

1967/21  
[6]

IN THE PRIVY COUNCIL

No. 11 of 1967

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

B E T W E E N :

TAN SEE BOON alias TAN GUAN KHIM  
Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

---

RECORD OF PROCEEDINGS

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

Solicitors for the  
Appellant

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

Solicitors for the  
Respondent

1968 1968

ACQUISITION NUMBER

**91346**

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

IN THE PRIVY COUNCILNo.11 of 1967

O N A P P E A L  
 FROM THE FEDERAL COURT OF MALAYSIA  
 (Appellate Jurisdiction)

---

B E T W E E N

TAN SEE BOON alias TAN GUAN KHIM  
Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

---

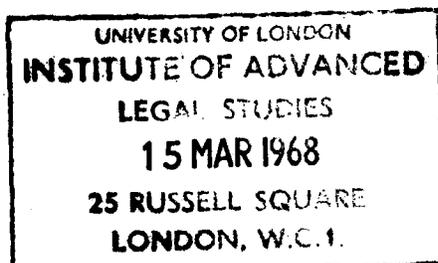
RECORD OF PROCEEDINGSINDEX OF REFERENCEPart I

No.	Description of Document	Date	Page
	<u>In the High Court of Malaya</u>		
1.	Charges	17th August 1965	1
2.	Plea and preliminary objection	28th August 1965	3
3.	P.W.2 Ramli bin Ahmad	28th August 1965	4
4.	P.W.5 A. Hamid bin Musa	28th August 1965	5
5.	P.W.6 Yeoh Ah Cheng	28th August 1965	6
6.	D.W.2 Accused, Tan See Boon	28th August 1965	7
7.	P.W.8 Karma bin Omar	28th August 1965	8

No.	Description of Document	Date	Page
8.	P.W.9 Sutisna Utja bin Padma	29th August 1965	12
9.	P.W.10 Sutikno bin Tjetrosumarto	29th August 1965	16
10.	Submissions	29th August 1965	20
11.	D.W.1 Accused, Tan See Boon (statement from the dock)	29th August 1965	21
12.	Submissions	29th August 1965	21
13.	Finding of Court	29th August 1965	24
14.	Grounds of Judgment	29th August 1965	24
<u>In the Federal Court of Malaya</u>			
15.	Petition of Appeal	2nd October 1965	32
16.	Notes of Argument	10th November 1965	34
17.	Judgment of Thomson, L.P., Malaysia	28th December 1965	42
<u>In the Judicial Committee of the Privy Council</u>			
18.	Order allowing special leave to appeal in forma pauperis to His Majesty the Yang di-Pertuan Agong.	7th March 1967	55

Part II - EXHIBITS

Mark	Description of Document	Date	Page
P3	Statement of Accused	3rd September 1964	57



91346

Part III - DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
P1 - sanction to prosecute	18th November 1964
P2 - Certificate under Regulation 4 of Emergency (Criminal Trials) Regulation 1964	18th November 1964
Judgment on the question of the admissibility of the cautioned statement	28th August 1965
Notice of Appeal	
Order of the Federal Court	28th December 1965

LIST OF EXHIBITS NOT INCLUDED IN THE RECORD

Number	Description
P1	Sten Gun F.G.5174
P2	353 rounds of 9 mm. ammo
P3	3 empty magazines
P4	1 compass
P5	Paratrooper's uniform
P6	Dry rations - 7 packets
P7	Wearing apparel
P8	Personal effects

IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

No.11 of 1967

ON APPEAL FROM

THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

B E T W E E N :

TAN SEE BOON alias TAN GUAN KHIM  
Appellant

- and -

10 THE PUBLIC PROSECUTOR Respondent

RECORD OF PROCEEDINGS

No. 1

Charge Sheet

IN THE HIGH COURT IN MALAYA AT MUAR

IN THE STATE OF JOHORE

Emergency Criminal Trial No. 16 of 1964

PUBLIC PROSECUTOR

Vs.

TAN SEE BOON @ TAN GUAN KHIM

In the High  
Court in  
Malaya

No. 1

Charge Sheet  
17 August 1965

20

C H A R G E S

Tan See Boon @ Tan Guan Khim, you are charged at the instance of the Public Prosecutor and the charges against you are:-

1st Charge: That you between 2.00 a.m. and 10.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong vide Federal L.N.245 of 17th

In the High  
Court in  
Malaya

No.1

Charge Sheet  
17 August 1965

August, 1964, namely Kampong Sekari, Labis, in the District of Segamat, in the State of Johore, consorted with members of the Indonesian Armed Forces who carried firearms and ammunition in contravention of the provisions of Section 57(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 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 at about 2.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong by Federal L.N.245 dated 17th August, 1964, namely at Kampong Sekari, Labis, in the District of Segamat, in the State of Johore, without lawful excuse carried a firearm to wit, one rifle, without lawful authority and that you have thereby committed an offence punishable under Section 57(1)(a) of the Internal Security Act, 1960.

20

3rd Charge: That you at about 2.00 a.m. on 2nd day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N.245 dated 17th August, 1964, namely at Kampong Sekari, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession ammunitions, to wit, 200 rounds of .303 ammunition and two handgrenades, without lawful authority and that you have thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960.

30

Dated this 17th day of August, 1965.

Sd: (B.T.H. Lee)  
Deputy Public Prosecutor.

No.2.

PLEA AND PRELIMINARY OBJECTION

In the High  
Court in  
Malaya

No.2

B T.H. Lee, D.P.P., for Public Prosecutor.

Tann Wee Tiong for the Defence.

Plea and  
preliminary  
objection.  
28th August  
1965

1st Charge read to the Accused. Accused claims  
trial.

2nd Charge read to the Accused. Accused claims  
trial.

3rd Charge read to the Accused. Accused claims  
trial.

Tann:

I have a preliminary objection.

10 Long delay to bring this case to trial.

Incident happened a year ago.

This case was first mentioned in Segamat  
in November, 1964.

Refer Regulation 9 of Emergency (Criminal  
Trials) Regulations, 1964. It says when an  
emergency procedure case has been committed for  
trial as aforesaid, the trial Registrar shall  
forthwith fix a date for the trial of such case.  
The Registrar has not forthwith fixed a trial  
20 in this case.

Refer Ex parte Lamb 19 Ch. D. 169 Headnotes,  
page 173 as to the meaning of the word  
"forthwith".

Object of the regulation to give speedy  
trial.

Refer to Singapore Bar Committee Circular  
dated 11.1.1965 in reference to Emergency cases -  
Item 4.

In the High  
Court in  
Malaya

No.2

Plea and  
preliminary  
objection.  
28th August  
1965 (Cont.)

Refer to (1962) M.L.J. 173 Mariapragasam v. Public Prosecutor headnotes "Where details of a case are more important than its apparently more important features, delays are very relevant to the merits of the case because the recollections of the witnesses could not have been very fresh."

In the present case - details of the circumstances of the case, for example as to identification of the accused's caution statement, are very important and the delay in bringing this case to trial would materially affect the proper trial of the case. 10

Sd. Azmi.

D.P.P.

The main reason for delay in this case is that this case and several others have been held back pending the decision of the Privy Council on important questions of law. That case is that of Lim Sing Hiaw v. P.P. The judgment of the Federal Court is reported in (1965) M.L.J. 85. It was not until June that the Privy Council refused leave to appeal. After that the trials of this and other cases have since been proceeded with. 20

That explains the delay.

Sd. Azmi.

This delay is very unfortunate but I decide to proceed with the trial.

Sd. Azmi.

In the High  
Court in  
Malaya

No.3

P.W.2.  
Ramli bin  
Ahmad.  
28th August  
1965.

No.3

P.W.2. - RAMLI bin AHMAD

P.W.2 Ramli bin Ahmad a/s in Malay:

P.C. 24213.

Stationed at Tenang Kampong Police Post.

On 2.9.64 at 9 a.m. I was at the Post. Then P W.1 ordered me to do something. As a result

I went to Jalan Tomalek and I saw 2 male Chinese walking towards Pekan Ayer Panas.

I stopped the two Chinese.

I asked for their identity cards. One of them ran away. I brought back the other to the Police Post and handed him to P.W.1.

10 When one of the two ran away I shouted to some Kampong people "Tolong tolong tangkap". Some Kampong people chased the Chinese. This man who ran away was wearing a pair of shorts and nothing on his body.

At 10 a.m. same day two Malays brought the Chinese to the Police Post.

The Chinese is Accused in the dock.

The two Malays who brought Accused were Hashim bin Sulaiman and Mohamed b. Gemok (identified).

The Accused appeared frightened when he ran away.

20 At the Police Post, Accused was handed over to officer in charge of Police Post.

Sd. Azmi.

Xrd. by Tann. P.W.1 was in charge of the Police Post then.

None of the Kampong people had sticks when they chased the Chinese.

Sd. Azmi.

No. 4.

P.W. 5. - A. HAMID bin MUSA

P.W.5 A. Hamid bin Musa a/s in English:

Inspector of Police.

30 Stationed at Kluang Police Headquarters.

In the High Court in Malaya

No.3

P.W.2.  
Ramli bin Ahmad.  
28th August  
1965 (Cont.)

No.4

P.W.5.  
A.Hamid bin Musa.  
28th August  
1965.

In the High Court in Malaya

No.4

P.W.5  
A.Hamid bin Musa.  
28th August 1965. (Cont.)

On 2.9.64 I was stationed at Labis Police Station and was Special Branch Liaison Officer.

At 2 p.m. on 3.9.64 I interrogated Tan See Boon for purpose of intelligence.

The interrogation lasted for about 40 minutes.

Tan See Boon is Accused.

I question him in Malay and he replied me in Malay.

No one else was present with me then.

I did not use any threat or promise or inducement in my interrogation.

10

Then I handed him back to Labis Police Station.

Sd. Azmi.

No.5

P.W.6.  
Yeoh Ah Cheng  
28th August 1965.

No. 5

P.W.6 - YEOH AH CHENG.

P.W.6 Yeoh Ah Cheng a/s in English:

A.S.P.

Stationed as O.C.P.D. at Gurun.

On 1.9.64 I was attached to Federal Police Headquarters, Kuala Lumpur.

