

In the High
Court in
Malaya

10th October, 1965

Muar Emergency Criminal Trial No.19/64

No.8
P.W.7

Sutikno
Tjetrosumarto
10th October
1965 (contd)

Hearing continued. Counsel as before.

P.W.7 SUTIKNO TJETROSUMARTO (re-affirmed):

Cross examined: I have come to this Court about three times to give evidence. This is the fourth time. I have so far identified in Court three Malayan Chinese who were in my team. I was in charge of the whole team of 47 persons.

I first met the accused at Jakarta on 1.9.64 at about 1 p.m. At that time I met 14 Chinese in all. I saw the Chinese again in the plane. I was at the very rear of the plane and there were no Chinese seated near me because members of the first and second sections were all Indonesians. The Chinese were distributed in the remaining sections. 10

The team were seated in four rows. Two rows were lined up in the middle of the plane and the persons were seated back to back. I was seated in the first row in the first seat on the right side facing the front of the plane. I did not remain seated all the time. I moved about. The flight from Medan to Malaya took about 2 hours. From Medan to Malaya I walked about the plane only twice, but I walked several times in the plane from Jakarta to Medan because it was daylight. 20

I saw the accused at 1 p.m. because he was in my team. I do not know when he was assigned to my team. I received orders at 1 p.m. to lead the team. Members of my team were all armed when I took charge. At that time no arms were distributed. I only allotted numbers. As far as the Indonesians were concerned, I am sure they carried G.3 guns. The Chinese carried Sten guns or Lee Enfield rifles. I saw that the Chinese were carrying bags. I think the accused carried a Sten gun. He was number 17 to jump. P.W.5 was number 18 to jump. 30 40

I have not got this information from P.W.5. It is not true that I am a big liar. I can remember well. I do not know names.

In the High
Court in
Malaya

I saw the accused again in Johore Bahru prison on 22.9.64. I next saw him on 7.10.65 in Muar lock-up.

No.8
P.W.7

Sutikno
Tjetrosuromo
10th October
1965 (contd)

I have given evidence against two Chinese in this Court and I mentioned the order in which they jumped. If I see the person I can say in what order he jumped.

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P.W.6 was in section 7 and he was number 41 to jump. There was a man named Karma in my team. He was in section 8 and No. 43 to jump. He was the section leader. Sutisma was the last man to jump.

As far as I can remember the accused has slit eyes. I passed his cell in Johore Bahru prison. He was covered with a blanket and I was told he was ill. This was on 23.9.64. I do not know how he became ill. I did not talk to him to find out what was wrong with him. I was not a free man at that time.

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If I see the Chinese in my team again I can identify them. I did not identify the accused at an identification parade. I said in my statement to the Police, "Amongst the 14 Malaysian Chinese there was a female Chinese whom I know as Selina and can recognize her." I also said, "I may not be able to recognize the others".

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I have said that I was to keep the purpose of my coming to Malaya a secret from my men. I do not know why I was given this order. I thought it was odd, but since I received orders that after landing in Malaya I would be given some other instructions from my superior officers, I was satisfied. I was to receive orders from Jakarta after landing, and there were three planes which were supposed to go to Malaya. I do not know whether the other planes arrived in Malaya.

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In the High
Court in
Malaya

No.8.
P.W.7

Sutikno
Tjetrosumarto
10th October
1965 (contd)

I told my men that we were going for training. I did not tell them to what part of the world they were going for training. I told them we were going to Medan for training. My men did not know that they were going to do any act prejudicial to the security of this country. My men did not know that they were carrying arms to Malaya.

Money was distributed in the plane by the pilot. Each person was given a packet wrapped in plastic. The pilot said it was a packet of cake. After I unwrapped my packet I found it was money. As far as I was concerned, I knew it was money. The packets were distributed after the take-off from Medan.

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I am not a free man now. When I go out of Court, I am not handcuffed. My men are handcuffed. I am not sure whether I may not be charged again. I have 50 - 50 chance. That is not the reason why I am trying to please the Government by giving evidence in this case.

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No.9
Addresses of
Counsel
10th October
1965

No.9

ADDRESSES OF COUNSEL

Case for the prosecution.

(Inche T.T. Rajah says that he does not wish to address me at this stage except to say that there is no case to answer. I do not call upon Inche Ajaib Singh to address.)

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I hold there is a case to answer against the accused on each charge. I explain the three courses to him and inform him that he can consult his counsel.

The accused says that he elects to remain silent.

Inche T.T. Rajah addresses the Court:

All three charges are bad in law. L.N.

245/64 defines the security area as being the territories of Johore, Negri Sembilan and Malacca. In law "territory" means land. No shred of evidence as regards consorting on land. Refer to judgment of Acting C.J. in Criminal Appeal No. 36/65. No evidence of intention. What has prosecution proved? P.W.5 and P.W.6 did not know where they were going.

In the High
Court in
Malaya

No.9
Addresses of
Counsel
10th October
1965 (contd)

10 No question of intention on second and third charges, but he must have knowledge. The persons in the plane had no knowledge that they were coming to Malaya. Weapons were never recovered. Statement of the accused that he could not lead security forces to the area. Characteristics of possession. Ho Seng Seng v. P.P. (1951) M.L.J. 225, 226. Arms not proved to be serviceable.

20 Coming to Malaya a pure accident and misfortune as far as the men were concerned. Section 86 of the Penal Code.

Landing in Malaya a mistake of fact or a mistake of mixed fact and law. Section 76 of the Penal Code. No orders given by Sutikno.

Inche Ajaib Singh addresses Court:

30 Legal Notification No. 245/64 not confined to terra firma. On general principles of law air space is included. Ample evidence of consorting. Armed personnel dropping into Labis area. Consorting both in air and on land. Circumstances in which they were found to be together. Cautioned statement of accused. After dropping they were to regroup. Evidence of Sutikno as to why they came to Malaya. Whether the men knew the purpose or not is immaterial.

The fact that the arms were not recovered is immaterial. Cautioned statement of the accused shows he had exclusive powers of control over the firearm and ammunition.

40 Prosecution has proved its case beyond reasonable doubt on all three charges. Agree

In the High
Court in
Malaya

that P.W.5, P.W.6 and P.W.7 are accomplices. They cannot corroborate each other. Continued statement of accused is corroborative evidence. Finding of money (P.W.2) and compass and whistle (P.4) on accused is independent corroboration of the evidence of the accomplices.

No.9
Addresses
of Counsel
10th October
1965 (contd)

No.10
Grounds of
Judgment
15th October
1965

No.10

GROUNDS OF JUDGMENT

FEDERATION OF MALAYSIA

10

IN THE HIGH COURT OF MALAYA AT MUAR

IN THE STATE OF JOHORE

MUAR EMERGENCY CRIMINAL TRIAL NO.19 OF 1964 .

PUBLIC PROSECUTOR

versus

LAW KIAT LAND alias LOH KIAT LONG

GROUNDS OF JUDGMENT

The accused in this case was charged, firstly, with consorting with Indonesian Armed Forces in contravention of Section 58 (1) 20 of the Internal Security Act, 1960, secondly, with unlawful possession of a Sten gun in contravention of Section 57 (1) (a) of the Act and, thirdly with unlawful possession of 300 rounds of ammunition and two handgrenades in contravention of Section 57 (1) (b) of the Act.

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 Tjetrosuwarto (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).

In the High Court in Malaya

No.10
Grounds of Judgment
15th October
1965 (contd)

On 4.9.64 about 9.30 a.m. Haron bin Othman (P.W.1), a kampong worker, left his 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 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 Liew Kooi Loon (P.W.2) received the Chinese whom he identified as Law Kiat Lang, the accused. From the trousers pocket of the accused, the Inspector recovered an Identity Card (P.3) a sum of \$298/- in one-dollar Malayan currency notes (P.2) and a compass attached to a whistle (P.4). The accused was placed under arrest and the exhibits handed over to Inspector Yean Yoke Khin (P.W.3) who produced them at the trial. At about 12 noon Inspector Abdul Hamid bin Musa (P.W.4) a Special Branch Officer, interrogated the accused for about two hours after which the accused was handed over at the Inquiry Office, Labis Police Station. Later that evening the accused was sent to the Special Branch Headquarters, Johore Bahru, from where he was sent to Segamat Police Station on 10.9.64. At about 11.10 p.m. on 11.9.64 A.S.P.

In the High
Court in
Malaya

Lim Teong Kooi (P.W.8), with the help of Detective Corporal James Wong Yeum Lum (P.W.9) acting as Interpreter, recorded a cautioned statement from the accused.

No.10
Grounds of
Judgment
15th October
1965 (contd)

The evidence of Sutikno (P.W.7) was that in February 1964 he received training in connection with Indonesian confrontation of Malaysia, and on 1st September 1964 at about 1 p.m. received an order to proceed to Malaya with a team of 47 persons. There were 34 Indonesians including himself and 14 Malayan Chinese in his team. He was armed with a revolver. Each of the other Indonesians carried a G.3 light automatic gun, ammunition and two handgrenades. The Chinese carried either Sten guns or Lee Enfield rifles and ammunition and two handgrenades each, apart from other equipment including rations and civilian clothes. In the plane the pilot gave each of them \$300/- in Malayan currency one-dollar notes. The purpose of his coming to Malaya was to liberate the people of Malaya from British Imperialism and to do sabotage work in order to crush the economy in Malaya, but his orders were to keep this a secret from his men. His instructions to his men on landing were to look for him on the indicated route. He had a Verrey pistol to draw the attention of his men towards him, and each of his men was given a compass to guide him, a torch light and a whistle. He landed in Kampong Tenang, Labis, about 50 to 75 yards from the kampong near a school, and he remained in hiding until 21.9.64 when he was arrested together with one of his men named Sali who was the only person whom he met prior to his capture.

