

1967/21

{1}

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.36 of 1966

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

FEDERAL COURT CRIMINAL APPEAL No. X.10 of 1965
(J. Bahru High Court Emergency Criminal Trial No. 32/65)

B E T W E E N:

LEE A BA alias LEE CHEE HUA

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

RECORD OF PROCEEDINGS

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

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

Solicitors for the Appellant

Solicitors for the Respondent

CLASS MARK

ADMISSION NUMBER

91339

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

(i)

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.36 of 1966

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

FEDERAL COURT CRIMINAL APPEAL No. X.10 of 1965

(J. Bahru High Court Emergency Criminal Trial No. 32/65)

B E T W E E N:-

LEE A BA alias LEE CHEE HUA

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

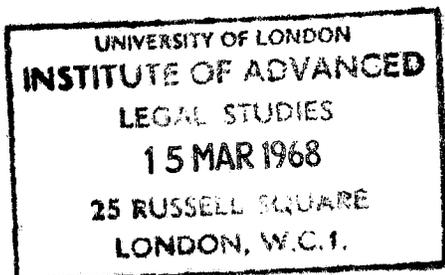
INDEX OF REFERENCE

No.	Description of Document	Date	Page No.
	<u>IN THE HIGH COURT IN MALAYA</u>		
1	Charge Sheet (as amended by Court on 20th September 1965)	19th Aug.1965	1
2	Notes of Evidence	28th Aug.1965	2
	<u>Prosecution Evidence</u>		
3	Lim Kok Bee		
	Examined	28th Aug.1965	3
	Cross-examined	28th Aug.1965	4
	Recalled by Court	28th Aug.1965	11
	Re-examined	28th Aug.1965	11

(ii)

INDEX OF REFERENCE (Contd.)

No.	Description of Document	Date	Page No.
	<u>IN THE HIGH COURT IN MALAYA (Contd.)</u> <u>Prosecution Evidence (Contd.)</u>		
	Lim Kok Bee (Contd.)		
	Recalled by Court	29th Aug.1965	15
	Cross-examined	29th Aug.1965	15
	Re-examined	29th Aug.1965	15
4	Palany Samy		
	Examined	28th Aug.1965	6
	Cross-examined	28th Aug.1965	
	Recalled	28th Aug.1965	13
	Re-examined	28th Aug.1965	13
	Cross-examined	29th Aug.1965	14
6	Kat Kim Hin		
	Examined	29th Aug.1965	16
	Cross-examined	29th Aug.1965	
7	Terence Keane		
	Examined	29th Aug.1965	16
	Cross-examined	29th Aug.1965	16
	Re-examined	29th Aug.1965	17
8	Agoram Visvanathan		
	Examined	29th Aug.1965	17
9	John Murray Lane		
	Examined	29th Aug.1965	18
	Cross-examined	29th Aug.1965	20
	Re-examined	29th Aug.1965	21
10	Tan Thin Loy		
	Examined	29th Aug.1965	21
	Cross-examined	29th Aug.1965	23



91339

(iii)

INDEX OF REFERENCE (Contd.)

No.	Description of Document	Date	Page No.
	<u>IN THE HIGH COURT IN MALAYA (Contd.)</u>		
	<u>Prosecution Evidence (Contd.)</u>		
11	Lee Gen Chai Examined	29th Aug. 1965	23
12	Chong Hian Shin Examined Cross-examined Re-examined	29th Aug. 1965 30th Aug. 1965 30th Aug. 1965	24 28 31
	Re-called by Court Cross-examined	20th Sept.1965 20th Sept.1965	45 45
13	Keong Tam Examined Cross-examined Re-examined	30th Aug. 1965 30th Aug. 1965 30th Aug. 1965	31 33 35
14	Tarmudji bin Djuremi Examined	30th Aug. 1965	35
15	Sujatino bin Kartesentomo Examined Cross-examined Re-called by Court Cross-examined Re-examined	30th Aug. 1965 30th Aug. 1965 20th Sept,1965 20th Sept.1965 20th Sept.1965	36 37 43 43 43
16	Cheh Chong Wah Examined Cross-examined Re-examined Re-called by Court Cross-examined	20th Sept.1965 20th Sept.1965 20th Sept.1965 20th Sept.1965 20th Sept.1965	39 39 40 47 47

INDEX OF REFERENCE (Contd.)