20

On 3.9.64 at 7.15 p.m. I was at Labis Police Station.

I went there to record a caution statement from the Accused.

I first ascertained from him what language he wanted to speak. He said he wanted to speak in Hokkien. I employed Det. Cpl. James Wong as interpreter (identified Det. Cpl. 414 James Wong Yuen Lam).

30

I administered the caution according to S.75

of the Internal Security Act.

It was interpreted to Accused.

Accused understood it.

After that I and the interpreter signed the Caution.

Then I proceeded by asking him questions and Accused answered, through James Wong's interpretation.

After the statement was recorded, it was  
10 read back to Accused and interpreted by James Wong.

After it was read to Accused, I asked him if it was correct. Accused said it was correct. All this through James Wong.

I also asked Accused if he wanted to amend it or add anything further.

He replied there was nothing to add except to ask for leniency.

I was satisfied the statement was made willingly and voluntarily.

20 I then signed the statement and so did the interpreter.

Before or in course of taking the statement I did not use any threat or inducement or promise.

Sd. Azmi.

Tann indicates he challenges the admisibility of the statement.

Sd. Azmi.

No. 6

D.W.2 - ACCUSED, TAN SEE BOON

30 Xxd. by D.P.P:

I was born in Bagan Serai near Bukit Mertajam.

In the High  
Court in  
Malaya

No. 5

P.W.6.  
Yeoh Ah Cheng  
28th August  
1965 (Contd.)

No. 6

D.W.2  
Accused, Tan  
See Boon.  
28th August  
1965.

In the High  
Court in  
Malaya

No. 6

D.W.2

Accused, Tan  
See Boon.  
28th August  
1965 (Contd.)

Q: What kind of Hokkien they speak in Province  
Wellesley and Penang?

A: That spoken by the Babas.

A: I am a Baba.

No. 7

P.W.8

Karma bin Omar  
28th August  
1965.

No. 7.

P.W.8 - KARMA bin OMAR

P.W.8 Karma b. Omar, a/s in Malay:

Age 23.

Occupation - Section leader of Section 8 of  
Pasokan Gerak Tjapat, Indonesian Army.

10

In my group there were 6 persons namely:

- 1) myself
- 2) A Chinese - I don't know his name.  
He is Accused.
- 3) Another Chinese.
- 4) Another Chinese
- 5) Ejep Suharja
- 6) Sutisna Utjar

I was the leader of Section 8. There were 8  
Sections, and the commanding officer was Lt.  
Muda Sutikno.

20

On 1.9.64 I was at Jakarta. I was with 47 others  
- Indonesian soldiers of P.G.T. and Chinese. The  
Chinese were not members of P.G.T. but merely  
volunteers. All of us including the volunteers  
were wearing uniform, of the Indonesian Army.

We were all carrying firearms, including the Accused. The Indonesian soldiers were carrying G3 - Automatic and ammunitions. The Chinese volunteers were carrying Lee Enfield rifles and ammunitions and also 2 handgrenades each.

Accused carried a Lee Enfield rifle, 2 handgrenades and ammunitions. I don't know how many rounds.

10 In the evening of 1.9.64 we got into the plane at Jakarta, flew to Medan where we stopped about 3 hours. Then we carried our parachutes and plane took off again. We did not know the destination.

In the plane we were given money - Malayan currency - 300 \$1/- notes.

Accused was given the same amount.

After I jumped I came to know we landed in Malaya. I knew from the fact the money given was Malayan Currency.

20 Accused's number was 45 in the plane. On the plane we were given a number. My own was 43.

These numbers were numbers on the seats and also order of jumping down.

On landing I did not meet any one.

On 3.9.64 I was arrested alone.

I saw Accused at the Labis lock-up when I was taken there.

The money was wrapped in a plastic cover - transparent material.

30 I don't know why the Chinese volunteers were included in our party.

Sd. Azmi.

Xxd. by Tann:

I did not know where I was going<sup>1</sup>/<sub>2</sub>.

In the High  
Court in  
Malaya

\_\_\_\_\_  
No. 7

P.W.8  
Karma bin Omar  
28th August  
1965 (Cont.)

In the High  
Court in  
Malaya

            
No. 7

P.W.8  
Karma bin Omar  
28th August  
1965 (Cont.)

The plane flew down and up during jumping.

There was no confusion or chaos in the plane just before I jumped down.

There was some light in the plane but not very bright.

At time of jumping we were carrying bundles - 2 bags - one small and one big. They were heavy and were carried in front down to the knee and on back a pack of parachute.

We were dressed according to Indonesian Army Regulations. 10

I was carrying my G3 (machine gun) across my body and wearing a steel helmet.

The parachutists jumped at regular intervals but there were some who hesitated.

We did not hold on a strap before jumping.

The parachutes opened automatically after we jumped.

I have seen instances when the parachutes failed to open and the parachutist was killed. 20

We had to see that our parachutes were properly attached to the wire which would pull open the parachute.

I felt excited.

It is not usual that we were not informed of our destination until we got on the plane.

Accused's serial number was 45. No.44 belonged to another Chinese.

No.44 and 45 were on my right in the plane.

Sutisna's place was 48 - the last man. 30

(Witness referred to his statement in which he gave following list:

"Members of the section were:

- (i) KARMA @ YALI (myself)
- (ii) SUTISNAS UTJAR
- (iii) EJEP SUHARJA (at large)
- (iv) POI (identified as TAN SEE BOON)
- (v) Another Chinese (identified by him as TAN HUA LAM).
- (vi) Another Chinese (identified as WONG CHONG YU)"

In the High  
Court in  
Malaya

                      
No. 7

P.W.8

Karma bin Omar  
28th August  
1965 (Cont.)

10 ==The order is not according to our serial number.

I am sure of the correctness of serial numbers I gave. We jumped serially according to our number.

Not true the order of jumping was according to whoever happened to be standing near the door first.

Sd. Azmi.

The order of jumping was according to section too, so that the section could keep together after  
20 landing.

Sd. Azmi.

I gave a statement at the Police Depot and twice in Johore Bahru Prison.

I was charged in Segamat Court for possession of arms.

I was taken to the Court and was told the charge was withdrawn.

We are detained for 2 years and when confrontation ceased, we would be sent back to  
30 Indonesia.

All my statements were about this case.

In the High Court in Malaya

No. 7

P.W.8

Karma bin Omar  
28th August  
1965 (Cont.)

The other statement was taken before the one taken on 9.11.64.

It was taken in September 1964 - soon after I was arrested. I was asked about my life. So far I can remember both statements were the same.

Sd. Azmi.

Re-examined by Lee:

We jumped according to our serial number.

No further direction from another just before jumping. If necessary the person who refused to jump would be pushed out.

10

Sd. Azmi.

Adjourned to 9.30 a.m. tomorrow.

Sd. Azmi.

No. 8

P.W.9

Sutisna Utja bin Padma  
29th August  
1965.

No. 8

P.W.9 - SUTISNA UTJA bin PADMA

29th August, 1965.

Counsel as before

D.P.P. calls:

P.W.9 Sutisna Utja bin Padma a/s in Indonesian Malay:

20

Age 23.

I am now a prisoner of war - like all members of the Indonesian Armed Forces who were captured in Malaysia.

I am a member of Indonesian Pasokan Gerak Tjepat.

I was in group 8.

There were 6 persons in my group namely:

Three Indonesian and three Malayan Chinese.

I can identify all the 3 Malayan Chinese.

Accused was one of the 3 Malayan Chinese.

10 On 1.9.64 I was in Jakarta. Then we proceeded to Medan by plane. We left Jakarta at 5 p.m. on 1.9.64. We flew to Medan. We rested about 3 hours in Medan. Then we were issued with parachutes. All of us - 48 persons. We were in the uniform of the Indonesian Armed Forces, including the Accused.

We were carrying arms.

I was carrying an L.M.G. G3 - light automatic machine gun.

Accused was carrying a rifle and ammunition and 2 handgrenades.

Then we boarded the plane.

On the plane I was given paper currency - I did not know of what country.

20 After flying about one hour, the door of the plane opened and we jumped down with our parachutes - fully equipped.

I was the last one who jumped. My number was 48.

Accused's number was No. 45. We jumped down according to our serial number.

Accused jumped before I did - in fact 2 others jumped before me after Accused jumped down.

I know P.W.8 (identified).

30 He was in my group when we flew here and jumped down. He was my section leader.

I jumped down at about 1 a.m. on 2.9.64.

I landed on the ground.

I found I was alone.

In the High Court in Malaya

No. 8

P.W.9.  
Sutisna Utja  
bin Padma  
29th August  
1965.(Cont.)

In the High  
Court in  
Malaya

No. 8

P.W.9.  
Sutisna Utja  
bin Padma  
29th August  
1965 (Cont.)

I could not find my friends.

I did not meet Accused until at the Police  
Depot Johore Bahru.

I was arrested on 21.9.64 at Labis, and was  
taken to Labis Police Station. I was 3 days  
there and was taken to Johore Bahru about 25.9.64.

The same day I saw Accused at the Police  
Depot.

Eventually I found that the place I landed  
was Johore and the paper currency is Malayan.

I knew it was Malayan currency the morning I 10  
landed.

All the 48 persons were given money.

I was charged in Court for carrying arms, but  
the charge was withdrawn but we were detained for  
2 years or until the Indonesian Confrontasi ends,  
when we would be repatriated to Indonesia.

In other words the Indonesians were treated  
as prisoners of war only.

Sd. Azmi.

Xxd. by Tann:

In the plane P.W.7 sat on my left. After P.W.7 20  
a Malayan Chinese - No. 44. Not Accused. Then  
another Chinese - the Accused.

Then another Chinese. His No. was 46.

Then an Indonesian.

Then myself.

We jumped according to our serial numbers.

Before we jumped the plane was not swaying.

No confusion before we jumped.

We were wearing our full equipments.

The equipments were heavy - I don't know the weight.

There would be slight difficulty in our movement because of the equipments.

The equipments in front go down to the knees. I was wearing my steel helmet - just like an ordinary helmet but made of steel. It does not obscure our vision.

10 Before I jumped I saw to it that my equipments were in proper place.

There was a hook attached to the plane and a wire attached to the hook. A string is tied to the hook from the parachute pack.

