

91333 JUDICIAL COMMITTEE OF THE
 IN THE PRIVY COUNCIL No. 16 of 1966

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

1967/21
 [10]

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

B E T W E E N :

LEE FOOK LUM Petitioner

- and -

THE PUBLIC PROSECUTOR Respondent

CASE FOR THE RESPONDENT

Record

10 1. This is an appeal by Special Leave from the Judgment of the Federal Court of Malaysia Holden at Kuala Lumpur (Appellate Jurisdiction) (Thomson, Lord President, Malaysia, Ong Hock Thye, Ag. Chief Justice, Ismail Khan, Judge) dated the 18th day of August 1965, dismissing the Appellant's appeal against his conviction by the High Court in Malaya at Johore Bahru (Azmi bin Haji Mohamed, J) on the 14th day of January 1965 upon a charge of carrying ammunition in a Security Area without lawful authority and without lawful excuse.

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2. The Appellant was charged as follows:-

20 "That you between dawn on 17th August, 1964 and 9.10 a.m. 18th August, 1964, in the Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal Legal Notification 245 of 17th August, 1964, namely Kampong Parit Jawa, in the district of Pontian, in the State of Johore, without lawful excuse, carried ammunition to wit, one handgrenade, without lawful authority, and that you thereby committed an offence punishable under Sub-Section (1) of Section 57 of the
 30 Internal Security Act 1960."

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3. The principal issues raised in this appeal are:-

(a) whether the Courts below were in error in their treatment of the defence of lawful excuse.

(b) whether the Courts below were right in holding that the Appellant had not established that he had lawful excuse for carrying the handgrenade the subject of the charge.

4. Section 57 of the Internal Security Act 1960 provides as follows:-

"(1) Any person who without lawful excuse, the onus of proving which shall be on such person, in any security area carries or has in his possession or under his control -

- (a) any fire-arm without lawful authority therefor: or
- (b) any ammunition or explosive without lawful authority therefor,

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shall be guilty of an offence against this Part and shall be punished with death.

(3) A person shall be deemed to have lawful excuse for the purposes of this section only if he proves -

- (a) that he acquired such fire-arm, ammunition or explosive in a lawful manner and for a lawful purpose: and
- (b) that he has not at any time while carrying or having in his possession or under his control such fire-arms, ammunition or explosive, acted in a manner prejudicial to public security or the maintenance of public order."

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5. By Legal Notification No. 245 in the Government Gazette dated the 17th August 1964 the Yang Di-Pertuan Agong declared the State of Johore to be a security area for the purpose of Part II of the Internal Security Act with effect from the date of the notification.

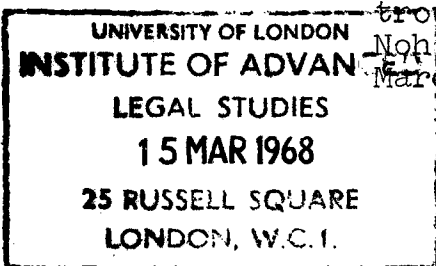
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6. The case for the prosecution was as follows:-

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P.W.3 Marjunid testified that on a Tuesday (the date of which was fixed by other evidence as the 18th August 1964) at about 8 a.m. he was working in the grounds of the Parit Jawa Mosque in the company of his brother Mardikut and a friend named Mohamed Noh (P.W.4), when the Appellant appeared. He was wearing a green shirt and trousers, and asked where the police station was. The Appellant was asked if he had anything on him and produced a handgrenade from his trousers pocket which he handed over to Mohamed Noh. The Appellant was then taken by Marjunid, Mardikut and Mohamed Noh to the police station,

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the Appellant riding on the carrier of Mardikut's bicycle. At the police station the witness handed over the Appellant to Inspector Ja'afar (P.W.5) and Mohamed Noh handed over the handgrenade.

