

1967/21

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.16 of 1967 [13]

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL No. X9 of 1966
(Muar High Court Emergency Criminal Trial No. 20 of 1964)

B E T W E E N:

THE PUBLIC PROSECUTOR Appellant
- and -
OIE HEE KOI Respondent

RECORD OF APPEAL

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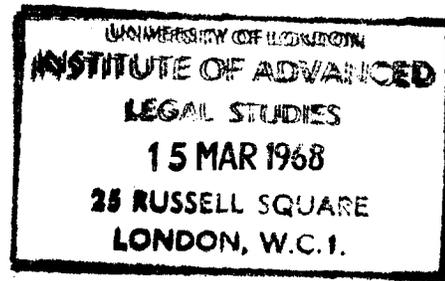
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CLASS MARK

ACCESSION NUMBER

91361



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

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(Muar High Court Emergency Criminal Trial No. 20 of 1964)

B E T W E E N:

THE PUBLIC PROSECUTOR Appellant

-- and --

OIE HEE KOI Respondent

RECORD OF PROCEEDINGS

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

91361

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1.

IN THE JUDICIAL COMMITTEE OF THE PRIVY
COUNCIL

No.16 of 1967

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO. X9 of 1966

(Muar High Court Emergency Criminal Trial No. 20
of 1964)

B E T W E E N:

10

THE PUBLIC PROSECUTOR

Appellant

-- and --

OIE HEE KOI

Respondent

RECORD OF PROCEEDINGS

NO. 1
CHARGE SHEET

In the High
Court in
Malaysia

EMERGENCY (CRIMINAL TRIALS) REGULATIONS, 1964

No. 1

Certificate under Regulation 4

Charge Sheet
11th December
1965

20

Muar High Court Emergency Criminal Trial No.20
of 1964

PUBLIC PROSECUTOR vs. OIE HEE KOI

I, Ajaib Singh, Deputy Public Prosecutor, in
accordance with the provisions of regulation 4
of the Emergency (Criminal Trials) Regulations, 1964
hereby certify that the above case in which Oie Hee
Koi is charged is a proper one to be tried under

(F.L.N.
286/1964)

In the High
Court in
Malaysia

No.1

Charge Sheet
11th December
1965
(Continued)

the aforesaid Regulations.

And in accordance with regulation 5 of the aforesaid regulations, I prefer the following charges against the said Oie Hee Koi to be tried in the High Court at Muar

1ST CHARGE:

That you at about 6.40 a.m. on the 13th day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong by Federal L.N.245 of 17th August, 1964, namely, Kampong Sekarai, Tenang, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had under your control a firearm, to wit, one rifle MK: 3 No.3501 without lawful authority and that you have thereby committed an offence punishable under section 57(1) (a) of the Internal Security Act, 1960.

10

20

2ND CHARGE:

That you at about 6.40 a.m. on the 13th day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong by Federal L.N. 245 of 17th August, 1964 namely Kampong Sekarai, Tenang, Labis, in the District of Segamat, in the State of Johore without lawful excuse had under your control ammunitions, to wit, 200 rounds of .303 ammunitions, and two hand-grenades Chinese Type, without lawful authority and that you have thereby committed an offence punishable under section 57(1) (b) of the Internal Security Act, 1960.

30

3RD CHARGE:

That you between 2.00 a.m. on the 2nd day of September, 1964 and 6.40 a.m. on the 13th day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong by Federal L.N. 245 of 17th August, 1964 namely Kampong

40

3.

10 Sekari, Tenang, Labis, in the District of Segamat, in the State of Johore, consorted with members of the Indonesian Armed Forces who carried firearms and ammunitions in contravention of the provisions of Section 57 (1) of the Internal Security Act, 18/60 in circumstances which raised a reasonable presumption that you intended to act with such members of the said Indonesian Armed Forces in a manner prejudicial to Public Security and that you have thereby committed an offence punishable under Section 58(1) of the same Act.

Dated this 11th day of December, 1965.

(AJAIB SINGH)

Timbalan Penda 'awa Raya.

In the High Court in Malaysia

No. 1

Charge Sheet
11th December
1965
(Continued)

NO. 2

NOTES OF EVIDENCE

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

MUAR EMERGENCY CRIMINAL TRIAL NO. 20 of 1964

PUBLIC PROSECUTOR v. OIE HEE KOI

NOTES OF EVIDENCE

19th March, 1966

In open Court
Before Gill, J.

Inche Ajaib Singh for Public Prosecutor.
Inche R. Ramason for the accused, assigned

30 Inche Ajaib Singh produces consent to prosecute under Section 80 of the Internal Security Act, 1960 (put in and marked "A") and certificate under regulation 4 of the Emergency (Criminal Trials) Regulations, 1964 together with charges (put in and marked "B").

No. 2

Notes of
Evidence
19th March 1966

In the High
Court in
Malaysia

No. 2

Notes of
Evidence
19th March
1966
(Continued)

Charges:

1. Unlawful control of a firearm, an offence under Section 57(1) (a) of Internal Security Act, 1960.
2. Unlawful control of 200 rounds of .303 ammunition and 2 handgrenades, an offence under Section 57 (1) (b) of Internal Security Act, 1960.
3. Consorting with armed members of the Indonesian Armed Forces in contravention of Section 57(1) and punishable under Section 58 (1) of the Internal Security Act, 1960. 10

Charges read over and explained to accused. Claims to be tried on the first two charges and pleads guilty on the third charge.

Inche Ajaib Singh opens case and calls evidence.

Prosecution
Evidence

No. 3

Teo Teng Koon
Examination

NO. 3

EVIDENCE OF TEO TENG KOON.

20

P.W.1 TEO TENG KOON, affirmed, states in Hokkien:

I reside at Pekan Ayer Panas, Labis, a rubber tapper, 31 years old, a married man. On 13.9.64 at about 6.30 a.m. I was on my way to my plantation for work. I was riding a motor cycle. There was another person named Ng Kim Foh following me on a motor cycle. This is Ng Kim Foh (identified). We were both riding our motor cycles on a kampong laterite road. I saw two persons standing on the road on my left as I was proceeding on my cycle. One of them looked like a Chinese and the other like a Malay. I stopped my motor cycle and questioned them as to where they wanted to go. They replied that they wanted to board a bus. I told them that there was no bus service along that road. They requested me to get some transport for them. I told them that there were no vehicles on that road, and I agreed to carry them on my motor cycle. They said they wanted to go to the bus station.

30

40

I carried one of them on my pillion and Ng Kim Foh carried the other on his pillion. I carried the Chinese and my friend took the other man on his motor cycle. My friend and I took the two men to Ayer Panas Police Station.

In the High
Court in
Malaysia

Prosecution
Evidence

No.3

Teo Teng Koon
Examination
(Continued)

10 I have been living in Pekan Ayer Panas for 13 years. I have known Ng Kim Foh for about 10 years. The two persons I met on the road were total strangers to me. I stopped in order to help the two strangers. I took them to the Police Station because they were total strangers to me and it was emergency time. I became suspicious. We were told by local security forces that if we met any strangers we must take them to the Police.

20 I cannot remember what dress the strangers were wearing. They were wearing civilian clothes. I can recognise them a bit if I see them. The man I carried on my motor cycle was the accused, but he had no moustache then. I did not see any moustache then. This is the other stranger who was with the accused then (Iding bin Jumadi identified).

Cross-examined. The accused told me he wanted to go to the bus station. I took him to the Police Station and handed him to Che Yaacob, a Policeman. Yaacob took the accused inside.

Cross-examination

30 Re-examined. This is Che Yaacob (Yaacob bin Abdul Majid, P.C. 12065, identified).

Re-examination

In the High
Court in
Malaysia

NO. 4

EVIDENCE OF NG KIM FOH

No. 4

P.W.2 NG KIM FOH, affirmed, states in Hokkien:

Ng Kim Foh
Examination

I am 31 years old, residing at Pekan Ayer Panas, Labis, a rubber tapper. I am married. I know P.W.1. We worked together. I have known P.W.1 for about 7 years.

On 13.9.64 at about 6.30 a.m. P.W.1. and I were proceeding along a kampong laterite road on separate motor cycles on our way to work. After travelling for a short distance I saw two persons walking on the road towards me on my left. I saw that they were strangers. They were a Malay and a Chinese. I stopped my motor cycle. P.W.1. also stopped. We questioned the strangers. I asked the Chinese where he wanted to go. He said he was looking for friends. As they were strangers to us we took them to the Police Station. They did not tell me where they wanted to go. The Chinese told me that he wanted to board a bus.

10

20

I took the Malay stranger on my pillion and P.W.1 took the Chinese on his pillion. We took them to Ayer Panas Police Station and handed them to Police Constable Yaacob (Yaacob bin Abdul Majid, P.C. 12065, identified).

I have lived in Pekan Ayer Panas for about 7 years. I had not seen those two people before. I stopped to question them because they were strangers. We were informed by the Government that we must report any strangers to the Police. I cannot remember what clothes they were wearing. They were wearing civilian clothes.

30

I can recognise them if I see them again. The Chinese stranger was the accused in the dock. The Malay was this man (Iding bin Jumadi identified), whom I carried on my motor cycle.

Cross-
examination

Cross-examined: I spoke to the Chinese and not to the Malay. The Malay did not speak to me.

40

No re-examination.

EVIDENCE OF YAACOB BIN ABDUL
MAJID

In the High
Court in
Malaysia

No. 5

Yaacob bin
Abdul Majid
Examination

P.W.3 YAACOB BIN ABDUL MAJID affirmed, states
in Malay:

10 I am Police Constable No. 12065 stationed
at Police Headquarters, Segamat. In September
1964 I was stationed at the Police Post, Tenang
Kampong, Labis which is also known as Pekan
Ayer Panas.

On 13.9.64 at about 6.40 a.m. P.W.1 and
P.W.2 brought in two persons to my Police Post
on their motor cycles. The two persons they
brought were a male Indonesian and a male Chinese.
I ascertained their names. The name of the
Indonesian was Iding and the name of the Chinese
was Oie Hee Koi. This is the Indonesian (Iding
bin Jumadi identified). Oie Hee Koi was the
accused.

20 I searched the accused. I recovered from
him this Identity Card No. 3019104 (marked P.1
for identification). I ascertained the name of
the accused from the Identity Card. I also
recovered from the accused this bundle of \$132
Malayan money in one-dollar notes (marked P.2
for identification). The accused and the
Indonesian were wearing civilian clothes when
they were brought in.

30 I handed over the exhibits together with
the accused and Iding to Inspector Anuar Yusof at
the Police Post. Inspector Anuar Yusof came
there.

I searched Iding and found on him \$184/-
Malayan money in one-dollar notes. I handed
that money also to Inspector Anuar Yusof
(Inspector Anuar bin Yusof identified). I am
sure I handed the accused and the Indonesian
to Inspector Anuar at Ayer Panas Police Post.

40 Cross-examined: When the accused and Iding
were brought in I was in charge of the Post,
but there was another Policeman with me. There
were only two of us at the Police Post. The

Cross-
examination

In the High
Court in
Malaysia

No. 5

Yaacob bin
Abdul Majid
Cross-
examination
(Continued)

accused and Iding were brought in at 6.40 a.m. or 6.45 a.m. on 13.9.64. I detained them at the Police Post temporarily. I handed the accused to Inspector Anuar between 9.50 and 10 a.m. The accused and Iding were detained in the guard room, and not in the lock-up, until Inspector Anuar arrived. I did not have any conversation with them. The accused and Iding did not volunteer any conversation with me. Inspector Anuar took them away. There were some soldiers outside the Police Post when the accused and Iding were brought in. They came in and out of the Police Post but did not take any interest in the accused and Iding. The soldiers were making use of the Police Post because of the emergency. I was there all the time keeping watch over the accused and Iding. They were normal when Inspector Anuar took them away. The accused did not look depressed or sad from the time he was brought in up to the time he was taken away.

10

20

No re-examination.

Prosecution
Evidence

No. 6

Parjabahadur
Gurung
Examination

NO. 6

EVIDENCE OF PARJABAHADUR
GURUNG

(Corporal Dhanprashad of 1/7 Gurkha Rifles
sworn as Gurkhali Interpreter)

P.W.4 PARJABAHADUR GURUNG, affirmed, states
in Gurkhali:

30

I am a Corporal in 1/10 Gurkha Rifles. I was promoted to the rank of Corporal in November 1964. In September 1964 I was first in Malacca and then in Labis.

On 13.9.64 I was doing operational duties in the Labis area. On that day at 2.30 p.m. two captured men took our patrol to recover their belongings. One of the captured men was a Chinese and the other an Indonesian. The Chinese was the accused, and this man (Iding bin Jumadi) resembles the Indonesian and he seems

40

to have grown fatter. I am positive that the accused was the captured Chinese who took my patrol to recover his belongings.