The witness stated further that he could recognize each of his men for whom he was responsible. Among his men in the plane were P.W.5, P.W.6 and the accused. He went on to say that he could identify the Chinese in his team if he saw them again notwithstanding his statement to the Police, "Among the 14 Malayan

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In the High
Court in
Malaya

No.10
Grounds of
Judgment
15th October
1965 (contd)

Chinese there was a female Chinese whom I know as Selina and can recognize her. I may not be able to recognize the others". When asked about any peculiar features which enabled him to identify the accused, he said that, as far he could remember, the accused had slit eyes. One glance at the accused was sufficient to convince anybody that this was so because the accused does have rather small eyes. Under cross-examination the witness admitted that he told his men that they were going to Medan for training. His men did not know that they were carrying arms to Malaya or were going to do any act prejudicial to the security of this country. I had no reason whatsoever to doubt the veracity of this witness even though the defence counsel dubbed him as a liar and suggested that he was giving evidence in order to please the Government of this country.

20 Tobi Tabrani (P.W.5) stated in evidence that he was one of the 48 armed persons in uniform in the Hercules plane which brought him to Malaya on the night of 1.9.64. He was armed with a G.3 gun, ammunition and two handgrenades. Every one in the plane was given \$300/- in Malayan currency one-dollar notes. Amongst the 14 Chinese in the plane was the accused whom he knew by sight but not by name. He first met the accused at the Asrama (camp) two days before he took off from Jakarta. The accused was in his section and carried a Sten gun, ammunition and two handgrenades. There were in his section two other Chinese whom he could identify, but they were dead. He did not know the name of any of the Chinese except that of a girl whom he called Seong Mee and who had died. The accused was No. 17 to jump and he was No.18. He admitted saying in his statement to the Police, "He may be the 12th man to jump out of the plane (on the left side) and I the 15th man". He stated further that Lieutenant Mada Sutikno told them that they were going for training in parachute-jumping in Indonesia and he genuinely believed that that was so. He did not know either at Jakarta or at Medan that he was coming to Malaya. When he landed he thought

In the High
Court in
Malaya

No. 10
Grounds of
Judgment
15th October
1965 (contd)

that he had landed in some part of Indonesia. He guessed that he had landed in Malaya early in the morning when he saw the Malayan currency notes, and he came to know definitely that he had landed in Malaya when he boarded a lorry and was arrested. Apart from a discrepancy in the evidence of this witness in Court and the statement which he made to the Police as regards the order in which he and the accused baled out, there was nothing to suggest that he was telling the Court anything but the truth. As the accused was in his section and he had met the accused in the camp two days before their departure from Jakarta, I accepted his evidence that the accused was one of the armed Chinese in the plane. 10

Ahmad Surahman (P.W.6) gave the same sort of evidence as regards the number of armed men in the plane, the sort of arms and ammunition they carried, the distribution of money in the plane and the circumstances under which he happened to be in Malaya. However, I formed the impression that it would be dangerous to reply on his evidence that the accused was one of the Malayan Chinese volunteers in the plane. I formed this impression because he was not in the same section as the accused and he had seen the accused for the first time only in the plane. Unlike Lieutenant Muda Sutikno he was not in charge of the party. This witness too said that he genuinely believed that when he left Jakarta he was going for training somewhere in Indonesia. He came to know he was on foreign soil when he was arrested. In answering a question put to him by defence counsel, he said that he did not think he was deceived (in other words, tricked) into coming to Malaya, because his duty as a soldier is to obey. He admitted that he was very surprised and shocked when he found himself in Malaya. 20 30 40

The evidence of P.W.2 and P.W.3 was not challenged. In answer to the only question put to him by defence counsel, P.W.2 said that it was not true that he did not find the compass

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Court in
Malaya

No.10.
Grounds of
Judgment
15th October
1965 (contd)

attached to a whistle on the accused. The evidence of P.W.4 with regard to his interrogation of the accused was very seriously challenged. It was put to him that in an earlier criminal trial he was proved to be a liar when he had said that he had interrogated the accused in that case. He agreed that he had admitted in that case that he confused himself with the name of the accused and had thus told a lie. He maintained, however, that he did interrogate the accused in this case in Malay. He agreed that it was odd for a Malay to question a Chinese on Special Branch intelligence matter, but the accused could speak Malay. He made no notes of the intelligence which he obtained from the accused and passed it on verbally to the Operations Officer. There was his further evidence that he was not in any way concerned with the investigation of any criminal offence which the accused might have committed. I accepted the evidence of this witness, and I was satisfied that his duty was merely to obtain whatever intelligence he could get from the accused for the benefit of the Operations Officer.

The Indonesian witnesses were obviously accomplices, but theirs was not the only evidence to implicate the accused, so that I did not have to decide the question as to whether I was going to found a conviction on that accomplice evidence alone. In my opinion, the finding of money in one-dollar currency notes and the compass together with a whistle on the accused was the strongest corroborative evidence that could be hoped for in a case such as this. The presence of the accused in the Labis area, in the light of the evidence of Lieutenant Muda Sutikno as regards the area in which the landings took place, was also of some corroborative value.

On the evidence before me I was satisfied that the prosecution had proved its case beyond all reasonable doubt on all three charges even without the cautioned statement of the accused.

As I have stated, the accused made a cautioned statement at Segamat Police Station on 11.9.64 at about 11.10 p.m. The admission

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Malaya

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15th October
1965 (contd)

of this cautioned statement in evidence was opposed by defence counsel on the grounds, firstly, that no caution as required by law was administered to the accused before the statement was taken, and secondly, that it was not a free and voluntary statement.

On the evidence of A.S.P. Lim (P.W.8.) and the evidence of Detective Corporal James Wong (P.W.9), I was satisfied that a caution was administered to the accused. P.W.9 was cross-examined at great length on his knowledge of the Teochew language in which the accused was alleged to have made his statement. It was clear on the evidence that the Interpreter used some Hokkien words. In this connection I had the evidence of the Court Interpreter Chiew Cheng Ho who stated that there is only difference in tone between Hokkien and Teochew, although he said at the same time that Hokkien is an entirely different dialect from Teochew. The Court Interpreter further said that there is quite close similarity between Hokkien and Teochew. According to him, nobody in this country speaks 100% Hokkien and 100% Teochew so that a Hokkien can understand a Teochew and vice versa. From the Hokkien and Teochew versions of some of the most vital English words in the caution as given by James Wong, I was satisfied that the accused could not have failed to understand him. There was further the evidence of A.S.P. Lim, who is a Hokkien himself and understands a little bit of Teochew, that there was no hitch between the Interpreter and the accused in understanding each other. Moreover, the evidence of the accused himself was not that he did not understand the Interpreter's language but that he gave no statement at all. The accused's evidence was that a number of questions were put to him and in each case his answer was, "I don't know". James Wong gave evidence in English and from the manner in which he gave his evidence, I was satisfied that he knows sufficient English so as to have been able to understand A.S.P. Lim. A.S.P. Lim

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himself informed the Court that the Interpreter found no difficulty in understanding his English.

In the High
Court in
Malaya

No.10
Grounds of
Judgment
15th October
1965 (contd)

10 The accused said that he was assaulted on the date of his arrest by plain clothes men, but he made no allegations against the Inspector who arrested him or the Inspector who interrogated him. He also said that he was assaulted in Johore Bahru on 9.9.64. He made no allegations of his being assaulted at Segamat. Apart from his general complaints of assault, he made no allegations about any threat or inducement having been made to him with reference to any statement sought to be obtained from him. He said he was handcuffed when his statement was recorded, but this was denied by A.S.P. Lim and Detective Corporal James Wong. Detective Corporal James Wong was cross-examined on this point. He
20 frankly admitted that there were some cases in which on the occasion of a statement being recorded the accused was handcuffed for security reasons. As far as this case was concerned, I was satisfied that the accused was not handcuffed.

30 In my opinion there was nothing sinister about the accused having been sent off from Labis to the Special Branch Headquarters at Johore Bahru. If there was no place or not sufficient place for captured persons in Labis in the vicinity of which some sort of operations must have gone on against the paratroopers who had landed, the military as well as the Police authorities were justified in sending away the captured persons to a safe area. Again there was nothing sinister about the accused being sent from Johore Bahru to Segamat. As far as I could gather from the evidence, he was sent there so that
40 his statement could be recorded in a place other than the Special Branch Headquarters.

Considering the evidence as a whole, I was satisfied beyond reasonable doubt that the accused elected to make a statement after a caution as required by law was duly administered

In the High
Court in
Malaya

No.10
Grounds of
Judgment
15th October
1965 (contd)

to him and that he made his statement freely and voluntarily. I therefore allowed the cautioned statement to be produced in evidence. This cautioned statement corroborated the evidence of the Indonesian witnesses and, taken by itself, was sufficient to found a conviction.

At the end of the case for the prosecution the defence counsel stated that he did not wish to address the Court at that stage except to say that there was no case to answer. Without calling on the Deputy Public Prosecutor to address me on this point, I held that there was a case against the accused to answer on each of the three charges. The accused elected to remain silent.

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It was argued by defence counsel that there was no evidence of consorting on land, his argument being that the territory of Johore which was declared to be a Security Area was confined to terra firma and did not include the air space. As I have had the occasion to remark in an earlier case, there was very little substance in that argument put forward by the defence counsel. There was no evidence as to the height at which the plane flew when the 48 armed men started baling out from it, but that is beside the point. What is important is that the plane must have flown over Johore territory in order to allow its occupants to land in the Kampong Tenang area in Labis. In the air space the accused was consorting with armed Indonesians in circumstances which raised a reasonable presumption that he intended to act in a manner prejudicial to public security. The fact that he did not know what he was to do on landing was no defence to the charge because he was under the command of a person who certainly knew the purpose for which he had brought his men to Malaya.

