

1967/21  
[10]

IN THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL

No. 16 of 1966

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

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FEDERAL COURT CRIMINAL APPEAL NO. 1 of 1965  
(J. Bahru High Court Emergency Criminal Trial  
No. 32 of 1964)

B E T W E E N:

LEE FOOK LUM Appellant  
- and -  
THE PUBLIC PROSECUTOR Respondent

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R E C O R D O F A P P E A L

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

Solicitors for the Appellant

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

Solicitors for the Respondent

CLASS MARK

ACCESSION NUMBER

91331

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

(i)

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

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FEDERAL COURT CRIMINAL APPEAL NO. 1 of 1965  
(J. Bahru High Court Emergency Criminal Trial  
No. 32 of 1964)

B E T W E E N:                      LEE FOOK LUM                      Appellant

10

-      and      -

THE PUBLIC PROSECUTOR                      Respondent

---

R E C O R D      O F      A P P E A L

---

NO. 1  
CHARGE SHEET

In the High  
Court of  
Malaysia

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU  
JOHORE BAHRU EMERGENCY CRIMINAL TRIAL  
No. 32 of 1964

---

No. 1  
Charge Sheet  
20th December  
1964

The Public Prosecutor  
versus  
Lee Fook Lam

---

20

Lee Fook Lam, You are charged at the instance  
of the Public Prosecutor, and the charge against  
you is:-

That you between dawn on 17th August,  
1964 and 9.10 a.m. 18th August, 1964, in the  
Security Area as proclaimed by the Yang Di-  
Pertuan Agong vide Federal Legal Notification  
245 of 17th August, 1964, namely Kampong Parit

In the High Court of Malaya

No. 1

Charge Sheet

20th December 1964

(Contd.)

~~Parit~~ Jawa, in the district of Pontian, in the State of Johore, without lawful excuse, carried ammunition to wit, one hand grenade, without lawful authority, and that you thereby committed an offence punishable under Sub-Section (1) of Section 57 of the Internal Security Act 1960.

Sgd.:

Deputy Public Prosecutor.

Dated at Johore Bahru,

10

this 20th day of December, 1964.

No. 1a  
Notes of Evidence  
2nd January 1965

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU.  
JOHORE BAHRU EMERGENCY CRIMINAL TRIAL No.32 of 1964

Public Prosecutor

Vs.

Lee Fook Lum

In Open Court

Coram: Azmi, J.

This 2nd January, 1965

Notes of Evidence

Hamzah, D.P.P. for P.P.

T.G. Sim for Defence (assigned).

20

Hamzah puts in Consent Under Section 80 (marked Ex.A), and Certificate under Regulation 4 (marked Ex.B)

Following charge read to accused:

"That you between dawn on 17th August, 1964 and 9.10 a.m. 18th August, 1964, in the Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal Legal Notification 245 of 17th August, 1964, namely Kampong Parit Jawa, in the district of Pontian, in the State of Johore, without lawful excuse, carried ammunition to wit, one handgrenade, without lawful authority, and that you

30

thereby committed an offence punishable under Sub-Section (1) of Section 57 of the Internal Security Act 1960."

In the High Court of Malaya

No. 1a

Accused claims trial.

Notes of Evidence

2nd January 1965

Continued

D.P.P.D opens his case and calls:

P.W.1 Terrence Anthony Keane a/s in English:

Prosecution Evidence.

Age 29, Sgt.

No. 2

Ammunition Technician attached to Armed Forces Depot, Johore Bahru.

Terrence Anthony Keane

10th January 1965

10 I have been Ammunition Technician for 11 years.

Examination

On 18.8.64 at about 3 p.m. I was at Pontian Police Stn. I was also there on 17th - called by Police to examine any explosive.

20 On 18.8.64 at 3 p.m. A.S.P.Zainal handed me a handgrenade marked as "Pontian Group 14" and later a detonator also marked "Pontian Group 14". I have kept them since that day. I now produce them (hand grenade marked Ex.P.1 and detonator Ex.P2). It is of Indonesian manufacture. It is a high explosive, fragmentation grenade. The detonator is a type that can be used in Exhibit P.1. The hand grenade is serviceable. It was manufactured in 1963. Sd. Azmi.

XXd. by Sim:

Cross-examination

I am a Class I Ammunition Technician. I did a course for 9 months in 1953, followed by up-grading examination to reach 1st Class standard in 1955.

30 Ex. P.1 was handed first and later on same day P.2 was handed. P.1 was handed at 3 p.m. but P.2 within some hours later at same place. I left Pontian Police Stn. at about 9 p.m.

When I first received Ex. P.1 I removed the base plug - a normal safety precaution. I inspected the working parts of the grenade to ensure that it would function. I found that the

In the High Court of Malaya

Prosecution Evidence

No. 2

Terence Anthony Keane

10th January 1965

Cross-examination (contd.)

grenade with a detonator would function.

At bottom of P.1 were letters "S/M". S/M mean Senjata/Mesuri, meaning Arms/Ammunition. These are the usual markings of Indonesian handgrenades. I have seen these Indonesian hand grenades previously in their original packing.

Ex. P.1 was only hand grenade I was handed at that time on 18.8.64, but during course of that day I was handed over about 20 handgrenades in groups of one or two or three. Each time only a group. All the handgrenades are almost identical - with same markings.

10

That day I received more detonators than handgrenades. One detonator only to be used for one handgrenade.

All the detonators I saw that day could be used for any of the grenades shown to me.

The detonator is also Indonesian.

Sd. Azmi.

Re-examination

Re-xd. by D.P.P:

20

I was handed 20 handgrenades and I purposely marked them. No question that they got mixed up. Sd. Azmi

No. 3

Zainal Abidin b.. Hj.Ma'sod

10th January 1965

Examination

P.W.2 Zainal Abidin b. Hj. Ma'sod a/s in English:

A.S.P. Now O.C.P.D.Kulai.

In August last year I was Deputy O.C.C.I. for State of Johore.

On 18.8.64 I was attached to Pontian Police Stn. I was sent there as Investigating Officer into Indonesian Infiltrators.

30

The first landing took place on morning of 17.8.64.

The Security Forces there were engaged in mopping operations. There was shooting in the area.

On 18.8.64 Insp. Ja'afar, Asst. O.C.P.D. Pontian, handed me one handgrenade with a detonator. The detonator had been removed from the handgrenade. I marked the handgrenade "Group 14" and also the detonator.

10 Insp. Ja'afar also handed me \$104/- in cash. Here they are: 10 \$10/- notes and 4 \$1/- notes (marked as Ex. P.3). He also handed me other articles. These are subject matter of Pontian Report No. 641/64.

I was handed the handgrenade and detonator more or less at the same time. I handed the handgrenade to P.W.1 and I subsequently handed to P.W.1 the detonator. (Identified Ex. P.1 and P.2). P.W.1 kept them in his custody.

Sd. Azmi.

20 XXd. by Sim: I cannot remember if P.W.1 took both P.1 and P.2 at same time.

This genade and other exhibits were all laid out on the floor.

That day I only handed Ex. P.1 and P.2 to P.W.1. There were other handgrenades I handed to P.W.1 that day.

30 (Witness referred to his diary). Altogether I handed about 31 handgrenades to him and same number of detonators. That happened on 18th. I handed the handgrenades by pointing them to him as they lay on the floor together with other things in same group. P.W.1 took possession of them at different times.

Ex. P.1 is same one I handed to him. It was marked by tying a card to it and on the envelope is written "Group 14". The handgrenade was in the envelope. I think both handgrenade and detonator were given at same time.

Some of the other handgrenades were also

In the High Court of Malaya

Prosecution Evidence

No. 3

Zainal Abidin b. Hj.Ma'sod

10th January 1965

Examination (contd.)

Cross-examination

In the High Court of Malaya

Prosecution Evidence

No. 3

Zainal Abidin b. Hj.Ma'sod

10th January 1965

Cross-examination (contd.)

placed in envelopes and some had tags tied on them - tags showing the identification marks.

I cannot remember now if in each case the detonator was in the envelope with the hand-grenade.

Insp. Ja'afar handed me the detonator in the envelope but handgrenade outside. I put the handgrenade into the envelope. I did not seal the envelope.

Ex. P.1 and P.2 were about one hour in my possession before I handed them to P.W. 1. When I received them they were not marked. I did the marking.

10

I received them at about 11.15 a.m. on 18.8.64. I marked them immediately after receiving and placed them on the floor.

Sd. Azmi.

Re-examination

Re-xd. by D.P.P: The things were grouped on the floor as belonging to each report. Exhibits P.1 and P.2 were in respect of Report 641/64. The Inspector brought all things in respect of each report. I laid them out on the floor and with necessary markings.

20

Sd. Azmi.

No. 4

Marjunid b.Hj. Abdul Karim

10th January 1965

Examination

P.W.3 Marjunid b. Hj. Abdul Karim a/s in Malay:

Age 58. Kampong worker.

Living at Lot 181, Kampong Parit Jawa, Pontian.

I have a younger brother named Mardikut b. Hj. Abdul Karim and a friend named Mohd. Noh b. Hj. Abu Bakar (identified both).

30

I remember seeing Accd. on Tuesday at about 8 in the morning. I cannot remember the date but it was about 4 months ago. I was at same time together with my brother Mardikut and Mohd. Noh.

My brother and I were working on grounds of the Parit Jawa Mosque.

About that time Accused came. He was alone. He asked us where Police Stn. was. He was wearing green shirt and trousers. The lower half of his trousers were wet.

10 I took him straightway to the Police Stn. at Pontian. All of us went to the Police Stn. Accused rode on carrier of Mardikut's bicycle. At Police Stn. I handed over Accd. to Insp. Ja'afar. A handgrenade was also handed to the Police by Mohd. Noh. It was similar to Ex.P.1.

He got it from Accused. We handed Accused to this Insp. (identified Insp. Ja'afar).

Mohd. Noh handed the handgrenade to same Inspector.

Sd. Azmi.

Xcd. by Sim: Mohd. Noh handed a handgrenade to Insp. Ja'afar.

20 In Parit Jawa Mohd. Noh asked if Accd. had anything on him. He then gave the handgrenade to Mohd. Noh. Accd. was carrying it in his trousers' pocket. He also gave his identity card because Noh asked for it. I cannot say out of which pocket Accd. took handgrenade. Accd. himself put his hand into his trousers pocket and took it out and handed it to Mohd. Noh.

30 Accd. did not tell me why he wanted to go to Police Stn. None of us asked him why he wanted to go to Police Stn.

At thzt time we thought he was a Communist. At that time there was a rumour of Indonesians coming to this country. So we all thought Accd. must be one of them.

Accd. was talking to us in a gentle way. We conversed with Accd. in Malay.

He said he wanted to go to Police Stn. and asked where Police Stn. was.

In the High Court of Malaya

Prosecution Evidence

No. 4

Marjunid b.Hj. Abdul Karim

10th January 1965

Examination (contd.)

Cross-examination

In the High  
Court of  
Malaya

Prosecution  
Evidence

No. 4

Marjunid b.Hj.  
Abdul Karim

10th January  
1965

Cross-  
examination  
(contd.)

