

1967 | 21
[5]

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

No. 10 of 1967

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

1. NG SENG HUAT alias NG CHING KIM
 2. LEE CHING SAI alias LEE BOON KHENG
- Appellants

- and -

THE PUBLIC PROSECUTOR

RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON
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LONDON, W.C.1.

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ON APPEAL
 FROM THE FEDERAL COURT OF MALAYSIA
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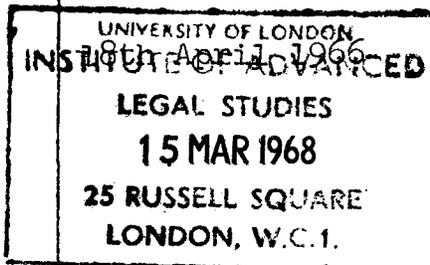
- and -

THE PUBLIC PROSECUTOR Respondent

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IN THE JUDICIAL COMMITTEE OF THE

No. 10 of 1967

PRIVY COUNCIL

ON APPEAL FROM

THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

B E T W E E N :

- 1. NG SENG HUAT alias NG CHING KIM
- 2. LEE CHING SAI alias LEE BOON KHENG

Appellants

10

- and -

THE PUBLIC PROSECUTOR

Respondent

RECORD OF PROCEEDINGS

NO. 1

CERTIFICATE UNDER REGULATION 5A OF EMERGENCY
(CRIMINAL TRIALS) REGULATIONS, 1964, AND CHARGES

Emergency (Essential Powers) Act, 1964.

Emergency (Criminal Trials) Regulations, 1964

MUAR EMERGENCY CRIMINAL TRIALS NOS. 19 AND 20 OF
1965

20

Certificate Under Regulation 5A

I, Ajab Singh, Deputy Public Prosecutor, do certify that it is desirable in the public interest that the following persons should be tried together on the charges set below their names:

- (1) NG SENG HUAT @ NG CHING KIM

1ST CHARGE

That you between the 2nd day of September, 1964 and the 13th 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 Kampong

In the High Court in Malaya

No. 1

Certificate under Regulation 5A of Emergency (Criminal Trials) Regulations, 1964, and Charges.
20th September 1965.

In the High
Court in
Malaya

No. 1

Certificate
under Regu-
lation 5A of
Emergency
(Criminal
Trials) Regu-
lations, 1964,
and Charges.
20th
September 1965.
continued.

Redong Ayer Panas, Labis, in the District of Segamat, in the State of Johore, consorted with members of the Indonesian Armed Forces who carried firearms and ammunitions in contravention of the provisions of section 58(1) of the Internal Security Act 18/1960, 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 you have thereby committed an offence punishable under section 58(1) of the Internal Security Act, No. 19/1960.. 10

2ND CHARGE

That you between the 2nd day of September, 1964 and the 13th 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 Kampong Redong Ayer Panas, Labis in the District of Segamat, in the State of Johore, without lawful excuse had in your possession a firearm, to wit, a Bren Gun, without lawful authority and you have thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act, No.18/60. 20

3RD CHARGE

That you between the 2nd day of September, 1964 and the 13th 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 Kampong Redong Ayer Panas, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession ammunition, to wit, 120 rounds of ammunition, without lawful authority and you have thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, No.18/1960. 30

(2) LEE CHING SAI @ LEE BOON KHENG

1ST CHARGE

That you between the 2nd day of September, 1964 and the 13th day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N.No.245 of 17th August, 1964 namely Kampong Tenang, Labis, in the District of Segamat, in the State of Johore, consorted with 40

members of the Indonesian Armed Forces, who carried firearms and ammunitions in contravention of the provisions of section 58(1) 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 the public security and that you have thereby committed an offence punishable under section 58(1) of the Internal Security Act, 1960.

10

2ND CHARGE

That you between the 2nd day of September, 1964 and the 13th 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 Kampong Tenang, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had under your control a firearm, to wit, a sten gun, without lawful authority and you have thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act No.18/1960.

20

3RD CHARGE

That you between the 2nd day of September, 1964 and the 13th 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 Kampong Tenang, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had under your control ammunitions, to wit, 300 rounds of stengun ammunition, without lawful authority and you have thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, No.18/1960.

30

Dated this 20th day of September, 1965.

Sd: (AJAIB SINGH)
Deputy Public Prosecutor.

In the High
Court in
Malaya

No. 1

Certificate
under Regu-
lation 5A of
Emergency
(Criminal
Trials) Regu-
lations, 1964,
and Charges
20th
September 1965,
continued.

In the High
Court in
Malaya

NO. 2

PLEAS

No. 2

IN THE HIGH COURT IN MALAYA AT MUAR

Pleas
25th September,
1965.

IN THE STATE OF JOHORE

EMERGENCY CRIMINAL TRIAL NO. 19 OF 1965

AND

EMERGENCY CRIMINAL TRIAL NO. 20 OF 1965

Public Prosecutor v. Ng Seng Huat @ Ng Ching Kim
Public Prosecutor v. Lee Ching Sai @ Lee Boon Kheng

First charges read out and explained to both 10
accused. First accused claims trial. Second
accused claims trial.

Second charges read out and explained to
accused. First accused refuses to plead. Second
accused refuses to plead. I record a plea of not
guilty.

No. 3

NO. 3

P.W.l. Ahmad
bin Haji Salleh
25th September,
1965.

AHMAD BIN HAJI SALLEH, affirmed, states in Malay:

I am 45 years old. I am a labourer in the 20
Drainage and Irrigation Department residing in
Tenang Kampong, Labis.

I remember the month of September last year.
I was then residing at Tenang Kampong. On 13.9.64.
at about 2 p.m. I left my house to go to a shop
at Pekan Ayer Panas. When I reached the junction
of Jalan Petar and Jalan Kepoh I met a friend of
mine named Yassin (Yassin bin Kandol identified).
While we were having conversation for about 3 to
4 minutes two male persons came out from Jalan
Petar. I looked at them. To me they were 30
strangers. We had been notified by Government
that if any strangers were seen we should notify
the Police. So we both followed the strangers.

Both strangers were wearing civilian clothes. We followed them. As I was following them I saw a Police van on the other side of Sungei Tenang bridge. I gave a signal to the Police by pointing my hand to the two male strangers. The Police approached the strangers, and then took me and my friend Yassin together with the two male strangers to Labis Police Station.

10 There were five persons including the driver in the Police vehicle on the other side of the bridge. I can identify the officer in charge of the Police vehicle. This was the Police Officer (Corporal 8815 Mohamed Yasin bin Rasmani identified).

As we were following the strangers we were pushing our bicycles along. The strangers were walking. I cannot identify the strangers if I see them again, as I saw them a long time ago and only for a short while.

20 I did not observe whether the Police searched the strangers at the bridge.

Jalan Petar originates from the jungle and goes towards Pekan Ayer Panas. Jalan Kepoh is a road which comes from Kampong Kepoh and goes towards Pekan Ayer Panas. They both meet at a junction and then one road leads to Pekan Ayer Panas.

30 When I first saw the two strangers I was about 1 chain from the junction. When I first saw the strangers they were coming along Petar Road and they were very near the junction. The head of the junction is about $1\frac{1}{2}$ miles from the fringe of the jungle.

40 Cross-examined by Wilson: I paid attention to the two persons because they were strangers. The Chinese live in Pekan Ayer Panas but not near the vicinity where I saw the two strangers. Pekan Ayer Panas is about $1\frac{1}{2}$ miles from where I saw the two strangers. There are many Chinese living in Pekan Ayer Panas now. I do not know how many Chinese live in Pekan Ayer Panas, but I know some of them by sight. I know 70 to 80 of them. There are much more than 80 Chinese in Pekan Ayer Panas but less than 500 persons. There were many Chinese working in the logging area in the jungle.

In the High Court of Malaya

No. 3

P.W.1. Ahmad bin Haji Salleh
25th September 1965 -
continued.

In the High
Court in
Malaya

No. 3

P.W.1. Ahmad
bin Haji
Salleh
25th September
1965 -
continued.

I had seen Chinese go into and come out of the logging area. I knew some of them by sight, and there were some whom I did not know by sight.

I saw the strangers after the landing of paratroopers. That area in the jungle was under curfew. No persons were allowed to go into the jungle. I became suspicious of the strangers because of the Government's notification. I cannot say whether the strangers were from Pekan Ayer Panas.

Both strangers were wearing shirts and trousers. I cannot say whether their shirts were tucked inside the trousers. I cannot remember the colour of their clothes. 10

The strangers were walking like normal persons. I gave a signal to the Police by pointing my finger at the strangers (witness demonstrates). At that time I was about 3 chains from the Police van. The Police saw my signal when they were getting down from the vehicle. The strangers were then between the Police vehicle and myself. At the Police Station I lodged a report. 20

Cross-examined by Tan: Jalan Petar ends at the edge of the jungle. Then there are tracks inside the jungle. Jalan Petar was built by the logging companies to go into the jungle to obtain timber.

No re-examination.

By Court: I had never seen those strangers before.

No. 4

NO. 4

P.W.2. Yassin
bin Kandol
25th September
1965.

YASSIN bin KANDOL

YASSIN bin KANDOL, affirmed, states in Malay: 30

I am 46 years. I am a kampong holder residing at Kampong Tenang, Labis.

I remember the month of September last year. On 13.9.64. at about 2 p.m. I was at the junction of Jalan Kepoh and Jalan Petar. I was having a conversation with P.W.1. After about 3 minutes I

saw two male persons walking along Jalan Petar in the direction of Kampong Redong near Kampong Ayer Panas. The two male persons were strangers. I had never seen them before. I did not know their nationality or race then. They were wearing civilian clothes.

In the High Court in Malaya

—
No. 4

P.W.2. Yassin bin Kandol
25th September 1965 -
continued.

10 When they passed Jalan Kepoh where P.W.1. and I were, we followed them pushing our bicycles along. We followed them up to near Sungei Tenang bridge where I saw a Police van. There were Policemen inside the van. I gave a signal to the Police by pointing my finger at the strangers. The Police came and approached the strangers. I just stood there. After that the Police took the strangers, P.W.1 and myself to Labis Police Station.

I can identify the Corporal in charge of the Police party. This was the Corporal (Corporal Yasin bin Rasmani identified).

20 I cannot identify those two strangers if I see them again.

Cross-examined by Wilson: I paid attention to the two male persons because I had never seen them before. They had crew cut hair. I had seen captured Indonesians with the same type of crew cut hair.

30 I cannot say whether the two strangers I saw were Chinese or not, as I saw them only for a short while. When I first saw them they were about 1 chain from where I was. That was the closest I went to them then. When I was taken to the Police Station I was seated in front in the Police vehicle. I followed the strangers for about 5 minutes. As I was following them I did not see any Chinese pass by. There was a curfew not to enter the jungle. I did not notice anything peculiar in the clothing of the strangers. They were wearing shirts and trousers. I cannot remember the colour of their clothing. Apart from their crew cut, there was nothing unusual about them. If not for their
40 crew cut, they could have been any Chinese from the Kampong.

I became suspicious of them because they were strangers and not merely because of their crew cut. Before that day I had seen Chinese whom I did not

In the High
Court in
Malaya

No. 4

P.W.2. Yassin
bin Kandol
25th September
1965 -
continued.

know go up and down that road. This was before the landing of Indonesians. After the landings there was a curfew and I did not see any persons whom I did not know passing along that road.

I am telling the truth. It is not true that I am not telling the truth.

I was slightly less than 2 chains away when I saw the Police van. P.W.1 suggested that we should follow the strangers. I gave the signal by pointing my finger at the strangers. P.W.1 gave the same sort of signal. The van was facing us. Police were on the ground when I gave the signal. They saw my signal. It was because of my signal that the Police arrested the strangers. When I first saw the van it was stationary and two Policemen were already on the ground facing me. At that time the strangers were between me and the Police van. The strangers were then about 1 chain from the van. I had not at any time seen the Police van in a moving position.

10

20

No cross-examination by Tan.

No re-examination.

No. 5

P.W.3. Mohamed
Yasin bin
Rasmani 25th
September 1965.

NO. 5

P.W.3 - MOHAMED YASIN bin RASMANI

MOHAMED YASIN bin RASMANI, affirmed, states in Malay:

I am Police Corporal No. 8815 stationed at Segamat Police Station. On 13.9.64. I was on mobile patrol duty from 2 p.m. to 6 p.m. on Police Land Rover No. BE 8412 together with 4 Police Constables including the driver. I was in charge of the Police party. The area of my patrol was from Labis to Kampong Tenang Redong.

30

At about 2.40 p.m. on 13.9.64. I arrived with the party at Sungei Tenang Redong. There is a bridge there. At that time I saw two male persons walking along the logging lane coming towards us, and I saw two other male persons pushing their bicycles and following behind the other two male

persons. I saw one of the persons behind pointing to the two male persons walking in front of him.

I went up with three Police Constables to the two male persons walking in front. I stopped them. The persons I stopped were the two accused in the dock. The persons following the two accused were P.W.1. and P.W.2. It was P.W.1 who pointed to the accused.

10 I saw that both accused had crew cut. I asked for their identity cards. The first accused did not produce his identity card. The second accused produced this Identity Card (marked P.1 for identification). I searched both accused and I recovered packets from them containing one-dollar notes in Malayan currency. The money on the first accused was not wrapped. The money on the second accused was wrapped in paper. I did not count the money. I took possession of it. At Labis Police Station I handed the money and the Identity Card to Inspector Liew (Inspector Liew Kooi Loon identified).

20

I took the two accused, P.W.1 and P.W.2 to Labis Police Station. I handed the accused to Inspector Liew at the Police Station.

Cross-examined by Wilson: My van had already stopped when I saw the accused walking towards us. We stopped the van there because there was a bridge over which the van could not go. I had not seen the accused when the van stopped. I saw the accused within 3 minutes of the stopping of the van. When I first saw the accused they were about 1 chain away. P.W.1 and P.W.2 were about 1½ chains from me when I first saw them.

