

1967/21

{83}

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.13 of 1967

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO. X.11 of 1966

(Muar High Court Emergency Criminal Trial No: 1/65)

B E T W E E N:

LEE HOO BOON alias LEE CHENG HOE Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

RECORD OF PROCEEDINGS

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CLASS MARK

ACCESSION NUMBER

**91352**

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

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transmitted to the Privy Council but  
not reproduced

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1.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.13 of 1967  
ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA  
(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO. X.11 of 1966  
(Muar High Court Emergency Criminal Trial No: 1/65)

B E T W E E N:

LEE HOO BOON alias LEE CHENG HOE Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

10

RECORD OF PROCEEDINGS

NO. 1

CHARGE SHEET

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

In the High  
Court in  
Malaya

No. 1  
Charge Sheet

MUAR EMERGENCY CRIMINAL TRIAL NO 18 of 1965

PUBLIC PROSECUTOR

versus

LEE HOO BOON alias LEE CHENG HOE

1st Charge

20

That you between the 2nd day of September,  
1964 and the 7th day of September, 1964 in a

In the High  
Court in  
Malaya

          
No. 1

Charge Sheet  
(Continued)

Security Area as proclaimed by the Yang Di-  
Pertuan Agong vide Federal L.N. 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 a reasonable presump-  
tion that you intended to act with such members  
of the Indonesian Armed Forces in a manner  
prejudicial to the Public security and you have  
thereby committed an offence punishable under  
Section 58(1) of the Internal Security Act No.  
18/1960.

10

2nd Charge

That you between the same date, in a  
Security Area as proclaimed by the Yang Di-  
Pertuan Agong vide Federal L.N. 245 of 17th  
August, 1964 namely Tenang Kampong Labis, in  
the District of Segamat, in the State of Johore  
without lawful excuse had under your control a  
firearm to wit a stengun without lawful authority  
and you have thereby committed an offence  
punishable under Section 57(1)(a) of the Internal  
Security Act, 1960.

20

3rd Charge

That you between the same dates, in a  
Security Area as proclaimed by the Yang Di-  
Pertuan Agong vide Federal L.N. 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  
ammunition to wit 371 rounds of 9 mm ammunition  
and two hand grenades Chinese type without  
lawful authority and you have thereby committed  
an offence punishable under section 57 (1)  
(b) of the Internal Security Act, 1960.

30

Sd: Hamzah bin Mohd. Salleh.

---

EVIDENCE OF HAMID BIN MUSA

P.W.3 HAMID bin MUSA, affirmed, states in English:

No. 2

I am a Police Inspector attached to Police Headquarters, Kluang, Johore. On 7.9.64 I was stationed at Labis Police Station as a Special Branch Officer.

Hamid bin  
Musa  
Examination  
14th August  
1965

10 At about 8.10 p.m. on 7.9.64 two Chinese males named Lee Hoo Boon and Ooi Wan Yui were brought before me by Captain Sanders of the 1/10th Gurkha for the purpose of interrogation.

I interrogated Lee Hoo Boon and Ooi Wan Yui separately and not in the presence of each other. I instructed Ooi Wan Yui to be placed in the lock-up. Then I proceeded to interrogate Lee Hoo Boon. Lee Hoo Boon is the accused.

20 I interrogated Lee Hoo Boon, the accused, for about 3½ hours. In the process of interrogation I did not use inducement, threats or promises. I passed the information I obtained from him to the officer in charge of the Operations Room. I did not record his statement. On giving the information to the officer in charge of the Operations Room my task ceased and I sent the accused to the lock-up.

30 Cross-examined: I am a Malay. I spoke to the accused in Malay. The accused understood Malay fully. I spoke to him in Malay and he replied in Malay. It is not true that I never interrogated the accused. On that day there were no Chinese Special Branch Officers in Labis Police Station. I saw P.W.1. in Labis Police Station on that day. I did not see A.S.P. Lim (called in and identified) in Labis Police Station on that day. It is not true that some Chinese Special Branch Officers were in Labis Police Station at about the time I interrogated the accused.

Cross-  
examination

40 I spoke to the accused in Malay for nearly 3½ hours. That is not untrue. Lee Hoo Boon, the accused, and Ooi Wan Yui were handed to me by Captain Sanders at the same time. They were not blindfolded when I received them. I

In the High  
Court in  
Malaya

Prosecution  
Evidence

No. 2

Hamid bin  
Musa  
Cross-  
examination  
14th August  
1965  
(Continued)

commenced interrogation at 8.10 p.m. and finished at about 11.40 p.m. I did not take down anything in writing. I passed on the information to Inspector Idris bin Wahid, the officer in charge of the Operations Room. It is not true that at about the same time the accused was interrogated by two Chinese Police Officers. It is not true that the accused was assaulted by the two Chinese Police Officers from time to time during the interrogation. After 11.40 p.m. on 7.9.64 I had nothing to do with the accused.

10

Ooi Wan Yui is about 23 years old. He is older than the accused. A statement was recorded from me on 25.2.65. That was the first time I made a statement about my interrogation of the accused.

No re-examination.

By Court (at Inche Lee's request): The accused was dressed in a paratrooper's uniform when he was handed to me.

20

By Court: P.W.1 was not a Special Branch Officer on that day.

No. 3

Lim Teong  
Kooi  
Examination  
14th August  
1965

NO. 3

EVIDENCE OF LIM TEONG KOOI

P.W.4 LIM TEONG KOOI, affirmed, states in English:

I am an Assistant Superintendent of Police stationed at District Police Headquarters, Ipoh. On 8.9.64 at about 6.20 p.m. I was at Labis Police Station. Previous to that I was stationed in Pahang.

30

On 8.9.64 at about 6.20 p.m. I recorded a statement from the accused. I spoke to the accused in Hokkien dialect. Before I spoke to the accused in Hokkien I ascertained that he was also a Hokkien. I administered a caution to the accused as laid down in Section 75 of the Internal Security Act, 1960 before

proceeding to record his statement. I understood what the accused said, and the accused understood what I said.

In the High  
Court in  
Malaya

Prosecution  
Evidence

No. 3

Lim Teong Kooi  
Examination  
14th August  
1965  
(Continued)

10

After the accused had understood the caution which I administered in Hokkien, I asked him if he wished to make a statement. His reply was in the affirmative. I did not use any inducement, threat or promise before or during the course of my recording the statement. After I had recorded his statement I read it back to him again in Hokkien dialect, and I asked him if he wanted to make any alterations or additions to the statement. His reply was in the negative.

I was satisfied that it was a voluntary statement and that it was made freely. I signed at the bottom of the statement.

Johore was declared a security area vide Legal Notification 245/64.

20

(As the statement is being objected to and challenged, I allow Inche T.T. Rajah to cross-examine the witness at this stage).

Cross-examined: I first saw the accused when I proceeded to record a statement from him. At that particular time I was in charge of investigation of this case.

Cross-  
examination

30

I started recording the statement at about 6.20 p.m. It took me about 3 hours to record the statement, so that I finished recording the statement at about 9.20 p.m.

40

The accused spoke to me in Engkhoa Nokkien. There is Chawan Hokkien. There are no other dialects in Hokkien. My dialect is Engkhoa Hokkien. The accused spoke to me in Engkhoa Hokkien. The accused did not say he was Chawan Hokkien. There is very little difference between Engkhoa Hokkien and Chawan Hokkien. The accused did not tell me that he is Engkhoa Hokkien but he spoke to me in Engkhoa Hokkien. The accused's statement was taken at Labis. I am very sure of that. It is not true that the statement was taken at Segamat Police Station. I am definite that I took the statement at Labis.

In the High  
Court in  
Malaya

Prosecution  
Evidence

No. 3

Lim Teong  
Kooi  
Cross-  
examination  
14th August  
1965  
(Continued)

I arrived at Labis one day before I recorded the statement. On that night I slept at Segamat. I did not meet Captain Sanders on 7.9.64. I saw Captain Sanders but I cannot remember on what day. I recorded a statement from him, and I first saw him then.

After doing my work in Labis on 8.9.64 I went back to Segamat to sleep there. I left for Segamat at about 11 p.m. A statement was recorded from me on 6.10.64 by Inspector Anuar. I remember saying in that statement that I recorded the statement from the accused in Segamat. That was incorrect. The statement was read out to me and I confirmed that it was correct. I came to know a minute ago that that statement is incorrect.

10

I cannot remember whether the accused told me that he is a Chawan Hokkien. I remember that accused spoke to me in Engkhoa Hokkien. I speak Engkhoa Hokkien, not Chawan Hokkien.

20

It is not correct that the accused spoke to me in Chawan Hokkien and that I did not understand him. I am very sure that I spoke to the accused in Engkhoa Hokkien. My dialect is Engkhoa Hokkien. The accused spoke to me in Engkhoa Hokkien. It is not true that the accused spoke to me in Chawan Hokkien and that I did not understand him sufficiently well.

Before recording the statement from the accused, I sent for him. I was in a room. There was no other Chinese, apart from the accused, with me all the time when I recorded the statement. There were some Chinese coming in and going out. No soldiers came into that room, but Policemen came in and went out. There were other officers doing interrogation in the same room. There were three others in a big hall. The room was a big hall. The Policemen had access to the room. Quite a number of them came in and went out. The maximum number of Policemen in the hall, going in and coming out, at any one time was two or three.

30

40

When I recorded the statement from the

accused, he was not handcuffed. When he came into the hall he was handcuffed. I had the handcuffs removed when he was brought before me and I dismissed the escort. The accused sat down in front of me, and I spoke to him in Engkhoa Hokkien. I spoke to him to find out what particular Hokkien he understood. He replied to me in Engkhoa Hokkien, which I understood. After ascertaining that he could understand me well and that I could understand him, I administered the caution in the dialect which he understood.

10

I do not speak Mandarin. I do not read Chinese characters.

(At this stage the witness is asked to repeat to the Chinese Interpreter in Hokkien the caution which he administered. The Interpreter says that what the witness has repeated to him means in English: "It is my duty to warn you that you are not obliged to say anything or to answer any question, but whatever you say, whether in answer to a question or not, would be used as evidence.") I know the caution required to be administered in English as well as Hokkien by heart.

20

I asked the accused if he understood the caution and he said that he understood it. He said he understood fully.

30

It is not true that there was one other Chinese with me through the whole period of my recording of the statement from the accused. It is not true that there was one person standing near the accused throughout. It is not true that the accused spoke to me in Chawan Hokkien.

40

It is not true that I started by saying, "Now I am recording your statement. Do you know?" and that I then said, "You had better speak the truth." It is not true that that was all the caution I administered to the accused. It is not true that the accused was handcuffed during the whole period of the statement. It is not true that a Chinese standing by the side of the accused chopped his neck with an outstretched hand many times. It is not true that a Chinese standing by the side of the accused pulled his hair. I was in

In the High  
Court in  
Malaya

Prosecution  
Evidence

No. 3

Lim Teong  
Kooi  
Cross-  
examination  
14th August  
1965  
(Continued)

In the High Court in Malaya

plain clothes. No one came up near my table while I was recording the statement, except the person who delivered drinks to me.

Prosecution Evidence

No.3

Lim Teong Kooi  
Cross-examination  
14th August 1965  
(Continued)

After my interrogation I had the accused sent back to the cell at Labis Police Station. I do not know anything about his being sent to Johore Bahru that night. I do not know that the accused's case was mentioned in the Magistrate's Court, Segamat.

I did not record my own statement about my taking the statement from the accused. I did not make any note of it.

I cannot remember what I recorded as being the race of the accused. I would record the race of a Hokkien as a Hokkien.

I called the accused to record a statement from him. I was instructed to record a statement from the accused. Before I recorded the statement I did not ask the accused whether he had any complaints to make. I asked him when he was arrested. I did not ask him where he was kept.

The statement by the accused was voluntary and freely given. I found no difficulty in the language.  
No re-examination.