Re-  
examination

Further  
Cross-  
examination

I was sitting down rolling my cigarettes when Accd. came from behind to my side.

Q: Did Accd. tell you he wanted to surrender?

A: He did not tell us he wanted to surrender.

I thought he wanted to surrender and that was why he asked for Police Stn.

At time Accused came to me, my brother was sitting about 7 yards away from me. Both of us were resting from work.

When Accused asked about Police Stn. I stood up and my brother also stood up and came to us. Mohd. Noh arrived whilst I was talking to Accd.

Mohd. Noh did not do anything to Accused. I did not either.

Sd. Azmi.

Re-exd. by D.P.P: Besides rumour of Indonesian landing I heard shooting coming from direction of Pontian Kechil. Parit Jawa is about 4 miles from Pontian Kechil.

Sd. Azmi.

Xxd. by Sim (with Court's leave): After Mohd. Noh took the handgrenade from Accused, he held it in his hand. I don't know in which hand he held it as he was riding on his bicycle. I was riding in front of him.

Sd. Azmi.

Re-examination: Nil.

Sd. Azmi.

Adjd. to 9.30 a.m. tomorrow.

Sd. Azmi

10

20

30

11th January, 1965

Counsel as before.

In the High  
Court of  
Malaya

D.P.P. calls:

Prosecution  
Evidence

P.W.4 Mohamed Noh bin Haji Abu Bakar a/s in Malay:

No. 5

Age 31. Rubber tapper. Living at Kg.  
Parit Jawa Pontian.

Mohamed Noh  
bin Haji Abu  
Bakar

11th January  
1965

Examination

10 I have friends named Marjunid and Mardikut  
- Marjunid is P.W.3, Mardikut is P.W.3's brother.

I have seen Accused before. First time I  
saw him was on a Tuesday, about 8 a.m. about  
4 months ago. I was, just before that, in my  
house about 20 yards from the Pontian Mosque.  
Then I came out of my house and saw P.W.3 and  
his brother with a Chinese. That Chinese was  
sitting on the carrier of Mardikut's bicycle.  
The Chinese was Accd.

20 I got my bicycle and followed behind. We  
were all going to Pontian Police Stn. At  
Police Stn. I saw Insp. Ja'afar.

Whilst on the way to Police Stn. accused  
showed me a handgrenade. It looks like Ex.P.1.

30 Accused produced the handgrenade out of his  
right trousers pocket and showed it to me.  
Whilst we were riding Accd. showed me the hand-  
grenade and handed it to me. I kept it in my  
hand until I got to Pontian Police Stn. At the  
Police Stn. I saw Inspector Ja'afar and handed  
the handgrenade to the Inspector.

P.W.3 handed over Accd. to Insp. Ja'afar.

On night previous to morning of the above  
incident, there was nothing unusual happening.  
I suspected Accd. to be a Communist. He  
appeared to be unusual - wet trousers.

Sd. Azmi.

In the High  
Court of  
Malaya

Prosecution  
Evidence

No. 5

Mohamed Noh  
bin Haji Abu  
Bakar

11th January  
1965

Cross-  
examination

Xcd. by Sim: The first time I saw them was when the three of them were on bicycles on way to Police Stn. and Accused was sitting on Mardikut's bicycle-carrier. I was then outside my house and about 10 yards to them. I took my bicycle and followed from behind because Mardikut told me he suspected that Accused came from Indonesia.

I followed them in the first place because I was curious, and that was because Accused was of a different nationality. As we were riding we were about 3 yards apart from each other. Mardikut was in front. I was second and about 1½ yards behind.

10

On the way Accused handed the handgrenade to me.

After 10 minutes riding I caught up with them and came close to Mardikut. Before that the chain of my bicycle came off and I had to stop to put it back. That was why I took 10 minutes to catch up with Mardikut. Then Accused handed me the handgrenade. I was then riding abreast. I took it with my right hand. Mardikut was close to the side and I was on his left-hand side. We were all riding on the right hand side of the road.

20

(Witness demonstrates he and Mardikut proceeding neck to neck on right hand side of road when Accused handed Witness the handgrenade)

When Accd. handed me the handgrenade I knew it was a handgrenade. I never saw it before. Accused told me it was a handgrenade. The handgrenade was not in a wrapping when he handed to me. He also handed an identity card at about same time. Nothing else.

30

I held handgrenade in my right hand. I felt afraid whilst I was holding. It might explode.

Q: Why didn't you throw it away?

A: It would be wrong to do that.

I was holding the handgrenade for about an hour whilst cycling.

40

At Police Stn. I handed the handgrenade and Identity Card to Insp. Ja'afar.

I did not stop riding for purpose of searching Accused after he handed me the handgrenade.

Having regard to Mardikut's position whilst riding his bicycle perhaps he could not see, but P.W.3 should have seen Accused hand me the grenade. I did not at any time search Accused.

In the High Court of Malaya

Prosecution Evidence

No. 5

Mohamed Noh bin Haji Abu Bakar

11th January 1965

Cross-examination (contd.)

10

Q: Did you say to the Inspector who took your statement: "The male Chinese handed me the handgrenade. I then examined his body and found he had no arms."?

A: I did not say that I examined Accused's body. I never examined Accused's body. If the Inspector said I did say so, then he was wrong.

20

Q: Do you remember telling the Police that, "At about 8.15 a.m. on same morning I saw Marjunid holding the right hand of a male Chinese."?

A: I did not say that. I told Police I did not see it, when asked if Marjunid held Accused's hand.

I did not say:-

"Mardikut rushed up and held the left hand of the male Chinese."

I did not say, "I rushed at them".

30

Q: The handing over of the handgrenade took place before you all started riding your bicycles?

A: No.

Sd. Azmi.

At this stage Mr. Sim said Accused would like to speak with him, and asked for adjournment.

Sd. Azmi.

Short adjournment.

In the High  
Court of  
Malaya

Prosecution  
Evidence

No. 5

Mohamed Noh  
Bin Haji Abu  
Bakar

11th January  
1965

Re-  
examination

P.W.4 Mohd. Noh b. Hj. Abu Bakar.

Re-xd. by D.P.P: I went to school for 2 years  
and stopped because of the war.

I think I made a statement to the Police the  
day after I handed the handgrenade to Police.

I cannot remember all I said to the Police.

The distance from Parit Jawa to Pontian  
Kechil Police Station is about 4 miles by  
kampong road and then main road. It would take  
about an hour to cycle the distance.

Sd. Azmi.

10

No. 6

Ja'afar bin  
S.M. Dom

11th January  
1965

Examination

P.W.5 Inspector Ja'afar b. S.M. Dom a/s in  
English.

Police Inspector. Stationed at Pontian.  
I have been Asst. Officer Commanding Police  
District of Pontian since 12.10.63.

On 17.8.64 we received information of  
landing of Indonesian infiltrators during the  
early hours. Later this was confirmed by  
our personal knowledge. As result of the  
landing security forces in Pontian were rein-  
forced. There was shooting during the night.

20

H.M. the Yang di-Pertuan Agong declared the  
area as a security area for purpose of Internal  
Security Act.

I have seen Accused. I saw him on 18.8.1964  
at about 9.10 a.m. at the Pontian Police Stn.  
He was brought to me by three Malays, i.e. P.W.3  
and P.W.4 and another named Mardikut (identified  
Mardikut bin Hj. Abdul Karim).

30

P.W.4 handed a handgrenade to me. I looked  
at it.

I immediately took off its detonator - usual  
safety precaution. The detonator was inside

the handgrenade. I scratched letter "J" on the handgrenade.

(Shown Exhibit P.1 - witness pointed out the marking he made).

This is handgrenade handed to me by P.W.4. I kept it with me until I made a report at the Police Station. My report was No. 641/64.

(Shown a document and marked Ex. P.4). This is copy of my report.

In the High Court in Malaya

Prosecution Evidence

No. 6

Ja'afar bin S.M. Dom

11th January 1965

Examination (contd.)

10 After lodging report I handed the hand-grenade and detonator to P.W.2 and also other things I got from Accused's possession, including cash of \$104/-. That was at 11.15 a.m. on 18.8.64. P.W.2 after he got the things marked them with words "Group 14".

When Accused was handed to me, he was wearing jungle green shirt and shorts. It could be he was wearing trousers. I cannot remember clearly now.

20 When I showed the handgrenade and things to P.W.2, Accused was also shown to him. Then I handed Accused to a Special Branch officer for necessary action.

On same day a caution statement was taken from Accused by Prob. Inspector Yean.

On 22.8.64 Accused was taken before the Magistrate's Court at Pontian and a charge was read to him. He was subsequently remanded in custody.

Sd. Azmi.

30 Xxd. by Sin: Accused was sent to Special Branch for interrogation. I don't know how long Accd. was with the Special Branch. Accused was kept in the Pontian Police Station lock-up after interrogation. I did not see him again until 22.8.64 when he was taken to Pontian Court.

Cross-examination

I was not present the whole time when Accd. was giving his statement to Prob. Insp. Yean. By that I mean I saw them for a while but I did

In the High  
Court in  
Malaya

Prosecution  
Evidence

No. 6

Ja'afar  
S.M. Dom

11th January  
1965

Cross-  
Examination  
(contd.)

not take part in the recording. There were several officers taking statements about same time in the room. I walked in and looked over.

I saw Insp. Yean alone with Accused when he was taking Accused's statement.

I did not know if a caution was administered to Accused by Insp. Yean or not.

I put the detonator and documents in an envelope and handed them to P.W.2, and also the handgrenade. It was wrapped up. 10

I put the other things found on Accused in same envelope, i.e.

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. 20
10. 2 slips of paper bearing Election Symbol of Socialist Front.

I put these all in that envelope containing Ex.P.2.

On 18.8.64 I handed several handgrenades to P.W.2 in reference to other persons. But I did this a group at a time. There are other types of handgrenades too. I cannot remember if there are other similar handgrenades to Ex.P.1. There could be.

I made different markings on the handgrenades. 30

After I took off the detonator from the handgrenade I kept them for about 1½ hours before

I handed them to P.W.2.

There were other handgrenades. They are kept separately.

The O.C.P.D. was in charge of the area.

10 There were surrenders of Indonesian infiltrators. There was inducement of them to surrender by means of voice aircraft and dropping of leaflets, urging them to surrender. There were surrenders as a result of this appeal. Quite a number of surrenders.

The appeal to surrender by leaflets and voice aircraft was started about 10 days after 17.8.64. No appeal to surrender was made on 17th, 18th or 19th August.

I am not aware of any other methods used to appeal to the infiltrators to surrender.

I knew of these appeals to surrender in my own capacity as Asst. O.C.P.D.

20 There is no difference in treatment and facilities for those who surrendered and those who were captured.

The landing on 17th was first landing of the infiltrators.

I am not aware of instructions to effect that any surrender after the appeal would not be prosecuted.

I have been in Police Force for 13 years.

I do not know about rewards given to informers. That part is handled by Headquarters.

Sd. Azmi.

30 No re-exn.

Sd. Azmi.

In the High Court in Malaya

Prosecution Evidence

No. 6

Ja'afar S. M. Dom

11th January 1965

Cross-examination (contd.)