In the High
Court in
Malaysia

Prosecution
Evidence

No. 6

Parjabahadur
Gurung
Examination
(Continued)

10 The accused and the Indonesian took my patrol from Ayer Panas Police Post to the left of the road about 500 yards to the nearby rubber estate. I was the leader of the patrol. They took us to where their belongings were hidden. We went to where they took us. They were together and I cannot recall who pointed out first. When the accused pointed out his belongings in the bushes I found a rifle, ammunition, handgrenades and other military equipment. I did not make a note of the number of the rifle, but this is the rifle (marked P.3 for identification). The ammunition was like this round (marked P.4 for identification). I cannot recall the type and make of the handgrenades.

20 This is the camouflage uniform (marked P.5 for identification), this black empty purse (P.6 for identification), these black boots (P.7 for identification), these two packets of dry rations (P.8 for identification), these two tubes of tooth paste (P.9 for identification), this medicine (P.10 for identification), this bundle of civilian clothes (P.11 for identification) and this haversack (P.12 for identification) which formed part of the military equipment. The

30 accused went near the bush and pointed out his belongings. I took all his belongings and handed them to the Police. The accused was with me for approximately two to three hours from the time he took us to show his belongings up to the time I brought him back. (Inspector Anuar produced before witness). I think I handed the exhibits to this man. None of my men or I used force on the accused or threatened him. I handed the exhibits as well as the accused and the

40 Indonesian to the Inspector.

Lance Corporal Prodhansing Rai, then a Rifleman, was a member of my patrol when the accused took us to show his belongings.

The Indonesian also pointed out his belongings. In the bundle pointed out by the Indonesian I found an LMG, some ammunition, 2 handgrenades and other military equipment. I

In the High
Court in
Malaysia

Prosecution
Evidence

No. 6

Parjabahadur
Gurung
Examination
(Continued)

Cross-
examination

cannot say what type of ammunition it was. I handed all those things also to the same Inspector of Police. None of my men or I used force on the Indonesian or threatened him.

Cross-examined: I was at Ayer Panas Police Post on the afternoon of 13.9.64. I took the accused and the Indonesian from Ayer Panas Police Post. They were not in the Police lock-up. We were armed when we took them with us. I spoke to the accused and the Indonesian in the Malay language. I asked both of them to show us their arms and belongings. Both of them took us to the bushes and pointed the place from where their belongings were recovered. I ordered Rifleman Prodhansing Rai to pick up the bundles, which he did. He handed them at the Police Post. I did not make any note of the particulars of the rifle or the other things.

10

20

The rifle and ammunition found in the bundle pointed out by the accused were similar to this rifle (P.3 for identification) and this ammunition (P.4 for identification).

Re-
examination

Re-examined: I am sure that I did not mix up the bundles pointed out by the accused and Iding. They were kept separate.

No. 7

Prodhansing
Rai
Examination

NO. 7

EVIDENCE OF PRODHANSING RAI

P.W.5 PRODHANSING RAI, affirmed, states in Gurkhali:

30

I am a Lance Corporal in 1/10 Gurkha Rifles. In September 1964 I was a Rifleman. On 13.9.64 at about 2.30 p.m. I was a member of a patrol led by P.W.4. Two captured personnel led us to a spot in a rubber estate. The captured persons were an Indonesian and a Chinese. The Chinese was the accused, and this man (Iding bin Jumadi) was the Indonesian.

40

The accused pointed out his belongings where they were hidden under the bush. I was

ordered to pick up the bundle pointed out by the accused. In the bundle pointed out by the accused were a Mark III rifle similar to P.3 .303 ammunition like P.4, 2 handgrenades and clothing and other things packed in a haversack similar to P.12.

In the High Court in Malaysia

Prosecution Evidence

No. 7

Prodhansing Rai Examination (Continued)

10

In the bundle pointed out by the Indonesian were an LMG, .303 ammunition, 1 handgrenade (but I am not very sure) and other military equipment. I am also not sure about the type of ammunition.

The belongings of the accused and the Indonesian were taken to the Police Station. We did not use any force on the accused or threaten him.

Cross-examination

20

Cross-examined: After the bundles had been taken out from the bushes P.W.4 carried one bundle and I carried the other bundle to our transport which was some distance away. We placed both bundles in the transport and went in the transport to the Police Station. The bundles were removed by the Policemen from the transport. I cannot recall which Policemen carried them. I think the Policemen carried the bundles. I did not make a note of the particulars of the guns and ammunition in the two bundles.

P.3 and P.4 are similar to the rifle and ammunition found in the bundle pointed out by the accused.

30

We were all armed when we took the accused and the Indonesian to the bushes. We had self loading rifles and sub-machine guns. The accused and the Indonesian led us to the place. They walked ahead of us.

In the High
Court in
Malaysia

NO. 8

EVIDENCE OF ANUAR BIN
YUSOF

Prosecution
Evidence

P.W.6 ANUAR BIN YUSOF affirmed, states in
English:

No.8

Anuar bin
Yusof
Examination

I am an Inspector of Police stationed at
Kluang Police Headquarters. In September 1964 I
was stationed at Labis, Segamat.

At about 10 a.m. on 13.9.64 I was at Labis
Police Station. On information received I
proceeded to Tenang Police Post where I met P.C.
Yaacob (P.W.3) who handed to me two prisoners,
a male Chinese named Oie Hee Koi and an
Indonesian named Iding bin Jumadi. The accused
is the Chinese. This is the Indonesian (Iding
bin Jumadi identified). P.C. Yaacob handed
to me in respect of the accused this Identity
Card (now marked P.1) and this sum of \$132
in one-dollar Malayan currency notes (now
marked P.2). In respect of the Indonesian P.C.
Yaacob handed to me \$184 in one-dollar Malayan
currency notes.

10

20

At about 4 p.m. P.W.4 and P.W.5 handed me
this rifle (P.3) 200 rounds of .303 ammunition
(P.4), 2 handgrenades and these other articles
(P.5, P.6, P.7, P.8, P.9, P.10, P.11 and P.12).
I handed these exhibits to Inspector Yean Yoke
Khin (identified) for safe custody.

I kept the accused and the Indonesian in
custody in the Police lock-up at Labis. Later
in the evening I brought out the accused before
Acting A.S.P. Chew Kok Khee at Labis Police
Station for the purpose of recording a statement.
After the statement had been recorded I took
back the accused to the lock-up. I did not
take any part in the recording of the statement
from the accused.

30

From the time the accused was handed to me
I did not make any threat, promise or inducement
to him. The accused did not make any complaint
to me while he was in custody. He was given
his meals.

40

Cross-
examination

Cross-examined: I took the accused from Ayer

10 Panas Police Post at about 10 a.m. I did not record a statement from him at that time. At about 2.30 p.m. I handed the accused and the Indonesian to a party of Gurkha soldiers including P.W.4 and P.W.5. P.W.4 was in charge of the Gurkha patrol. They returned to Labis Police Station at about 3.30 p.m. and then handed to me the accused and the Indonesian, together with 2 bundles. I took possession of the bundles from P.W.4. I did not take them from a vehicle. I did not make any markings on the bundles then, but I did so when I handed them to Inspector Yean Yoke Khin, just before I handed them. The firearms were tagged separately as P.3 is now tagged with a Police 78 Card. The number of the firearm, the relevant report number and description were noted on the card. The handgrenades were tagged but not the ammunition. The ammunition was put back into the haversack. The two bundles were kept separately. The plate number of the rifle was 3501.

20

Re-examined: I am the Investigating Officer in this case. A report was made in connection with this case. Its number was 475 - 6/64. The report was made by a civilian named Pendik bin Saji who is now dead. He died on 2.9.65. The same report number was tagged to the rifle (P.3).

In the High Court in Malaysia

Prosecution Evidence

No. 8

Anuar bin Yusof
Cross-examination
(Continued)

Re-examination

30

NO. 9

STATEMENT BY DEFENCE COUNSEL

40

By Ramason (with leave of Court): The accused was in the lock-up from 3.30 p.m. until he was taken to Acting A.S.P. Chew Kok Khee for a statement to be recorded from him. This was in the evening between 5.30 and 6.30 p.m. In the compound of the Police Station there were a number of Policemen and soldiers, and there was movement of military and Police personnel. When I took accused to Chew Kok Khee, he looked normal, as far as I can remember. I cannot say whether he looked depressed or sad. He was kept in the Police lock-up which was about 70 yards from the Canteen where the officers were. I was in one of the offices at the Canteen and I did not know what was happening at the lock-up. The lock-up was secluded and no military personnel

No. 9

Statement by Defence Counsel

In the High Court in Malaysia

were allowed there. I would not know if any of the Police personnel approached the accused in the lock-up.

Prosecution Evidence

Adjourned until 2.15 p.m.

No. 9

Signed (S.S. Gill)

Statement by Defence Counsel

Resumed at 2.20 p.m.

No. 10

NO. 10

Yean Yoke Khin Examination

EVIDENCE OF YEAN YOKE KHIN

P.W.7 YEAN YOKE KHIN, affirmed, states in English.

10

I am an Inspector of Police stationed at Kluang. In September 1964 I was stationed at Johore Bahru.

On 13.9.64 at about 4.15 p.m. I was at Labis Police Station when Inspector Anuar (P.W.6) handed to me certain exhibits. Those exhibits were this rifle (now marked P.3), these 200 rounds of .303 ammunition (now marked P.4), two handgrenades with detonators, and all these exhibits now shown to me (now marked P.5, P.6, P.7, P.8, P.9, P.10, P.11 and P.12).

20

On 14.9.64 I handed the rifle (P.3) and the rounds of ammunition (P.4) to Inspector Visvanathan at Segamat Police Station for his examination. He returned these exhibits to me about an hour later. When he returned the ammunition, included in them were two expended rounds.

On 15.9.64 I handed the 2 handgrenades and detonators to Sergeant Keane for his examination. They were not returned to me.

30

Exhibits P.3 to P.12 have been in my custody since.

This is Inspector Visvanathan (identified).

This is Sergeant Keane (identified).

The number of the rifle is 3501.

In the High
Court in
Malaysia

Prosecution
Evidence

No.10

Yean Yoke
Khin
Examination
(Continued)

Cross-
examination

10 Cross-examined: On 13.9.64 I was not on duty in the operations room, but on investigation duty. My office was in the Police Canteen, Labis. That was not known as the operations room. Inspector Anuar was in the Canteen offices when he handed me the exhibits. There were officers moving in and out. I cannot say how many officers were there. I saw Acting A.S.P. Chew Kok Khee that day in the Canteen. I cannot remember who all the officers were. I did not see the accused at all on that day. I do not even know who the accused is.

20 I took custody of all exhibits and I am producing them today. The rifle and the other exhibits were in my possession in the Canteen. I cannot remember whether I handed any of the exhibits to Chew Kok Khee. I did not keep the exhibits under lock and key in the Canteen, or in any cupboard. About half an hour after they were handed to me and after listing them I kept them in a separate compartment under lock and key near the Labis Police Station Enquiry Office. That was at about 5 or 5.30 p.m. From that time onwards I did not part with them to anybody. I cannot remember whether the accused could have seen them. On the same day at 7 or 8 p.m.

30 I had the exhibits moved to Segamat Police Station, except for the handgrenades. I cannot remember handing any of the exhibits to Chew Kok Khee on that day. The handgrenades were kept in the ammunitions store at about 5 or 5.30 p.m. I did not remove them until 15.9.64 when I handed them to Sergeant Keane. I did not hand to Chew Kok Khee. Nobody had access to the exhibits on that day.

40 Re-examined: The Canteen was meant only for the C.I.D. team. The Canteen was within the Police compound. I was present during the one hour that the exhibits were in the Canteen before I locked them. I do not know whether Chew Kok Khee saw them earlier that day.

Re-examination

NO. 11

EVIDENCE OF AGORAM VISVANATHAN

In the High Court in Malaysia

Prosecution Evidence

No.11

Agoram Visvanathan Examination

P.W.8 AGORAM VISVANATHAN, affirmed, states in English:

I am an Inspector of Police stationed at Johore Bahru as Armament Officer for Johore and Malacca.

On 14.9.64 at about 11 a.m. I received this rifle (P.3) and these rounds of ammunition (P.4) from P.W.7 at Segamat Police Station for examination. I examined the rifle and found products of combustion in the barrel. This indicated that the gun had been fired since last cleaned. I also test-fired the gun with two rounds from P.4. I found the gun and the ammunition serviceable. In my opinion the remaining 198 rounds were in serviceable condition and were the appropriate type of ammunition for the gun. I returned P.3 and P.4 including the spent rounds to P.W.7 about an hour later.

10

20

I have been an Armament Officer for the last 5 years. I completed a course on arms and ammunition. I have given evidence in the High Court on arms and ammunition on at least 50 occasions, and my evidence has always been accepted.