30

I said in my statement to the Police that I saw two persons (males) walking along the road coming in the opposite direction and that on coming near I stopped the vehicle and stopped them. That is not correct. I also said in my statement that just then two male Malays on bicycles arrived on the spot. That is also not correct.

40

When I searched the accused they offered no resistance. They appeared frightened. They did not try to run away, but their hands were trembling. The first accused followed instructions

In the High Court in Malaya

—
No. 5

P.W.3. Mohamed Yasin bin Rasmani 25th September 1965 - continued.

In the High Court in Malaya

No. 5

P.W.3. Mohamed Yasin bin Rasmani 25th September, 1965 - continued.

and did not offer any resistance.

Cross-examined by Tan: The second accused followed instructions and offered no resistance.

Re-examined: Since they offered me no resistance there was no need for me to handle them roughly and in fact I did not handle them roughly.

I gave my statement in Malay and it was recorded in English. A mistake may have arisen in my statement in that way. I do not know how the mistake arose. I am quite certain that our van had stopped before I saw the accused.

10

Adjourned to 2.15 p.m.

Signed (S.S. Gill)

No. 6

P.W.5. Yusof Suwarjo 25th September 1965.

NO. 6

P.W.5. - YUSOF SUWARJO

YUSOF SUWARJO, affirmed, states in Indonesian Malay:

I am 25 years old. Before coming to Malaysia I was in the Indonesian armed forces. I am an Indonesian national. I was in the Indonesian Air Force. I am now a prisoner of war. I am detained in Johore Bahru.

20

I came to Malaya in a plane on the night of 1.9.64. It was a Hercules aeroplane. Apart from the flight crew, there were 48 persons in the plane including myself. I was armed with a G.3 automatic gun, ammunition and 2 handgrenades. I was dressed in a uniform. All 48 of us were in uniform. The Indonesians carried G.3 automatic guns, ammunition and handgrenades. The Chinese carried Bren guns or Sten guns, ammunition and 2 handgrenades. Out of the 48 persons, 41 persons were Indonesians and 7 Chinese. One of the Chinese was a female.

30

My section was No. 8. There were 6 of us in my section. There were five Indonesians and one Chinese in my section. I do not know the name of

the Chinese in my section. He was the only Chinese in my section. My section leader was Supangat who is now dead. I do not know what the Chinese was known as. I called him a friend. He was carrying a Bren gun and some ammunition. I do not know whether he was carrying any handgrenades. He was sitting behind me.

In the High Court in Malaya

—
No. 6

P.W.5. Yusof Suwarjo 25th September 1965 - continued.

10 My plane left Jakarta and came straight to Malaya. During the night a signal was given and I jumped out. The Chinese in my section also jumped out. We jumped out with all our arms and ammunition. It was in the middle of the night. I landed on the ground and searched for my friends. Later I met all my friends from my section including the Chinese. When I met them we all had our arms and ammunition. We consulted our compass and followed a line to meet the commander but did not find him. I also met people from the other section. Later I was captured together with
20 Sergeant Ismail, an Indonesian.

The Chinese from my section was with me for three days in the jungle. Then we separated. I was in the jungle for a month before I was captured. I first met the Chinese in my section in the plane when it was about to take off. After my capture I saw the Chinese from my section in Johore Bahru prison. Before that I saw him at the Police Depot in Johore Bahru. That Chinese is in Court. He is the man in the yellow shirt (points to first
30 accused).

Cross-examined by Wilson: I do not know the first accused's name. I have never known his name. I cannot remember whether I have heard the name Ng Seng Huat. I have heard the name Ah Chong. Ah Chong was the man in my section. He is the accused, the man with the yellow shirt. When I was first asked the question I had forgotten the accused's name.

40 At the time I was about to take off at Jakarta I knew I was in Section 8 and that there were six of us in the section. We were not introduced to each other. At that time I knew only the names of the Indonesians. I now know the name of the Chinese as well. The Indonesians were Supangat, myself, Unisar, Suparjono and Toto Gurnita. I do not know why they put a Chinese in my section and

In the High
Court in
Malaya

No. 6

P.W.5. Yusof
Suwarjo 25th
September
1965 -
continued.

why he was armed with a Bren gun. Apart from our uniforms we were given civilian clothes which were in the bags.

I do not know how I separated from the Chinese in the jungle. We separated because of the thickness of the jungle. We lost our way. I met men from other groups. There was one Chinese among them. I do not know his name, and I cannot identify him. He also got separated from me.

In the night after landing I met Kabeng, Supangat and five others including the first accused. I met the first accused in less than one hour after meeting Kabeng. 10

Cross-examined by Tan: I do not know from what section Kabeng was. I have forgotten.

No re-examination.

No. 7

P.W.6. Ismail
bin Marjuki
25th September
1965.

NO. 7

P.W.6 - ISMAIL bin MARJUKI

ISMAIL bin MARJUKI, affirmed, states in Indonesian Malay:

I am 33 years old. I am an Indonesian prisoner of war now detained in Johore Bahru. I was in the Indonesian Armed Forces as Sergeant Class II Air Force. 20

I came to Malaya in a plane on 2.9.64. It was a Hercules plane. There were 48 persons in the plane, apart from the crew. I and the other 47 persons wore uniforms and carried firearms, ammunition and handgrenades. I carried a G.3. automatic gun. I am an Indonesian. There were 41 Indonesians and 7 Chinese in the plane. The Chinese were in uniforms and similarly armed. 30

There was one Chinese near me in the plane. While I was in Indonesia I did not know his name. I first saw him in Jakarta when the plane was about to take off. The plane took off for unknown destination. I jumped out of the plane in the

early hours of 2.9.64. My parachute got caught in a tree. The Chinese also jumped out. We all had our arms and ammunition when we jumped out.

In the High Court in Malaya

The Chinese who was near me carried a Bren gun, ammunition and 2 handgrenades. I met this Chinese again in the jungle several days after I had landed. He was then carrying his Bren gun, ammunition and handgranades.

No. 7

P.W.6. Ismail bin Marjuki
25th September 1965 -
continued.

10 Apart from our uniforms we also carried civilian clothes. I remained in the jungle for one whole month before I was captured.

20 The Chinese who sat near me in the plane was with me in the jungle for one week. After that I got separated, and I do not know what happened. I remained in the jungle for about a month. Then I was captured by the Security Forces by the roadside between Labis and Segamat. I cannot say how far this place was from where I last saw the Chinese. From the roadside the place where I was captured was about 20 metres, and the jungle about a mile. It was in that jungle that I met the Chinese.

After my capture I was taken to Labis, then to Segamat and finally to Johore Bahru. I next saw the Chinese at the Police Depot, Johore Bahru and then in Johore Bahru prison. That Chinese is not in Court today. If I see him again, I can recognise him. That Chinese is not in Court today.

30 I saw the first accused in the jungle only for one day. I did not see him in the plane. I met him in the jungle two days after I landed. He was wearing a uniform, the same type of uniform as myself. He was carrying a Bren gun, some ammunition and 2 handgrenades. I separated from him after one day. I was further inside the jungle then, too far. Far inside the jungle from the main road. After my capture I saw the first accused at the Depot and then at the prison at
40 Johore Bahru.

The Chinese who was with me for seven days met me about 2½ miles inside the jungle from the fringe of the jungle. The place where I was captured was about one mile from the fringe of the

In the High
Court in
Malaya

No. 7

P.W.6. Ismail
bin Marjuki
25th September
1965 -
continued.

jungle. I met the accused about a mile further in from where I met the other Chinese.

I know P.W.5. I did not see him in the plane. I did not see him jump out but I met him in the jungle after I landed. He then had short moustache. I was with P.W.5 when I was captured.

Cross-examined by Wilson: I do not know whether any other plane left Jakarta at the same time as our plane. I first met P.W.5 2 days after I landed. I was together with him until we were captured. I first met the first accused two days after I had landed, at the same time as I met P.W.5. After that we missed each other. P.W.5 was sick and I stayed with him. The others walked ahead of us and we lost sight of them. There were five who walked ahead and got separated. They were three Indonesians and two Chinese. 10

I am sure that was the first time I met the first accused. I am sure that he had a Bren gun, 2 handgrenades and several rounds of ammunition. 20

I made a statement to the Police on 27.2.65 (Allowed to cross-examine). I said in the statement that in that plane were forty-one Indonesian paratroopers and seven Chinese. I also said that among the Chinese there was one named Ng Seng Huat. I said this because his photograph was shown to me. I further said that he was attached to Section Number 8. Now I say that I did not make a statement like that to the Police. 30

I did not say in my statement that I jumped down from the plane followed by the others including Ng Seng Huat, but I did not land at the same place as Ng Seng Huat. I did not say in my statement that I did not know what type of fire-arms Ng Seng Huat was carrying.

Cross-examined by Tan: When I left Jakarta I did not know where I was going. No one told me where we were going, not even in the plane before we jumped out. Before we boarded the plane we were told we were going for training. My platoon commander told me. I do not know what the others were told. It was dark in the plane.

Re-examined: I cannot recognise the person to

whom I made the statement even if I meet him. I was able to express well to him. When he asked questions, I sometimes could not understand him. What I have told the Court today is the truth. I have no grudge or ill feeling against the first accused. I was armed all the time I was in the jungle.

Adjourned until 9.30 a.m. tomorrow.

Signed (S.S. Gill)

In the High Court in Malaya

No. 7

P.W.6. Ismail bin Marjuki
25th September 1965 -
continued.

10

NO. 8

P.W.7 - DJAMHIR bin EROP ALI

26th September, 1965

Emergency Criminal Trials 19 and 20/65

Hearing continued. Counsel as before.

DJAMHIR bin EROP ALI, affirmed, states in Indonesian Malay:

20

I am 25 years old. I am an Indonesian. I am now a prisoner of war detained in Johore Bahru prison. I came to Malaya by plane. I was a soldier in the Indonesian army before I came to Malaya. I came to Malaya in a Hercules plane. There were altogether 48 persons in the plane, apart from the crew. There were 41 Indonesians and 7 Chinese. I was wearing a uniform and so were the other 47 men. I carried a G.3 automatic gun. All the Indonesians carried the same type of guns as myself. The Chinese carried Bren guns or Sten guns. We all carried ammunition, about 150 rounds each. Each person carried two handgrenades. We carried civilian clothes, provisions and \$300 in Malayan currency. Each of us carried the same type of things and Malayan currency in one-dollar notes.

30

The plane took off from Jakarta at about 11 p.m. on 1.9.64. I did not know the destination of the plane. I was told that we were going for

No. 8

P.W.7.
Djamhir bin Erop Ali
26th September 1965.

In the High
Court in
Malaya

No. 8

P.W.7. Djamhir
bin Erop Ali
26th September
1965 -
continued.

training.

I was in Section No. 7. There were 6 persons in my section including myself. The other five were Sergeant Tohir, Sadik, Iber Ali, Gabeng and a Chinese. There was only one Chinese in my section. He was carrying a Sten gun, ammunition and 2 handgrenades. I do not know how many rounds of ammunition he carried.

About two hours after the plane took off from Jakarta I jumped out of the plane on orders. The others in my section jumped out. I landed in the jungle. After my jump I met the Chinese from my section. He remained with me for about one hour and then separated from me. He was still having his firearm and ammunition with him. I was also having my firearm and ammunition with me. I did not go with the Chinese because I was sick. My parachute had got caught in a tree and I fell down. I felt pain in my hip joint. Iber Ali remained with me to look after me. This is Iber Ali (identified). Eventually I was captured, after 16 days of my landing. If I am not mistaken, I was captured on 16.9.64. I was captured at a different place from the place of my landing. I was captured in a kampong. 10 20

From where I was captured I was taken to some Police Station. After my capture I met the Chinese from my section at the Police Depot, Johore Bahru and then in the prison, Johore Bahru.

I can recognise the Chinese from my section if I see him again. He is in Court. He is the one with the green shirt (points to second accused). 30

I was captured in a kampong. It took me 16 days to walk from the place of my landing in the jungle.

Cross-examined by Tan: I am a prisoner of war. I am treated well. I am grateful to the Government for that. I remember making a statement to the Police on 24.2.65. I said in that statement that there were 48 persons in the plane, forty Indonesian paratroopers and the rest Chinese. Today I have said there were 41 Indonesians and 7 Chinese. Now I am sure that there were 41 Indonesians and 7 Chinese. When I made the statement I was not in good health and my mind was not steady. I did not 40

see a doctor. After my statement was taken I saw a doctor. I did not tell the officer taking my statement that my mind was not steady. It is true I was then suffering from my pain in the hip. The statement was not read over to me.

Before the recording of the statement I was shown a photograph of the second accused. The Police told me that his name was Lee Ching Sai. This was at the Police Depot.

10 The Malayan money which I carried was given to me inside the plane. There was a red light in the plane near the door through which we jumped out. This door was quite far from the pilot's place. The door was at the back of the plane. The red light was on the side wall of the plane. It was a dim red light. We sat at right angles to the walls of the plane, in rows. I was near the front portion of the plane. I cannot say how long the plane was. It was about the length of this Court
20 (50 to 60 feet). The distance from me to the light was less than that. I was sitting about 3 metres from the door where the red light was. When I said the front portion I meant front portion from the red light.

I was not the first to jump out. We all jumped out one at a time. I was No. 38 to jump out. We jumped out according to order. I was the second to jump after the Sergeant in charge of my section. The Chinese jumped after me. I said
30 in my statement to the Police that Lee Ching Sai sat number three from me. I did not remember well on that day because I was sick. Iber Ali was behind me and also behind Sadik. Gabeng was the last in my section. Iber Ali was on the left of Sadik. Left to me was the Chinese, next left to the Chinese was Sadik, next left to Sadik was Iber Ali. Sergeant Tohir was on my right. Gabeng was next left to Iber Ali.

40 The money given to me was wrapped in plastic. It was after landing that I came to know that the money was Malayan money. It was after daybreak that I saw the money. It was dark in the plane. I could not see the money.

