

1967/27
[7]

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 12 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 :

HO MING SIANG alias HO SUNG Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

RECORD OF PROCEEDINGS

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CLASS MARK

ACCESSION NUMBER

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UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
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LONDON, W.C.1.

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

B E T W E E N :

HO MING SIANG alias HO SUNG Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

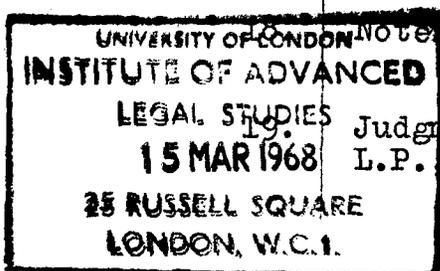
RECORD OF PROCEEDINGS

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1.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 12 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 :

HO MING SIANG alias HO SUNG Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

RECORD OF PROCEEDINGS

10

No. 1

No. 1

CERTIFICATE UNDER REGULATION 4 OF
EMERGENCY(CRIMINAL TRIALS) REGULATIONS
1964 AND CHARGES

Muar Emergency Criminal Trial No. 32 of
1965

Certificate
under
Regulation 4
of Emergency
(Criminal
Trials)
Regulations
1964 and
charges 17th
August 1965

PUBLIC PROSECUTOR vs. HO MING SIANG @ HO SUNG

20 I, B.T.H. LEE, Deputy Public Prosecutor, in
accordance with the provisions of regulation 4 of
the Emergency (Criminal Trials) Regulations, 1964,
hereby certify that the above-named case in which
Ho Ming Siang @ Ho Sung is charged is a proper
one to be tried under the aforesaid Regulations.

And in accordance with regulation 5 of the

No. 1

Certificate
under
Regulation 4
of Emergency
(Criminal
Trials)
Regulations
1964 and
charges 17th
August 1965

aforesaid Regulations, I prefer the following charges against the above-named accused to be tried in the High Court, Muar:

1ST CHARGE

That you between 2.00 a.m. on the 2nd day of September and 6.00 a.m. on the 11th day of September, 1964, in a security Area as proclaimed by the Yang-di-Pertuan Agong vide FLN. 245 of 17th August, 1964, namely Tenang Kampong, 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 57(1) of the Internal Security Act, 1960, in circumstances which raised 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 said Act. 10 20

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 vide FLN. 245 of 17th August, 1964, namely Tenang Kampong, Labis, in the District of Segamat, in the State of Johore, without lawful excuse carried a firearm, to wit, a LEE ENFIELD RIFLE, without lawful authority and that you have thereby committed an offence punishable under Section 57(1)(a) of the Internal Security Act, 1960. 30

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 FLN. 245 of 17th August, 1964 namely Tenang Kampong, Labis, in the District of Segamat, in the State of Johore, without 40

3.

lawful excuse had in your possession 200 rounds of
ammunitions without lawful authority and that
you have thereby committed an offence punishable
under Section 57(1)(a) of the Internal
Security Act, 1960.

Dated this 17th day of August, 1965.

Sd: (B.T.H. LEE)

Deputy Public Prosecutor

No. 1
Certificate
Under
Regulation 4
of Emergency
(Criminal
Trials)
Regulations,
1964 and
Charges 17th
August 1965
Continued

IN THE HIGH COURT IN MALAYA AT MUAR

10 MUAR EMERGENCY CRIMINAL TRIAL NO. 32 OF 1965

In the High
Court of
Malaysia

PUBLIC PROSECUTOR

versus

HO MING SIANG @ HO SUNG

Enche B.T.H. Lee for the Public Prosecutor
Enche Lim Kean Siew for the accused, retained.

NO. 2

PLEA

Charges read out and explained to accused.

20 Claims trial on all charges

No. 2

Plea 5th
September
1965

In the High
Court of
Malaysia

No. 3

P.W.1. Shuaid
bin Haji Hussin
5th September
1965

NO. 3

P.W.1. SHUAID BIN HAJI HUSSIN

P.W.1. SHUAID bin HAJI HUSSIN, affirmed, states
in Malay:

I am Police Constable No. 12340 stationed
at Pokok Assam Police Station, Taiping. I have
been stationed there for four years. My duties
include patrol and beat duties.

I know and can recognise a person named Ho
Ming Siang. He was residing at 189, Jalan Aun
Chuan, Pokok Assam, Taiping. He is in Court
today. He is accused. I know his father named
Ho Tak (identified). 10

On 13.9.64 at about 6.30 p.m. I was on duty
in Pokok Assam. I received certain information.
On receipt of this information I returned to
Pokok Assam Police Station and called a
Corporal and two Constables. With the Corporal
and the other Constables I went near the house
of the accused and laid an ambush. 20

On reaching near the house I positioned
myself in front of the house. One P.C. was at
the back of the house, the other P.C. on the
right side of the house and the Corporal on the
left of the house. I saw a bright light inside
the house, but at that time I could not see the
persons in the house. At about 8.30 p.m. the
Corporal left the place.

At about 9.00 p.m. I saw a person coming
out of the side. I looked and observed and saw
that he was the accused. I followed him. On
reaching the town he stopped a car. I arrived
at the car. The accused opened the left front
door of the car. Having satisfied myself that
he was the accused, I stopped him and asked for
his Identity Card. I checked the name in the
Identity Card. It was Ho Ming Siang alias Ho
Sung. I arrested him and took him in that car 30

to Pokok Assam Police Station. I then lodged a report.

In the High Court in Malaya

No. 3

P.W.1. Shuaid bin Haji Hussin 5th September 1965
Continued

Cross-examined: After the arrest, the accused was taken to Taiping Police Station. On the same night I informed the accused's mother in front of her house about the accused's arrest. I cannot remember the time. It was at about 11.30 p.m. This was after the accused had been taken away to Taiping. As far as I am aware, the
10 accused had no chance to see his family after his arrest. I do not know whether he was given an opportunity to take his clothing, toothbrush, etc.

No re-examination.

NO. 4

P.W.2. HO TAK.

In the High Court in Malaya

No. 4

P.W.2. HO TAK, affirmed, states in Hakka:

P.W.2. Ho Tak 5th September 1965

I am 55 years old residing at 189 Pokok Assam, Taiping. I am a woodcutter. I have a son by the name of Ho Ming Siang. He is the accused.
20 The accused is still unmarried. He worked as an odd job labourer and also as a timber worker. He stayed with me. I know he was arrested some time on the 12th or 13th of September, 1964. He had returned to the house four or five days earlier. Prior to that he had left the house some time in the Middle of August, 1964. He said he wanted to go to Kuala Lumpur to look for work. That was in June, 1964. Then he came back and four or five days later the Police arrested him.

30 My son left in the middle of June, not in May. I remember the elections some time in April 1964 and another election in June 1964. The election in June was the bye-election. My son left after the bye-election. I am certain that my son left the house in June 1964.

(Enche Lee applies to have this witness

In the High
Court in
Malaya

No. 4

P.W.2. Ho
Tak 5th
September
1965
(Continued)

treated as hostile with a view to putting the Police statement to him. Leave granted).

I made a statement to the Police on 26.9.64. I did not say in my statement that some time in late May 1964 after the election my son Ho Ming Siang left the house and that I did not know where he went. I did not further say in my statement that since then my Son Ho Ming Siang did not return until 11.9.64.

Cross-examined: I am a Hakka. I am now giving my evidence in Hakka. The Chinese who took my statement spoke in Cantonese and mixed it up with other dialects. My statement was written down and subsequently typ by a Malay Inspector. He did not explain my statement to me. Chinese 5th month is English 6th month. My son left after the bye-election. The bye-election was the local Council election. 10

I am a woodcutter. I go into the jungle. I work in a lumbering firm. I go deep into the jungle. I go in a team of about 12. I do not come back home every day. It takes me two weeks to return home. After returning home I sometimes stay in the house for one day, two days or three to four days. After that I go out again. "To return" and "come back home" mean the same thing. I learnt Chinese only for a few months. Apart from that I am not educated at all. 20

Prior to 1964 my son had left the house to go and look for work. He used to go for work and come back. He would come home after two days, eight days or ten days. But he never stayed away for more than two or three months. The accused returned home a few days before his arrest. The accused also returned home in July and also in August. He returned home every month. I saw him every time he returned. He went out again after 2, 8 or 10 days. If he returned when I was not at home, I would not see him. 30 40

On 13.9.64 the Police brought my son to my house after his arrest at about 11 p.m. P.W.1 was with the Police party. The Police searched my house in my presence. The police were unarmed.

They were in my house about one hour. I was not allowed to speak to my son. My son was not allowed to speak to any member of my family. When he was about to leave, the Police party allowed him to take his toothbrush and towel. I was not frightened. My son did not do anything wrong.

In the High Court in Malaya

No. 4

P.W.2 Ho Tak
5th September
1965
Continued

NO. 5

P.W.5. SEMAN bin PAWIRO

No. 5

P.W.5. Seman
bin Pawiro
6th September
1965

P.W.5 SEMAN bin PAWIRO, affirmed, states in
10 Indonesian Malay:

I am an Indonesian. I am 23 years old. I am a Private Class 1 of the "P.G.T." group of the Indonesian Armed Forces. I was attached to Platoon 3, Company No. 2, Section No. 2. There were 9 persons in my group while I was in Indonesia. When we entered the plans, there were six persons in my group. They were Kamis, the Ketua of the group, myself, two Chinese, Abdul Jabar and Iju Johan. There were two
20 Chinese in my group. I can identify the two Chinese. One of the two Chinese was the accused (points to accused in the dock).

We entered the plane on 1.9.64. I was carrying my own firearms, ammunition and 2 handgrenades. I do not know what the accused was carrying. The plane took off from Medan at about 11 p.m. towards a destination which I did not know. At 2 a.m. on 2.9.64 I jumped out of the plane as ordered. There were 48 persons in
30 the plane. The others were also carrying firearms, ammunition, handgrenades and provisions. My position in the plane was No. 20. The position of the accused was No. 21. Sutikno was the first person to jump from the plane. This is Sutikno (identified). I was No. 20 to jump from the plane. I landed on the ground. I did not know

In the High
Court in
Malaya

No. 5

P.W.5. Seman
bin Pawiro
6th September
1965
Continued

the place where I landed. I did not eventually come to know the place I landed. I was arrested on 7.9.64 inside a kampong in Labis. After my arrest I met the accused at the depot in Johore Bahru.

I know the next person to jump after me was No. 21. When I landed I did not meet anybody. I was alone all the time until I was arrested. I am now a prisoner of war.

I first met the two Chinese in my group at Jakarta on 28th August, 1964. The accused was wearing a uniform when he was in the plane with me. He was seated next to me. I do not know whether all were carrying arms, ammunition and handgrenades, but they all carried bundles. 10

Cross-examined: I am a brave soldier. I surrendered because I was alone, afraid and lost. I expected to be shot when I was arrested. I was happy that I was not shot. I left my gun in the jungle when I was about to enter the kampong in which I was arrested. I wandered about for 5 days before I surrendered. I do not know how far I walked. I do not know whether I can walk from Singapore to Labis in 5 days. In April this year I was told at the depot that I am a prisoner of war. I do not know what a prisoner of war means. I do not know whether I can refuse to give evidence in this case. I am a prisoner of war. I follow instructions. 20

When I boarded the plane on 1.9.64 I did not know whether I was coming to Malaya. I did not know until I landed. Nobody told me, not even when I was flying. I was surprised when I found myself in strange territory next morning. When I found myself in strange territory, it did not occur to me to shoot somebody. My aim was to look for my commander. I did not use my firearm because I lost my ammunition when I jumped. Sutikno was in Medan. I went on board at Medan. There were 48 of us. I met accused in Jakarta on 28th August, 1964. I arrived at Medan at 9 p.m. on 1.9.64 by plane. Until then I did not know what my destination was. I thought I was going for training. While at Medan I had no 30 40

reason to believe that I was going for anything other than training. Whilst at Medan I was in the company of 48 people. When I boarded the plane at Medan I did not know where I was going. I do not know how fast a Hercules plane flies. The plane was under the control of the pilot. Once I was in the plane I did not know where I was going until the orders came. When orders came I did not know where I was jumping to.

10 I jumped into darkness. I looked directly in front when I jumped. I was facing in the direction of the tail of the plane when I jumped. The others in the plane were behind me. At the moment of jumping I did not know what happened behind me or in the plane or to the plane after I jumped. As soon as my parachute opened I looked round, and all I saw was darkness. I was lost. I did not see any other parachutes. As soon as I landed I parted company with the others.

20 I did not know what happened to the others. All I heard was the noise of the plane.

I next saw the accused at the depot in Johore Bahru. I cannot remember the date. The Police by then had taken my statement but not completed it. The Police carried on taking my statement for two weeks. When the Police took my statement I had not been informed that I was a prisoner of war. I do not know what I was then.

30 I was not asked to co-operate with the Police. They asked questions. I was a bit afraid. During the period my statement was taken I was allowed to mix with others. When I saw the accused at the depot I was with some others. The Police brought him to the verandah and took him into a cell. I cannot remember whether I made my last statement after that.