When we jumped down the string would pull open the packet and parachute opens.

We jumped down at regular intervals.

I did not notice any of us who hesitated to jump down.

20 I felt slightly excited before I jumped down - slightly afraid. That was natural. I was afraid of the parachute failing to open.

Q: Because of your slight nervousness and your equipment, you could not notice about others.

A: I noticed what others were doing.

We were trained to be able to put on a parachute pack within 3 minutes.

One pack of clothings etc. and one of ammunition were hung down the front.

Both were strapped to the body.

30 We transfer the packs to the back before we start fighting.

In the High Court in Malaya

No. 8

P.W.9  
Sutisna Utja  
bin Padma  
29th August  
1965 (Cont.)

Sd. Azmi.

In the High  
Court in  
Malaya

No. 8

P.W.9  
Sutisna Utja  
bin Padma  
29th August  
1965 (Cont.)

Re-examination by Lee:

The equipments I had were usual Army issue including the steel helmet.

Sd. Azmi.

No. 9

P.W.10  
Sutikno bin  
Tjetrosumarto  
29th August  
1965.

No. 9

P.W.10 - SUTIKNO bin TJETROSUMARTO

P.W.10 - Sutikno bin Tjetrosumarto a/s in Indonesian Malay:

Lt. Muda of the Angkatan Udara Indonesia.

Age 40.

10

I joined the Indonesian Army in 1945.

Then I got into the Angkatan Udara in 1950, and stationed at Bandoeng.

I was appointed Muda in July 1962 and as such I became Commander of "C" Co. at Bandoeng.

In 1964 we were trained for the "Crush Malaysia" Confrontasi Campaign.

I was trained for that campaign.

In July 1964 I was sent to Pulau Karimon, an Indonesian Island.

20

Whilst there I was to train Malayan Chinese - i.e. military training in the use of rifles, revolvers and sten guns and handgrenades and mortar.

These Malayan Chinese were given this training for the purpose of confronting.

They were to be brought back to Malaysia as

volunteers.

They were for sabotage work in Malaysia.

I returned to Jakarta on 25.8.64 because I was to undergo some more training for promotion in the Army.

There I met Suroso.

After meeting Lt. Suroso my further training in Jakarta was cancelled and I was ordered to rejoin the Confrontasi Company against Malaysia.

10 On 1.9.64 I was briefed by Lt. Suroso at 12 noon.

I was to be Commander of a team of paratroopers into Malaya.

On landing in Malaya I was to do sabotage work.

Further briefing would be given by Lt. Suroso whilst I was here.

20 At 1 p.m. on 1.9.64 after the briefing, I mustered my team of 48 paratroopers, including myself.

Malayan Chinese were included in the 48 - 12 male Chinese and 2 female Chinese.

We boarded the plane and at 4.30 p.m. we headed for Medan. We landed at Medan. We rested for 2½ hours. Then we boarded again and we took off at Medan at 12 midnight.

About 2 a.m. we reached Johore territory.

Crates were baled out first. Then I jumped down - first to jump.

30 I landed on the ground.

The others to jump one after another immediately.

I met one of my men named Sahi after I jumped.

In the High  
Court in  
Malaya

            
No. 9

P.W.10  
Sutikno bin  
Tjetrosuanto  
29th August  
1965 (Cont.)

In the High  
Court in  
Malaya

No. 9

P.W.10  
Sutikno bin  
Tjetrosumarto  
29th August  
1965 (Cont.)

We were arrested on 21.9.64 at about 8 p.m.

We were arrested at Kampong Tenang.

P.W.8 and P.W.9 were two of my paratroopers. P.W.8 is my section leader and P.W.9 was the last to jump down according to the order.

I saw both at the Johore Special Branch, Johore Bahru.

I cannot remember the names of the Malayan Chinese but I might recognize them.

Q: Can you identify any one in Court.

10

A: There Accused whose number was 45 (pointed to Accused).

I was never charged in Court. I had always been treated as a prisoner of war.

I was armed with a revolver.

All the other 47 paratroopers were carrying firearms. The Indonesian paratroopers were carrying T3 - light automatic machine gun and the Malayan Chinese were carrying sten guns or Lee Enfield rifles and every one of them carried 2 handgrenades and ammunition ranging from 200 to 500 rounds or as many they could carry as for Indonesians.

20

As for the Chinese, they carried at least 200 rounds. I don't know these things personally.

They were also supplied with \$300/- Malayan for each person - in \$1/- denomination.

The crates baled out contained rations, ammunitions and medical supplies.

The rations were to last for 20 days apart from the week's ration carried by each paratrooper.

30

Sd. Azmi.

Xcd. by Tann:

Accused is the only one in the dock.

I was the person who gave him the number 45 at time we boarded the plane at Jakarta.

I also recognized his face.

This is first time I have been asked to identify Accused.

After my capture I corroborated with the Govt.

10 I went round and by broadcasting messages urged my men to surrender.

I also signed pamphlets - in which I said I was treated well and given special treatment.

On 25.9.64 I was taken to Kuala Lumpur.

I appeared in T.V. Malaysia.

When I was in the plane there was no confusion.

The plane swayed a bit and the crates were pushed about. No chacs when I was in plane.

At 1.50 a.m. the light signal to jump was given.

Sd. Azmi.

20 No re-examination.

Sd. Azmi.

Lee: That is my case.

Sd. Azmi.

11.30 a.m.

Short adjournment

Sd. Azmi.

In the High  
Court in  
Malaya

No. 9

P.W.10  
Sutikno bin  
Tjetrosumarto  
29th August  
1965 (Cont.)

In the High  
Court in  
Malaya

No. 10

SUBMISSIONS

No.10

Submissions  
29th August  
1965.

Tann: Prosecution has not proved its case.

Indonesian witnesses accomplices with common intention in reference to confrontasi campaign. Accused said he fainted.

Karma charged but charge withdrawn.

Sutikno treated well.

3 charges - alleged to be made in Security area.

10

Not established where the place was where the accused and the other parachuted. Not established it was in Security Area within the meaning of L.N. 245 dated 17.8.64.

1st charge - consorting. No evidence that they were consorting between 2 and 10 a.m. on 2.9.1964 in security area.

No evidence of possession in second and third charge, at least not clearly established.

I submit no case to answer.

20

Sd. Azmi.

Lee: 1st point - refer Sec. 114 illustration (b) - accomplices - and Sec. 133.

Submit corroboration by circumstances - behaviour of accused running away until captured by the two Malays.

Submit guilty knowledge.

Reference Security Area. Paratroopers jumped down on to the ground.

Submit immaterial whether they are still in the air - the rule that possession in the air right to the sky. No doubt Indonesians intended to land in Labis in Johore.

30

I hold there is a case to answer.

Sd. Azmi.

In the High  
Court in  
Malaya

After usual explanation to Accused, Accused elects to give statement from the dock.

Sd. Azmi.

No.10  
Submissions  
29th August  
1965 (Cont.)

No. 11

D.W.1. Accused TAN SEE BOON  
(Statement from the dock)

10 Accused states: I am Tan See Boon @ Tan Guan Khim.

Age 30.

I lived at Bagan Serai, Perak.

I am an odd job labourer.

I did not commit any offences.

I came from Pahang to Labis.

At the point I was arrested I had nothing with me.

As such I did not commit any offence.

That is all.

20 I am not calling any witness.

Sd. Azmi.

No. 12

SUBMISSIONS

Tann: That is case for the Accused.

No evidence Accused was consorting in Security Area.

Accused said he came from Pahang - not

No.11  
Accused, Tan  
See Boon  
(statement  
from the dock)  
29th August  
1965.

No.12  
Submissions  
29th August  
1965.

In the High  
Court in  
Malaya

No. 12

Submissions  
29th August  
1965. (Cont.)

security area under L.N. 245.

I submit no evidence against Accused.

Sd. Azmi.

Lee: Exhibit P.3 - caution statement - salient points.

Para. 2 - object of training to overthrow Malayan Government when any demand not allowed - speaking as a member of Labour Party - agreed to join the volunteers - freely decided to enlist in the Indonesian Army.

10

Para. 3 - military training and parachute jumping for 2 months - given arms and parachutes on 1.9.64 at 4 p.m.

Jumped into Johore.

Intention to discard Indonesian Army and return to his hometown.

On this point refer to (1954) M.L.J. 29. At page 31 judgment of the Court of Appeal as it was then:

"My decision to surrender made the carrying of the revolver lawful." "My intention to cease committing an offence provides a lawful excuse for continuing temporarily to commit the offence". This is tantamount to saying that a man can change the nature of his act, from an unlawful to a lawful one, by a mere change in his intention. That may be true of offences of which intention is an ingredient, but it is not true of offences to which the doctrine of "absolute prohibition" applies.'

20

30

This view of the Court of Appeal was agreed to by the Privy Council, see page 191 (1954) M.L.J. The Privy Council says, after referring to the passage I quoted above as follows:

'In so far as this passage decides that a mere change of intention on the part of a person accused under regulation 4(1) cannot, in itself, constitute a "lawful excuse",

their Lordships are in agreement with it.'  
Therefore the fact that the Accused decided to leave the Indonesian Army then is no defence on the question of lawful excuse.

In the High  
Court in  
Malaya

—  
No. 12

Another point where Accused said - "I had a rifle, two hundred rounds of ammunitions and two hand grenades and other rations" -

Submissions  
29th August  
1965 (Cont.)

"I left them in the jungle".

10 "I think I can. To-day I led a police party to locate them but were fired upon and did not proceed further."

Refer to Emperor v. Chokhey 1937 A.I.R. Allahabad 497 at page 500.

20 Refer to the case of Prater - 44 Cr. App. R. 83 headnote "Where it appears that a witness, whether a co-prisoner or a Crown witness, may have some purpose of his own to serve in giving evidence, it is desirable .... a warning should be given.... with regard to the danger of acting on his uncorroborated evidence similar to that which is given in the case of accomplices, whether the witness can properly be classed as an accomplice or not."

30 At page 86 - "This court, in the circumstances of the present appeal, is content to express the view that it is desirable that, in cases where a person may be regarded as having some purpose of his own to serve, the warning against uncorroborated evidence should be given. But every case must be looked at in the light of its own facts...."