(Inche Lee at this stage calls the Court Interpreter. Inche T.T. Rajah has no objection. I allow this witness to be called in the interest of justice).

No.4

NO. 4

Wong Mun Fai  
Examination  
14th August 1965

EVIDENCE OF WONG MUN FAI

P.W.5 WONG MUN FAI, affirmed, states in English:

I am a Certificated Chinese Interpreter attached to the High Court, Muar. My mother tongue is Cantonese. I am qualified in Hokkien dialect. I can only say that I know the Hokkien dialect. When I went for the examination I was not tested in Amoy or Engchoon or Chawan Hokkien. I was tested just in Hokkien. That was the Hokkien which was spoken to me by P.W.4. I am interpreting in the same Hokkien to the accused today.

Cross-examination

Cross-examined: Hokkien is not my mother tongue. To my knowledge there are more than three groups of Hokkien dialect. They are different groups. There is a very slight difference between each group. I have spoken to the accused. He has spoken to me. We have both spoken to each other in what I call Hokkien. I cannot say that what P.W.4 spoke to me was Engkhoa Hokkien.

Adjourned until 2.15 p.m. Signed (S.S.Gill)  
Resumed at 2.20 p.m.

Inche T.T. Rajah says that he wishes to call the accused to give evidence about his statement.

EVIDENCE OF LEE HOO BOONIn the High  
Court in  
MalayaD.W.1 LEE HOO BOON, affirmed, states in Hokkien:Defence  
EvidenceNo. 5Lee Hoo Boon  
Examination  
14th August  
1965

10 I speak the Chawan Hokkien. I do not understand Engkhoa Hokkien. I can understand only some of the Hokkien that is now spoken to me. There was a Chinese who interrogated me. I cannot remember from what time to what time. I was interrogated by this Chinese. When I was being interrogated by this Chinese, another Chinese came into the room and said that I was too "sombong" (proud) and did not know how to answer questions. I was asked to stand up and that other Chinese assaulted me. He fisted me on my stomach. I was interrogated for a long time. That night P.W.3 did not interrogate me. When my lawyer spoke to me in Malay, I could not understand him. My lawyer spoke to me through an interpreter. My lawyer's interpreter does not speak to me in Malay. He speaks to me in Mandarin. I do not know Malay. If P.W.3 says he spoke to me in Malay for three hours, that would not be true.

20 The two Chinese who interrogated me spoke to me in Mandarin. The man who interrogated me spoke to me in Mandarin. The other Chinese spoke to me in Hokkien.

30 On the following morning I was in the lock-up. Between 5 and 6 p.m. I was taken out of the lock-up to a hall where I was further questioned. This time I was interrogated by a different person. I was interrogated by P.W.4. P.W.4 was with two other Chinese. When I was taken before P.W.4 I was asked to sit down. I sat down on a chair. I was handcuffed then. P.W.4 interrogated me for about 2 hours.

40 I was born at Pontian Kechil. I stayed at 66-3 Jalan Kukup, Pontian. I am also known as Lee Cheng Kee and not as Lee Cheng Hoe. My father's name is Lee Sai Hock.

Cross-  
examination

It is not true that I am telling a pack of lies. It is not true that I have merely devised a scheme to challenge my statement by saying that I do not speak Hokkien. I know the word "sombong". It is not true that I know the Malay language

In the High Court in Malaya

perfectly well. I was never questioned in Malay.

No re-examination.

Defence Evidence

By Court: I was born in Pontian Kechil. For the most part of my childhood and boyhood I lived in Pontian.

No. 5

Lee Hoo Boon  
Cross-examination  
14th August  
1965  
(Continued)

Prosecution Evidence

NO. 6

EVIDENCE OF TAN BANG SOONG

No. 6

Tan Bang Soong  
Examination  
14th August  
1965

D.W.2 TAN BANG SOONG, affirmed, states in English:

10

I am 24 years old. I am a secretary of a number of Trade Unions in Singapore. I have come here particularly to assist defence counsel by interpreting from the accused to him. The accused spoke to me in Mandarin and I explained this to defence counsel in English. Defence counsel speaks Malay. I have heard him addressing workers in Malay. I have not heard defence counsel speak to the accused in the Malay language.

20

Cross-examination

Cross-examined: My mother tongue is Hainanese, but I cannot speak this dialect fluently. I cannot speak Hokkien but I can understand the spoken language. I would not know whether the accused can speak Malay, but he has not spoken in Malay during the time I have spoken to him. I would not know if he could speak Malay.

Re-examination

Re-examined: I know that defence counsel tried to speak to the accused in Malay. The accused could not understand counsel.

30

11.

NO. 4

FURTHER EVIDENCE OF WONG MUN  
FAI

In the High  
Court in  
Malaya

Prosecution  
Evidence

D.W.3 WONG MUN FAI, affirmed, states in English:

No. 4

I am a Certificated Chinese Interpreter attached to the High Court, Muar. Defence counsel spoke to the accused through me. He made use of my services two or three times.

Wong Mun Fai  
Recalled by  
Court

Examination  
14th August  
1965

10

By Court: I had no difficulty in understanding the accused when he spoke to me in Hokkien as he was giving evidence. He understood me. P.W.4 repeated the caution to me in the same sort of Hokkien as the accused spoke and as I spoke.

NO. 7

COURT RULING ON CAUTION STATEMENT

No. 7

Court Ruling  
on Caution  
Statement  
15th August  
1965

20

Court: The question which I have to decide at this stage is whether a cautioned statement which is alleged to have been made by the accused to A.S.P. Lim Teong Kooi (P.W.4) under the provisions of the Internal Security Act, 1960 was made freely and voluntarily or whether the making of such statement was caused by inducement, threat or promise in terms of proviso (a) of the same section.

30

I have given very careful consideration overnight to the whole of the evidence which was produced in relation to this question. I accept the whole of the evidence of Inspector Hamid bin Musa (P.W.3) and A.S.P. Lim Teong Kooi (P.W.4). From that evidence I am satisfied beyond reasonable doubt that from the time the accused was handed over at Labis Police Station after his capture the military authorities had nothing more to do with him and that at no time thereafter was he assaulted by any member of the Police, whether belonging to the Special Branch or not.

P.W.3 interrogated him for about 3 hours on 7.9.64 commencing from 8.10 p.m. this questioning

In the High  
Court in  
Malaya

No. 7

Court Ruling  
on Caution  
Statement  
15th August  
1965  
(Continued)

was in the Malay language, but the results of such questioning were not reduced to writing. The information obtained from the accused was passed on to the officer in charge of the Operations Room and the accused was sent back to the cell, whereupon the task of P.W.3 ceased. No Chinese officers questioned him that night.

On 8.9.64 between 6.20 p.m. and 9.20 p.m. P.W.4 recorded a statement from the accused after administering the caution in the Hokkien dialect in terms of proviso (b) of Section 75 of the Ordinance and after satisfying himself that he understood the language spoken to him by the accused and the accused understood the language spoken by him to the accused. I am satisfied that there was no other persons with P.W.4 to assist him in recording the statement or to assault the accused in order to induce him to make the statement. The statement was taken in a hall in which there were other persons and to which other Policemen had access, but the taking of the statement was in no way interfered with by anybody. I am satisfied that P.W.4 made a mistake when he said in his statement to the Police that the statement was recorded in Segamat.

10

20

I reject the accused's story that he does not know the Malay language. The defence has sought to prove that the accused was unable to converse with the defence counsel in Malay, but the witness called has stated that he would not know whether the accused spoke Malay. I cannot believe that a person born and brought up in Pontian, Johore would not know sufficient Malay so as to be able to answer questions put to him in Malay.

30

I also reject the accused's story that he did not understand the language spoken to him by P.W.4. In my opinion this part of the accused's story was a deliberate and barefaced lie. In this connection I have the evidence of the Court Interpreter, Inche Wong Mun Fai, who has been called as a witness for both sides. This witness has stated in unmistakable terms that the accused spoke to him in Hokkien which he understood and that he spoke to the accused in Hokkien which the accused understood. He has stated further that P.W.4 repeated to him

40

the terms of the caution in the same sort of Hokkien. According to him there are various groups of Hokkien, but there is very little difference between the various groups. I therefore reject the accused's story that no caution was administered to him in terms of proviso (b) of Section 75 of the Act.

In the High  
Court in  
Malaya

—  
No. 7

Court Ruling  
on Caution  
Statement  
15th August  
1965  
(Continued)

10

I accept the accused's story that his hands were tied behind his back after his capture, that he was made to squat and blindfolded and then pushed forward until he was put into a motor vehicle and taken to Labis Police Station. But in view of the deliberate lies which he has told me, to which I have referred, I discount his story that he was assaulted by the soldiers, although I am fully aware that this part of his evidence is uncontradicted and there is nothing inherently improbable about it. After all, the military can hardly be expected to use kid gloves when dealing with a captured person.

20

30

The story of the accused is that when he was interrogated on 7.9.64 and 8.9.64 he was afraid of being beaten further as he had been beaten previously, and that he was extremely frightened when he was blindfolded because he could not see. His further story is that he did not give any statement because he could not understand what was spoken to him, and that he could not understand what P.W.4 wrote. I reject his story that he was handcuffed when he was questioned by P.W.4

40

A number of authorities have been cited to me by defence counsel in support of his arguments that the alleged statement of the accused was not a free and voluntary statement. In my view the strongest authority in support of his argument is the recent decision of the Federal Court in *Lim Sing Hiaw v. P.P.* (1965) M.L.J. 85. That was a case in which the accused alleged that he was threatened that if he did not make a statement he would be taken into the jungle and shot. However, the facts here are quite different. There is no evidence that the accused was threatened with any consequence if he failed to make a statement. And there is no

In the High  
Court in  
Malaya

No. 7

Court Ruling  
on Caution  
Statement  
15th August  
1965  
(Continued)

evidence that the soldiers assaulted him in order to extract a statement out of him. As I have already stated, I reject his story that he was beaten up by the Police before or at the time of the recording of his statement, and I have also stated that no Chinese Police Officers interrogated him on 7.9.64 at about the same time as P.W.3 interrogated him.

Having considered all the evidence and the authorities cited to me by counsel, I am satisfied that a caution was duly administered to the accused before his statement was recorded. I am also satisfied that his fears had no bearing on the making of his statement, and that if he had any fears at all, they were dissipated by the caution administered to him, the full effect of which I have no doubt he understood.

10

In consequence I hold that the accused made the statement after he was duly cautioned and that he made the statement freely and voluntarily and without any inducement, threat or fear or promise operating on his mind before or at the time of the making of the statement. I will therefore allow evidence to be given of the statement.

20

Inche B.T.H. Lee recalls P.W.4.

Prosecution  
Evidence

NO. 8

EVIDENCE OF SADIKON BIN ASHAARI

No. 8

Sadikon bin  
Ashaari  
Examination  
15th August  
1965

P.W.6 SADIKON bin ASHAARI, affirmed, states in Malay:

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(Inche Rajah Objects to the Malay Interpreter interpreting to the witness in the Malay language as the witness is an Indonesian. I decide to carry on until I am satisfied that the witness does not understand the Malay language).

I am an Indonesian. I was born in Java Tengah, Indonesia. I last lived in Banyumas, Java. I am 39 years old. I was in the Pasokan Gerak Tjepat (Crack Army) as Corporal

40

Satu. I was the head of Section No. 7 forming part of a team. One Sutikno was the head of the team. His rank was Lieutenant Muda Satu. There were six persons in my section including myself. The other members of my section were Amod, Ahmad Surahman, Neemanseri and two Chinese whose names I do not know. One of the Chinese is in Court (points to the accused).