In the High  
Court in  
Malaya

Prosecution  
Evidence

No. 7

Yean Yok Khin  
11th January  
1965

Examination

P.W.6. Yean Yok Khin a/s in English:

Probationary Inspector attached to C.I.D.  
Police Headquarters, J. Bahru.

I underwent a course of instructions at  
Police Depot.

I have been a Probationary Insp. now for  
2 years 7 months. I joined the Police Force as  
Prob. Inspector. I passed all my examinations  
and if all things go as they should I should be  
confirmed as Inspector in June, 1965.

10

On 18.8.64 I was attached to C.I.D.Hqrs.  
in Johore Bahru and I was sent to Pontian Police  
Stn. to help with criminal investigations.

I helped to investigate Pontian Report No.  
641/64. I recorded a caution statement from a  
male Chinese named Lee Fook Lam, i.e. Accused in  
dock. I took Accused's statement in a room in  
the Pontian Police Stn. In that there were  
also other officers doing other work, i.e.  
taking statements from witnesses, sorting out  
exhibits, because space was rather acute at the  
Police Station then.

20

I gave Accused a chair and he sat in front of  
me at a table. I found he spoke in Cantonese and  
I spoke that dialect. Therefore no interpreter  
was necessary. I made sure he understood my  
Cantonese and I understood his. Then I adminis-  
tered the caution. I had a copy of the English  
version of the caution. I interpreted that in  
Cantonese to Accused. I produce a sample of  
the caution. (Read out and caution marked Ex.P.5)

30

I asked him if he understood what I read to  
him. He said, "Yes." He chose to answer to  
my questions.

Before I took the statement I did not use any  
inducement. I did not use any threat on him. I  
did not promise him anything if he should make a  
statement.

I was satisfied that he was going to give  
the statement voluntarily. After I have decided

40

to take his statement I went and looked for Accused in the lock-up.

I got him out of the lock-up and went to the room where I took the statement. He appeared to be normal.

Sd. Azmi.

At this stage Mr. Sim indicates that he is going to object to the admission of Accused's statement.

Sd. Azmi.

In the High Court of Malaya

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Examination (contd.)

Cross-examination

10

Xcd. by Sim:

No other person was present assisting me when I was taking the statement from Accused.

I had taken caution statements before. The only other person in previous cases who might be present assisting me would be an interpreter.

Cantonese is my mother dialect. I did not find any difficulty in understanding Accused's Cantonese.

20

Accused and I apparently came from same town in Malaya, i.e. Taiping.

Sd. Azmi.

Sim indicates he would be some time with his cross-examination and might require assistance of Court's Chinese Interpreter to test P.W.6's knowledge of Cantonese, etc.

Adjd. to 9.30 a.m. tomorrow.

Sd. Azmi.

In the High Court in Malaya

12th January, 1965

Counsel as before.

Prosecution Evidence

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Yean Yok Khi

12th January 1965

Further examination in chief

Sim: After taking further instructions I now do not wish to object to the admission of the caution statement.

Sd. Azmi.

P.W.6 Yean Yoke Khin (on former affirmation) states:

Xd. by D.P.P.: After I have satisfied myself that the Accused wanted to give a voluntary statement I proceeded to record it. This is the statement (produced and marked Ex. P.6) (Witness reads out the statement).

10

The statement was taken in my own handwriting.

In the course of interrogation Accused identified the handgrenade marked "Group 14", i.e. Ex. P.1.

I read back the caution statement. I was satisfied that Accused understood the statement he made. When asked Accused did not wish to make any correction or alteration.

20

Sd. Azmi.

Cross-examination

Xxd. by Sim: Accused appeared very willing to co-operate with the Police.

I cannot say if he had shown any sign of repentance.

I was with Accused for about an hour and a quarter.

My own impression was that Accused showed repentance. He seemed to give the impression that he wished he had not done all these things.

30

Q: When the Accused said to you, "I had wanted to look for food and surrender myself", did he give you the impression he was sincere about the surrender?

A: I formed the impression that he was sincere

when he said that.

Accused said in the statement that he had arms and ammunition which he had thrown away. He said he had a handgrenade which he had in his right hand trousers pocket.

I did not ask him why he did not throw that grenade. He told me he had a handgrenade. He spoke to me in Cantonese. I cannot remember his exact words in Cantonese.

10 I could not have made any mistake in reference to any part of the statement. I did not find any difficulty at all.

Q: You asked him if he could identify the handgrenade?

A: He said, Yes.

Q: What do you mean by "your handgrenade"?

A: I meant the particular handgrenade he mentioned to me he was carrying.

20 Q: There were other handgrenades in the Police Station at that time?

A: There were many but I cannot say exact number.

Q: Did Accd. say as he pointed to the handgrenade to you that that was his handgrenade which he had in his possession but had thrown away?

A: No.

Q: Did you ask him what he intended to do with the handgrenade?

A: No, I did not.

30 It is not possible I asked a question and Accused gave an answer and I failed to record them.

I also took statements from other witnesses.

In the High  
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Cypss-  
examination  
(contd.)

In the High Court in Malaya

I took a statement from Mohd. Noh b. Hj.. Abu Bakar. This is the statement (produced and marked Ex. D.7).

Prosecution Evidence

(Witness reads out the statement).

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(I ask witness to number the paragraphs in the statement for ease of reference. He did so).

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Paragraph II, III, and IV. give me the impression that when Accd. handed the handgrenade to one of the Malays, they had not yet left on their bicycles.

10

Cross-examination (contd.)

I took the statement exactly as Mohd. Noh gave it to me.

Sd. Azmi.

Re-examination

Re-xd. by D.P.P.: Cantonese is my mother tongue. I was born and brought up in Taiping in State of Perak, amongst the Taiping Cantonese community.

Trong is a village near Taiping - 15 to 20 miles away. In Trong Hokkien dialect was prevalent.

20

Though there were other handgrenades, Accused pointed to Ex. P.1 to me.

Sd. Azmi.

Examination by Court

To Court: I speak Malay. I passed Std. II Malay Govt. Examination. Std. III is the highest standard. If one passed Std. III, he is supposed to know all one should know about the Malay language.

Sd. Azmi.

(At Mr. Sim's request).

30

Q: Did you take any Cantonese examination?

A: No. No need to take that examination in the Police Service.

Sd. Azmi.

D.P.P.: I close my case. I make my witness, whom I am not calling, i.e. Mardikut b. Hj. Abd. Karim, available to the defence.

Sd. Azmi.

Sim: I wish to call that witness for defence.

Sd. Azmi

Mr. Sim asks that the Court would allow him to recall P.W. 3 and P.W.4

In the High Court in Malaya

Prosecution evidence

12th January 1965

10 P.W.3 Marjunid b. Hj. Abd. Karim (on former affirmation):

XXd. by Sim: For taking Accused to Police Stn. I received a reward from Mentri Besar, Johore. He handed me \$500/- cash for myself. Mohd. Noh also received another \$500/-. My brother also received \$500/-. So all 3 of us received \$1,500/.

Sd. Azmi.

20 Re-xd. by D.P.P.: I received the gift from M.B. Johore about 10 days after the incident. When I took Accused to the Police Stn., Pontian, I did not at that time expect to receive any reward. The reward came as a very pleasant surprise.

Sd. Azmi.

Mr. Sim now says: I do not wish to recall P.W.4.

Sd. Azmi.

30 Sim: I submit prosecution has not made out a prima facie case. It has not proved conclusively the handgrenade, Ex. P.1, was actually the one in possession of Accused. Because, when the first landing took place, the Police had recovered similar handgrenades.

From evidence of A.S.P. Zainal and Insp.

Defence Evidence

No. 8

Marjunid b. H. Abd. Karim

(recalled)

12th January 1965

Cross-examination

Re-examination

No. 9

Defence submission of no prima facie case.

12th January 1965

In the High  
Court in  
Malaya

Defence  
Evidence

No. 9

Defence sub-  
mission of no  
prima facie  
case

12th January  
1965

(Contd.)

Ja'afar all handgrenades were placed in a room and therefore possibility of handgrenades getting mixed.

Discrepancy of A.S.P. Zainal and Keane - evidence as to handgrenade and detonator. A.S.P. Zainal said both were handed at same time, but Keane said after he had received the handgrenade he had to ask for the detonator. No mention of envelope by Keane.

In process of handling all handgrenades wrong handgrenades might be produced and if that happened, prosecution has failed because essential it must prove that P.1 was same handgrenade alleged to have been handed by Accused to P.W.4.

10

Secondly:

Evidence of Mohd. Noh, P.W.4 - he gave two different versions, i.e. to Police and to Court, i.e. how handgrenade was handed to him.

I suggest it would be fantastic for Mohd. Noh to be holding the handgrenade in his hand all the way to Pontian Police Stn.

20

His story does not tally with P.W.3's.

P.W.3 - his evidence about holding hands - different from his statement to Police Stn. The difference is as follows:-

In Statement he said, "I then went up to him and held his right hand with both my hands." In his evidence in Court he did not say anything about that. (Mr. Sim admits witness was never asked about it.)

30

Insp. Yean (P.W.6) - I suggest P.W.6 might make a mistake in reference to Accused's admission of having a handgrenade.

Mohd. Noh, P.W.4, denied making certain statements to Inspector. So if Mohd. Noh is right, Inspector is lying.

I say Prosecution has not made out its case.

Sd. Azmi.

I hold there is a case to answer. Sd.Azmi.

13th January, 1965

11.30 a.m.

Counsel as before.

Sim: I submit prosecution has failed to prove its case beyond reasonable doubt.

Grave doubts that accused had in his possession the handgrenade at the time of the surrender.

10 P.W.3's story - how accused gave handgrenade to P.W.4. Different from P.W.4's evidence as to place of handing over the handgrenade.

P.W.3's evidence different from his statement to Police:

Evidence - "Accused came and said he wanted to surrender", whereas in the statement different from that. The difference is that in the statement accused volunteered to go to Police Stn., but in his evidence accused was asked if he wanted to go to Police Stn.

20 P.W.4 - evidence of how accused handed the handgrenade to him most fantastic. His evidence is different from what he said in the Police statement. I ask Court to disregard P.W.4's evidence.

30 Insp. Yean - P.W. 6. Possibly he has made a mistake in the statement about accused admitting possession of handgrenade. Accused's explanation in the witness box was that he was asked by Insp. Yean if the handgrenades he had would be similar to any of those at the Police Stn., so he pointed to one of them as one similar to the one he had.

Accused generally intended to surrender and after surrender volunteered to go to the place where he hid his weapons. Purpose to help the Police. He went to the Police as soon as he could get away from his companions. His main purpose was to surrender and he handed to the Malays all he had. I submit accused is not guilty.

In the High Court in Malaya

Defence Evidence

No.10

Notes of addresses by Counsel

13th January 1965

In the High Court in Malaya

Defence Evidence

No.10

Notes of address by Counsel

13th January 1965

(Contd.)

Second limb of my defence: If Court believes that accused had in his possession the hand-grenade at the time of surrender to the 3 Malays I would submit that he had lawful excuse.

Refer Sec. 57(1) of Internal Security Act.

Accused's "lawful excuse". He wanted to surrender and hand over whatever he had to authorities.