(1947) M.L.J. 90 Yap Sow Keong and Anor. v. P.P. - question of confession and retracted confession referred to.

Confessions must not only be made voluntarily but also must be true, see Abu bin Hussin v. P.P. (1959) M.L.J. 5. Therefore, Court must also be satisfied that the statement is true.

As to the meaning of "consorting", please

In the High Court in Malaya

No. 12

Submissions 29th August 1965 (Cont.)

see (1951) M L.J. 186.

(1951) M.L.J. 143, 144.

Sd. Azmi.

I find the accused guilty on all charges.

Sd. Azmi.

Accused, when asked if he had anything further to say, said: "I know nothing of caution statement. I ask for leniency. That is all."

Sd. Azmi.

No. 13

Finding of Court. 29th August 1965.

No. 13

10

FINDING OF COURT

I convict the accused and pass sentence of death on him.

Sd. Azmi.

When asked by me, Accused said he wished to appeal against the conviction and sentence.

Sd. Azmi.

- - - - -

No. 14

Grounds of Judgment. 29th August 1965.

No. 14

20

GROUND OF JUDGMENT

IN THE HIGH COURT IN MALAYA AT MUAR.

EMERGENCY CRIMINAL TRIAL NO. 16 OF 1964.

Public Prosecutor

v.

Tan See Boon @ Tan Guan Khim

JUDGMENT

The accused is charged with the following :

In the High  
Court in  
Malaya

            
No. 14

Grounds of  
Judgment.  
29th August  
1965 (Cont.)

- 10 (1) That between 2 a.m. and 10 a.m. on 2nd September, 1964, in a Security Area he consorted with members of the Indonesian Armed Forces who carried firearms and ammunition in circumstances which raised a reasonable presumption that he intended to act with such members of the Indonesian Armed Forces in a manner prejudicial to public security - an offence under Section 58 (1) of the Internal Security Act, 1960.
- (2) That he at about 2 a.m. on the same day as in the first charge at Kampong Sekari without lawful excuse carried a rifle without lawful authority - an offence under Section 57 (1) (a) of the Internal Security Act.
- 20 (3) That he at about 2 a.m. on the same day in Kampong Sekari without lawful excuse had in his possession 200 rounds of .303 ammunition and two handgrenades without lawful authority, an offence under Section 57 (1) (b) of the Internal Security Act.

The facts produced by the Prosecution may be summarised as follows.

30 Before I deal with the facts I like to refer to the Gazette Notification under which the various parts of Malaysia were declared a Security Area. Under L.N. 245 dated 17th August 1964, the area comprising the territories of the States of Johore, Malacca and Negri Sembilan were declared as a security area for the purpose of Part 2 of the Internal Security Act, 1960. Though a subsequent notification extended the area to the whole Federation of Malaya, for the purpose of this trial the Security Area consists only of the States of Johore, Malacca and Negri Sembilan. It is quite true that the District of Segamat borders the State of Pahang which was not then a Security Area. Labis is a sub-district of Segamat and it is also the name given to the capital of the sub-district.

40

According to the Prosecution's evidence, at about 9.30 a.m. on 2nd September, 1964, two Malays - P.W. 3, Hashim bin Sulaiman, and P.W.4, Mohamed b. Gemok - as a result of an appeal made by P.W.2, P.C. Ramli, acting on the order made

In the High  
Court in  
Malaya

No. 14

Grounds of  
Judgment.  
29th August  
1965 (Cont.)

by another person, he went to Jalan Temalek and saw two male Chinese walking towards Pekan Ayer Panas. He stopped them and asked for their identity cards. One of them ran away. He took the other one to his kampong Police Post known as Tenang Kampong Police Post. This was between 9 a.m. and 10 a.m. The Police Constable shouted for the assistance of the people round there to catch the man who ran away. As a result of that two Malays chased and caught the accused and took him to the Tenang Kampong Police Post. 10

The next day at about 2 p.m. the accused was interrogated by Insp. Abdul Hamid bin Musa - P.W.5 and this interrogation was only for obtaining certain information on intelligence matters. In any case the Inspector said in interrogating the accused he did not use any threat or promise or inducement. The interrogation lasted until 4 p.m.

The same day at about 7.15 p.m. at the Labis Police Station A.S.P. Yeoh - P.W.6, with the assistance of P.W.7 - Det. Cpl. James Wong Yuen Lum took the caution statement from the accused. I admitted that statement after an inquiry. I will refer to the contents of the statement later. 20

According to P.W.8 - Karma bin Omar, a member and in fact Section Leader of Section 8 of Pasokan Gerak Tjepat of the Indonesian Army, and P.W.9 - Sutisna Utja b. Padma of the same, the accused was a member of the Section and one of 48 personnel, in full uniform, of the Indonesian Army and fully armed as such, who parachuted into this country in the early morning of 2nd September, 1964. 30

According to P.W.8, the party was flown from Djakarta to Medan in Sumatra and after about 3 hours stop there, proceeded and was finally dropped into this country. The accused was armed, like several other Malayan Chinese in the party, with a Lee Enfield Rifle and ammunition and 2 handgrenades. Each was also given about \$300 Malayan currency. Before leaving Djakarta each of them was given a serial number. Karma's number was 43 and Accused was 45. They jumped from the plane in order according to their 40

serial numbers. On 3rd September, 1964, Karma was arrested alone, but he saw the accused at the Labis Lockup.

In the High Court in Malaya

No. 14

Grounds of Judgment.  
29th August  
1965 (Cont.)

10 According to P.W.9 - Sutisna Utja, his number was 48 and the accused's number was 45. The accused jumped down from the plane and two others, and then finally Witness did. P.W. 9 said that when he jumped it was about 1 a.m. He was arrested on 21st September, 1964, at Labis and was taken to Labis Police Station. On 25th September, 1964, he was taken to Johore Bahru and on that day he saw the accused at the Police Depot. Witness said "Eventually I found that the place I landed was Johore". In cross-examination he denied that there was a confusion in the plane before they jumped.

20 The third Indonesian who gave evidence was Lieut. Muda Sutikno bin Tjetrosomuto. He said that he was in charge of 47 paratroopers, including 12 male Malayan Chinese and 2 female Chinese. They boarded the plane at 4.30 p.m. at Djakarta, proceeded to Medan where they arrived at 12 midnight. About 2 a.m. the same morning they reached Johore territory. After baling out the crates from the plane he was the first to jump and the order was for the rest to jump one after another according to their serial number. He landed and found one of his men named Sahi. Together they went about until they were arrested on 21st September, 1964, at Kampong Tenang. He said that the purpose of this operation was to land in Malaya and to carry on subversive work as part of the operation in the "Malaysian konfrontasi". He was treated very well after capture and that was because he corroborated with the Government of this country. He went about broadcasting messages and urging the rest of his men to surrender. He also signed pamphlets. He identified the accused as one of the Malayan Chinese who landed with him. It was suggested in cross-examination that he really could not identify the accused. To cut the story short, I also feel that there is some doubt as to the identification by Lieut. Sutikno, but in this respect I wish to say that I am quite satisfied as to the identification of accused by P.W.8 and P.W.9 subject, of course, to what I am going to say later on the question of the law as

30

40

In the High  
Court in  
Malaya

            
No. 14

Grounds of  
Judgment.  
29th August  
1965 (Cont.)

to accomplices.

At the close of the prosecution Mr. Tann submitted that the prosecution had not proved its case for several reasons.

Firstly, he said that the Indonesian witnesses were all accomplices. Again Karma and Sutisna Utja were charged but the charges against them were withdrawn, and Lieut. Muda Sutikno had been treated very well by our Government.

10

The second ground was that there was some doubt whether it had been proved that the accused parachuted into a security area, having regard to L.N. 245.

In reply Mr. Lee for the prosecution referred me to the law as to accomplices - Sections 114 and 133 of the Evidence Ordinance.

At this stage I held that there was a case to answer and called the accused to give his defence.

The accused in his statement from the dock said that he lived in Bagan Serai, Perak. He maintained that he did not commit any offence. He came from Pahang to Labis and at the time when he was arrested he had nothing with him. Mr. Tann lay emphasis on the fact that the accused said he came from Pahang, which was not a security area under L.N. 245.

20

I have no doubt that for the purpose of this trial the three Indonesians were accomplices. The law on this question is quite clear in that it is a practice which has almost the strength of law that a Court should not convict on the evidence of accomplices unless such evidence is corroborated by independent evidence, but in our law it is also provided under Section 133 of the Evidence Ordinance that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. In my view there are several reasons why the evidence of an accomplice should be regarded with suspicion unless corroborated. One of the reasons is that an accomplice is likely to swear

30

40

falsely in order to shift the blame from himself to another and that in so doing he expects leniency from the authorities, for example he will not be prosecuted or otherwise dealt with lightly. There is also a question of law that the evidence of an accomplice cannot be regarded as evidence of corroboration of another accomplice.

In the High  
Court in  
Malaya

—  
No. 14

Grounds of  
Judgment.  
29th August  
1965 (Cont.)

10 In this case, however, although the three  
Indonesians are accomplices, one thing should be  
kept in mind - that they were members of the  
Indonesian Armed Forces and they came here by  
order of the Authorities in Indonesia. They  
are professional soldiers and they were merely  
obeying the orders of their superiors. I think  
I am entitled to make a distinction between them  
and the usual type of accomplices who normally  
give evidence in the Court. These Indonesian  
witnesses were not personally responsible for  
20 Accused's joining their party and parachuting  
into this country. It has been said in reference  
to the two soldiers that the charges against them  
has been withdrawn. I understand the reason why  
the charges were withdrawn was because this  
Government decided to treat them as prisoners-of-  
war according to the Geneva Convention. In other  
words, the withdrawal of charges against them has  
nothing to do with their willingness or under-  
taking to give evidence in this trial.

30 As to Lieut. Sutikno, I understand that he has  
been treated very well because he corroborated  
with the Government in advising his men to  
surrender.

For the above reasons I accept their evidence  
without corroboration.

