

RECORD

p. 3, 1.4. 2. The Appellant upon arraignment claimed trial upon the charge against him and at no time during his trial or in his appeal to the Federal Court did he raise any point as to the jurisdiction of the Court to try him or claim the status of a prisoner of war.

p. 7, 1.4.
p.13, 1.16.
p. 7, 1.21.
p. 9, 1.25. 3. The prosecution evidence established that the Appellant, when he was captured, was wearing civilian clothes, being clad in a green shirt and trousers (or shorts) and that he was carrying the handgrenade the subject of the charge in his pocket.

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4. The following articles were found upon the Appellant when he was captured.

- p.14, 1.13. 1. Identity card No. 4046066
- 2 & 3. Receipts
- 4. Election paper
- 5. Nationality Certificate No. 005366
- 6. Card - Pendaftar Pemilih Pilihan Raya
- 7. Membership card of Labour Party
- 8. Chinese newspaper cutting
- 9. Driving Licence No. 12/29556
- 10. 2 slips of paper bearing Election Symbol of Socialist Front.

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These documents, although it would seem that they are material to the matters now in issue, were not reproduced in the Record, no point ever having been raised hitherto as to the Appellant's having any status other than that of an ordinary national, citizen and resident of Malaysia.

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It is submitted that the nature of the documents, as it appears from their description, points to the Appellant being a national and citizen of and owing allegiance to Malaysia, but that in any event, the Appellant's possession of such documents indicates that, when the offence was committed, he was resident and domiciled in Malaysia.

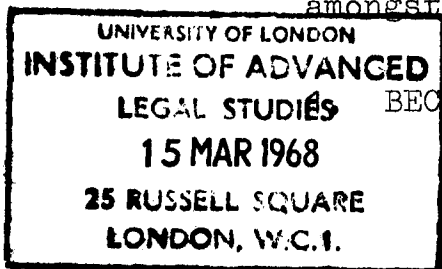
5. The Respondent respectfully submits that this Appeal should be dismissed for the following amongst other further

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R E A S O N S

BECAUSE the Appellant was not a prisoner of

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war within the meaning of the Geneva Conventions Act 1962.

2. BECAUSE the Appellant was a defector to the enemy and as such was not entitled to be treated as a prisoner of war.
3. BECAUSE the Appellant was in breach of his duty of allegiance to His Majesty the Yang di-Pertuan Agong and was accordingly upon a proper construction of the Geneva Conventions Act 1962 and by the law of nations to which such Act gives expression and effect not entitled to the protection of the Act.
4. BECAUSE it was for the Appellant to show that he enjoyed the status and privileges of a prisoner of war and this he did not do.
5. BECAUSE no facts or circumstances were shown to oust the Court's jurisdiction to try the offences charged according to the ordinary processes of law.
6. BECAUSE there was no evidence that if there was either a "declared war" or an "armed conflict" between Malaysia and any other Power, that other Power was a "High Contracting Party" or had accepted and applied the provisions of the Geneva Convention so as to make the Government of Malaysia bound by it and so give the material provisions of the Third Schedule any legislative force.
7. BECAUSE the evidence showed on the contrary that there was not an armed conflict within the meaning of Article 2 of the 3rd Schedule but that the Appellant was merely taking part in a mission of sabotage.
8. BECAUSE the evidence showed that the Appellant was not a person who fell within the definition of a prisoner of war contained in Article 4 of the 3rd Schedule and accordingly neither by the express terms of the Article nor by the law of nations to which it gives expression and effect was he entitled to be treated as such.

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9. BECAUSE if there was any onus upon the prosecution to prove that the Appellant owed allegiance to His Majesty the Yang di-Pertuan Agong, it discharged such onus.
10. BECAUSE if there was any onus upon the prosecution to prove that the Geneva Conventions Act 1962 had no application, it discharged such onus.
11. BECAUSE the judgments of the Federal Court of Malaysia in the cases of Teo Boon Chai alias Tey Ah Sin v. Public Prosecutor and Lee Hoo Boon v. Public Prosecutor, in which it was held upon broadly similar facts that the Geneva Conventions Act was not applicable, were correct for the reasons therein stated. 10
12. BECAUSE the trial Court had jurisdiction and was competent to try the Appellant in the manner in which it did and rightly convicted the Appellant on the charges against him and the Federal Court of Malaysia rightly affirmed the said convictions. 20

MONTAGUE SOLOMON.

Appeal No. 16 of 1967
IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL
ON APPEAL FROM
THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N

LEE FOOK LUM

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

SUPPLEMENTAL
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