I jumped down when I got orders from my commandant Sergeant Major Tuginin. There was a

In the High Court in Malaya

No. 8

P.W.7. Djamhir bin Erop Ali
26th September 1965 -
continued.

In the High
Court in
Malaya

signal from the lamp, and I knew that was the order to jump. There was no direct order from the Sergeant Major.

No. 8

P.W.7. Djamhir
bin Erop Ali
26th September
1965 -
continued.

Just before I jumped, the plane was swaying. It was quite high. I do not know whether it was fast or slow. There was no confusion in the plane because we were trained to jump. There was slight difficulty to keep my balance. I was carrying my equipment which was heavy so that I could not walk properly. When it was my turn to jump I was busy with myself. I was a bit nervous jumping out into the darkness. I jumped out into pitch darkness and I landed on a tree. I was stuck on the tree for about one hour. Then I fell on the ground and became unconscious. I did not have a watch then. I do not know after how long I regained consciousness. It was daylight when I regained consciousness.

10

I met Iber Ali the same morning about half an hour after I regained consciousness. I remained where I was. I did not go to search for my friends because I could not get up. Iber Ali stayed with me for about 10 days. I remained where I had landed for 3 days and then we moved.

20

I met the Chinese from my section on the morning of my landing after I became conscious, about half an hour after I became conscious. The Chinese came first and then Iber Ali. The Chinese stayed with me for about one hour. Then he left.

I broke my bone when I came down (points to his spine). It was painful. I was in agony. I did not pay much attention to what was happening around me. I saw the Chinese carrying the gun. I had pain, but I could see. I did not make a mistake about seeing the Chinese.

30

After I was shown a photograph of the second accused there was an identification parade at the Depot. I cannot remember the date.

I first saw the 7 Chinese in our group in the plane. I was in the jungle for about 16 days. After the first three days we kept on moving, stopping only at night for rest, Iber Ali and I.

40

It is not true that I have identified the

second accused because he is in the dock and because his photograph was shown to me. At the Depot the second accused was inside a cell and I was kept outside the cells. At the Depot I was asked to identify the second accused from a row of persons, during the course of my statement to the Police. During the course of my statement I was stopped and then asked to identify from a row of persons. There were about 15 persons sitting in a row. There were three Chinese and the rest Indonesians in the row. This was after I was shown the photograph of the second accused. I was asked to identify the man in the photograph and I did identify him.

10

After the landing I did not meet Sadik, Sergeant Tohir or Gabeng.

Cross-examined by Wilson: Before I entered the plane I did not know where I was going.

20

Re-examined: I remember the affirmation I took. What I told the Court is the truth. I am quite positive that the second accused was the Chinese in my section in the plane. He was seated next to me. I saw him clearly. After my capture and before I made my statement to the Police I had not seen the accused.

NO. 9

P.W.8 - IBER ALI

IBER ALI, affirmed, states in Indonesian Malay:

I am an Indonesian. I am 21 years old. I am now detained at the prison, Johore Bahru.

30

Before coming to this country I was a soldier in the Indonesian Pasokan Gerak Chepat. I am a private class II in the Indonesian Army. I came to Malaya by a Hercules plane. Apart from the crew, there were 48 of us in the plane. We were all wearing uniforms. There were 41 Indonesians including myself and 7 Chinese. The Chinese were also wearing uniforms.

I was carrying a G.3 automatic gun. The

In the High Court in Malaya

No. 8

P.W.7. Djamhir bin Erop Ali
26th September 1965 -
continued.

No. 9

P.W.8. Iber Ali
26th September 1965.

In the High
Court in
Malaya

No. 9

P.W.8. Iber
Ali 26th
September
1965 -
continued.

Indonesians carried G.3 guns and the Chinese carried Bren guns or Sten guns. We all carried ammunition, 150 rounds each, and 2 handgrenades each. We also carried civilian clothes and provisions, all of us. I carried \$300/-. Each carried \$300/-. It was money in Malayan one dollar currency notes.

The plane took off from Jakarta at about 10 p.m. on 1.9.64. I was not told where we were going. After the plane took off we waited for orders and then we jumped.

10

I belonged to Section 7. There were 6 persons in my section including myself. The others in the section were Sergeant Tohir, Djamhir (P.W.7), Sadik, Gabeng and one Chinese. The Chinese in my section carried a Sten gun, some rounds of ammunition and 2 handgrenades.

I jumped out with a parachute about three hours after I had been airborne. The pilot gave the instructions to jump by a light signal. In the plane I was sitting about 2 metres from P.W.7. The Chinese was on my right next to me.

20

After I landed I went to search for my friends when daylight came. I met the Chinese from my section and Djamhir (P.W.7). I was still carrying my firearm and ammunition. Djamhir and the Chinese were also carrying their firearms and ammunition. The Chinese stayed with us for about one hour and then left. Djamhir and I stayed where we were for 3 days, and on the fourth day started to move. We stayed where we were for 3 days because Djamhir fell down from a tree and was in pain. Djamhir and I stayed together for about 7 days after moving. Then we separated. I was captured on 14.9.64. I was taken to Kampong Tenang, Labis. Kampong Tenang is about 15 miles from where I was captured by winding ways through the jungle.

30

After I was captured I met the Chinese from my section in Johore Bahru prison and before that at the Johore Bahru Police Depot. I can identify him if I see him again. He is in Court, sitting on the left of the man in yellow shirt (points to second accused). I have no ill feeling or grudge against the second accused.

40

Cross-examined by Tan: I am now being treated as a prisoner of war. I am well treated by the authorities. I am grateful to the authorities and I have good feelings for the Government.

In the High Court in Malaya

No. 9

P.W.8. Iber
Ali 26th
September
1965 -
continued.

10 We were sitting in the plane when we took off. The seating arrangement was Sergeant Tohir, Djamhir, Sadik, the Chinese, myself and then Gabeng. I am sure about the seating arrangement. What I say is correct. I remember that the Chinese was on my right next to me.

I remember making a statement to the Police. I said in my statement that while in the plane the Chinese sat near me two seats away. Before I made my statement, the photograph of the Chinese was not shown to me. The statement was read back to me, and I confirmed it to be correct. I forgot about the seating position when I made the statement to the Police.

20 The money was given to me in the plane. I came to know it was Malayan money after I landed and when it was daylight. The money was wrapped up in plastic. I did not look at the money in the plane. I put it in my pocket straightaway.

30 There was some light in the plane. It was a dim light. I met Djamhir on the morning of my landing. At that time he was alone. I met the Chinese first. The Chinese and I went up together to Djamhir. It is not true that when I was in the plane I could not see who was seated next to me. I saw the second accused. There was some light in the plane.

40 I first saw the seven Chinese in the plane when we were about to take off from Jakarta. I had not met or seen them before that. It was night time when we took off. I landed in pitch darkness. My parachute was caught in a tree. I came down when it was daylight. I did not fall down from the tree. Having got down from the tree I started looking for my friends. I met Djamhir about 2 hours after I set off to look for my friends. We stayed together there for three days, and then kept on moving in the jungle. We rested at night. I do not remember the exact number of days I stayed with Djamhir.

In the High Court in Malaya

No. 9

P.W.8. Iber Ali 26th September 1965 - continued.

I pointed to the second accused just now as the Chinese from my section. I was asked to identify him before this, and that was in Johore Bahru prison. That was when my statement was taken. There was a break in my statement and I was taken out to identify. I was taken to his cell. There were three persons in that cell. The Police officer who recorded my statement took me along to the cell in which there were the second accused and two other persons. I was not shown the photograph of the second accused before I was taken to the cell. I was asked to identify the person named Lee Sing Chai. I am not familiar with Chinese names. I cannot pronounce Chinese names properly. It was either Lee Sing Chai or Lee Ching Sai. It is not true that I have made a mistake about the identity of the second accused. I have never made a mistake. I made a mistake about the seating arrangement of members of my section. 10

Cross-examined: Before I got into the plane I was not told where I was going. Nobody was told within my hearing. 20

No re-examination.

Adjourned until 2.15 p.m.

Signed (S. S. Gill)

Resumed at 2.20 p.m.

No.10

Yean Yoke Khin 26th September 1965.

NO. 10

P.W.9 - YEAN YOKE KHIN

YEAN YOKE KHIN, affirmed, states in English:

I am an Inspector of Police stationed at Kluang Police Headquarters. In September 1964 I was attached to C.I.D. Headquarters, Johore Bahru. On 13.9.64, at about 3.15 p.m. I was at Labis Police Station. There I received two bundles of money containing \$300/- and \$270/- respectively. They were in one-dollar denomination, Malayan currency. I also received an Identity Card bearing the name of Lee Ching Sai and number Pontian (J) 013592. I received these from Inspector Liew 30

In the High
Court in
Malaya

NO. 13

FINDINGS OF COURT REGARDING
ADMISSIBILITY OF CAUTIONED STATEMENT

No.13

Finding of
Court regard-
ing admiss-
ibility of
Cautioned
Statement
27th September
1965.-

Court: I am satisfied that the two accused made their cautioned statements of their free will after the caution as required by law was administered to them. I am satisfied that the statements were not made because of any inducement, threat or promise held out to the two accused with reference to the charges against them. I therefore allow evidence to be given of the statement.

10

No.14

Submissions of
Counsel 27th
September
1965.

NO. 14

SUBMISSIONS OF COUNSEL

Case for the prosecution.

Both defence counsel say that they do not wish to address me at this stage except to point out that the Indonesian witnesses are accomplices.

Enche Ajaib Singh says that the prosecution has established case against both accused on all three charges. He concedes that the Indonesian witnesses are accomplices, but says that there is corroboration of their evidence by P.W.1 and P.W.2 who say that they saw the two accused coming along the road from the jungle and there is also further corroboration by the finding of the money on the accused. There are also the cautioned statements of the two accused.

Court: I hold that there is a case against each accused to answer on each of the three charges and call on their defence. The three courses open to the accused explained to them and they are allowed to consult their counsel.

First accused elects to make a statement from the dock.

NO. 15

1ST ACCUSED, WONG SENG HUAT
(STATEMENT FROM THE DOCK)

In the High
Court in
Malaya

No.15

WONG SENG HUAT: (stating from the dock) in
Mandarin:

1st Accused,
Wong Seng
Huat (State-
ment from
the Dock)
27th
September
1965.

10 I am 19 years old. On 17.9.64. the statement
which I gave to P.W.10 was all untrue. The
evidence given against me by the two Indonesians
is also untrue. I was never at any time with the
two Indonesians. I do not know the two Indonesians
at all.

(Enche Wilson says he does not wish to call
any further evidence on behalf of the first
accused.)

Second accused elects to make a statement from,
the dock.

NO. 16

2ND ACCUSED, LEE CHING SAI
(STATEMENT FROM THE DOCK)

No.16
2nd Accused
Lee Ching
Sai (State-
ment from
the Dock)
27th
September
1965.

20 LEE CHING SAI (speaking in Mandarin):

I am 24 years old. I am innocent. The
statement which I gave to P.W.10 on 17.9.64 was all
untrue. The evidence given by the two Indonesians
against me is also untrue.

(Enche Tan says he is not calling any further
evidence on behalf of the second accused.)

In the High
Court in
Malaya

NO. 17

ADDRESSES

No.17

Enche Wilson addresses Court:

Addresses 27th
September
1965.

Main evidence against the first accused is his own cautioned statement. P.W.1 and P.W.2 merely saw the accused walking on the road. P.W.5 and P.W.6 are accomplices. Unsafe to rely on their evidence of P.W.5 and P.W.6 should be disregarded. P.W.6 has been discredited by his statement to the Police. The first accused lured away to Indonesia on the promise of a job. Nothing in his statement that he intended to consort with Indonesian armed men. Did not know where they were going. Going on training. Obtained firearm and ammunition in lawful manner and for a lawful purpose in Indonesia. No evidence that he acted in a manner prejudicial to public security.

10

Accused not guilty on all the three charges.

Enche Tan addresses Court:

Not clearly proved that all this happened in a security area. Landing may not have been in Johore. P.W.7 and P.W.8 contradicted each other. Their evidence should be disregarded. Accused should be acquitted and discharged.

20

Enche Ajaib Singh addresses Court:

Section 57 of the Internal Security Act, 1960. Onus on accused to show lawful excuse and lawful authority. The people in the plane did not come here on a goodwill mission. First accused said in his statement what his destination was. Did not discard firearm and ammunition. Hid them. Second accused said in his statement that he came to know where he landed.

30

No doubt created by the two accused as to the truth of the prosecution case.

27.

NO. 18

FINDING OF COURT

I find both accused guilty on each of the three charges against them and convict them on each charge.

I sentence the first accused to death on each of the three charges. I sentence the second accused to death on each of the three charges.

Both accused give oral notice of appeal.

Signed (S. S. Gill)

10

In the High Court in Malaya

No.18

Finding of Court 27th September 1965.

NO. 19

GROUNDS OF JUDGMENT

IN THE HIGH COURT IN MALAYA AT MUAR
IN THE STATE OF JOHORE

MUAR EMERGENCY CRIMINAL TRIAL NO. 19 OF 1965

AND

MUAR EMERGENCY CRIMINAL TRIAL NO. 20 OF 1965

Public Prosecutor v. Ng Seng Huat @ Ng Ching Kim

Public Prosecutor v. Lee Ching Sai @ Lee Boon Kheng

20

GROUNDS OF JUDGMENT

The accused in these two cases were tried jointly on a certificate under Regulation 5A of the Emergency (Criminal Trials) Regulations, 1964. There were three charges against each of the accused. The first charge against each accused was that of consorting with armed members of the Indonesian Armed Forces in contravention of Section 58 (1) of the Internal Security Act, 1960. The second charge against the first accused was one of unlawful possession of a Bren gun in contravention of Section 57 (1) (a) of the Internal Security Act, and the second charge against the second accused that of unlawful control of a Sten gun in

30

No.19

Grounds of Judgment
13th October
1965.