In the High Court in Malaya

Prosecution Evidence

No. 8

10 On 1.9.64 I was in Labis. Before that I was in Indonesia. We left Bandoeng in Java for Jakarta in an aeroplane. There were 48 of us in the aeroplane. The accused was also in the same plane. I was wearing a uniform like an American soldier. All were wearing the same uniform. I was carrying a weapon, a Bren gun, not a gun like P.3. The others were carrying the same type of weapons. The accused was carrying a Sten gun similar to P.3. I also carried provisions, money, 20 a compass, a steel helmet, a wrist watch, a small torch light and two handgrenades. The others also carried two grenades each.

Sadikon bin Ashaari  
Examination  
15th August  
1965  
(Continued)

30 From Jakarta we went to Medan in Sumatra by an aeroplane. At Medan we were given night jump training. From Sumatra we came to Malaya in an aeroplane. I jumped from the plane and reached the ground. All 48 people jumped down. I do not know what the accused did after he jumped because we were separated. After that I next met the accused at the depot in Johore Bahru about 15 days after the jump.

I do not know what the accused's duties were. He was a member of my section.

We were made to stand in the plane before we jumped. We put on our parachutes and waited for a command. We took our provisions and weapons. By "we" I mean the 48 persons. All the members of my section were there.

40 I was arrested on 15.9.64 at 8 p.m. Before that I stayed in the jungle with two others, one from my section and another from a different section. I was in the jungle from 2.9.64 to 15.9.64.

Cross-examined: I remember I was charged in Court with being in possession of firearms and ammuni-

Cross-examination

In the High  
Court in  
Malaya

Prosecution  
Evidence

No. 8

Sadikon bin  
Ashaari  
Cross-  
examination  
15th August  
1965  
(Continued)

tion. I cannot remember on what date I was charged. I was charged about 20 days after I was arrested, in the Johore Bahru Court. I was first charged in Segamat and thereafter produced in Johore Bahru Court every week. The charges were read out. I was charged with carrying a firearm and handgrenades. At the time of my arrest I was not in possession of a firearm or handgrenades. I had buried them in the jungle. A Police party and I recovered the weapons. I was last brought to Johore Bahru Court three days from that day. Nothing happened. I was told that I would have to wait for two years or until the confrontation ends. If the confrontation does not end, the period will be extended. I have no fear in my mind that I will be prosecuted again for carrying arms. I was not given any assurance of this by anybody. I know that charges against 30 Indonesians were withdrawn recently. I therefore have no fear of being charged again.

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I remember I was arrested on 15.9.64. A statement was recorded from me in Johore Bahru and not before. After my arrest I was taken to Johore Bahru after I had been detained in Labis for one night. At Labis no statement was taken from me. I was arrested together with Ahmad Susman. My statements were taken four times at Johore Bahru. I was asked various questions about weapons. Before I made the statements a caution in the following terms was given to me: "It is my duty to warn you that you are not obliged to say anything or answer any question, but whatever you say, whether in answer to any question or not, may be given in evidence." This caution was given to me by a Police Officer. In that statement I gave a full story of how I came to this country including the members of my section, including the accused. That statement was in relation to my own case.

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40

(Inche T.T. Rajah applies for a copy of this witness's statement to be supplied to him. Refers to Regulation 10 of the Emergency (Criminal Trials) Regulations, 1964. I disallow the application as the statement referred to was not made in relation to this case. Inche T.T. Rajah also refers to

Section 113 (ii) of the Criminal Procedure Code. I still refuse the application).

In the High Court in Malaya

Prosecution Evidence

No. 8

Sadikon bin Ashaari  
Cross-examination  
15th August 1965  
(Continued)

10 I do not know the names of the two Chinese in my section. Right up to now I do not know their names. At Johore Bahru I was confined in a different cell from that of the accused. I did not come to know the accused's name in Johore Bahru. It is not true that I did come to know his name. I came to know the name of the other Chinese as Tan Swee. Up to now I do not know the name of the accused.

20 I remember a statement was recorded from me by Inspector Anuar on 1.3.65. At that time I gave the name of the accused to Inspector Anuar. I have forgotten what name I gave. I said in that statement that Tan Swee alias Lee Ho Boon carried a rifle. I said that Tan Swee was carrying L.E. rifle. I meant Lee Enfield rifle and not something like P.3. The accused was carrying a Sten gun similar to P.3. Tan Swee was carrying a rifle. Tan Swee is not the accused. Tan Swee and Lee Ho Boon are different persons. I said to the Inspector Tan Swee alias Lee Ho Boon had a rifle. Tan Swee is not the accused.

30 I was No. 37 in the jump from the plane. The accused was still there when I jumped. I did not see him jump. He was No. 39 in the line, most probably No. 40. I carried a "Get me" gun. When I left Medan I did not know I was coming to Malaya. Before we left Medan we were told that we were to have night jump training. I was surprised when I landed in Malaya. No one in my group told me that he knew where we were going. The weapons were issued to us at Jakarta. I was given my weapon long ago, including the handgrenades. When we left for our night jump training I did not know what weapon each person carried. When the plane was flying, the lights were off. The plane took off from Medan at about 11.30 p.m. or 40 12 midnight. We flew for 2 hours. We left Jakarta at 5 p.m. and reached Medan at about 11 p.m. I first met the accused inside the plane at Jakarta.

I was not blindfolded soon after I was arrested.

In the High Court in Malaya

Prosecution Evidence

No. 8

Sadikon bin Ashaari  
Re-examination  
15th August 1965  
(Continued)

Re-examined: I was charged with being in possession of firearms and ammunition. All the 48 of us carried ammunition. In my section only one person carried a weapon similar to P.3, and he was the accused.

No. 9

Ahman Surahman  
Examination  
15th August 1965

NO. 9

EVIDENCE OF AHMAN SURAHMAN

P.W.7 AHMAN SURAHMAN, affirmed, states in Malay:

I am an Indonesian. I was born in Java. I was a farmer in Indonesia. I joined the army. I was in the Pasokan Gerak Tjepat. I belonged to Section 7. The other members of Section 7 were P.W.6, the commander of the section, Amod, two Chinese and Neemansari. One of the Chinese is in Court. He is the accused in the dock. On 1.9.64 at about 5 p.m. I was in Jakarta. I was instructed to board a plane. The plane took off and at about 8 p.m. the plane landed at Medan. The plane stopped at Medan for about 3 hours. At about 11 p.m. I was ordered to put on a parachute for jumping training under the command of Lieutenant Sutikno.

I was made to board a plane at Medan at 11 p.m. and the plane took off. After the plane had flown for about 3 hours I was ordered to jump out. I jumped out with a parachute. My parachute got caught on the branch of a big tree. I was suspended until morning. The next morning I managed to come down and I called for my friends, but no one answered my call. I was in the jungle for 3 days looking for my friends. Then I met P.W.6 and another man from a different section.

His name was Iid Sarjuni. I asked P.W.6 where we were and he said he did not know. On 15.9.64 at about 9 p.m. I was arrested together with P.W.6 and Sarjuni.

In the High Court in Malaya

Prosecution Evidence

No. 9

I did not see the accused in the jungle. I next saw him at the Police Station, Johore Bahru. I was taken to Johore Bahru on 16.9.64.

Ahman Surahman Examination 15th August 1965 (Continued)

10

My number in the jump from the plane was 41. I saw the accused jump. He was number 39. I saw the accused carrying a bundle of provisions of clothing, 1 Sten gun, a water bottle, 2 handgrenades, a knife, a poncho cape similar to P.6 and other things. I do not know what the duties of the accused were.

Adjourned until 2 p.m.

Signed (S.S. Gill)

Resumed at 2.10 p.m.

AHMAN SURAHMAN (on former oath):

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Cross-examined: I do not know the name of the accused. I do not know that his name is Tan Swee. I remember making a statement to a Police Inspector on 1.3.65 at Johore Bahru. P.W.6 was with me when my statement was taken. I heard what P.W.6 told the Inspector. When my statement was recorded P.W.6 was there. At that time I did not know the name of the accused. I am sure I am telling the truth. I do not know the name of the accused now. It is not true that I knew the name of the accused when I made the statement. I did not know the name of the accused when I was questioned. I do not know whether it was read over to me.

Cross-examination

30

(Inche T.T. Rajah asks that a copy of the statement be supplied to him. Inche Lee produces a copy of the Statement signed by Inspector Anuar. Statement marked D.14.)

I cannot say what weapon each of the persons in the plane carried. I first met the accused at the time we left Jakarta. I saw him inside the plane. There was some light in the plane,

In the High  
Court in  
Malaya

Prosecution  
Evidence

No. 9

Ahman  
Surahman  
Cross-  
examination  
15th August  
1965  
(Continued)

but not very bright light. Two Chinese were seated next to me. When the plane was in flight there were some lights. When the plane left Medan the lights were off. It was day time when we left Jakarta and it was bright. I was not in charge of the Chinese in the plane. When I jumped I was more concerned about myself. I did not observe what the others did and what they carried. Whether they carried 3 guns or 2 handgrenades I do not know. At Jakarta I saw the accused's equipment. He carried a Sten gun. I know what a Sten gun is. I have seen a Sten gun. (Shown P.3). This is a Sten gun. I know what a Bren gun is. It is different from a Sten gun. The other Chinese carried a rifle.

10

When I was arrested I was facing two charges. The charges were for carrying firearm and handgrenades. When I came from Jakarta I was carrying bullets. They were part of the charge. The charges are still pending. I know that charges against 30 Indonesians have been withdrawn. I was told in Johore Bahru Court that the charge against me will be withdrawn. If I am not mistaken, I was told so in April. It is not because I have been so told that I gave the accused's name. I did not mention the name of the accused to the Inspector I did mention the weapons which they carried. I told the Inspector that of the two Chinese in my section one carried a Sten gun and the other a rifle.

20

30

No statement was taken from me at Labis. On the next day at Johore Bahru a statement was taken from me. I was questioned daily for a week. Everything I said was recorded. I was given a warning before my statement was recorded that I was not obliged to make a statement, but if I did it might be used in evidence. In that statement I did mention about the Chinese and about the weapons they carried.

40

(Inche T.T. Rajah applies as before that a copy of this statement be supplied to the defence either under the Emergency (Criminal Trials) Regulations, 1964 or Section 113 (ii) of the Criminal Procedure Code. I refuse the application.)

21.

Before I landed in this country I did not know I was coming here.

Re-examined: I never heard the name Tan Swee at any time. I have not heard the name Lee Ho Boon or Lee Ah Cheng. I have not heard the name Ooi Wan Yun or Wong Kam Chin. I was not with P.W.6 when the Inspector took my statement in this case. I did not tell the Inspector which Chinese carried the Sten gun and which the rifle.

10

In the High Court in Malaya

Prosecution Evidence

No. 9

Ahman Surahman Cross-examination 15th August 1965 (Continued)

Re-examination

NO. 2

FURTHER EVIDENCE OF ABDUL HAMID BIN MUSA

No. 2

Abdul Hamid bin Musa Recalled 26th March 1966

P.W.3 ABDUL HAMID bin MUSA (recalled, reaffirmed):

I stated earlier in my evidence that on 7.9.64 I received two male Chinese, one of whom was Lee Hoo Boon the accused, from Captain Sanders. This is Captain Sanders (identified).

No cross-examination.

20

NO. 10

EVIDENCE OF JOHN YARDLEY SANDERS

No. 10

John Yardley Sanders Examination 26th March 1966

P.W.8 JOHN YARDLEY SANDERS, affirmed, states in English:

I am a Captain in 1/10 Gurkha Rifles at present stationed in England. On 7.9.64 I was at Kampong Tenang near Labis commanding "A" Company of 1/10 Gurkha Rifles. At about 4 p.m. on that day I was sitting in my Company Headquarters in a school. An observation post on top of the hill reported seeing 3 individuals in uniform

30

In the High Court in Malaya

Prosecution Evidence

No. 10

John Yardley Sanders Examination 26th March 1966 (Continued)

across the valley from us approximately 500 yards away. We immediately put in an attack on the three by then confirmed enemy. There was a brief burst of fire and after a short chase we captured two Chinese and shot dead one Indonesian. We then returned to the school with the one body and the two prisoners. After a short period of time I took the two prisoners and the body to Labis Police Station and handed them together with their equipment and arms to the Police. I handed the exhibits to an officer, but I do not recall the name of the officer.