10 P.W.4 Mohamed Noh testified that at about 8 a.m. on the day in question he came out of his house and saw the Appellant with P.W.3 and Mardikut. The Appellant was sitting on the carrier of Mardikut's bicycle. They all cycled to the police station and it was on the way there that the Appellant produced the handgrenade from his trousers pocket and handed it to the witness. The witness kept the grenade in his hand until he arrived at the police station where he handed it over to Inspector Ja'afar. 9

20 P.W.5 Inspector Ja'afar testified that the Appellant was brought to Pontian police station on the morning of the 18th August 1964 by P.W.3, P.W.4 and Mardikut and that P.W.4 handed him a handgrenade, the detonator of which was inside the grenade. 12

P.W.6 Probationary Inspector Yean gave evidence as to the taking and recording of a voluntary statement by the Appellant which was produced and admitted in evidence as Ex.P.6. 16

30 7. In the course of his statement (Ex.P.6) the Appellant described how he left his home in Trong on the 29th May 1964 and made his way to the coast where, with 14 other male Chinese, he boarded a fishing vessel. After sailing in this for about 3 hours they transferred to a bigger boat in mid-sea, which took them next morning to an island. The Appellant said he did not know the name of this but in the context it would appear to have been admittedly a part of Indonesia. He remained there until the 16th August 1964, receiving military training with other Malayan Chinese who had gone there. 60

40 On the night of the 16th August, with 10 Indonesians and 8 other Chinese, he left the island in a boat, landing near daybreak at a spot he did not know. Most of the Chinese were wearing jungle green uniforms, including the Appellant who wore a jungle green shirt. The party was armed, the Appellant having a rifle, 3 handgrenades, 302 rounds of .303 ammunition, 2 pairs of jungle greens and some propaganda Chinese documents.

Prior to embarking, they were told that they were going to "a certain place" where they were to steal fire-arms from police stations and open fire on and

fight with any military forces they might encounter.

After the landing the landing party split up and the Appellant found himself in a smaller party which made its way to a rubber estate. The Appellant and his companions remained on the estate until darkness fell, when they found a place to sleep. At about midnight the Appellant took a rifle and a handgrenade and left his companions, who were by then asleep. The statement continued.

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"I had wanted to look for food and surrender myself. The other personal effects and jungle greens carried by me from Indonesia were thrown away at the landing beach. While making my way out of the jungle I found it very difficult as I was new to the surroundings. Hampered by that I threw away my rifle in some thick undergrowth. I kept the handgrenade in my right trouser pocket."

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8. The Appellant went on to describe how he found his way to a Malay Kampong and came to the site of a mosque where he saw 3 Malays working. One of these he asked to take him to the nearest police station. The handgrenade which was in his pocket was handed to one of the Malays and he was taken by them to the police station. Here he identified the handgrenade as his. (This was confirmed by P.W.6 Inspector Yean). The Appellant concluded his statement by saying that he "was cheated in going to Indonesia for military training."

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9. A defence submission of no case to answer was rejected by the learned trial Judge, and the Appellant then gave evidence on his own behalf. He said that in May 1964 he went for a swim at Pantai in Dindings, being one of a party of 15 or 16 persons, 3 of whom came from Trong and all of whom were Chinese. At about 5 p.m. after they had finished swimming, a fishing boat arrived. They went aboard and were told they were returning to Taiping. However, to the Appellant's surprise, the party was taken upon a voyage which lasted until the following night. They arrived finally at a strange island where the Appellant stayed until the 16th August.

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During his stay on the island he was taught how to shoot with a rifle, being given 5 rounds of ammunition a week. However, he could not understand why he had been taken to the island; he wished only to return to Malaya and thought of attempting to escape, but had no opportunity of doing so.

On the 16th August the Appellant was brought

back to Malaya by boat together with 8 other Chinese and 10 Indonesians. Upon embarkation he was issued with a rifle and ammunition and 3 handgrenades, but he and his companions were not told what their mission was.