In the High
Court in
Malaya

No.19

Grounds of
Judgment
13th October
1965 -
continued.

contravention of the same section. The third charge against the first accused was unlawful possession of 120 rounds of ammunition, and against the second accused unlawful control of 300 rounds of Sten gun ammunition in contravention of Section 57 (1) (b) of the same Act.

The two accused were arrested on suspicion on 13.9.64 at about 2 p.m. near Sungei Tenang bridge in Kampong Tenang area in the Labis District, Johore. They were first seen by Ahmad (P.W.1) and Yassin (P.W.2) who were then having a conversation at the junction of Jalan Petar and Jalan Kepoh. The two witnesses followed the two accused and pointed them out to a Police patrol party who were waiting near a bridge in a Police vehicle. Corporal Mohamed Yasin (P.W.3) who was in charge of the Police patrol party, arrested the two accused, only one of whom was able to produce his Identity Card. The Corporal searched the two accused and recovered packets containing one-dollar notes in Malayan currency from both of them. He then took the accused to Labis Police Station where he handed the money and the Identity Card to Inspector Liew Kooi Loon (P.W.4). P.W.4 found that the money on the first accused amounted to \$300 and the bundle on the second accused contained \$270. The Identity Card and the money were handed to Inspector Yean Yoke Khin (P.W.9), who produced them at the trial.

10

20

P.W.4 as a Special Branch officer interrogated the accused to obtain information in connection with an operation then in progress. The accused were then sent to the Special Branch lock-up at Johore Bahru where on 14.9.64. they were interrogated by Inspector Foong Wai Sek (P.W.12) and Inspector Chan Kok Kong (P.W.13). On 17.9.64. the two accused made cautioned statements to A.S.P. Abdullah bin Awang (P.W.10) who employed Detective Sergeant Chee Kee Fong (P.W.11) to act as Interpreter between him and the two accused.

30

Apart from the cautioned statements of the accused, with which I shall deal at a later stage, the evidence against the two accused consisted of members of the Indonesian Armed Forces who parachuted into this country on the night of 1.9.64. from a Hercules aeroplane. There were two Indonesian witnesses against each of the two accused.

40

In the High
Court in
Malaya

—
No.19

Grounds of
Judgment
13th October
1965 -
continued.

10 The first Indonesian to give evidence against
the first accused was Yusof Suwarjo (P.W.5) who said
that there were 48 armed persons in military uniform
in the plane which brought them to this country,
41 of whom were Indonesians and 7 Chinese. Each
Indonesian carried a G.3 automatic gun, ammunition
and two handgrenades, and each Chinese carried
either a Bren gun or a Sten gun, ammunition and two
handgrenades. He was in Section 8 consisting of
20 6 persons, one of whom was a Chinese. His plane
left Jakarta and came straight to Malaya. He jumped
out during the night when a signal was given and so
did the Chinese from his section. After landing he
met all his friends from his section including the
Chinese and they all had their arms and ammunition
at the time. The Chinese from his section was with
him for three days in the jungle, after which they
were separated. He also met people from the other
section. Later he was captured together with
Sergeant Ismail. After his capture he saw the
Chinese from his section at the Police Depot and
later at the prison in Johore Bahru. That Chinese
was the first accused. The evidence of this
witness was not seriously challenged and I formed
the impression that he was speaking the truth.

30 The second witness against the first accused
was Ismail bin Marjuki (P.W.6). This witness gave
the same sort of evidence as P.W.5 as regards the
number of armed persons in the plane, the arms and
ammunition they carried and how they jumped out of
the plane in the early hours of 2.9.64. He said
that there was near him in the plane one Chinese
whose name he did not know but whom he met in the
jungle several days after he had landed. That
Chinese, he said, was not in Court. He then said
that he met the first accused in the jungle two
days after he had landed, at the same time as he
met P.W.5, after which they missed each other. In
40 other words, what he was saying was that he was
with the accused only for one day. On this point
he was confronted with his statement to the Police
in which he had said that amongst the 7 Chinese
there was one named Ng Seng Huat who was attached
to Section No. 8. When asked to explain this
contradiction, he said that he mentioned Ng Seng
Huat because his photograph was shown to him, and
then went on to say that he did not make a state-
ment like that to the police. He also denied say-
ing in his statement that he jumped down from the

In the High
Court in
Malaya

plane followed by the others including Ng Seng
Huat and that he did not land at the same place as
Ng Seng Huat.

No.19
Grounds of
Judgment
13th October
1965 -
continued

What emerged from this apparent contradiction between the evidence of P.W.6 in Court and his statement to the Police was that in his statement to the Police he had not said anything about the Chinese who sat near him in the plane and with whom he was in the jungle for one week, because what he told the Police was that among the Chinese there was one Ng Seng Huat who was attached to Section No. 8. This apparent contradiction led me to think that I should treat the evidence of this witness with caution and perhaps with suspicion. There was, however, one point on which his story tallied with the story of P.W.5 who had said that the first accused was with him for three days. If P.W.5 and the first accused met each other on the day of the landing and P.W.6 met both of them two days after the landing, and if the first accused got separated from P.W.5 after three days, then the first accused and P.W.6 could have been together for only one day, which was in fact what P.W.6 told the Court. That, in my opinion, was the redeeming feature in the evidence of P.W.6. Both P.W.5 and P.W.6 said that they were together when they were captured and that the first accused was carrying a Bren gun and some ammunition when he was with them. 10 20

The Indonesian witnesses against the second accused were Djamhir (P.W.7) and Iber Ali (P.W.8). P.W.7, after relating the same sort of story as P.W.5 and P.W.6 did about the Hercules plane and the number of armed persons who came on the plane from Jakarta on the night of 1.9.64 said that he was in Section 7 in which there was one Chinese who carried a Sten gun. He met this Chinese after his jump and remained with him for about one hour and then they separated. This Chinese was still having his firearm and ammunition when they separated from each other. He could not go on with the Chinese because he had injured himself as a result of a fall after his parachute had got caught in a tree. One Iber Ali remained with him to look after him. He was captured on or about 16.9.64, after which he met the Chinese from his section at the Police Depot and then in the prison in Johore Bahru. He identified the second accused as the Chinese from his section. This witness said that he had made 30 40

a mistake when he said in his statement to the Police that of the 48 persons in the plane 40 were Indonesians and the rest Chinese. He said he was not in good health and his mind was not steady when he made that statement. What this witness said in the course of his very lengthy cross-examination did not detract very much from his evidence.

In the High Court in Malaya

—
No.19

Grounds of Judgment
13th October 1965 -
continued.

10 Iber Ali (P.W.8) said that he belonged to Section 7 and that P.W.7 and a Chinese were in the same section. After landing from the plane he looked for his friends when daylight came and met the Chinese from his section and P.W.7. The Chinese was with them for about one hour and then left. He stayed back to look after Djamhir who was injured. Djamhir and he stayed where they were for three days and started to move on the fourth day, after which they stayed together for about 7 days and then got separated. He was captured on 14.9.64, and
20 subsequently he met the Chinese from his section at the Police Depot and in the prison in Johore Bahru. He said that the Chinese from his section was the second accused. This witness was also cross-examined at great length. In my opinion whatever was brought out during the course of his cross-examination did not weaken his story.

30 The evidence given by the four Indonesians was clearly accomplice evidence. They are prisoners-of-war and from what they told me they were well looked after. They have reason to be grateful to the Government. It might be argued that they were giving evidence in order to show their gratitude to the Government, but I had also to bear in mind that they were giving evidence against men who, according to them, were at one time their comrades in arms. The only thing which could be said against their evidence was that they had not been asked to pick out the accused at identification
40 parades. However, any identification parade in the circumstances would have been of doubtful value. When considering the evidence of these accomplice witnesses I had to consider whether there was any independent corroboration of their stories. To my mind, the finding of Malayan money in one-dollar currency notes on the two accused at the time of their arrest was strong corroborative evidence because of the evidence that each person in the plane was supplied with \$300 in Malayan one-dollar currency notes. Thus, even without

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taking into consideration the cautioned statements of the two accused, the prosecution had established a case which if unrebutted warranted their conviction on the charges framed.

I now come to the cautioned statements of the two accused. A.S.P. Abdullah (P.W.10) and Detective Sergeant Chee Kee Fong (P.W.11) who gave evidence about the cautioned statements of the two accused were cross-examined at great length. From their evidence I was satisfied that a caution was administered to both accused in the Hokkien dialect and that each accused elected to make a statement. I have no doubt that A.S.P. Abdullah as a Malay understands the Malay language. He told the Court that the Detective Sergeant who acted as Interpreter understood his Malay very well and that he understood the Interpreter's Malay. The Interpreter stated that he was getting an allowance for passing an examination in the Hokkien dialect. I was satisfied on his evidence that he and the two accused understood each other when they spoken in Hokkien. Both these witnesses said that they made no threat, promise or inducement to either of the accused and that no one else was present when the cautioned statements were recorded. The Special Branch Inspectors who interrogated the accused also said that they offered no threat, inducement or promise to the two accused and that they did not assault the accused.

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Both accused gave evidence about their cautioned statements. The first accused said he was assaulted by plain clothes men at Labis Police Station about ten times. He was interrogated on 14.9.64 by P.W.12 and P.W.13. He made no complaint against P.W.12 and P.W.13 but said that after the interrogation he was beaten up by two or three plain clothes men. He was interrogated in the morning, afternoon and evening every day and beaten for no reason. He was not beaten up in Segamat. As regards the cautioned statement, he said that the Malay officer spoke to the Interpreter in Malay and the Interpreter spoke to him in Hokkien. Sometimes he could not understand the Interpreter but mostly he understood him. Ultimately he said that it was true that he made a statement to P.W.10 voluntarily after the caution was read to him.

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The second accused said he was assaulted by

Inspector Liew (P.W.4). He was interrogated on 14.9.64 and 15.9.64 by P.W.12 and P.W.13. On the night of 15.9.64 he was taken to Labis Police Station where a man with a swollen face was shown to him and he was asked whether he knew the man. On the morning of 16.9.64 he was interrogated by a fat Chinese who explained to him why the British soldiers were in Malaysia. He thought the main purpose of this fat man was to ask him (the accused) to co-operate. Several questions were put to the second accused to get him to say what his real complaint was, but he made no allegations about anybody threatening him or making any inducement or promise to him with a view to obtaining a statement from him. With regard to the cautioned statement itself, he said that he made a statement because he was questioned. He said that he could not remember whether the words of the caution were read out to him in Hokkien. He found it difficult to understand in what dialect the Interpreter was speaking to him, so he answered directly to P.W.10.

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Having considered all the evidence relating to the cautioned statements, I was satisfied that no pressure was brought on either of the accused to make a cautioned statement. I was also satisfied that they were not assaulted in Labis or Johore Bahru as alleged. No questions were put to P.W.4 about the alleged assault. The first accused, as I have said before, in fact admitted that he made a statement voluntarily. I was satisfied that the second accused also made a statement of his own free will. I therefore allowed the cautioned statements to be put in evidence. The cautioned statements of the two accused speak for themselves.

Both accused made statements from the dock. The first accused said that the statement which he gave to P.W.10 on 17.9.64 was all untrue, and so was the evidence given against him by the two Indonesians as he was never at any time with them and he did not know them. The second accused also said that the statement he gave to P.W.10 on 17.9.64 was all untrue as was the evidence of the two Indonesians.

Having read through the cautioned statements by the accused and in the light of the evidence given against them by the Indonesians, I was satisfied that what they said in their cautioned statements was substantially true. They appeared to

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continued.

be statements of persons who were very repentant for what they had done.

It was argued by defence counsel that the first accused had obtained the firearm and the ammunition in a lawful manner and for a lawful purpose in Indonesia and that there was no evidence that he acted in a manner prejudicial to public security. The obtaining and the carrying of firearm and ammunition might have been lawful in Indonesia, but the onus of proving that it was lawful for him to carry a firearm and be in possession of ammunition in Malaya was upon the accused. No attempt was made to furnish that proof. I did not think there was any substance in the argument that the accused had not acted in a manner prejudicial to public security, as the circumstances under which the accused came to this country raised a reasonable presumption that he intended to act with the members of the Indonesian Armed Forces in a manner prejudicial to public security.

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It was argued by defence counsel for the second accused that there was no proof that the accused was found in a Security Area, as the landing may not have taken place in Johore. In my opinion, evidence of this was furnished by the evidence of the capture of some of the witnesses and the accused themselves at places which could not have been more than 20 miles from where they landed. That was a clear indication that the landing took place in some part of the Johore State which had been declared as a Security Area.

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In the result the prosecution had proved its case against the accused and the defence raised no doubt in my mind as to the truth of the prosecution case. I therefore found each accused guilty, convicted him on each of the three charges against him and sentenced him to death on each charge.

Kuala Lumpur,

(S. S. Gill)

JUDGE

13th October, 1965.

HIGH COURT, MALAYA.

40

Enche Ajaib Singh for Public Prosecutor.

Enche H. Wilson for the first accused, assigned.

Enche Tan Wee Tiong for the second accused,
assigned.

signed.

NO. 20

PETITION OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

CRIMINAL APPEAL No. X12 OF 1965

Between

Ng Seng Huat @ Ng Ching Kim
Lee Ching Sai @ Lee Boon Kheng

Appellants

10

and

Public Prosecutor

Respondent

PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE FEDERAL COURT

20 Ng Seng Huat @ Ng Ching Kim and Lee Ching Sai @ Lee Boon Kheng, the appellants above-named 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 27th day of September, 1965, state the following grounds for their said appeal:-

1. The evidence adduced by the prosecution through three Indonesian witnesses conclusively proved the fact that none of the 48 persons who were airdropped and subsequently landed in Malaya in the early hours of the 2nd day of September, 1964 knew what their destination was when the plane took off from Djakarta. On this issue, the evidence of the Indonesian witnesses was as follows:-

30

P.W.6 (Sergeant Ismail) deposed in the following words:-

"When I left Djarkata, I did not know where I was going. NO ONE TOLD ME WHERE WE WERE GOING NOT EVEN IN THE PLANE BEFORE WE JUMPED OUT. BEFORE WE BOARDED THE PLANE WE WERE TOLD WE WERE GOING FOR TRAINING."