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On the second and third charges it was argued by defence counsel that neither of these offences had been committed with knowledge,

10 because the coming of the accused to Malaya was a pure accident and a misfortune. His landing in Malaya was also a mistake of fact or a mistake of mixed fact and law. In this connection reference was made to Sections 86 and 76 of the Penal Code. In my opinion neither of these defences was open to the accused so long as he was found to be in possession of a firearm and ammunition in a Security Area after he had allowed himself to be put in a position in which he had to go wherever ordered. It was for him to show that he was carrying the firearm and ammunition for a lawful purpose, and he gave no evidence on that point.

In the circumstances I found the accused guilty on all three charges, convicted him and sentenced him to death on each charge.

Kuala Lumpur.

(S.S.Gill)

20 15th October, 1965.

JUDGE
HIGH COURT,
MALAYA.

Enche Ajaib Singh for the Public
Prosecutor.

Enche T.T. Rajah for the accused,
retained.

In the High
Court in
Malaya

No.10.
Grounds of
Judgment
15th October
1965 (contd)

In the
Federal Court
of Malaysia

No. 11

PETITION OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

No.11
Petition of
Appeal
2nd November
1965

CRIMINAL APPEAL No. X 16 OF 1965

B E T W E E N

LAW KIAT LANG @ LOH KIAT LONG Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

PETITION OF APPEAL

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TO THE HONOURABLE THE JUDGES OF THE
FEDERAL COURT

Law Kiat Lang @ Loh Kiat Long, the appellant abovenamed having given notice of appeal to the Federal Court against the decision of the Honourable Mr. Justice S.S. Gill given in the High Court at Muar in the State of Johore on the 10th day of October, 1965, states the following grounds for his said appeal:-

20

1. The evidence adduced by the prosecution established beyond the slightest shadow of doubt that none of the 47 persons out of the 48 persons who were airdropped and who were subsequently arrested in the Labis area of the State of Johore, had any knowledge or intention whatsoever to enter any part of Malaya on the alleged date and time. The said 47 persons were told that they were going for training in parachute jumping somewhere in Indonesia and they genuinely believed this. The prosecution evidence also disclosed that

30

when they landed, the said 47 persons genuinely believed that they had landed in some part of Indonesia and they were surprised and shocked when they found out that they had landed in this country. Two prosecution witnesses deposed that their landing in this country was most unexpected and that their landing in Malaya was an accident and a misfortune.

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10 On this issue, Ahmad Surahman, an Indonesian witness, (P.W.6) stated on oath in the following words:-

"I was not told where we were going for training. I believed I was going for training somewhere in Indonesia. I was not told what to do on landing. As far as I knew, I was going for training in Indonesia".

20 He further continued "I came to know I was on foreign soil when I was arrested. When I was in the jungle, I thought I was in Indonesia". He also testified "The soldiers who arrested me told me that I was in Malaya. I was very surprised when I found myself in Malaya. I was shocked. I never expected to come to Malaya".

The leader of the Indonesian team, Lt. Sutikno (P.W.7). deposed in the following words :-

30 "I received orders from Djakarta that I must keep the purpose of our coming to Malaya a secret. I did not tell my men our destination.....My men did not know that they were going to do any act prejudicial to the security of this country.....
MY MEN DID NOT KNOW THAT THEY WERE CARRYING ARMS TO MALAYA. Money was distributed in plane by the pilot.....The pilot said it was a packet of cake".

40 In the light of this overwhelmingly convincing evidence given by the key prosecution Indonesian witnesses, your appellant had not

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committed any of the offences as alleged by
the prosecution for the following reason:-

Your appellant will contend that his
case falls within the ambit of the
provisions of the General Exceptions
of the Penal Code namely :-

(a) Sections 76 and 79 of the said Code
state "Nothing is an offence which is
done by a person by reason of a mistake
of fact etc."

10

(b) Section 80 of the said Code which
states that nothing is an offence which
is done by accident or misfortune
and without any criminal intention
or knowledge etc.

.....

2. The charge of consorting against the
appellant on the date alleged in the charge
is bad in law for the following reasons:-

(i) The learned trial Judge seriously
erred in law when he found as a fact
"that the plane must have flown over
Johore territory in order to allow its
occupants to land in the Kampong Tenang
area in Labis".

20

(ii) The prosecution failed to adduce
even an iota of evidence that your
appellant consorted with members of the
Indonesian Armed Forces etc. between
the 2nd and the 4th days of September,
1964 at the alleged time and place.

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(iii) There was no evidence produced by
the prosecution to establish (a) the
height at which the plane flew on the
material date and time (b) the exact
territory in which the occupants of the
plane were baled out.

(iv) In view of the evidence of the
Indonesian witnesses as stated in

the 1st ground, there was no pre-arranged or pre-concerted plan with a COMMON INTENTION to do any acts prejudicial to the security of Malaya bearing in mind the evidence of P.W.7 (Lt. Sutikno) that his men did not know that they were going to do any act prejudicial to the security of this country.

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10 With regard to the 2nd and 3rd charges of possession of a firearm and ammunitions, the conviction could not be sustained for the following reasons :-

(i) In view of the evidence of the 3 Indonesian witnesses particularly taking into consideration the evidence of Lt. Sutikno (P.W.7) who deposed that "MEN DID NOT KNOW THAT THEY WERE CARRYING ARMS TO MALAYA".

20 (ii) The arms and ammunitions in question were never recovered and in law, the evidence adduced in this case did not establish exclusive possession by your appellant.

4. (a) All the three charges on which your appellant was found guilty are bad in law in that the Proclamation issued by the Yang di-Pertuan Agong and as notified in Legal Notification 245 of 1964 specified the areas comprising the TERRITORIES of the States of Johore, Malacca and Negri Sembilan as security areas. The said Proclamation did not specifically state that the AIR SPACE OVER Kampong Tenang in the State of Johore as prohibited air space as required by the appropriate laws. In the absence of a proclamation or order to cover a . air space on the date of the alleged offence, your appellant had committed no offence in law. in the result, the conviction ought to be set
30
40 aside.

(b) The prosecution had failed to prove that the place where your appellant landed was

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in the security areas as proclaimed by Yang
di-Pertuan Agong in Legal Notification 245
of 1964.

5. The strongly disputed statement made by
your appellant ought to have been excluded in
evidence for the following reasons :-

A. UNDER SECTION 75(a) OF THE INTERNAL
SECURITY ACT, 1960

(i) Abdul Hamid of the Special Branch
testified that he interrogated your
appellant IN MALAY for the purpose of
obtaining intelligence for about 2
hours on the 4th day of September,
1964 and that no force, threat or
inducement was used during the interro-
gation. On the contrary, your appellant
stated on oath that P.W.4 (Abdul Hamid)
did not interrogate him. He further
stated that on the day of his capture
no one interrogated him in Malay and
that it was not possible for him to
speak to another person in Malay
for two hours on important matters.
A prosecution witness, P.W.5 (Tobi
Tabrani) strongly confirmed the
evidence of your appellant on this issue
when he (P.W.5. testified that he (P.W.5)
did not speak to your appellant because
of language difficulty. He further
continued that his language was the
same as that of the court interpreter
who spoke in Malay to this witness.

10

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In the light of this evidence and taking
into consideration the fact that the learned
trial Judge had completely disregarded the
evidence of this Indonesian witness (P.W.5)
on the issue of your appellant's lack of
knowledge of Malay language and further bearing
in mind that he accepted P.W.5 as a witness of
truth, the evidence of the Special Branch
Officer(P.W.4) was thrown open to grave and
serious doubt. This witness (P.W.4) had been
completely discredited and proved as an

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unreliable witness in another Emergency trial.

In the result, the evidence of your appellant, namely that he was subjected to extremely severe and brutal physical violence by the police, remained uncontradicted. Furthermore his evidence that he was taken to a big hospital at Johore Bahru where he was given three injections, and that he was put on a special diet also remained unrebutted.

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10 In the circumstances, the disputed statement could not be termed a statement made "voluntarily and of his (the appellant's own free will".

B. UNDER SECTION 75(1)(b) OF THE
INTERNAL SECURITY ACT 1960

20 (i) The caution purported to be administered to your appellant by the police interpreter, James Wong (P.W.9) was not in accordance with the law. In the result, no legal caution was administered to your appellant.

(ii) The learned trial Judge erred in fact when he stated he was satisfied that P.W.8 (the recording officer) and your appellant understood each other. In fact P.W.8 testified that he understood a bit of Teochew.

30 (iii) The police interpreter (P.W.9) testified that he spoke in a mixture of Hokkien and Teochew.

(iv) That Court Interpreter testified that P.W.9 (the police interpreter) spoke 80% Hokkien and 20% Teochew.

(v) In view of the evidence of P.W.8 (A.S.P. Lim) who stated on oath in the following words :-

"As a Hokkien I understood some of the words he (P.W.9) used, but I cannot say whether the words were

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Teochew or Hokkien. I understood about 40 or 50 per cent of it".

(vi) The exact words spoken by your appellant and/or interpreter (P.W.9) and the questions put to him were not recorded by the recording officer. In the circumstances, a serious doubt as to the authenticity of the contents of the disputed statement had been created.

10

6. The evidence of the Indonesian witnesses ought to have been rejected, the particulars whereof are as follows :-

(i) Tobi Tabrani (P.W.5.) stated twice in his evidence that he did not know the name of your appellant but subsequently he retracted his evidence.