I am familiar with this type of gun. It is a .303 rifle, British made. .303 ammunition can also be used for a .303 light machine gun.

Cross-examination

Cross-examined: P.3 was made during the last war.

30



17.

NO.12

EVIDENCE OF TERRENCE ANTHONY
KEANE

In the High
Court in
Malaysia

Prosecution
Evidence

No.12

Terrence
Anthony Keane
Examination

P.W.9 TERRENCE ANTHONY KEANE, affirmed, states
in English:

I am stationed at Johore Bahru. I am an
ammunition technician in the British Army
seconded to the Malaysian Army.

10 On 15.9.64 in the early afternoon at Labis
Police Station P.W.7 handed to me two handgrenades
complete with detonators. I examined them and
found that one grenade was a Chinese manufactured
high explosive fragmentation grenade, a copy of
a Russian grenade known as the F1 grenade.
The other grenade was also of Chinese manufacture.
It was a high explosive blast grenade, a copy of
the Russian RG42 grenade. The detonators were
of the type which could be used with either
20 grenade. I found the grenades and detonators
serviceable. I retained them until 8.5.65 when I
destroyed them because they were unsafe for
further storing. I produce my certificate of
destruction (put in and marked P.13). The Police
report number in the certificate was given to
me by the Police.

30 I have been an ammunition technician for 13
years. I did an intensive 9 month course in the
School of Ammunition in 1953. I am a qualified
technician. I am familiar with this type of
handgrenades.

I have given evidence in the High Court on
many occasions. My evidence has always been
accepted.

No cross-examination.

In the High Court in Malaysia

NO. 13

EVIDENCE OF ABDUL HAMID BIN MUSA

Prosecution Evidence

No.13

P.W.10 ABDUL HAMID BIN MUSA, affirmed, states in English:

Abdul Hamid bin Musa Examination

I am an Inspector of Police stationed at Kluang as a Special Branch Officer. In September 1964 I was stationed at Labis. On 13.9.64 at about 10.30 a.m. I interrogated one male Chinese by the name of Oie Hee Koi, the accused, for the purpose of obtaining intelligence. During the interrogation I made no threat, inducement or promise to the accused. I was concerned solely with intelligence. I was not concerned with any criminal acts the accused might have committed. There was an operation then in progress in connection with the landing of Indonesian paratroopers in the Labis area.

10

I interrogated the accused for two hours. I used no force on him. He made no complaints to me of any kind. He looked physically fit.

20

Cross-examination

Cross-examined: I did not interrogate the accused in the Canteen. I interrogated him in a room near the operations room. I was alone with the accused. There were persons outside the room.

I interrogated the accused for two hours. I did not think fit to take a statement from the accused.

There was a Canteen in the Police compound but away from where I was. The Canteen was turned into offices for C.I.D. Officers. The Canteen was a long hall. At that time there were quite a number of Police Officers in Labis.

30

At that time I interrogated only the accused. There were other prisoners.

No re-examination.



NO. 14EVIDENCE OF IDING BIN JUMADIIn the High
Court in
Malaysia

P.W.11 IDING BIN JUMADI, affirmed, states
in Malay:

Prosecution
Evidence

No.14

I am 25 years old. I am an Indonesian,
now a detainee in Johore Bahru prison. In
Indonesia I was a soldier, a paratrooper
private.

Iding bin
Jumadi
Examination

10 I first joined the Indonesian Armed
Forces in 1960. I came to Malaya in a
Hercules aeroplane on 1.9.64. I left
Jakarta at about 5 p.m. on that day with 47
other persons. All 48 of us were dressed in
camouflage military uniforms similar to P.5.
There were some Chinese amongst us. The
overall commander of 48 men was Lieutenant
Sutikmo (identified).

20 When we left Jakarta we were carrying
firearms, ammunition, handgrenades (2 each)
and other military equipment. We also carried
food rations similar to P.8. The Indonesian
paratroopers were carrying G3 guns. The
Chinese paratroopers carried either Sten
guns or Lee Enfields Rifles like P.3. I
was carrying a G3 gun which is a small machine
gun.

30 Our plane stopped at Medan at about 10
p.m. and took off again at about 12 midnight
with all 48 of us carrying the same arms and
ammunition. At Medan we remained in the
airfield near the plane and were not allowed
to go out. We rested and had our meals
there.

40 We were divided into sections at
Jakarta. There were 8 sections, each section
consisting of 6 persons. The others in my
section were Bachir, Sali, a Chinese, another
Chinese and Yusias. I was the last in my
section. I do not know the names of the
Chinese in my section. The accused was one of
the two Chinese in my section. This is Yusias
(Yusias bin Jarnkar identified) who was one of

In the High
Court in
Malaysia

Prosecution
Evidence

No.14

Iding bin
Jumadi
Examination
(Continued)

the men in my section.

After our plane took off from Medan the accused was seated next to Yusias who was next to me on my right. That is the order in which we sat from Jakarta. The accused was carrying a rifle like P.3. He was carrying some ammunition and other equipment in a haversack. I did not observe whether he was carrying any handgrenades. In the plane after it left Medan I was given \$300 in British money similar to P.2.

10

After that we jumped out of the plane. This was at about 2 a.m. Bachir was the first from my section to jump followed by Sali, the other Chinese, then the accused, Yusias and myself.

I landed in the jungle on the ground. I sprained my left ankle on landing. At about 4 a.m. I met the accused. We remained together until daybreak. We had our arms and ammunition intact. I saw in the morning that the accused had his arms and ammunition. We carried the handgrenades in pouches attached to our hips. I saw the accused having his handgrenades.

20

I did not meet anybody else, other than the accused in the jungle. The accused and I remained together for about 13 days before we were captured. We walked out of the jungle on to a kampong road from where P.W.1 and P.W.2 took us on their motor cycles to the Police Station. Before coming out of the jungle I had hidden my arms, ammunition and other equipment in a bush. The accused also hid his arms, ammunition and other equipment in the same bush. We kept our things separately in separate piles. On the day of our arrest, some time in the afternoon the accused and I led Gurkha soldiers to the place where we had hidden our belongings. I cannot now remember the faces of the Gurkha soldiers. I pointed out my things to the Gurkhas and the accused pointed out his things. Our arms and ammunition were among our things. The Gurkhas then took us and our belongings to the Police Station.

30

40

The accused and I were kept separately in the Police lock-up. I next saw the accused at the Police Depot, Johore Bahru and then at the prison, Johore Bahru.

In the High Court in Malaysia

Prosecution Evidence

No.14

Iding bin Jumadi
Examination
(Continued)

I first saw the accused at about 1 p.m. on the day of our departure from Jakarta. This was at the time we were lined up according to sections. My jumping number was 30.

10 I am sure that I am not making a mistake about the identity of the accused. He was with me in the plane and in the jungle for 13 days.

When I jumped down I was wearing a uniform like P.5. The accused was also wearing the same type of uniform. When I came out of the jungle I changed into civilian clothes. The accused did the same.

In the jungle I ate my dry rations. My body was thinner than it is now when I came out of the jungle. I was much thinner.

20 Cross-examined: I am sure I met the accused in Jakarta. That was the first time I met him. It was at the Jakarta airport. Before that I had never met or seen the accused. The plane stopped at Medan. I was number 30 in the plane. The number of the accused was 28.

Cross-examination

I have never been to school in Indonesia. I was about 20 when I joined the army. I was paid 70 rupias a month when I joined the army.

30 I was not told that we were going to Malaya. I was ordered to jump out of the plane, and I jumped. I did not know that from Jakarta we were going to Medan. Some of us alighted from the plane at Medan and some remained inside.

40 As soon as I parachuted I was in the jungle. At the time when we went out of the jungle we went to look for some of our friends. We had not decided to surrender. I did not come out of the jungle earlier because my leg was in pain and we had no guidance as to how to come out. I was lost in the jungle.

Re-examined: Upon landing from the plane I was supposed to look for our commander. Those were our instructions.

Re-examination

In the High Court in Malaysia

NO.15

EVIDENCE OF YUSIAS BIN JARNKAR

Prosecution Evidence

P.W.12 YUSIAS BIN JARNKAR, affirmed, states in Malay:

No.15

Yusias bin Jarnkar Examination

I am 27 years old, not married. I am an Indonesian detainee in Johore Bahru. In Indonesia I was a paratrooper in the Pasokan Gerak Tjepat. I joined the P.G.T. in 1962.

I came to Malaya on 2.9.64. I left Jakarta on 1.9.64 at about 4.30 p.m. with 47 others in a Hercules aircraft. Our commander was Lieutenant Sutikno. Some of the persons with us were Chinese. We all wore camouflage uniforms like P.5 and carried firearms, ammunition, hand-grenades (2 each) and other military equipment. We also carried dry food rations like P.8. The Indonesians and the Chinese carried different types of guns. some of the Chinese carried Sten guns and some carried rifles. The Indonesians carried G3 automatic guns.

10

Our plane stopped at Medan at about 9 p.m. and took off from there at about midnight with the same 48 of us. In the plane we were given money in Malayan one-dollar currency notes like P.2.

20

We were divided into 8 sections of 6 persons each. I was in section 5. Sergeant Bachir was the leader of my section. The other four in my section were Sali, Iding and two Chinese. Iding is P.W.11. I do not know the names of the two Chinese who were in my section. One of them is the accused (points to accused in the dock). The accused was carrying a rifle like P.3. He was also carrying ammunition, handgrenades and other military equipment like the rest of us.

30

After we had been airborne from Medan for some time we jumped out at about 2 a.m. The accused jumped before I did. I jumped immediately after he did. The accused carried his firearm, ammunition and grenades when he jumped.

40

I landed in the jungle. I did not meet any of my friends in the jungle. I remained in the jungle for 15 days when I met some kampong people who handed me to the Police.

In the High Court in Malaysia

Prosecution Evidence

No.15

Yusias bin Jarnkar Examination (Continued)

10

After my capture I saw the accused at the Police Depot and then the prison at Johore Bahru. I first met the accused in Jakarta one day before my departure from Jakarta, that is, on 31st August, 1964. He was allotted to my section on that day. We separated after that and met again on 1.9.64 when we regrouped.

There were 14 Chinese amongst the 48 of us. The remainder were Indonesians. I cannot identify all the Chinese.

I can recognise the accused because he was wearing a moustache and was sitting next to me in the plane. He is very fat.

20

When I left Jakarta I did not know my destination. Our instructions on landing were to look for our commander.

Cross-examined: I did not know where my destination was when we left Jakarta.

Cross-examination

Adjourned until 9.15 a.m.

Signed (S.S. Gill)

In the High
Court in
Malaysia

NO.16
EVIDENCE OF SUTIKNO BIN
TJETROSUMARTO

Prosecution
Evidence

20th March, 1966

No.16

Muar Emergency Criminal Trial No. 20/64

Sutikno bin
Tjetrosumarto
Examination

Hearing continued. Counsel as before.

P.W.13 SUTIKNO BIN TJETROSUMARTO, affirmed,
states in Malay:

I am 40 years old, married. I am an Indonesian, now a detainee in Malaya. I joined the Indonesian Army in 1945 and I was promoted as Lieutenant in July 1962. In 1950 I was transferred to the Indonesian Air Force.

10

In February 1964 I was given additional training at Jakarta for the confrontasi campaign against Malaysia. On 1.9.64 at 1 p.m. I was placed in command of 47 paratroopers at Jakarta. Of the 48 of us, 34 were Indonesians and 14 Malayan Chinese. I was instructed to bring my men into Malaya for a confrontasi campaign.

20

I left Jakarta with my men on 1.9.64 at 4.30 p.m. in a Hercules plane. All of us were dressed in camouflage military uniforms similar to P.5. Each of us carried a firearm, ammunition, 2 handgrenades, food rations like P.8 and other military equipment. We did not all carry the same type of firearm. I carried a pistol. The other Indonesians carried G3 guns. Some of the Chinese carried Sten guns and some carried rifles.

30

After taking off from Jakarta we stopped at Medan. We arrived at Medan at about 9 p.m. We rested and had our meals at the airport near the plane. We took off from Medan at about 12 midnight, all 48 of us and carrying the same arms, ammunition and other equipment. In the plane each of us was given \$300 in one-dollar Malayan currency notes like P.2.

My force was divided into 8 sections of 6 persons each. I was the leader of Section 1 as well as overall commander. I know Iding

40

(P.W.11) and Yusias (P.W.12). They were part of the 48 men in the plane. They belonged to Section 5. The leader of their section was Sergeant Bachir. The other three in their section were Sali and two Chinese. One of these two Chinese is in Court. He is the accused. I cannot remember what type of firearm the accused was carrying, but I am positive that the Chinese carried either a Sten gun or a rifle.