P.W.7 (Djamhir) testified in the following

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continued.

words:-

"The Plane took off from Djakarta at about 11 p.m. on 1.9.1964. I did not know the destination of the plane."

He further stated "Before I entered the plane I did not know where I was going."

P.W.8 (Iber Ali) another Indonesian witness stated on oath as follows:-

"I was not told where we were going..... Before I got into the plane, I was not told where I was going. Nobody was told within my hearing."

10

P.W.5 (Yusof) stated in the following words:-

"I do not know why they put a Chinese in my section and why he was armed with a bren gun."

In the light of the foregoing evidence adduced by the prosecution, it will be argued that your appellants were not guilty of the alleged offences. In so far as your appellants were concerned, their presence in the State of Johore on the alleged date and time was an accident and/or a misfortune. In the circumstances that existed then, the presence of your appellants at the said place and time was entirely fortuitous, unexpected, unintentional and beyond their control and power.

20

In the alternative, it will also be argued that your appellants had committed no offence on the alleged date, time and place in view of the existence of a genuine mistake of fact in the mind of your appellants at the relevant period.

In the further alternative, it will also be argued that in the circumstances of this particular case, the possession of the incriminating article fell within the definition of lawful excuse as laid down in the Internal Security Act, 1960.

30

2. (a) In the light of the facts enumerated in the preceding ground, the learned trial Judge erred in law when he stated in his grounds of judgement that "the onus of proving that it was lawful for him to carry a firearm and be in

possession of ammunition in Malaya was upon the accused....."The learned trial Judge seriously erred when he failed to direct his mind that where such proof was available or clearly discernible from the evidence adduced by the prosecution, then the defence could wholly rely on such evidence.

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10 (b) In the circumstances of this case, the learned trial Judge also seriously erred in law when he stated in his grounds of judgment that there was no substance in the argument that your appellants had not acted in a manner prejudicial to public security. There was no evidence whatsoever on the record to indicate that your appellants ever intended to do any acts prejudicial to the security of this country. On the contrary, the witnesses for the prosecution proved that they even did not known of their destination.

In the result, the conviction of both your appellants ought to be set aside.

20 3. (a) All the three charges on which your appellants were 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
30 Johore as prohibited air space as required by the appropriate laws. In the absence of a proclamation or order to cover air space on the date of the alleged offences, your appellants had committed no offence in law. In the result, the conviction ought to be set aside.

(b) The prosecution had failed to prove that the place where your appellants landed was in the security areas as proclaimed by Yang di-Pertuan Agong in Legal Notification No. 245 of 1964.

40 4. As enumerated in the 1st ground, the prosecution failed to place before the trial Court even a jot or tittle of evidence to prove that your appellants intended to do any act prejudicial to public security of Malaya. None of them even knew that they were coming to Malaya. In the result, the charge of consorting against both your

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continued.

appellants was devoid of any substance and hence the conviction on this charge was bad in law.

5. The incriminating articles were left in the jungle. They could not be traced. In the result, your appellants could not have any physical control or possession of these weapons.

6. The learned trial Judge gravely erred in law and in fact when he accepted the evidence of the Indonesian witnesses on the issue of identification for the following reasons:-

10

A. IDENTIFICATION EVIDENCE WITH REGARD TO
1ST APPELLANT

(i) P.W.6 (An Indonesian sergeant) deposed in the following words:-

"I also said that among the Chinese here was one named Ng Seng Huat. I said this because his photograph was shown to me."

(ii) P.W. 5 (another Indonesian witness) stated that there was one Chinese among them and he further continued "I do not know his name and I cannot identify him." This was despite the fact:- (a) the evidence adduced by the prosecution that at all material times from 11.00 a.m. on the date of landing (i.e. 2nd day of September, 1964), both your appellants were together until they were arrested some 11 days later; (b) the evidence of the said Indonesian witness (P.W.5) that the same Chinese (i.e. Appellant No. 1) remained with him for 3 days in the Jungle.

20

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(iii) The evidence of P.W.6 (Sergeant Ismail) was seriously discredited and shaken in cross-examination. Even the learned trial Judge was constrained to state that he "should treat the evidence of this witness with caution and perhaps with suspicion."

(iv) P.W.5 (Yusof) deposed that he "did not know what the Chinese was known as. I called him a friend." He also stated that he "first met the Chinese in the plane when it was about to take off."

40

(v) The evidence of the prosecution also showed that "it was dark in the plane".

In the Federal Court in Malaysia

B. IDENTIFICATION EVIDENCE WITH REGARD TO THE 2ND APPELLANT

No.20

(i) Indonesian witness Djamhir (P.W.7) deposed in the following words:-

Petition of Appeal
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"I met the Chinese from my section. He remained with me for about 1 hour and then separated from me."

10 (ii) This witness (P.W.7) also stated that "before recording the statement, I was shown photograph of the 2nd accused." He also said that after he was shown a photograph of the 2nd appellant, there was an identification parade at the Depot.....I was asked to identify the man in the photograph.

20 (iii) This witness (P.W.7) further stated that he first saw the 7 Chinese in their group in the plane.

(iv) In the circumstances of this case, the holding of a proper identification parade was absolutely essential and no evidence on this vital issue was introduced by the prosecution. Furthermore, the purported parade was highly irregular and vitiated the proper identification of your 2nd appellant.

30 (v) Another Indonesian witness Iber Ali (P.W.8) stated as follows:-

"I first saw the 7 Chinese in the plane when we were about to take off from Djakarta..... It was night time when we took off."

(vi) This witness (P.W.8) also stated that he was asked to identify your 2nd appellant when he was in his cell with only 2 other persons.

40 In the result, the conviction of both your appellants were bad in law.

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7. (a) From the grounds of judgment it is manifestly clear that the learned trial Judge did not give much credence to the evidence of the Indonesian accomplices. This is evidenced in his grounds when he stated in the following words:-

"When considering the evidence of these accomplice witnesses, I had to consider whether there was any independent corroboration of their stories."

The only independent corroborative evidence the learned trial Judge could cite was the "finding of Malayan money in one dollar current notes on the two appellants at the time of their arrest."

10

In so directing his mind, the learned trial Judge erred in law when he held that this piece of evidence constituted independent corroboration of the accomplice witnesses.

(b) The learned trial Judge seriously erred in law when he accepted the evidence of an accomplice (P.W.5) as corroborative evidence of another accomplice (P.W.6).

20

In the result, the conviction of both your appellants ought to be set aside.

8. The statements purported to have been made by both your appellants ought not to have been made admitted in evidence for the following reasons:-

(i) The learned trial Judge stated in his grounds of judgment that your 2nd appellant made statements because he was questioned. The notes of evidence recorded by the learned trial Judge shows that a police detective sergeant, P.W.11 (Chee Kee Fong, the police interpreter used by the recording officer P.W.10) administered the caution to both the appellants in Hokkien dialect. This witness (P.W.11) who is a Cantonese used the Cantonese word for the vital word "question" when he administered the caution to both your appellants whose mother tongue is Hokkien. In the result, the full significance of the caution purported to be administered by P.W.11 (Chee Kee Fong) could not have been

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grasped or understood by both your appellants. Hence the caution is bad in law.

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10 (ii) The 1st appellant stated on oath that a few days before the taking of the statement, he was under heavy pressure and that he was assaulted, threatened and warned. He also stated that he was shown a number of photographs consisting of dead bodies. He also deposed that he was afraid to complain and if he complained he would be further assaulted.

In the circumstances, his statement could not have been a free and voluntary statement.

20 (iii) The 2nd appellant stated on oath that he was shown a dead body on a stretcher and that the eyes of the dead body were covered up and there was blood on the chest. He was also asked whether he could identify another person with a swollen face. He also testified that he was assaulted and fisted on days prior to his statement was recorded.

In the circumstances, his statement could not have been a free and voluntary statement.

and the appellants above-named therefore pray that the conviction and sentence on them may be set aside.

30 Dated this 28th day of October, 1965.

SD: (T.T. RAJAH)

SOLICITOR FOR THE APPELLANTS

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

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NO. 21

NOTES OF ARGUMENT

No.21
Notes of
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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR
(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No. X.12 of 1965
(Muar High Court Em: Criminal Trials Nos.19 & 20/65)

- 1. Ng Seng Huat alias Ng Ching Kim
 - 2. Lee Ching Sai alias Lee Boon Kheng
- } Appellants

v.

10

The Public Prosecutor

Respondent

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

NOTES OF ARGUMENT RECORDED BY THOMSON, LORD
PRESIDENT, MALAYSIA

11th November, 1965.

For Appts: Rajah.

For Respt: Hamid Azmi.

Rajah:

20

This is different from previous occasions - a
different aircraft.

No evidence of acts to prejudice security.

Appts. refused to give instructions to counsel
until 3rd day of trial.

There was no knowledge.

Williams "Criminal Law" (2nd Ed.) p.151.

They were told they were going for training. Not
even evidence they went to Indonesia for training.

On intention:

30

Sohoni (15th Ed.) II 2010.

There was no evidence of any plan to do any act after they landed.

No evidence as to intention of appts. at the material time.

R. v. Steane 32 C.A.R. 61.

Judge was wrong in saying that onus of proving lawful excuse was on appts.

10 No evidence of any intention to do prejudicial acts.

Not pressing the airspace argument.

Appts. were arrested near Labis. Had been in jungle from 2nd September about 2 a.m. until 13th September, when they were arrested. It is 12 miles from Labis to Pahang border. We do not know where they landed and Pahang was not a security area.

The firearm and ammunition were left in the jungle and could not be traced. After they were lost they were not in the possession of anybody.

20 Evidence of Indonesian witnesses on identification should not have been accepted. A photograph was shown to one of them.

P.W.6 identified after being shown a photo.

Archbold § 1009.

Dwyer & Ferguson 18 C.A.R. 145.

Haslam 19 C.A.R. 59.

Loke Soo Har v. P.P. (1954) M.L.J. 149.

Chooi Kam Woh v. R. (1954) M.L.J. 264.

No police evidence of identification parade.

30 Williams 8 C.A.R. 84.

No attack on ground of photographs on P.W.5 or P.W.8.

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Judge did not accept Indonesians as witnesses of truth. I say so because he looked for corroboration.

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Argument
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continued.

Only corroboration was the money but that is not sufficient - it was an innocent circumstance.

Evidence Ord. s.114(b). - "particulars" is in the plural.

Judge treated one accomplice as corroborating another.

Statements by appts. shd. not have been admitted. 10

Interpreter said he administered caution in Hokkien but he used the Cantonese word for "question". Caution must be intelligible -

Poon Heong v. P.P. (1949) M.L.J. 114

Liew Ching v. P.P. (1949) M.L.J. 184.

Appts. gave evidence, which should have been accepted of threats and assaults.

Also shown dead bodies.

Case for appts.

Hamid:

20

On question of mistake -

Cotterill v. Penn (1936) 1 K.B. 53

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

Should examine whole history of appts. from time they went to Indonesia to ascertain intention.

So there can be no question of mistake being relevant. They joined the Indonesians and trained as paratroopers and that was prejudicial. If they came within a security area they had to take the consequences.

30

P.W.6 was captured within the security area.

P.W.5 could identify (1) and not (2) because

(1) was in his group and (2) was not.

As to alleged discrepancies in the police statements no police statements were proved.

I agree photos should not have been used but on this I refer to:

Seiga 45 C.A.R. 220.

Here also there was other evidence of identification. Anyhow the photo was shown to the witness 7 months before the time.

10

As regards the caution it is said that the usual "question" was spoken in Cantonese and not Hokkien. But this is immaterial.

As regards corroboration this was to be found in the money.

(1) admitted his statement was voluntary.

The interpreter had passed in Hokkien and was an experienced interpreter.

Case for respt.

Rajah:

20

In Seiga's case there was other evidence.

The word "question" is the actual word in the Statement.

C.A.V.

Intld. J.B.T.
11.11.65.

TRUE COPY.

(Tneh Liang Peng)

In the
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of Malaysia

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Notes of
Argument
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continued.

In the
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No.21
Notes of
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continued.

FEDERAL COURT CRIMINAL APPEAL NO. X 12 OF 1965

(Muar Emergency Criminal Trials Nos. 19 & 20 of 1965)

1. NG SENG HUAT @ NG CHING KIM
2. LEE CHING SAI @ LEE BOON KHENG } Appellants

vs.

Public Prosecutor

Respondent

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

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

10

T.T. Rajah for appellants

A. Hamid, D.P.P. for P.P.

Rajah: Different plane from Tan Hua Lam.

No Lt. Sutikno.

Nothing to show that appellants were going to do anything prejudicial.

- cautioned statement.

- no instructions given to their counsel for 2 days.

1st ground: none of the paratroopers knew of the intended destination.

20

Glanville Williams, 2nd Ed., p.151 - re "mistake" - ignorance is lack of true knowledge.

Mistake destroys the intentional nature of an act.

- re P.W.6 - p.14 line 39

- P.W.7 - p.15 line 36, p.19 line 16

- P.W.8 - p.20 line 8

- P.W.5 - p.12 line 1

30

No evidence of "object" in going to
Indonesia - (cf. Tan Hua Lam) - p. 36 B2 -
"Kalong".

p. 77 line 4

- genuine mistake of fact - circumstances
distinguish this case from the others

"lawful excuse" -

Sohoni, Vol.II, p.2010 - re intention.

Proof of intention - onus on prosecution to
prove mens rea.

Rex v. Steeve, 32 C.A.R. p.61

Archbold, p.1010.

Ground 2 - (a)

(b)

Ground 3 - air-space

(b) in security area? what proof?

Labis from Pahang - miles?

Pahang not security area - benefit
of doubt to accused.

20 Ground 4 - is repetitive as to intention.

Ground 5 - no possession or control of the arms
and ammunitions.

Ground 6 - identification by Indonesians on
identification of 1st appellant.