(ii) The evidence of the said witness (P.W.5) ought to have been viewed with distrust and suspicion when he deposed that after a lapse of one year he could recall without any doubt the type of firearm your appellant carried although in his statement to the Police he expressed in equivocal terms.

20

(iii) The same witness (P.W.5) gave different numbers as to the order of jumping out from the plane. In his statement he said "He (the appellant) may be the 12th man".....and that he was the 15th man. In Court this witness (P.W.5) stated that your appellant's number was 17 and his number was 18.

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(iv) This witness (P.W.5) stated that he was nor a free man at the time he gave his evidence in Court and that he was very keen to return to Indonesia.

(v) The evidence of P.W.6 (Ahmad Surahman)

on the issue of identification was valueless as even the learned trial Judge stated that he formed the impression that it would be dangerous to rely upon this witness's evidence that your appellant was one of the Malayan Chinese volunteers in the plane. It has to be borne in mind that this witness also testified that he had no doubt that your appellant carried a sten gun.

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(vi) The evidence of Lt. Sutikno (P.W.7) on the issue of identification was most unreliable and of no legal value. He stated on oath "I can recognise each one of my men" In his statement to the police he said "I may not be able to recognise the others "except one female Chinese. He also stated that your appellant carried a sten gun and that he was the 17th person to jump. In a connected case, another learned trial Judge observed in the following words with regard to identification by this witness:- "I also felt that there is some doubt as to the identification by Lt. Sutikno. "He also stated that he was not a free man and that he had a 50 to 50 chance of being charged again. In all the circumstances, his evidence on the identification of your appellant was valueless.

7. (a) In a connected case with your appellant, (namely Federal Court Criminal Appeal No. X6 of 1965 - Tan Hua Jam vs. Public Prosecutor wherein the main broad facts were identical and the same main Indonesian witness (Lt. Sutikno) also testified), the learned trial Judge observed in the said connected case as follows :-

"I had no hesitation in accepting evidence of the group commander Lt. Muda Sutikno as being true".

The learned trial Judge also warned himself of the danger of convicting the said Tan Hua

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Lam on "their (Indonesian accomplices') evidence alone." In your appellant's case, the learned trial Judge did not warn himself in similar terms but looked for independent corroborative evidence. The corroborative evidence as found by the learned trial Judge was inadequate to base a conviction in the circumstances of the case. Furthermore the fact that your appellant had carried with him a compass (which fact was denied by your appellant) which was completely empty and which was of no help to him to point out the direction diminished the value of this piece of corroborative evidence on which the learned trial Judge placed great reliance.

10

(b) The learned trial Judge seriously erred in law when he stated in his grounds that the "cautioned" statement, which was strongly disputed, was by itself sufficient to found a conviction in view of the fact that your appellant did not know he landed in a jungle in Malaya. Furthermore as soon as your appellant came to know that he landed in Malaya, he expressed his intention to return to his home town in Pontian.

20

(c) The learned trial Judge also gravely erred in law when he stated in his grounds of judgment that "it was for him (your appellant) to show that he was carrying the firearms and ammunition for a lawful purpose."

In the result, the conviction is bad in law and ought to be set aside.

30

And the appellant abovenamed therefore prays that the conviction and sentence on him may be set aside.

Dated this 2nd day of November, 1965.

SD: (T.T. RAJAH)

SOLICITOR FOR THE APPELLANT

The address for service of the abovenamed appellant is care of Mr. T.T. Rajah, Advocate and Solicitor, 3a, Prince Street, Singapore 1., Solicitor for the said appellant.

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NOTES OF ARGUMENT

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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
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(APPELLATE JURISDICTION)

No.12

Notes of
Argument.
9th November
1965.

Federal Court Criminal Appeal No:X 16 of 1965
(Muar High Court Emergency Criminal Trial No:19/64)

Law Kian Lang alias Loh Kiat Long .. Appellant

v.

10 The Public Prosecutor .. Respondent

Cor: Thomson, Lord President, Malaysia.
Ong Hock Thye, Ag. Chief Justice, Malaya.
Suffian, Judge.

NOTES OF ARGUMENT RECORDED BY THOMSON, LORD PRESIDENT,
MALAYSIA.

9th November, 1965

For Appt : Rajah.

For Respt: Ajaib Singh.

Rajah:

20 Reads Petition of Appeal.

There was no intention and there was an
accident. There is ample material in this case to
support that though there may not have been in
X.6/65.

Intention is necessary to consorting.

Abdullah v. Reg. (1954) M.L.J. 195, 196.

Glanville Williams "Criminal Law" (2nd Ed.) § 82.

Gour (7th Ed.) I p. 111.

Mahbub Shah v. King-Emp. 72 I.A. 148, 153.

30 Subramaniam v. P.P. (1956) M.L.J. 220, 221.

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Yong Sang v. P.P. (1955) M.L.J. 131, 132.

P.P. v. Chin Kiang Yin (1956) M.L.J. 217.

Sambasivam v. P.P. (1950) M.L.J. 145, 147.

There was no pre-arrangement. Sutikno said he kept his party in ignorance of the destination.

On mistake -

Gour (7th Ed.) I.

On intention -

Tan Hua Lam v. P.P. F.C. Crim. App. X.6/65.

It was not proved they were in a security area. 10

Labis is only 10 - 12 miles from Pahang border. There is a possibility they might have landed in Pahang. No evidence he consorted from 2nd to 4th. Charge was not amended. Only evidence of consorting was in the plane.

As to airspace.

McNair "Law of the Air" p.47.

No pre-conceived plan & intention was not established.

On the evidence appt. left his arms & ammunition in the jungle. 20

The statement was not free & voluntary.

Carter "Essays on Evidence" p. 69.

P.W.4 said he questioned appt. in Malay but this is clearly wrong.

("It is the habit of this Judge to skip over matters favourable to the defence.")

The M.O. could have been called but this was taking a risk. Onus not on appt. - onus on prosecution.

30

Confession was obtained by torture, all methods known to the Kempeitai were practised.

The proper caution was not administered.

Recording officer & appt. did not understand each other. Recording officer said he understood Teochew, but mother tongue of appt. was Hokkien.

Interpreter said he spoke in a mixture of Hokkien & Teochew.

The exact words spoken were not recorded.

The exact words spoken must be recorded. That is required by the Judge's Rules in England.

10 Mok Choon v. P.P. (1949) M.L.J. 179, 180.

Cheng Seng Heng & ors. v. P.P. (1949) M.L.J. 175,177.

C.L.R. 1964 p.167 deals with the latest forms of the Judge's Rules -

Archbold § 1118.

The statement should be recorded in the language in which it is made.

The evidence of the Indonesians as to the identity of appt. was not reliable.

20 Indonesian witnesses were accomplices of the worst character.

Judge did not believe Indonesian witnesses because he looked for corroboration & found it in the money and the compass.

The money had no criminal significance.

He denied having the compass.

As to intention -

Wong Pooch Yin v. P.P. (1954) M.L.J. 29.
(P.C.) p. 189.

He made a mistake - he thought he was in Pahang.

30

Case for appt.

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Ajaib Singh:

Intention was to be gathered from surrounding circumstances.

Appt. went to Indonesia for military training. Sutikno said object of expedition was sabotage.

That the destination was kept secret is immaterial.

s.76 P. Code cannot apply - appt. had no reason he was bound by law to do what he did.

s.79 P.Code does not apply because appt. did not believe he was justified by law in doing what he did. 10

Abdullah v. Reg. (1954) M.L.J. 195.

Appt. admitted he went to Indonesia for military training.

There is no question of accident within the meaning of s.80 - doing a lawful act in a lawful manner by lawful means and with proper care and caution.

s.34 P. Code had no bearing in this case; there is no question of common intention. 20

Arms & ammunition were never recovered, but he admitted he had them on the ground & he exercised dominion over them by hiding them.

Nothing to substantiate appt's allegations that he was tortured. He said he was treated by an M.O. but no evidence was called. Prosecution covered his movements after his arrest by evidence.

Dawood Shah & Co. v. Joseph Clas & ors. (1939) M.L.J. 110. 30

Powell v. Streatham Manor Nursing Home (1935) A.C.243.

As to the statement appt. was cautioned & the statement was properly recorded. Judge accepted prosecution evidence on that point.

The "Judge's Rules" are not applicable here. Statements to Police not generally admissible here and the exception is governed by statute.

Appt. arrested 4.9.64. Somebody gave information to P.W.4. Statement recorded 11.9.64. Did he make any statement in the meantime? ? at p.36.

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The Indonesians gave reasons for their confusion - mixed up jump numbers with parachute sizes.

Case for respt.

Rajah:

10 A common intention was necessary and no common intention was made out.

Only Sutikno knew the object of the expedition.

The confession was not voluntary and so should be rejected.

C.A.V.

Intld. J.B.T.
9.11.65

FEDERAL COURT CRIMINAL APPEAL NO. X 16 OF 1965
(Muar High Court Emergency Criminal Trial No.19/64)

20 LAW KIAT LANG @ LOH KIAT LONG ... Appellant

vs.

PUBLIC PROSECUTOR ... Respondent

Coram: Lord President, Malaysia.
Ag. C.J., Malaya,
Suffian, J.

Notes of Argument recorded by Ong, Ag. C.J.

T.T. Rajah for appellant

Ajaib Singh for respondent.

Rajah: 1st ground - no intention or knowledge.

30 In Tan Hua Lam - Lord President has not touched on issue of intention and accident because

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there was no material on this point there - whereas abundant material here.

Question is: Did they know they were coming to Malaya? Mens rea is sine qua non in consorting charge.

Abdullah v. Regina (1954) M.L.J. 195 @ 196

s.79 & 76 of the Penal Code

s.80 Penal Code - accident

P.19 line 10, P.21 line 27-33.