10

The exhibits were 1 Bren gun and 2 Sten guns. The Sten guns were similar to this Sten gun (P.3). Having looked at the number of the gun in my statement I say one of the Sten guns bore number ST 1014. This is the Sten gun (P.3).

The accused is one of the two Chinese I captured.

20

During the engagement the arms of the 3 enemies got mixed up. At the school each of the Chinese prisoners picked up his own gun and pointed it out to me.

No. 11  
Grounds of Judgment  
30th March 1966

NO. 11  
GROUNDS OF JUDGMENT

IN THE HIGH COURT IN MALAYA AT MUAR

IN THE STATE OF JOHORE

MUAR EMERGENCY CRIMINAL TRIAL NO. 18 of 1965

30

PUBLIC PROSECUTOR

versus

LEE HOO BOON ALIAS LEE CHENG HOE

GROUNDS OF JUDGMENT

This is another case arising out of the landing of Indonesian troops in the Labis

area of Johore in the early hours of 2nd September, 1964. The accused was charged with (i) consorting with members of armed Indonesian Forces, (ii) unlawful control of a Sten gun and (iii) unlawful possession of ammunition in contravention of Section 58(1), Section 57(1) (a) and Section 57(1) (b) respectively of the Internal Security Act, 1960. The case against the accused was that he was one of the paratroopers and that at the time of his capture by the local Security Forces at about 4 p.m. on 7.9.64 he was carrying a Sten gun and a quantity of ammunition.

In the High Court in Malaya

—  
No.11

Grounds of Judgment  
30th March 1966  
(Continued)

Two of the Indonesian paratroopers named Sadikon (P.W.6) and Ahman Surahman (P.W.7), who are now held under detention in this country, gave evidence for the prosecution to say that they were among a body of 48 men who came to this country by an aeroplane on 1.9.64 and that the accused was one of them. Each of them carried a firearm, ammunition and other military equipment at the time of their departure from Jakarta in Indonesia and at the time of their jumping out of the plane. The men were divided into 8 sections of 6 persons each, and they and the accused belonged to Section 7.

Sadikon's other evidence was that he was the leader of his section and that he was No. 37 to jump from the plane, the accused being No. 39 or No. 40. The firearm which the accused carried was a Sten gun. After landing he stayed in the jungle with two others, one from his section and another from a different section, until 15.9.64 when he was arrested. After his capture he met the accused at the Police Depot in Johore Bahru.

Ahman Surahman also testified that he was in Section 7 and that the accused was in the same section and carried a Sten gun. The accused was No. 39 to jump from the plane and his number was 41. He saw the accused jump, carrying with him a Sten gun, two handgrenades and other things. After landing he was in the jungle for three days looking for his friends. Then he met Sadikon and a man called Sarjuni from a different section. All three of them were arrested on 15.9.64 at about 9 p.m. After his arrest he saw the accused at the Police Station, Johore Bahru.

In the High  
Court in  
Malaya

—  
No.11

Grounds of  
Judgment  
30th March  
1966  
(Continued)

Evidence about the capture of the accused was given by Captain Sanders of 1/10 Gurkha Rifles. The evidence of this witness was that at about 4 p.m. on 7.9.64 an observation post on the top of a hill near his Company Headquarters in a school reported seeing three individuals in uniform across the valley approximately 500 yards away. He and his men immediately put in an attack. There was a brief burst of fire and after a short chase they captured two Chinese and shot dead one Indonesian. One of the Chinese captured was the accused. In the vicinity from where the three individuals had been seen running, they recovered one Bren gun, two Sten guns, 6 handgrenades, a quantity of ammunition and other military equipment. They took the captured men and the body of the dead Indonesian together with all the arms, ammunition and other equipment to the school, where each of the Chinese prisoners pointed out his own gun. Subsequently the prisoners and the dead body together with the exhibits recovered were handed at Labis Police Station.

10

20

Inspector Yean Yoke Khin (P.W.1) stated in evidence that on 7.9.64 at about 8 a.m. at Labis Police Station he received one Sten gun, 371 rounds of 9 m.m. ammunition and other exhibits from Captain Sanders. On 14.9.64 he handed the Sten gun and the ammunition to Inspector Visvanathan for his examination. The Sten gun and the ammunition were returned to him on the same day.

30

Inspector Visvanathan gave evidence to say that on 14.9.64 he examined a Sten gun and 371 rounds of 9 m.m. ammunition which were handed to him by P.W.1. He test-fired both the Sten gun and the ammunition and found them to be in serviceable condition. After his examination he handed the Sten gun and the ammunition back to P.W.1.

40

Inspector Hamid bin Musa gave evidence to say that at about 8.10 p.m. on 7.9.64 the accused and another Chinese were brought before him by Captain Sanders of 1/10 Gurkha Rifles. He interrogated the accused for about 3½ hours and passed on the information obtained to the

officer in charge of the Operations Room. In the process of interrogation he did not use any inducement, threats or promise. After the interrogation he sent the accused to the lock-up.

In the High  
Court in  
Malaya

          
No.11

10           The accused made a cautioned statement to A.S.P. Lim Teong Kooi (P.W.4) at Labis Police Station starting from about 6.20 p.m. on 8.9.64. This witness gave evidence to say that he administered a caution to the accused as laid down in Section 75 of the Internal Security Act, 1960 before proceeding to record his statement. The accused understood the caution and said that he wished to make a statement. The witness went on to say that he did not use any inducement, threat or promise before or during the course of his recording of the statement. After he had recorded the statement he read it back to the accused and the accused  
20           had no alterations or additions to make.

Grounds of  
Judgment  
30th March  
1966  
(Continued)

          Having heard all the evidence relating to the cautioned statement of the accused I allowed the statement to be put in evidence as I was satisfied that it was a voluntary statement made after the accused had been duly cautioned. I stated my reasons for admitting the cautioned statement in evidence at the time and they are set out as part of the record.

30           The evidence implicating the accused was the evidence of the two Indonesian witnesses, the evidence of Captain Sanders and the accused's own cautioned statement. The evidence of the Indonesian witnesses was undoubtedly accomplice evidence, but to my mind that was amply corroborated by the evidence of Captain Sanders. I was satisfied on all that evidence that both at the time of landing from the plane and just before his capture the accused had under his control a Sten gun and a quantity of ammunition.  
40           Moreover, at the time of his capture he was in the company of one armed Indonesian who was shot dead. Finally, there was the accused's own statement which speaks for itself.

          At the end of the case for the prosecution counsel for the accused conceded that there was

In the High  
Court in  
Malaya

            
No.11

Grounds of  
Judgment  
30th March  
1966  
(Continued)

evidence in the case to substantiate all the three charges but that as the accused was tricked into coming into this country by being told merely that he was going on a jumping exercise, the case came within the general exceptions contained in Sections 76, 79 and 80 of the Penal Code. In my opinion none of these three sections in the Penal Code was applicable in this case in relation to the three charges against the accused. I was thus satisfied that the prosecution had proved its case beyond all reasonable doubt on all three charges and called on the accused to enter on his defence. The accused elected to remain silent and to say nothing in his defence. I therefore found him guilty on each of the charges, convicted him and sentenced him to death on each charge.

10

Kuala Lumpur,  
30th March, 1966.

20

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

Inche B.T.H. Lee for Public Prosecutor.

Inche Chan Yew How for the accused, assigned.

Certified true copy.

(Wong Yik Ming)  
Secretary to  
Mr. Justice Gill  
30.3.1966.

30

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27.

NO. 12

PETITION OF APPEAL

In the Federal  
Court of  
Malaysia

IN THE FEDERAL COURT OF MALAYSIA

No. 12

(Holden at Kuala Lumpur)

(APPELLATE JURISDICTION)

Petition of  
Appeal  
20th April  
1966

FEDERAL COURT CRIMINAL APPEAL NO. X 11 of 1966

B E T W E E N:

LEE HOO BOON ALIAS LEE CHEONG HOE  
Appellant

10

- and -

PUBLIC PROSECUTOR Respondent

PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE FEDERAL COURT

Lee Hoo Boon alias Lee Cheng Hoe, the Appellant above named having given notice of appeal to the Federal Court against the decision of the Honourable Mr. Justice S.S. Gill in the High Court at Muar in the State of Johore on the 26th of March, 1966 states the following grounds for his said appeal:-

20

1. The prosecution has failed to establish or prove in relation to all the charges that Tenang Kapong, Labis was a security area as defined by the Internal Security Act No. 18 of 1960. (P.W.4) A.S.P. Lim Teong Kooi has stated in evidence that "Johore was declared a security area vide legal notification 245/64" but no such notification was ever tendered or produced in evidence.

30

2. The learned trial judge had no jurisdiction to hear the case. The evidence adduced by the prosecution and the defence has the effect of giving your appellant the status of a protected prisoner of war under the Geneva

In the Federal  
Court of  
Malaysia

—————  
No.12

Petition of  
Appeal  
20th April  
1966  
(Continued)

Conventions Act 1962 and as the mandatory provisions of Section 4, article 100 and 104 of Third Schedule of the Geneva Conventions Act, 1962 have not been complied with the prosecution and conviction of your appellant is a nullity.

Your appellant was born and lived in Pontian for the most part of his boyhood. He left for Indonesia and had regular training and has been described as an Indonesian infiltrator. Sadikon Bin Asharri (P.W.6) is a member of Pasokan Gerak Tjipat (Crack Army) and head of Section 7 of which the accused was a member. Ahman Surahman (P.W.7) also confirmed this. Accused in his statement (P13) called his companion "comrade" Capt. Sanders (P.W.8) has also regarded your appellant as an enemy.

10

3. The learned judge erred in law and in fact in his ruling on the admissability of the alleged statement or confession made by your appellant to A.S.P. Lim Teong Kooi (P.W.4) for the following reasons:-

20

(a) His Lordship has failed to give due weight or consideration to the sworn evidence of your appellant.

(b) The prosecution has failed to prove affirmatively that no fear of torture or assault operated in the mind of the accused when he made the statement or that the statement was not obtained by any inducement threat or promise.

30

Accused has stated that he was assaulted and blind-folded by the soldiers. The learned Judge has not given due weight and consideration to this part of the evidence.

Accused stated further "I was afraid when I was interrogated on 7.9.64 and 8.9.64. I was afraid of being beaten further as I had been beaten previously"

40

Accused story as a whole has raised a reasonable doubt which was not rebutted by the prosecution.

In the Federal  
Court of  
Malaysia

- (c) There is a doubt whether the accused did in fact understand the caution statement.

No.12

Petition of  
Appeal  
20th April  
1966  
(Continued)

Accused claims to know only Mandarin, Chawan Hokkien and not Engkhoa Hokkien. He does not know Malay. Even the statement (P.13) bears the same fact.

There is no indication or evidence that P.W.4 himself could speak Hokkien well enough to take statement from the accused and reduce the same into the English Language. He knew by heart the caution in the Hokkien and English Language. Caution statement was not taken in a room where only the accused and P.W.4 were. This seems more inconsistent with his story that he did not make the alleged statement or if he had made one such statement was not voluntarily made. The statement only says that the accused fully understood it not that it was true.

- (d) Accused was passed from one person to another like a chattel and interrogated closely and exhaustively for as long as 3½ hours. Accused was severely interrogated by the members of armed forces immediately after arrest, beaten, blind-folded and handcuffed. He was again severely interrogated by P.W.3 from 8.10 p.m. to about 11.40 p.m. He was also interrogated again the following day by P.W.4 for another 3 hours. Accused has been under constant fear. There is nothing inherently improbable when the accused said "I was afraid when I was interrogated on 7.9.64 and 8.9.64. I was afraid of being beaten further as I had been beaten previously". The Learned Judged failed to give due weight to this part of the accused evidence especially when he has held that "this part of his evidence is uncontradicted".