No.	Description of Document	Date	Page No.
	<u>IN THE HIGH COURT IN MALAYA (Contd.)</u>		
	<u>Prosecution Evidence (Contd.)</u>		
17	Lai Teng Sui		
	Examined	20th Sept.1965	40
	Cross-examined	20th Sept.1965	40
	Re-examined	20th Sept.1965	42
	Recalled by Court	20th Sept.1965	46
	Cross-examined	20th Sept.1965	46
18	Low Chin		
	Examined	20th Sept.1965	42
	Cross-examined	20th Sept.1965	42
	Re-examined	20th Sept.1965	43
19	Addresses by Counsel	20th Sept.1965	44
	<u>Defence Evidence</u>		
5	Lee A Ba		
	Cross-examined	28th Aug.1965	
20	Conviction and Sentence	20th Sept.1965	48
21	Grounds of Judgment	5th Oct. 1965	49
	<u>IN THE FEDERAL COURT OF MALAYSIA</u> <u>(APPELLATE JURISDICTION)</u>		
22	Petition of Appeal	21st Oct. 1965	60
23	Notes of Argument (Thomson L.P)	10th Nov. 1965	68
24	Notes of Argument (Ong A.C.J)	10th Nov. 1965	70

(v)

INDEX OF REFERENCE (Contd.)

No.	Description of Document	Date	Page No.
25	Notes of Argument (Suffian J.)	10th Nov.1965	73
26	Oral Judgment (Ong A.C.J.)	10th Nov.1965	76
<u>IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL</u>			
27	Order granting Special Leave to Appeal in forma pauperis to H.M. the Yang di-Pertuan Agong	21st Oct.1966	79

E X H I B I T S

A	Consent under Section 80 of the Internal Security Act 1960	14th Apl.1965	81
B	Certificate under Regulation 4 of the Emergency (Criminal Trials) Regulations 1964 and Charges	14th Apr.1965	81
P2A	Photograph	28th Aug.1965	83
P2B	Photograph	28th Aug.1965	83
P25	Sketch Plan and Key	7th Apr.1965	84
P27	Accused's Statement	undated	86
P28	Certificate of Destruction	31st May 1965	91

INDEX OF REFERENCE (Contd.)DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT REPRODUCED

Description of Document	Date
<u>IN THE HIGH COURT IN MALAYA</u> Oral Notice of Appeal	Undated
<u>IN THE FEDERAL COURT OF MALAYSIA</u> <u>(APPELLATE JURISDICTION)</u> Order P.1 NRIC No.3723873 of Accused (In Malayan) P.26 Caution Form	10th Nov. 1965 28th Aug. 1965 28th Aug. 1965

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 36 of 1966

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

FEDERAL COURT CRIMINAL APPEAL No. X 10 of 1965
(J. Bahru High Court Emergency Criminal Trial No. 32/65)

B E T W E E N:

LEE A BA alias LEE CHEE HUA Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

10

RECORD OF PROCEEDINGS

No.1
CHARGE SHEET - 19th August 1966
(as amended by Court on 20th
September 1965)

In the High
Court of
Malaya

C H A R G E S

1st Charge

20 That you on 9th March, 1965 at about
8.00 p.m. in a Security Area as proclaimed
by the Yang di-Pertuan Agong by Federal L.N.
245 of 17th August, 1964, namely at Federal
Land Development Authority Pasak, in the
District of Kota Tinggi, in the State of
Johore, without lawful excuse had in your
possession ammunition to wit, two handgrenade
detonators without lawful authority and that
you have thereby committed an offence punishable
under Section 57(1)(b) of the Internal
Security Act No. 18 of 1960.

No.1
Charge Sheet
19th August
1965 -
(as amended
by Court on
20th September
1965)

In the High Court in Malaya

2nd Charge

No.1
Charge Sheet
19th August
1965
(as amended
by Court
on 24th
September
1965)
(Contd.)

That you on 9th March, 1965 at about 8.00 p.m. in a Security Area as proclaimed by the Yang Di-Pertuan Agong by Federal L.N. 245 of 17th August, 1964, namely at Federal Land Development Authority Pasak, in the District of Kota Tinggi, in the State of Johore, consorted with members of Indonesian Armed Forces who carried firearms, ammunitions and grenades in contravention of the provisions of Section 57 of the Internal Security Act 1960 in circumstances which raised a reasonable presumption that you intended to act with members of the Indonesian Armed Forces in the manner prejudicial to the public security and that you have thereby committed an offence punishable under Section 58(1) of the said Act.