In the High
Court in
Malaysia

Prosecution
Evidence

No.16

Sutikno bin
Tjetrosumarto
Examination
(Continued)

10 Just before 2 a.m. on 2.9.64 we received a signal to jump out from the plane. The door of the plane at the back opened and three large crates containing ammunition, food rations, medical supplies and other accessories were baled out. I then baled out. The others were to follow me section by section. I landed in a cleared jungle area and found at daybreak that I had landed in the Tenang area, Labis in
20 Johore State. At 2 p.m. I met Sali from Section 5. I did not meet any one else. I remained together with Sali in the jungle for about 20 days after which we were captured while we were in a kampong.

I can recognise some of the Chinese who were under my command. I first met them on 1.9.64 at about 1 p.m. at Jakarta when their names were called and they were allotted numbers for their respective jumps.

30 I have known Iding (P.W.11) since 1962 and Yusias (P.W.12) also for the same period. After my capture I saw the accused at the Police Depot, Johore Bahru. I was there for three days and I saw the accused several times. I can recognise the accused because he was seated in the plane before me. He was wearing a moustache. I also recognise him from his face and appearance.

40 Our objective was to help to liberate the people of Malaya from imperialism by carrying on sabotage work in order to cripple the economy of Malaya and, if necessary, to carry on guerilla warfare in the country. My instructions to my men after landing were to look for their section leaders and then to look for me. Further instructions were to be given on regrouping.

In the High Court in Malaysia

Prosecution Evidence

No.16

Sutikno bin Tjetrosumarto
Cross-examination

Cross-examined: I was given command of 47 persons in Jakarta on 1.9.64 at about 1 p.m. at the airfield. I had known some of the Indonesians in my group earlier, but I met the Chinese for the first time. I gave instructions to my section leaders to look for me as soon as they had landed for further instructions.

No re-examination.

No.17

Chew Kok Khee
Examination

NO.17

10

EVIDENCE OF CHEW KOK KHEE

P.W.14 CHEW KOK KHEE, affirmed, states in English:

I am an Assistant Superintendent of Police stationed at Police Headquarters, Kuala Lipis. In September 1964 I was stationed at C.I.D. Headquarters, Johore Bahru and during that month I was sent to Segamat and Labis area for duty.

On 13.9.64 at about 6.45 p.m. I recorded a cautioned statement from Oie Hee Koi, the accused, at the Canteen in the compound of the Police Station Labis. At that time the Police Station and the offices were taken up by the local security forces, and the Canteen was used by C.I.D. Officers.

20

I used one portion of the Canteen to record the statement. I gave the accused a chair to sit on. Only the two of us were at my table. I ascertained from the accused what dialect he wished to speak. He said he was a Hokkien and that he wished to speak the Hokkien dialect. I then administered a caution to the accused in the form laid down in Section 75 of the Internal Security Act, 1960. The accused understood the caution and agreed to make a statement. He said he wanted to make a statement. I wrote down the caution and signed it.

30

The accused proceeded to make a statement and I wrote it down in my handwriting in English. It took me roughly 1½ hours to record the statement. The statement was in narrative form. I sometimes asked questions to clarify some points.

In the High
Court in
Malaysia

Prosecution
Evidence

No.17

Chew Kok Khee
Examination
(Continued)

10

After I had recorded the statement I read it back to the accused in Hokkien dialect. The accused said that the statement was correct and that he had nothing to add or alter. I then signed the statement. The accused did not sign the statement.

The accused was brought to me either by Inspector Yean Yoke Khin or Inspector Anuar. They were both there. After recording the statement I handed back the accused to them. Neither Inspector Yean Yoke Khin nor Inspector Anuar took part in the recording of the statement.

20

During or before the recording of the statement I did not use any threat or force on the accused. I did not make any promise to him. I did not offer him any inducement. The accused did not make any complaint to me. He appeared physically fit. The accused and I did not find any difficulty in understanding each other in the Hokkien dialect. My mother tongue is Hokkien. I often speak Hokkien at home and with my friends. I went to a Chinese school for a short period. I passed the School Certificate Examination with credit in the English language.

30

(Inche Ajaib Singh asks witness to produce statement. Inche Ramason objects to the statement on the ground that it was not a voluntary statement. I allow witness to be cross-examined).

40

Cross-examined: The Canteen was used by C.I.D. Officers on that day. It was a hall smaller than this Court room. The soldiers were on the other side of the Police Station. The Canteen was to the left of the Police Station as one looked out. The security forces were on the right side of the Police Station.

Cross-
examination

In the High
Court in
Malaysia

Prosecution
Evidence

No.17

Chew Kok Khee
Cross-
examination
(Continued)

As far as I can remember, there were 5 or 6 officers in the Canteen including myself. I did not pay attention as to whether the other officers were seated or standing as I was concentrating on the recording of the statement. It was emergency time. The Police Officers were armed. I had a pistol and so did the others. I had my pistol when I was recording the statement.

I went to a Chinese school for 1½ years. Soon after that I entered an English school and continued until I passed my School Certificate Examination. I was in school for approximately 11 years. I passed an examination in Hokkien some time in 1950 when I was Police Clerk and Interpreter.

10

Re-
examination

Re-examined: My pistol was inside a holster attached to my belt. I did not at any time bring the pistol out as I was recording the statement.

(Inche Ramason calls accused to give evidence regarding the alleged cautioned statement).

20

Defence
Evidence

NO. 18

EVIDENCE OF OIE HEE KOI

No.18

Oie Hee
Koi
Examination

OIE HEE KOI, affirmed, states in Hokkien:

I am 28 years old. On 13.9.64 at about 6.45 p.m. I made a statement to A.S.P. Chew Kok Khee (P.W.14). I was compelled to make a statement to him. I was taken to a Canteen where there were many Police Inspectors and military personnel. At the time when my statement was recorded there was an armed Sikh in plain clothes. He assaulted me. As I was seated on the chair in front of P.W.14, Inspector Anuar walked near me and hit me on my cheek with his revolver. After beating me Inspector Anuar showed me the revolver. A.S.P. Chew Kok Khee asked me if I was frightened of the weapon. He abused me and said that if I did not give a proper statement I would be taken away by the military and shot. Because I was assaulted and threatened I made a statement to A.S.P. Chew Kok Khee. I was

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in fear because there were so many military personnel all around.

Cross-examined: I did not complain to any one that I was compelled to make a statement. I was produced before a Magistrate. I did not tell the Magistrate about the assault, because I did not know that I could do so. It is not true that I am lying.

10

A.S.P. Chew Kok Khee did not read out any caution to me. All he said was, "Do you want to say or not?" I do not remember whether he told me that whatever I said would be taken down. The statement was taken a long time ago, and I cannot remember. Moreover, my memory is bad. The caution was never administered to me. I was not told that I was not obliged to say anything.

20

It is not true that nobody assaulted me. A.S.P. Chew Kok Khee and I had no grudge against each other. I was not assaulted by him. The assault took place when I was about to give the statement.

It is not true that I elected to make a statement after a caution was administered to me.

No re-examination.

Court adjourned and resumed after 15 minutes.

In the High
Court in
Malaysia

Defence
Evidence

No.18

Oie Hee
Koi
Examination
(Continued)

Cross-
examination

In the High
Court in
Malaysia

NO.19

ADDRESSES BY COUNSEL AS
TO STATEMENT

Defence
Evidence

Inche Ramason addresses Court:

No.19
Addresses by
Counsel as
to
Statement

For the prosecution to establish that the statement of accused was voluntary and that no threat, promise or inducement was used to obtain a statement. Accused taken into Police custody on 13.9.64 at about 6.45 a.m. Handed to military at 2.30 p.m. Evidence of P.W.4 that he and his men were armed when they took accused and the Indonesian to recover their belongings. Accused brought back to Labis and kept in the lock-up. Security forces moving in and out of Police Station, Labis. Police Officers in the Canteen armed. P.W.14, who recorded the statement, also armed. Fear in the mind of the accused. Made statement as a result of the fear. Could not say, "No". If he wanted to volunteer a statement, he could have made it to Inspector Anuar earlier. Surrounding circumstances created apprehension in the mind of the accused.

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20

Inche Ajaib Singh addresses Court:

Statement properly taken from accused. It is true that the Police were armed, and so were the Gurkha soldiers, but that was because of the emergency. Labis declared a security area. Necessary for security forces to be armed in the face of an outside invasion. Evidence of Inspector Anuar, Inspector Yean Yoke Khin and A.S.P. Chew Kok Khee that accused was not threatened and no promise or inducement was made to him. Inspector Anuar and Inspector Yean not questioned about any assault by them on accused. Canteen had to be used for C.I.D. purposes. Question of credibility. Accused says he has poor memory, cannot remember some of the details.

30

Prosecution has proved that caution was administered and that the accused elected to make a statement. No threat, promise or inducement used.

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NO. 20

JUDGES FINDING AS TO
STATEMENT

In the High
Court in
Malaysia

Defence
Evidence

No.20

Judges finding
as to
Statement

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Court: On the evidence before me I am satisfied that the accused made a statement of his own free will after a caution was administered to him. He made the statement on the very day of his arrest. I do not accept the accused's story that anybody assaulted him. I find as a fact that no threat, promise or inducement was made to him. I allow the statement to be produced in evidence.

NO. 21

FURTHER EVIDENCE OF CHEW KOK
KHEE

No.21

Further
Evidence of
Chew Kok Khee
Re-called

20

P.W.14 CHEW KOK KHEE (recalled on former oath):

I produce the cautioned statement made to me by the accused (put in and marked "P.14"). (Witness reads statement).

No cross-examination.

Case for the prosecution.

Inche Ramason says that he does not wish to address me at this stage. I hold there is a case for the accused to answer and call on his defence. Three courses open to him explained to him. Accused elects to make a statement from the dock.

In the High
Court in
Malaysia

NO.22

STATEMENT OF OIE HEE
KOI

Defence
Evidence

OIE HEE KOI making a statement in Hokkien:

No.22

Statement of
Oie Hee Koi

I was an odd job labourer in Pontian. Some time in May 1964 I was unemployed. During the period of my unemployment I met a person named Mah Yong who wanted to introduce me to a job in Singapore. As I was unemployed I went with him to Singapore. At Singapore he told me that the employment was in an island off Singapore. I got into a boat with him to go to that island. I worked in that island for a few days. I do not know the name of the island. After working there for 4 or 5 days I was taken in a boat by an Indonesian to a military camp. I refused to go into the military camp. I was beaten by the Indonesians with military weapons. I was forced to join military training. I had no alternative but to join the training. In the course of my training I was given uniforms, a firearm and other military equipment. After supplying me with all the things, I was forced to board a plane. The plane took off. At midnight I was forced to jump from the plane. I was not informed about the destination of the plane. I landed in the jungle. I did not know where I was. When I landed I met Iding. I wanted to come out, but Iding was all the time with me. So I could not leave him. After long persuasion Iding agreed to come out with me to surrender. When I came out I met P.W.1 and P.W.2. I talked to them in Chinese and asked them to take me to the Police Station. I was very happy when I came to the Police Station, because I had a chance to leave the Indonesians. Then I was taken into Police custody.

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30

I admit I consorted with Indonesians, but I was forced to do so in order to save my own life. Certain parts of my cautioned statement were untrue because at the time I made the statement I was in fear. Due to the ill-treatment by the Indonesians I was then in fear. I had practically no chance to escape from the Indonesians from the time I was taken

40

to Indonesia until I succeeded in persuading Iding to come out. At the time that I was with the Indonesians all of them were armed, and I was afraid that if I tried to escape I would be shot. That is all I wish to say.

Case for the defence.

NO.23

FINAL ADDRESSES BY COUNSEL

Inche Ramason addresses Court:

10 Facts of the case. Accused's statement that he was forced to go to Indonesia, forced to receive training, forced into a plane and forced to jump out. Came out of jungle to surrender. Statement corroborated to some extent by the evidence of Iding and other witnesses. They were not told what their destination was. Instructions only to contact the leader. If accused forced, he should be given the benefit of the doubt.

20 Inche Ajaib Singh addresses Court:

Refer to Section 94 of Penal Code on the question of duress. No defence in case of murder and offences included in Chapter VI of the Penal Code which are punishable with death. Section 69 of the Internal Security Act, 1960 incorporates Section 94 of the Penal Code. Duress no defence in this case.

30 Prosecution has proved case beyond reasonable doubt on all three charges. Evidence of P.W.11, P.W.12 and P.W.13. They are accomplice witnesses, but their evidence is corroborated by the finding of money on accused and his pointing out his arms and ammunition in the jungle to P.W.4. Moreover, there is his own cautioned statement. Clearest of evidence on all these charges. Statement of accused from dock has not raised any doubt on the prosecution case.

In the High Court in Malaysia

Defence Evidence

No.22

Statement of Oie Hee Koi (Continued)

No.23

Final addresses by Counsel

In the High
Court in
Malaysia

NO. 24

CONVICTION AND SENTENCE

No.24
Conviction
and Sentence

Court: I find the accused guilty on the first and second charges and convict him on each of these charges. On the third charge I convict the accused both on his plea of guilty and on the evidence produced in the case.