Assuming he had the handgrenade at the time of the surrender to the Malays I submit he had lawful excuse.

10

Refer to Wong Fook Yin v. B.P. (1954) M.L.J. 189 at p.190, right hand column, passage beginning with, "Their Lordships doubt if it is possible" right to the end of the judgment.

The fact that accused wanted to surrender makes possession legal from otherwise illegal possession.

Provision of Regulation 4 (1) (a) of the old Emergency Regulations similar to Section 57 (1) of the Internal Security Act.

20

I submit that the facts in Wong Fook Yin's case similar to present case, i.e.

(1) Both were alleged to have taken arms against the Govt.

(2) Both intended to surrender.

Overt acts to further intention to surrender.

(3) In Wong Fook Yin's case, accused went to Temiars and surrendered to them, and in this case the accused surrendered to 3 kampong men.

30

I submit accused should be acquitted on this ground.

Sd. Azmi.

D.P.P: This case should be dealt with on its merits. I say accused had no intention to surrender.

Sd. Azmi

Adjourned to 9.30 a.m. tomorrow

14th January, 1965

Counsel as before.

In the High  
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Notes of  
addresses by  
Counsel

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(Contd.)

10 D.P.P. continues: I submit the case of Wong Pooch Yin does not either in law or in fact fall fairly and squarely with the present case. In that case it was tried by a Judge sitting with assessors. The case went to the Court of Appeal on the ground that the Judge in his summing-up to Assessors took away from consideration of assessors the question whether Accused had lawful excuse or not.

Court of Appeal supported Judge's view and Accused appealed to the Privy Council.

20 The Privy Council held that the Trial Judge should have left to the Assessors the question whether there was lawful excuse or not, having held that in proving a "lawful excuse" it is the excuse or exculpatory reason put forward by the accused, rather than the carrying, possession or control of the firearm, ammunition or explosive, that must be shown to be lawful.

In Wong Pooch Yin's case, the accused admitted he was in possession of the revolver and explained that he had the revolver because he wanted to surrender himself with it. In the present case the accused denied he ever had the handgrenade.

30 I agree, however, on the facts that from about 8 a.m. that morning the accused in the present case intended to surrender. He did so because he was hungry and frightened. I submit he never had the intention to surrender at the time when he landed.

You will remember that the charge is possession from about dawn until time of surrender to the Malays.

40 I also wish to refer to Section 57 (3) of the Internal Security Act, which now defines the meaning of "lawful excuse". This would overrule the decision of the Privy Council.

In the High  
Court in  
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Notes of  
addresses  
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(Contd.)

I found from my volume of the old Emergency Regulations that Regulation 4(2A) - an amendment made to the Emergency Regulations, 1951 - was made in 1955 subsequent to the judgment of the Privy Council in Wong Pooch Yin's case.<sup>7</sup>

I submit that the Court should find Accused guilty.

Sd. Azmi.

I give my judgment (taken down by my Secretary) and find the Accused guilty.

10

Sd. Azmi.

Sim: The punishment in this case is death and no alternative, but I ask Court to place the following facts to the authority so that the authority may reduce the sentence to something less than death:-

- (a) Accused's story was that he was tricked into the Indonesian gang.
- (b) On first opportunity he went to two or three Malays to surrender.
- (c) He was repentant.

20

The purpose of law is to punish those who do harm against the country.

I ask Court to recommend so that sentence of death will not be carried out.

Sd. Azmi.

Accused Lee Fook Lum a/s in Cantonese:

I am 24 years of age.

I live in Trong New Village, Perak, formerly. Rubber tapper.

In May last year a friend invited me for a swim at Pantai in Dindings. I went. I swam until 5 p.m.

10 There 15 or 16 of us altogether. Out of them, 3 including myself came from Trong. We were all Chinese. At about 5 p.m. when we finished swimming, a fishing boat arrived.

20 I don't know who owned the boat - known to people there but not to me. We went aboard the boat. When were aboard we were told by Chan Sam Yew, who invited me to swim, we were returning to Taiping. He was the Chairman of the Socialist Front in Taiping. I was also a member of the Socialist Front of Trong Branch. I was once the Treasurer in the Trong Branch. We were taken finally to an island - strange island to me - the following night. I was sick during the voyage.

On the island we were confined in a building guarded by an armed man. I was on the island for a little more than two months. All those at the picnic in Pantai were taken to the island. After staying on the island for 2 days, some of us were taken away in a boat. I was not in that party.

30 Whilst on the island I was taught how to shoot with a rifle. I was given 5 rounds of ammunition a week. I could not understand why I was taken to the island. I wished to return to Malaya. I thought of attempting to escape but I had no opportunity because of the guards. I was only taught to shoot but no drilling or physical exercises.

40 On 16.8.64 the Indonesians who were there told us we could go back by boat. At daybreak on 16.8.64 I and about 18 others, among whom were 10 Indonesians and 8 other Chinese, arrived

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12th January  
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Examination  
(contd.)

in Malaya.

I was issued at time when boat left the island with a rifle and some ammunition and three handgrenades. We were not told what our mission was.

I was happy to come back and see my family.

I was happy that on arrival at Pontian I could inform the authorities here of the landing.

I tried to make an attempt. On arrival I threw away my things and ran away into the jungle. I threw away my rifle, ammunition and 3 handgrenades. I ran looking for a Police Station. I ran here and there but could not find a Police Stn.

10

On landing I started running away and later I met 4 of my companions. After meeting them I could not leave them because they did not wish to surrender. Later, when the 4 and myself reached a rubber plantation, they told me not to run any further. All of them sat on the ground among the rubber trees. We sat until 8 p.m. We slept there. I slept till 12 midnight when I got up. I saw the others still sleeping. Then I ran away from them. I walked away from them for about an hour. Then I rested. I slept on the ground. When I got up it was already daybreak. After getting up I looked for any man. My purpose was to surrender myself. Later on I came to a clearing and a building that looked like a mosque. I went closer and I saw 3 Malays sitting outside at the mosque - 2 on one side and one on other side.

20

30

I asked one of them to take me to the Police in order to surrender. This Malay then pushed his bicycle and asked me to sit on the carrier. I can recognise that man again. (Identifies Mardikut b. Hj.Abdul Karim). This man took me on his bicycle.

I remember P.W. 4 giving his evidence that I handed him a handgrenade. When I approached the 3 Malays all I had was \$100/- and wallet. I did not have a handgrenade.

40

The Malay who took me stopped at a spot about 30 yards from Police Stn. He parked his bicycle. I went alone into the Police Stn. I first saw a Chinese and he asked for my name and address and purpose of my visit. I told him I wished to surrender. So I was detained.

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Examination  
(contd.)

I did not see any of the 3 Malays in the Police Station. I did not see any of them hand the handgrenade to the Police.

10

I told the Police I had thrown away my rifle and ammunition and handgrenade on beach. So some soldiers took me to the beach but no rifle or ammunition was recovered. That was after the Chinese with the spectacles took a statement from me. At 8 p.m. that day P.W.6 took my statement. In that statement he said I admitted I had a handgrenade. That is not true. P.W.6 produced 1 Chinese made handgrenade and the yellow marked handgrenade I had at the time of landing. He asked me what type of handgrenade I had brought with me. I told him I was given the type with yellow marking.

20

I never told the Police Inspector that that particular handgrenade was the one I had.

Sd. Azmi.

To Court: I don't know why the Police Inspector wanted to lie.

Sd. Azmi.

30

By Sim: Q: Is it possible he might have misunderstood your explanation?

A: Quite possible.

I told him the handgrenades I had brought with me were of same type as Ex. P.1.

I handed my wallet and \$100/- to P.W.4. Those were all I had. I would have handed if I had anything else.

If I had a handgrenade at that time I would have handed it to the 3 Malays.

Sd. Azmi.

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Cross-  
examination

XXd. by D.P.P.: I was born in 1941 in Trong of Cantonese family. I was born and brought up in Trong. I received 3 years education in Kroh. I did 3½ years in Sui Sin Chinese School. I am not sure if I left school either end of 1953 or 1954. It could be end of 1954.

I was a rubber tapper. I earned about \$2.70 or \$2.80 a day.

I can drive a car. I drove my friend's car - never been employed as a driver. 10

As a Treasurer of the Trong Socialist Branch, my duty was only to collect subscriptions and issue receipts.

I went to a picnic with 15 others. I don't know if they were all members of Socialist Front.

That picnic at Pantai was arranged, and not impromptu.

That picnic was just over month before the General Elections. 20

Q: Did you believe you were going back to Taiping by boat?

A: I believed it then.

We were told we were going to Port Weld which was near Taiping.

Q: You were therefore abducted and taken to the strange island?

A: Yes. That is true.

I took with me about \$100/- to the picnic at Pantai. That is my family's money. I was keeping my family's money. I was the eldest then - my elder brother having gone away. 30

On the island I was taught to shoot and only once had to use a handgrenade. I threw one and it exploded on the island.

I was issued with a uniform on day we left.

On the island I was wearing my own and other civilian dresses supplied to me.

Some of those in boat with me were issued with uniform and some not.

10 I first learned that it was an offence punishable with death to have ammunition when my case was mentioned in the lower Court here in Johore Bahru - downstairs. That was more than 2 weeks after 18.8.64. Therefore at time I gave the statement to Police I had no idea of that offence previously.

Now I am concerned with the outcome of this case. Not true I was so concerned as to invent story.

I spoke the truth today. P.W.3 and P.W.4 were lying about my possession of a handgrenade.

Insp. Ja'afar, P.W.5, also lied if he said he received the handgrenade from P.W.4.

20 Insp. Yean, P.W.6, also lied when he said I admitted I had a handgrenade and that I pointed the handgrenade P.1 to him.

I don't know why they lied against me.

Inspector Yean was wrong in two things.

- (1) my admission of having the handgrenade, and
- (2) that I pointed it out to him.

I cannot remember if the rest of my statement was correct.

30 (Statement read back to Accused). The statement is partly correct and partly wrong. It was wrong in respect of the two points I mentioned just now. Besides there was something else wrong too. I did not carry a rifle when I ran away.

Not true the statement was read back to me by the Inspector.

I do not know Court procedure that I could or

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Cross-  
examination  
(contd.)

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Cross-  
examination  
(contd.)

should challenge that.

I gave instructions to my Counsel.

Not true what I have said in caution  
statement was true.

When I met my four friends without my rifle  
one of them made a remark that I should not throw  
it away. That was all he said.

I told one of them I would surrender. The  
other did not say anything.

I did not surrender because I was afraid of  
the shooting. I decided to surrender that night  
and next morning I went and met the 3 Malays. 10

Q: You had no intention of surrendering on  
landing?

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

I was not given any money by the Indonesians.

Q: Why didn't you surrender with your arms?

A: I intended to go back and recover the weapons  
after surrender and to give to Police. 20

Sd. Azmi.

Re-  
examination

Re-xn: I first formed the intention to  
surrender when I was on the island. I had no  
choice.

I wanted to inform the Govt.

Sd. Azmi.

Sim: I close my case. I am not calling other  
witnesses.

Sd. Azmi.

Adjd. to 11.30 a.m. tomorrow. 30

Sd. Azmi.

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU.