Before leaving Jakarta I saw some Chinese but I cannot identify them. I can identify some of the Indonesians who were in the plane, about 15 of them. When in Indonesia I did not know the accused's name. The accused wore a peak cap. I was not together with him all the time. I saw him at the time when we were about to take off from Jakarta. I saw him on 28th, 29th, and 30th August, but I did not mix with him. He was with about 200 persons. I cannot say how many Chinese there were. Apart from the

40

In the High
Court in
Malaya

No. 5

P.W.5. Semen
bin Pawiro
6th September
1965
Continued

In the High
Court in
Malaya

No. 5

P.W.5. Seman
bin Pawiro
6th September
1965
Continued

accused, I cannot identify anybody. I saw him wearing uniform in the plane. When I saw him in the depot, he was in civilian clothes as now. I did not know his name in Indonesia or in the plane. I made a statement to the Police when I was at the depot. When I saw accused in the depot I did not know his name. I came to know his name from my firends at the depot after I saw him. Before meeting the accused I had informed the Police about my team.

No. re-examination

10

No. 6

P.W.6.
Sutikno
Tjetrosumarto
6th September
1965.

NO. 6

P.W.6. SUTIKNO TJETROSUMARTO

P.W.6. SUTIKNO TJETROSUMARTO, affirmed, states in Indonesian Malay:

I was a Lieutenant Muda in the Indonesian Armed Forces before I was captured. I am now a prisoner of war.

I joined the Indonesian Army in September, 1945. Later in 1950 I was transferred to the Air Force. I was appointed Lieutenant Muda in 1962 and I became Commander of C Company.

20

In February 1964 my company had training for the confrontation against Malaysia. I was trained for that. In July I was transferred to Pulau Kariman, an Indonesian island, to train the Chinese who came from Malaysia in the use of firearms and handgrenades, etc., for the confrontasi campaign. The object of the training was to come to Malaya to liberate the people and to carry out sabotage work such as blowing up of roads and bridges to disrupt the economy of the country.

30

I returned to Jakarta on 25th August, 1964, arriving there on 26th August, Then I returned home to rest at Bandoeng and went back to Jakarta again on 30th August. On 1.9.64 at about 12 noon I was instructed to muster a team of 48 persons including myself. I mustered a team which consisted of 14 Chinese from Malaya. The object

was to go to Malaysia to liberate the people of Malaysia and to carry out sabotage work. At that time I did not know to which place I was to go to carry out the sabotage work.

In the High
Court in
Malaya

No. 6

I left Jakarta with my team in a plane at about 4.30 p.m. on 1.9.64 for Medan. At Medan we rested for some time and then left by plane for Malaysia at about 12 midnight. At about 2 a.m. on 2.9.64 we jumped out of the plane and landed in Malaya, in Johore. About 15 minutes before the jump I saw the light signal for the jump. It was a warning that we had arrived at the place. A few minutes after that the back door was opened. Before I jumped I baled out the crates containing ammunition, provisions and medical supplies. The supplies were for a period of 20 days. I was the first to jump after the crates. The rest were lined up according to numbers. They were to jump according to numbers, one after the other. Each person was given a number for the order to jump. They were lined up close together to jump out one after the other.

P.W.6.
Sutikno
Tjetrosuanto
6th September
1965
Continued

Each of us carried two bags containing food, clothing and medicine. We were all in uniform. Each of us was given \$300 in Malayan currency. Each person carried a firearm, 2 handgrenades and ammunition. There was no limit to the ammunition carried, but the minimum was 200 rounds. Some of the Malayan Chinese carried Lee Enfield rifles and some carried Sten guns. The Indonesians carried G.3 light automatic firearm.

I know P.W.5. He was one of my men. I can identify all the Malayan Chinese. The accused was one of the Malayan Chinese in my company. My team consisted of 48 persons.

After I had landed I did not meet any of my men except one until I was arrested on 21.9.64 at about 7.30 p.m.

Each person carried enough rations to last a week.

I cannot say whether I met the accused after his arrest.

In the High
Court in
Malaya

No. 6

P.W.6.
Sutikno
Tjetrosuanto
6th September
1965
Continued

Cross-examined: I consider myself an efficient officer. I did not find the provisions I had dropped from the plane. I met only one of my men. I was engaged in a fight, a shooting fight for about five minutes. I do not know whether I killed somebody. Then I ran away. I was having my food in a kampong when I was arrested. I was captured with my gun. I had had food with some Malays. Then I went out and I was surrounded by New Zealand soldiers. I did not want to fight because there were many children. I then had one of my men with me. He ate together with me. He was also surrounded and captured. I did not put a guard outside the house as I was eating to give me warning.

10

I am now giving evidence against one of my men. I call myself a good officer. I first saw the accused on 1.9.64 when I mustered my men and gave them numbers. I was in uniform. I was not wearing a helmet. I was wearing a peak cap. The accused was wearing a helmet covering his ears. I could see his face.

20

When I came from Medan, there was a red light in the plane. After mustering my men and giving them numbers, I entered the plane with them. The plane left Jakarta at about 4 p.m. I saw my men from 1 p.m. I mustered my men at 1 p.m. We had our food at 3 p.m. and at about 4 p.m. I lined up my men and gave them numbers. I first saw the accused after my arrest in the Muar lockup on 4th September, 1965. I was instructed to give evidence. I was also in the Muar lockup but in a separate cell. I do not know the accused's name. I know only his face. There was no identification parade. I have been asked to identify only two persons in Court.

30

I remember making a statement to the Police on 18.8.65. I said in my statement, "Amongst the 14 Malaysian Chinese there was a female Chinese whom I know as Salina and can recognize her. I may not be able to recognize the others". I am recognising the accused one year after the incident. When I first saw him in Indonesia he was in uniform. He was not in uniform when I next saw him.

40

I am a prisoner of war. I do not know what that means. I know that as a prisoner of war I can refuse to give evidence. Nobody told me that. I was called as a witness and I have given evidence.

In the High Court in Malaya

No. 6

P.W.6
Sutikno
Tjetrosumarto
6th September
1965
Continued

10 I was in the lockup at Travers Road Police Station, Kuala Lumpur. Nobody told me that I can refuse to give evidence if I wish. I do not get food parcels. I get my food in a tiffin carrier. A Police Corporal gives me food.

I do not know what happened to the man who was captured with me. I was with him in the same lockup at Johore Bahru until 25th September, 1964. I have not seen him since.

20 Since I jumped first, it is possible that the others landed at other places. When I was in the plane I depended on the pilot to tell me when to drop. I did not know where I was going to drop. I walked about for 20 days before I was arrested. I had a compass, but it was not working because I landed in a swanp. I had a map. When I walked into the kampong, I knew it was Tenang Kampong.

My briefing in Jakarta was confidential. I was then alone.

30 Re-examined: When I jumped I knew I was going to drop into Malaya but not what part of Malaya. I did not know where I landed until next morning. Next morning when I opened my map, I knew I was in Tenang area, Johore.

By Court: I knew we came in a Hercules plane. I did not know its maximum speed.

NO. 7

No. 7

P.W.7. BAKIR bin AKIR

P.W.7.
Bakir bin
Akir 6th
September
1965

P.W.7 BAKIR bin AKIR, affirmed, states in Indonesian Malay:

In the High
Court in
Malayan

No. 7

P.W.7
Bakir bin
Akir 6th
September
1965
Continued

I am an Indonesian. I am 35 years old. I was a member of the Indonesian Armed Forces before I was captured. I am now a prisoner of war.

On 1.9.64 I was at Jakarta. Then I got into a plane under the command of P.W.6. P.W.5 was in same plane, but he belonged to a different section from mine. There were some Chinese in the plane. I can identify some of them. The accused was one of the Chinese in the plane (points out accused after looking round).

10

There were 48 persons in the plane. The accused was one of them. I was wearing a uniform. All the others were also wearing uniform. I was carrying a firearm, ammunition and 2 handgrenades. The others were also carrying firearms, ammunition and handgrenades.

Cross-examination: I remember making a statement to the Police about this case on 21.9.64. I met the accused before I boarded the plane to come to Malaya on 1.9.64. He was in uniform. He was in the plane. After I jumped out of the plane I did not see him again. I have been brought here from Johore together with P.W.5. I was put in the Muar lockup on 4th September, 1965. I saw P.W.6 also in the lockup in a different cell.

20

I gave the accused's name in my statement to the Police as Ho Min Siang. I came to know his name after my capture. I heard from my friends. After my capture I was not shown photographs of any people or given names of people. I did not discuss accused's name with P.W.5. I met the accused at the Johore Bahru depot and again when I was in Johore Bahru prison. This was after I had made my statement to the Police. I was never asked to identify the accused.

30

I cannot identify any of the other Chinese in the plane. I can identify one more, a male person. I was never asked to identify that other Chinese.

I was captured on 11.9.64. I was captured with another person named Suffian. I jumped out of the plane before he did. I had a compass. I

40

did not see the accused jump out of the plane. After landing I was in the company of only one Indonesian. I did not take part in any fight. I went to one Haji's house for rice when I was captured. I was in the jungle for 10 days. I was not surprised or ambushed in the jungle.

No re-examination.

Ajourned until 1.30 p.m.

Signed (S.S. Gill)

In the High Court in Malaya

No. 7

P.W.7. Bakir bin Akir 6th September 1965 Continued

10 Resumed at 1.30 p.m.

NO. 8

ACCUSED HO MING SIANG

HO MING SIANG, affirmed, states in Hakka:

I am 24 years old residing at 189 Pokok Assam, Taiping. I was an odd job labourer before my detention. I was arrested on the night of 13.9.64 at Taiping, after which I was interrogated by many people.

No. 8

Accused Ho Ming Siang 6th September 1965

NO. 9

SUBMISSIONS OF COUNSEL

Enche Lim Kean Siew addresses Court:

All the evidence in this case amounts to this: that the accused was in a plane somewhere over Malayan skies. Only Sutikno knew where they were going. The accused and the others did not know where they were going. The accused was next in the jungle. No evidence where he landed. No case to answer on any of the three charges.

No. 9

Submissions of Counsel 24th October 1965

20

In the High Court in Malaya

No. 9

Submissions of Counsel
24th October 1965
Continued

Enche Lee addresses Court:

Accused arrested on information received. P.W.5 said that there were two Chinese in his group. One of them was accused. Said he was No. 20 to jump and the accused was the next in the order of jump. Evidence of P.W.6. and P.W.7. The cautioned statement of accused - intention and knowledge. Training in Indonesia, issued with a Lee Enfield Rifle and 200 rounds of ammunition, order of jump (No. 21), met others in jungle.

10

Consorting, refer to P.P. v. Tan Thoy (1951) M.L.J. 186 and Soo Sing v. P.P. (1951) M.L.J. 143.

A case has been made out against the accused on all three charges.

I hold there is a case against the accused to answer on all three charges and call on his defence. The three courses open to the accused explained to him.

No. 10

D.W.1.
Accused Ho Ming Siang
24th October 1965

NO. 10

D.W.1. HO MING SIANG

20

D.W.1. HO MING SIANG, affirmed, states in Hakka:

I am 24 years old. I have been detained since 13.9.64. In May 1964 I was in Taiping. I stood for election in Matang ward. I cannot remember well putting in my election return. This is my election return. I signed it in English and submitted it on 11th July 1964. Before submitting it, I had to take an oath. I took an oath in Taiping Court. There was no fee payable. This is the form of oath dated 10th July, 1964. I took an oath on 10th July, 1964 (Bundle of documents D.3 marked D.3 for identification).

30

There was another election after this. Lim

Cheng Ho (identified) was the candidate in that election. I was the election agent. This was the return I made as election agent together with the oath I took on 15th August, 1964 (Bundle of documents marked D.4 for identification).

In the High
Court in
Malaya

No. 10

The election in which I stood as candidate was on 25th April, 1964, but I submitted my return on receipt of notice.

D.W.1 Accused
Ho Ming Siang
24th October
1965
Continued

10 The election in which I was agent for Lim Cheng Ho was held on 13th June, 1964.

In between the first election and second election I was in my house. I went to the same office on both occasions to swear my oath. I was helping Lim Cheng Ho during his election. I used to see him almost every day before the election.

20 I was arrested on 13.9.64. After the election on 13th June, 1964, about 15th June, 1964 I went to Kuala Lumpur to look for work. I returned to Taiping some time at the end of June, 1964. About a week later I went to Penang to look for my school mate in order to ask him to get me a job. I failed to get employment on both occasions. I was in Penang four or five days. Then I returned home.

I went to Kulim next. I kept on going out to look for work and coming back home after that. I cannot remember all the instances.

30 Some time in August, 1964 I was in Taiping and I put in my return.

After both elections I very seldom met Lim Cheng Ho. Occasionally Lim Cheng Ho called at my house. I met him during the elections. I met him to prepare the returns.

40 It is not correct that I went to Indonesia some time in May 1964, as I said in my cautioned statement. I was forced and coached to make that statement. I did not mention any names. I do not know why they appear in my statement. I was shown two albums of photographs in the Special Branch.

In the High
Court in
Malaya

No. 10

DW.1. Accused
Ho Ming Siang
24th October
1965
continued

I know a person by the name of Teh Ah Yeok (identified). During the month of August after the election I saw her. She is my neighbour.

I was arrested on 13.9.64. Teh Ah Yeok was with me then. I went with her to Hospital to visit her husband who was ill. This was two days before my arrest. On the night of my arrest I was on my way to the Hospital.

I have a friend by the name of Oh Chuan whose mother in Chin Moy (identified). They live in Kampar. I was arrested on a Sunday, 13.9.64 Two weeks before my arrest I went to visit Oh Chuan at Kampar. I met Oh Chuan and stayed with his mother Chin Moh for four to five days. 10

I was not in Johore on 2.9.64. In my cautioned statement I said I boarded a plane in Indonesia on 1.9.64. That was untrue.