Sutikno kept mission secret from his men.

10

"Mens rea" not adverted to in Tan Hua Lam's case. Sans knowledge no actus reus in consorting.

Glanville Williams: Criminal Law (2nd Ed) p.140

Gour Vol.1, p.111 (last sentence in para 1) - motive or object must be distinguished from "intention".

What was their immediate objective?

Mahboob Shah v. King Emperor L.R.72 I.A. 148 @ 153 (middle)

s.34 Penal Code

20

See p.16 line 11 (P.W.6)

No question of "they must have known" - cf. Tan Hua Lam.

and p.8 line 3 (P.W.5)

Submit - case falls under s.80 P.C.

Subramaniam v. P.P. (1956) M.L.J. 220 @ 221

Yong Sang v. P.P. (1955) M.L.J. 131 @ 132

Submit - knowledge that he was coming to Malaya - essential for conviction.

P.P. vs. Chin Keang Yin, (1956) M.L.J.

30

"Nothing is an offence" where there was a mistake of fact.

Why destination kept secret?

ss. 76, 79, 80 P.C.

Glanville Williams, p. 141

Sambasivam (1950) M.L.J. p.145 @ 147

"carries" means "carries" to his knowledge. Appellant did not know he was carrying firearm to Malaya.

10 ss. 76, 79 & 80 Penal Code again applies.

R. v. Prince: Gour Vol.1, p.289, rule III

Submit: Security Act does not exclude "knowledge" from the "carrying"

ss. 76, 79 & 80 P.C. apply to the Act.

As to sentence, ask for life imprisonment instead of death.

Lim Kim Hong & 2 ors. F.C. Crim. App.6/65 @ p.3.

Ground of accident and mistake now concluded.

2nd Ground:

20 - "over Johore" a matter of conjecture.

Labis only a few miles from Pahang border.

No proof of where they actually landed - onus on prosecution.

Pahang then was not proclaimed area.

No evidence appellant consorted from 2nd to 4th.

Consorting, if any, was in the plane.

See Statement at p.77 line 20.

McNair (3rd Ed) - p.47 "Law of the air"

What was intention - common intention?

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3rd Ground:

- (i) covered already by ground 1
- (ii) "exclusive possession" (see p.78)

At 2 a.m. possession was in plane - but where was the plane?

4th ground:

No comment in view of ruling in Tan Hua Lam.

5th ground:

Statement, voluntary?

Why not complain?

10

But to whom?

Essays on Law of Evidence by Gower & Carter @ p.69

A. Hamid (p.6 G) P.W.4

P.W.5 cf. at p.9 line 29, line 35-10, line 15.

If A. Hamid (P.W.4) & P.W.5 contradict each other - how could both be believed?

Three injections } disproved?
special diet }

Submit - there was torture.

Sutikno at p.21 line 13.

20

Onus not on accused.

S.75(1)(b) - no comment in view of Tan Hua Lam judgment except - re p. 28 F.

p. 28 cf. p.44

p. 32 G cf p.45

P. 41A

Teochew & Hokkien - how exact was statement?

Is it necessary to record exact words of question and answer?

see: Judge's Rules and -

Mok Choon v. P.P. (1949) M.L.J. 179, 180

Cheng Seng Heng & 4 ors. (ibid) p.175, 177.

(Judge's Rules referred to).

Criminal Law Review (1964) @ p.167(e)
(para 4 of p.164)

Ground 6:

(i) p.7 line 12 cf. p.9, line 16, p.9 line 29.

(ii) p.

10 (iii) contradiction as to who jumped first.

(iv) not free man

Submit - Indonesians are accomplices and trash at that.

Ground 7:

- pass over, but not abandoned.

- Judge looked for corroboration.

- here he did not believe the Indonesians.

(a) Corroboration - money
- compass

20 Submit - no criminal significance in either, hence not corroborative at all.

Possession of compass was denied by appellant.

P, 15 line 14.

p. 34

Woodroffe, p. 1671 (10th Ed.) Vol. 3

As to corroboration - not necessarily by direct evidence.

Possession of non-incriminating articles,

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submit, is not sufficient.

(b) re Cautioned statement - intention?
Wong Poo Yin (1954) M.L.J. 29, 31 & 189

Submit - cautioned statement insufficient for all
3 charges.

- intention - see p. 77

- object cf. intention; & vide Sutikno.

Ajaib Singh:

Intention - in re 1st charge & in re the 2nd & 3rd
charges can be gathered from surrounding circum-
stances. 10

P 74-75 - object of going to Indonesia.

- appellant's presence in plane -

- what was their intention setting out in the plane?

Submit - intention to consort was clear.

- no mistake: why did he go to Indonesia?

- his avowed object of going there.

- fact that P.W.5, P.W.6 and accused did not know
destination is irrelevant.

- p. 12 line 19 (of P.W.5) 20

- p. 15 line 4 (of P.W.6)

- p. 18 line 36 (Sutikno)

Indonesian's purpose - see Sutikno.

ss. 76, 79 & 80 P.C.

s. 76 - bound by law?

s. 79 - justified by law? good faith?

Abdullah v. Rex (1954) M.L.J. 195

P.W.5 & P.W.6 would have obeyed their C.O.

Statement (p.74-75) on "military training"

s. 80 P.C. - accident?

- what lawful act?

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Common intention:

Case of Mahboob Shah irrelevant.

1st charge - there was consorting in the air.

2nd & 3rd charge - arms and ammunition - he had
them still on him when he landed - p. 77.

Guruvammah v. Ramasamy (1939) M.L.J. 110

10 Mok Choon v. P.P. (1949) M.L.J. 180

Rajah:

p. 36 D - interrogation & 3rd degree.

The object must be showed - common intention.

s.58 of Act.

Gour p.275, also p.203

Judgment reserved.

(Sd) H.T. Ong.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

20 FEDERAL COURT CRIMINAL APPEAL NO. X 16 OF 1965
(Muar High Court Emergency Cr.Trial No.19/64)

Law Kiat Lang @ Loh Kiat Long ... Appellant

v.

Public Prosecutor ... Respondent

Coram: Thomson, Lord President, Malaysia
Ong Hock Thye, Ag.Chief Justice
Suffian, Judge.

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NOTES OF ARGUMENT RECORDED BY
SUFFIAN J.

9 November 1965 in Kuala Lumpur.

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T.T. Rajah for appellant

Nik Saghir D.P.P. for respondent

RAJAH ADDRESSES

Refers to written grounds of appeal.

Ground No. 1 - Ss. 76, 79 and 80 Penal Code good
defence.

Case Criminal Appeal X6/65 decided yesterday by this Court wrongly decided. 10

1954 M.L.J. 195 Abdullah v. Regina S.79 Penal
Code not in English law. Refers to p.196.

P.W.7 Sutikno kept purpose secret from his men
p.21-22.

Knowledge fundamental - not a word mentioned of
it in yesterday's judgment.

Glanville William's Criminal Law 2nd edition
"General Part" para. 52, p.140, 2nd edition.

Gour 7th edition, volume 1, p.111 first para-
graph last sentence - look only at intention of
appellant at time of act complained of. 20

Mahboob Shah L.R. 72 1. A. 148: Privy Council
decision on common intention. P. 153. Here no
pre-arranged plan.

Refers to evidence p.16 line 11 until end.
Also p.8 line 14.

Subramaniam 1956 M.L.J. 220, 221 (2nd column)
Privy Council case. General Exceptions in Privy
Council apply to Emergency cases.

Yong Sang v. P.P. 1955 M.L.J. 131, 132 (1st
column, last paragraph). Knowledge necessary. 30

P.P. v. Chin Kiang Yin 1956 M.L.J. 217, 218.

Ss.76, 79 and 80 of Penal Code afford good
defence.

Carry means carry to appellant's knowledge. (Sambasivam 1950 M.L.J. 145, 147 (1st column mid of p.)). Here appellant did not know he was carrying firearms to Malaya.

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R. v. Prince mentioned in Gour volum 1 p. 289 - I rely on rule (iii) in para. 22. Case reported in 1875 L.R. 2 C.C.R. 154.

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Notes of
Argument
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1965 (contd.)

Lim Kim Hong Federal Court Criminal Appeal 6/65 (unreported).

10

Ground No. 2 Possible they landed in Pahang (not security area then) and then walked into Johore when arrested.

Consorting if at all only in the plane - never on the ground.

Refers to p.77 line 20 - appellant did not know he had landed in Malaya until he met Malay cyclist.

No evidence re altitude of plane

20

McNair on Air Law 3rd edition, p.47, intrusion into outer space no offence.

Ground No. 3

(i) I have covered it in ground 1.

(ii) No exclusive possession of arm and ammunition by appellant - he had left them in the jungle - no longer under his control - moment he knew.

Charge specified possession at 2 a.m. - but then appellant was in plane.

Ground No. 4

30

I don't abandon this ground.

Ground No. 5: statement not voluntary.

Refers to Hamid's evidence at p.6,7

p.9-10.

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p.11 line 8.

p.34

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(b) caution not admitted in accordance
with the law

(i)

(ii) refers to p. 28F

p.44F

(iii) p. 32G

(iv) p.41

Exact words of confession should be taken 10
down. According to judges' rules which I
submit apply here in absence of provisions
to contrary. Authorities: 1949 M.L.J. 179
Mok Choon v. P.P. Exact questions and answers
should be recorded.

Also Cheng Seng Heng 1949 M.L.J. 175, p.177.

Criminal Law Review 1964 p.167 gives latest
position regarding judges' rules. Refers to
rule 3 p. 168.