I sentence the accused to death on each charge.

Accused gives oral notice of appeal.

10

Signed (S.S. Gill).

Certified true copy.

(Wong Yik Ming)
Secretary to
Mr. Justice Gill.
31.3.1966

No.25

Grounds of
Judgment
25th March
1966

NO. 25

GROUND OF JUDGMENT

IN THE HIGH COURT IN MALAYA AT MUAR

IN THE STATE OF JOHORE

20

MUAR EMERGENCY CRIMINAL TRIAL NO. 20 of 1964

PUBLIC PROSECUTOR v. OIE HEE KOI

GROUND OF JUDGMENT

The accused in this case was charged with (i) unlawful control of a firearm in contravention of Section 57(1) (a) of the Internal Security Act, 1960, (ii) unlawful control of 200 rounds of .303 ammunition and 2 handgrenades contrary to Section 57 (1) (b) of the same Act and (iii) con-
sorting with armed members of the Indonesian Armed Forces contrary to Section 58 (1) of the same Act. 30

The evidence for the prosecution was as

10 follows. On 13.9.64 at about 6.30 a.m. two rubber tappers named Teo Teng Koon (P.W.1) and Ng Kim Foh (P.W.2) were on their way to work on motor cycles along a Kampong laterite road when they saw the accused and an Indonesian named Iding standing on the road-side. They stopped their motor cycles and had some conversation with the accused and Iding, after which they took them to the Police Post, Tenang Kampong, Labis and handed them to Police Constable Yaacob (P.W.3). Yaacob searched the two persons brought to the Police Station. From the accused he recovered Identity Card No. 3019104 and \$132/- in one-dollar Malayan currency notes and from Iding a sum of \$184/- in Malayan currency notes. At about 10 a.m. on information received Inspector Anuar bin Yusof (P.W.6) proceeded to Tenang Police Post, took charge of the accused and 20 Iding as well as the exhibits recovered from them and took them to the Police Station at Labis.

30 At about 10.30 a.m. on the same day Inspector Abdul Hamid (P.W.10), a Special Branch Officer, interrogated the accused. This witness testified that he was solely concerned with intelligence, as there was an operation then in progress in connection with the landing of Indonesian paratroopers in the Labis area. He was not concerned with any criminal offence the accused might have committed. He used no force on the accused, and made no threat, promise or inducement to him.

40 At about 2.30 p.m. on the same day the accused and Iding took some Gurkha soldiers under the charge of Parjabahadur Gurung (P.W.4) to a rubber estate about 500 yards away from Tenang Police Post and there in the bushes each of them pointed out a bundle containing his own belongings. The bundle pointed out by the accused was found to contain one rifle M.K.3: No. 3501, 200 rounds of .303 ammunition, 2 handgrenades, a camouflage uniform and some other articles including some civilian clothes. These exhibits were handed to Inspector Anuar who in turn handed them to Inspector Yean Yoke Khin (P.W.7). On 14.9.64 Inspector Visvanathan

In the High Court in Malaysia

No.25

Grounds of Judgment
25th March
1966

(Continued)

In the High
Court in
Malaysia

—
No.25

Grounds of
Judgment
25th March
1966
(Continued)

(P.W.8) examined the rifle and the ammunition and found them to be serviceable. The two handgrenades were handed to Sergeant Keane (P.W.9) who examined them and found them to be serviceable. He retained them until 8.5.65 when he destroyed them because they were unsafe for further storage.

Iding (P.W.11), who is now a detainee, gave evidence to say that he came to Malaya in a Hercules plane on 1.9.64 from Jakarta with 48 other persons under the command of Lieutenant Sutikno. Each of them at the time of landing from the aeroplane carried a firearm, ammunition, 2 handgrenades and other military equipment. In the plane they were given Malayan money in one-dollar currency notes. They were divided into 8 sections of 6 persons each, and he belonged to Section 5, the leader of which was Sergeant Bachir. The accused belonged to his section and carried a rifle similar to the rifle produced in Court. The others in his section were two Indonesians named Sali and Yusias and another Chinese whose name he did not know. He jumped from the plane at about 2 a.m. and landed in the jungle. At about 4 a.m. he met the accused. The accused and he were in the jungle for 13 days, after which they walked out of the jungle on to a kampong road from where P.W.1 and P.W.2 took them on their motor cycles to the Police Station. Before coming out of the jungle they had hidden their arms, ammunition and other equipment in a bush and kept them separately in separate piles. Some time in the afternoon they led Gurkha soldiers to the place where they had hidden their belongings and pointed out their bundles to them. 10 20 30

Yusias (P.W.12) gave similar evidence as Iding as regards his being a member of a force of 48 uniformed and armed paratroopers under the command of Lieutenant Sutikno, his being in Section 5 to which Bachir, Iding and the accused also belonged and his jumping from the plane at about 2 a.m. He stated further that after landing he remained in the jungle alone for 15 days, after which he met some kampong people who handed him to the Police. After his capture he saw the 40

accused at the Police Depot and the Prison at Johore Bahru.

In the High Court in Malaysia

No.25

Grounds of Judgment
25th March 1966
(Continued)

10 Lieutenant Sutikno (P.W.13) said that he was in command of the paratroopers, including the accused, Iding and Yusias, who landed in the Tenang area, Labis at about 2 a.m. on 2.9.64. They are all dressed in camouflage military uniforms and each of them carried a firearm, ammunition, 2 handgrenades, food rations and other military equipment. In the plane they were given \$300 in one-dollar Malayan currency notes. He landed in the Tenang area, Labis and met Sali from Section 5, with whom he remained in the jungle for about 20 days before they were captured while in a Kampong. His objective was to help to liberate the people of Malaya from Imperialism by carrying on sabotage work in order to cripple the economy of Malaya, and, if necessary, to

20 carry on guerilla warfare in the country.

30 On 13.9.64 at about 6.45 p.m. the accused made a cautioned statement to A.S.P. Chew Kok Khee (P.W.14). The evidence of this witness was that he recorded the statement after administering a caution to the accused in the form laid down in Section 75 of the Internal Security Act. The accused understood the caution and agreed to make a statement. After recording the statement he read it back to the accused who said that the statement was correct and that he had nothing to add or alter. Before or during the recording of the statement he did not make any threat, promise or inducement to the accused. He recorded the statement in the canteen at the Police Station which was then being used, because of the emergency, by C.I.D. officers. No other officers took part in the recording of the statement.

40 The accused gave evidence to say that he was compelled to make a statement. He was taken to a canteen where there were many Police Inspectors and military personnel. At the time when his statement was recorded there was an armed Sikh in plain clothes who assaulted him, and he was hit on his cheek with a revolver by Inspector Anuar. A.S.P. Chew Kok Khee abused him and said that if he did not make a proper

In the High
Court in
Malaysia

—
No.25

Grounds of
Judgment
25th March
1966
(Continued)

statement he would be taken away by the military and shot.

On the evidence before me I was satisfied that nobody assaulted the accused or made any threat or inducement to him in order to get a statement from him. I therefore allowed his cautioned statement to be given in evidence.

In my opinion there was overwhelming evidence against the accused on all three charges. Part of this evidence was given by witnesses who were accomplices, but this was a case in which I would have had no hesitation in acting on the uncorroborated evidence of accomplices. However, there was ample corroboration of such evidence, such as the finding of the money in one-dollar Malayan currency notes on the accused, his being found in the vicinity of the area where the landing took place, his pointing his belongings to the Gurkha soldiers and his own cautioned statement.

10

20

As I have said, there was overwhelming evidence against the accused. I therefore held that there was a case for him to answer.

The accused made a statement from the dock in which he said that one Mah Yong took him to Singapore and then to an island off Singapore in order to introduce him to a job. After he had worked in the island for four or five days he was taken in a boat by an Indonesian to a military camp where he was forced to undergo military training. He was given uniforms, firearm and other military equipment, after which he was forced to board a plane. The plane took off and at midnight he was forced to jump from the plane. He was never informed about the destination of the plane. When he landed he met Iding. He wanted to come out, but he could not do so because Iding was with him all the time. Eventually he persuaded Iding to come out with him to surrender. When he came out he met P.W.1 and P.W.2 who took him to the Police Station. He admitted consorting with Indonesians, but he said that he was forced to do so in order to save his own life. Certain parts of his cautioned statement, he said, were untrue, because

30

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at the time he made the statement he was in fear.

In the High
Court in
Malaysia

—————
No.25

Grounds of
Judgment
25th March
1966
(Continued)

10

The statement of the accused from the dock in no way created a doubt in my mind as to the truth of the prosecution case. The two rubber tappers who took the accused and Iding to the Police Station had said nothing about the accused telling them that he wanted to surrender. According to them, the accused was looking for a transport. Eventually he asked them to take him to a bus station. It is clear from Section 69 of the Internal Security Act, 1960 when read with Section 94 of the Penal Code that duress was no defence to the charges preferred against the accused.

20

The accused had pleaded guilty to the third charge at the commencement of the trial, but as he had claimed to be tried on the other two charges I deferred accepting his plea until the end of the trial. In the event I found the accused guilty on the first and the second charges and convicted him. On the third charge I convicted him both on his plea of guilty and on the evidence produced in the case. The accused was sentenced to death on each charge.

(S.S. Gill)

JUDGE,

HIGH COURT, MALAYA

30

Kuala Lumpur,
25th March, 1966

Inche Ajaib Singh for Public Prosecutor.

Inche R. Ramason for the accused, assigned.

Certified true copy

Secretary to Judge,
Kuala Lumpur.
22.7.1966

—————

40.

In the High
Court in
Malaysia

No.26

Oral Notice
of Appeal

NO.26

ORAL NOTICE OF APPEAL

IN THE HIGH COURT IN MALAYA AT MUAR

EMERGENCY CRIMINAL TRIAL NO. 20 OF 1964.

PUBLIC PROSECUTOR

Vs.

OIE HEE KOI

ORAL NOTICE OF APPEAL UNDER REGULATION 11 (L)

of THE EMERGENCY (CRIMINAL TRIALS) REGULATIONS, 1964

Accused: Oie Hee koi: I wish to appeal against
conviction and sentence.

10

41.

NO. 27.

PETITION OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

HOLDEN AT KUALA LUMPUR

FEDERAL COURT CRIMINAL APPEAL NO: X.9/66

In the Federal
Court of
Malaysia

No.27

Petition of
Appeal
3rd March
1966

Between:

OIE HEE KOI Appellant

-and-

PUBLIC PROSECUTOR Respondent

10 IN THE MATTER of Muar Emergency Criminal Trial
No. 20 of 1964
P.P. Vs. Oie Hee Koi

To:

The Honourable the Chief Justice and Judges
of Appeal Federation of Malaya.

PETITION OF APPEAL

The humble Petition of Oie Hee Koi showeth
as follows:-

- 20 1. Your Petitioner was charged under regulation
4 of the Emergency (Criminal Trials)
Regulations, 1964 on the following charges:-
- (1) Unlawful control of a firearm, an
offence under Section 57(1) (a) of
Internal Security Act, 1960.
- (2) Unlawful control of 200 rounds of
303 ammunition and 2 handgrenades,
an offence under Section 57(1) (b)
of the Internal Security Act, 1960.
- 30 (3) Consorting with armed members of the
Indonesian Armed forces in
contravention of Section 57 (1) and

In the Federal
Court of
Malaysia

No.27

Petition of
Appeal
3rd March
1966
(Continued)

punishable under Section 58(1)
of the Internal Security Act, 1960.

2. Your Petitioner was found guilty and convicted on all the three charges and sentenced to death on each charge on the 25th March, 1966 at the Muar High Court.
3. Your Petitioner is dissatisfied with the said conviction and sentence on the grounds following:--
 - (1) The learned trial Judge was wrong in Law in not considering the question of whether the firearm and the ammunition were in fact under the control of the appellant at time of arrest. If he had, it would have been shown that the appellant was merely one of a section and the leader of the section Sergeant Bachir was the person who had control of the firearm and ammunition. Alternatively, it was likely that P.W.11 Iding bin Jumadi being an Indonesian would be more in control of the firearm and ammunition than the appellant. 20
 - (2) The learned trial Judge failed to consider that the prosecution had not adduced evidence to show that the particular firearm or ammunition exhibited were solely under the control of the appellant. Further, the appellant had none of them near his person when arrested. 30
 - (3) The learned trial Judge misdirected himself in law when he stated in his Grounds of Judgment that duress was no defence under Section 69 of the Internal Security Act, 1960 when read with Section 94 of the Penal Code to the Charges preferred against the appellant.