Cross-examined: I know P.W.8. I did not know him before this incident. I heard his evidence in Court. I know P.W.9. I did not know him before this incident. I heard his evidence in Court. It is not true that I gave my statement to them voluntarily. P.W.8 and P.W.9 were in plain clothes when I made a statement to them. I thought they were Special Branch officers. I recollected how I was threatened in Ipoh and I told them what I had been coached in Ipoh to say. This is the truth. I did not remember all the details. Some of the details may have been added by P.W.8. 20 30

My alleged statement has been read out to me in Court today. The whole of the statement represents what I was coached in Ipoh to say.

I have heard the evidence of the three Indonesian witnesses in Court. Their evidence that I was in the plane is untrue, even the evidence that I was No. 21 in the order of jump.

If it is put to me that what I said in my statement is true, I deny it. I have never been to Indonesia. 40

Re-examined: I said in my statement about persons who were detained. If I had not been told about them, I would not have known.

In the High Court in Malaya

No. 10

D.W.1. Accused
Ho Ming Siang
24th October
1965
Continued

No. 11

D.W.2. LEE KOK CHENG

No. 11

D.W.2. Lee
Kok Cheng
24th October
1965

D.W.2. LEE KOK CHENG, affirmed, states in English:

I am Supervisor of Elections, Perak in Ipoh. I was not in Perak in 1964.

10 After an election a candidate has to make a return which is filed in the Elections Office.

There was an election for Matang Constituency on 25th April, 1964 and a by-election for Jalan Raja Muda Ward, Taiping on 13th June, 1964.

I have been subpoenaed today to produce the returns of those elections. Those documents are kept in my file.

20 This is a return submitted on 11th July, 1964 in respect of Ho Min Siang as candidate. It was affirmed by him on 10th July, 1964 in the presence of the Commissioner for Oaths, Sessions Court, Taiping (marked D.3).

This is a return submitted by Lim Cheng Ho as candidate submitted to the Elections Office, Ipoh on 17th August 1964 (now marked D.4). This return was accompanied by declarations by Lim Cheng Ho and Ho Min Siang made before the Commissioner for Oaths, Sessions Court, Taiping on 15th August, 1964. The return bears

In the High
Court in
Malaya

signatures which I cannot read.

Cross-examined: I do not know the accused
personally. I have never seen him before.

No. 11

D.W.2. Lee
Kok Cheng
24th October
1965
Continued

No. 12

D.W.3. Lim
Cheng Ho
24th October
1965

NO. 12

D.W.3. LIM CHENG HO

D.W.3. LIM CHENG HO, affirmed, states in
Hokkien:

I am 26 years old, residing at 656 Pokok
Assam, Taiping. I am a private school teacher.

I know the accused. He was a candidate
for Matang Constituency in 1964 and I was his
election agent. I stood for election on 13.6.64
and the accused was my agent. During the
elections we met often. 10

Some time in July we submitted this return
(D.3). The accused only took a declaration. On
15th August, 1964 both the accused and I signed
declarations and submitted this return on 17th
August, 1964 (D.4).

Before 17th August, 1964 I met the accused
often. I met him every day during the course of
the election. Before I submitted the return I
used to meet him two or three times a week. I
met him after we had submitted our return on 17th
August, 1964, but not so often as before, once in
3 or 4 days or once a week. This went on until
the accused was arrested. 20

Sometimes when I went to accused's home to

meet him I could not find him and I was told that he had gone out to look for employment.

Cross-examined: The accused was arrested on 13.9.64. I do not keep a diary of my events. I am speaking from memory. I am a good friend of accused. We were at school together. I did not go to the Police after the arrest of the accused.

No re-examination.

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Court in
Malaya

No. 12

D.W.3. Lim
Cheng Ho
24th October
1965
Continued

10

NO. 13

D.W.4. HO KWAN LIAN

No. 13

D.W.4. Ho
Kwan Lian
24th October
1965

D.W.4 HO KWAN LIAN, affirmed, states in Hakka:

I am 22 years old. I live at 189, Pokok Assam, Taiping. I am a seamstress. In 1964 I was always in Taiping staying with my father. The accused is my elder brother.

I saw the accused during the elections. I helped him during the elections. I helped him during the bye-election. Until June 1964
20 the accused was in Taiping.

(Shown D.4). This is the report of accounts. This report was put in some time in August, 1964. My brother was in Taiping before D.4 was submitted. My brother left Taiping sometimes to look for work. Sometimes he went out for a week and sometimes for two weeks.

During the two elections my brother was in Taiping. I cannot remember whether he left Taiping between the two elections.

30 Between 13th June, 1964 and 17th August, 1964 my brother did leave Taiping a number of times. He stayed away sometimes for a few days and sometimes for one or two weeks. But he

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No. 13

D.W.4. Ho
Kwan Lian
24th October
1965
Continued

always came back.

Before his arrest the accused was away from the house for more than a week. He left at the end of August, 1964. He told me he wanted to go to Kampar. He returned home about a week before his arrest.

Cross-examined: I am a sister of the accused. After my brother's arrest I did not go to the Police to give any information about my brother. I do not keep a diary of events.

10

Re-examined: The Police did not come to me to take any statement. I did not go to the Police Station to see my brother.

By Court: My brother, the accused, was in the habit of leaving the house, staying away and then coming back. This was in 1964. Each time he said he was going out to look for a job. The longest he was away was ten odd days.

No. 14

D.W.6 Chin Moy
24th October
1965

NO. 14

D.W.6 CHIN MOY

20

D.W.6 CHIN MOY, affirmed, states in Hakka:

I am 50 years old, residing at 467 Kampong Tinah, Tanjong Tualang. I have not been to the Police. I have a son named Ho Chuan. He is now dead.

I know the accused. I have been told the date of his arrest. My son died a few days after the arrest as a result of an accident.

The accused saw my son when my son was still alive. This was on 27th August, 1964. He was with me for about one week. After the accused's arrest my son died. The accused came to my house about two weeks earlier than his arrest. He

30

came on a Friday and stayed for about a week. I do not know on what day of the week he left.

In the High Court in Malaya

The accused came on 27th August, 1964. He left on 3rd September, 1964.

No. 14

Cross-examined: I got a letter to come to Court. No one taught me what to say. I remember 27th August, 1964 and Friday clearly. I have not talked about this case with anyone.

D.W.6 Chin Moy
24th October
1965
Continued

No re-examination.

10 Case for the defence.

Court adjourned and resumed after 15 minutes.

NO. 15

No. 15

ADDRESSES OF COUNSEL

Addresses of
Counsel 24th
October 1965

Enche Lim Kean Siew addresses Court:

20 Case falls distinctly into two parts. The first part is the cautioned statement and what value is to be placed upon it. The second part is the evidence of the Indonesian witnesses. Court to decide whether the Indonesian witnesses actually saw the accused.

Cautioned statement. First part deals with the training. The second part deals with his arrival in Malaya. Accused could not have known who were detained since he saw no one except Special Branch Officer. This officer was given to him, or he was coached or it was inserted by Inspector Anuar.

30 No evidence against accused about his being in Indonesia until 1.9.64. Only the retracted confession weighs against him. If he went to Indonesia in May, he could not have taken part in the elections. In regard to this part of the evidence, the benefit

In the High
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No. 15

Addresses of
Counsel 24th
October 1965
Continued

of the doubt should be given to accused. Not allowed to visit his family.

Defence could not have produced any stronger evidence. Accused could not have been in Malaya and Indonesia at the same time.

If the second part of the statement is not rejected, there is the evidence of the witnesses for the defence.

The evidence of the accomplices. What is their evidence? That the accused was in the plane 10 and was carrying some sort of arms. Evidence of P.W.4, P.W.5 (not asked to identify anybody at an identification parade), P.W.6 and P.W.7.

Evidence for the defence. Sufficient if it throws a doubt on the truth of the prosecution case.

Enche Lee addresses Court:

In essence it is a simple case. Question of credibility of witnesses. Witnesses have said that they saw accused in the plane. Why should they have told lies? They have nothing to gain. 20
Cautioned statement leave no doubt about the guilt of the accused. Refer to Yusoff and another v. P.P. (1956) M.L.J. 47 - whether the confession bore the stamp of truth; Abu bin Hussain v. P.P. (1959) M.L.J. 5; Yap Sow Keong v. P.P. (1947) M.L.J. 90.

Prosecution has proved its case beyond reasonable doubt. Defence an alibi which has not cast doubt. Nothing to prevent the accused from having come back to file his election return, as 30
Indonesia is not far away.

NO. 16

FOUNDATIONS OF JUDGMENT

In the High
Court in
Malaya

IN THE HIGH COURT IN MALAYA AT MUAR

No. 16

MUAR EMERGENCY CRIMINAL TRIAL NO. 32 OF 1965

Grounds of
Judgment
29th October
1965

PUBLIC PROSECUTOR

versus

HO MING SIANG @ HO SUNG

FOUNDATIONS OF JUDGMENT

10 The accused in this case was tried on the following charges:

- (1) Consorting with members of the Indonesian Armed Forces in contravention of the provisions of Section 57 (1) of the Internal Security Act, 1960, an offence punishable under Section 58(1) of the Act;
- (2) Unlawful possession of a Lee Enfield rifle contrary to Section 57 (1) (a) of the same Act; and
- 20 (3) Unlawful possession of ammunition contrary to Section 57 (1) (b) of the said Act.

30 The evidence for the prosecution was that a force of 48 paratroopers under the command and inclusive of Lieutenant Muda Sutikno (P.W.6) of the Indonesian Armed Forces took off from Jakarta in an Indonesian plane at about 4.30 p.m. on 1.9.64 for Medan where they rested for some time and from where they left by plane for Malaysia at about 12 midnight. At about 2 a.m. on 2.9.64 this body of 48 men jumped down from the plane and landed in Johore, Malaya. Two of the Indonesian paratroopers in the plane were Seman bin Pawiro (P.W.5) and Bakir bin Akir (P.W.7). These three Indonesians are now under detention in Malaya as prisoners of war. All

In the High
Court in
Malaya

No. 16

Grounds of
Judgment
29th October
1965
Continued

three of them gave evidence to say that every member of the force wore a uniform and carried, apart from other equipment, a firearm, ammunition and two handgrenades. They further said that the accused was one of the men in the plane.

Sutikno (P.W.6) stated in evidence that he joined the Indonesian Army in September 1945. In 1950 he was transferred to the Air Force and was appointed Lieutenant Muda in 1962 when he became the Commander of C Company. In February 1964 his company had training for the confrontation against Malaysia. In July of the same year he was transferred to Pulau Kariman, an Indonesian island, to train Malayan Chinese for the konfrontasi campaign.

10

On 1.9.64 in consequence of instructions received at about 12 noon he mustered a team which contained 14 Chinese from Malaya. The object was to go to Malaysia to liberate the people of Malaysia and to carry out sabotage work. When their plane arrived over Malaya he was the first to jump after some crates containing ammunition, provisions and medical supplies had been baled out. The rest of his men were lined up according to numbers and they were to jump according to numbers one after the other. Each one of them was given \$300 in Malayan currency and each person carried a firearm, two hand-grenades and a minimum of 200 rounds of ammunition. Some of the Malayan Chinese carried Lee Enfield rifles and some carried Sten guns. The Indonesians carried G.3 light automatic firearm. On the morning of his landing, on looking at his map, he knew that he was in the Tenang area of Johore. He had landed in a swamp, from where he walked into a kampong which he knew was Tenang Kampong.

20

30

According to this witness, the accused was one of the 14 Malayan Chinese in the plane. He first saw the accused on 1.9.64 when he mustered his men and gave them numbers. He knew the accused only by his face and did not know his name. He next saw the accused after his arrest in the Muar Police lockup on 4th September, 1964.

40

Under cross-examination he admitted that in his statement to the Police he said, "Amongst the 14 Malayan Chinese there was a female whom I know as Selina and can recognize her. I may not be able to recognize the others". He further admitted that he was recognizing the accused one year after the incident.

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Grounds of
Judgment
29th October
1965
Continued

10 Seman (P.W.5) testified that the accused was one of the two Chinese in his group in the plane and was seated next to him in the plane. His position in the plane was No. 20 and the position of the accused was No. 21. He jumped from the plane according to his number and the next person to jump after him was No. 21. This witness went on to say that he first met the accused in Jakarta on 28th August, 1964. He saw the accused on 29th and 30th August, but did not mix with him. He next met the accused at the depot in Johore Bahru. This was after he had
20 been arrested on 7.9.64 inside a kampong in Labis. He did not know the name of the accused when he first saw him, but came to know his name from his friends at the depot. He was unable to say what the accused was carrying in the plane.

Bakir bin Akir (P.W.7) testified that there were some Chinese in the plane and that the accused was one of the Chinese. He met the accused before he boarded the plane on 1.9.64 and came to know his name after his capture.

30 The accused was arrested on information received on 13.9.64 at about 9. p.m. in Taiping. On the same night he was sent to the Special Branch at Ipoh, from where he was sent off to the Special Branch at Johore Bahru where he was received by Inspector Oh Cheng Kooi (P.W.4) on 18.9.64 at about 6.20 p.m. On 22.9.64 at about 11.20 a.m. Inspector Anuar (P.W.8) with the assistance of Police Translator, Chia Kong Sin (P.W.9), recorded a cautioned statement from
40 the accused.