EMERGENCY CRIMINAL TRIAL NO. 32/1964

Public Prosecutor

Vs.

Lee Fook Lum

JUDGMENT

In the High  
Court in  
Malaya

No.12

Judgment

14th January  
1965

The accused is charged as follows:

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

20 Section 57 (1) of the Internal Security Act,  
1960, reads as follows:

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

.....

(b) any ammunition or explosive without  
lawful authority therefor,

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

30 It will be seen therefore that the onus of  
proving that he had "lawful excuse" would be on  
the accused once it is proved by the prosecution  
that he carried the handgrenade without "lawful  
authority".

Under Legal Notification No. 245 in the

In the High  
Court in  
Malaya

\_\_\_\_\_  
No.12

Judgment  
14th January  
1965

(Contd.)

Government Gazette dated 17th August, 1964, His Majesty the Yang di-Pertuan Agong had declared that the State of Johore is a security area for the purpose of Part II of the Internal Security Act with effect from the date of the notification.

Now, the facts for the prosecution may be summarised as follows:

According to Marjunid b. Hj. Abdul Karim, P.W.3, he was with his brother Mardikut bin Hj. Abdul Karim having a short rest after working in the compound of the mosque at Parit Jawa when the accused appeared wearing jungle green shirt and trousers. Accused asked him where the Police Station was and finally he and his brother together with Mohamed Noh bin Hj. Abu Bakar, P.W.4 took the accused to the Police Station at Pontian about 3 or 4 miles from the place, and handed him to Insp. Ja'afar, P.W.5. 10

According to Marjunid, P.W.3, a handgrenade was also handed to the Inspector by Mohamed Noh, who took it from the accused. In answer to cross-examination Witness said that whilst at Parit Jawa, Mohd. Noh asked if the accused had anything on him whereupon the accused gave to Mohd. Noh the handgrenade which he took out from his trousers pocket. 20

Now, the possession of this handgrenade was the main thing about this charge so that I think I will deal straightaway with the prosecution evidence on this question. According to Mohd. Noh, P.W.4, the accused handed him the handgrenade whilst they were riding their bicycles on the way to the Police Station. That means to say while the accused was on the carrier of Mardikut's bicycle and while P.W.4 was riding his bicycle. I must say at this stage that there is a serious discrepancy between the evidence of P.W.3 and P.W.4 as to the manner and place where the handgrenade was handed over. According to Marjunid, the accused handed the handgrenade to Mohd. Noh at Parit Jawa, that is to say before they left for the Police Station, whereas according to Mohd. Noh, the accused handed him the handgrenade whilst they were riding their bicycles, apparently doing so without stopping. Well, in my view, this is a serious discrepancy 30 40

I think Mohd. Noh was not telling the truth. I do not know how one could possibly take a hand-grenade out of his trousers pocket while riding on the carrier of a bicycle and hand it to Mohd. Noh. I think it is physically very difficult, if not impossible.

In the High  
Court in  
Malaya

—  
Judgment

14th January  
1965

(Contd.)

10 For the prosecution there is other evidence on the question of possession of the handgrenade and which goes towards corroborating the story of the handing over the handgrenade by the accused. There is the evidence of Inspector Ja'afar who said that 3 Malays arrived at the Police Station and handed the accused and the handgrenade. The handgrenade came from Mohd. Noh. Then, of course, there is the accused's statement to Inspector Yean. Inspector Yean also said that at a certain stage of taking the statement, after the accused apparently said he had a handgrenade, he asked whether the accused 20 could identify it and the accused proceeded to point it out. That part is not statement of the accused. It was the evidence of Inspector Yean.

30 The question of possession of the hand-grenade by the accused was amply corroborated by the evidence of the three witnesses as follows. P.W.5 in a sense corroborated the story because he received a handgrenade from P.W.4. Insp. Yean's evidence showed how the accused pointed the handgrenade to him. P.W.3 said he saw the accused hand the handgrenade to Mohd. Noh, P.W.4. If I accept the story of Insp. Ja'afar (and I do not see why I should not) that he received a handgrenade from Mohd. Noh, where could Mohd. Noh have got the handgrenade? It is not a thing you can buy, or anything like that. I accept the story that the accused had a handgrenade which he gave to Mohd. Noh, who in turn handed to Insp. Ja'afar, P.W.5.

40 It was suggested too, I think, by the Defence regarding the alleged identification of the handgrenade by the accused that Insp. Yean may have made a mistake as follows. Accused was asked what type of handgrenade he had, and for that purpose the accused pointed to the handgrenade. Accused denied that he had said that it was the handgrenade he had up to that time.

In the High  
Court in  
Malaya

—  
No.12

Judgment

14th January  
1965

(Contd.)

I will refer to the accused's evidence. If there is reasonable doubt in my mind about the truth of the story of the prosecution, the accused is entitled to acquittal.

The accused gave his evidence. He told me from the witness box how in the month of May last year he went to a picnic at Pantai in Dindings. There were other persons. After they had a swim and all that, at about 5 p.m. they were put in a boat, and he was told that they were going back to Taiping by boat, but to his surprise he found himself on a strange island and he stayed there until the 16th or 17th August when he was brought in a boat to Malaya. During his stay on the island he had some training in rifle practice - how to use a rifle, how to use a handgrenade. He was also supplied 5 rounds of ammunition per week. He said when he arrived here, all the time he wanted to run away. He was practically abducted in the first instance, and therefore all the time since his landing (and even before that) he wanted to surrender and also to give information to the authorities here. In a party of about 18 of them (10 of whom were Indonesians) they landed on the Malayan coast. Finally, he managed to run away but later he met 4 of his companions. By that time, he told us, he had thrown away what he had, viz, a rifle, ammunition and three handgrenades. Then, finally, in the morning at about 9 a.m. he met these 3 Malays in a mosque compound. He told the Malays that he wanted to surrender and to take him to the Police Station, which they did. He said that he entered the Police Station on his own. The 3 Malays never went in with him. He did not know what happened to them because he left them about 30 yards from the Police Station. The accused denied again and again that he still had the handgrenade at the time when he met the 3 Malays.

10

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As to the story of the accused about his being kidnapped or abducted - I think he is lying there. He must have known the purpose of the picnic and that he was to go to Indonesia. Then, of course, for the purpose of his case I would say, too, that I accept his story that he met 3 Malays and he decided to surrender - not perhaps with the high motive he gave that he

wanted to give information. He did not say what information he wanted to give. He told the Police he had left the rifle and some ammunition and handgrenades on the beach. Naturally, the Police took him there and searched but nothing was found. In any case for the purpose of this trial I am going to say that he wished to surrender himself and that is why he went to the Malays to ask them to take him to the Police Station.

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In the High  
Court in  
Malaya

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No.12

Judgment

14th January  
1965

(Contd.)

Now, as to the second limb of the defence, Mr. Sim referred me to the Privy Council case of Wong Pooch Yin v. P.P. (1954) M.L.J. 189. That case at first sight in my view would have been a good defence. I found at page 29 of the same Volume of the Journal the judgment of the Court of Appeal on same case. I think in that case what happened was that the accused was charged with carrying arms, an offence similar to the present offence under the Internal Security Act. I had the impression at that time that Mr. Sim said that the provision of that Regulation is on all fours with our Section of the Internal Security Act. In that case a terrorist was charged with the offence of carrying a pistol and he admitted that he carried a pistol. His defence was that he had lawful excuse in that he went to surrender himself to the authorities. He did it because the Government issued pamphlets inviting terrorists to surrender themselves. That defence failed. The Trial Judge said, "no", because if that defence had been allowed, anyone after capture could say that he had wanted to surrender. The Trial Judge withdrew that matter from the Assessors. The Court of Appeal agreed he did right but the Privy Council said, "no", he should have allowed the Assessors to consider it because, according to the Privy Council, that is a fact which might go to show lawful excuse.

20

30

40

The Court of Appeal, at page 31, give examples of what would constitute "lawful excuse":

"In our view, even accepting the bona fides of the appellant's intention to surrender, this could not constitute a lawful excuse. If an administrator who is compelled by law to take possession of a deceased's property is found to have an

In the High  
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14th January  
1965

(Contd.)

un-licensed fire-arm in a suit-case not yet opened, he clearly has a lawful excuse. If a person finds a stick of dynamite on the road and takes it to the appropriate authorities, he clearly has a lawful excuse. If a terrorist after some time in the jungle decides to surrender with his arms, he has an excuse, and if he is acting on a 'surrender leaflet' addressed to him by the security forces, he may have a political or an administrative excuse but, in our opinion, that does not amount to a lawful excuse within the meaning of the regulation."

10

Anyhow, the Privy Council said this in reference to the words "lawful excuse" at page 190:

"There are, however, two general conclusions on the construction and effect of the regulation which are relevant to such an examination and which may be appropriately stated at this point. The first of these is that the defence of 'lawful excuse' may be sufficiently proved although no 'lawful authority' exists for doing what is charged against the accused. The terms of regulation 4 (1) clearly contemplate this and, accordingly, make 'lawful excuse' and expression of wider import than 'lawful authority', as defined in regulation 4 (2). It follows from this that in proving a 'lawful excuse', which falls short of 'lawful authority', it is the excuse or exculpatory reason put forward by the accused, rather than the carrying, possession or control of the firearm, ammunition or explosive, that must be shown to be lawful."

20

30

At this stage it would appear to me that on the authority of the judgment of the Privy Council in the above case, the accused would have been entitled to an acquittal on the ground that from the dawn of the day he met the three Malays and went to the Police Station he had intended to surrender, and did surrender to the Police with the handgrenade. He would have had, therefore, lawful excuse for carrying the handgrenade. But the learned Deputy Public Prosecutor referred me

40

to Section 57 (3) of the Internal Security Act, 1960. That sub-section reads as follows:

In the High  
Court in  
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Judgment

14th January  
1965

(Contd.)

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

(a) that he acquired such fire-arm, ammunition or explosive in a lawful manner and for a lawful purpose; and

10

(b) that he has not at any time while carrying or having in his possession or under his control such firearms, ammunition or explosive, act in a manner prejudicial to public security or the maintenance of public order."

20

From a perusal of Regulation 4 of the Emergency Regulations, 1951, I found that Section 57 (3) of the Internal Security Act appears to be on all fours with Regulation 4 (2A). I also found that Regulation 4 (2A) was added by Legal Notification 1 dated 3rd January, 1955, i.e. subsequent to the 27th July, 1954 - the date the Privy Council gave its judgment in the case of Wong Poo Yin v. P P.

30

In my opinion, by virtue of this sub-section, a person shall have lawful excuse only if he can prove that he acquired such explosive in a lawful manner and for a lawful purpose as illustrated by the Court of Appeal in the passage of the judgment at page 31 (as quoted above).

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

I, therefore, find the accused guilty.

Sd. Azmi bin Hj. Mohamed  
(AZMI BIN HAJI MOHAMED)  
JUDGE, MALAYA.

40

14/1/1965

In the High  
Court in  
Malaya

            
No. 13

Conviction  
and Sentence.

14th January  
1965.

I convict Accused and pass sentence of  
death according to law.

Sd. Azmi.

Certified true copy.