Refers to rule 4 p.169 20

Refers to para. 5 p.171 - if statement in
foreign language, it should be taken down in
that language.

Ground No. 6

Indonesian witnesses unreliable.

Ground No. 7

Corroboration - finding of money, whistle
and compass? p.29-30. But none has criminal
significance.

Appellant denied having compass - refers to 30
appellant's evidence p.34.

Woodroffe 10th edition, volume 3, p.1671
corroboration need not be direct evidence.
Last line on p.1671.

In the
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1954 M.L.J. 29 Wong Pooh Yin v. P.P. Refers to
p.31; this opinion confirmed by Privy Council
at p. 189. Submit intention is important in case
of consorting which is not absolutely prohibited.

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Cautioned statement by itself insufficient
to prove any of 3 charges.

10 Refers to appellant's statement at p.77.

No intention to come to this country.
Object is a different thing, but we are not
concerned with it.

AJAIB SINGH ADDRESSES

Intention re 3 charges can be gathered from
surrounding circumstances.

Going to Indonesia no offence.

Refers to p.74-75 appellant's statement -
also Sutikno p. 19, 21-22.

20 Appellant and party hadn't come on goodwill
mission.

No. 9 of mistake here. Different if
appellant had gone to Indonesia for higher studies
and then diverted into the Army.

Evidence was p.12 line 19 wherever they landed.
They were to regroup and look for our commander -
also p.15 line 4 - p.18 line 36 (lunch adjournment).

30 S. 76 Penal Code - but here appellant had no
good reason to believe he was bound by law to do
so.

S. 79 Penal Code - here no evidence that
appellant in good faith believed himself justi-
fied in law to do it. Abdullah v. Rex 1954
M.L.J. - therefore accused believed in good faith

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girl under 16, so good defence - but here no good faith at all.

Also in his statement p.75 line 1 appellant said he went to Indonesia for military training. Also p. 68E (?)

S. 80 Penal Code - note "lawful act in a lawful manner by lawful means". Accident is a defence but subject to those words.

Common intention under S.34 Penal Code irrelevant here.

10

Submit appellant consorted in the plane and on the ground. Appellant had whistle and compass - Sutikno had Verrey pistol. No evidence he had contact with others on the ground.

Concede arms and ammunition never recovered. But when he landed he had them. He had exclusive control of them, he exercised control by hiding them p.77 line 20 - he did not discover them - he went looking for his comrades.

20

Statement. No evidence that Kampetei methods were used. Wild allegations made. But no attempt made to call Doctor in big Hospital. Question of credibility. Judge heard and saw - witnesses - he believed prosecution witnesses.

1939 M.L.J. 110 Guru Karma v. Ramasami - p.112 at bottom - what Court of Appeal should do in appeal against facts decided by Judge alone.

30

Evidence of Inspector A. Hamid P.W.4.

Caution - abundant evidence that proper caution admitted and understood. Hokkien and Teochew sister dialects.

Judges' rules - submit they are not applicable here. In U.K. unlike here statements to police officers during course of

investigation are admissible. Applicable here to limited extent only: M.L.J. 179, p.180 (2nd column). In 1964 rules amended - 2 forms of caution formulated. Questions and answers must be taken down in case where it is decided to charge the accused. Here accused had not been charged at all.

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10 Evidence of P.W.5. Never retracted his evidence - merely explained his evidence - pp.7,8 and 9 line 16 explained how he came to know appellant's name. Order of jumping - again he explained - he meant size of parachute not order of jumping p.9-10 (bottom).

Corroboration

Ample corroboration here: (a) money on appellant (b) compass and whistle.

Also fact appellant found in jungle area.

Finally there is appellant's confession.

20 Ground of appeal p.10 para.(c) - but note S. 57 Internal Security Act - onus is on Appellant to prove lawful excuse.

Appellant did not allege he said anything between P.W. and on 11.9.64.

RAJA REPLIES

But see p.36E - appellant did say he was interrogated.

30 The object or knowledge of coming here must be shared - if not, no intention on appellant's part. Refers to S.57 intention also mentioned in the charge.

Ground 7 (c) - refers to Gour p.275 (last paragraph) volume 1.

Question of regrouping - they never regrouped.

Appellant on 2.9.65 did act in good faith.

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Only evidence of appellant carrying
arms on land - is in statement.

Sarkar 10th edition, p.203. Even if
true confession must be rejected if in-
voluntary. p.208 to same effect.

Doctor not called. Prosecution should
have called him, they knew who he was.

To tomorrow 10 a.m.

Coram as yesterday.

10.11.65

10

X.16/65

Counsel as before

Judgment reserved

M.S.

28 Dec.'65 in K.L.

Coram: Thomson L.P.
Ong F.J.
Suffian J.

Cr. Appeal X16/65

K.K. Lam for T.T. Rajah for appellant

Ajaib S. D.P.P. for P.P.

20

Written judgment of Court delivered
by L.P.

M.S.

No.13

JUDGMENT OF THOMSON, L.P., MALAYSIA

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No:X 16 of 1965
(Muar High Court Emergency Criminal Trial No:19/64)

Law Kiat Long alias Loh Kiat Long Appellant

v.

The Public Prosecutor Respondent

Cor: Thomson, Lord President, Malaysia.
Ong Hock Thye, Ag. Chief Justice, Malaya
Suffian Judge.

10

JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA.

This is another appeal arising out of the Indonesian invasion near Labis on the night of 1st/2nd September, 1964, with which we were concerned in the case of Tan Hua Lam v. Public Prosecutor. (1)

20

On the morning of 4th September the present appellant was arrested and he was thought to have been one of the armed men who had left by parachute the aircraft which figured in that case. He was prosecuted on three charges under the Internal Security Act, 1960. These charges were as follows :-

"1st Charge

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

(1) Federal Court Criminal Appeal No. X6/65.

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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 Forces who carried firearms and ammunition in contravention of the provisions of section 57 of the Internal Security Act, 1960, in circumstances 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.

10

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.

20

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 handgrenades, 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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40

With regard to the first of these charges, the dates are wrong and the charge was at no time amended. This in itself, however, is without importance. As was observed by Atkin, J., in the case of Severo Dossi:-⁽²⁾

"From time immemorial a date specified in an indictment has never been a material matter unless it is actually an essential part of the alleged offence".

10 In the event the appellant was convicted on all three charges and was sentenced to death.

Against these convictions he has now appealed.

The prosecution evidence was as follows and, as regards events prior to the arrest of the appellant, that evidence has never been contradicted by him except on one point when he was giving evidence in the course of the trial in connection with the admissibility of a statement alleged to have been made to the Police, for when after the close of the prosecution case he was called on to make his defence he remained silent.

30 First there was the evidence of Lieutenant Sutikno, the Commanding Officer of the jumping party in the aircraft, and of two of the Indonesian soldiers who were members of the party all of whom were captured after landing and were subsequently treated as prisoners of war under the Geneva Conventions.

40 Lieutenant Sutikno said that on 1st September, 1964, in Jakarta he was ordered to proceed to Malaysia in charge of a party of 47 men of whom 34 were Indonesian soldiers and 14 were Malaysians. The appellant was one of the latter. The party left Jakarta and proceeded to Medan. They left Medan about 9 p.m. Every member of the party then carried a firearm of some sort, ammunition, two handgrenades and other equipment including a compass and a whistle. He thought the appellant's weapon was a sten gun. The destination of the expedition

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(2) 13 C.A.R. 158, 159.

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was Malaysia, but that was a secret known only to the witness. In the aircraft each member of the party was given a packet containing \$300 in \$1 Malaysian currency notes. At about 2 a.m. on 2nd September the party jumped. He himself landed about 75 yards from the school in Kampong Tenant, near Labis, a place which according to a Survey Department map is some 40 miles east of the coast of Johore and some 12 miles west of the Johore/Pahang border which in that region runs through jungle country.

10

Tobi Tabrani said he was a Private Class II in the Indonesian Army. He was one of the party in the aircraft commanded by Lieutenant Sutikno. The appellant was also one of the party and was in his section and was carrying a sten gun, 2 handgrenades and ammunition. Each of the party including the appellant was given \$300 in \$1 Malaysian currency notes. This was wrapped in plastic and at the time the witness did not see what it was. The appellant jumped from the aircraft before he did. When the party left Indonesia they were told they were being taken for training somewhere in Indonesia and when he himself landed he thought at first he had landed in Indonesia.

20

Ahmad Surahman said he was a Private in the Indonesian Army and also one of the party in the aircraft commanded by Lieutenant Sutikno. He gave evidence similar to that of Private Tobi Tabrani but the trial Judge said that he formed the impression that it would be dangerous to rely on his evidence identifying the appellant as one of the Malaysians in the aircraft because he was not in the same section as the appellant and had seen him for the first time only that afternoon in the aircraft.

30

40

The Judge regarded the evidence of these witnesses as that of accomplices but though he believed it he did not find it necessary to consider whether by itself it was sufficient to support convictions because,

in his view, there was corroboration in other parts of the evidence.

This corroboration he found in the evidence as to the circumstances in which the appellant was arrested.

10 On 4th September about 9.30 a.m. near Labis a kampong worker named Haron bin Othman met the appellant wearing a singlet and black trousers. He asked him from where he came. He said he had come from Kuala Lumpur by bus and wanted to go to Pontian. This made the witness suspicious because the bus service had been suspended on account of a curfew that had been imposed and he took him on his bicycle to Labis Police Station. Inspector Liew Kooi Loon said that he was at Labis Police Station when Haron brought the appellant to him. He searched the appellant and in his trouser pocket found an identity card, \$298 in \$1 Malaysian currency notes, a compass and a whistle. The compass was a plastic marching compass part of the case of which had been broken and from which the card and needle were missing. In fairness to the appellant it is to be observed that this is the one point on which he contradicted any of the prosecution evidence. In the course of giving evidence regarding the admissibility of a statement said to have been made by him to the Police he said that nothing was found on him except his identity card, a handkerchief and some money, more than \$300.