P.W.6 - p.14 line 24

P.W.5 -

P.W.5 saw both appellants for 3 days,
yet could not identify.

p.12 line 4

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of Malaysia

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Notes of
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continued.

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No.21

Notes of
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continued.

p.14 line 44 "dark in the plane" (p.17 line 14)

p.11 line 26 - first meeting in plane.

P.W.6 - p.30 line 3

p.94 - Ismail Marjulu re Ng Seng Huat

Re 2nd appellant:

P.W.7 - photograph shown - p.16 line 12

Dwyer & Ferguson, 18 C.A.R. 145, 147

p. 17 line 5

p. 18 line 43 - 19 line 12

Archbold, p.1009

10

R. v. Haslam, 19 C.A.R. 59

Loke Soo Hai, (1954) M.L.J. 149

Chooi Kam Woh, (1954) M.L.J. 264

15 persons - 3 Chinese, 12 Indonesians.

P.W.7 - p.18 line 42 (Djambir)

Photo of 1st appellant shown to P.W.6.

Photo of 2nd appellant shown to P.W.7.

Williams, 8 C.A.R., p. 84.

No criticism re: P.W.5 & P.W.8.

Photos shown to P.W.6 and 7

20

But re P.W.8 - see P.22 line 7

(identification among 2 others)

Ground 7 - independent corroboration - the finding
of \$1 notes.

Woodroffe, p.1271

1st appellant had \$300

2nd appellant had \$270

s.114 of Evidence Ordinance

The money alone insufficient corroboration -
the money had no incriminating significance -
p. 30 line 17

Ground 7 (b) - p.30 line 12

Ground 8 - inadmissibility of statements

(i) Cantonese - Hokkien (p.41) - in caution
re Form of caution see -

10

Poon Heng v. P.P., (1949) M.L.J. 114,115 &
Liew Ching (ibid) p. 184

(ii) pressure and ill-treatment?

p.23, 51

(but cf. p.53 C)

A. Hamid in reply:

1st ground - knowledge.

Cottrell v. Penn.

Tan Hua Lam.

20

Intention - relevant from time they
joined Indonesian Army and stayed on
in Indon. army.

Defence of mistake not available.

Site of Landing - p.13 line 21 (P.W.6)

Identification of 2nd Appellant -

P.W.5 could identify 1st accused but
not 2nd accused.

Failure to identify 2nd - why to his
discredit.

30

Re photo shown to P.W.7 before identifi-
cation -

In the
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Notes of
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In the
Federal Court
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Segar - 45 C.A.R. @ 220 @ 224

Cautioned statement:

Caution - one word not fatal even if
erroneous.

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continued.

Corroboration -

The \$1 notes found provided corrobor-
ation.

p. 53 C - statement voluntary by 1st
accused.

p. 57 C3 - 2nd accused.

10

Rajah: re Cottrell v. Penn.

Photos - a gap in time (Segar)

In instant case different.

C.A.V.

(Sd) H.T. Ong.

Certified true copy,
Signed.
(B.E. Nettar).

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

20

FEDERAL COURT CRIMINAL APPEAL NO. X 12 of 1965
(Muar Emergency Cr. Trials Nos. 19 & 20/1965)

- | | | | |
|----|--------------------------------|---|------------|
| 1. | Ng Seng Huat @ Ng Ching Kim | } | Appellants |
| 2. | Lee Ching Sai @ Lee Boon Kheng | | |

v.

Public Prosecutor

Respondent

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

NOTES OF ARGUMENT RECORDED BY SUFFIAN J.

11 November 1965 in Kuala Lumpur.

In the
Federal Court
of Malaysia

No.21

T.T. Rajah for appellants

Hamid Azmi D.P.P. for respondent

RAJA ADDRESSES

Notes of
Argument
18th April
1966 -
continued.

Ground 1

Evidence here that none in plane knew they were coming to Malaysia.

10 Until 3rd day of Trial, accused gave no instructions to their assigned counsel.

No knowledge on part of accused

Glanville William's 2nd edition, p.151 (bottom)

Refers to evidence set out in written ground 1.

Refers to p.72 - appellant 1 only went to get a job on a Kelong. When he got to Indonesia he was given training. Could he have refused training. He did not go to Indonesia conscientiously nor did he return here conscientiously. Refers to p.79 line 1 - appellant 1 has been cheated.

20 I have argued to same effect in previous appeals within last few days. But facts here stronger in favour of appellants.

Sohoni volume 2 p. 2010 on intention.

Appellants knew they had landed in Malaya only after they had landed.

Rex v. Steane 32 Criminal Appeal Report 61, 1947 KB 997.

Archbold para. 1010 on intent.

Ground No. 2

30 (a) See written ground

(b)

In the
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No.21

Notes of
Argument
18th April
1966 -
continued.

Ground 3

- (a) Airspace not part of Johore
- (b) No evidence where appellants were dropped.

Not arrested until 13.9.64 (Landing on 2.9.64).
Labis only 14-15 miles from Pahang border.
Appellants might have landed in Pahang.

Ground 4 Refers to written ground

Ground 5 " " " "

Ground 6

Identification of appellant 1 by Indonesians 10
unreliable.

(i) After appellant 1's arrest, P.W.6 shown
appellant 1's photo. p.14 line 24.

(ii) P.W.5's evidence unreliable p.12 line 9
p.14 line 44 -dark in the plane. Also p.17 line 44
p.11 line 22 -P.W.1 met appellant 1 for first
time in the plane.

(iii) P.W.6 discredited. Refers to p.30, p.94.

(iv) and (v).

Identification of appellant 2 by Indonesian 20
witnesses unreliable

Archbold para.1009

R. v. Dwyer & Ferguson 18 Criminal Appeal Report
145, 147

R. V. Haslam 19 Criminal Appeal Report 59, 60

1954 M.L.J. 149 Loke Soo Ha v. P.P.

1954 M.L.J. 264

p.18 line 42

Appellant 1's photo shown to P.W.6

Appellant 2's photo shown to P.W.7.

Identification of appellant 2 by P.W.8 unsatisfactory p.22

8 Criminal Appeal Report 84, 88

On question of photos, I only attack evidence of P.W.6 and P.W.7. Only they were shown photos. As to P.W.8, he was asked to identify appellant 2 when appellant 2 was in cell with 2 others - p.22.

In the Federal Court of Malaysia

No.21

Notes of Arguments
18th April
1966 -
continued.

Ground 7

10 (a) Judge did not accept accomplices as reliable without corroboration.

Possession of money is of no criminal significance

Woodroffe cited yesterday.

Appellant 1 had \$300 in pocket when arrested

Appellant 2 had \$270 in pocket when arrested

S.114 Evidence Ordinance 111(b)

(b) Refers to p.30 line 12.

Ground 8

20 Statements should not have been admitted

(i) Refers to p.41C - interpreter uses Cantonese word not Hokkien for "question" - statement given by appellants in Hokkien.

Caution must be intelligible to accused.

Here no reference to "question" in the caution - so caution void. 1949 M.L.J. 114 Poon Heong

1949 M.L.J. 184

(ii) Appellant 1 under duress

30 Refers to p.51G

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Refers to p.53C - if appellant 1 voluntary
he did not know his rights - if he is truthful here,
he must have been told the truth as to beating.

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(iii) Refers to p.54.

Notes of
Argument
18th April
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continued.

D.P.P. ADDRESSES

As to knowledge, I refer to Tan Hua Lam's case.

Intention of appellants should be considered
from time they got into Indonesian Army. They
remained. They did not leave.

Position of landing p.13 line 21.

10

P.W.6 Ismail was in jungle with appellant 1
for a week. Pahang border not less than 20 miles
away.

P.W.5 identified appellant 1 but not appellant
2.

P.W.7 shown photo - but see 45 Criminal Appeal
Report, 220, 224. He was asked to identify
appellants in Court 7 months later.

Statement

The Cantonese for "question" used does not
invalidate the caution.

20

Corroboration

Appellant 1's statement - he finally admitted
giving statement voluntarily, p.53

p.57

Appellant 2's evidence p. 57C.

Interpreter's knowledge of Hokkien not seriously
challenged.

RAJA REPLIES

C.A.V.
28 Dec. '65 in K.L.

30

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

Cr. Appeal X.12/65

Counsel as in above appeal

Written judgment delivered by L.P.

M.S.

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Notes of
Argument
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continued.

NO. 22

JUDGMENT OF THOMSON, L.P., MALAYSIA

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

No.22

Judgment of
Thomson L.P.
Malaysia
18th April
1966 -
continued.

10

Federal Court Criminal Appeal No:X.12 of 1965
(Muar High Court Em: Criminal Trials Nos. 19 & 20/65)

- 1. Ng Seng Huat alias Ng Ching Kim
 - 2. Lee Ching Sai alias Lee Boon Kheng
- } Appellants

v.

The Public Prosecutor

Respondent

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

JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA

20

This is another appeal arising out of the airborne Indonesian invasion which took place near Labis in Johore on the night of 1st/2nd September, 1964. The two appellants were alleged to have been members of the party of armed men who were dropped from one of the Indonesian aircraft and in consequence they were each prosecuted for three offences under the Internal Security Act, 1960.

30

In the case of the first appellant, Ng. Seng Huat, the charges were as follows:-

"1st Charge: That you between the 2nd day of September, 1964 and the 13th day of September, 1964, in a Security Area as

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proclaimed by the Yang di-Pertuan Agong vide Federal L.N. 245 of 17th August, 1964, namely Kampong Redong Ayer Panas, Labis, in the District of Segamat, in the State of Johore, consorted with members of the Indonesian Armed Forces who carried firearms and ammunitions in contravention of the provisions of section 58(1) of the Internal Security Act 18/1960, 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 you have thereby committed an offence punishable under section 58(1) of the Internal Security Act, No. 18/1960.

10

2nd Charge: That you between the 2nd day of September, 1964, and the 13th 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 Kampong Redong Ayer Panas, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession a firearm, to wit, a Bren Gun, without lawful authority and you have thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act, No. 18/60.

20

3rd Charge: That you between the 2nd day of September, 1964 and the 13th 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 Kampong Redong Ayer Panas, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession ammunition, to wit, 120 rounds of ammunition, without lawful authority and you have thereby committed an offence punishable under section 57(1) (b) of the Internal Security Act, No. 18/1960."

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40

In the case of the second appellant, Lee Ching Sai, the charges were as follows:-

"1st Charge: That you between the 2nd day of September, 1964 and the 13th day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong vide

10 Federal L.N. No. 245 of 17th August, 1964
 namely Kampong Tenang, Labis, in the District
 of Segamat, in the State of Johore, consorted
 with members of the Indonesian Armed Forces,
 who carried firearms and ammunitions in con-
 travention of the provisions of section 58(1)
 of the Internal Security Act, 1960, in circum-
 stances which raised a reasonable presumption
 that you intended to act with such members of
 the said Indonesian Armed Forces in a manner
 prejudicial to the public security and that
 you have thereby committed an offence punishable
 under section 58(1) of the Internal Security
 Act, 1960.

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 continued.

20 2nd Charge: That you between the 2nd day
 of September, 1964, and the 13th day of
 September, 1964, in a Security Area as pro-
 claimed by the Yang di-Pertuan Agong vide
 Federal L.N. 245 of 17th August, 1964, namely
 Kampong Tenang, Labis, in the District of
 Segamat, in the State of Johore, without lawful
 excuse had under your control a firearm, to
 wit, a sten gun, without lawful authority and
 you have thereby committed an offence punish-
 able under section 57(1)(a) of the Internal
 Security Act No. 18/1960.

30 3rd Charge: That you between the 2nd day
 of September, 1964 and the 13th 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 Kampong Tenang, Labis,
 in the District of Segamat, in the State of
 Johore, without lawful excuse had under your
 control ammunitions, to wit, 300 rounds of
 stengun ammunition, without lawful authority
 and you have thereby committed an offence
 punishable under section 57(1)(b) of the
 Internal Security Act, No. 18/1960."

40 Both appellants were tried together on all
 three charges and neither at the trial nor before
 this Court has any objection been taken to this
 course. In the event each of the appellants was
 convicted on all three charges against him and
 sentenced to death.

Against these convictions the appellants have
 now appealed.

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The case for the prosecution was as follows.

The appellants were arrested near Labis on 13th September, 1964. Ahmad Salleh and Yassin Kandol, two village labourers, said that on that day about 2 p.m. they were together near Labis when they saw two strangers coming out of a road that came from the jungle dressed in shirt and trousers. They were suspicious of these men because they were strangers and by reason of the invasion civilians had been forbidden to go into the jungle and so they followed them till they came to a Police party. They then pointed at the strangers and the Police arrested them. Neither witness identified either of the appellants as one of the strangers. 10

Corporal Mohamed Yasin said that on 13th September he was in charge of a Police patrol. About 2.40 p.m. he saw the appellants approaching and the two previous witnesses following them. One of the previous witnesses pointed at the appellants and he arrested them. He searched them and found that each of them had a packet of Malaysian currency in \$1 notes wrapped in plastic. He did not count these notes but later he handed them to Inspector Liew who did count them and found that the amount found on the first appellant Ng was \$300 and the amount found on the second appellant Lee was \$270. The second appellant, Lee, also had a Malaysian Identification Certificate. 20

Then there was the evidence of four Indonesian prisoners of war said to have been in the same aircraft as the appellants. 30

Yusof Suwarjo of the Indonesian Air Force said he was one of an armed party which left Jakarta by air and came straight to Malaysia. The party consisted of 48 persons, 41 Indonesians and 7 Malaysians, all in Indonesian uniform. The first appellant, Ng, was one of the party. He was the only Malaysian in the witness' section. He was carrying a Bren gun and ammunition but he could not say if he was carrying grenades. On a given signal all the party jumped from the aircraft including the first appellant. They landed in jungle and he and the first appellant were together in the jungle for two days. They then separated. The witness was captured about a month later and later he saw the first appellant at the Police 40

depot in Johore Bahru.