He failed to take into consideration

that the appellant had every intention of surrendering himself but was prevented from doing so for fear of being shot by his Indonesian leaders. The circumstances shown by the prosecution and by the cautioned statement of the appellant support this. For example;

In the Federal
Court of
Malaysia

No.27

Petition of
Appeal
3rd March
1966
(Continued)

10

(a) Iding bin Jumadi (P.W.11) who was with the appellant for 13 days in the jungle had stated: "I did not come out of the jungle earlier because my leg was in pain and we had no guidance as to how to come out. I was lost in the jungle".

20

(b) the accused had persuaded Iding bin Jumadi to accompany him for the purpose of voluntarily surrendering themselves (page 71 & 39). Since the cautioned statement was made on the very day of arrest of the appellant (page 29 para C), it was unlikely that the appellant could have made up this intention to surrender:

30

(c) No evidence had been adduced to show that any attempt had been made by the appellant to use the arms and ammunition which in fact were arranged in piles when Iding bin Jumadi and the accused came out of the jungle.

40

(d) the fact that Iding bin Jumadi and the appellant followed P.W.1 and P.W.2 without any hesitation and without making any inquiries showed they were willing to follow them anywhere even to a Police Station. The discrepancies in the evidence of P. W.1 and P.W.2 showed they were not telling the absolute truth.

(e) the appellant appeared normal throughout the arrest and subsequently (page 8 & 16).

In the Federal
Court of
Malaysia

No.27

Petition of
Appeal
3rd March
1966
(Continued)

- (f) the appellant voluntarily led the Gurkhas soldiers to the spot where the arms and ammunition were found
- (4) The learned trial Judge was wrong in accepting the evidence of P.W.11, P.W.12 and P.W.13, all detainees, as corroborative of the offences with which the appellant was charged. 10
- (5) The learned trial Judge failed to note that there was no evidence on record to show under what circumstances the appellant led the Gurkhas to the jungle where the exhibits were found except the evidence of P.W.10, to wit; "On 13.9.64 at about 10.30 a.m. I interrogated one male chinese by the name of Oie Hee Koi the accused for the purpose of obtaining intelligence." 20
- (6) The learned trial Judge failed to note that the cautioned statement made by the appellant was consistent with explanation given in his defence.

Your petitioner prays that such conviction and sentence may be set aside.

Dated this 3rd day of May, 1966. 30

sd
(M. ABRAHAM)

Solicitor for appellant.

The address for service of the appellant is:-

c/o Mr. N. Abraham, Advocate & Solicitor, No. 67,
Jalan Ampang, Kuala Lumpur.

Filed this 3rd day of May, 1966

sd
(PAWAN AHMAD BIN IBRAHIM RASHID)
Chief Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

PARTICULARS OF TRIAL

In the Federal
Court of
Malaysia

Form C
(Rule 8)

No.28

Particulars
of Trial

IN THE FEDERAL COURT OF MALAYSIA

HIGH COURT IN MALAYA AT MUAR

Criminal Appeal No. X9 of 1966

PUBLIC PROSECUTOR v. OIE HEE KOI

PARTICULARS OF TRIAL

- 10 1. Where was the trial held? Muar High Court.
2. Date of trial. On 19th and 20th of March, 1966.
3. Name of trial Judge. Mr. Justice Gill.
4. For what offence was the conviction? For 3 offences under the Internal Security Act No.18 of 1960.
5. What was the sentence? Death.
- 20 6. Annex hereto a copy of the list of exhibits. Annexed.
7. Was appellant defended by an Advocate and Solicitor privately, or at request of the Court? At request of the Court.
8. State the name of the Advocate and Solicitor. Inche R. Ramason.
9. Was the appellant admitted to bail before trial? No.
- 30 * The appellant requested that same Counsel be assigned to argue his appeal in the Appellate Court and the Hon'ble Judge recommended the appellant's application.
-

In the Federal
Court of
Malaysia

NO. 29

NOTES OF ARGUMENT, SYED
SHEH BARAKBAH, C.J.

No.29
Notes of
Argument
Syed Sheh
Barakbah
C.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No: X. 9 of 1966
(Muar High Court Emergency Criminal Trial
No.20/1964)

OIE HEE KOI

Appellant

10

v.

THE PUBLIC PROSECUTOR

Respondent

Cor: Syed Sheh Barakbah, Chief Justice,
Malaya.
Ong Hock Thye, Judge, Federal Court.
Ismail Khan, Judge.

NOTES OF ARGUMENT RECORDED BY SYED SHEH
BARAKBAH, CHIEF JUSTICE, MALAYA

9th May 1966

Abraham for App.

20

Ajaib Singh for Resp.

Abraham:

1st Grd.

Did not consider whether App. had control of
firearm at time of his arrest.

P.38 & 9.

Def. of control - Chambers Dictionary.
Strouds Judicial Dict.

Grd. 2 - Pg. 9 & 10, Pg. 15 & 18.

Grd. 3 - abandoned.

30

Intention to surrender.

Pg. 71 & 39.

Counsel applies to add another grd. of appeal:

That the App. having been born in China, is he amenable to the Internal Security Act. Counsel in the following case is arguing this grd. Will rely on his arguments.

D.P.P. not called upon to reply.

Ct. calls the next case.

In the Federal Court of Malaysia

No.29

Notes of Argument
Syed Sheh Barakbah
C.J.
(Continued)

10

Sgd. S.S. Barakbah
9.5.66.

TRUE COPY

(Tneh Liang Peng)
Secretary to the Lord President
Federal Court of Malaysia
30 July 1966

NO. 30

NOTES OF ARGUMENT ONG HOCK THYE, F.J.

IN THE FEDERAL COURT OF MALAYSIA AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL X.9/66

Monday, 9th May 1966:

Coram: Syed Sheh Barakbah, C.J., Malaya,
Ong Hock Thye, Judge, Federal Court,
Malaysia,
Ismail Khan, Judge, High Court, Malaya.

NOTES RECORDED BY ONG, F.J.

M. Abraham for appellant

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

30

Ground 1: wording of charge "control".

No.30

Notes of
Argument
Ong Hock Thye
F.J.

In the Federal
Court of
Malaysia

No.30

Notes of
Argument
Ong Hock Thye
F.J.
(Continued)

Had appellant control of ammunition
or firearm?

- see p.38 & 9

- "control" - see Dictionary.

Here soldier under orders of superior
officer.

Ground 2: firearm and ammunition - see p.9 & 10.

- no positive identification of rifle.

- p.15 & 18.

Ground 3: "consorting" - duress no defence. 10

Intention to surrender:

Cautioned statement - p.71 & 39.

Appellant born in China - is he amenable
to Internal Security Act?

Ajaib Singh: not called on.

Adjourned till other appeal concluded.

(Sd) H.T. Ong

Certified true copy,

(B.E. Nettar)
Ag: Secretary to Judge,
Federal Court,
Malaysia.

NO. 31

NOTES OF ARGUMENT ISMAIL KHAN,
J.

In the Federal
Court of
Malaysia

IN THE FEDERAL COURT OF MALAYSIA AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CRIMINAL APPEAL NO.X9 OF 1966

B E T W E E N:

OIE HEE KOI

Appellant

10

-and-

PUBLIC PROSECUTOR

Respondent

Cor: Syed Sheh Barakbah, Chief Justice, Malaya,
Ong Hock Thye, Judge, Federal Court,
Ismail Khan, Judge.

NOTES OF ARGUMENT

9th May, 1966

Mr. M. Abraham for Appellant.
Mr. Ajaib Singh for Respondent.

Mr. Abraham:

20

Ground 1.

Section 57(1) of Internal Security Act,
1960.

Judge failed to consider if appellant had
control of firearm and ammunition at time of
arrest. Only said this - see p.2 line 40 of
judgment. (p.40 of record).

Ordinary meaning of control - see
Dictionary (Chambers) and Stroud.

30

In this case appellant is a soldier;
commander, an Indonesian. Has a soldier
authority to use firearm as he pleased?

No.31

Notes of
Argument
Ismail Khan,
J.

In the Federal
Court of
Malaysia

No.31

Notes of
Argument
Ismail Khan,
J.

Ground 2

See record - p.9 line 10.

Ground 3

Judge said duress no defence. (Mr. Abraham abandons this Ground).

As to consorting, if there is intention to surrender, this negatives consorting.

See cautioned statement - p.71 line 39.

Failed to come out earlier as fellow Indonesian soldier had injured his leg.

10

See evidence of appellant - p.32-33

Mr. Abraham applies to bring in another ground of appeal, namely, that appellant having been born in China, should he not have been treated as prisoner-of-war? He is not amenable to the Internal Security Act.

(Counsel in next appeal will be arguing this point).

Mr. Ajaib Singh not called upon.

Adjourned till disposal of next appeal.

20

I.K.

Certified true copy

D.C. Haslam
Secretary to Judge,
High Court,
Seremban,
26.7.66.

51.

NO. 32

JUDGMENT OF FEDERAL COURT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No:X.9/1966

B E T W E E N:

OIE HEE KOI Appellant

-and-

10 PUBLIC PROSECUTOR Respondent

Federal Court Criminal Appeal No.X.12/1966

OOI WAN YUI alias WONG KAM CHIN

Appellant

- and -

PUBLIC PROSECUTOR Respondent

Coram: Syed Sheh Barakbah, Chief Justice,
Malaya
Ong Hock Thye, Judge, Federal Court,
Ismail Khan, Judge.

20 JUDGMENT OF ONG HOCK THYE, F.J.

30 These appeals came up for hearing in consecutive order on May 9, 1966, but since they raised a common ground on which the decision must turn, we think it will be convenient to deal with them in a single judgment. It was contended that the appellants were and should be treated as "prisoners of war" within the definition in Article 4 of the Third Schedule to the Geneva Conventions Act 1962; as such they should be entitled to all the benefits of the relevant Convention.

In the Federal
Court of
Malaysia

No. 32

Judgment of
Federal Court
(Continued)

Oie Hee Koi, the appellant in the first appeal had been prosecuted on three charges, of possession of a firearm, possession of ammunition and consorting with members of Indonesian Armed Forces, in contravention of sections 57(1) (a), 57(1) (b) and 58(1) of the Internal Security Act, 1960. He pleaded guilty to the third charge, which carries an alternative of life imprisonment to the death sentence, but claimed trial on the other charges. In the result he was convicted on all three charges and sentenced to death on each charge.

10

Ooi Wan Yui, the other appellant, had claimed trial on three similar charges, with the same result.

Each of them now appeals against his conviction and sentence.

Except as to the circumstances of their capture, the material evidence in both cases was very much the same. They were members of an armed force of 47 paratroopers, under the command of Lieutenant Sutikno of the Indonesian Air Force, who in the early hours of September 2, 1964, were air-dropped from a Hercules plane belonging to the Indonesian Air Force over the Labis area of Johore. All 48 members of this invasion force were in camouflage uniform of that Air Force and each carried a firearm, ammunition, two hand-grenades, food rations and other military equipment. The force was divided into 8 sections, each under a section commander, with Lieutenant Sutikno as overall commander. Of the 48 men 34 were Indonesians and 14 so-called Malayan Chinese. Among the latter were these appellants.

20

30

On the person of Oie Hee Koi, when he was captured, was found his identity card, No. 3019104, which was produced in evidence by the prosecution. Ooi Wan Yui was not in possession of any such card and no evidence was given as to the kind of card issued to him under the National Registration Act 1959.

40

Each made a cautioned statement to a police officer, shortly after being taken prisoner, which the learned trial Judge held admissible in evidence. Oie Hee Koi, in his statement,

said that he was 26 years old and had come over from China with his parents, when he was 2, to reside in Pontian, Johore. At the age of 12 to 14 he went to the Bin Cheng Chinese School, and while still a boy, he became a rubber tapper after the death of his father. In 1955 he became a courier for communist-terrorists and on February 29, 1959 he was arrested for subversive activities and detained for a total period of six months in Johore Bharu, Kuala Lumpur and Johore. Upon his release he was placed under an order of restricted residence. During a spell of unemployment in April 1964 one Beh Yong offered to find him work in Indonesia. He was taken to an island off Singapore where he was compelled to undergo military training by Indonesians, followed by further training in Bandoeng. The rest of his statement told how he was brought over to Johore and eventually captured.

In the Federal
Court of
Malaysia

No.32

Judgment of
Federal Court
(Continued)

Ooi Wan Yui, who was 29, in his statement, said that he was born in the Lam Wua district of Fukien, China, where he lived with his mother until the age of 12. In 1948 his father fetched him and his mother to Malaya, where his family settled down in Trong. In brief, the rest of his story told how he left for Indonesia at the end of May 1964, underwent military training there, was parachuted into Johore on September 2, 1964 and was in the company of another Chinese, Lee Hoo Boon (the appellant in Federal Court Criminal Appeal No.X.11 of 1966) and an Indonesian soldier when the three of them came under fire from the security forces, the Indonesian was killed and he and Lee Hoo Boon were captured.