While at Ipoh the accused was interrogated by A.S.P. Rogers Samy Chong (P.W.3) on 14.9.64 from 1 p.m. to 4 p.m. and again on 15.9.64 from 10 a.m. to 4 p.m. Mr. Chong stated in evidence that the purpose of his interrogation was to

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Grounds of
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29th October
1965
Continued

obtain intelligence. The accused was co-operative with him and appeared to be repentant. He stopped interrogating the accused on 14.9.64 because the accused was tired and continued on the following day. He showed the accused two small books of photographs and asked him about certain persons, but he did not ask the accused any questions about this case. At the time of his interrogation he was not aware that this charge might be brought against the accused. 10
As far as he knew he was the only person who interrogated the accused. He did not know what happened to the accused after his interrogation and he did not know whether many persons interrogated the accused successively from 13.9.64 to 15.9.64. He did not use any threat, promise or inducement before or during the interrogation.

Oh Cheng Kooi (P.W.4) said that on receiving the accused he interrogated him for about 10 or 15 minutes in a room, and once he had confirmed the identity of the accused he had the accused put in the lockup under his supervision. As far as he knew, the accused was not taken out of the cell except on 22.9.64 for his cautioned statement, and no one could see the accused without permission from him or the officers in charge of the Special Branch. This witness also stated that he did not use any threat, inducement or promise to the accused at any time. 20 30

Inspector Anuar (P.W.8) said that after he had administered a caution to the accused, the accused said that he understood the caution and elected to make a statement. The accused then began to give his statement freely and voluntarily and the statement was read back to him through the Interpreter. The accused, when asked, replied that he had no additions or alterations to make to his statement. The witness went on to say that he did not make any promise, hold out any threat or offer any inducement before or during the statement. The witness also said that he did not ask the accused what happened to him between 20th and 22nd September, nor did he make enquiries as to where the accused was detained in Perak. He was aware that the accused had been interrogated 40

by the Special Branch in Ipoh. The Police Translator (P.W.9) who acted as Interpreter corroborated the evidence of P.W.8 as regards the caution and the free and voluntary nature of the statement made by the accused after the caution had been administered.

In the High
Court in
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No. 16

The accused gave evidence on the question of his cautioned statement. His evidence, briefly, was that on his arrival at Ipoh after his arrest
10 he was pushed into a room, where five or six persons took off his clothing and made him wear a prisoner's trousers after which they showed him two books of photographs and asked him if he knew the persons in the photographs. When he told them that he could not recognize any of the persons, he was threatened, assaulted and fisted on both sides of his abdomen. Subsequently two or three Special Branch Officers taught him what to say and stopped beating him when he not only
20 understood what they taught him but could repeat it. He told P.W.3 what the 5 or 6 persons had taught him. On the night of 14.9.64 he was again taught what to admit and he was kept awake until about 2 or 3 a.m. on 15.9.64. Later that day P.W.3 interrogated him again. His interrogation took the whole day because he refused to say what he had been taught.

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29th October
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Continued

He was sent to Johore Bahru on 17th or 18th September, 1964, where he was kept in a cell for
30 4 days and 4 nights without anybody being allowed to see him. Then a statement was taken from him on 22.9.64. P.W.8 was there when his statement was taken and P.W.9 interpreted for him, but he could not understand P.W.9 because he spoke in Cantonese. They did not ask him if he had been eaten. He was not asked if he would give a statement voluntarily, nor did they ask him if any threat or inducement has been made to him. He went on to say that he did not know if they
40 warned him or not that he was not obliged to say anything and when he made that statement he had hoped that he would be released to see his parents. He was afraid that if he did not make a statement, he would be beaten again or shot. The caution was not explained to him. Certain facts were put to him and he was asked to answer "yes" or "no" and he felt that the answer was

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Grounds of
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Continued

already in the question. The way the questions were put to him, he got the impression that the persons taking the statement from him knew what he was going to say in reply. He ended by saying that the statement he gave was untrue. Under cross-examination the accused said that he was taught what to say in his statement. He agreed, however, that his statement contained a lot of details. He denied that he made a statement out of remorse or repentance. He said 10
he had been to a Chinese school for 7 or 8 years. He made a complaint to the doctor in prison, but he made no complaint to the Magistrate when he was produced in Court every week because he did not know that he had the right to do so.

I gave very careful consideration to the whole of the evidence relating to the cautioned statement of the accused. On that evidence I was satisfied that the accused freely and voluntarily 20
made a statement after the caution had been duly administered to him. No allegations of assault were made against any of the persons who had interrogated the accused, but he made a general complaint of his having been assaulted and taught what to say in his statement. This general complaint of assault could be rebutted only by calling every member of the Special Branch at Ipoh to deny the alleged assault. However, I accepted the evidence of A.S.P. Chong that as far as he 30
knew he was the only person who interrogated the accused. On the evidence it was clear that after 16.9.64 no one assaulted the accused or taught him what to say. In all the circumstances of that evidence there was no doubt created in my mind as to the voluntary nature of the accused's statement. I therefore allowed it to be admitted in evidence. On a careful scrutiny of the statement I was satisfied that it contained certain details which could have been known only 40
to the accused.

The evidence of the Indonesian witnesses was undoubtedly accomplice evidence, but it was amply corroborated by the accused's own statement. On the second and third charges the evidence against the accused was furnished by his own cautioned statement, there being no clear-cut

evidence by the Indonesian witnesses as to the type of firearm which the accused carried and as regards the ammunition in his possession. However, I was satisfied about the truth of the accused's statement. I therefore held that the prosecution had proved its case on all three charges beyond any reasonable doubt and called on the defence.

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Grounds of
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1965
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10 The defence of the accused was an alibi, as he denied that he went to Indonesia some time in May and boarded a plane on 1.9.64 as he had said in his cautioned statement. He said he was in Taiping in May 1964 as he had stood as a candidate for the election in Matang Ward on 25th April, 1964. In relation to this election he had submitted a return to the Elections Office on 11th July, 1964. This return contained a form of declaration which he made on 10th July, 1964. He was also present in
20 Taiping on 13th June, 1964 when a by-election took place. The candidate for this by-election was Lim Cheng Ho (D.W.3), and he was Lim Cheng Ho's election agent. In respect of this election also a return was filed, and he again swore a declaration before a Commissioner of Oaths in August, 1964.

30 The accused went on to say that after the second election he went to Kuala Lumpur to look for work and returned to Taiping at the end of June, 1964. About a week later he went to Penang to look for a job and returned home four or five days later. On both occasions he failed to get employment. He next went to Kulim and then kept on going out to look for work and coming home. Two weeks before his arrest on 13.9.64 he went to visit one Ho Chuan in Kampar and stayed with his mother Chin Moy for four or five days. He repeated his story that the whole of his statement which was read out in Court
40 represented what he was coached in Ipoh to say. He added that what he had said in his statement was untrue, and so was the evidence of the three Indonesian witnesses.

Lee Kok Cheng (D.W.2), the Supervisor of Elections, Perak, produced the two returns about which the accused had given evidence which were marked as D.3 and D.4 respectively. These documents

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Continued

did contain a declaration alleged to have been made by a person having the same name as the accused on 10th July, 1964 and 15th August, 1964 respectively. The two declarations were made before the Commissioner for Oaths at the Sessions Court, Taiping. The witness himself knew nothing about the accused.

Lim Cheng Ho (D.W.3) gave evidence on behalf of the accused to say that the accused was a candidate for Matang Constituency in 1964, and he was the accused's election agent. He himself stood for election on 13.6.64 when the accused was his agent. They met often during the elections. He then gave evidence about the two returns (D.3 and D.4). The witness stated further that after the accused and he had submitted the return on 17th August, 1964 he still met the accused but not so often as before, once in three or four days or once a week, and this went on until the accused was arrested.

10

20

The accused's sister named Ho Kwan Lian (D.W.4) testified that the accused was in Taiping until June 1964 but that between 13th June and 17th August, 1964 he left Taiping a number of times and stayed away for a few days. According to her, before his arrest the accused was away from the house for more than a week as he had left at the end of August 1964 saying that he wanted to go to Kampar, and he had returned home about a week before his arrest.

30

Teh Ah Yeok (f) (D.W.5) said she was present when the accused was arrested on 13.9.64 as she was with him then, but she had not gone with the accused anywhere before that date.

The last witness for the defence was a woman named Chin Moy (D.W.6) who said she was residing in Tanjong Tualang and that she had a son named Ho Chuan, who is now dead. She said she knew the accused and had been told the date of his arrest. Then she went on to say that the accused saw her son while he was still alive on 27th August, 1964. She further said that the accused was with her for about one week.

40

The only evidence of the defence which

deserved any consideration was the alleged making of the declarations by the accused in Taiping on 10th July, 1964 and 15th August, 1964. But there was nothing in the declarations to suggest that the person making them was identified to the Commissioner for Oaths. In any event, the dates of the declarations were not relevant to the charges.

In the High
Court in
Malaya

No. 16

Grounds of
Judgment
29th October
1965
Continued

10 I had very little hesitation in rejecting the evidence of the woman Chin Moy, as in my opinion she knew nothing about the accused. The accused had said something about going to Kampar prior to his arrest, whereas this woman lived in Tanjong Tualang. She was informed about the date of the accused's arrest and she then fixed on the 27th of August as the date on which the accused had come to see her. Had she been personally aware of the date of the accused's arrest or had come to know about it at or about the
20 time, there might have been something in her story that she saw the accused so many days before his arrest. Having seen and heard her in the witness box, I decided to reject her evidence.

30 There was something in the evidence of the accused's sister, Ho Kwan Lian, but there was her evidence that her brother was in the habit of going out and staying away for one or two weeks. In this connection there was the evidence of Ho Tak (P.W.2), the father of the accused, who was called by the prosecution but treated as a hostile witness on the basis of his statement to the Police, that the accused returned home a few days before his arrest and further that he returned home in July and August.
40 This evidence was brought out by defence counsel under cross-examination. As these two witnesses had no personal knowledge as to where the accused went whenever he left the house, no doubt was created in my mind as to the truth of Seman's story that he first met the accused in Jakarta on 27th August, 1964.

On the whole, the evidence for the defence created no doubt in my mind as to the truth of the prosecution case, the major portion of which

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Continued

was the accused's own statement. As I have stated before, this statement of the accused was not the sort of story which he could have been coached to say with all its details. This was particularly so with regard to what he did after the landing and how he got to Taiping. Moreover, I was so convinced about the truth of the evidence of Seman (P.W.5) that I would have convicted the accused on the consorting charge even if there was no independent corroboration of that accomplice evidence. 10

From the evidence as a whole, it was clear that the accused was consorting with members of the Indonesian Armed Forces in the air space over Johore territory. These members of the Indonesian Armed Forces were certainly not on a goodwill mission to Malaya. Their purpose in coming to Malaya, as was known to their commander, was to act in a manner prejudicial to public security. According to the accused's own statement, he was armed with a Lee Enfield rifle and carried 200 rounds of ammunition. I therefore found him guilty as charged, convicted him and sentenced him to death on each charge. 20

Kuala Lumpur,
29th October, 1965

Sd. (S.S. Gill)
JUDGE,
HIGH COURT, MALAYA.

Enche B.T.H. Lee for the Public Prosecutor.

Enche Lim Kean Siew for the accused, retained.

IN THE FEDERAL COURT OF MALAYSIA
F.C. CRIMINAL APPEAL NO. X 19 OF 1965

In the
Federal Court
of Malaysia

BETWEEN

No. 17

HO MING SIANG alias HO SUNG APPELLANT

Petition of
Appeal
18th November
1965

AND

PUBLIC PROSECUTOR ... RESPONDENT

(In the matter of Muar Emergency Criminal Trial
No. 32 of 1965)

PETITION OF APPEAL

10 TO THE HONOURABLE THE JUDGES OF THE FEDERAL
COURT

Ho Ming Siang alias Ho Sung the appellant above
named having given notice of appeal to the
Federal Court against the decision of the
Honourable Mr. Justice Gill given in the High
Court in Malaya at Muar on the 24th day of
October 1965 states the following grounds for his
said appeal:

20 1. Your Petitioner was on the 5th day of
September 1965 charged as follows:-

30 (i) That you between 2.00 a.m. on the 2nd day of
September and 6.00 a.m. on the 11th day of
September, 1964, in a Security Area as
proclaimed by the Yang Di-Pertuan Agong
vide FLN. 245 of 17th August, 1964, namely
Tenang Kampong, 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
57(1) of the Internal Security Act, 1960, in
circumstances which raised 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

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Continued

an offence punishable under Section 58(1)
of the said Act.

(ii) 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 FLN. 245 of 17th August, 1964, namely Tenang Kampong, Labis, in the District of Segamat, in the state of Johore, without lawful excuse carried a firearm, to wit, a LEE ENFIELD RIFLE, without lawful authority and that you have thereby committed an offence punishable under Section 57(1)(a) of the Internal Security Act, 1960.

10

(iii) 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 FLN. 245 of 17th August, 1964 namely Tenang Kampong, Labis, in the District of Segamat in the State of Johore, without lawful excuse had in your possession 200 rounds of ammunitions without lawful authority and that you have thereby committed an offence punishable under Section 57(1) (b) of the Internal Security Act, 1960.

20

2. To the above charges your Petitioner claimed trial and on the 5th day of September 1965 and 24th day of October 1965 your Petitioner was tried and found guilty on all the said charges and sentenced to death.

30

3. Your humble Petitioner is dissatisfied with the conviction and the sentence on the grounds following:-

(i) That the Learned Trial Judge should have tried the charges separately and by not so doing he had not dealt with the evidence and the law relating to the charges properly and had therefore been prejudiced and had not given a fair trial to your Petitioner.