Sd. T. Nesathurai

Secretary to Judge  
23/1/1965

IN THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 1 OF 1965

B E T W E E N

LEE FOOK LUM Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

In the Federal  
Court of  
Malaysia

No. 14

Petition of  
Appeal.

1st February  
1965

PETITION OF APPEAL

10 TO THE HONOURABLE THE JUDGES OF THE FEDERAL COURT

Lee Fook Lum, the appellant above-named having given notice of appeal to the Federal Court against the decision of the Honourable Mr. Justice Axmi bin Haji Mohamed given in the High Court at Johore Bahru in the State of Johore on the 14th day of January, 1965, states the following grounds for his said appeal :-

20 1. The trial of your appellant by the learned trial Judge without a jury constituted a mistrial for the following reasons :-

(a) The Emergency (Criminal Trials) Regulations made under section 2(2) of the Emergency (Essential Powers) Act 1964 are applicable only to the trial of offences created under the Act and not to offences made under any other law such as, in reference to the present appeal, the Internal Security Act 1960.

30 (b) Regulation 4 of the Emergency (Criminal Trials) Regulations 1964 in so far as it purported to be retrospective is void as ultra vires the Emergency (Essential Powers) Act 1964.

Filed this 9th day of February 1965.

Sgd. E.E. Sim  
Deputy Registrar,  
Federal Court, Malaysia,  
Kuala Lumpur.

In the Federal  
Court of  
Malaysia

No. 14  
Petition of  
Appeal.

1st February  
1965

- continued

2. The learned trial Judge erred in law and in fact when he found that your appellant had in his possession the alleged handgrenade between the alleged dates for the following reasons :-

- (a) Apart from the fact that your appellant was alleged to have admitted to the Police that he had the alleged handgrenade, there was no other evidence to show that he had in his possession the alleged handgrenade. 10
- (b) Inspector Yean, P.W.6., who took down the alleged admission referred to above was not a qualified interpreter, although he said he and your appellant both spoke the Cantonese dialect. P.W.6. and your appellant did not speak the same type of Cantonese. P.W.6. could therefore have misunderstood your appellant when the alleged admission was made. According to your appellant "P.W.6 produced one Chinese made handgrenade and the yellow marked handgrenade I had at the time of landing. He asked me what type of handgrenade I had brought with me. I told him I was given the type with yellow marking. I never told the Police Inspector that that particular handgrenade was the one I had." P.W.6 clearly misunderstood your appellant to mean that that was the handgrenade he had in his possession. 20 30
- (c) Your appellant's conduct subsequent to his landing in Malaya on or about the 17th August 1964 was consistent with his protestations that he never had in his possession the alleged handgrenade at the time he surrendered himself to the authorities. Your appellant was tricked into going to Indonesia against his will. As soon as he realised that, he formed his intention to escape but had no opportunity to do so. Your appellant availed himself of the first opportunity 40

10 that presented itself when he landed in Malaya on the 17th day of August 1964 with a group of Indonesians and Malaysians. No sooner had he landed in Malaya than he threw away all his arms and ammunition. His whole intention was to surrender himself to the authorities. He approached P.W.3., P.W.4., and another Malay, and asked them to bring him to the nearest Police Station, which they did. If your appellant's intention was to surrender - as the learned trial Judge had found that that **was** what he intended and did - and had thrown away all the arms and ammunitions issued to him by the Indonesians on landing, why should he be carrying the alleged handgrenade with him at the time of his surrender?

In the Federal  
Court of  
Malaysia

No. 14  
Petition  
of Appeal

1st February  
1965

- continued

20 (d) P.W.3 and P.W.4 were star witnesses for the prosecution but the learned trial Judge found that "there is a serious discrepancy between the evidence of P.W.3 and P.W.4 as to the manner and place where the handgrenade was handed over" and formed the opinion that "I think Mohamed Noh (P.W.4) was not telling the truth." The learned trial Judge however went on to say that

30 "for the prosecution there is other evidence on the question of possession of the handgrenade and which goes towards corroborating the story of the handing over of the handgrenade by the accused." These conflicting findings clearly show that there were grave doubts in the mind of the learned trial Judge. That being so, he should

40 have given the benefit of the doubts to and acquitted your appellant.

3. The learned trial Judge erred in law and in fact when he found that your appellant did not have a "lawful excuse" within the meaning of Section 57(3) of the Internal Security Act 1960 for carrying the alleged handgrenade for the following reasons :-

In the Federal  
Court of  
Malaysia

                      
No. 14

Petition  
of Appeal  
1st February  
1965  
- continued

- (a) Even if it were true that your appellant had in his possession the alleged handgrenade, his purpose for carrying it would have been lawful, because he wanted to surrender and hand it over to the authorities.
- (b) There was no evidence to show that your appellant had acted in a manner prejudicial to the security of the country.
- (c) The decision of the Privy Council case in WONG POOH YIN vs. P.P. (1954 M.L.J. 189) is still good law.

10

ACCORDINGLY, the conviction is bad in law and the appellant abovenamed therefore prays that the conviction and sentence on him may be set aside.

Dated this 1st day of February, 1965.

Sgd.

Solicitor for the Appellant 20

The address for service of the appellant is care of Drew & Napier, 3-I Foh Chong Building, Johore Bahru.

No. 15

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No: 1 of 1965  
(Johore Bahru Emergency Criminal Trial No: 32/64)

Lee Fook Lum .. Appellant

V.

The Public Prosecutor Respondent

10 Cor: Thomson, Lord President, Malaysia.  
Ong Hock Thye, Ag. Chief Justice.  
Ismail Khan, Judge.

NOTES OF ARGUMENT RECORDED BY THOMSON, LORD PRESIDENT

18th August, 1965.

For Appt: Sim.

For Respt: Salleh Abas.

Sim:

20 In view of recent decision by P.C. in F.C.  
Crim. App 76/64 withdraw G/A No.1. Rely on 2 & 3.

Only evidence was appt's admission to Police.  
That was unsatisfactory for reasons stated in  
Petition.

In any event even if possession was made out  
there was "lawful excuse".

His admission to the Police was retracted at  
the trial. That was a mistake by Police witness.

Police did not speak the same type of  
Cantonese.

30 When a confession is retracted it must be

In the Federal  
Court of  
Malaysia

No. 15

Notes of  
Argument  
(Thomson L.P)

18th August  
1965.

In the Federal  
Court of  
Malaysia

                      
No. 15

Notes of  
Argument  
(Thomson L.P)  
18th August  
1965.  
- continued

examined with care before a conviction can be based on it.

Sarkar (11th Ed.) I. 249.

There was inadequate evidence altogether of possession. The evidence of the Malays was incredible and was not believed by the Judge.

Then there was lawful excuse.

Internal Security Act, 1960, s.57(3).

Wong Pooh Yin V. P.P. (1954) M.L.J. 189.

s.57(3) does not over-ride the P.C. decision -  
it merely state its effect.

10

On question of construction -

The King v. Governor of Brixton Prison (1937)  
1 K.B. 305.

Case for appt.

Salleh Abas: (called on "lawful excuse" only).

s. 57(3) removes effect of P.C. decision.

Here there was no evidence which, if believed, would support the defence.

Appeal dismissed.

20

Intld. J.B.T.  
18.8.65

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TRUE COPY

(Tneh Liang Peng)

Secretary to the Lord President  
Federal Court of Malaysia  
2 Nov. 1965.

No. 16

IN THE FEDERAL COURT OF MALAYSIA AT KUALA LUMPUR

FEDERAL COURT CRIMINAL APPEAL NO. 1 OF 1965

(J. Bharu Emergency Criminal Trial No.32 of 1964)

LEE FOOK LUM ... Appellant

vs.

THE PUBLIC PROSECUTOR ... Respondent

Coram: L.P. Malaysia, Ong. F.J., & Ismail Khan, J.

Wednesday, 18th August 1965:

In the Federal  
Court of  
Malaysia

No. 16

Notes of  
Argument  
(Ong. F.J

18th August  
1965.

10

NOTES OF ARGUMENT

Recorded by Ong. F.J.

Sim Teow Gok for appellant

Salleh Abbas for respondent

Sim: Order disposed of in Lim Seng Hiaw's case  
by Privy Council.

Appeal proceeds on two remaining grounds.

Ground 1: Had appellant possession?

Appellant's version.

20

Inspector Yean and appellant did not speak  
same type of Cantonese.

Did Judge consider which specific hand  
grenade was in possession of appellant?

P.34 (last para)

Appellant admitted he threw away his 3  
handgrenades after landing.

Retracted confession must be looked at with  
suspicion.

Sarkar (11th Ed.) Vol.1, p.249

In the Federal  
Court of  
Malaysia

No. 16  
Notes of  
Argument  
(Ong. F.J.)  
18th August  
1965  
- continued

Ground 2: Appellant had "lawful excuse" within  
the meaning of s.57(3) of Internal  
Security Act, 1960.

Wong Pooch Yin, (1954) M.L.J. 189

Submit: Subsection (3) does not get round the  
Privy Council decision.

"Acquiring in a lawful manner" equivalent  
to having "lawful authority".

Submit "and between (a) & (b) should be  
~~not~~ disjunctively.

10

The King v. Governor of Brixton Prison,  
(1937) 1 K.B. 305, Ex parte Bidwell.

Salleh Abbas: (to reply only on question of  
"lawful excuse")

History behind s.57(3).

Wong Pooch Yin @ p.193.

Court retires.

Court resumes.

L.P. delivers oral judgment.

Appeal dismissed.

20

Ong, F.J.  
18.8.65.

Certified true copy,

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

No. 17  
 IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
 LUMPUR  
 (APPELLATE JURISDICTION)

In the Federal  
 Court of  
 Malaysia

FREderAL COURT CRIMINAL APPEAL NO.1 OF 1965  
 (J. Bharu Emergency Criminal Trial No. 32/1964)

No. 17

Lee Fook Lum           ...           ...           Appellant

Notes of  
 Argument  
 (Khan J)

vs.

Public Prosecutor ...           ...           Respondent

18th August,  
 1965.

10       Cor: Lord President, Malaysia.  
           Ong Hock Thy, Federal Judge.  
           Ismail Khan, Judge, Malaya.

18th August, 1965

NOTES OF ARGUMENT

Mr. T.G. Sim for Appellant.

Inche Mohd. Salleh bin Abbas for Respondent.

Sim: Dropping 1st Ground in view of recent  
 decision in Lim Lian Geok's case.

Going on Grounds 2 and 3.

20   2nd Ground.

Only evidence against Appellant in his  
 admission he had hand grenade.

Appellant explained how he told Inspector  
 he had the hand grenade. Had it until he threw  
 it away.

See Judgment, page 35. Judge found P.W.4.  
 not telling the truth.

30       Judge did not say if he believed P.W.3.  
           (But what about page 35, where there is evidence  
           of P.W.3 who say Appellant handing grenade to  
           P.W.4.)

Conceded Appellant had grenade before he  
 threw it away.

In the Federal  
Court of  
Malaysia

                      
No.17

Notes of  
Argument  
(Khan J)

18th August,  
1965.  
- continued

Sarkar on Evidence, 11th ed. vol. 1, page  
249, on confession.

On lawful excuse:

Internal Security Act, 1960, section 57(3).