In the Federal  
Court of  
Malaysia

No.12

Petition of  
Appeal  
20th April  
1966  
(Continued)

- (e) P.W.4 is not a witness of truth. The statement (P13) specifically sets out the Bangsa of the accused as "Chawan Hokkien". This was written by P.W.4 but P.W.4 denies all throughout that accused ever told him that he was Chawan Hokkien or spoke only Chawan Hokkien.

In the statement recorded from P.W.4 the latter said that he took the statement (P13) of the accused in Segamat when in fact it was taken in Labis. The statement P.W.4 made, was read out to him and he confirmed then that it was correct.

10

- (f) There is no basis or foundation for the learned trial judges' finding that "if he (accused) had any fears at all, they were dissipated by the caution administered to him". The test to be administered here is a subjective one and the evidence of the accused sufficiently shows that he was under constant fear.

20

4. During the course of the cross-examination of P.W.6 (Sadikon Bin Asharri) and P.W.7 (Ahman Surahman) the learned counsel for your appellant applied for a copy of the said witnesses' statements. These witnesses were accomplices and the statements could have been used to clarify or contradict the evidence led or for impeaching the credit or testing the veracity of the witnesses. The refusal of this application has had the serious and incurable effect of depriving your appellant of the right to avail himself of every opportunity or right given by law to successfully defend himself giving rise to a serious miscarriage and a denial of justice. In view of this your appellant prays that the conviction ought to be set aside without an order of a retrial.

30

40

5. That in view of the evidence adduced the learned trial judge has erred in law and in fact in ruling that the section 76,

79 and 80 of the Penal Code did not apply.

In the Federal  
Court of  
Malaysia

          
No.12

Petition of  
Appeal  
20th April  
1966  
(Continued)

6. The learned trial judge erred in law when he said in his grounds of judgment namely the assertion that your appellant chose to remain silent. His Lordship failed to give serious consideration to the truth or otherwise of the appellant's evidence given on oath (when challenging the admissibility of cautioned statement) when the appellant said "when I  
10 was arrested there was nothing on me".

This statement has not been contradicted, in fact this is corroborated by P.W.8 (Capt. Sanders).

7. The conviction of your appellant could not be supported having full regard to the evidence of P.W.8 (Capt. Sanders) P.W.1 (Inspector Yean Yoke Khin) P.W.6 (Sadikon Bin Asharri) and P.W.7 (Ahman Bin Surahman) and to the following:-

20 (a) At about 4 p.m. P.W.8 (Capt. Sanders) captured 2 Chinese one of whom was your appellant and shot dead another alleged to be an Indonesian. There is no evidence that the dead person was an Indonesian. He could have been a Malaysian of Indonesian Origin. He took them "with  
30 their equipment and arms to the Police. I handed the exhibits to an officer" whom he did not know. There were 1 Bren gun and 2 sten guns one of which (P3) bore number ST 1014. There is no evidence whether this particular sten gun belonged to your appellant. In the statement (P13) the accused stated that he did not know the markings or number of his gun.

40 During the engagement the arms of the 3 enemies got mixed up. His (accused's) weapon was not in his (accused's) hands when Capt. Sanders (P.W.8) captured him. The exhibits were near a rubber tree, 4 hand-grenades and ammunition which were not identified by any one of the captured. "When I (Capt. Sanders) got closer I could distinguish that the accused was carrying a sten gun". There is no evidence at all to establish that the sten gun the accused was alleged to have been carrying was P.3 numbered as ST 1014. No marking was made on any of the exhibits when

In the Federal  
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(Continued)

Capt. Sanders took them or handed to the Police. Though P3 was in a serviceable condition there is no evidence that the sten gun accused was alleged to have been carrying was serviceable or could be used or was recently used.

(b) There is no evidence that P5 (ammunition) actually belonged to the accused. None of the 4 hand-grenades found by Capt. Sanders (P.W.8) was tendered or put in as exhibits or evidence though possession of 2 hand-grenades forms part of the 3rd charge. P5 and hand-grenades (4 of them) either belonged to all the 3 persons or to any one person. It could have belonged to none of the 3 persons as there were many other alleged infiltrators who were at large.

10

(c) There is no evidence that the "equipment and arms" alleged to have been handed to the Police by Capt. Sanders (P.W.8) were the ones (exhibits P.3 to P.12) produced in Court.

20

There is a wide gap in the evidence of Capt. Sanders (P.W.8) and Inspector Yean Yoke Khen (P.W.1) in respect of the time when the exhibits were alleged to have been delivered to the Police and received by the latter. Capt. Sanders (P.W.8) confronted and arrested the accused at 4 p.m. on 7.9.64 and after a short period of time handed them to the Labis Police Station together with the arms and equipment. Capt. Sanders (P.W.8) could not recall the name of the officer to whom he delivered the exhibits. He did not make any attempt to identify Inspector Yean (P.W.1) when the latter was recalled on the 26th March, 1966 and on which day Capt. Sanders (P.W.8) gave evidence.

30

P.W.1 (Insp.Yean) was quite definite of receiving the exhibits P.3 to P.12 from P.W.8 (Capt. Sanders) at 8 o'clock in the forenoon of 7.9.64. He repeated this twice under cross-examination "if it is said that these exhibits were given to me in the afternoon and not in the morning, I would disagree".

40

P.W.1 gave evidence again on 26th March, 1966 but did not say anything in respect of the same. This statement by P.W.1 has been accepted as a fact by His Lordship the learned trial judge in his judgment.

In the Federal  
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Malaysia

No.12

The chain of evidence has been broken in a very important material particular.

Petition of  
Appeal  
20th April  
1966  
(Continued)

10 (d) In view of the above evidence there is a genuine and reasonable doubt as to whether Capt. Sanders (P.W.8) was a witness of truth and whether his evidence ought to have been accepted without sufficient or strong corroboration by the learned trial judge. Further Capt. Sanders (P.W.8) was not a disinterested witness and he regarded your appellant as an enemy.

(e) Having regard to the fact that your appellant had no firearm or ammunition on his person at the time of his arrest.

20 (f) Failure on the part of the prosecution to prove beyond reasonable doubt the proper identification of the incriminating articles.

(g) The failure on the part of the prosecution to produce the other captured Chinese to give evidence and the consequent application of Section 114 (g) of the Evidence Ordinance, 1950 in favour of your appellant.

30 (h) Taking into consideration all the probabilities of the evidence adduced both by the prosecution and the defence.

Your appellant prays that the conviction and sentence on him may be set aside or a retrial ordered or for such order as Your Honourable Court may think just and reasonable.

Dated this 20th day of April, 1966

Sd. C. Thambiah  
ADVOCATE FOR THE APPELLANT

40 The address for service of the appellant is care of Messrs. Xavier & Thambiah, Advocates & Solicitors, of No. 4, Jalan Klyne, Kuala Lumpur, Solicitors for the appellant.

In the Federal  
Court of  
Malaysia

No.13

Notes of  
Argument  
(Thomson,  
L.P.)  
25th April  
1966

NO. 13

NOTES OF ARGUMENT (THOMSON,  
L.P.)

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IN THE FEDERAL COURT OF MALAYSIA HOLDEN  
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No: X.11 of 1966  
(Muar High Court Emergency Criminal Trial  
No: 18/1965)

Lee Hoo Boon alias Lee Cheng Hoo      Appellant      10

v.

The Public Prosecutor      Respondent

Cor: Thomson, Lord President,  
Malaysia  
Harley, Ag. Chief Justice,  
Borneo.  
Raja Azlan Shah, Judge.

NOTES OF ARGUMENT RECORDED BY THOMSON, LORD  
PRESIDENT, MALAYSIA

25th April 1966 20

For Appt: Thambiah

For Respt: Nik Sadgir

Thambiah:

No evidence Labis in security area.  
(Ct: see L.N. 245/64).

L.N. published by Minister of Interior  
under s.47(1) of Internal Security Act, 1960.

It was not published as required by s.  
47(3).

L.N. dated 17.8.64 was published in  
Gazette. No evidence that proclamation was

30

ever laid before Parliament.

Appt. is entitled to status of a prisoner of war.

Geneva Conventions Act, 1962, s.4.

Geneva Conventions Act, 1962, 3rd Schedule, Articles 100, 104.

10 Appt. described as "Indonesian infiltrator". He was born in Pontian but had military training in Indonesia. He was in uniform. He called the Indonesians "comrades" and Capt. Sanders called him an "enemy".

Appt's I.C. was not produced at the trial.

Appt's statement should not have been admitted. His evidence of being assaulted was not contradicted and should have been accepted.

Internal Security Act s.75.

It is doubtful whether appt. understood the caution administered to him.

20 Appt. was constantly under the influence of fear.

Counsel should have been supplied with statements of P.W.6 and P.W.7.

Appeal X.6/65.

De Silva v. P.P. (1964) M.L.J. 81.

Emergency (Criminal Trials) Rogns. r.10. This amounts to a miscarriage of justice. ss.76, 79 and 80 Penal Code applied. Appt. had a lawful excuse.

30 We do not know why he went to Indonesia.

Prosecution should. have given evidence of firearm unlicensed -

Lim Ah Tong v. P.P. (1948-49) M.L.J. Supp.

In the Federal Court of Malaysia

No.13

Notes of Argument (Thomson, L.P.)  
25th April 1966  
(Continued)

In the Federal  
Court of  
Malaysia

No.13

Notes of  
Argument  
(Thomson,  
L.P.)  
25th April  
1966  
(Continued)

158, 159. Onus of proving "lawful authority" as distinct from "lawful excuse" lies on prosecution.

No evidence that the man shot by Capt. Sanders' party was an Indonesian.

The sten gun was not identified and it was not proved to be serviceable. Not identified with the gun seen by Sanders.

Chong Kim Seng v. P.P. (1949) M.L.J. 109,111.

Ismail bin Haji Ibrahim v. P.P. (1949) M.L.J. 139, 140. 10

No evidence that appt. was in possession of ammunition.

Grenades were not produced at trial.

Prosecution failed to call the other captured Chinese as a witness.

26th April,  
1966

26th April, 1966

Thambiah (continuing):

No evidence to connect appt. with ammunition. Only evidence is his own admission. 20

The prosecution shd. have called the other Chinese who was captured with the appt. He was available. So s. 114(g) should apply.

Sia Soon Suan v. P.P. [1966]1 M.L.J. 116, 118.

Lim Sing Hiaw v. P.P. [1965]1 M.L.J. 85, 89.

There was no evidence of mens rea.

Lim Chin Aik v. Reg. (1963) M.L.J. 50.

Mens rea was a necessary ingredient of the offence of consorting. 30

Case for appt.

Nik Sadgir:

Evidence -

- (1) Indonesians.
- (2) Appt's statement.
- (3) Capt. Sanders.

Evidence of Capt. Sanders alone, if believed, sufficient to support conviction.

Court can take judicial notice Kg. Tenang is in a security area.

10 L.N. 245/64 was effective from 17.8.64 - the date of publication. Internal Security Act s.47 applies. It was laid before Parliament on 10.9.64.

Appt. not entitled to be treated as a prisoner of war and given benefit of Geneva Conventions.

20 Prima facie Court had jurisdiction to try appt. even if offences were committed in Malaya - Judicature Act s.22 Jurisdiction was not challenged at the trial.

Geneva Conventions Act, 1962, 3rd Schedule. Appt. did not fall within Article 4 of 3rd Schedule.

In any event the Court could try appt. by reason of Article 104 of 3rd Schedule.

Sambasivam v. P.P. (1950) M.L.J. 145, 150.

As regards appt's statement, his allegations were rebutted.