Before closing his submissions, Mr. Abraham, counsel for Ooi Hee Hoi, intimated that he would ask leave to add a further ground of appeal, arising out of the fact that this appellant was born in China. He was told that he would be heard further, should the court deem it necessary after hearing argument by Mr. K.C. Yap, counsel for Ooi Wan Yui, on the same ground. After hearing Mr. Yap and the learned Deputy Public Prosecutor, judgment on both appeals was reserved.

While these appeals were under consideration the winds of change have happily blown away the miasma of Indonesian confrontation. The military

In the Federal
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No.32

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Federal Court
(Continued)

and political solution however, is not the end of the matter, unfortunately, so far as cases pending in the courts are concerned.

The appellants' claim to be prisoners of war makes it necessary to refer to the definition of that term in Article 4 of the Third Schedule to the Geneva Conventions Act, 1962, the relevant portion of which reads:

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"Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

- (1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces."

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This category includes members of volunteer corps forming part of the armed forces of a Party to the conflict and the evidence for the prosecution leaves no room for doubt that the appellants were in fact members of the Indonesian Armed Forces commanded by Lieutenant Sutikno, whether volunteers or conscripts. That being the case, the appellants ought prima facie to be regarded as prisoners of war unless there were circumstances which dis-entitled them to treatment as such.

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Dealing, for a start, with the case Ooi Wan Yui, two arguments were advanced by Mr. K.C. Yap. In the first place, he refers to the definition of "Indonesian" in the Internal Security (Controlled Area) Order, 1964 (L.N. 244/64) which under paragraph 2(c), includes:-

"any person who, having been ordinarily resident in the Federation of Malaya, North Borneo, Sarawak or Singapore on or after the 8th day of December,

40

1962, left the Federation of Malaya, North Borneo, Sarawak or Singapore, as the case may be, on or after that date, or who, having been ordinarily resident in Malaysia on or after Malaysia Day, left Malaysia on or after that day, without complying with the appropriate laws relating to national registration, passports, immigration or aliens."

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Federal Court
(Continued)

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This order, however, was made for a specific and limited purpose, namely to prohibit the entry of Indonesians as so defined, into a "Controlled Area", declared to mean the "territorial waters bordering the States of Malaya and Singapore." Section 20 of the Interpretation and General Clauses Ordinance provides that "When an Ordinance or Enactment confers powers to make any subsidiary legislation, expressions used in the subsidiary legislation shall, unless the contrary intention appears, have the same respective meaning as in the Ordinance or Enactment conferring the power." Since the order was expressly made for a limited purpose only, there is clearly a contrary intention that the term "Indonesian" has no application beyond the scope of the order itself.

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In the next place, Mr. Yap relies, in support of his contention, on the most recent judgment on this point of the Federal Court (see Lee Hoo Boon v. Public Prosecutor, Federal Court Criminal Appeal No.K.11 of 1966, April 26, 1966, unreported) in which Thomson, L.P. said:

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

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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

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was said that the relationship between this country and the Republic of Indonesia if it did not amount to actual war in the conventional Grotian 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.

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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 Johore National.

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

The Lord President then referred to the following passage at page 268 of Oppenheim's International Law (7th Ed.):

"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,

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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 protection of a flag of truce, deserters and traitors may be seized and punished."

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(Continued)

He went on as follows:

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

20 State of Johore and was engaged in assisting the Republic of Indonesia in armed conflict with this country of which Johore is part."

30 With respect, we do not agree with that judgment. Lee Hoo Boon did not automatically become a citizen of the Federation of Malaya merely by reason of his being born in the State of Johore: see Articles 14(1) (a), 16, 18(1) of the Constitution of the Federation of Malaya. Not being "Malay" as defined in the Johore Nationality Enactment, 1952, his birth within the State of Johore did not per se clothe him with the status of a national of that State: see sections 2, 4(c) and (f) and (5) of the Enactment. We do not think that any fact may be presumed when the onus of proving such fact lies on the prosecution.

40 Mr. Yap, of course, was relying on the inverse proposition, that no one but a "traitorous subject" is disentitled to the benefits of the Geneva Conventions. In the case of his client, Ooi Wan Yui, as against uncontroverted evidence that he was born in China, there was not an iota of evidence to prove that he owed allegiance to His Majesty the Yang di-Pertuan Agong. On the other hand, even in the consorting charge itself which was abundantly supported by the evidence, he was said to be a member of the Indonesian

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(Continued)

Armed Forces. The onus clearly did not rest on him to prove that he was not a subject of his Majesty or that by reason of his past residence he was owing allegiance at the time he joined the Indonesian Armed Forces, or during the period specified in the charges against him.

That long residence alone is insufficient to found allegiance is clear from the judgment of Lord Jowitt L.C. in Joyce v. Director of Public Prosecutions (1):

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"There is no evidence that the appellant left a family or effects behind him when he left his realm. I do not for this purpose regard parents or brother or sisters as a family. But though there was no continuing protection for his family or effects, of him too it must be asked, whether there was not such protection still afforded by the sovereign as to require of him the continuance of his allegiance ... Treason, "trahison," is the betrayal of a trust: to be faithful to the trust is the counterpart of the duty to protest. It serves to illustrate the principle which I have stated that an open enemy who is an alien, notwithstanding his presence in the realm, is not within the protection nor therefore within the allegiance of the Crown. He does not owe allegiance because although he is within the realm he is not under the sovereign's protection ... The material facts are these, that being for long resident here and owing allegiance he applied for and obtained a passport and, leaving the realm, adhered to the King's enemies The essential fact is that he got the passport and I now examine its effect. The actual passport issued to the appellant has not been produced, but its contents have been duly proved... By its terms it requests and requires in the name of His Majesty all those it may concern to allow the

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(1) (1946) A.C. 347, 368, 369

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—————
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Federal Court
(Continued)

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bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need. It is, I think, true that the possession of a passport by a British subject does not increase the sovereign's duty of protection, though it will make his path easier. For him it serves as a voucher and means of identification. But the possession of a passport by one who is not a British subject gives him rights and imposes upon the sovereign obligations which would otherwise not be given or imposed."

20

In that case the onus of proof was said to rest on William Joyce to show that something had occurred to put an end to his duty; it was contended by the Attorney-General that "if a matter be within the knowledge of the accused and unknown to the Crown the onus of proof is cast upon the former." On this point Lord Porter in his dissenting judgment quoted Holroyd J. in R. v. Burdett (2):

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"The rule in question, he says, is not allowed to supply the want of necessary proof, whether direct or presumptive, against a defendant of the crime with which he is charged; but when such proof has been given it is a rule to be applied in considering the weight of evidence against him, whether direct or presumptive, when it is unopposed, unrebutted, or not weakened by contrary evidence which it would be in the defendant's power to produce, if the fact directly or presumptively proved were not true."

Such rule of evidence is enunciated in section 106 of our Evidence Ordinance which provides:

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"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

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(Continued)

On this point it is sufficient to say that the Judicial Committee have clearly laid down that this section does not cast any burden on an accused person to prove that no crime was committed by proving facts especially within his own knowledge: see Attygalle v. R. (3) and Seneviratne v.R. (4) In the instant case Ooi Wan Yui committed no offence that was not committed by an Indonesian member of the same invasion force and Article 16 of the Third Schedule declares that "all prisoners of war shall be treated alike." A distinction to his disadvantage can only arise if at the relevant time he owed a duty of allegiance, which the Indonesians did not. Joyce's case clearly shows that onus lies on the prosecution to prove allegiance. Although the instant case is not a trial for treason, the question of allegiance is no less material if it is to deprive this appellant of the status of prisoner of war. Section 105 of the Evidence Ordinance, of course, does not relieve the prosecution of the necessity of proving allegiance, since the fact is not among "any of the general exceptions in the Penal Code or within any special exception or proviso contained in any other part of the same Code or in any law defining the offence, which of course, is the Internal Security Act, 1960.

We are accordingly of the opinion that, in the case of Ooi Wan Yui, the prosecution had failed to prove that he was a person owing allegiance at any relevant time: Consequently he should have been held to be a prisoner of war and entitled to the same treatment as was accorded to Lieutenant Sutikno and the Indonesians under his command none of whom were put on trial for any offence under the Internal Security Act, 1960. Moreover and in particular, the trial had failed to comply with the mandatory provisions of Articles 87, 100 and 104 of the Third Schedule to Act or 1962. His appeal is therefore allowed and the conviction and sentence quashed.

(3) (1936) 2 A.E.R.116
(4) (1936) 3 A.E.R.36

We turn now to the other appellant, Oie Hee Koi, in whose possession a blue identity card was found, stating under place of birth "China" and under classification of "race" that he is "Warga Negara Persekutuan", a citizen of the Federation of Malaya. The National Registration Act, 1959, provides in section 5, that "Subject to the provisions of any exemptions which may be granted by regulations made under section 6, every person within the Federation shall be registered under and in accordance with the provisions of this Act and of any regulations made thereunder."

In the Federal
Court of
Malaysia

No.32

Judgment of
Federal Court
(Continued)

The National Registration Regulations, 1960 (vide L.N. 151/60) provide by Regulation 5(2)(a) for the issue of "blue bordered cards with blue printing to citizens of the Federation of Malaya." This would seem at first sight, to conclude the matter, but is the question of Oie Hee Koi's allegiance resolved by the mere production of his identity card?

The prototype of our Act is the English National Registration Act, 1939 (2 & 3 Geo.6, C.91). In an appeal heard by a Court of seven judges specially constituted for the purpose, Lord Goddard C.J. said in Willcock v. Muckle (5):

"This Act was passed for security purposes; it was never passed for the purposes for which it is now apparently being used," (i.e. whenever motorists were stopped or interrogated for any cause).

This case shows, in our opinion, that a distinction should be observed between a passport (held decisive in Joyce's case) and an identity card. The former confers rights whereas the latter imposes obligations. The former avails its non-subject holder to claim Crown protection abroad, whereas the latter is of no possible value outside the Federation. What, at all events, is crucial for the purposes of this case is that Regulation 23 provides:

"23(1). The burden of proving the truth of the contents of any written application for

In the Federal
Court of
Malaysia

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Judgment of
Federal Court
(Continued)

registration under these Regulations, or the contents of an identity card, shall be on the applicant, or on the person to whom such identity card has been issued, or on any other person alleging the truth of such contents.

(2) Where any person claims that he is an exempted person the burden of proving such fact shall lie upon him."

Proof of the truth of the allegation as to this appellant's status thus rested on the prosecution. The prosecution offered no such proof, notwithstanding that both in the identity card and the cautioned statement, the appellant's place of birth stood out plain as a pikestaff. This appellant therefore, should stand on the same footing as the other. We accordingly allow his appeal as well and quash the conviction and sentence.

10

In arriving at this decision we are not unaware that it runs counter to the previous decision of this Court. Nevertheless, we do so without qualms. As Sir Carleton Allen says at p.245 of Law in the Making (6th Ed.) "the case of Gideon Nkambule v. R. (1950) A.C. 379, makes it clear that in criminal matters at least, where life and liberty are at stake, the Privy Council will not hesitate to reject even a recent decision of its own, if it is satisfied that all relevant considerations and historical circumstances were not before the Court in the earlier case." We would not hesitate to follow the same principle.

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(sgd) H.T. ONG

JUDGE,
FEDERAL COURT,
MALAYSIA.

Kuala Lumpur,
12th July 1966.

The Lord President (C.J. as he then was) and Dato Justice Ismail Khan concurred.

40

Mr. M. Abraham for the appellant in X.9/66
Mr. K.C. Yap for the appellant in X.12/66
Mr. Ajaib Singh, D.P.P. for the respondent.

Certified true copy. B.E. Nettar,
Ag. Secretary Judge, Federal Court,
Malaysia.

NO.33

In the Federal
Court of
Malaysia

ORDER OF FEDERAL COURT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

No.33

Order of
Federal Court

(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPEAL NO:9 OF 1966

(Muar High Court Emergency Criminal Trial No:20/64)

OIE HEE KOI

Appellant

v.

10

THE PUBLIC PROSECUTOR

Respondent

CORAM: SYED SHEH BARAKBAH, CHIEF JUSTICE HIGH
COURT IN MALAYA:
(Now Lord President, Federal Court,
Malaysia)

ONG HOCK THYE, JUDGE, FEDERAL COURT,
MALAYSIA:

-and-

ISMAIL KHAN, JUDGE, HIGH COURT,
MALAYA.

20

IN OPEN COURT

THIS 12TH DAY OF JULY, 1966

O R D E R

30

THIS APPEAL coming on for hearing on the
9th day of May, 1966 in the presence of Mr. M.
Abraham of Counsel for the above named
Appellant and Mr. Ajaib Singh, Deputy Public
Prosecutor on behalf of the Respondent AND UPON
READING the Record of Appeal herein AND UPON
HEARING Counsel for the Appellant IT WAS
ORDERED that this Appeal do stand adjourned
AND the same coming on for judgment this day in
the presence of Counsel for the Appellant and
the Deputy Public Prosecutor as aforesaid:

In the Federal Court of Malaysia

IT IS ORDERED that the Appeal of the above named Appellant be and is hereby allowed AND IT IS ORDERED that the conviction and the sentence be and are hereby quashed.