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10 Ismail Marjuki, a Sergeant in the Indonesian Air Force, said he was in the same aircraft as the last witness but did not see the first appellant in the aircraft. The aircraft left Jakarta for what was, so far as he was concerned, an unknown destination and in the early hours of 2nd September they all jumped from the aircraft. The witness was in the jungle for about a month when he was captured near Labis. While he was in the jungle he met the first appellant in company with the witness Suwarjo. The appellant was still wearing uniform and was carrying a Bren gun, ammunition and two grenades.

20 Djamhir Erop Ali, a soldier in the Indonesian Army, said he was one of the party of 41 Indonesians and 7 Malaysians who were in the aircraft that left Jakarta. Each of them had firearms, ammunition, grenades, civilian clothes and \$300 in Malaysian \$1 notes. The second appellant, Lee, was one of the party and was in the same section as the witness. He was carrying a Sten gun, ammunition and two grenades. When they left Jakarta they were told they were going for a training flight. They all jumped from the aircraft. After he landed he saw the second appellant on the ground and he still had his firearm and ammunition. After about two weeks the witness was captured and he saw the second appellant in the Johore Bahru prison.

30 Iber Ali, a private in the Indonesian Army, said he was a member of the armed party in the aircraft which left Jakarta about 10 p.m. on 1st September. All the party were armed with Bren guns or sten guns, ammunition and two grenades and each of them had \$300 in Malaysian \$1 notes. The second appellant, Lee, was one of the party and was in the same section as the witness. He was carrying a sten gun, ammunition and two grenades. After the party jumped he met the second appellant who was still carrying his firearm and ammunition. Later the witness was captured and saw the second appellant in the Johore Bahru prison.

40

Finally there were statements by the appellants made to the Police on 17th September which were admitted under section 75(1) of the Internal Security Act. There was acute controversy at the

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trial regarding the circumstances in which these statements were made and that will have to be considered later. The contents of these statements, however, were as follows.

The first appellant, Ng, said that one day in May, 1964, a friend approached him and asked him if he would like a job looking after some fishing stakes. He agreed and they went to the stakes which were in the sea off Pontian. Then he was taken to the Indonesian island of Balai. There with some 50 other young men, 10 of them from Pontian, he was given weapon training for ten days. He and the others were then taken to Jakarta where they were issued with rifles and uniforms and given about two months' training. 10

Then about 11 p.m. on 1st September he and others left Jakarta by aircraft. He himself was issued with a Bren gun, 120 rounds of ammunition, uniform, civilian clothing and rations. At first they were not told their destination but later were told it was Johore. In the aircraft they were each given \$300 in Malaysian currency. They jumped from the aircraft about 3 a.m. and landed in jungle. After daybreak he met the second appellant. They wandered about in the jungle and at one stage met some Indonesians who later left them. When their rations were exhausted they decided to come out of the jungle and he hid his weapon and ammunition and uniform under a tree. He came out of the jungle with the second appellant and was arrested. He now felt he had been cheated and wanted to settle down in this country. He had tasted the life of a soldier and did not like it at all. 20 30

The second appellant, Lee, said that in May, 1964, a friend offered him a job. He went with his friend to a beach where with others he was picked up by a motor boat and taken to the island of Balai. There they received weapon training for about ten days when they were taken to Jakarta where they received parachute training for about three months. On 1st September he and others were ordered to assemble. There were 48 persons in all, 41 Indonesians and 7 Malaysians, under the command of an Indonesian leader named Wagimin. About 11 p.m. they went on board an aircraft and each of them was given \$300 in Malaysian currency. They were not told their destination. Later they jumped from the 40

aircraft. At the time he did not know where they had landed but later he learned it was near Labis. He started to walk on a compass bearing. He met an Indonesian paratrooper hanging on a tree. Then he met the first appellant, Ng, and then they met other Indonesians. Later they separated from the Indonesians and decided to come out of the jungle. At the time he still had a Sten gun and 300 rounds of ammunition but he hid these things and his uniform under a tree.

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That was the case for the prosecution and in itself, leaving aside the statements of the appellants to the Police, it was if believed sufficient to justify the convictions of the appellants on the charges against them.

Nevertheless, although in the course of the prosecution case each of them gave evidence regarding the making of their statements to the Police, yet when the time came for them to make their defence at the close of the prosecution case neither of them gave evidence on affirmation, but each of them elected to make a statement not on affirmation.

The first appellant, Ng, said this:-

"I am 19 years old. On 17.9.64 the statement which I gave to P.W.10 was all untrue. The evidence given against me by the two Indonesians is also untrue. I was never at any time with the two Indonesians. I do not know the two Indonesians at all."

The second appellant, Lee, said this:-

"I am 24 years old. I am innocent. The statement which I gave to P.W.10 on 17.9.64 was all untrue. The evidence given by the two Indonesians against me is also untrue."

Perhaps not surprisingly the trial Judge found nothing in these statements to make him less than sure regarding the conclusions of guilt which he based upon the prosecution evidence.

Passing now to the grounds of appeal a number of these, though not abandoned, were not argued at

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length by reason of our decisions in previous cases.

The argument was advanced that the airspace of the State of Johore was not part of the security area established by the Proclamation of 17th August, 1964. In so far as airspace was concerned we rejected this argument for reasons we have stated previously. It is, however, to be observed that in the present case the prosecution evidence, if believed, made out possession of arms and ammunition and consorting not only in the airspace but also on the ground after the invading party had landed.

10

Again it was argued that because the members of the invading party had no knowledge that an invasion was intended there could be no question of any intention to act in a manner prejudicial to the public security of this country. Again, for reasons we have stated previously we rejected this argument.

There are, however, three grounds of appeal which merit some consideration.

20

In the first place, it was said that the Indonesians who gave evidence were accomplices and that although the trial Judge warned himself as regards the danger of accepting accomplice evidence without corroboration nevertheless he erred in holding there was corroboration and in particular he erred in finding corroboration in the uncontradicted facts that at the time of his arrest the first appellant was in possession of \$300 and the second appellant in possession of \$270 and that in each case the amount was made up exclusively of single dollar notes.

30

Here it was said that corroboration must be on "a material particular" implicating the appellants (Baskerville(1)), and that possession of money was a neutral circumstance that in itself could not connect the appellants with anything. But what was proved against the appellants (and this was not contradicted) was not just possession of money but possession in each case of a sum of about \$300 which was not only a large sum but consisted exclusively of notes of one denomination and one denomination only and that is the smallest denomination in circulation. We find it impossible to imagine,

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(1) [1916] 2 K.B. 658

and counsel for the defence has not suggested any circumstances in the normal life of this country in which any person could be found abroad in possession of a sum of money of such a size so made up without being able to furnish an immediate explanation. Casual unexplained possession of such sums is a fact which can only be described as something extraordinary and in the highest degree unusual. It was, however, capable of explanation here by the evidence of the Indonesian witnesses that each of the persons in the invading party was provided with such a sum so composed and that the appellants were both members of that party. And clearly to make such provision was a very obvious thing to do by way of preparing the party to make their way after landing in a hostile country which was the object of their being together equipped with arms and ammunition.

10

In the circumstances the trial Judge was clearly right in regarding possession of the sums of money in question as corroboration of the evidence of the Indonesian witnesses implicating each of the appellants in a material particular.

20

Then it was said that the evidence of identification of the appellants was unsatisfactory.

As regards the witness Ismail Marjuki there is no need to examine this complaint in detail for the reason that the trial Judge has said that though he did not doubt his veracity he would not have been prepared to regard his evidence of identification as wholly reliable.

30

As regards the other evidence of identification the complaint was based on admissions elicited from the witnesses in cross-examination that they did not know the appellants prior to 1st September and did not know their names, that they were shown photographs of the appellants and that no formal identification parades were held.

In our view these complaints are without substance. The witnesses said they saw the appellants on the ground as well as in the aircraft. It is clear that they were shown photographs with a view to connecting the appearance of the appellants, which they knew, with their names, which they did not know, for the purpose of recording Police statements to be supplied to the defence. And as

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regards identification parades it is difficult to see what useful purpose such parades would have served. It was not a case where witnesses were claiming to identify accused persons on the strength of having previously had a single sight of them. Here the witnesses had seen the appellants for some time before their capture and after their capture had seen them in custody. In the circumstances to have held formal identification parades would have been otiose. The question of whether identification was made out was largely a question of credibility and was a question for the trial Judge to decide and we can see no reason to interfere with his conclusions.

10

Finally there is the question of the statements made by the appellants to the Police, on 17th September, which it was said were wrongly admitted in evidence.

The appellants were arrested near Labis on 13th September. Inspector Liew said that on the 14th at Labis he questioned them both for intelligence purposes but denied that he used any threats, inducements or promise or applied any pressure to them. Inspector Foong said that later the same day at Johore Bahru with Inspector Chan he further questioned the appellants for intelligence purposes. Both the appellants were co-operative and answered questions willingly. At no time was any threat, inducement or promise made to either of them and no violence was used.

20

Then Superintendent Abdullah said that on 17th September he interviewed the two appellants separately at Segamat Police Station, in each case with the assistance of Sergeant Chee as interpreter. At neither interview was any other person present.

30

He saw the first appellant, Ng, at about 11.35 a.m. At no time did he make any threat, promise or inducement to this appellant. He read out the statutory form of caution in Malay and Sergeant Chee interpreted it into a Chinese language. He then asked the appellant if he wished to make a statement. The appellant said he did. He then made a statement in a Chinese language which Sergeant Chee interpreted into Malay and the witness wrote down in English. The statement was interpreted back to the appellant who said it was

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correct. He finished recording the statement about 12.45 a.m.

About 3.15 p.m. the same day he saw the second appellant, Lee. Again no threat, promise or inducement was held out. He administered the statutory caution and the appellant elected to make a statement which was recorded in the same way as the statement of the first appellant.

10 Sergeant Chee said that he was present at the interviews between Superintendent Abdullah and the two appellants on 17th September and acted as interpreter. At neither interview was any other person present. His native tongue was Cantonese but he knew Hokkien and had passed a departmental examination in that dialect. As regards the Malay language he had no difficulty in conversing with Superintendent Abdullah.

20 He asked the first appellant what language he wished to speak and the appellant said Hokkien and the interview proceeded in that language. He interpreted the statutory caution to the appellant. The appellant then made a statement which he interpreted into Malay. The statement was then interpreted back to the appellant who adhered to it. No threat, inducement or promise was made.

30 Later he asked the second appellant what language he wished to speak and he also said he wished to speak in Hokkien. The caution was administered to him and he made a statement which was interpreted, written down and interpreted back to him and he adhered to it. Again there was no threat, promise or inducement.

At this stage both the appellants gave evidence regarding the statements made by them.

40 The first appellant, Ng, said that at Labis on 13th September, after his arrest, he was beaten by a number of men in plain clothes including Inspector Liew. They questioned him regarding the Indonesian forces. They showed him a dead body and said that if he did not co-operate he would be like the dead body. The following day he was taken to Johore Bahru where he was interviewed by Inspector Foong and Inspector Chan. They did not assault him and he made a statement to them. They said, however, that

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his statement was wrong. He was then beaten by some men in plain clothes. The next day or two he was beaten three times daily. He was told he was not speaking the truth and that his statement did not coincide with one made by the second appellant, Lee. He was also shown photographs of dead bodies, some with bullet holes and some with hands missing. On the night of 16th September he was taken to Segamat. The next morning he was taken to an office where there were five or six men in plain clothes and an officer in uniform whom he pointed out as Superintendent Paul Raj who was sitting in Court. He admitted that the caution was read out to him and that he made a statement. He made no complaint of beating and his only complaint was that sometimes he did not understand the interpreter very well but he said that the reason he made the statement was that he had been under heavy pressure previously, he had been beaten and threatened. Later, in cross-examination he admitted that he made the statement voluntarily after the caution was read to him. 10 20

The second appellant, Lee, said that at Labis on 13th September he was questioned by Inspector Liew who told him he was telling lies and beat him. He and the first appellant were then shown a dead body and were told if they did not co-operate with the Government they would be like the dead body. The following morning he was taken to Johore Bahru where he was questioned by Inspector Foong and Inspector Chan. They told him he was telling lies but did not do anything to him. The following day, 15th September, he was again questioned by Inspector Foong and Inspector Chan and again nothing happened to him. That night about midnight he was taken back to Labis where he was asked if he could identify a man with a swollen face. He was then taken back to Johore Bahru and had no sleep that night. The following morning, 16th September, he was questioned by a fat Chinese who asked him to co-operate with the Government. He was then asked some questions but was not assaulted and was not threatened in any way. The following day, 17th September, he was back at Segamat where he was questioned by Superintendent Abdullah. He admitted that he was cautioned but said he did not understand the caution fully. He made his statement because he was questioned and had previously been assaulted. 30 40

On that material there is no real cause to doubt

the evidence of Superintendent Abdullah and his interpreter as to the circumstances in which the statements of the appellants were taken on 17th September. There is no allegation of any impropriety of any sort and little if any possibility of the caution which was admittedly administered being misunderstood.

10 There was, however, acute conflict of testimony between the prosecution witnesses and the two appellants as to what happened to the appellants while in custody prior to 17th September. That evidence was examined in detail by the trial Judge who came to the conclusion that neither of appellants was assaulted on 13th September while in the custody of Inspector Liew and neither of them was assaulted subsequently while they were in the custody of Inspector Foong and Inspector Chan at Johore Bahru. He was also satisfied that the statutory caution was properly administered to both
20 the appellants by Superintendent Abdullah and his interpreter. In the circumstances he came to the conclusion that the statements were made voluntarily and after administration of the statutory caution and with this conclusion we see no reason to quarrel.

30 In any event we would observe that quite apart from the statements there was ample evidence which, if believed and it was believed by the trial Judge, was sufficient to support the conclusions at which he arrived. In our view it was evidence on which no reasonable trier of fact could have come to any other conclusions.

The appeals are dismissed.

Sgd. J.B. THOMSON

Kuala Lumpur,
28th December, 1965.