40 I will now refer to the accused's statement.  
In his statement he said that he left Malaya for  
Indonesia about 2 months before his arrest. He  
also said how he came to join a party of men  
and went to a certain island off the Perak coast  
as volunteers for the purpose of getting  
training, the object of which was to overthrow  
the Malayan Government when they were refused  
any demands. On that island they had military  
training and also parachute jumping for 2 months.  
He himself had 7 practice jumps. On 1st September,

In the High  
Court in  
Malaya

            
No. 14

Grounds of  
Judgment.  
29th August  
1965 (Cont.)

1964, they were given arms and ammunitions and parachutes, two of them being female Chinese. They boarded a plane but they were not told where they were going but they were told that they were to do night parachute jumps. Then after flying for a few hours 2 or 3 bundles were baled out and after that one by one they jumped down. He was almost the last to jump. When he landed he was dazed and waited until daybreak. He kept his parachute in place, took off his uniform, his arms and ammunition and kept in a certain spot and started to walk away.

10

The accused also said that his intention was to leave the Indonesian army and return to his home town. He was only wearing a pair of underpants. After walking for some time he came to a road and was nearing some shop houses when he was caught. In answer to a question he admitted he had a rifle, 200 rounds of ammunition and 2 handgrenades, and other rations and clothings. When asked where all the arms and ammunitions were he said he left them in the jungle and in answer to further questions he said he could show the spot. In fact he admitted he led a Police party to locate them, but they were fired upon and did not proceed any further. He also admitted that he was given a bundle of \$1/- notes.

20

In respect of this statement I have to decide also whether it is true. I find that there is a substantial part of the accused's statement similar to the evidence of the Indonesians, for example as to the fact that he with others after being given arms and ammunitions and parachutes flew in the plane on the 1st of September, how he parachuted down with his uniform, arms and ammunition, and that he was almost the last to jump. His story of the training he had and the purpose of the training is also consistent with the evidence of Lieut. Sutikno.

30

40

There are two points I want to make on this statement which appear inconsistent with the facts of the case, namely when the accused said that when he got on the plane, he was told it was only a night practice, but that does not seem to be consistent with the fact that he was

given Malaysian money too. Having regard to all the circumstances of the case I hold the view that the statement is substantially true.

The accused also said his intention was to leave the Indonesian Army and return home.

In this respect Mr. Lee referred me to a passage in the judgment of the Privy Council reported at page 190 of (1954) M.L.J. which says:

In the High Court in Malaya

No. 14

Grounds of Judgment.  
29th August 1965 (Cont.)

10

'It is evident that this last consideration weighed with the Court of Appeal, for the learned Chief Justice, in delivering the judgment of the court, said after paraphrasing what he considered to be the substance of the appellant's defence - "This is tantamount to saying that a man can change the nature of his act, from an unlawful to a lawful one, by a mere change of his intention. That may be true of offences of which intention is an ingredient, but it is not true of offences to which the doctrine of 'absolute prohibition' applies",

20

In so far as this passage decides that a mere change of intention on the part of a person accused under regulation 4 (1) cannot, in itself, constitute a "lawful excuse", their Lordships are in agreement with it.'

30

On the question whether the accused was ever in a security area when he was alleged to consort with Indonesian soldiers or that he had possession or control of the arms and ammunition - having regard to the evidence of P.W.9 that he found subsequently that he landed in Johore and also the evidence of Sutikno when he said that at about 2 a.m. they reached Johore territory, I am satisfied that it was Johore territory that the accused and others were parachuted into and at that time they were fully armed. Besides, this would be consistent with what he himself stated in his statement that after discarding his uniform he walked off in daylight in his shorts

40

only and was subsequently arrested in Tenang; so it could not be very far off from Tenang that he landed. According to the map of Johore published by the Surveyor General, Malaya, Pahang is many

In the High  
Court of  
Malaya

            
No. 14

Grounds of  
Judgment.  
29th August  
1965 (Cont.)

miles to the north and north-east of Tenang so that on this point, having regard to all the circumstances of the case, it was somewhere near Tenang that the accused with the others landed, and when he landed he was fully armed.

In my view there is nothing in the accused's statement from the dock that raised any reasonable doubt in my mind as to the truth of the Prosecution's case.

In reference to his evidence that he came from Pahang. It does not seem reasonable that he should be wandering from Pahang in shorts only. I have no doubt he was in shorts because he had thrown away his Indonesian uniform which would be very much more noticeable. 10

For the above reasons I find the accused guilty.

Sd. Azmi bin Haji Mohamed  
(AZMI BIN HAJI MOHAMED)  
JUDGE.  
MALAYA. 20

29th August, 1965.

In the Federal  
Court of  
Malaysia

            
No.15

Petition of  
Appeal  
2nd October  
1965.

No. 15

PETITION OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

CRIMINAL APPEAL No. X4 of 1965

Between

Tan See Boon @ Tan Guan Khim  
....Appellant 30

And

The Public Prosecutor Respondent

PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE FEDERAL COURT

Tan See Boon @ Tan Guan Khim, the appellant abovenamed having given notice of appeal to the Federal Court against the decision of the Honourable Mr. Justice Azmi bin Haji Mohamed given in the High Court at Muar in the State of Johore on the 29th day of August, 1965 states the following grounds for his said appeal :-

In the Federal  
Court of  
Malaysia

          
No. 15

Petition of  
Appeal.  
2nd October  
1965 (Cont.)

10 3. The statement allegedly made by your appellant showed that his occupation (kerja) at the time he made the statement was "Indonesian soldier" and his place of abode (dudok-di) was Djakarta, Indonesia. The evidence of the Indonesian witnesses showed that all the member of the crew were in the uniform of the Indonesian Armed Forces. They also testified that they (the Indonesians) were treated as prisoners of war. Furthermore the learned trial Judge stated in his grounds as follows :-

20 "I understand the reason why the charges were withdrawn was because the Government decided to treat them (the Indonesians) as prisoners of war according to the Geneva Convention."

30 In the circumstances, your appellant ought to be accorded a similar treatment as that accorded to the Indonesians and it will be argued that your appellant should also be regarded in law as a prisoner of war or as a person of similar standing. On land, your appellant did not commit any act which was prejudicial to the security of Malaya.

- - - - -

In the Federal  
Court of  
Malaysia

No. 16

Notes of  
Argument.  
10th November  
1965.

No. 16

NOTES OF ARGUMENT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No:X.4/1965  
(Muar High Court Emergency Criminal Trial No.16/64)

Tan See Boon alias Tan Guan Khim .. Appellant

v.

The Public Prosecutor .. Respondent 10

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

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

10th November, 1965

For Appt : Rajah.

For Respt: Nik Saghir.

Rajah:

Withdraw nothing but do not argue grounds on 20  
which Court decided against me in X.6/65.

That covers 1 & 2.

Ground 3 is without merit and I abandon it.

Ground 4 - Judge convicted on uncorroborated  
evidence of Indonesians. Judge did not direct  
his mind to the danger or give himself the  
necessary warning.

R. v. Davies [1955] 1 Q.B. 71.

Woodroffe Vol. III, p.1162.

In any event Judge's reasons for accepting the evidence of the Indonesians were not sound.

Statement by appellant should not have been admitted.

Appellant was questioned to excess and this deprived the statement of any voluntary quality.

Roscoe "Criminal Evidence" (16th Ed.) 41.

R. v. Wong Chiu Kwai [1908] H.K.L.R. 89.

Booth & Jones 5 C.A.R. 177.

10 Appellant had been taken into the jungle and was fired upon. Then a dead body covered with blood was thrown into the vehicle.

Appellant was wounded when arrested but was questioned as to whether he was a paratrooper.

Smith 43 C.A.R. 121, 129.

Woodroffe Vol. III, p.370.

Evidence Ord. s.28.

20 The caution was not properly administered by reason of insufficient knowledge of the Hokkien language by the interpreter.

In any event he was frightened by being shown dead bodies.

Case for appellant.

Nik Saghir:

Submit Judge's warning as to corroboration was adequate. The words "should not" are adequate.

Submit his reasons were adequate.

Srinivas Mall v. Emperor A.I.R. 1947 P.C. 135

30 With regard to appellant being interrogated by P.W.5 according to prosecution it only lasted for 40 minutes. Anyhow this had no connection

In the Federal  
Court of  
Malaysia

No.16

Notes of  
Argument.  
10th November  
1965 (Cont.)

In the Federal Court of Malaysia

No. 16

Notes of Argument. 10th November 1965 (Cont.)

with the charges.

He was not fired on in the jungle - he only heard shots.

No prosecution evidence as to whether he was brought into the jungle.

There were no threats or inducements having reference to the charge. (I.S. Act s. 75).

Case for respondent.

Rajah:

Nothing in reply.

10

C.A.V.

Intld. J.B.T.  
10.11.65.

FEDERAL COURT CRIMINAL APPEAL NO. x4 of 1965

(Muar High Court Emergency Criminal Trial No.16/1964)

TAN SEE BOON @ TAN GUAN KHIM ... Appellant

vs.

The Public Prosecutor ... Respondent

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

20

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

T.T. Rajah for appellant

Nik Saghir for respondent.

Rajah: Not commenting on points in which court had ruled in Tan Hua Lam.

Ground 2 - no comments

" 3 - withdrawn

Ground 4

- (a) complaint is that Judge did not address his mind to the warning as to the dangers of convicting on uncorroborated evidence of accomplices.

See p. 29 l.8 to p.29 l.34 - no such warning to himself.

Davies (1954) 2 W.L R. 343, 351  
(1955) 1 Q.B. 71

10 Woodroffe, Vol. 3, p.1662

- (b) The reasons why Judge accepted the Indonesians as witnesses of truth are not good and sound.

Ground 5 - re The Cautioned statement:

persistent questioning (p.8 - off and on for 2 hours) p.10 (2 hours)

Roscoe Cr. Evidence (16th Ed.) P.41 and P.48

- (i) taken into jungle  
(ii) dead body thrown into vehicle (p.15G)  
20 (iii) shown dead body at Police Station.

They said if I did not co-operate I would be like the dead body. Soon after statement was taken from me.

- (iv) Judge had some doubt as to whether force was not used. (See s.24 of Evidence Ordinance).