10

Sgd:

(TUNKU ZAID BIN TUNKU ZAKARIA)
Deputy Public Prosecutor,
JOHORE

Dated 19th August, 1965

20

No.2
Notes of
Evidence
28th August
1965

No.2
NOTES OF EVIDENCE - 28th August 1965

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

J. B. EMERGENCY CRIMINAL TRIAL No. 32/65

PUBLIC PROSECUTOR

- versus -

LEE A BA alias LEE CHEE HUA

NOTES OF EVIDENCE

28th August, 1965

In Open Court

30

Tunku Zaid bin Tunku Zakaria for the Public Prosecutor

Enche T.T. Rajah for the accused, retained.

Charge:

- 1. Possession of handgrenade detonators, Section 57(1)(b) of Internal Security Act, 1960
- 2. Consorting, under Section 58(1) of Internal Security Act, 1960

In the High Court in Malaya

No.2
Notes of Evidence
28th August 1965
(Contd.)

Charges read out and explained to Accused.

Claims trial on both charges.

10 Tunku Zaid bin Tunku Zakaria produces consent to prosecute and Certificate under Regulation 4 of Emergency (Criminal Trials) Regulations, 1964 (put in and marked "A" and "B" respectively).

Tunku Zaid opens case and calls evidence.

No.3
EVIDENCE OF LIM KOK BEE

Prosecution Evidence

P.W.1 LIM KOK BEE, affirmed, states in Hakka:

No.3
Lim Kok Bee
28th August 1965

20 I am a Detective Police Constable attached to the Police Station, Kota Tinggi. On 11.3.65 at about 4 a.m. I was at the Kota Tinggi Police Station. On instructions from Inspector P. Samy I acted as interpreter between him and a Chinese named Lee Chee Hua, the accused. I first saw the accused in the office of Inspector P. Samy when I went in. The persons present in the office were Inspector Samy, the accused and myself. There were no other Police or Military Officers in the office at that time. I do not know whether there were any Police or Military
30 Officers outside. Physically the accused appeared to be normal. He also appeared to be mentally normal. I was not armed. I did not notice any arms with Inspector Samy.

Examination

This is Inspector Samy (identified). Inspector Samy behaved normally to the accused. The accused also behaved normally, although he appeared to be a little bit frightened. He was not afraid of Inspector Samy. Inspector Samy administered a caution to the accused. He spoke

In the High
Court in
Malaya

Prosecution
Evidence

No.3

Lim Kok Bee
28th August
1965

Examination
continued

to me in Malay. I fully understood Inspector Samy's Malay. I spoke to Inspector Samy also in Malay. I believe Inspector Samy fully understood me. Inspector Samy asked questions through me. The Inspector read out a caution in Malay. In interpreted the caution to the accused in Mandarin because Mandarin is common and because the accused told me that he understood Mandarin. I fully understood the accused's Mandarin and he fully understood my Mandarin. I am a Hakka. I studied Mandarin in a Chinese school in Paloh. Before and during the caution neither Inspector Samy nor I held out any threat, promise or inducement to the accused.

10

The accused did not say anything after I had explained the caution to him. I asked him if he understood what I had read out to him and he said, "Yes". The accused then made a statement through me to the Inspector. I explained whatever the accused said to me to Inspector Samy in Malay. Inspector Samy wrote down the accused's statement on a typewriter. After the accused had finished making the statement, Inspector Samy read out the statement and I interpreted it to the accused. The accused said that the statement was correct. Inspector Samy signed the statement. I also signed the statement.

20

No one came into the room whilst the statement was being recorded.