30 He was arrested on 7.9.64 at 7 p.m. He was handed to Police at Labis. Then he was handed to Inspector Hamid, P.W.3. He interrogated him but did not assault him. On 8.9.64 at 6.20 p.m. he was cautioned and statement taken by Inspector Lim (P.W.4).

In the Federal  
Court of  
Malaysia

No. 13

Notes of  
Argument  
(Thomson,  
L.P.)

26th April  
1966

(Continued)

In the Federal  
Court of  
Malaysia

No.13

Notes of  
Argument  
(Thomson,  
L.P.)  
26th April  
1966  
(Continued)

Judge did not believe appt's allegations.

Appt. made no complaint to Magistrate.  
He said he complained to Doctor but he was not  
called as a witness.

There was ample evidence that appt. and  
Inspector Lim did understand each others  
version of the Hokkien language.

No evidence why evidence of Capt. Sanders  
should not be accepted as true.

In view of the nature of the evidence as to 10  
the ammunition I am unable to support the  
conviction on the ammunition charge.

Prosecution did not require to prove sten  
gun was serviceable. I rely on -

Abdul Manap v. P.P. (1952) M.L.J. 140.

As regards refusal to refer to statement by  
prosecution witness, I admit this was wrong but  
it fell within proviso to s.60(1) of Judicature  
Act.

As to Penal Code ss.76, 79 and 80 - 20

Tan Hua Lam v. P.P. Crim. App. No.X.6/65.

Case for respt.

Thambiah:

Do not wish to be heard in reply.

Appeals against convictions on 1st and  
2nd charges dismissed.

Conviction on 3rd charge set aside.

Intld. J.B.T.  
26.4.66.

TRUE COPY  
(Inche Liang Peng)

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Secretary to the Lord President Federal  
Court of Malaysia - 28th May 1966.

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NO. 14

NOTES OF ARGUMENT (HARLEY,  
AG. C.J.)

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In the Federal  
Court of  
Malaysia

No.14

Judge's Notes

Notes of  
Argument  
(Harley, Ag.  
C.J.)  
26th April  
1966

(Harley, Ag. Chief Justice, Borneo High Court)

FEDERAL COURT CRIMINAL APPEAL NO.C.11 OF 1966

(Muar High Court Emergency Crim. Trial 18/65)

Lee Hoo Boon alias Lee Cheng Hoe Appellant

Vs.

10 The Public Prosecutor Respondent

For Appellant: Thambiah

For Respondent: Nik Saghir.

Grounds of Appeal.

1. Notification not retrospective. S.47 (1)

Act 18/60. Security Area. Publication.  
17th August, 1964. L.N. 245/64. No evidence  
that it was laid before Parliament. Therefore  
cannot take effect as law.

20 2. Geneva Conventions Act, 1962, S.4.  
Third Schedule p.57.

Lord P. "Accept that Article 2 applies".

Article 4 of Third Schedule (p.58)  
"Militias" citizen army.

Appellant was in Pasokan Gerak Tjepat  
(P.14) - in uniform P. 18 L. 14-15

Capt. Sander's evidence: "individuals in  
uniform" also P.21: "paratrooper's uniform".

30 Article 4 (a) (1) and (2).  
P.6 & P.7 said Accused had arms. Identity card  
not produced. No proof of citizenship of Malaysia -

In the Federal Court of Malaysia

No.14

Notes of Argument (Harley, Ag. C.J.) 26th April 1966 (Continued)

but immaterial - still prisoner of war.

Ground 3.

Capt. Sanders interrogated - Lim Sing Hiaw v. Public Prosecutor 1965 M.L.J. 89: fear dissipated? 8.10 p.m. (P.3) up to 11.40.

p.10. 6.20 to 9.20.

Signing statement. S.113 G.P.C.

3 (e).

Ground 4.

10

Tan Hua Lam v. P.P. App. X.6/65. 1966 M.L.J. 147. p.28 p.33

Ground 5

Accused did not know that he was going on a jump other than an exercise. Acquired firearm in a lawful manner as member of armed forces. "Jumping practice". S.57 (2) Act 18/60.

Lim v. P.P. 1949 M.L.J. Supp. 158.

See Busu v. P.P. 1949 M.L.J. Supp. 140.

Abdul Manap v. P.P. 1952 18 M.L.J. 140.

20

P.P. v. Lim Kwan Thean 1959 25 M.L.J. 179.

Ground 7 (a)

Man shot dead in Indonesia? No evidence that sten gun except ST1014 was serviceable.

Chong Kim Seng v. P.P. 1949 M.L.J. p.111  
"Onus in proving that firearm is serviceable."

Ismail v. P.P. 1949 M.L.J. 141.

(c) P.24. P.W.1 got the gun etc. at 8.00 a.m. 7th September. Sanders gave it over after 4.00 p.m. (P.21)

30

(d) (f) - (g).

Refer to P.14 page 60.

Lord P.: "Not evidence".

Rajah: "Appellant was in uniform".

As for ammunition or hand grenades P.W.6 never referred to ammunition. P.14.

P.58-59 refers to "4 magazines and 2 hand grenades".

No basis for findings of fact.

10 p.13 and p.14.

7 (g). Ooi Wan Yui (P.7) not called.

1966 M.L.J. p.116, 118 Sia Soon Suan.

Mens Rea.

Lim Chin Aik v. R. 1963 M.L.J. 50.  
Harley J.: "Meaning of S.58 (3)?"

Nik Saghir: Evidence of Capt. Sanders.

20 (1) L.N. 245/64 effective from 17.8.64.  
S.47 (3) Act 18/60. Sub-section  
(4) is procedural. It was laid before  
Parliament 10.9.64.

(2) Prisoner-of-War.

Offence committed in Malaya, therefore Court has jurisdiction. S.22 (1) Court of Judicature Act.

Jurisdiction never challenged.

Geneva Convention Art. 4. 3rd Schedule p.58.

Art. 104 gives power to Court to try prisoners of war.

30 Sambasivam v. P.P. 1950 M.L.J. 145, 150.

In the Federal Court of Malaysia

No.14

Notes of Argument (Harley, Ag. C.J.)  
26th April 1966  
(Continued)

In the Federal  
Court of  
Malaysia

No.14

Notes of  
Argument  
(Harley, Ag.  
C.J.)  
26th April  
1966  
(Continued)

(3) Evidence of assault rebutted.  
Arrested 7.9.64 4.00 p.m. by Sanders p.34.  
Handed him to Insp. Hamid P.W.3 (p.7) at  
8.10 p.m. P.W.3 denied assault on 8.9.64.  
Accused's statement recorded. Soldiers  
never cross-examined about assault. Accused  
did not complain to magistrate, and doctor  
not called.

As for language see P.W.4.  
p.4, p.6, p.9.

Identification of gun p.12 G  
(See p.31 one gun or two).

Again no evidence of ammunition, but  
there is evidence of hand grenades. Do not  
support conviction on ammunition -  
evidence tenuous. Count 3.

Serviceability of gun

Manap's case 1952.

Tan Hua Lam X.6/65.

Court adjourned.

Lord President delivers Judgment orally.

Appeal allowed on 3rd charge

(possession of ammunition) allowed  
(evidence tenuous and convictions not  
supported by D.P.P.).

Appeal dismissed on Counts 1 and 2.

Harley J.

26. 4. 66.

Certified true copy.

Michael Frim  
Secretary to Chief Justice,  
Borneo.

18.5.66

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NOTES OF ARGUMENT (SHAH J.)

In the Federal  
Court of  
Malaysia

No.15

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA  
LUMPUR.

(APPELLATE JURISDICTION).

Notes of  
Argument (Shah,  
J.)  
25th April 1966

FEDERAL COURT CRIMINAL APPEAL NO.XII OF 1966  
(Muar High Court Emergency Crim.Trial 18/65)

Lee Hoo Boon alias Lee Cheng Hoe                    Appellant

vs.

10    The Public Prosecutor                                    Respondent

CORAM:       Thomson, Lord President, Malaysia.  
                  Harley, Ag. Chief Justice, Borneo.  
                  Raja Azlan Shah, Judge, Malaya.

NOTES OF ARGUMENT RECORDED BY RAJA AZLAN SHAH, J

25th April, 1966

C. Thambiah for Appellant (assigned).

Nik Saghir, D.P.P., for Respondent.

Thambiah addresses:

(1) Labis not a security area.

20                    Sect. 47 I.S. Act 1960.

                  Proc'd. 245/64.

(2) Jurisdiction.

                  Sect. 4, Geneva Convention Act 1962, p.21.

                  Third Sch. p.57.

                  Art. 4 Third Sch.

                                  (Court adjourns to 2.30 p.m.)  
                                  (Court resumes).

In the Federal  
Court of  
Malaysia

No.15

Notes of  
Argument  
(Shah, J.)  
25th April  
1966  
(Continued)

- (3) Cautioned statement of appellant.
  - (b) and (d).
  - (c) understand caution statement.
  - (e) and (f)
- (4) De Silva, (1964) M.L.J. Reg. 10.
- (5) Sects. 76, 79 and 80, P.C.  
(1948-1949) Supp. 159.
- (6) (a) Carrying a sten-gun?  
Serviceability of sten-gun.  
(1949) M.L.J. 109, 111, 139,  
140.
- (b) Ammunition?
- (c) Equipment and arms handed to  
police by Capt. Saunders were  
the ones produced in court.

10

(Court adjourns to 26.4.1966).

26th April  
1966

26th April, 1966

(Court resumes).

Thambiah continues:

Ammuniation and hand-grenades, p.19, 20, 58, 19. 20  
Caution statement p.12.  
P.17, doubt whether accused is Tan Swee.

(g) Sect. 114(g) Evidence Ordinance.

(1966) M.L.J. 116, 118.  
(1965) 1 M.L.J. 85, 89.

Fear dissipated.

Mens rea.

(1963 M.L.J. 50. Intention and knowledge.

Consort - must have the necessary intention.

D.P.P. addresses:

Prosecution case rests on Indonesian accomplices, caution statement and Capt. Saunders.

In the Federal  
Court of  
Malaysia

          
No.15

Notes of  
Argument  
(Shah, J.)  
26th April  
1966  
(Continued)

(1) Kampong Tenang a security area.  
L.N. 245/64, 17.8.65. Sect. 47  
I.S. Act. Laid before Parliament  
on 10.9.64.

(2) Jurisdiction.

10

Offence committed in Malaya.  
Sect. 22(1) Jud. Act. 1964.  
Accused never challenged jurisdiction  
in Court below. Geneva Convention  
Act. Sect. 3, Art. 4.  
Art. 4(2) not complied with.  
(1950) M.L.J. 150.

(3) Caution statement.

20

Allegation of assault rebutted by  
P.W.s.  
Accused arrested 7.9.64 at 4.00 p.m.  
by Capt. Saunders. Saunders  
handed accused to police at Labis  
Police Station. Handed to  
Inspector Hamid (PW.3) who interro-  
gated accused for 3 hours (pg.4).  
Kept in lock-up. On 8.9.64 at 6.20  
p.m. caution statement recorded by  
A.S.P. Lim (PW.4). Judge's finding  
at p.21. Accused did not understand  
PW.4's language. Pg.4, 5, 7, 8,  
13. Pg.22.

30

No evidence to say that accused was  
in possession of ammunition. Not  
supporting conviction on third  
charge in view of nature of evidence  
on this aspect. Serviceability of sten-  
gun.

Manap v. P.P. (1952).

Proviso to Jud. Act. Failure of Judge  
to consider statement of P.W.

In the Federal  
Court of  
Malaysia

No.15

Notes of  
Argument  
(Shah, J.)  
26th April  
1966  
(Continued)

Sects. 76, 79 and 80 P.C. F.C.Cr.App.  
X.6/65.

(Court adjourns)

(Court resumes)

Lord President delivers judgment.

Third charge - conviction set aside.

First and Second charges - appeal dismissed.

(Sgd) RAJA AZLAN SHAH.

JUDGE.