Wong PooH Yin v. P.P., 1954 M.L.J. 189.  
Facts on all fours.

Section 57(3) recognises what was decided  
by Privy Council in above cases.

In lawful manner I submit means with lawful  
authority.

King V. Governor of Brixton Prison, (1937)  
1 K.B. p. 305.

Salleh:

Asked to address on "lawful excuse", not  
possession.

Section 57(3) has modified effect of Privy  
Council case. Reads case.

Lawful excuse if circumstances exist to  
justify carrying of firearm. These circumstances  
are stated in section 57(3).

Appellant to show he acquired in lawful  
manner and not acted against public security.

Evidence in this case, page 37.

Appellant only going to surrender, but he  
was kidnapped, so he acquired grenade from  
Indonesian authorities and came with the soldiers  
to Malaya.

Appeal is dismissed.

I.K.

Certified true copy  
D.C. Haslam  
Secretary to Judge,  
High Court,  
Seremban.

18th October, 1965.

10

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No. 18IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(APPELLATE JURISDICTION)

Federal Court Criminal Appeal No: 1 of 1965  
(Johore Bahru Emergency Criminal Trial No: 32 of  
1964)Lee Fook Lum .. Appellant  
v.

10 The Public Prosecutor Respondent

Cor: Thomson, Lord President, Malaysia.  
Ong Hock Thye, Judge, Federal Court.  
Ismail Khan, Judge.ORAL JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA.

This appellant was convicted at Johore Bahru for an offence in contravention of section 57(1) of the Internal Security Act, 1960, and sentenced to death.

20 What was alleged against the appellant was that on 17th or 18th August, 1964, that is a year ago to-day, near Pontian, he carried a handgrenade without lawful authority and without lawful excuse.

30 Up to a point there was at the trial little controversy as to the facts. The appellant, who was a person domiciled here left this country and went to Indonesia where he had some sort of military training and he was then among the persons who took part in the first incursion at Pontian a year ago today. Shortly after landing he surrendered himself to some Malays whom he happened to meet and they took him to the Police Station. At some stage of these events he was in possession of at least one handgrenade. On his own admission he was in possession of it when he landed at Pontian but he said he threw it away after landing. On the prosecution evidence he was still in possession of it when he surrendered himself to the three Malays and he handed it to one of them who took him to the Police Station.

In the Federal  
Court of  
MalaysiaNo. 18Oral  
Judgment  
(Thomson L.P)  
18th August  
1965  
(Authenticated  
22nd October  
1965)

In the Federal  
Court of  
Malaysia

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No. 18  
Oral  
Judgment  
(Thomson L.P)  
18th August  
1965  
(Authenticated  
22nd October  
1965)  
- continued

The appellant has appealed against his conviction on two grounds.

One of these is that it was not sufficiently made out at the trial that he was in possession of the handgrenade and the second ground is that if he was in possession of it he had at the material time a lawful excuse.

The ground of appeal relating to possession is without substance. On any showing, on appellant's own evidence or on the prosecution evidence, he was in possession of the handgrenade at or about the time mentioned and at or about the place mentioned.

10

As regards lawful excuse the position is this.

The Act says :-

"57(1) Any person who without lawful excuse, the onus of proving which shall be on such person, in any security area carries or has in his possession or under his control -

(a) any fire-arm without lawful authority therefor: or

20

(b) any ammunition or explosive without lawful authority therefor,

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

"Lawful excuse" is ~~exegesised~~ in sub-section (3) as follows :-

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

30

(a) that he acquired such fire-arm, ammunition or explosive in a lawful manner and for a lawful purpose: and

(b) that he has not at any time while carrying or having in his possession or under his control such fire-arms, ammunition or

explosive, acted in a <sup>manner</sup> ~~manner~~ prejudicial to public security or the maintenance of public order."

In the Federal Court of t  
Malaysia

No. 18

Oral  
Judgment  
(Thomson L.P)  
18th August  
1965  
(Authenticated  
22nd October  
1965)

— continued

10 It would be wrong for this Court to restate in general terms of its own what is said in sub-section (1) and sub-section (3) of section 57. What we are concerned with here is the application of these sections where, in cases such as this, the defence is set up that the party in possession was in possession solely for the purpose of surrendering the tainted article to the authorities.

20 In the case of Wong Pooch Yin v. Public Prosecutor, (1) decided under the old Emergency Regulations, the Privy Council decided that such a state of affairs, if made out, brought an accused person within the protection of the words "Lawful excuse". But of course whether or not it is made out must be a matter for decision by the trier of fact in each individual case and it is to be observed that in Wong's case the question had not been left at the trial to the triers of fact, who at that time were assessors, and it was on that ground that the appeal in Wong's case was successful.

30 In the present case the trier of fact, who was the trial Judge, did apply his mind to the facts in this connection and what he found was that although at the time of his arrest the appellant had the intention to surrender that intention only came into existence at a point of time subsequent to his landing in this country. What the trial Judge said was this :-

"As to the story of the accused about his being kidnapped or abducted - I think he is lying there. He must have known the purpose of the picnic and that he was to go to Indonesia."

Then having found that for the purpose of his case he went on :-

40 "I would say, too, that I accept his story that he met 3 Malays and he decided to surrender -"

Now these are findings of fact which this

(1) (1954) M.L.J. 189.

In the Federal  
Court of  
Malaysia

No.18

Oral  
Judgment  
(Thomson L.P)  
18th August  
1965  
(Authenticated  
22nd October  
1965

- continued

Court must accept, and if they be accepted then it follows that immediately prior to that moment when he met the 3 Malays there was no question of any intention to surrender on his part and so there was no material whatsoever which would have afforded a foundation for accepting that he had made out what he was bound to make out if his defence was to succeed that he had acquired the handgrenade in a lawful manner and for a lawful purpose.

10

It is true that at the very end of his judgment the learned Judge said :-

"In my opinion, by virtue of this sub-section, a person shall have lawful excuse only if he can prove that he acquired such explosive in a lawful manner and for a lawful purpose."

That, of course, is correct. Then he goes on :-

"For this reason I would now say the fact that the accused had intended all along to surrender with the handgrenade is no longer lawful excuse for the purpose of section 57(3)."

20

With great respect, in our view that statement goes too far. If there had been material on which to find that he had intended all along to surrender then of course that material would have had to be considered and if it had not been considered there would be a fatal fault in the proceedings. But such material as there was was considered and the Judge's finding of fact was not that he had intended all along to surrender: his finding of fact was that the appellant's intention to surrender had only come into existence at the time he met the 3 Malays.

30

In the circumstances we have no option but to dismiss the appeal.

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

Kuala Lumpur, Secretary to the Lord President  
18th August, 1965. Federal Court of Malaysia  
22 Oct. 1965

40

T.G. Sim Esq. for appellant  
Enche Salleh bin Abas for respondent.

NO. 19

No. 19

ORDER

Order

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR (Appellate Jurisdiction)

18th August  
1965.

FEDERAL COURT CRIMINAL APPEAL NO: 1 OF 1965  
(Johore Bahru High Court Emergency  
Crim. Trial 32/64)

LEE FOOK LUM      ...      ... APPELLANT

VS.

10      THE PUBLIC PROSEGTOR      ... RESPONDENT

GORAM: THOMSON, LORD PRESIDENT, MALAYSIA;  
ONG HOOK THYE, JUDGE, FEDERAL COURT,  
MALAYSIA; AND ISMAIL KHAN, JUDGE  
HIGH COURT, MALAYA;

IN OPEN COURT

THIS 18TH DAY OF AUGUST, 1965

O R D E R

20      THIS APPEAL coming on for hearing this day  
in the presence of Mr. T.G. Sim of Counsel for  
the above named Appellant and Inche Mohd. Salleh  
bin Abas, Deputy Public Prosecutor on behalf of  
the Respondent AND UPON READING the Record of  
Appeal herein AND UPON HEARING the Counsel for  
the Appellant and the Deputy Public Prosecutor  
as aforesaid IT IS ORDERED that the Appeal of  
the above named Appellant be and is hereby  
dismissed.

GIVEN under my hand and the seal of the  
Court this 18th day of August, 1965.

30      Sgd. Pawan Ahmad bin Ibrahim Rashid  
CHIEF REGISTRAR,  
FEDERAL COURT,  
MALAYSIA.

No. 20

In the  
Judicial  
Committee of  
the Privy  
Council

No. 20

Order

allowing  
special leave  
to appeal in  
forma paupors  
to His Majesty  
the Yang di-  
Pertuan Agong

23rd May 1966

NO. 20

ORDER ALLOWING SPECIAL LEAVE  
TO APPEAL IN FORMA PAUPERIS  
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 31st day of March, 1966, in the words following, viz:- 10

"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 Lee Fook Lum in the matter of an Appeal from the Federal Court of Malaysia between the Petitioner and the Public Prosecutor Respondent setting forth that the Petitioner seeks special leave to appeal in forma pauperis from an Order of the Federal Court of Malaysia (Appellate Jurisdiction) made on the 18th August 1965 whereby his Appeal against his conviction in the High Court at Johore Bahru was dismissed: that the Petitioner was on the 14th January 1965 convicted in the said High Court upon an amended charge that without lawful excuse he carried a hand grenade without lawful authority in a security area an offence punishable with death by reason of section 57(1)(b) of the Internal Security Act, 1960: And humbly praying Your Majesty to grant him special leave to appeal in forma pauperis from the Order of the Federal Court of Malaysia (Appellate Jurisdiction) dated the 18th August 1965 and for such Order as to Your Majesty may seem fit: 20 30

THE LORDS OF THE COMMITTEE in obedience to the said Orders in Council have taken the 40

10 humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree to report to the Head of Malaysia as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Order of the Federal Court of Malaysia (Appellate Jurisdiction) dated the 18th day of August 1965 and that the authenticated copy 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."

20 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 23rd day of May, 1966.

BY COMMAND

Sgd. Dato' (Dr) ISMAIL BIN DATO'  
ABDUL RAHAMAN

MINISTER OF JUSTICE.

(F.C. Crim. App. 1/65).

---

No. 20

In the  
Judicial  
Committee of  
the Privy  
Council

No. 20

Order

allowing  
special leave  
to appeal in  
forma paupors  
to His Majesty  
the Yang di-  
Pertuan Agong

23rd May 1966  
(Cont'd)

EXHIBIT "A"

Consent under  
Internal  
Security Act,  
1960.

8th November  
1964.

EXHIBIT "A"

Consent Under Section 80 of the Internal  
Security Act 1960.

Public Prosecutor Vs. Lee Fook Lum

I, HAMZAH BIN MOHD. SALLEH, Deputy Public  
Prosecutor hereby consent to the prosecution of  
the above-named person accused of an offence  
under section 57 of the Internal Security Act  
1960 committed on 18.8.64 at Pontian, Johore.

Sgd.

Deputy Public Prosecutor

10

DATED this 8th November, 1964.

SUPREME COURT, Johore Bahru  
E.C. TRIAL No. 32/1964  
Exhibit marked "A"  
Put in by D.P.P.  
This 2nd day of JAN, 1965.