Cross-
examination

Cross-examined: My mother tongue is Hakka. I studied Mandarin for 6 years. My Mandarin is quite good. I speak Mandarin quite well. I am a Hakka. That is why I am speaking Hakka in Court. Besides Mandarin and Hakka, I speak Cantonese and Hokkien, although my standard of Cantonese and Hokkien is not as high as that of Mandarin. I ascertained the mother tongue of the accused. He told me that he was a Hokkien. I started talking to him in Hokkien. Then I asked him if he could talk in Mandarin. He said he could. I therefore spoke to him in Mandarin. It is not correct that I spoke to him in Hokkien and Mandarin because his Mandarin was not good. Because my Hokkien is not so good I spoke to the accused in Mandarin. The accused spoke Mandarin to me. I am receiving an allowance for Hokkien and also for Mandarin. I started receiving an allowance for Mandarin about

30

40

4 years ago and for Hokkien about two or three years ago. I get an allowance of \$37 a month for Mandarin and \$18.50 for Hokkien.

In the High
Court in
Malaya

Prosecution
Evidence

No.3

Lim Kok Bee
28th August
1965

Cross-
Examination
continued

10 I did not appear for any test in Malay but I can speak Malay because I have been in the Police Force for thirteen years. The Malay word for "caution" is "amaran", The Malay word for "duty" is "kerja" or "kewajipan". I cannot recite the caution administered in Malay. The words in Malay, as far as I can remember, were "Ada-lah kewajipan saya memberi amaran kepada awak awak tidak kena paksa mau chakap atau jawab tetapi awak punya chakapan atau jawapan yang bertayan itu boleh jadi di-gunakan paksi jadi saksi." The words "may be given" mean "boleh jadi pakai saksi". It is true that my knowledge of Malay is that of colloquial Malay in which Inspector Samy spoke to me.

20

I entered Inspector Samy's office at about 4 a.m. I was given a seat. I started interpreting and went on until 6 a.m. He started speaking to me in Malay. I cannot remember all he said to me. The Inspector read out a caution to the accused and then started asking questions. The Inspector did not say to the accused that he was facing two charges. The Inspector did not say anything about the Internal Security Act, 1960. The word for "magazine" in Malay is "magazin". I do not speak English. I cannot understand English. The Malay word for "cuttle fish" is "sotong".

30

Inspector Samy did not instruct me in what language to administer the caution to the accused. It is not true that Inspector Samy instructed me to speak to the accused in Mandarin. I said in my statement to the Police that I was instructed by Inspector Samy to administer the caution in the Mandarin language.

40

It is not true that I spoke to the accused in a mixture of Mandarin and Hokkien. I do not know who brought the accused to Kota Tinggi Police Station. I was not there when he was brought in. At about 6.30 a.m. on 11.3.65 I went to a kongsi house together with Inspector

In the High
Court in
Malaya

Prosecution
Evidence

No.3
Lim Kok Bee
28th August
1965

Cross-
examination
continued

Samy, the accused and some soldiers. We came back at about 7.30 a.m. No further statement was then recorded by Inspector Samy from the accused.

No Indonesian was sitting by the side of the accused when his statement was recorded. The statement was recorded until 6 or 6.30 a.m. No Indonesian came in as his statement was recorded. No Malay or Indian was standing by the side of the accused as his statement was recorded. 10
It is not true that any Malay or Indian assaulted the accused in my presence. It is not true that 5 or 6 Chinese and Malays came into the room when his statement was recorded and that one of the Chinese threatened the accused. I did not see the accused bleeding from his mouth. The accused was not handcuffed when his statement was taken. It is not true that he was handcuffed. I am not telling a lie when I say this. It is not true that a Malay assaulted the accused with a ruler and paper weight. 20

No re-examination.

No.4
Palany Samy
28th August
1965

Examination

No.4
EVIDENCE OF PALANY SAMY - 28th
August 1965

P.W.2. PALANY SAMY, affirmed, states in English:

I am an Inspector of Police station at Kota Tinggi Police Station where I met Senior Inspector Tan Thin Loy (Senior Inspector Tan Thin Loy identified) and Major Lane (Major John Murray Lane identified). Inspector Tan Thin Loy handed to me this Identity Card (Marked P.1) bearing the name of Lee A Ba alias Lee Chee Hua and number 3723873 together with a photograph. The same Inspector handed to me two handgrenade detonators. The detonators were similar to the detonators in this photograph (marked P.2a for identification). I also received these two miniature compasses (marked P.3) and this cash \$18 (marked P.4). At the same time Inspector Tan handed the accused to me. It was then 4 a.m. 30 40

I took the accused into my office next to

the Kota Tinggi Police Station Enquiry Office together with P.W.1. I gave the accused a seat opposite me. I also gave P.W.1 a seat. Then I gave a caution in the Malay language to the accused through P.W.1. From the accused's appearance I could see that he understood what P.W.1 said to him. The accused then made a statement to me. The statement was made voluntarily. I did not at any time before or during the statement make any promise to the accused. I did not offer him any inducement or make any threat to him. I did not apply any pressure. During the recording of the statement no threat, promise or inducement was made or given to the accused. There was no one else present in my office at that time. Nobody at all came into my office as I was recording the statement. I was not armed. P.W.1 was not armed. The accused was not handcuffed.