Certified true copy

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Secretary to Judge Kuala Lumpur  
28.5.66.

No.16

Judgment of  
(Thomson  
L.P.)  
26th April  
1966

NO. 16

JUDGMENT OF THOMSON L.P.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No. X.11 of 1966  
(Muar High Court Emergency Criminal Trial No:18/1965)

Lee Hoo Boon alias Lee Cheng Hoo

Appellant

20

v.

The Public Prosecutor

Respondent

COR: Thomson, Lord President, Malaysia.  
Harley, Ag. Chief Justice, Borneo.  
Raja Azlan Shah, Judge.

ORAL JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA

This is another appeal arising from the Indonesian invasion which took place at Labis on the night of 1st/2nd September, 1964. The

present appellant was thought to have been one of the persons who took part in that invasion and in consequence he was prosecuted on charges of consorting, possession of arms and possession of ammunition in contravention of sections 58(1), 57(1)(a) and 57(1)(b) of the Internal Security Act. He was convicted on all three charges and sentenced to death.

In the Federal  
Court of  
Malaysia

\_\_\_\_\_  
No.16

Judgment of  
(Thomson  
L.P.)

26th April  
1966

(Continued)

10           Against these convictions he has now  
          appealed.

          There are numerous grounds of appeal which have been argued, if I may say so, extremely competently and extremely persuasively, but not all of them merit consideration.

          Before proceeding to deal with those which in our view do merit consideration, and at least one of them merits serious consideration, I propose to deal with the conviction on the third charge - possession of ammunition.

20           It has been conceded that the evidence connecting the appellant with the items of ammunition mentioned in the charge can only be described as very tenuous and certainly not sufficient to support a conviction. With that we agree and we accordingly set aside the conviction on the third charge.

30           To proceed with the appeals against the other two convictions, it is not necessary in our view to consider the evidence at great length; it is not really necessary to go beyond the evidence of Captain Sanders. His evidence was that on 7th of September, that is 5 days after the airdrop, he was at Kampong Tenang commanding a company of the 1/10 Gurkha Rifles. He saw 3 individuals in uniform at a distance of 500 yards away. He and his troops attacked them and after some firing one of them, an Indonesian, was killed and the other two, both Chinese, were captured. One of those who was captured was the present appellant. The witness, a trained  
40           soldier, stated categorically that immediately prior to his capture the appellant was carrying a sten-gun. There is, we appreciate, some doubt as to whether that sten-gun was the same sten-gun that was subsequently produced in evidence by the Police.

In the Federal  
Court of  
Malaysia

—  
No.16

Judgment of  
(Thomson  
L.P.)  
26th April  
1966  
(Continued)

Nevertheless having regard to Captain Sanders' skill in these matters and having regard to the fact that his evidence was never contradicted, because the appellant himself did not give evidence at the trial, it is our view that that evidence alone would support the convictions for consorting and for possession of arms.

There is, however, a considerable body of other evidence. There is the evidence of 2 Indonesian soldiers who were in the aircraft which brought the party from Indonesia and who identified the appellant and there was a statement which was made by the appellant to the Police and admitted in evidence under section 75(1) of the Internal Security Act which admitted every element in the offences charged against him excluding the element of possession of ammunition which we have already disposed of. And as has been said, Captain Sanders' evidence was not denied.

10

20

I proceed now to deal with such of the grounds of appeal as merit consideration.

In the first place it was said that the statement made to the Police by the appellant was wrongly admitted in evidence. It was not a free and voluntary statement. It was made under the influence of physical attacks previously made on the appellant and moreover there was some considerable possibility of misunderstanding because the appellant and the Police officer who took the statement spoke different dialects of the Hokkien dialect of the Chinese language.

30

With regard to the question of whether it was voluntary or not the trial Judge who heard the evidence of the Police witnesses and of the appellant came to the conclusion that the appellant's story was not true, that he was not attacked and assaulted as he alleged he was, and that finding, turning as it does on questions of relative credibility, is not one with which it is open to us to interfere.

40

With regard to the language question, there was evidence that persons speaking the Hokkien

10 dialect can understand each other irrespective of whatever variety of dialect of that language they speak. In our experience it is not the practice of the Courts to differentiate between the various forms of the Hokkien dialect and in the circumstances and in the absence of any real evidence to the contrary we are not prepared to say there was any possibility of misunderstanding between the appellant and the officer who took his statement.

In the Federal Court of Malaysia

No.16

Judgment of  
(Thomson  
L.P.)  
26th April  
1966  
(Continued)

20 Then it is said that the trial Judge was invited to refer to statements made to the Police by the two Indonesian witnesses and that he refused to do so. For reasons which we stated in the previous case of Tan Hua Lam v. Public Prosecutor (1) we are of the opinion that on that point the appeal is successful. We are, however, of the same opinion as we were in the previous case that the case falls within, the proviso to section 60(1) of the Judicature Act which is the same as section 4(1) of the United Kingdom Criminal Appeal Act. We consider there has been no substantial miscarriage of justice.

30 Then an argument has been addressed to us that there was a certain amount of evidence, that of the Indonesian witnesses, which suggested that when the aircraft left Medan the people in it were under the impression that they were engaged in a practice flight and not in an actual invasion of this country. On that it was submitted that the appellant was entitled to avail himself of the defences of mistake, accident and so forth dealt with in sections 76, 79 and 80 of the Penal Code.

40 Now, of course, it was decided again and again under the old Emergency Regulations and we have decided again and again under the Internal Security Act that a party prosecuted under the Emergency Regulations or under the Internal Security Act is entitled to avail himself of the defences set out in the Penal Code.

(1) Federal Court Criminal Appeal No:X.6/65.

In the Federal  
Court of  
Malaysia

No.16

Judgment of  
(Thomson  
L.P.)  
26th April  
1966  
(Continued)

In the present case, however, the argument addressed to us is the same as that which was addressed to us in the case of Tan Hua Lam v. Public Prosecutor (*supra*) and for the reasons we stated in that case and which we find it unnecessary to repeat we are of the opinion that in the present case the ground of appeal based on sections 76, 79 and 80 is without substance.

I now come to the only ground of appeal which has given us some concern.

10

It was argued that on the evidence the appellant was a member of the Indonesian military forces. He had associated himself with them. He had been trained by them. He formed part of an organised company with them. He was wearing Indonesian uniform. He was carrying Indonesian weapons. Then it was said that the relationship between this country and the Republic of Indonesia if it did not amount to actual war in the conventional Grotion sense amounted to a state of hostilities as envisaged by the Geneva Conventions of 1949 relating to prisoners of war. In the circumstances the appellant was entitled to the benefit of these Conventions to which this country is a party and which have become part of our municipal law by reason of the Geneva Conventions Act 1962. At the trial he did not claim the protection of the Conventions but we have listened to a long and careful argument to the effect that nonetheless he was entitled to that protection.

20

30

The grounds on which it has been argued that the appellant was a member of the Indonesian military forces have been stated. There is, however, one other relevant fact and that is that on the appellant's own admission he was born in the State of Johore. There is no other evidence having any bearing on his national status and from the admitted fact that he was born in the State of Johore then in the absence of anything to the contrary it must be presumed that whatever the position as regards citizenship he is at all material times a

40

Johore national.

That being so, in our view he is not entitled to the benefit of the Geneva Conventions.

In the Federal  
Court of  
Malaysia

\_\_\_\_\_  
No.16

Judgment of  
(Thomson  
L.P.)  
26th April  
1966  
(Continued)

10

With regard to the Conventions I would observe that they are a treaty or, at any rate, an international agreement analogous to a treaty and treaties are not to be interpreted in the same way as ordinary contracts. What I have in mind is better said than I can say it by Professor Keith in Wheaton's Elements of International Law (6th Ed.) at page 522:-

"The general principle is that treaties, being compacts between nations, are not to be subjected to the minute interpretation which in private law may result in defeating through technical construction the real purpose of the negotiators."

20

Bearing that in mind we are entitled to conclude that the parties to the Geneva Conventions had in mind the general principles of international law and of the law of nations and on the particular point with which we are concerned here I would read a passage by Dr. Lauterpacht from Oppenheim's International Law (7th Ed.). He discusses in Chapter VI the armed forces of the belligerents in general and their privileges in particular and he concludes with the following passage (p.268):-

30

"The privileges of members of armed forces cannot be claimed by members of the armed forces of a belligerent who go over to the forces of the enemy and are afterwards captured by the former. They may be, and always are, treated as criminals. The same applies to traitorous subjects of a belligerent who, without having been members of his armed forces, (that is their own armed forces) fight in the armed forces of the enemy. Even if they appear under the traitors may be seized and punished."

40

In our view the Geneva Conventions are to be read in the light of that statement which after all

In the Federal  
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1966  
(Continued)

is a statement of a principle of international law by a recognised authority and read in that light the present appellant is not entitled to the protection of the Conventions even if he did become a member of the Indonesian Armed Forces because he was a traitorous subject of the Ruler of the State of Johore and was engaged in assisting the Republic of Indonesia in armed conflict with this country of which Johore is part.

10

Although I do not think the expression has actually been used there is no getting away from the fact that the Internal Security Act, and in particular section 57, does create what might be called a form of constructive treason. It was introduced as far as I am aware by the British in the Irish troubles of 1920 by proclamation under martial law the provisions of which were enforced not by the civil courts but by military courts (see Clifford v. O'Sullivan) (2) It was used again by the British Government in Palestine during the troubles there. It was introduced in this country in 1948 to deal with the communist troubles under the Emergency Regulations Ordinance 1948 which was the authority for the Emergency Regulations with which we became so unfortunately familiar during the ensuring years. And now it has become part of the permanent local apparatus of the country.

20

30

For these reasons then we would dismiss the appeals against the first and second convictions.

-----  
Taken down by me and seen by the Hon'ble the Lord President.

(Tneh Liang Peng)  
Secretary to the Lord  
President Federal  
Court of Malaysia.

40

Kuala Lumpur, 26th April, 1966.

-----  
(2) [1921] 2 A.C. 570.

C. Thambiah Esq. for appellant.  
Nik Sadgir bin Mohd. Noor for respondent.

In the Federal  
Court of  
Malaysia

True copy

No.16

(Tneh Liang Peng)

Secretary to the Lord President  
Federal Court of Malaysia

Judgment of  
(Thomson  
L.P.)  
26th April  
1966  
(Continued)

16/5/66

NO. 17

No.17

ORDER

Order  
26th April  
1966

10 IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CRIMINAL APPEAL NO.X.11 OF 1966

(Muar High Court Emergency Criminal Trial  
No. 18/1965)

LEE HOO BOON alias LEE CHENG HOE Appellant

Vs.

THE PUBLIC PROSECUTOR Respondent

20 CORAM: THOMSON, LORD PRESIDENT, FEDERAL COURT,  
MALAYSIA:

HARLEY, ACTING CHIEF JUSTICE, HIGH  
COURT IN BORNEO:

AND

RAJA AZLAN SHAH, JUDGE, HIGH COURT IN  
MALAYA

IN OPEN COURT

THIS 26th DAY OF APRIL, 1966

O R D E R

30 THIS APPEAL coming on for hearing on the  
25th day of April, 1966 and on this day in the

In the Federal  
Court of  
Malaysia

                      
No. 17

Order  
26th April  
1966  
(Continued)

presence of Mr. G. Thambiah of Counsel for  
the above named Appellant and Inche Nik Saghir  
bin Mohd. Noor, Deputy Prosecutor on behalf  
of the Respondent AND UPON READING the Record  
of Appeal herein AND UPON HEARING Counsel  
for the Appellant and the Deputy Public Prosecutor  
as aforesaid IT IS ORDERED that the Appeal of  
the above named Appellant against the conviction  
on the 1st and 2nd charges be and is hereby  
dismissed AND IT IS ORDERED that the Appeal  
against the conviction on the 3rd charge be  
and is hereby allowed.