40

(ii) That the Learned Trial Judge should have directed his mind properly to the First charge and had he done so he would have held

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Continued

10 that there was no evidence that your
Petitioner was ever in Tenang Kempong, in
the State of Johore or that he ever
consorted with any armed Indonesian in that
area or even if he had done so he should
have held that there could be no
reasonable presumption that your Petitioner
intended on the 2nd day of September, 1964 to
act in a manner prejudicial to public
security punishable under Section 58(1) of
the Internal Security Act, 1960 since he was
not conscious where he was going or where
he was.

(iii) With regard to the second charge the
Learned Trial Judge should have directed
his mind to the fact that there was no
evidence that your Petitioner was ever in
Tenang Kampong on the day in question or
that he was carrying a rifle.

20 (iv) With regard to the third charge the Learned
Trial Judge should have directed his mind to
the fact that there was no evidence that your
Petitioner was ever at Tenang Kampong on the
day in question or that he was in possession
of any ammunition.

30 (v) That the Learned Trial Judge failed to direct
his mind to the fact that there was no
evidence whatsoever that your Petitioner
landed in a Security Area as there was no
evidence whatsoever that he had landed
anywhere in Johore or any Security Area which
is a necessary ingredient to these charges
to secure a conviction.

(vi) The Learned Trial Judge should not have
admitted the confession of your Petitioner
upon all or any of the grounds following:-

40 (a) That the cautioned statement was taken
after your Petitioner had been in
solitary confinement for 10 days in a
special branch police cell and that
during the confinement of 10 days prior
to the cautioned statement being taken
he was not allowed to see any person

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and any threat or inducement made to him during his confinement could not have been removed under such circumstances.

- (b) That there was no evidence to contradict the evidence of your Petitioner that he had been threatened and beaten and hope inducement and/or promise had been held up to him and that this had induced him to make the cautioned statement 10
- (c) That no attempt was made by P.W.8 when taking the cautioned statement to find out the circumstances under which your Petitioner was held and to make certain that any such hope or promise, inducement or threat had been removed from the mind of your Petitioner before he took the cautioned statement nor did P.W.8 attempt to remove or dissipate such threat, hope, inducement 20 or promise that may have been playing on the mind of your Petitioner prior to the taking of the cautioned statement
- (d) That the evidence of P.W.8 shows clearly that he was not a reliable witness in view of his insistence that he knew nothing of your Petitioner or the charges till he had taken a statement from Your Petitioner, that he asked questions of your Petitioner 30 and inserted names which your Petitioner did not mention and that he had known that your Petitioner was giving a statement even before he saw him and that such questions he asked could have amounted to cross examination or leading questions.
- (e) That P.W.8 had tried to pretend that he knew nothing of the statement he was going to take from your Petitioner when 40 in fact he had taken 3 other statements from 3 other witnesses in the case before he went to take the statement of your Petitioner and that in these statements of the other witnesses he

had even written down the name of your Petitioner when in fact these witnesses said in evidence that they did not know the name of your Petitioner when the statements were taken.

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- 10 (f) That there was clear evidence that questions had been asked your Petitioner by P.W.8 and P.W.9 and that these questions could have been in the nature of leading or cross-examination questions.
- 20 (g) That P.W.8 according to the evidence of Oh Cheng Kooi (P.W.4) seem to know your Petitioner was prepared to give a cautioned statement even before he has spoken to your Petitioner and that this corroborates the evidence of your Petitioner that he had been told he had to make such a cautioned statement.
- (h) That the Learned Trial Judge should have looked at the statement by your Petitioner whether or not the nature of this cautioned statement would bear out that it could only have been as a result of questions put to your Petitioner by someone who knew the facts and knew what he wanted to get out of your Petitioner.
- 30 (i) That the Learned Trial Judge should have been more cautious of accepting the cautioned statement in view of the fact that P.W.8 was acting in the capacity of an investigating officer, and that there was a likelihood of bias.
- 40 (j) That there was nothing in the evidence to contradict the statement of your Petitioner that hope, inducement threat and promise had been held up to him and that the statement was made as a consequence of such a hope inducement threat or promise.
- (k) That the Learned Trial Judge should have

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held that it was doubtful if the cautioned statement of your Petitioner was in fact a free and a voluntary one and the benefit of the doubt should have been given to your Petitioner.

- (vii) That the Learned Trial Judge failed to direct his mind to the fact that the election returns were in fact signed by your Petitioner and that this signing could only have taken place in the presence of the Commissioner for Oaths and in doing so he has failed to give proper consideration to the alibi of your Petitioner. 10
- (viii) That the Learned Trial Judge was wrong in holding that the election returns were irrelevant to the case since, upon admitting the cautioned statement, it was then the duty of the Court to examine the cautioned statement critically to see whether or not such statement was consistent with the facts of the case and that the cautioned statement was in fact a retracted statement and such a statement has stated that your Petitioner was in Indonesia as from May which fact contradicted the election returns and therefore could not be true since he was in Taiping during that time and had the Learned Trial Judge checked with these things he would have rejected the cautioned statement 20
- (ix) That the Learned Trial Judge was wrong to hold that the evidence of D.W.6 could not be considered as she had worked out the days of the visit of your Petitioner to her house from the date of the arrest of your Petitioner. This was the best way of making certain that these were the dates that your Petitioner was in her house and that in not doing so he had misdirected his mind and so occasioned failure of justice. 30
- (x) The Learned Trial Judge had misdirected his mind to the above (viii) and (ix) and had he directed his mind properly he would have acquitted your Petitioner. 40

(xi) That the Learned Trial Judge should have held that the identification of your Petitioner by P.W.6, P.W.7 and P.W.8 were in fact dubious and highly suspicious since they could not identify anyone else and since their evidence as to how they have seen your Petitioner after his arrest were vague and uncertain.

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10 (xii) That the Learned Trial Judge should have held that the evidence of P.W.5 P.W.6 and P.W.7 were suspicious and could not warrant a conviction especially as it appeared from the evidence of P.W.5 that his statement was a result of the interrogation which lasted weeks and especially as P.W.5 P.W.6 and P.W.7 were not only corroborators but who seemed most likely to give false evidence

20 (xiii) That the Learned Trial Judge should have held that upon all the evidence before the Court that there was a doubt in the case and that the benefit of the doubt should have been given to your Petitioner.

4. Your Petitioner says that upon all or any of the above grounds given there was in fact a miscarriage of justice and failure of justice and that conviction ought to be set aside and the sentence quashed.

30 5. The verdict of the Learned Trial Judge was in any case unreasonable and cannot be supported having regard to the evidence

Your humble Petitioner therefore prays that the said conviction and sentence against your Petitioner may be set aside or such other order as to this Federal Court may appear to be just and expedient.

Dated this 18th day of November, 1965.

SD: (K.S. LIM)

Solicitors for the Appellant

40 The address of the Appellant is No.: 3 Union Street Penang.

In the
Federal Court
in Malaysia

Filed this 19th day of November, 1965.

No. 17

Sd: (NG MANN SAU)
Deputy Registrar,
Federal Court, Malaysia
Kuala Lumpur.

Petition of
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Continued

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NO. 18

Notes of
Argument
28th & 29th
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NOTES OF ARGUMENT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

10

Federal Court Criminal Appeal No: X.19 of 1965
(Muar High Court Emergency Criminal Trial No.32/
1965)

Ho Ming Siang alias Ho Sung Appellant

v.

The Public Prosecutor Respondent

Cor: Thomson, Lord President, Malaysia.
Syed Sheh Barakbah, Chief Justice
Malaya.
Ong Hock Thye, Judge, Federal Court.

20

NOTES OF ARGUMENT RECORDED BY THOMSON, LORD
PRESIDENT MALAYSIA

28th December, 1965.

For Appt: Lim Kean Siew

For Respt: Ajaib Singh

Lim:

This case is different from others.
Appt. was arrested in Taiping.

(1) Was he ever in Kg. Tenang, Johore?

Was there any evidence on that point?

(2) Assuming he was in Johore, was he ever identified with the offences charged against him?

His identification comes from the 3 Indonesian witnesses. There were accomplices and Judge did not direct himself as to necessity for corroboration.

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Federal Court
in Malaysia

No. 18

Notes of
Argument
28th & 29th
December 1965
Continued

10 Appt. was never proved to have been in
Johore.

P.W.5 only said that he was arrested in a Kampong near Labis and met appt. at Johore Bahru.

Sutikno (P.W.6) did not know where he landed.

The other Indonesian (P.W.7) did not know where he landed.

The only evidence as to where he was was his own statement which was inadmissible.

His statement does not mention any of the witnesses.

20 Appt's defence was alibi. Judge accepted part of this by saying that appt's sister's evidence as to his sometimes being in Taiping might well be true.

I refer to the general law as to corroboration but where alibi is a defence corroboration is very important.

Millichamp 16 C.A.R. 83.

Robert Smith 18 C.A.R. 19.

30 If he signed declarations in Taiping on 10th July and 15th August that casts doubt on the truth of his cautioned statement. There was the evidence of the returns of election expenses.

Judge misdirected himself as to the burden of proof of alibi.

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Notes of
Argument
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Continued

Lee Teng Tai v. P.P. 1953 M.L.J. 4.

Anthony Hugh Johnson 46 C.A.R. 55, 57.

Chadwick, Matthews & Johnson 12 C.A.R. 247.

Judge misdirected himself as to the evidence supporting appt's defence of alibi.

Grayson 16 C.A.R. 7.

I come to appt's alleged confession.

It is for the prosn. to show a statement is voluntary and produce evidence as to circumstances in which accd. was detained. Here nothing was known of what happened to appt. after his arrest. 10

Lim Sing Hiaw v. P.P. (1965) 1 M.L.J. 85, 89.

Appt. arrested on 13.9.64. Statement was made on 22.9.64. In the meantime it was admitted he was interrogated.

Adjd. to 29.12.65.

29th December, 1965

Lim:

Onus was on prosn. to prove confession was voluntary. 20

Cheng Seng Heng v. P.P. (1949) M.L.J. 175, 178.

Here the statement was not "volunteered".

The Queen v. Thompson [1893] 2 Q.B. 12, 16.

Reg. v. Bass [1953] 1 Q.B. 680, 684.

Reg. v. Joyce [1958] 1 W.L.R. 140, 142.

P.P. v. Thum Soo Chye (1954) M.L.J. 96, 98.

Any inducement vitiates a voluntary statement.

Selvadurai v. P.P. (1948-9) M.L.J. Supp. 43.

Thomas Joseph Smith 43 C.A.R. 121.

If an accd. is questioned, the questions shd. be recorded. Long interrogation is not permissible.

Ibrahim v. The King [1914] A.C. 599, 613.

Cheng Seng Heng & ors. v. P.P. (1949) M.L.J. 175, 178.

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Notes of
Argument
28th & 29th
December 1965
Continued

10 It was admitted that appt. was shown albums of photos.

Appt. was not found in the security area and nothing incriminating was found in his possession. The statement even if admissible does not corroborate the accomplice witnesses.

Michael Murray 34 C.A.R. 203, 208.

P.P. v. Thum Soo Chye (1954) M.L.J. 96, 99.

There was a non-direction amounting to misdirection.

Thomas Finch 12 C.A.R. 77.

20 Cohen & Bateman 2 C.A.R. 197.

Anthony Hugh Johnson 46 C.A.R. 55.

Thomas Lewis 26 C.A.R. 110.

Case for Appt.

Ajaib Singh:

As to identification there is no room for doubt as to identification of the appt. The evidence of the Indonesians was never seriously questioned.

30 I accept it that the Indonesians were accomplices but Judge found corroboration in the appt's own statement.

NOTES OF ARGUMENT RECORDED BY BARAKBAH, CHIEF
JUSTICE

In the
Federal Court
of Malaysia

Lim Kean Siew Esq., for Appellant.

Ajaib Singh Esq. for Respondent. Kuala Lumpur,

28th December, 1965.

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Notes of
Argument
28th & 29th
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Continued

Lim: Accused never arrested in Johore but in
Taiping.

(1) Was he ever in Kampong Tenang,
Johore.

(2) Assuming he was in Johore, was he
ever identified with this offence.

10

Identification by 3 witnesses - P.W.5
P.W.6 and P.W.7. Judge should have
directed himself as to whether there was
corroboration as to identification.

(1) Whether he was in Johore.

P.W.5.

P. 7 l. 36.

Judge found that as he was found in Johore
therefore he landed at Labis.

20

P.W.6.

P.13 l. 15

P.W.7.

P. 14 No evidence where he landed.

P. 79.

None of the witnesses saw each other until
after the arrest.

Cautioned statement did not refer to any
of these witnesses.

P. 8. 1.13 P, 9 l. 26.

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Notes of
Argument
28th & 29th
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Continued

P.W.6

P. 11 1.32 P. 12 1.31, 26

P. 14 1.15, 18.

Defence - Alibi.

P. 32 1.23, P. 33 1.21.

Where alibi is put forward the question
of identification is very important.

Howard's case - 15 C.A.R. 177.

John Millichamp - 16 C.A.R. 83.

Robert Smith - 18 C.A.R. 19, 21. 10

P. 32 1.44.

P. 16 1.30. P. 17 P. 20-21 P. 19 1.16.

Lee Teng Tai v. P.P. - 1953 M.L.J. 2.

Johnson - 46 C.A.R. 55, 57.

Chadwick, Matthews & Johnson - 12 C.A.R.
247.

Alibi challenges the identification.