10. The Appellant went on to say that he was happy that on arrival at Pontian he would be able to inform the authorities of the landing and that on landing he threw away his rifle, ammunition and the 3 handgrenades and ran away into the jungle looking for a police station. He was unsuccessful in his quest and later met 4 of his companions whom he was unable to leave because they did not wish to surrender. They reached a rubber plantation where they stayed and later slept. At about midnight while the others were asleep, the Appellant ran away with the intention of surrendering. Eventually he arrived at a clearing where there was a mosque. He saw 3 Malays sitting outside, surrendered to one of them and was taken to the police station.

20 The Appellant denied that he had handed P.W.4 Mohamed Noh a handgrenade. He said that he did not have one in his possession at all. It was equally untrue that P.W.5 Inspector Ja'afar had received the handgrenade from P.W.4 or that he (the Appellant) had admitted to P.W.6 Inspector Yean that he had a handgrenade and identified the one that had been brought in as his. The statement (Ex.P.6) was incorrect in ascribing these admissions to him. The statement was also incorrect in representing him as saying that he carried a rifle when he ran away. The Appellant claimed that he told the police that he had thrown away his rifle, ammunition and handgrenade on the beach.

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11. Cross-examined as to when he formed the intention of surrendering, the Appellant said

"I did not surrender because I was afraid of the shooting. I decided to surrender that night and next morning I went and met the 3 Malays." 32

Q: You had no intention of surrendering on landing?

40 A: It was all the same. I had same purpose to surrender."

In re-examination he said:- 32

"I first formed the intention to surrender when I was on the island."

12. On the 14th day of January 1965 the learned trial Judge delivered Judgment, convicting the Appellant and 33

sentencing him to death.

38 13. In his Judgment the learned Judge accepted that the Appellant had a handgrenade which he gave to Mohamed Noh who in turn handed it to Inspector Ja'afar. He rejected the Appellant's account of how he had been tricked into going to Indonesia, but accepted that it was because the Appellant wished to surrender himself that he went to the Malays to ask them to take him to the police station. On the question of "lawful excuse" the learned Judge held, it is submitted correctly, that the fact "that from the dawn of the day he met the three Malays and went to the Police Station he had intended to surrender, and did surrender to the Police with the handgrenade" did not bring the Appellant within the terms of Section 57(3) of the Internal Security Act 1960. The sole test under this subsection was whether an accused had proved a lawful acquisition and a lawful purpose at the time of acquisition. Hence, the learned Judge concluded,

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39 "For this reason I would now say the fact that the accused had intended all along to surrender with the handgrenade is no longer lawful excuse for the purpose of Section 57(3), and the second limb of the defence must also fail."

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It is submitted that the learned Judge's conclusion was right, that an intention "all along" to surrender (which in the context of the learned Judge's findings of fact plainly did not extend to the time of acquisition of the grenade and meant only from the dawn of the day he met the 3 Malays) was immaterial, and that on the evidence the Appellant fell far short of establishing lawful excuse.

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51 14. The Appellant appealed against his conviction to the Federal Court of Malaysia which on the 18th day of August 1965 dismissed his appeal.

15. The Respondent respectfully submits that this Appeal should be dismissed for the following amongst other

R E A S O N S

1. Because the learned trial Judge did not fall into error in considering whether the Appellant had made good a defence of lawful excuse.
 2. Because the findings of fact made by the learned trial Judge negatived the defence of lawful excuse.
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3. Because the Appellant failed to establish that he acquired the handgrenade in a lawful manner and for a lawful purpose.
4. Because the Appellant failed to establish that he had not while carrying the handgrenade acted in a manner prejudicial to public security or the maintenance of public order. On the contrary his admitted participation in an armed landing which the evidence showed was directed against the security of Malaysia established the opposite.
5. Because the learned trial Judge's Judgment was right for the reasons therein stated and the Federal Court of Malaysia rightly affirmed it.
6. Because the conviction of the Appellant did not occasion any miscarriage of justice.

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MONTAGUE SOLOMON

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