20

30

40 Finally there was a statement alleged to have been made by the appellant to a Police Officer on 11th September, a week after his arrest. The appellant said that this statement was elicited from him by improper means or alternatively that he did not make it at all, and its admission constitutes one of his grounds of appeal which will be considered later. But if it was admissible it amounted to a complete confession of the charges against him. Its effect was as follows.

He was 23 years of age and his home was in Pontian where he was employed as a rubber

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tapper. In April, 1964, a friend invited him to go to Indonesia for military training and he agreed. He and some others were picked up by a fishing boat and taken to a small island called Bali where they found other Malaysians and some Indonesians. More Malaysians arrived and after some weeks training some 42 of them were taken to a military camp at Bandoeng where they were trained as parachutists and in the use of firearms and explosives.

10

On 29th August, 41 of the Malaysians were taken to Jakarta. On 1st September 10 of these, including the appellant, and some 40 Indonesians left Jakarta in an aircraft which landed 4 or 5 hours later. At Bandoeng the appellant had been provided with a sten gun and ammunition. At Jakarta he was given two handgrenades and when the aircraft next landed he was given \$300 in \$1 Malaysian currency notes. About an hour after the aircraft took off the second time a signal was given to jump from the aircraft and the appellant was 16th to jump. When he landed he did not see any of his companions so he went to sleep. At dawn he hid his sten gun, ammunition and grenades and started to look for his friends. He did not find them although he heard gun fire. He passed another night in the jungle and the next morning he started to find a way out of the jungle with the intention of returning to Pontian. On his way he met a Malay who took him to the Police.

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Now, putting aside for the moment the alleged statement by the appellant to the Police, the prosecution evidence made out that in the early morning of 2nd September an Indonesian aircraft carrying a party of armed men, the majority of them members of the Indonesian forces, entered the airspace of the State of Johore. And about 2 a.m. when the aircraft was in the air over Labis in that State the armed men left it and proceeded to earth by means of parachutes. The appellant was one of these men and before he left the aircraft he was in possession of a sten gun, a

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quantity of ammunition for it, two handgrenades, about \$300 in \$1 Malaysian currency notes, a compass and a whistle. At that time it was a matter of such common knowledge that we must take judicial notice of it that the Republic of Indonesia was conducting hostilities against Malaysia, and was not conducting hostilities against any other neighbouring country. Two days later the appellant was found near Labis. He was then alone and was not in possession of any arms or ammunition but he was in possession of a broken compass, a whistle and \$298 in \$1 Malaysian notes. When asked by a casual wayfarer from where he came he said he had come from Kuala Lumpur (which is some 125 miles away) by bus but at least part of that statement was untrue for the bus service had been suspended. Except as regards possession of the broken compass and the whistle, on which the trial Judge believed the prosecution witness who spoke to it, none of that evidence was contradicted and in our view it was sufficient to support the convictions.

On top of the evidence which made out these facts there was the statement alleged to have been made to the Police but although it fully supported the other evidence it did not add to it except to show that the appellant was still in possession of his arms and ammunition when he landed but hid them.

Proceeding to the grounds of appeal, it is not necessary to deal with some of these which are the same as were advanced in the previous appeal (No: X.6 of 1965).

It was urged that the airspace of the State of Johore is not part of the security area established by the Proclamation of 17th August, 1964. For reasons stated in the previous appeal we do not accept this.

Again, it was urged that although the expedition was in fact and was intended to be an invasion, the members of it, apart from Lieutenant Sutikno, had no knowledge of its true nature until they were ordered to jump

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but were under the impression that it was a training exercise. In the circumstances there could be no question of any intention to act in a manner prejudicial to the public security of this country. For the reasons we have stated in connection with the previous appeal and which it is not necessary to repeat we are of the opinion that this point is without substance.

In the present case the argument has been taken a little further by urging that even if the object was invasion, as it clearly was, there was no evidence, as to what particular purpose, if any, prejudicial to public security the invaders intended to effect. Having regard to the facts of the case and the conditions of the time this argument deserves no better treatment than the somewhat unkind observation made by counsel for the Public Prosecutor that it was clearly not a "goodwill mission".

That brings us to so much of the grounds of appeal as relates to the statement which the appellant is alleged to have made to the Police regarding which there was an acute conflict of testimony at the trial.

The appellant was arrested on 4th September and the statement, if it was made at all, was made on 11th September.

Inspector Lin said that about 11 p.m. on 11th September he interviewed the appellant with the assistance of Corporal Wong as interpreter. The appellant was not handcuffed and appeared to be quite at ease and in normal physical condition. Neither of the police officers was armed. He ascertained what was the Chinese dialect spoken by the appellant. The appellant spoke in the Teochew dialect which the witness understood slightly. He then read out, phrase by phrase, the statutory form of caution prescribed by section 75(1) of the Internal Security Act and this was interpreted to the appellant.

The appellant then made a statement which was interpreted into English by the interpreter and written down by the witness. The witness did not not at any time use any force or hold out any inducement to the appellant and he was satisfied that the statement was made freely and voluntarily. He did not detect any hitch in the process of interpretation.

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10 Inspector Lim's evidence was corroborated by the interpreter. He said that he spoke in a mixture of the Teochew and Hokkien dialects but he was satisfied that he and the appellant understood each other perfectly. Some attempt was made by counsel for the appellant to argue that by reason of the mixture of languages spoken by this witness and by reason of the appellant being Teochew-speaking there was a probability that the caution as administered by this witness was not understood by the
20 appellant and so could not have been said to have been administered to him at all. Apart from the point that the appellant denied that any caution at all was administered to him, the Court Interpreter, who was called as a witness by the defence, said that there is a close similarity between the Teochew and Hokkien languages and that in this country nobody speaks either pure Teochew or pure Hokkien and that a person whose language is Teochew
30 can understand Hokkien and vice versa. We are satisfied that the point is without substance, as was the trial Judge to whom the same argument was addressed.

The appellant's story was, or rather his stories were, entirely different.

40 He said that on the day of his arrest he was questioned by 2 Chinese as to whether he was one of the paratroopers. He denied this but the two Chinese assaulted him. They struck him on the stomach for about 15 minutes. Then three other Chinese came and struck him and went on striking him till blood came out of his mouth. He fell down on the floor. They then kicked him on the legs, buttocks and on the ribs for about 10 minutes. Then his head

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was banged against the wall. About an hour later he was again beaten. This was at Labis. The same night he was taken to Johore. During the night he fainted and was taken to hospital where he was given injections and medicine. The next 2 days he remained in Johore Bahru. On 9th September, that is 5 days after his arrest, he was again questioned at Johore Bahru and again beaten. The following day he was taken to Segamat where he was told that the next day a statement would be taken from him and if he did not co-operate he would be sent back to Johore Bahru where he would be beaten again. The following night he was taken before Inspector Lim and Corporal Wong in handcuffs. Corporal Wong spoke to him in Hokkien. He was not cautioned but was told another prisoner had made a statement. He himself then made a statement which was recorded. He was confused and frightened. That was his evidence in chief; but in cross-examination he denied that he made any statement.

10

20

The trial Judge believed the evidence of Inspector Lim and Corporal Wong and disbelieved that of the appellant and he accordingly admitted the statement in evidence.

With this we see no cause to quarrel. As regards the question of whether or not the statement was ever made, and as regards what happened at the time it was made, if it was made, the evidence of the appellant was contradicted by that of Inspector Lim and Corporal Wong. The issue was clearly one of credibility and we must accept the trial Judge's finding.

30

As regards the antecedent beatings alleged by the appellant, although his evidence was not contradicted in terms it is difficult to see how any reliance could be placed upon it. Apart from such minor difficulties as that when asked to account for the absence of bruises on his person as a

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result of injuries he had suffered he said he was struck on the stomach only, which was not what he had said earlier, and that no efforts seem to have been made to call any evidence from the Johore Hospital as to his being treated there, there was the change in his story which went to the root of it. He started by saying that he made a statement while he was upset by previous ill-treatment and as a result of a threat; then he completely changed his story and said he did not make any statement at all. It is axiomatic when a witness is proved to have spoken untruthfully on one or two points the whole of his evidence is not necessarily discredited. It is, however, a different position where, as here, a witness while in the witness box changes the whole nature of his evidence regarding the fundamental matter on which he is giving evidence.

In our view the statement was properly admitted. We would, however, add that we are satisfied that had it been wrongly admitted either by reason of having been obtained by improper means or by reason of not having been made at all the case would clearly fall within the proviso to section 60(1) of the Judicature Act for in our view no reasonable Judge after properly directing himself could have failed to convict the appellant on the rest of the evidence to which no objection could be taken (see *Stirland*(3)).

The appeals are dismissed.

Sgd. J.B. Thomson

Kuala Lumpur
23th December, 1965.

LORD PRESIDENT
FEDERAL COURT OF MALAYSIA

T.T. Rajah Esq. for appellant.
Mr. Ajaib Singh, D.P P. for respondent.

(3) 30 C.A.R. 40.