P. 33 1.11 - not correct.

P. 18 1.9, P. 44, D.W.6.

Confession

20

Harold Johnson Grayson - 16 C.A.R. 8.

Prosecution to shew that statement was
voluntary.

Prosecution to shew the circumstances
under which Accused was detained.

P. 30 1.24.

Lim Sing Hiaw v. Public Prosecutor - 1965

M.L.J. 85, 89.

Arrested on 13.9.64.

Taken to Ipoh and interrogated.

P. 7 F.

P. 11 D, G.

P. 26 C.

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Notes of
Argument
28th & 29th
December 1965
Continued

Sd. S.S. Barakbah

28.12.65

29th December, 1965

- 10 Lim: Prosecution to prove that confession was voluntary.
- P. 11E.
- P. 26 C, P. 17 l.18.
- P.W.8 went to accused to take a statement.
- P. 18 l.25.
- P. 30
- Chong Seng Heng v. P.P. - 1949 M.L.J. 178.
- Accused was asked to make a statement. He did not volunteer.
- 20 Queen v. Thompson - 1893, 2 Q.B.D. 12, 16.
- Regina v. Bass - 1953, 1 Q.B.D. 680, 684.
- Regina v. Joyce - 1958, 1 W.L.R. 140, 142.
- P.P. v. Thum Soo Chye - 1954 M.L.J. 96, 98, 99.
- P. 23.
- Selvadurai v. P.P. - 1948 - 1949 M.L.J. 44.
- Thomas Joseph Smith - 1959, 43 C.A.R. 121.

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Notes of
Argument
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Accused in solitary confinement.

Evidence by long interrogation is not
allowed.

Ibrahim v. The Queen - 1914 A.C. 599, 613.

P. 36A, P. 17 1.40

P. 25A.

Michael Murray - 34 C.A.R. 203, 208.

Can the confession corroborate the
evidence of identity - No corroboration
as to identity.

10

Whether or not there is non-direction
amounting to mis-direction.

Thomas Finch - 12 C.A.R. 77, 78, 79.

Max Cohen and Leonard Nelson Batemen - 2C.
A.R. 197.

Johnson - 46 C.A.R. 55, 59.

Thomas Lewis - 26 C.A.R. 110.

D.P.P. Arrest - can be arrested anywhere.

Ajaib
Singh

No doubt as to Identification.

20

P. 7 1.19 - P.W.5.

P. 11 1.32 - P.W.6.

P. 14 1.7 - P.W.7.

Accomplices.

Corroboration in Accused's Statement.

P. 74

P. 76 1.24.

P. 78, P. 7 1.14.

P. 12 1.41.

P. 30 1.40.

Ample evidence on identification - non-direction - did not specify what the non-directions were Confession:

Sec. 75 Internal Security Act.

P. 30 1.18.

Specific finding of fact by the Judge.

P. 31 F, P. 32D.

10 Doctor not called.

P. 8 B.

Accused appeared to be repentant which is reason for making the statement.

P. 10F.

Sections 80 and 24 Evidence Ordinance irrelevant.

Take on his own volition.

Regulation 11 Emergency Trials Regulations.

Lim; Repentance at Interrogation - not relevant.

20 Sd. S.S. Barakbah
29.12.65.

30th December, 1965.

C. A. V.

Sd. S.S. Barakbah
30.12.65.

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Notes of
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Continued

In the
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FEDERAL COURT CRIMINAL APPEAL NO. X 19 OF 1965
(Muar High Court Emergency Crim. Trial No. 32/65)

HO MING SIANG ... Appellant

No. 18

vs.

THE PUBLIC PROSECUTOR Respondent

Notes of
Argument
28th & 29th
December 1965
Continued

Coram: Lord President, Malaysia,
Ong, F.J.,
Suffian, J.

NOTES OF ARGUMENT RECORDED BY ONG. F.J.

Lim Kean Siew for appellant 10

Ajaib Singh for respondent

Lim: 17-8-65 - 3 charges originally -

Accused arrested in Taiping.

Question (1) Was he ever in Kg. Tenang,
Johore?

Was there any evidence on
this point?

(2) Assuming he was in Johore,
was he ever identified with
the offences? 20

His identification comes from P.W.5, 6 & 7 -
Indonesians.

Accomplices of a sort - did Judge direct
himself as to necessity of corroboration?

But, there is a question of fact - was
accused ever in Johore?

P.W.5's evidence - see p.7 l.36 - was that
sufficient evidence of landing in Johore?

P.W.6 at p.16 l.15-30.

P.W.7 at p.14 - no evidence as to where 30
he landed: but see p. 71, para. 1.

Cautioned statement did not mention any of these 3 Indonesians.

How many planes came to Malaya?

Only Sutikno's came over.

As to identification by P.W.5 - see p.8 l.10.

See p.9 l.22.

" p.9-10

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Notes of
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28th & 29th
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Continued

10

- in course of police statement -
taking 2 weeks - police brought accused
to the verandah.

P.W.6 - Sutikno

p.11 l.32 - can identify all - accused was one.

p.12 l.17 - first saw accused on 1.9.64 in
uniform - saw the accused a year later on
next occasion - 4th September 1965 was day
before trial.

p.13 - in uniform the 1st time
- not in uniform the 2nd time.

20

P.W.7 - p.14 - 15

Defence was alibi.

Re elections see p.32 l.23, p.32-33, p.33-34.

Some evidence re alibi accepted (vide p.33)
- hence statement must be checked - if
part untrue - how can reliance be placed
on the statement?

When defence of alibi arises the question
of identification becomes of first importance

John Millichamp, 16 C.A.R. 83 @ 84

30

Robert Smith, 18 C.A.R. 19 @ p.21 per Avary J.

Accused's statement -

In the
Federal Court
of Malaysia

No. 18

Notes of
Argument
28 & 29th
December 1965
Continued

p.16 1.33-34.

p.20 1.12-27 corroboration by Lim Cheng Ho.

D.W.2 produced election returns from his
custody as Supervisor of Elections.

Test as to burden of proof in alibi.

Johnson, 46 C.A.R. @ 57

Chadwick v. Johnson, 12 C.A.R. 247

- and see p. 33 1.9 re Chin Moy -

" in my opinion "

cf. p.18 1.9 and p.22 1.22-28.

10

- arrest related to son's death.

Grayson, 16 C.A.R. @ 8

Re Confessions -

Prosecution has to show it was voluntary:

doing so by adducing evidence as to
circumstances under which it was taken -
mere statement by police officer and
interpreter not enough - there was
lengthy interpretation in Taiping - of
cf. p.30 1.28

20

Lim Song Hiaw (1965) M.L.J. 89

Submit - greater care should be exercised in
scrutiny of circumstances in which
cautioned statements were made - e.g.
solitary confinement was pressure - instant
case - arrest on 13th night at Taiping -
taken to Ipoh - interrogation till he was
tired by A.S.P. Chong - in communicado -
p. 7 E-3, F.

On Chung Kooi - p.11

30

Chia Kong Sin - p.26

Wednesday 29th December '65: 10.10 a.m.

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Lim: Onus on prosecution that statement was voluntary. Here, it is unsatisfactory - see p.11 D4 D.W.4 - On Cheng Kooi - how did Anwar know accused wanted to make statement?

No. 18

Chia Kong Sin, Interpreter to Anwar -
p.26 C2, 27 A3.

Notes of
Argument
28th & 29th
December 1965
Continued

Accused - p.18 1.25.

10 p.30 A1 et seq.

Submit: there is some doubt as to voluntary nature of statement.

Cheng Seng Heng & 4 ors. (1949) M.L.J. 178

Queen v. Thompson, (1893) 2 Q.B.12 @ 16

Reg. v. Bass, (1953) 1 Q.B. 680 @ 684

Reg. v. Joyce, (1958) 1 W.L.R. 140 @ 142

and note:

P.P. v. Tham Soo Chye, (1954) M.L.J. 96 @ 98 per Buhagiar J.

20 (Did person taking statement make sure confession was voluntarily made?)

Here accused was known to have been in police custody for several days - to Anwar (p.23 D1) - and see Chia Kong Sin @ p.26C

See p.22 cf. p.23

p.24 A4

p.25

Inducement or threat need not be made at the time the statement was taken.

30 Solitary confinement - its psychological effect.

According to law - slightest inducement

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suffices to render statement inadmissible.

Selvadurai, (1948-49) M.L.J. 43 @ 44
(following R. v. Cowell, 27 C.A.R. 191)

Thomas Joseph Smith, 43 C.A.R. @ 121
Inducement and threat - according to
accused - see p.30 - B

& see p.30E

If questions asked - should not the
questions, their nature and type, be set
down?

10

(& see p.31 B5)

Ibrahim v. The Queen, (1914) A.C.599 @ 613
applied - Wong Pooch Yin - (1955) A.C.

Chong's interrogation is by person in
Authority.

Cheng Seng Heng (ubi. sup. @ 178)

(xxn. vs. elucidating questions)

Re the Statement itself - (popular features)
see Anwar at p.36 A & cf. p.40A
" " p.25 A1

20

See Statement at p. 74

" p.25 re "7.26 m.m. calibre"

Chia Kong Sin - p.27 B (P.W.8 did not use
words Lee Enfield etc.)

The cautioned statement was used to
corroborate Indonesian witnesses.

Michael Murray, 34 C.A.R. 203 @ 208

If statement admitted - submit it cannot
stand test of truth against established
facts.

30

Non-direction as misdirection -

Finch, 12 C.A.R. 77

Johnson, 46 C.A.R. 55 @ 59

T. Lewis, 26 C.A.R. 40

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Ajaib Singh:

As to identification - there is no doubt.

p.7 l.19 - P.W.5 - Seman

p.9 l.14 - P.W.6 - Sutikno

p.14 l.8 - P.W.7 - Bakir

Notes of
Argument
28th & 29th
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Continued

10

Admittedly accomplices - but Judge found
corroboration in statement of Accused.

p.77 l.8 & l.11 & 78 l.8 (Salina)

Dates, times & place in statement agree with
end of 3 Indonesians.

Sutikno - p.12 l.41 - "Salina"

As to cautioned statement -

It was properly and legitimately made and
taken under provisions of s.75 of Internal
Security Act.

Lim in reply:

20

Repentence?

Ajourned to 1.30 a.m. - 30/12/65

Thursday, 30th December 1965: (Continued):

Judgment reserved

(Sd) H.T. Ong

In the
Federal Court
in Malaysia

NO. 19

JUDGMENT OF THOMSON L.P. MALAYSIA

No. 19

Judgment of
Thompson L.P.
Malaysia 27th
January 1966

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No: X.19 of 1965
(Muar High Court Emergency Criminal Trial No:32/
1965)

Ho Ming Siang alias Ho Sung Appellant

v.

10

The Public Prosecutor Respondent

Cor: Thomson, Lord President, Malaysia.
Syed Sheh Barakbah, Chief Justice,
Malaya.
Ong Hock Thye, Judge, Federal Court.

JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA

This is yet another appeal arising out of the Indonesian invasion near Labis during the night of 1st/2nd September, 1965. The appellant was thought to have participated in that invasion and in consequence he was prosecuted on the following three charges under the Internal Security Act, 1960:-

"1st Charge.

That you between 2.00 a.m. on the 2nd day of September and 6.00 a.m. on the 11th day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong vide FLN. 245 of 17th August, 1964, namely Tenang Kampong, 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 57(1) of the Internal Security Act, 1960

30

in circumstances which raised 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 said Act.

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2nd Charge

10 That you at about 2.00 a.m. on the 2nd day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong vide FLN. 245 of 17th August, 1964, namely Tenang Kampong, Labis, in the District of Segamat, in the State of Johore, without lawful excuse carried a firearm, to wit, a LEE ENFIELD 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

30 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 FLN. 245 of 17th August, 1964, namely Tenang Kampong, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession 200 rounds of ammunitions without lawful authority and that you have thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960".

With regard to the first of these charges, the dates are wrong and the charge was at no time amended but, as was pointed out in Law Kiat Lang v. Public Prosecutor (1) this is without importance. As was said by Atkin, J., in the case of Dossi:- (2)

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

(1) Federal Court Criminal Appeal No: X.16/1965.
(2) 13 C.A.R. 158, 159.

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The appellant was convicted on all three charges and sentenced to death. Against these convictions he has now appealed.

The appellant was arrested on 13th September, 1964, at Taiping, some 300 miles north of Labis and his trial commenced on 5th September, 1965.

The prosecution case was based on the evidence of three Indonesian prisoners of war and a statement alleged to have been made voluntarily by the appellant to the Police at Labis on 22nd September, 1964. 10

Sutikno Tjetrosumarto said he was a Lieutenant in the Indonesian Air Force and at present a prisoner of war. He joined the Army in 1945 and in 1950 was transferred to the Air Force in which he became a Company Commander. In February, 1964, his Company was in training for "Confrontation" against Malaysia and in July he was transferred to the island of Karimun to train Chinese who had come from Malaysia in the use of firearms and explosives for a campaign the purposes of which were to come to Malaysia to "liberate" the people and by such acts of sabotage as blowing up roads and bridges to disrupt the economy of the country. 20

On 1st September at Djakarta he mustered a party of 48 persons including 14 Chinese from Malaysia. They left by aircraft for Medan where they rested for a few hours. About midnight the aircraft left Medan and about 2 a.m. they dropped by parachute and landed in Johore; he did not know exactly where he had landed but next morning he looked at his map and found it was in the Tenang area. They were all in uniform and each of them carried food, clothing medicine, \$300 in Malaysian currency, a firearm, two handgrenades and at least 200 rounds of ammunition. As regards firearms, the Indonesians had light automatic weapons and the Chinese Lee Enfield rifles or sten guns. The appellant was one of the Chinese in the party but the witness did not say with what type of weapon he was armed. Another member of the party was a Chinese girl named Salina. 30 40

After leaving the aircraft the witness did not see any of his men until after he was captured about 7.30 p.m. on 21st September, 1964. He did not see the appellant again till he saw him in the lock-up at Muar on 4th September, 1965.