No.33

Order of Federal Court (Continued)

GIVEN under my hand and the seal of the Court this 12th day of July, 1966.

sgd.

(PAWAN AHMAD BIN IBRAHIM RASHID)
CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

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In the Judicial Court of the Privy Council

No.34

Order allowing Special Leave to Appeal to His Majesty the Yang di-Pertuan Agong
27th February 1967

NO. 34

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

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 20th day of December, 1966, in the words following, viz:-

20

"WHEREAS by virtue of the Malaysia (Appeals to Privy Council) Orders in Council 1958 and 1963 there was referred unto this Committee a humble Petition of The Public Prosecutor Malaysia in the matter of an Appeal from the Federal Court of Malaysia (Appellate Jurisdiction) between the Petitioner and Oie Hee Koi Respondent setting forth that the Petitioner desires to obtain special leave to appeal from a Judgment of the said Federal Court dated the 12th July 1966 allowing the Respondent's Appeal against convictions in the High Court of Malaya at Muar in the State of Johore

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on the 25th March 1966 on charges of possession of a firearm and ammunition and of consorting with members of the Indonesian Armed Forces: And humbly praying the Head of Malaysia to grant the Petitioner special leave to appeal from the Judgment of the said Federal Court dated the 12th July 1966 and for further or other relief:

In the Judicial
Court of the
Privy Council

No.34

Order allowing
Special Leave
to Appeal to
His Majesty the
Yang di-Pertuan
Agong
27th February
1967
(Continued)

10 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 no one appearing at
the Bar on behalf of the Respondent 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 against
20 the Judgment of the Federal Court of
Malaysia (Appellate Jurisdiction) dated the
12th July 1966.

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

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 27th day of February, 1967.

BY COMMAND

40 sd: ISMAIL BIN DATO ABDUL RAHMAN
MINISTER OF JUSTICE

(F.C.Crim. App. X.9/66)

True Copy - Deputy Registrar, Federal Court,
Malaysia, Kuala Lumpur.

EXHIBITS

"A"

Consent
under
Section 80
of Internal
Security
Act 1960
11th December
1965

EXHIBIT "A" - CONSENT UNDER
SECTION 80 OF INTERNAL SECURITY
ACT, 1960

Internal Security Act, 1960

Consent under section 80

Muar High Court Emergency Criminal Trial No.20 of 1964

PUBLIC PROSECUTOR

vs.

OIE HEE KOI

I, Ajaib Singh, Deputy Public Prosecutor, hereby consent to the prosecution of Oie Hee Koi accused of three offences under sections 57(1) (a) and 57 (1) and 58(1) of the Internal Security Act, 1960, committed on 13th September, 1964, at Kampong Sekarai, Tenang, Labis, in the district of Segamat, in the State of Johore. 10

Dated this 11th day of December, 1965.

Sd: (AJAIB SINGH)

Timbalan Penda'awa Raya.

"B"

Certificate
under
Regulation 4
of Emergency
(Criminal
Trials)
Regulations
1964
11th December
1964

EXHIBIT "B" - CERTIFICATE UNDER REGULATION
4 OF EMERGENCY (CRIMINAL TRIALS) REGULATIONS
1964

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EMERGENCY (CRIMINAL TRIALS) REGULATIONS,
1964

Certificate under Regulation 4

Muar High Court Emergency Criminal Trial No.20 of 1964

PUBLIC PROSECUTOR vs. OIE HEE KOI

I, Ajaib Singh, Deputy Public Prosecutor, in accordance with the provisions of regulation 4 of the Emergency (Criminal Trials) Regulations, 1964, hereby certify that the above case in which Ooi

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(F.L.N.
286/1964)

Hee Koi is charged is a proper one to be tried under the aforesaid Regulations.

EXHIBITS

"B"

And in accordance with regulation 5 of the aforesaid regulations, I prefer the following charges against the said Oie Hee Koi to be tried in the High Court at Muar.

Certificate
under
Regulation 4
of Emergency
(Criminal
Trials)
Regulations
1964
11th December
1964
(Continued)

1ST CHARGE:

10 That you at about 6.40 a.m. on the 13th day of September, 1964, in a Security Area as proclaimed by the Yang di-Pertuan Agong by Federal L.N. 245 of 17th August, 1964, namely, Kampong Sekarai, Tenang, Labis, in the District of Segamat, in the State of Johore, without lawful excuse had under your control a firearm, to wit, one Rifle MK 3 No. 3501 without lawful authority and that you have thereby committed an offence punishable under section 57(1) (a) of the Internal Security Act, 1960.

20 2ND CHARGE:

30 That you at about 6.40 a.m. on the 13th day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong by Federal L.N.245 of 17th August, 1964, namely Kampong Sekarai, Tenang, Labis, in the District of Segamat, in the State of Johore without lawful excuse had under your control ammunitions, to wit, 200 rounds of .303 ammunitions, and two hand-grenades Chinese Type, without lawful authority and that you have thereby committed an offence punishable under section 57(1) (b) of the Internal Security Act, 1960.

3RD CHARGE:

40 That you between 2.00 a.m. on the 2nd day of September, 1964, and 6.40 a.m. on the 13th day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong by Federal L.N.245 of 17th August, 1964 namely Kampong Sekarai, Tenang, Labis, in the District of Segamat, in the State of Johore, consorted with members of the Indonesian Armed Forces who carried

EXHIBITS

"B"

Certificate
under
Regulation 4
of Emergency
(Criminal
Trials)
Regulations
1964
11th December
1964
(Continued)

firearms and ammunitions in contravention of the provisions of Section 57(1) of the Internal Security Act, 18/60 in circumstances which raised a reasonable presumption that you intended to act with such members of the said Indonesian Armed Forces in a manner prejudicial to Public Security and that you have thereby committed an offence punishable under Section 58(1) of the same Act.

10

Dated this 11th day of December, 1965

(AJAIB SINGH)

Timbalan Penda'awa Raya.

"P13"

Certificate
of
Destruction
28th May 1965

EXHIBIT "P13" - CERTIFICATE OF DESTRUCTION

No.2 Det Ammo Insp.,
c/o Armed Forces Ammo Depot,
Majidee Barracks,
Johore Bahru.

Tali: No. JB 3356 Ext. 55

20

7421/A1/32

Date 28/5/65

O.C.C.I.,
Johore, Bahru.

CERTIFICATE OF DESTRUCTION

It is hereby certified that item/s listed below and known by the following reference LABIS Rt.4756/64 1P 291 Group 45 have been destroyed being unsafe for storage.

ITEMS

30

1 CHINESE F1 GRENADE WITH DETONATOR

1 CHINESE RG - 42 GRENADE WITH DETONATOR

Signature Sd: Illegible

Name: T. KEANE

Rank: S/Sgt

EXHIBIT "P14" - CAUTION STATEMENTEXHIBITSPOLIS DI-RAJA MALAYSIA

"P14"

PERCHAKAPAN DALAM PEMERIKSAANCaution
Statement
13th September
1964

No. Rpt. 475-6/64 Rumah Pasong: Labis

Perchakapan bagi: Ng Hee Koi Nama bapa: Ng Huat
Koh Laki2

Bangsa: Hokkien Tempat di-peranakan: China

10 Umor: 26 tahun Kerja: odd job Dudok di: Batu
36, Pontian Di-Terima oleh K.K. Chew At Labis
Pol.Stn. Pada 13.9.64 Jam 6.45 p.m.Jurubahasa: Recorder Daripada Hokkien Kpd.
English

Before recording the statement of the accused
I administered the following caution to him in
the Hokkien Dialect.

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

20 After administering the caution the accused
admitted that he fully understood the caution
and he likes to speak in answer to my question.

Before me,

Sd: CHEW KOK KHEE

I came over from China with my parents
when I was about 2 years old and we took up
residence in Pontian Kechil at 37th m.s.
I have 3 elder brothers and a younger brother.

30 I was educated in Bin Cheng Chinese School
in Pontian for two years only i.e. when my age
was 12-14 years old. My father who was a rubber
tapper in Pontian Kechil died when I was still a
young boy. Soon after I left school I became
a rubber tapper and sometime in 1955 I became
a courier for CTs at 31st m.s. J.Bahru-Pontian

EXHIBITS

"P14"

Caution
Statement
13th September
1964
(Continued)

Road. On 25th Feb. 1959, I was arrested for subversive activities and was detained a total of 6 months in J. Bahru, Kuala Lumpur and Batu Gajah. I was released from Batu Gajah Prison sometime in August, 1959 and was restricted to the District of Pontian Kechil. I continued tapping rubber and soon after this I became a member of the S.F. in Pontian. I used to attend meetings and listen to speakers specially from other places. One Beh Yong who was a member of the Barisan Socialist from Singapore used to visit our Socialist Front HQ in Pontian and make speeches. In March 1963 this Beh Yong introduced himself to me and since then whenever he came over he would discuss with me the responsibility of a member towards the Party. I could not discuss such matters with him as I was still a restricted person. 10

It was on 23.4.64 this Beh Yong came to my house and I was then unemployed for about 2 weeks and was in difficulties, this Beh Yong then told me that he could get an employment for me in Singapore. He did not specify what type of employment he could get for me but I agreed to go along with him. This Beh Yong then took me over to a certain place near the sea and there was a boat which he asked me to get in. I agreed and he Beh Yong then told me that he had arranged for me an employment in Indonesia and I should not worry. This Beh Yong only proceeded out to the sea for about $\frac{1}{4}$ hour only and there we met another motor boat and I was transferred to the other boat driven by an Indonesian. The boat proceeded for about 3 hours and arriving in an Island known as Tanjong Balai. I was taken to a near by training camp. I could see the men were all dressed in jungle green and there were approx. 300 of them in this camp. I was given two suits of jungle green uniform and on the following day I was asked to join in the training. I was in a platoon of about 25 persons and received training in the using of rifle and stengun only for about 10 days. Soon after this about 42 of us were placed in a boat and four of us were girls and about a day later we arrived in Jakarta. From there we proceeded by lorry to Bandoeng. Two days later we were taken to a training camp and practiced jumping. We were in this training for about 2 $\frac{1}{2}$ 20 30 40

months. After this training we were given practice jumps from parachute for 1 week and once a day. We jumped at heights of 300 metres and had one night practice. There was no further training for us.

EXHIBITS

"P14"

Caution
Statement
13th September
1964
(Continued)

10 We waited until 1.9.64 and my section commander known as Cpl. Bakri with 7 of us proceeded by lorry to the airfield each with a parachute. When we arrived at the air-
field each of us were given a full set of equipment and firearm. I was given a rifle only and cash (Malayan Currency) \$300/-. I could see there were altogether 7-8 sections and an officer then addressed us that we would get further instructions from our section leader when we arrived at the destination. All of us then went aboard a large airplane with 4 engines and we left the airfield at 12.00 midnight.
20 We travelled very fast for about 2 hours and a signal of hooting sounded and all of us were asked to jump out. I was the 3rd in my section to jump after 4 sections had jumped down in 2 files. I landed safely in a replanting area and I was able to contact one IDING an Indonesian paratrooper from my section. We were unable to contact our section leader Bakri and Iding injured his left foot. We then immediately walked towards the forest about half a mile away.
30 We waited near the fringe of the forest until day break and we then moved to a thicker area of this forest and remained there. I did not collect my parachute and remained in this place since then i.e. for the past 10 nights. We ate on the biscuit rations supplied and we collected rain water from the rubber cups to drink and during rain we collected with our pouches and stored into our flasks.

40 On 13.9.64 at about 5.30 a.m. I suggested to IDING that we should move out from the area and give ourselves up to the Police and he agreed as we were running out of rations. At about 7.00 a.m. while Iding and myself were walking out on a road beside a rubber estate we were confronted by security forces and we were captured and then brought over to Labis Police

EXHIBITS

"P14"

Caution
Statement
13th September
1964
(Continued)

Station at about 11.00 a.m. the same day. At about 2.30 p.m. both IDING and myself led security forces to collect our firearms and equipments. I have since checked the firearms a .303 rifle No.3510 and two hand-grenades and 200 rounds of ammo. All were intact.

Read over to the accused who admitted it to be correct.

Q. Do you have anything to add or alter?
A. No.

10

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

Before me,

Sd: Chew Kok Khee.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.16 of 1967

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

FEDERAL COURT CRIMINAL APPEAL No. X9 of 1966

(Muar High Court Emergency Criminal Trial No. 20 of 1964)

B E T W E E N:

THE PUBLIC PROSECUTOR

Appellant

- and -

OIE HEE KOI

Respondent

RECORD OF APPEAL

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