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In the
Judicial
Committee of
the Privy
Council

No.14

ORDER ALLOWING SPECIAL LEAVE
TO APPEAL IN FORMA PAUPERIS
TO HIS MAJESTY THE YANG
DI-PERTUAN AGONG

No.14
Order allow-
ing special
leave to
appeal in
forma paup-
eris to His
Majesty the
Yang di-
Pertuan Agong
7th March
1967

Seal of
Malaysia

COURTS OF JUDICATURE ACT, 1964

No.7 of 1964

ORDER UNDER SECTION 76(1)

WHEREAS there was this day submitted to
His Majesty the Yang di-Pertuan Agong a Report 10
from the Lords of the Judicial Committee of the
Privy Council dated the 6th day of December, 1966,
in the words following, viz:-

WHEREAS by virtue of the Malaysia
(Appeals to Privy Council) Orders in
Council 1958 and 1963 there was referred
unto this Committee a humble Petition
of Law Kiat Lang alias Loh Kiat Long in
the matter of an Appeal from the Federal
Court of Malaysia (Appellate Jurisdiction) 20
between the Petitioner and the Public
Prosecutor setting forth that the Petitioner
desires to obtain special leave to appeal
in forma pauperis from a Judgment of the
said Federal Court dated the 28th day of
December 1965 dismissing his Appeal
against convictions in the High Court of
Malaya at Muar in the State of Johore on
the 15th day of October 1965 on charges 30
of possession of a firearm and ammunition
and of consorting with members of the
Indonesian Armed Forces: And humbly
praying the Head of Malaysia to grant
him special leave to appeal in forma
pauperis from the Judgment of the said
Federal Court dated the 28th day of
December 1965 and for further or other
relief:

10 THE LORDS OF THE COMMITTEE in obedience to the said Orders in Council 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 the Head of Malaysia as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Federal Court of Malaysia dated the 28th day of December 1965:

20 And Their Lordships do further report that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before the Judicial Committee on the hearing of the Appeal.

NOW, THEREFORE, His Majesty the Yang di-Pertuan Agong having taken the said Report into consideration was pleased to approve thereof and to order as it is hereby ordered that the same be punctually observed, obeyed and carried into execution.

DATED this 7th day of March, 1967.

BY COMMAND

30 Sd: TUN (Dr.) ISMAIL BIN DATO'ABDUL RAHMAN

MINISTER OF JUSTICE

In the
Judicial
Committee of
the Privy
Council

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Order allow-
ing special
leave to
appeal in
forma paup-
eris to His
Majesty the
Yang di-
Pertuan Agong
7th March
1965 (contd)

ExhibitsList of
Exhibits.E X H I B I T SLIST OF EXHIBITS

IN THE FEDERAL COURT OF MALAYSIA
F.M. CRIMINAL APPEAL NO.X16 of 1964

LAW KIAT LANG @ LOH KIAT LONG APPELLANT

AGAINST

PUBLIC PROSECUTOR RESPONDENT

(In the matter of Muar Emergency Criminal Trial
No. 19 of 1964)

LIST OF EXHIBITS

10

<u>Number</u>	<u>Description</u>	<u>Whether or not included in record</u>	
A	Consent under Sec. 80 of Act 18/60	Included	
B	Certificate under Reg.4 of E (C.T.) R., 1964	Included	
D1	Labis Report No. 433/64	Included	
P2	Cash \$298/-	Not Included	
P3	N.R.I.C. of Accused	Not Included	20
P4	Compass with whistle attached	Not Included	
P5	Caution Statement	Included	

"P.5"

Statement of
Accused
11th September
1964P.5. STATEMENT OF ACCUSED

POLIS DI-RAJA MALAYSIA
PERCHAKAPAN DALAN PEMEREKSAAN

No. Report 433/64 Rumah Pasong: Labis

Perchakapan bagi LAW KIAT LANG @ LOH KIAT LONG @
CHONG SEN

Nama bapa LAW JOO CHIM laki2

Bangsa: Teochew. Tempat di-pernakan: Pontian
Johore.

Umor: 23 tahun. Kerja: Indonesian paratrooper.

30

Dudok di-Parit Ibrahim, Pontian Besar.
 Di-Terima oleh: A.S.P. Lim. di-Office pada
 11 Sep, 1964 jam. 11.00 P.M.
 Jurubhasa: D/Cpl. 414 daripada Teochew kepada
 English.

Exhibits

"P.5"

Statement of
 Accused
 11th September
 1964 (contd)

Before recording the statement I administered the undermentioned caution to the Accused in English and interpreted by D/cpl. 414, James Wong Yuan Lam into Teochew dialect.

10 "It is my duty to warn you that you are not obliged to say anything or answer any question but whatever you say whether in answer to a question or not may be given in evidence."

The Accused admitted that he fully understood the caution and elected to make the following statement:-

Interpreted by me. Sd. LIM TEONG KOOI A.S.P.

Sd. James Wong Yuen Lam Investigating Officer

11.9.64 D/Cpl. 414 11.9.64

20 I was born in Pontian, Johore, I am the eldest of a family of 3 boys and 3 girls. My father is a vegetable gardener. I received 7 years Chinese education in Puay Khoon Chinese School, Pontian.

30 I became a member of the Labour Party of Malaya at the end of 1961. Before I went to Indonesia, I was a rubber tapper. On 19/5/64 at about 3.30 p.m. a friend of mine, named CHEN SEONG came to my house and invited me to go to Indonesia for military training. I agreed and he told me to meet him in a fishing village about 1 mile away from Kukup near a Chinese School at 7.00 p.m. that night. At about 6.30 p.m. I left Pontian in a taxi. When I arrived at the rendezvous, there were already about 5 or 6 persons all of whom were Chinese and resident of Pontian. They were:-

(a) Lee Hoo Boon

(b) Sin Sen

40 (c) Teh Ah Kow

Exhibits

"P.5"
Statement of
Accused
11th September
1964 (contd)

(d) Lee Poh Hong (f)

(e) Lim Tang and another whose name I cannot remember. A short while later another 4 persons joined us. We waited there until about 10.00 p.m. when a fishing boat came ashore. We all got into the boat and proceeded towards the open sea. We were in the boat till about 12 midnight when we arrived on a small island which I later learnt to be known as Bali Island. There were about 10 Chinese and 3 or 4 Indonesians on the island.

10

While on the island we were put on weapon training and taught how to use explosives by Indonesian instructors. We remained on the island for about 3 weeks during which period more Chinese recruits arrived. I do not know where they came from. There were altogether about 50 to 60 Chinese training on the island. At the end of the course, 42 of us recruits were selected and put into an Indonesian boat which brought us to Bandoeng where we stayed in a military camp.

20

At Bandoeng we were trained as parachutists. We also received training on the use of firearms and explosives. I had done about 7 trial jumps from aircrafts. While at Bandoeng we were all issued with firearms such as rifles and Stenguns. During training in Bandoeng one of the recruits by the name of Chen Tien Sen was killed when his parachute failed to open up.

30

On 29/8/64 at about 2.00 p.m. 41 of us went on 2 buses which took us to Djakarta where I passed 3 nights. At Djakarta 10 of us Chinese paratroopers were attached to about 40-50 Indonesian paratroopers making a strength of 50-60 paratroopers.

On 1/9/64 at about 5.00 p.m. 50 or 60 of us took off in an aircraft and about 4 to 5 hours later our aircraft landed on an airfield where we stopped for about 1½ hours when we had our

40

food. I forgot to mention that while I was at Bandoeng I was issued with a Stengun, 4 magazines and 300 rounds of ammo. While at Djakarta I was given two handgrenades. After we had had our food we were each given \$300/- in Malayan currency in one dollar denomination after which our aircraft took off again.

Exhibits

"P.5"

Statement of
Accused
11th September
1965 (contd)

10 About 1 hour later the signal was given to jump. I was the number 16th to jump from the aircraft. I remained suspended in mid-air for about 2 minutes before I landed. It was pitch dark and I was separated from the rest of my comrades. I did not make any attempt to look for my comrades because it was too dark so I leaned against a tree and fell asleep.

20 At the break of dawn, I woke up and started to look for my comrades without success. I hid my stengun, ammo and 2 handgrenades beside a log and covered them up with some grass before I started out to look for my friends. I wandered about in the jungle and heard gunfire at a distance on one occasion. I passed one more night in the jungle and next morning I started to wander again in the jungle to find a way out with the intention of returning home to Pontian.

30 On 4/9/64 at about 12.00 noon, I made my way out to a metal road and was met by a Malay riding a bicycle. I then asked him the name of the place. He replied that it was Labis. I then told him that I wanted to return to Pontian whereupon the Malaya asked me to sit on the cross-bar of his bicycle. When we arrived at a mosque, the Malay got down from his bicycle and I did likewise. He put the bicycle in the mosque and asked me to accompany him. We walked for about $\frac{1}{2}$ a mile and eventually arrived at Labis Police Station.

40 Q. Can you remember the number of markings on

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"P.5"

Statement of
Accused
11th September
1965 (contd.)

your Stengun?

A. No, I cannot remember.

Q. Can you lead the Security Forces
to recover your stengun, ammo and
handgrenades?

A. No, I do not know the way back to the spot
where I hid my firearms.

Before concluding the statement, it was
read over to the Accused in English and
interpreted to him in the Teochew dialect
by D/Cpl.414 James Wong Yuen Lam. Accused
admitted that he fully understood it. He
had no alteration to make or anything further
to add.

10

No threat, inducement or promise was
made to the Accused in recording his
statement.

Interpreted by me Sd: LIM TEONG KOOI, ASP.

Sd: James Wong Yuen Lam Investigating Officer

11/9/64.

20

D/Cpl. 414. 11/9/64.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 9.of 196'

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

B E T W E E N :-

LAW KIAT LANG alias LOH KIAT LONG

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

RECORD OF PROCEEDINGS

Garber, Vowles & Co.,
37 Bedford Square,
London, W.C.1.

Stephenson Harwood & Tatham
Saddlers' Hall,
Gutter Lane,
London, E.C.2.

Solicitors for the Appellant

Solicitors for the Respondent