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Seaman bin Pawiro said he was an Indonesian soldier and was one of Lieutenant Sutikno's party who left Djakarta and later Medan by air and landed by parachute in Malaysia in the early morning of 2nd September, 1964. The appellant was also one of the party; he was in uniform and sat next to the witness in the aircraft; his number was 21 and that of the witness was 20. The witness did not know if all the party were carrying arms and ammunition but they were all carrying bundles; in particular he did not know what the appellant was carrying. After he jumped he did not know where he landed but 5 days later he was arrested near Labis.

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Bakir bin Akir said he also was an Indonesian soldier and one of Lieutenant Sutikno's party. The appellant was also one of the party. All of them were in uniform and were carrying firearms, ammunition and handgrenades. The witness did not, however, state specifically what the appellant was carrying. After he jumped from the aircraft he wandered about in the jungle and was later captured.

Then there was a statement made by the appellant to the Police on 22nd September, 1964, which was admitted in evidence under section 75(1) of the Internal Security Act. The circumstances in which that statement was made will call for examination later. Its contents, however, were as follows.

In May, 1964, the appellant was told by a friend he was going to take him for a visit and he was taken to Pantai Remas in Perak. From there he was taken in an Indonesian boat with 17 other Chinese (whose names he gave) to an island he knew as Balai where they were given physical training under an Indonesian instructor. After a week they were taken to Bandoeng where they were given training in the

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use of weapons and in parachute jumping. He was there issued with a Lee Enfield rifle of 7.62 calibre but no ammunition. He was given the number 14 and though he could not remember the number of his rifle the number 14 was stamped on the sling. Among the Chinese with him at this stage were 10 persons now detained in this country whom he named.

The training at Bandoeng lasted three months and then the trainees were taken to Djakarta where they were asked to join some Indonesians in paratroop uniforms. The appellant was attached to section 4 of platoon 3. There were six persons in this section, one of whom was a Malaysian girl he knew as Salina. The platoon commander was an Indonesian sergeant whom he knew as "Pa Yet". He still had his rifle and he was now issued with 200 rounds of ammunition. He was also issued with a paratrooper's uniform, civilian clothing, a compass, a whistle and toilet articles.

10

20

On 1st September, 1964 about noon the party were taken to an aircraft which left at 3 p.m. for a place he did not know. It waited there for an hour and left again about 11 p.m.

About 2 a.m. they received the signal to jump. His number was 21 and he was among the last four to jump. His parachute caught in a tree and he lost his rifle and had to use a rope to get to the ground. He waited where he was till he could see and he then walked on a compass bearing till about 3 p.m. when he met an Indonesian paratrooper he knew as Man. Next morning they met two other Indonesian paratroopers. They remained in the jungle till 10th September. Their rations were then exhausted and the others sent him out, dressed in civilian clothes, to buy food. He found his way to a road and then travelled by bus and taxi to his home at Taiping using for the purpose the money he had been given by the others. He had been given \$300 in the aircraft but had lost it.

40

In the course of the prosecution case the appellant gave evidence regarding this statement

which will be considered later. But at the close of the prosecution case he gave evidence on his own behalf setting up a defence of alibi.

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He said that in May, 1964, he was in Taiping where he had been a candidate in an election for the state Legislative Assembly on 25th April. On 11th July he submitted his return of election expenses as required by law having sworn to it before a Magistrate the previous day.
10 After this election there was an election for the Town Council on 13th June. In this a friend of his, Lim Cheng Ho, was a candidate and he acted as his election agent. In connection with this election he swore to a return of Lim's election expenses on 15th August.

When he was not engaged in these political activities he was going about the country looking for work and visiting friends. He did not go to Indonesian at any time and he
20 was forced and coached to make his statement to the Police. Among other visits he made one was about two weeks before his arrest to one Chin Moy, the Mother of a friend, Oh Chuan, near Kampar with whom he stayed for four or five days.

In support of his alibi he called five witnesses.

Lim Cheng Ho said that he had acted as election agent for the appellant in April 1964. He himself was a candidate at the Town Council
30 election on 13th June, 1964, and the appellant acted as his agent. During the two elections they met often. He had frequently gone to the appellant's house to see him but at times the appellant was not there and was said to have gone in search of employment. He did not go to the Police after the arrest of the appellant.

Ho Kwan Lian said she was the sister of the appellant and had helped him during the elections in 1964. Until June, 1964, the
40 appellant was in Taiping. Between 13th June and 17th August he left Taiping on a number of occasions and sometimes stayed away for as long as two weeks but he always came back. She did not go to the Police after her brother's arrest.

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Teh Ah Yeok said that she saw the appellant in Taiping after the elections and before his arrest. She was present when he was arrested on 13th September.

Chin Moy said she resided at Kampong Tinah, Tanjong Tualang, and had a son Ho Chuan who was killed in an accident some time after the arrest of the appellant. The appellant came to see her on 27th August, 1964, and stayed for a week.

Finally, there was the evidence of Lee Kok Cheng, the Supervisor of Elections for the State of Perak. He was not in Perak in 1964 and did not know the appellant, but he produced two documents. One of these was a return of election expenses purporting to be filed on behalf of a candidate named Ho Min Siang. This embodied a verification on oath made before a Magistrate on 10th July and purporting to be signed with the appellant's name "Ho Min Siang" in Roman characters. 10 20

The other document was a declaration of election expenses purporting to be filed on 17th August, 1964, on behalf of a candidate named Lim Cheng Ho whose election agent was named Ho Min Siang. This contained a verification on oath made before a Magistrate by the election agent on 17th August, 1964, and purporting to be signed with the appellant's name "Ho Min Siang" in Chinese characters.

On that evidence as a whole the trial Judge accepted the evidence of the Indonesian prisoners of war as true. He treated it as the evidence of accomplices and regarded it as in any event inadequate to support convictions for carrying arms and possession of ammunition. But he found corroboration of it and evidence which made out the prosecution case as a whole in the statement made to the Police by the appellant shortly after his arrest which he had admitted as having been voluntarily made after the statutory caution under section 75 of the Internal Security Act had been administered. He regarded the defence evidence as not deserving of any consideration except so much of it as showed that 30 40

a person who said his name was Ho Min Siang, but whose identity was not proved, had made declarations before a Magistrate in Taiping on 10th July and 15th August, 1964.

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Such of the grounds of appeal as merit consideration are connected in one way or another with the statement made by the appellant to the Police at Johore Bahru on 22nd September, 1964, that is to say ten days after his arrest and a
10 year prior to his trial. It will thus be necessary to consider the evidence as to the circumstances in which that statement was made.

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Contable Shuaid said he arrested the appellant on the evening of 13th September and took him to the Taiping Police Station and informed his mother that her son had been arrested.

A.S.P. Rogers said that the following morning he saw the appellant at the Ipoh Police
20 Station and interrogated him for intelligence purposes. He did not use any threat, promise or inducement at any time and found the appellant intelligent and co-operative. As far as he knew nobody but himself interrogated the appellant at Ipoh. On 17th September the appellant was sent to Johore Bahru.

Inspector Oh said that on 18th September the appellant arrived in Johore Bahru in custody from Ipoh. He questioned him for a few minutes,
30 but did not use any threat, promise or inducement. The appellant was then put in the lock-up under the witness's supervision where he was kept by himself in a cell but was visited by the witness twice daily and made no complaints. He was also seen by the Doctor every morning. He was taken out of the cell on 22nd September because Inspector Anuar wished to obtain a statement from him.

Inspector Anuar said he saw the appellant
40 on 22nd September at Johore Bahru and interviewed him through Chia Kong Sin as interpreter. He ascertained that the appellant wished to speak in Cantonese. Then he administered the caution

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prescribed by section 75 of the Internal Security Act. The appellant said he understood the caution and elected to make a statement. He then made a statement freely and voluntarily which was interpreted into English and written down by the witness. It was interpreted back to the appellant who adhered to it and said he did not wish to make any additions or alterations. No threat, inducement or promise was held out to the appellant. In cross examination the witness admitted he knew the appellant had been interrogated for intelligence purposes and that he had seen statements made by the Indonesian witnesses Seman and Bakir but not by Lieutenant Sutikno who had been captured the previous evening. 10

Similar evidence was given by the interpreter Chia and it is to be observed that no suggestion of any sort of inducement being held out at the interview was put either to this witness or to Inspector Anuar. 20

At this stage the appellant gave evidence. He was arrested on 13th September at Taiping and was taken to his house which was searched. He was then taken to Ipoh where he arrived about midnight. Next day between 1 and 4 p.m. he was interrogated by A.S.P. Rogers. He was pushed into a room and five or six people took off his clothes and gave him prison trousers. He was shown two books of photographs and asked if he knew any of the persons in the photographs. He did not recognise any of the photographs and the man with him then struck him with their fists on both sides of the abdomen and told him that if he did not tell them what they wanted they would continue beating him, but that if he said what they taught him to say he would not be beaten again. At first he could not remember what they taught him but they kept on repeating it to him until he understood. They then stopped beating him and told him that if he did not follow what they had taught him they would beat him to death or shoot him. That night he had no sleep. 30 40

The following day he was questioned again but was not beaten. He was taken to Johore Bahru on 17th or 18th September where he was

questioned by Inspector Oh and then kept in a cell for 4 days without seeing anyone. On 22nd September a statement was taken from him by Inspector Anuar with the assistance of Chia. They did not ask him whether he wanted to make a statement. They told him they had come to take a statement from him and that if he made it he would be released to see his parents. He also had in mind from his previous experience that if he did not make a statement he would be beaten again or shot. He did not actually make a statement but he was asked a series of questions putting certain facts to him and to these questions he was required to answer "yes" or "no". While he was in prison he was seen regularly by the Doctor and complained to him of severe pain in the abdomen as a result of being beaten.

10

The trial Judge did not accept the appellant's evidence as to the circumstances surrounding the taking of his statement. He found as a fact that that statement was freely and voluntarily made after the proper caution had been administered to the appellant and he did not accept it that the appellant had been assaulted or threatened at any time. In so far as these findings were based on the Judge's estimate of the credibility of witnesses they would, of course, have been difficult if not impossible to attack in this Court.

20

The admission of the statement has, however, been attacked on the ground that the Judge did not consider the possible effect on the mind of the appellant of being kept in what was virtually solitary confinement in the Johore Police Station for a period of four days. This, it was argued, constituted some sort of psychological pressure upon him which in itself must have made the making of the statement less than fully voluntary.

30

In our view this complaint is without substance. The appellant was arrested on 13th September and it was on 22nd September that he made his statement. From 13th till 17th September he was detained at Ipoh where he was questioned for intelligence purposes. He made

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allegations of being assaulted and threatened while he was there but on the evidence the trial Judge did not accept these allegations. Then he was taken to Johore, some 350 miles away and was in custody there for four days.

During that time there is no suggestion that he was threatened or physically molested in any way. Indeed there is no suggestion that his treatment differed in any way from that of any other prisoner held in custody on a serious charge. He was kept in a cell in the Police lock-up and was only let out for necessary purposes and for exercise; he was allowed no communication with anybody except his guards, though it is to be noted that there was no evidence that his mother, who knew he had been arrested, or anybody else expressed any wish to communicate with him. But the statutory caution was properly given to him and in our view that was sufficient in the circumstances to make it clear to him that he was under no obligation to make any statement unless he wished to do so. Whether or not ignorance of the Police case against him and a period of reflection had in fact made him wish to make a statement when afforded the opportunity to do so in entirely a matter of speculation. But even so it cannot be said that what he did was not done voluntarily. 20

I now come to the main ground of appeal which was to the effect that even if on the evidence before him at the time he admitted the statement the Judge was right in doing so yet at the end of the case he should have taken the evidence for the defence into account and rejected it as being the result of pressure and coaching on the part of the Police, and moreover should have treated the fact that the Police found it necessary to fabricate such evidence as adding such additional weight to the defence of alibi as to cast fatal doubt on the case for the prosecution as a whole. 30 40

Such superficial attractiveness as this piece of forensic dialectic may possess has been enhanced by the skill and persuasiveness with which it has been urged upon us. It will not,

however, withstand close examination.

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10 First of all, viewing the argument in isolation, it is necessary to consider just what it involves. It necessarily involves the proposition that the statement as written down by Inspector Anuar was from beginning to end a complete concoction by the Police. The appellant was an innocent man who at all material times had been going about his lawful
10 occupations in this country. In Ipoh he was told that he was expected to tell a detailed story which was lies from beginning to end emanating from the evil minds of Police officers of how he had gone to Indonesia and then participated in the Labis invasion and then in Johore he was asked a series of questions embodying that false story to which he was required to answer "yes" or "no".

20 Now this may be possible in the sense that all things are possible but it is in the highest degree improbable. There have been from time to time unfortunate incidents where Police officers have been tempted to "touch up" individual pieces of evidence to strengthen a case against a man they believe to be guilty. But to concoct a story which is from beginning to end a mass of falsehoods to implicate an innocent man in a series of capital offences is a very different thing.