Sgd: V.R.T. Rangan

Asst. Registrar

EXHIBIT "B"

Certificate  
under Regula-  
tion 4 of  
Emergency  
(Criminal  
Trials)  
Regulations  
1964

8th November  
1964.

Certificate under Regulation 4 of Emergency  
(Criminal Trials) Regulations 1964.

20

P. P. Vs. Lee Fook Lum

I, HAMZAH BIN MOHD. SALLEH, D.P.P. in  
accordance with the provisions of regulation 4 of  
the Emergency (Criminal Trials) Regulations, 1964,  
hereby certify that the above-named case in which  
the above-named accused is charged is a proper  
one to be tried under the aforesaid Regulations.

And in accordance with regulation 5 of the  
aforesaid Regulations, I prefer the following  
charge against the above-named accused to be  
tried at High Court Johore Bahru.

30

CHARGES.

(see annexure)

Sgd.

Deputy Public Prosecutor

Dated this 8th November, 1964.

SUPREME COURT, Johore Bahru  
E.C. TRIAL No. 32/1964  
Exhibit marked "B"  
Put in by D. P. P.  
This 2nd day of JAN, 1965.

10

Sgd: V.R.T. Rangam  
Asst. Registrar

Exhibit "B"  
Certificate  
under Regula-  
tion 4 of  
Emergency  
(Criminal  
Trials)  
Regulations  
1964  
8th November  
1964.  
Continued

ANNEXURE 108/64

AMENDMENT CHARGE

20

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

Sgd.

8.11.64

C A U T I O N

30

"IT IS MY DUTY TO WARN YOU THAT YOU ARE NOT OBLIGED TO SAY ANYTHING OR TO ANSWER ANY QUESTION, BUT ANYTHING YOU SAY, WHETHER IN ANSWER TO A QUESTION OR NOT, MAY BE GIVEN IN EVIDENCE."

Exhibit "P5"  
Sample Caution  
Form  
undated

Exhibit "P5"

Sample  
Caution Form  
Undated.  
Continued

A M A R A N

"ADA-LAH KEWAJIPAN SAYA MEMBERI AMARAN KEPADA KAMU BAHAWA KAMU TIDAK DI-PAKSA MESTI BERCHAKAP ATAU MENJAWAB APA2 PERTANYA'AN, TETAPI APA2 JUA YANG KAMU CHAKAPKAN SAMA ADA KERANA MENJAWAB PERTANYA'AN ATAU TIDAK, MAKA PERCHAKAPAN KAMU ITU BOLEH DI-GUNAKAN SABAGAI KETERANGAN."

SUPREME COURT, Johore Bahru  
EMERGENCY CR. TRIAL NO. 32/1964 10  
Exhibit marked P.5  
Put in by P.W.6.  
This 11th day of Jan. 1965.

Sgd. V.R.T. Rangam  
Asst. Registrar.

Exhibit "P6"

Caution  
Statement

18th August  
1964.

POLIS DI-RAYA MALAYSIA

ORANG KENA TUDOH

(PK) 020481 (4046066)

PERCHAKAPAN DALAM PEMEREKSAAN

No. Report 641/64 Rumah Pasong Pontian Kechil 20  
Perchakapan bagi Lee Fook Lum Nama bapa Lee Wah  
Ichi2 Bangsa Cantonese Tempat di-peranakan Trong,  
Perak Umor 23 tahun. Kerja Rubber Tapper dudok  
di 58, Trong New Village, Perak. Di-terima oleh  
P/I Yean di Pontian pada 18.8.1964, jam 2100 hrs.  
Jurubhasa Self daripada Cantonese Kepada English  
kata-nya I Probationary Inspector Yean Yoke  
Khin administered the caution to the accused in  
Cantonese.

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

After administering the caution in Cantonese  
the accused told me he chose to speak in answer

to my questions.

Sgd: (Y.K.Yean) D/Insp  
Recording Officer.

Exhibit "P6"

Caution  
Statement

18th August  
1964.

(Cont'd)

Q. When did you leave for Indonesia, from where and to where?

A. I left my home in Trong for Taiping on 29th May, 1964. From Taiping I rode in a taxi for about 6 hours to a coast and there I boarded a fishing vessel with 14 other male Chinese. After sailing in the boat for about 3 hours we changed into a bigger boat in mid-sea until we reached an island in the next morning. I do not know the name of the island.

10

Q. What did you do there and for how long?

A. I was there till the 16/8/64. I had Military training in that island with other Malayam Chinese who had gone there. While under training I was in Platoon 3.

Q. How did you come back to Malaya and for what purpose? A. On the night of 16/8/64 there were nineteen of us, 10 Indonesians and 9 Chinese when we left the island in a boat.

20

Near dawn break we saw a light-house and the boat was approaching land. There all of us alighted and waded through sea-water until we arrived at the beach. I do not know what place it was, Most of the Chinese wore jungle green uniforms including myself wearing a jungle green shirt. I was armed with a rifle, 3 handgrenades, 302 rounds of .303 ammunitions, 2 pairs of jungle greens and some propaganda Chinese documents. The rest of the party were also armed. A Chinese known to me as Yong Meng was leading the party when we landed at the beach. This man was not in my Company when I left Malaya to Indonesia. I do not know rank he held. I had no rank.

30

A Chinese man on the island was teaching us while undergoing training. He told us before we left the island by boat that we were going to a certain place where

40

Exhibit "P6"

Caution  
Statement

18th August  
1964.

(Cont'd)

we were to steal firearms from Police Stations there. And if we should encounter with Military Forces we were to open fire and fight with them. We were not told where the Police Stations were but to follow the leadership of this Yong Meng as he had been briefed with details.

- Q. What happened after you had made the landing? A. Somehow or rather we seperated when landed on the beach. I was in the company of other five Chinese males, of which Yang Meng was one of them. He led us to a rubber estate after walking for 3 to 4 hours. We rested in that Estate for a few hours. During that period of which I heard gun-shorts coming from far distance. We did not move from that place until darkness set in. From there we walked in the estate again until a suitable place was found in the same estate. There all of us laid down and rested. It was about midnight when I saw that the others were sleeping that I took my rifle, a handgrenade and left the company of them. I had wanted to look for food and surrender myself. The other personal effects and jungle greens carried by me from Indonesia were thrown away at the landing beach. While making my way out of the jungle I found it very difficult as I was new to the surroundings. Hampered by that I threw away my rifle in some thick undergrowth. I kept the handgrenade in my right trouserpocket.

When morning came I found my way to a Malay Kampong. There I came to a site of a mosque where I saw 3 male Malays working. I approached one of them and asked him to take me to the nearest Police Station. The handgrenade which I was having in my pocket was handed to one of the Malays.

Subsequently I was seated at the back of a bicycle carrier rode by one of the Malays followed behind by 2 others. On arrival at the Police Station I was handed

to a Police Officer.

Exhibit "P6"

Q. Could you identify your handgrenade? A. Yes. I identified my handgrenade placed in group 14.

Caution  
Statement

Q. Could you name the 3 others apart from Yang Meng, of whose company you were in and later left them while sleeping in the Estate? A. To the best of my knowledge the others are known to me as, Wong Yong, Cher Lee, Woo Loong and Siow Chin.

18th August  
1964.  
(Cont'd)

10

Q. Who is the leader of the Indonesians of which you came in the same boat and what rank is he holding? A. I do not know.

Q. After reading the caution statement to you in Cantonese dialect have you got any corrections or alterations to make? A. I only wish to state that I was cheated in going to Indonesia for military training.

Before me,

20

Sgd:

(Y.K. Yean)

Recording Officer.

SUPREME COURT, Johore Bahru  
E. C. TRIAL No. 32/1964  
Exhibit marked "P6"  
Put in by P. W. No.6  
This 12th day of JAN. 1965.

Sgd: V.R.T. Rangam

Asst. Registrar

\_\_\_\_\_

Exhibit "D7"

## POLIS DI-RAJA MALAYSIA

Statement of  
4th Prosecu-  
tion Witness  
Mohamed Noh  
bin Haji Abu  
Bakar

SAKSI

## PERCHAKAPAN DALAM PEMERIKSAAN

9th August  
1964.

No. Report 641/64 Rumah Pasong Pontian Kechil Perchakapan bagi MOHAMED NOH Nama bapa HJ.ABU BAKAR Umor 31 tahun, Kerja Factory Worker dudok di Lot. 247, Kg. Parit Jawa, Pontian Di-terima oleh P/I Yean di Pont. DHQ pada 19th: August, 1964 jam 1445 hrs. Jurubhasa Self daripada Malay kapada English kata-nya:

10

In answer to my question:

On the morning of 18.8.64. I was working in a mosque at Parit Jawa, Pontian, together with Marjunid bin Haji Karim (A2) and his younger brother Mardikan bin Haji Abdul Karim (A3). The mosque is about 50 yards in front of Marjunid house.

At about 8.15 a.m. on the same morning I saw Marjunid bin Haji Abdul Karim (A2) holding the right hand of a male Chinese (B1) who appeared behind Marjunid bin Haji Abdul Karim (A2). Mardikan bin Haji Abdul Karim (A3) also rushed up and held the left hand of the male Chinese (B1). I also rushed up to where they were. The male Chinese (B1) was dressed in jungle ~~jungle~~ green shirt and light blue long pants. The pants was wet up to the knees. This male Chinese looked very tired.

20

Marjunid bin Haji Abdul Karim (A2) left the hand of the male Chinese (B1) and he took out a handgrenade from his right trouser pocket when he was freed. The male Chinese (B1) handed the handgrenades to me. I then examined his body and found there was no arm.

30

With the male Chinese (B1) sitting at the back of Mardikan's bicycle the three of us proceeded to Pontian Police Station. Mardikan bin Haji Abdul Karim (A3) was riding in front with the male Chinese (B1) followed by Marjunid bin Haji Abdul Karim (A2) and myself.

Reaching Pontian Police Station the male Chinese (B1) was handed over to a Police Inspector by Mardikan bin Haji Abdul Karim (A3) while I handed to the same Police Inspector the said handgrenade.

Q. Is this the handgrenade which was handed to you by the male Chinese (B1), (exhibit 9 marked 14 shown to witness)? A. Yes.

10 Read over the statement to the witness and admitted by him to be correct.

Q. Does the above represent truly all you know about the case? A. Yes.

Q. Have you got any correction or alteration to make? A. No.

Before me,

Sgd:

(Y.K.Yean) P/INSP:

20 SUPREME COURT, Johore Bahru  
E. C. TRIAL No. 32/1964  
Exhibit marked "D7"  
Put in by P.W. No.6  
This 12th day of JAN. 1965.

Sgd: V.R.T. Rangam.

Asst. Registrar.

Exhibit "D7"

Statement of  
4th Prosecu-  
tion Witness  
Mohamed Noh  
bin Haji Abu  
Bakar

19th August  
1964.

(Cont'd)

IN THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL

No. 16 of 1966

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

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FEDERAL COURT CRIMINAL APPEAL NO. 1 of 1965  
(J. Bahru High Court Emergency Criminal Trial  
No. 32 of 1964)

B E T W E E N:

LEE FOOK LUM

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

---

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R E C O R D        O F        A P P E A L

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

Solicitors for the Appellant

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

Solicitors for the Respondent