Evidence - p.14 cf. p.39

In the Federal  
Court of  
Malaysia

No.16

Notes of  
Argument.  
10th November  
1965 (Cont.)

In the Federal  
Court of  
Malaysia

No.16

Notes of  
Argument.  
10th November  
1965 (Cont.)

Smith, 43 C.A.R. 121, 126, 128

Woodroffe Vol. 1, P.370 -  
re quantum of proof.

(v) Implied threat was there.

Statement taken at 7.15 p.m.  
was immediately after he was shown  
the dead body.

Administration of Caution:

repeat what was said yesterday.

The circumstances preceding taking  
of statement an implied threat.

10

(vi) Administration of caution only  
a paper safeguard.

Ground 6 - repeat what was in p.7 of  
Petition.

Submit appeal should be allowed.

Nik Saghir in reply:

Did Judge warn himself? - see P.44.

His reasons on p.45  
A.I.R. (1947) P.C. 135 @ 139.

20

Persistent interrogation:

by P.W.5 only for intelligence.

No threats etc. (p.8).

In any event, effect of threat etc.  
had been dissipated by the caution  
(see p.39).

Rajah: "fired upon" - see p.59.

C.A.V.

(Sd) H.T. Ong.

In the Federal  
Court of  
Malaysia

No.16

Notes of  
Argument.  
10th November  
1965 (Cont.)

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT

KUALA LUMPUR

FEDERAL COURT CRIMINAL APPEAL NO. X4 of 1965

(Muar High Court Emergency Criminal Trial  
No. 16/64)

Tan See Boon @ Tan Guan Khim . . Appellant

10

V.

Public Prosecutor . . Respondent

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

NOTES OF ARGUMENT RECORDED BY

SUFFIAN J.

T.T. Rajah for appellant

Nik Saghir D.P.P. for respondent.

RAJAH ADDRESSES

20

Ground 1. Not abandoned. But no comment

In the Federal Court of Malaysia today in view of X 6/65.

No.16

Notes of  
Argument.  
10th November  
1965 (Cont.)

Ground 2. Ditto

Ground 3. No merit. I withdraw it.

Ground 4. (a) Judge did not warn himself of danger of accepting accomplice evidence.

Refers to judgment p.29 L 8 onwards.

1954 2 W.L.R. 343, p.351 Davies's case  
or 1955 1 Q.B. 71

Woodroffe volume 3 p. 1662.

10

(b) Reasons for Judge accepting accomplice evidence are bad: reasons being the Indonesians were professional soldiers.

Ground 5. (i) intensive and persistent questioning makes appellant's statement involuntary.  
Refers to P.W.5 p.8 para.F  
"questioned appellant on and off for 2 hours".  
Refers to P.W.6 pp. 9, 10.

20

Roscoe's Criminal Evidence p.41, 16th edition. (2/3 down).

Here there is evidence of 4 hours of intensive questioning of appellant by 2 persons on same day.

Roscoe p.48. Case from Hongkong.  
Wong Cheng Hoi 1908 3 Hongkong Law Reports.

(ii)

(iii) Refers to p.15G to 16C. Dead bodies.

(iv)

(v) Judge had doubt. Note word appears in S.75 J.S.Act. Refers to p.14D to 15B. Cite Thomas Joseph Smith (1959) 43 Criminal Appeal Report 121, 126, 128 (slight threat etc. enough to make statement involuntary. Persistence of threat makes statement involuntary).

In the Federal  
Court of  
Malaysia

No.16

Notes of  
Argument.  
10th November  
1965 (Cont.)

10 Woodroffe 10th edition, volume 1 p.370  
on quantum of proof if there is doubt  
prosecution must satisfy Court confession  
voluntary.

Caution not properly admitted.

Appellant's evidence regarding his being  
severely dealt with by S. Branch uncontradicted.

Ground 7. I do not wish to elaborate.

#### SAGHIR ADDRESSES

Regarding ground No.4. Refers to p.28 at  
bottom of page. Also p.29.

20 A.I.R. (34) 1947 Penal Code 135 Bairoliya  
v. Emperor p.139 para.17. Sometimes an accomplice  
is not a willing participant in the offence  
but a victim of it. Submit degree of  
complicity of the Indonesians not as high as  
that of ordinary accomplices.

Statement. Interrogation by Hamid P.W.5  
only for 40 minutes and for military purposes  
and no threat etc, p.8.

30 Appellant being taken to the jungle etc. -  
but he was never fired upon, he only heard  
gunfire p.15G. No prosecution evidence that  
appellant was taken into the jungle.

Dead body put into jeep not to frighten  
appellant but for purpose to convey it to town.

Appellant shown 2nd dead body but only to  
identify it.

In the Federal  
Court of  
Malaysia

No.16

Notes of  
Argument.  
10th November  
1965 (Cont.)

Assaults here had no reference to the charge.  
S.75 (1) proviso says threats etc. must be in  
reference to the charge.

In any event caution admitted removed effect  
of threat - refers to judgment p.39 C.

RAJAH REPLIES

Refers to P.58 1.22- appellant said they were  
fired upon. Appellant admitted making statement  
but in adverse circumstances.

C.A.V.

10

28 Dec. '65 in K.L.

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

Criminal Appeal X 4/65

Ponnudurai for T.T. Rajah for appellant

Ajaib Singh D.P.P. for P.P.

Written judgment of Court delivered by L.P.

M.S.

No.17

No. 17

20

Judgment of  
Thomson L.P.  
Malaysia  
28th December  
1965.

JUDGMENT OF THOMSON, L.P. MALAYSIA

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No: X.4/1965 .  
(Muar High Court Emergency Criminal Trial No.16/64)

Tan See Boon alias Tan Guan Khim .. Appellant  
 V.  
 The Public Prosecutor .. Respondent

In the Federal  
 Court of  
 Malaysia

                      
 No.17

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

Judgment of  
 Thomson L.P.  
 Malaysia  
 28th December  
 1965 (Cont.)

JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA.

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

20 On the morning of 2nd September the present  
 appellant was arrested near Labis and he was  
 thought to have been one of the armed party  
 commanded by Lieutenant Sutikno who had left  
 by parachute the aircraft which figured in the  
 previous two cases. In consequence he was  
 prosecuted on the following three charges under  
 the Internal Security Act, 1960:-

30 "1st Charge: That you between 2.00 a.m. and  
 10.00 a.m. on the 2nd 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 Sekari,  
 Labis, in the District of Segamat, in the  
 State of Johore, consorted with members of  
 the Indonesian Armed Forces who carried  
 firearms and ammunition in contravention of  
 the provisions of section 57(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 public security and that you  
 have thereby committed an offence punishable  
 under section 58(1) of the Internal Security  
 Act, 1960.

40 "2nd Charge: That you at about 2.00 a.m.  
on the 2nd day of September, 1964, in a \_ \_ \_  
 (1) Federal Court Criminal Appeal No.X.6/1965.  
 (2) Federal Court Criminal Appeal No.X.16/1965.

In the Federal  
Court of  
Malaysia

No.17

Judgment of  
Thomson L.P.  
Malaysia.  
28th December  
1965 (Cont.)

Security Area as proclaimed by the Yang di-Pertuan Agong by Federal L.N. 245 dated 17th August, 1964, namely at Kampong Sekari, Labis, in the District of Segamat, in the State of Johore, without lawful excuse carried a firearm to wit, one rifle, without lawful authority and that you have thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act, 1960.

3rd Charge: That you at about 2.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong vide Federal L.N. 245 dated 17th August, 1964, namely at Kampong Sekari, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession ammunitions, to wit, 200 rounds of .303 ammunition and two handgrenades, without lawful authority and that you have thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960." 10 20

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

Against these convictions he has now appealed.

The circumstances in which the appellant was arrested on 2nd September have at no time been in dispute. About 9 a.m. that day Constable Ramli went to a road near Labis leading from the jungle. There he saw the appellant who was wearing shorts but nothing on his body and another man; he arrested the other man but the appellant ran away. Shortly afterwards two labourers, Hashim and Mohamed, were working in their rice fields nearby when they saw the appellant and caught him and took him to the Kampong Tenang Police post. Nothing incriminating was found in his possession. 30

The prosecution evidence against the appellant consisted mainly of that of Lieutenant Sutikno and two other Indonesian soldiers who were members of the party in the aircraft. 40

Lieutenant Sutikno said he had joined the

Indonesian Army in 1945 and had been a member of the Air Force since 1950. In 1964 he was trained for the "Crush Malaysia" campaign and in July that year he was sent to Karimun Island (in Indonesia) to give military training to Malaysians for the purpose of "confrontation". On 1st September he was ordered to take a party of parachute troops to Malaysia for purposes of sabotage. The party consisted, in addition to himself, of 23 Indonesians and 14 Malaysians, two of them women, and the appellant was one of the party. They left Jakarta about 4.30 p.m. on 1st September and landed at Medan. They left Medan at midnight and about 2 a.m. on 2nd September proceeded to leave the aircraft by parachute, the witness jumping first. Later he was captured and had at all times been treated as a prisoner of war. The appellant was one of the Malaysians in the party and his "jumping number" was 45. Each member of the party was carrying a sten gun or a rifle, two grenades and a quantity of ammunition and each of them was supplied with \$300 Malaysian currency in \$1 notes.

Karma Omar said he was a soldier in the Indonesian Army and was in charge of a section of six men in the armed party commanded by Lieutenant Sutikno. The appellant was one of his section and was armed with a Lee Enfield rifle, two grenades and a quantity of ammunition. On the evening of 1st September they left Jakarta and flew to Medan. After a short stay they left Medan and at that time they did not know their destination. They were then carrying their parachutes and were each given \$300 in Malaysian \$1 notes wrapped in plastic. They left the aircraft by parachute. The witness whose number was 43 did not actually see the appellant, who was 45, jump but said that if he had not done so he would have been thrown out and in any event he saw him later at the Labis Police Station. It was after he landed that the witness realised he was in Malaysia. He was captured and was at one time prosecuted for possession of arms but the charge against him was withdrawn and he was treated as a prisoner of war.