30 That, perhaps, is putting an unduly unfavourable construction on what the Police are supposed to have done. There is not a scrap of evidence to suggest that any individual Police officer had the slightest personal ground for bearing any malice towards the appellant personally and the allegation may be considered on the basis that the intention was not to secure the conviction of an innocent man but to assist in the conviction of a man the Police believed to be guilty. But even on this basis the allegation is in the highest degree
40 improbable.

For one thing, from the point of view of the Police officers concerned, it was an extremely dangerous thing to do. It was not the doing of a single officer. At least four named

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officers were involved - A.S.P. Rogers, Inspector Oh, Inspector Anuar and the interpreter Chia - and there were others alleged to have assisted A.S.P. Rogers whom the appellant did not name. With so many persons involved the risks of detection were very great and the consequences of detection would have been calamitous. Moreover the appellant by reason of his political activities must have been well-known in the Taiping area and if he had in fact not been absent in Indonesia from his usual sphere of activities for a period of some three months he would have been in a position to set up such an overwhelming alibi that detection of the fabrication would have been virtually inevitable. 10

Again, looked at from the point of view of the personality of the appellant the whole thing is incredible. He is not an ignorant youth, he is a politician of sufficient standing to be able to stand as a candidate for a State election. And yet he allows himself to be led, as it were, as a lamb to the slaughter. He has not even alleged that he made any attempt whatsoever to protest his innocence or to say a single word until his trial a year later of what was, if it was true, an invincible defence capable of being proved up to the hilt. 20

Apart, however, from considerations of inherent improbability there are ample grounds for saying that the appellant's allegations were effectively dispersed by the evidence. 30

In the first place A.S.P. Rogers, Inspector Oh, Inspector Anuar, and the interpreter Chia all gave evidence at the trial which has been recounted and in which they denied the appellant's story. The Judge believed them and he did not believe the appellant. Again he did not believe the witnesses who spoke to the appellant's alibi with the exception of the Supervisor of Elections and his evidence came to no more than this: that on 10th July an unidentified person appeared before a Magistrate and signed a paper with the name of the appellant in Roman characters and on 17th August an 40

unidentified person appeared before the same Magistrate and signed a similar form with the name of the appellant in Chinese characters.

In all the circumstances we are of the opinion that this ground of appeal also is without substance.

The appeals are dismissed.

Sgd. J.B. Thomson

10 Kuala Lumpur,
27th January, 1966.

LORD PRESIDENT,
FEDERAL COURT OF MALAYSIA.

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Thomson L.P.
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January 1966
Continued

Lim Kean Siew, Esq., for appellant.

Ajaib Singh, Esq., D.P.P., for respondent.

NO. 20

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

In the
Judicial
Committee of
the Privy
Council

No. 20

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

ORDER UNDER SECTION 76(1)

20 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:-

Order allowing
special leave
to Appeal in
Forma Pauperis
to His Majesty
the Yang Di-
Pertuan Agong
7th March 1967

WHEREAS by virtue of the Malaysia

In the
Judicial
Committee of
the Privy
Council

No. 20

Order allowing
special leave
to Appeal in
Forma Pauperis
to His
Majesty the
Yang Di-
Pertuan Agong
7th March
1967
Continued

(Appeals to Privy Council) Orders in Council 1958 and 1963 there was referred unto this Committee a humble Petition of Ho Ming Siang alias Ho Sung in the matter of an Appeal from the Federal Court of Malaysia (Appellate Jurisdiction) between the Petitioner and the Public Prosecutor setting forth that the Petitioner desires to obtain special leave to appeal in forma pauperis from a Judgment of the said Federal Court dated the 27th day of January 1966 dismissing his Appeal against convictions in the High Court of Malaya at Muar in the State of Johore on the 29th day of October 1965 on charges of possession of a firearm and ammunition and of consorting with members of the Indonesian Armed Forces: 10
And humbly praying the Head of Malaysia to grant him special leave to appeal in forma pauperis from the Judgment of the said Federal Court dated the 27th day of January 1966 and for further or other relief: 20

THE LORDS OF THE COMMITTEE in obedience to the said Orders in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree to report to the Head of Malaysia as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Federal Court of Malaysia dated the 27th day of January 1966: 30

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". 40

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.

In the
Judicial
Committee of
the Privy
Council

DATED this 7th day of March 1967.

BY COMMAND

Sd: TUN (Dr) ISMAIL BIN DATO ABDUL
RAHMAN

10 MINISTER OF JUSTICE.

(F.C. Crim. App. X. 19/65)

No. 20

Order allowing
special leave
to Appeal in
Forma Pauperis
to His
Majesty the
Yang Di-
Pertuan Agong
7th March
1967
Continued

LIST OF EXHIBITS

IN THE FEDERAL COURT OF MALAYSIA

F.M. CRIMINAL APPEAL NO. X 19 OF 1965

EXHIBITS

In the Federal
Court of
Malaysia

HO MING SIANG @ HO SUNG APPELLANT

AGAINST

PUBLIC PROSECUTOR RESPONDENT

(In the matter of Muar Emergency Criminal Trial
No. 32 of 1965)

List of Exhibits
undated

20 LIST OF EXHIBITS

<u>Number</u>	<u>Description</u>	<u>Whether or not included in Record</u>
A	Consent	included
B	Certificate	included
P1	Caution Statement	included
P2	Statement of Ho Tak	included

<u>Exhibits</u>	<u>Number</u>	<u>Description</u>	<u>Whether or not included in Record</u>
In the Federal Court of Malaysia	D3	Bundle of documents containing receipts and a statement of oath by candidate for return of election expenses.....	Not included.
List of Exhibits undated Continued	D4	Bundle of documents containing receipts, return of expenses and oath form	Not included. 10

"P.1"
Statement of
Accused 22nd
September
1964

POLIS DI-RAJA MALAYSIA

PERCHAKAPAN DALAM PEMEREKSAAN

No. Report 518/64 Rumah Pasong LABIS
Perchakapan bagi HO MING SIANG Nama bapa HO TAK Laki2
Bangsa. Cantonese Tempat di-peranakan Pendok Tanjong Taiping.
Umor. 24 tahun, Kerja Lorry Attendant, dudok di-189 Pokok Assam, Taiping.
Di-terima oleh Insp. Anuar di-JB office pada 22.9.64 jam 20
11.20 a.m. Jurubahasa oleh CHIA KHONG SIEN daripada Cantonese kepada English. Kata-nya

Before recording the statement of the accused, I administered the following 'caution' through an interpreter Mr. CHIA KHONG SIEN in the Cantonese dialect.

"It is my duty to warn you that you are not obliged to say anything or answer any question but anything you say whether in answer to a question or not may be given in evidence". 30

Q. Do you understand the above 'caution'?

Exhibits

A. Yes.

"P.1"
Statement of
Accused 22nd
September 1964
Continued

Interpreter

Recorder.

Sd: (CHIA KHONG SIEN). Sd.(ANUAR BIN MD.YUSOF)
Insp;

In answer to my questions:

I was born in Pondok Tanjong, Taiping, Perak. I am single and stay with my parent at 189, Pokok Assam, Taiping. Perak.

10 During May this year 1964, a person I know as Tan Chit San, a friend, told me that he was going to take me to a certain place for a visit for about two weeks. I was taken to Pautai Remis, Perak and asked to go into a 'sampan'. There were about 17 others all Chinese. After some distance from the shore all of us boarded an Indonesian boat. We were all taken to a small island at Pulau Balai. I would not know whether this is an Indonesian Island
20 or Malaysian. We stayed on this island for one week. Here we were doing some Physical Exercises under an Indonesian Instructor. Amongst the persons I met there are the following:-

- 1) Chong Cheng
- 2) Poh Hee
- 3) Tah Ah Long
- 4) Tan Seng Yong
- 5) Tien Chooi
- 6) Siew Soon
- 30 7) Tan Khek San
- 8) Leong Peng
- 9) Chee Seng
- 10) Cheng Han Soo

Exhibits

"P.1"
Statement of
Accused 22nd
September
1964
Continued

- 11) Lee Fok Lim
- 12) Seon He
- 13) Pang Fong
- 14) Wong Wah
- 15) Wong Min
- 16) Lee Yan

After one week we were all taken to Bandoeng. It is a training camp for Paratroopers. I do not know the name of this camp. We were undergoing Military Training and how to jump down by parachutes. I was issued with a Lee Enfield Rifle of 7.62 mm. calibre and was not issued any bullets while under training. I was given No. 14 as a Trainee. I cannot remember the number of my gun. I can only recognise this weapon from the sling where No. 14 is also printed. All the others were given the same training. By then there were about 42 others undergoing training. I do not know the name of the others except for one or two. I met this person CHONG SENG (LAU KIAT LONG) and one or two others who are with me now detained. The persons now detained that I met in Indonesia are:

- 1) CHONG SENG (LAU KIAT LONG)
- 2) WONG CHONG (NG SENG HUAT)
- 3) TAH AH LONG
- 4) POH YEE (TAN KWANG KIW)
- 5) BOK SENG (LEE BOK KIM)
- 6) CHONG CHENG (WONG CHONG YU)
- 7) LEE CHENG (LEE CHIN SAI)
- 8) TIAN CHOO (WONG CHIN CHEW)
- 9) ANG CHIAN (TEE CHONG KEE)
- 10) SIN SENN (TAN WAH LOM)

10

20

30

Exhibits

"P.1"
Statement of
Accused 22nd
September 1964
Continued

The training lasted about two to three months. I had about eight parachute jump training. After this training I was taken with the others to Djakarta. There were about 41 now as one died. In Djakarta we were asked to join the Indonesians. They were in the paratrooper uniform. I was then attached to Sec. 4 of Platoon 3 under an Indonesian. There were about six in the section including myself and another Malaysian girl I know her as SALINA. I was still using the same firearm I was issued and was given about 200 rds. of bullets. We were introduced to the Platoon 3 days before we left for Malaysia. The persons in my section:-

1) SALINA

2) Myself and four other Indonesians I do not know. In the platoon there were eight sections. Each under their own section commanders. The Platoon Commander was an Indonesian I know as PA'YET, an Indonesian Sergeant. The following equipment other than arms were also issued.

1) 1 suit paratrooper uniform

2) 2 pairs of civilians

3) 1 pair of boot

4) a pair of shoes

5) Mess Kits

6) Toilet facilities

7) One Compass

8) One whistle.

9) Assorted medicines

10) Raincoat ponche

11) Webbing equipments etc.

On 1.9.64 at about 12.00 noon all the personnel in Pln. 3 were asked to assemble by

Exhibits

"P.1"
Statement of
Accused 22nd
September 1964
Continued

the Commander PA'YET. All of us were asked to bring our arms and equipments into a waiting truck which took us to a waiting plane. It was a big carrier plane. At about 3.00 p.m. we boarded the plane. The plane made a stop over at a certain place. I do not know this place. From this place at about 10.00 p.m. to 11.00 p.m. the plane took off again. The following were with me in the plane:-

- 1) POH YEE (TAN KWANG KIM) 10
- 2) SALINA
- 3) SIN SERN (TAN WAH LAM)
- 4) CHONG SENG (LAU KIAT LONG)
- 5) CHONG CHENG (WONG CHONG YU)
- 6) BOK SENG (LEE BOK KIM)

and others I cannot remember their names.

At about 2.00 a.m., the signal came for all of us to be parachuted. I was lined No. 21 an Indonesian was in front of me. I was amongst the last four. When I touched ground my gun was missing as my parachute was caught in a tree. I had used a rope to come down. I waited at the place I was until I could see. By using compass 1700 I walked. 20

At about 3.00 p.m. I met other person I know as MAN, an Indonesian paratrooper. With this person we walked still in our paratroop uniform. We reached a cave. I do not know where this is and passed the night there. The following morning we walked on. At about 3.00 p.m.30 that we met two others I know as:-

- 1) DIN and
- 2) SADIKON.

The four of us walked on in the jungle. We heard gun shots. We walked and slept by night until the 10th of September, 1964. When our

rations were finished the group sent me out to buy food.

Exhibits

"P.1"
Statement of
Accused 22nd
September 1964
Continued

At 6.00 a.m. 11.9.64 dressed in civic I came out to a road side. I paid only sixty cents from the place to Segamat by bus. I took another bus to Gemas and then by taxi to Tampin. From Tampin I boarded a taxi to Kuala Lumpur and arrived Ipoh at about 4.00 p.m. 11.9.64. I took a taxi from Ipoh to Taiping. I used the money that
10 was given to me by the others as I lost my money in the flight. Cash \$300/- were given to each of us on the plane.

I stayed at home in Pokok Assam.

On 13.9.64 at about 9.00 p.m. I was arrested by Police. I am finally sent to this place. I was arrested outside my house when I was going into a taxi to go to a Hospital to see a neighbour who just died.

(Read over the above and confirmed correct).

20 Q. Do you have anything to add or alter?

A. No.

In the course of recording this statement no threat, promise or inducement was made to the accused.

(Interpreter)

Recording Officer

Sd:.....

Sd:.....

(CHIA KHONG SIEN)

(ANUAR B.MD.YUSOF) Insp.



IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 12 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 :

HO MING SIANG alias HO SUNG Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

RECORD OF PROCEEDINGS

GARBER, VOWLES & CO.,
37 Bedford Square,
London, W.C.1.

STEPHENSON HARWOOD & TATHAM,
Saddlers' Hall,
Gutter Lane,
London, E.C.2.

Solicitors for the Appellant

Solicitors for the Respondent