LORD PRESIDENT,
FEDERAL COURT OF MALAYSIA.

T.T. Rajah Esq. for appellants.
Enche Abdul Hamid bin Azmi, D.P.P. for respondent.

In the
Federal Court
of Malaysia

No.22

Judgment of
Thomson L.P.
Malaysia
18th April
1966 -
continued.

In the Judicial
Committee of
the Privy
Council

NO. 23

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

No.23

COURTS OF JUDICATURE ACT, 1964
(No. 7 of 1964)

ORDER UNDER SECTION 76(1)

Order allowing
special leave
to appeal in
forma pauperis
to His Majesty
the Yang Di-
Pertuan Agong
7th March
1967.

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

10

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 (1) Ng Seng Huat alias Ng Ching Kim and (2) Lee Ching Sai alias Lee Boon Kheng in the matter of an Appeal from the Federal Court of Malaysia (Appellate Jurisdiction) between the Petitioners and the Public Prosecutor setting forth that the Petitioners desire 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 their Appeal against convictions in the High Court of Malaya at Muar in the State of Johore on the 13th day of October 1965 on charges 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 them 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:

20

30

THE LORDS OF THE COMMITTEE in obedience to the said Orders in Council have taken the humble Petitions 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 Petitioners to enter and prosecute their

40

Appeal in forma pauperis against the Judgment of the Federal Court of Malaysia dated the 28th day of December 1965:

10 And Their Lordships do further report that the authenticated copy under seal of the Record produced by the Petitioners 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

Sd: Jun (Dr.) Ismail Bin Dato Abdul Rahman

20 MINISTER OF JUSTICE.

(F.C. Crim. App. X.12/65).

In the Judicial Committee of the Privy Council

No. 23

Order allowing special leave to appeal in forma pauperis to His Majesty the Yang Di-Pertuan Agong
7th March 1967 -
continued.

ExhibitsList of Exhibits
Undated.LIST OF EXHIBITSIN THE FEDERAL COURT OF MALAYSIA
F.M. CRIMINAL APPEAL NO.X.12 OF 1965NG SENG HUAT @ NG CHING KIM)
LEE CHING SAI @ LEE BOON KHENG) Appellants

AGAINST

PUBLIC PROSECUTOR Respondent

(In the matter of Muar Emergency Criminal Trial
No. 19 & 20 of 1965)LIST OF EXHIBITS

10

<u>Number</u>	<u>Description</u>	<u>Whether or not</u>	
A1	Consent under Sec.80 of Act.18/60	Included	
A2	Consent under Sec.80 of Act.18/60	Included	
B1	Certificate under Reg.4 of E.(C.T.)R., 1964	Included	
B2	Certificate under Reg.4 of E.(C.T.)R., 1964	Included	
C	Certificate for joint trial	Included	20
P1	Identity Card No. 0027210	Not Included	
P2	Cash \$300.00	Not Included	
P3	Cash \$270.00	Not Included	
P4	Caution Statement of Ng Seng Huat	Included	
P5	Caution statement of Lee Ching Sai	Included	
D6	Statement of Ismail bin Marsuki	Included	

EXHIBITSP.4. - CAUTION STATEMENT
OF NG SENG HUAT

POLIS DI-RAJA MALAYSIA

PERCHAKAPAN DALAM PEMEREKSAAN

Exhibits"P.4."Caution State-
ment of Ng
Seng Huat
17th September
1964.

No. Report 479/64 Rumah Pasong Labis

Perchakapan bagi. Ng Seng Huat @ Ng Ching Kim

Nama bapa. Ng Yean Kim laki2

Bangas: Hokkien. Tempat di-peranakan, Pontian. Johore.

10 Umor. 18 tahun. Kerja. Rubber tapper.

duduk di-Batu 35, Jalan Pontian, Johore

Di-terima oleh ASP Abdullah. di-Office Segamat

pada 17.9.64 jam 11.35 a.m.

Jurubhasa D/s 395 Chee Kee Fong daripada Hokkien

Kepada. Malay

Kata-nya:

20 Before recording the statement of the accused,
I administer the following caution to the accused
in the Hokkien language through the interpreter
D/S 395 Chee Kee Fong of the Police Station
Segamat.

"It is my duty to warn you that you are not
obliged to say anything or to answer any question
but anything 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 a statement.

Sd. CHEE KEE FONG, D/S 395

INTERPRETER.

Sd. ABDULLAH BIN AWANG
ASP

Investigating Officer.

17.9.64.

Exhibits

"P.4."

Caution
Statement of
Ng Seng Huat
17th
September
1964 -
continued.

I was born in Pontian Johore in 1946. Educated at Pei Chun School Pontian up to Form two. I left school in 1962. After leaving school I worked as a rubber tapper on my father's small holding.

I am not married yet. I live with my parents at the above address. My parents are still alive.

At about 3 or 4 p.m. in May, 1964 one named Hock Soon of Pontian, actual address not known, came to the Club and asked me whether I wanted job looking after a "Kelong". I agreed to work with him and I followed him to the "Kelong" in sea off Pontian coast. I boarded a fishing boat at about a little past 7.00 p.m. same day. Then I was taken to an island which I later knew as "BALAI". I was alone then. On arrival I slept for the night and the following morning I was given weapon training and parades. There were about 50 persons in all and amongst them there were about 10 persons from Pontian. The persons whom I knew were:

- (1) Tan Tian Pa
- (2) Tan Tian Seng
- (3) Chin Meng
- (4) Sin Chuang

20

Others I do not know their names. All of us are young men, their ages were around 20 years old.

We were trained there for about 10 days and then we were sent to Jakarta, and then to Bandung by lorry.

At Jakarta we received our training for about two months. We have been issued with uniform and a rifle each. The training was much harder than the previous ten days.

30

The training period each day was from 8.00 a.m. to 1.00 p.m. and from 4.00 p.m. to 6.00 p.m. At night there was no training. We were also trained in sten guns and bren guns.

I was in section No. 2. There were about 40 to 45 persons in all. Seven Chinese, out of which was a woman. Their names are :

- (1) Tar Long
- (2) Foo Moi (F)
- (3) Wong Peng
- (4) Ching Meng
- (5) Boo Meng
- (6) Lee Ching

Exhibits

"P.4."

Caution
Statement of
Ng Seng Huat
17th
September
1964 -
continued.

10 I was issued with a Bren gun and 120 rounds of ammunition. I do not know the number of the bren gun. Two sets of uniform and two pairs of civilian dress, and eighteen packets of rations.

20 We took off by plane from Jakarta at about 11.00 p.m. on 1.9.64. While on the plane I was given cash \$300/- Malayan currency. We were first not told our destination. It was after about three hours travel by plane when we were informed that our destination was Johore. At the time when I dropped by parachute from the plane it was at about 3 or 4 a.m. I landed in a jungle. Early that morning after day break I started going round looking for my friend. I met one named Lee Ching in the jungle at about 11.00 a.m. on 2.9.64. We then went round and later the same day met another three Indonesians who came with us. I do not know their names. We went round in the jungle living on our ration until it was exhausted. The three Indonesians separated from us. I then decided to hide my weapons as I intended to come out. I hid my weapon and uniform together with ammunition underneath a big tree in the jungle. It was covered with some grass on the top. I cannot remember the place now as it was deep in the jungle. Lee Ching's weapon was also hidden two or three days later in another place. I was too weak to carry the weapons and the uniform and equipments.

30

On 13.9.64 at about 2.00 p.m. when we came out of the jungle we were arrested by the Malays and taken to the P. Station (Labis P. Station).

40 We received no orders from the Indonesian leaders of what to do after the landing. The only orders we had was to assemble together after the landing and the orders would then be detailed by

Exhibits

"P.4."

Caution
Statement of
Ng Seng Huat
17th
September
1964 -
continued.

the commanders. The place to assemble was at "Gunong Besar". I do not know the exact spot but according to compass 150 degrees.

I now said that I had been cheated. I do not want to go anywhere now. I want to be the subject of this country. I have tasted the life of a soldier I do not like it at all. I do not know who were the commanders giving the orders after assembling.

Note: Read over to the interpreter who then explained to the accused in Hokkien dialect. Accused understood the statement and admitted correct.

10

No threat, inducement or promise was made to the accused with regard to this statement.

Sd: Illegible

Sd: ?

Interpreter.

Investigating Officer.

(CHEE KEE FONG, D/S 395)

(Abdullah bin Awang)
ASP."P.5."

Caution
Statement of
Lee Ching Sai
17th September
1964.

P.5. - CAUTION
STATEMENT OF LEE CHING SAI

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POLIS DI-RAJA MALAYSIA

PERCHAKAPAN DALAM PEMEREKSAAN

No. Report 480/64 Rumah Pasong. Labis

Perchakapan bagi Lee Ching Sai alias Lee Boon Kheng

Nama bapa. Lee Poh Nui laki2.

Bangsa. Hokkien Tempat di-peranakan Pontian, Johore

Umor 23 tahun. Kerja. Rubber tapper. dudok di-Batu 36,
Jalan Pontian, Johore.Di-terima oleh, ASP Abdullah di Office Segamat
pada. 17.9.64.

30

jam. 3.15 p.m.

Jurubhasa oleh D/S 395 Chee Kee Fong. daripada.
Hokkien kepada. Malay.

Exhibits

"P.5."

Kata-nya.

Caution
Statement of
Lee Ching Sai
17th
September
1964 -
continued.

Before recording the statement of the accused.
I administer the following caution to the accused
in the Hokkien language through the interpreter
D/S 395 Chee Kee Fong of Police Station Segamat.

10 "It is my duty to warn you that you are not
obliged to say anything or to answer any question
but anything 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 a statement.

Sd: ? Sd: Abdullah bin Awang
Interpreter. ASP
(CHEE KEE FONG) D/S 395 Investigating Officer
17.9.64.

20 I was born in Pontian in 1941. My mother is
still living my father was dead. I am a bachelor.
I am a rubber tapper. I am working under one
named Tua Bak in a small holding.

I was educated in Pei Chun School, Pontian.
I studied for three years and was in standard
three when I left school. My father could not
afford to allow me to continue my study because he
had no money. I left school at the age of 12 years.

30 In May 1964 one afternoon I met Tien Seng at
Pontian Village. He promised me a job. Three
days after one Chin Meng of Pontian came and asked
me to go by bus. He took me to Kukub and then we
walked to Ayer Masin. We arrived at Ayer Masin
at about 5.00 p.m., date not remembered. I was
asked to wait near the beach till about 7.00 p.m.
when another two persons came. They were (1)
Yap Chee (2) Ah Seng. Both were from Pontian.

Then a motor boat (fishing boat) number unknown
came alongside. Chin Meng then asked the three
of us to go on the motor boat. The boat took us to
Palau Balai. We reached there about 11.00 p.m.

40 We stayed there for the night and after three

Exhibits

"P.5."

Caution
Statement of
Lee Ching Sai
17th
September
1964 -
continued.

days we started training by Indonesian Officers. We began with physical training and weapon training for about ten days.

After ten days a ship came and took us to Jakarta. We were 42 in all. On arrival at Jakarta we were given two pairs of uniform each, complete with all the equipment except the weapon.

We were trained as paratroopers for about three months. I was issued with a sten gun. I do not know the number. 10

Three days before taking off we were taken to Jakarta and there was supposed to be some training but there was no training at all.

At about 8.00 p.m. 1.9.64 we were ordered to assemble at an air port at Jakarta. There were about 45 to 48 persons in all. There were seven Chinese amongst whom was a girl named Foo Moi aged about 20 years. Other than these all were Indonesian soldiers. We were all under the leadership of an Indonesian Ketua named Wegimin. I do not know his rank. 20

We waited at the air port until about 11 or 12 at night when a plane came and took us. While on the plane we were given cash of \$300/- each (Malayan currency). We were not told of the destination. After about three hours flight then we were given signal to alight by parachute. My section was number 7.

I landed in the jungle. I did not know which place at the time. But now I know it was somewhere in Labis. It was pitch dark when I landed. I waited till day break. I started to walk following the direction of my compass. At about 7.30 a.m. 2.9.64. I met one Indonesian paratrooper hanging on the tree. He gave his name as John. I do not know whether it was true or not. But this man is now in Johore Bahru. He has been captured too. At about 11.00 a.m. same day I met Ng Seng Huat. (B.). We then started walking again. Later we met another two Indonesians. 30 40

We roamed about in the jungle for about 9 to 10 days and then the Indonesian paratroopers separated from us. On the 10th day Ng Seng Huat found his

weapons were too heavy and decided to hide them. He then hid them underneath a big tree in the deep jungle. I do not know the place. I cannot show the place as I do not know the way in.

Exhibits

"P.5."

Caution
Statement of
Lee Ching Sai
17th
September
1964 -
continued.

10 Two days after I also hid my weapon. My weapon was a sten gun number unknown with 300 rounds of ammunition. I hid my weapon and ammunition underneath an old tree in the deep jungle. My uniform was hidden in the jungle near the place I hid the weapon. I am unable to show the place now.

The following paratroopers who came with me had already been arrested:

- (1) Foo Moi (F)
- (2) Tar Long
- (3) Wong Peng
- (4) Huang Chong

20 I did not receive any orders of what to do after the landing. I know that I have committed a grave offence against this country by going over to Indonesia and I regretted very much.

Note: Read over to the interpreter who then interpreted to the accused in the Hokkien dialect. Accused understood his statement and admitted correct. No threat, inducement or promise was made to the accused with regard to this statement.

Sd: ?
Interpreter.

(Sd: Abdullah bin Awang)
Investigating Officer ASP.

Sic.(CHEE KEE PONG) D/S 395

17.9.64.

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

No. 10 of 1967

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

1. NG SENG HUAT alias NG CHING KIM
 2. LEE CHING SAI alias LEE BOON KHENG
- Appellants

- and -

THE PUBLIC PROSECUTOR

RECORD OF PROCEEDINGS

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

Solicitors for the
Appellants

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

Solicitors for the
Respondent