Sitisna Utja said he also was a soldier in the Indonesian Army. He was one of the section

In the Federal  
Court of  
Malaysia

            
No.17

Judgment of  
Thomson L.P.  
Malaysia.  
28th December  
1965 (Cont.)

In the Federal  
Court of  
Malaysia

            
No.17

Judgment of  
Thomson L.P.  
Malaysia.  
28th December  
1965 (Cont.)

led by Karma Omar which was part of Lieutenant Sutikno's party. The appellant was a member of the same section and was carrying a rifle, ammunition and two grenades. The party left the aircraft about 1 a.m. on 2nd September. The appellant's "Jump number" was 45 and the witness, whose number was 48, actually saw the appellant leave the aircraft. The witness was captured and later saw the appellant at Johore Bahru. He himself was at one time prosecuted for possession of arms but the charge against him was withdrawn and he was treated as a prisoner of war.

10

The only other evidence against the appellant was a statement which he made to a Police officer on 3rd September, the day after his arrest. In this he said he had gone to Indonesia for military training, one of the objects of which was to overthrow the Malaysian Government which had refused to meet the demands of the party of which he was a member. The statement then described his training in Indonesia and gave an account of the expedition of 1st/2nd September which did not differ from that given by the Indonesian witnesses. After he landed he decided to return home and discarded his arms and ammunition and the Indonesian uniform he was wearing.

20

In the course of the prosecution case the appellant gave evidence of having been subjected to ill-treatment by intelligence officers after his arrest in support of an objection to the admissibility of the statement he made to the Police. But at the close of the prosecution case when the alternative methods of making his defence were explained he elected to make a brief statement from the dock not on affirmation. All he said was this :-

"I lived at Bagan Serai, Perak. I am an odd job labourer. I did not commit any offence. I came from Pahang to Labis. At the point I was arrested I had nothing with me. As such I did not commit any offence. That is all. I am not calling any witness."

In the event Azmi, J., convicted the appellant

In the Federal  
Court of  
Malaysia

\_\_\_\_\_  
No.17

Judgment of  
Thomson L.P.  
Malaysia  
28th December  
1965 (Cont.)

10 on all three charges for reasons which he has set  
out in a long and careful judgment. It is clear  
that he based his decision on the evidence of the  
Indonesian prisoners of war. He treated their  
evidence as that of accomplices. He warned  
himself of the danger of convicting on such  
evidence in the absence of corroboration and  
was of the opinion that there was no  
corroboration, but for reasons which he stated  
and to which we shall return, he accepted their  
evidence. He considered the appellant's  
statement to the Police but held that even if it  
were true that by the time of his arrest the  
appellant had formed an intention of returning  
peacefully to his home that afforded no ground  
of defence. Finally he considered the  
appellant's unsworn statement from the dock.  
He expressed surprise that anyone should be  
travelling from Pahang clad only in a pair of  
20 shorts and he found nothing in that statement  
which raised any reasonable doubt as to the truth  
of the prosecution case.

Before us the convictions have been attacked  
on a number of grounds with some of which it  
is not necessary to deal at length.

30 In the first place they were attacked on the  
grounds that whatever the appellant did that  
might be regarded as unlawful was done in the  
airspace above Johore which was not part of a  
security area and that there was a complete lack  
of any criminal intention on the part of the  
appellant because when he was in the airspace in  
question he did not know he was over Malaysian  
soil but was under the impression that he and  
the party of which he was a member were on a  
training flight in Indonesia and were not engaged  
in a hostile invasion. Counsel for the appellant,  
though he did not abandon these grounds, did not  
press them in view of our decision in the  
40 previous case of Tan Hua Lam v. Public Prosecutor  
(Supra).

There are, however, three grounds of appeal, or  
rather three groups of grounds of appeal, which  
merit consideration.

The first of these is that the trial Judge was  
wrong in rejecting the defence that the Appellant

In the Federal  
Court of  
Malaysia

No.17

Judgment of  
Thomson L.P.  
Malaysia  
28th December  
1965 (Cont.)

after landing from the aircraft had changed any previous intention which might be inferred from the circumstances of his presence in the aircraft and had formed a new and wholly innocent intention to return home. In rejecting this as a defence he found support in the Privy Council case of Wong Pooch Yin v. Public Prosecutor (3) and in this, in our view he was right.

In that case the appellant had been convicted for possession of arms without lawful excuse in contravention of Regulation 4(1)(a) of the Emergency Regulations, 1951. At his trial the defence had been set up that the accused had a lawful excuse for carrying firearms because he wanted and was waiting to surrender to the Police. The Judge withdrew this issue from the assessors and in the event the accused was convicted. On appeal the Court of Appeal held that the trial Judge was right in saying that in the circumstances of the case the defence of lawful excuse was not available. The appellant appealed to the Privy Council and although his appeal was successful, Lord MacDermott referred (at p.190) to the following passage in which the Court of Appeal had referred to the appellant's defence as being :-

"tantamount to saying that a man can change the nature of his act, from an unlawful to a lawful one, by a mere change in his intention. That may be true of offences of which intention is an ingredient, but it is not true of offences to which the doctrine of 'absolute prohibition' applies."

His Lordship then said (at p.191) :-

"In so far as this passage decides that a mere change of intention on the part of a person accused under regulation 4(1) cannot, in itself, constitute a 'lawful excuse', their Lordships are in agreement with it."

-----  
(3) (1954) M.L.J. 189.

In any event it is abundantly clear that even on the showing most favourable to the present appellant there was on the evidence not even any suggestion of any change of heart on his part prior to the time after his landing on Malaysian soil when he failed to make contact with his previous companions.

In the Federal Court of Malaysia

No.17

Judgment of Thomson L.P. Malaysia. 28th December 1965 (Cont.)

10 Then the convictions were attacked on the ground that the appellant had been convicted on the uncorroborated evidence of accomplices and that the trial Judge's reasons for this were unsatisfactory.

Azmi, J., has set out in some detail his course of reasoning in this connection.

20 "I have no doubt that for the purpose of this trial the three Indonesians were accomplices. The law on this question is quite clear in that it is a practice which has almost the strength of law that a Court should not convict on the evidence of accomplices unless such evidence is corroborated by independent evidence, but in our law it is also provided under section 133 of the Evidence Ordinance that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. In my view there are several reasons why the evidence of an accomplice should be regarded with suspicion unless corroborated. One of the reasons is that an  
30 accomplice is likely to swear falsely in order to shift the blame from himself to another and that in so doing he expects leniency from the authorities, .....

40 In this case, however, although the three Indonesians are accomplices, one thing should be kept in mind - that they were members of the Indonesian Armed Forces and they came here by the order of the Authorities in Indonesia. They are professional soldiers and they were merely obeying the orders of their superiors. I think I am entitled to make a distinction between them and the usual type of accomplices who normally give evidence in the Court. These Indonesian witnesses were not personally responsible for Accused's joining their party and parachuting into this country. It has been

In the Federal Court of Malaysia

No.17

Judgment of Thomson L.P. Malaysia. 28th December 1965 (Cont.)

said in reference to the two soldiers that the charges against them have been withdrawn. I understand the reason why the charges were withdrawn was because this Government decided to treat them as prisoners of war according to the Geneva Convention. In other words, the withdrawal of charges against them has nothing to do with their willingness or undertaking to give evidence in this trial.

As to Lieut. Sutikno, I understand that he has been treated very well because he collaborated with the Government in advising his men to surrender." 10

Throughout the trials arising from the Labis invasion it has been accepted that for the purposes of the law of evidence Indonesian prisoners of war are to be treated as accomplices. That assumption has not been questioned and it is no concern of ours to question it in the present case though it may be pertinent to observe that in the case of The King v. Lynch (4) a number of witnesses had fought against the British forces in South Africa and no suggestion was made at the trial that they were accomplices of the prisoner. 20

Nevertheless, even if that assumption be accepted, there is great force in the reasoning of Azmi, J.

Various reasons have been stated as the basis of the modern rule relating to accomplice evidence. It has been said that ex hypothesi an accomplice is an infamous person and as such not deserving of belief. Again it has been said he has an obvious interest in diverting blame from himself to the person against whom he testifies. Again it has been said he has an obvious interest in currying favour with the authorities in whose hands his own fate lies. Yet again it has been said that by reason of his knowledge as an accomplice he is in a peculiarly favourable position to concoct plausible false evidence. 30 40

-----  
(4) 19 T.L.R. 163.

In our view, however, none of these considerations are very relevant in the present case. Here the accomplices are men who have done whatever they have done in the course of their duty as soldiers and are being treated as prisoners of war. They are entitled to the protection of International Law and the Geneva Conventions relating to prisoners of war are part of the municipal law of this country (see Act No. 5 of 1962). They have nothing to fear and nothing to hope for save the end of hostilities which will permit their return to their homes. In particular they have no cause for animosity against any individual among their former comrades in arms who have the misfortune not to enjoy the protection they themselves enjoy. The trial Judge has seen and heard these particular witnesses and has found no reason to doubt their credibility as individuals. In the circumstances it is not open to us to dissent from his conclusions as to their credibility.

In the Federal  
Court of  
Malaysia

            
No.17

Judgment of  
Thomson L.P.  
Malaysia.  
28th December  
1965 (Cont.)

The third ground of appeal with which we have to concern ourselves is that the appellant's statement to the Police was wrongly admitted in evidence because it was elicited from him by threats and that in any event the statutory caution was not properly administered to him.

This statement was taken on the evening of 3rd September. the prosecution evidence was that the appellant was then detained at Labis Police Station where he had been taken after his arrest the previous day. On the afternoon of 3rd September he was interviewed by Inspector Hamid. This witness said he questioned the appellant for about two hours for intelligence purposes but denied that in the course of this questioning any threat or promise was uttered.

Superintendent Yeoh gave evidence that about 7.15 p.m. the same evening he saw the appellant at Labis Police Station with a view to taking a statement from him. Speaking through Corporal James Wong as interpreter he asked the appellant what language he wished to speak. The appellant said Hokkien. He then administered the form of caution provided by section 75 of the Internal Security Act which was interpreted to the appellant who appeared

In the Federal  
Court of  
Malaysia

                      
No.17

Judgment of  
Thomson L.P.  
Malaysia.  
28th December  
1965 (Cont.)

to understand it. He then asked the appellant questions to which the appellant gave replies which were interpreted into English by the interpreter and written down by the witness. The statement was then interpreted back to the appellant who said it was correct and said he wished to add nothing except to ask for leniency. He was satisfied that the statement was made voluntarily and at no time did he use any threat, inducement or promise.