10

GIVEN under my hand and the Seal of the  
Court this 26th day of April, 1966.

sd.

(PAWAN AHMAD BIN IBRAHIM RASHID)

CHIEF REGISTRAR  
FEDERAL COURT, MALAYSIA.

In the Privy  
Council

                      
No. 18

Order in  
Council  
granting  
Special Leave  
to Appeal in  
forma pauperis  
to His Majesty  
the Yang di-  
Pertuan Agong  
1st February  
1967

                      
NO. 18

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

20

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

ORDER UNDER SECTION 76(1)

WHEREAS there was this day submitted  
to His Majesty the Yang di-Pertuan Agong a  
Report from the Lords of the Judicial  
Committee of the Privy Council dated the  
9th day of November, 1966, in the words  
following, viz.:-

30

"WHEREAS by virtue of the  
Malaysia (Appeals to Privy Council)  
Orders in Council 1958 and 1963 there  
was referred unto this Committee a

10 humble Petition of Lee Hoo Boon alias  
 Lee Cheng Hoe 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 26th April 1966  
 dismissing his Appeal against  
 convictions in the High Court of  
 Malaya at Muar in the State of Johore  
 on the 26th March 1966 on charges of  
 possession of a firearm and of consorting  
 with members of the Indonesian Armed  
 Forces: And humbly praying the Head of  
 Malaysia to grant him special leave to  
 appeal in forma pauperis from the Judgment  
 20 of the said Federal Court dated the 26th  
 April 1966 and for further or other  
 relief:

30 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 (Appellate  
 Jurisdiction) dated the 26th April 1966:

40 And Their Lordships do further  
 report to the Head of Malaysia 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."

In the Privy  
 Council

                      
 No.18

Order in  
 Council  
 granting  
 Special Leave  
 to Appeal in  
 forma pauperis  
 to His Majesty  
 the Yang di-  
 Pertuan Agong  
 1st February  
 1967  
 (Continued)

In the Privy  
Council

No.18

Order in  
Council  
granting  
Special Leave  
to Appeal in  
forma pauperis  
to His Majesty  
the Yang di-  
Pertuan Agong  
1st February  
1967  
(Continued)

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

DATED this 1st day of February 1967.

BY COMMAND

Sd. Tun (Dr) Ismail Ben Dato Rahman  
MINISTER OF JUSTICE.

10

(F.C. Crim. App. X. 11/66)

True Copy

Deputy Registrar,  
Federal Court, Malaysia,  
Kuala Lumpur 13.3.67.

EXHIBITS

In the High  
Court in  
Malaya

Exhibit "P13"  
Caution  
Statement  
8th September  
1964

EXHIBIT "P.13" - CAUTION STATEMENT

POLIS DI-RAJA MALAYSIA

PERCHAKAPAN DALAM PEMEREKSAAN

No. Report 449/64 Rumah Pasong: Labis

Perchakapan bagi Lee Hoo Boon @ Lee Cheng Hoe

20

Nama bapa: Lee San Hock. Laki2. Bangsa:  
Chawan, Hokkien

Tempat di-peranakan: Pontian Kechil, Johore.  
Umor 19 tahun.

Kerja: Indonesian infiltrator. Dudok di No.  
66-3, Jalan Kukup, Pontian. Di-terima  
oleh: ASP. Lim. Di-office, Labis Pada 8  
Sep, 1964 Jam 6.20 p.m.

Jurubbhasa: Self daripada Hokkien Kepada  
English.

30

Before recording the statement I administered the undermentioned caution to the accused in Hokkien.

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

EXHIBITS

In the High Court in Malaya

Exhibit "P13"  
Caution Statement  
8th September 1964  
(Continued)

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

Sd: Lim Teong Kooi, ASP  
Investigation Officer,  
8.9.64.

20 I lived in Pontian Kechil, Johore. On or about 17.5.64 at about 2.30 p.m. while I was walking along the main road of Pontian Kechil, I met a friend by the name of CHEN TIEN SEN (at large) who told me that he would like to take me for a picnic on one of the fishing stakes. I replied that I would like to go if I was free.

30 On 20.5.64 at about 2.00 - 3.00 p.m. I met CHEN TIEN SEN again on the main road and he told me to wait for him at a nearby coffee shop. I did so as requested by him. At about 5.00 p.m. on the same day, CHEN TIEN SEN came for me. He was in the company of 4 other persons who were also from Pontian Kechil. One of them was a girl. The four persons were:-

- (a) Chong Sen (m)
- (b) Sin Sen (m)
- (c) Fang Phin (m) and
- (d) Lee Chien (f).

From Pontian Kechil 6 of us went in a car, the registration number of which I did not know. The driver of the car is known to me by sight but I do not know his name. He was a Chinese and I can recognise him. From Pontian Kechil

EXHIBITS

In the High  
Court in  
Malaya

Exhibit "P13"  
Caution  
Statement  
8th September  
1964  
(Continued)

we all proceeded to a fishing village about 1 mile south of Kukup. The car stopped near a Chinese School in the fishing village and after discharging its passengers, it drove away. The 6 of us waited near a Chinese School until about 10.00 p.m. when a fishing boat arrived at the jetty. We then went on boat the fishing boat which immediately sped towards the open sea.

We were in the boat till about 12 midnight when we arrived on a small island. There were already about 10 persons on the island out of whom 2 were girls. There were also 2 or 3 Indonesians on the island.

10

While we were here we were put on weapon training and taught how to use explosives by the Indonesians who were our instructors. I remained on the island for 16 days and during that period more recruits arrived. Before I left the island, the name of which I do not know, there were approximately 80 Chinese recruits. At the end of the 16 days, 42 of us recruits boarded a medium size boat which took us to Bandoeng where we were trained as parachutists. We were also trained how to use firearms and explosives.

20

On or about 30.8.64, 41 of us who had already made 7 trial jumps from aircraft were put in two buses which took us to Djakarta. One of the recruits who left the island with me died in Bandoeng in one of those practice jumps when his parachute failed to open up.

30

I passed 3 nights in Djakarta and from here only 16 of the 41 recruits were put on an aircraft together with about 32 Indonesians. Before we left Bandoeng we were issued with firearms. I was given a stengun with 4 magazines and two handgrenades. Altogether there were about 48 paratroopers including myself in the aircraft. This figure was made up of 8 sections of 6 paratroopers in one section. I was in No. 7 section. I was informed by one of the Indonesian officers that we would do some more practice jumps from the aircraft. We took off at about 4.00 p.m. or 5.00 p.m. on or about 1.9.64 from Djakarta airfield.

40

We were in flight until about 8.00 p.m. when we touched down on an airfield where we waited till about 11.30 p.m. after which the aircraft took off again.

EXHIBITS

In the High Court in Malaya

Exhibit "P13"  
Caution  
Statement  
8th September  
1964  
(Continued)

10

About 1½ hours later, during which period I was asleep most of the time, the microphone in the plane announced that we were nearing the jumping zone. A short while later, paratroopers in the aircraft started to jump out. I was the 39th paratrooper to jump. I remained suspended in the air for about only 2 minutes before I landed. It was pitch dark and I did not know where I was. I then began to blow my whistle while groping in the dark to contact my comrades. It was just before dawn when I came across an Indonesian comrade whose name I do not know. At about 6.00 a.m. in the same morning we met another Indonesian trained Chinese infiltrator known to me as TIEN CHOOI (Recorder's note: identified as OOI WAN YUI @ WONG KAM CHIN). Three of us then rested and had food in a blukar. Later we left the blukar and proceeded on with a view to contacting the rest of our comrades.

20

30

We walked for several days during which period, I heard gunfire on 2 or 3 occasions. On 7.9.64 at about 4.00 p.m. while 3 of us were wandering about on the fringe of a Malay Kampong (Recorder's note: Tenang Kampong), Gurkha soldiers met us and ordered us to surrender. We tried to run away but was shot at. I ran for about 100 yards hotly pursued by the soldiers. They again ordered me to surrender to which I did without offering any resistance.

40

Q. Do you know the markings or number of your stengun?

A. No, I do not know.

Q. Where and when were you issued with handgrenades?

A. I was issued with 2 handgrenades one day

EXHIBITS

In the High  
Court in  
Malaya

Exhibit "P13"  
Caution  
Statement  
8th September  
1964  
(Continued)

after our arrival at Djakarta camp, I wish to state that it was incorrect that I was given 2 handgrenades while at Bandoeng as stated by me previously.

Before concluding the statement, it was read over to the Accused in Hokkien and he admitted that he fully understood it. He had no alteration to make or anything to add.

No threat, inducement or promise was made to the Accused in recording his Statement. 10

Sd: (Lim Teong Kooi) ASP  
Investigation Officer,  
8.9.64.

Exhibit "P14"  
Statement of  
Witness -  
Ahman Sasman  
Undated

EXHIBIT "P14" STATEMENT OF  
WITNESS - AHMAN SASMAN

POLIS DI-RAJA MALAYSIA  
PERCHAKAPAN DALAM PEMEREKSAAN

No. Report: 449-50/64. Rumah Pasong: Labis.

Perchakapan bagi: Ahman Sasman. Nama bapa: Iskap. laki2. 20

Bangsa: Indonesian. Tempat di-peranakan: Tjikalong Pretan, Bandoeng.

Umur: 24 tahun. Dudok di Djatiwangi, Indonesia.

Di-terima oleh Insp. Anuar di Prison pada 1.3.65 jam 4.00 p.m.

I am a member of PGT Group Armed Forces Indonesia. I am a PGT C1 II attached to Sec: 7 Team III led by Lt. Sutikno that parachuted into Labis area on the morning of 2.9.64.

The members of the section were namely: 30

- (1) Cpl I Sadikon - Sec: leader
- (2) Pte 1 Amod (deceased)

61.

- (3) Pte I Nimansari (deceased)
- (4) Myself
- (5) Two male Chinese I now know as  
TAN SWEE (LEE HOO BOON) and  
OOI WAN YU.

EXHIBITS

Exhibit "P14"  
Statement of  
Witness -  
Ahman Sasman  
Undated  
(Continued)

10 The group of 48 Indonesians and Malaysian Chinese in which I were, left Djakarta Airport for Medan at about 5.00 p.m. 1/9/64 fully armed and equipped in paratroopers uniform. At about 11.00 p.m. 1/9/64 the same plane took us from Medan to send us into this country.

All of us were in fact fully armed and equipped including the two male Chinese in the same section namely: (1) Tan Swee - L.A. Rifle.

- (2) Another male Chinese  
now known to me as  
OOI WAN YU - Sten gun.

20 I am now certain that these are the persons that joined us at 5.00 p.m. 1/9/64 at Djarkarta Airport before we left and they are the same persons that were with us in the plane armed and equipped and parachuted with me into Labis.

I was lined No. 41 in the plane and these two Chinese were lined as follows in front:

- (1) Tan Swee - No. 39
- (2) Ooi Wan Yu - No. 40

I saw these two persons jumped with their arms and equipments.

30 When I landed I did not meet these two male Chinese until we were detained together. I am sure they are the very persons that joined my section in Djarkarta.

Q. What in fact is your acquaintance with these persons?

A. They were attached to my section only the evening before we were boarded on the plane

EXHIBITS  
Exhibit "P14"  
Statement of  
Witness -  
Ahman Sasman  
Undated  
(Continued)

at Djakarta and were with me throughout  
the journey to the time we were  
parachuted.

(READ OVER THE ABOVE AND CONFIRMED  
CORRECT)

Before me,  
Sd (ANUAR BIN MD. YUSOF) <sup>1/3</sup> Insp.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.13 of 1967  
ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA  
(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO. X.11 of 1966  
(Muar High Court Emergency Criminal Trial No: 1/65)

B E T W E E N:

LEE HOO BOON alias LEE CHENG HOE Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

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RECORD OF PROCEEDINGS

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

Solicitors for the Appellant

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

Solicitors for the Respondent