10

Corporal James Wong, the interpreter, gave similar evidence.

No suggestion of any threat or promises or indeed of any impropriety of any sort was made to either of these witnesses in cross-examination but Wong was cross-examined apparently with a view to making out that there was some possibility of misunderstanding between him and the appellant because they might have been using different forms of the Hokkien dialect. Although an attempt was made by the defence to support this by calling a Court interpreter as a witness the point was clearly without substance particularly as the appellant himself admitted he spoke the same sub-dialect.

20

The appellant himself gave evidence at this stage. His story was that after his arrest he was taken "to a certain place in a dark chamber". There a military officer and three other persons punched him and kicked him and asked him whether he was a paratrooper, which he denied. They then compelled him to make a statement. Then he was taken to the Police Station where he was questioned by the witness, Inspector Hamid. Later he was assaulted again and that night he only had two cups of Ovaltine as food.

30

The following day about noon he was taken into the jungle in a jeep by the three men who had beaten him the previous day to look for his gun and he was told that if he did not find it he would be beaten again on their return to the Police Station and that if he was not co-operative he would be killed and they would say he had been shot trying to escape. In the jungle they left the jeep and proceeded on foot but firing broke out and they hid in a bush. They then returned to the jeep to return to Labis and on the way a

40

dead body was found and taken into the jeep. They got back to Labis as it became dark and the appellant was asked to identify the body of a dead woman and he was told that if he did not co-operate he would be like the dead body. It was shortly after that that he was interviewed by Superintendent Yeoh and made his statement. He had had no food and was frightened by reason of his previous experiences. He was not cautioned and he did not understand the interpreter very well. All he was told was that it would be better for him to speak. Subsequently he made no complaint of ill-treatment to anybody.

In the Federal  
Court of  
Malaysia

            
No.17

Judgment of  
Thomson L.P.  
Malaysia.  
28th December  
1965 (Cont.)

It is not really necessary for this Court to examine that body of evidence because of the way in which it was regarded by the trial Judge.

As regards the interview between Superintendent Yeoh and the appellant the Judge accepted the evidence of Yeoh and his interpreter and rejected that of the appellant. That depended largely on the view the Judge took of the credibility of the Witnesses and we accept it without question. With regard to the events alleged by the appellant on 2nd September and on 3rd September prior to the statement being taken the Judge took the view that much of the appellant's story was a fabrication. He thought, however, that some inducement might have been held out to the appellant to persuade him to show where his gun was hidden, though not to persuade him to make a statement. And he thought that if there had been any threat or inducement held out to the appellant the effect of it had been removed by the caution administered by Superintendent Yeoh.

With respect we are unable to agree. We are prepared to accept that much of the appellant's evidence was exaggerated and a fabrication. Nevertheless if it contained any elements of truth, and the Judge clearly thought it did, something should have been said in addition to the statutory statement to remove any impression that might have been made on the mind of the appellant by whatever had happened previously. It may well be, of course, that Superintendent Yeoh had no knowledge of anything that might have happened





In the Judicial  
Committee of  
the Privy  
Council

\_\_\_\_\_  
No.18

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

to the said Orders in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree to report to the Head of Malaysia as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Federal Court of Malaysia dated the 28th day of December 1965.

10

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

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

20

DATED this 7th day of March, 1967.

TRUE COPY

Sgd.

Deputy Registrar  
Federal Court,  
Malaysia  
Kuala Lumpur

BY COMMAND

30

10.3.67.

Sd. Tun (Dr) Ismael bin Dato  
Abdul Rahman

MINISTER OF JUSTICE.

(F.C. Crim. App. X.4/65).

EXHIBITSP.3. - STATEMENT OF ACCUSEDPOLIS DI-RAJA MALAYSIAPERCHAKAPAN DALAM PEMEREKSAAN

No. Report: 422/64                      Rumah Pasong:    Labis

Perchakapan bagi:    TAN GUAN KHIM @ TAN SEE BOON

Nama bapa:    TAN CHOON HUAT

laki2

Rangsa: Teochew    Tempat di-peranakan: Bagan Serai

10 Umor: 29 tahun. Kerja: Indonesian soliders.

dudok di-Djakarta

DiTerima oleh: ASP KEOH CH CHENG di Labis pada:  
2.9.64 jam 7.15 p.m.

Jurubhasa: D/Cpl:414 James Wong daripada Hokkien  
kapada English

Kata-nya:

20 Before recording the statement I  
administered the undermentioned caution to the  
accused in English and this was interpreted to  
him in the Hokkien dialect by D/Cpl.414 James  
Wong :-

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

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

30                      Signed:

Signed

(JAMES WONG) D/Cpl.414  
Interpreter

(YEOH AH CHENG) ASP  
Investigating Officer

EXHIBITS

"P3"

Statement of  
Accused.  
3rd September  
1964

EXHIBITS

"P3"

Statement of  
Accused.  
3rd September  
1964 (Cont.)

I was born in Bagan Serai and I am now 29 years old. I left Malaya for Indonesia a little over two months ago. Before I left I was an odd labourer in Bagan Serai. I was also the Treasurer of the Labour Party in Bagan Serai.

Just a little over two months ago I met a friend of mine named Boon Leng of about thirty odd years old who asked me to join some volunteers in training in an island off the Parak coast. One object of the training was to overthrow the Malayan Government when we were refused any of our demands. 10

I was interested in this and agreed to join the volunteers.

About five days later the said Boon Leng took me in his lorry to Pontian and he had with him in his lorry an attendant, one Teik Cheong. We were the only three in the lorry and the lorry was loaded with sundry goods. When we left, which was from Gurun in Kedah, it was in the early morning. We travelled the whole day and night through and reached Pontian the next day about noon. After unloading the goods in various shops, Boon Leng and Teik Cheong took me to board a motor-boat. It was at about 9.p.m. There were about eleven other Chinese in the boat already. We started and reached the island at about 7 a.m. the next day. I do not know the name of the island. We spent two days in the island and later some of us were put into a bigger boat with twenty over other Chinese. We were in the bigger boat for over 24 hours, starting early one night and reaching our destination early the next night. When we arrived there we were taken in two lorries to a place quite far away, but I do not know the name. There we were not allowed to go out or mix with other people. There we were put on military training and do parachute jumps, for about two months. I had seven practise jumps in the place. In this group there were thirty odd men in training. 20 30 40

EXHIBITS

"P3"

Statement of  
Accused.  
3rd September  
1964 (Cont.)

On 1st September, 1964 at about 4.00 p.m. we were to get ready by an Indonesian Officer whose name I do not know. We were not told where we were going to. We were given our arms and ammunitions and parachutes. There were two female Chinese in the party seen by me but I was told there were four of them in the group. When we boarded the plane I saw there were about an equal number of Indonesian  
10 soldiers in the plane and so there were in all about seventy of us in the plane. I do not know where we were proceeding to and we were not given any instructions. We were only told to do night parachute jumps.

After about three to four hours in the plane, the door opened and two or three bundles in the plane were pushed out after which one by one of us in the plane was pushed out. I was almost the last to jump. It took  
20 only about ten minutes to complete the jump. I do not know what time it was that I landed and I was dazed. I waited till day break. I kept my parachute in place and I took off my uniform and my arms and ammunition and kept in a certain spot and started to walk away. My intention was to discard the Indonesian Army and return to my hometown. I was wearing only a pair of underpants. My intention was to buy new clothings and go home. When I landed  
30 from the plane there was nobody near me so I was able to discard my uniform and walked off when it was daylight. After walking for some time I came to a road and was nearing some shop houses when I was caught by some Government Officials.

Q. Were you not told where you were going to before boarding the plane?

A. We were not told where we were going. We were told that we were doing a night practise jump and on jumping to regroup and there would be someone to give  
40 instructions.

Q. Are there any other trainees in your camp in Indonesia left in training?

EXHIBITS

"P3"

Statement of  
Accused.  
3rd September  
1964 (Cont.)

- A. Nobody left. The whole lot were sent in this trip.
- Q. What happened to your friends Boon Leng and Teik Cheong?
- A. They also jumped down from the plane and I do not know where they are now.
- Q. A woman was killed to-day and brought to the Police Station. Do you know her?
- A. She was known to me as Tan Siew and she was also a member from our training camp. The other woman who also jumped is Kow Yian and I do not know of her whereabouts now. 10
- Q. What were you armed with?
- A. I had a rifle, two hundred rounds of ammunitions and two hand grenades and other rations and clothings
- Q. Where are your rifle, ammunitions and hand grenades now?
- A. I left them in the jungle.
- Q. Can you show us the spot? 20
- A. I think I can. To-day I led a police party to locate them but were fired upon and did not proceed further.
- Q. Are you married?
- A. I am a bachelor.
- Q. How was it that it took only ten minutes to drop the whole lot?
- A. That was my estimate of time.
- Q. Were you given any money and if so when?
- A. Yes, when we were in the plane we were each given a bundle of \$1/- notes. I do not know how much and we were asked to keep them. I lost the money while running out to the 30

main road.

Q. Have you anything further to say or any corrections to make to this statement?

A. No except to ask for leniency.

Before I concluded, this statement was read over to the accused and interpreted to him in the Hokkien Dialect, by D/Cpl: 414 James Wong and he admitted that he fully understood it and that it is Correct.

EXHIBITS

"P3"

Statement of  
Accused.  
3rd September  
1964 (Cont.)

10 No inducement, threat or promise was made to the accused in recording this statement.

Sgd: (JAMES WONG)D/Cpl: 414 Before me,  
Interpreter.

Sgd. (YEOH AH CHENG) ASP.  
Investigating Officer.

IN THE PRIVY COUNCIL

No. 11 of 1967

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

B E T W E E N :

TAN SEE BOON *alias* TAN GUAN KHIM  
Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

---

RECORD OF PROCEEDINGS

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

Solicitors for the  
Appellant

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

Solicitors for the  
Respondent