In the High Court in Malaya

Prosecution Evidence

No.4
Palany Samy
28th August
1965

Examination continued

The accused appeared to me to be physically and mentally normal when he was handed to me and during the course of the statement. The accused answered my questions spontaneously. As a result of the statement made by the accused I discovered some facts. In consequence of this discovery I together with the accused escorted by P.W.1, an Indonesian named Sujati, Major John Murray and Senior Inspector Tan Thin Loy went to the Federal Development Scheme Authority area called Pasak, which is about 4½ miles from Kota Tinggi proper. After we had all arrived there, the accused took me to a hut and from there to an open ground about 30 yards away. I found that the ground there had been dug. I dug the place in the presence of the accused to a depth of 1½ feet and found two pairs of jungle boots. These are the jungle boots (marked P.5). I also found this pair of jungle green trousers (Marked P.6).

After that I proceeded with the Indonesian (Sujati identified), Major John Murray Lane and Inspector Tan Thin Loy to a spot about 275 yards from the hut at the edge of the jungle. I found an arms dump lying concealed in the jungle. Major Lane uncovered the bushes and I found this sten gun numbered 53611 (marked P.7), these 115 rounds of 9 mm.

In the High
Court in
Malaya

Prosecution
Evidence

No.4

Palany Samy
28th August
1965

Examination
continued

rounds (marked P.8), this colt .38 revolver numbered 795673 in this holster (marked P.9), these 29 rounds of .38 ammunition (marked P.10), these 5 sten gun magazines (marked P.11), this .303 rifle numbered 57136L with one magazine containing 10 rounds (marked P.12), these 136 rounds of .303 ammunition wrapped up in a cloth (marked P.13), these three armalite rifles numbered 000693, 000957 and 0001509 (marked P.14), these 265 rounds of .223 ammunition (marked P.15), these 15 armalite magazines (marked P.16), this bayonet sheath (marked P.17), this medical pack (marked P.18), this mug, (marked P.19), these belts (marked P.20), this pair of boots (marked P.21) and this empty biscuit tin (marked P.22). I also found 7 handgrenades and 6 detonators which were similar to the handrenades and detonators shown in this photograph (marked P.2b for identification). I took all the exhibits to the hut. At the hut a Chinese named Chong (Chong Hian Shin identified) handed over to me this khaki shirt (marked P.23) and this khaki trousers (marked P.24). I took possession of them. After that I returned to Kota Tinggi Police Station. The exhibits have been in my possession ever since. I later handed the handgrenades and detonators to Sergeant Keane (Terence Keane identified). I asked the accused to wear P.23 and P.24. I found that they fitted him.

Adjourned to 2.15 p.m.

(Signed) (S.G. Gill)

Resumed at 2.20 p.m.

P.W.2. PALANY SAMY (on his former oath):

Before returning to the Police Station I made a sketch plan of the hut and of the place generally. This is the sketch plan I made together with the key (marked P.25).

On 15.3.65 at 10 a.m. I handed over 7 handgrenades and 8 detonators to Sergeant Terence Keane. The 8 detonators included the 2 detonators which had been handed to me by Senior Inspector Tan Thin Loy. Sergeant Keane examined the handgrenades and the detonators in the armoury magazine of Kota

Tinggi Police Station in my presence. Sergeant Keane took away the 7 handgrenades and 8 detonators.

In the High Court in Malaya

On 20.3.65 at about 3 p.m. I went to the Police Contingent Armourer's Office with all the arms and ammunition and handed them to Senior Inspector Visvanathan (identified). On the same evening I got the exhibits back from Inspector Visvanathan.

Prosecution Evidence

No.4

Palany Samy
28th August
1965

10 I made the sketch plan (P.25) on 7.4.65 when I visited the Development area at Pasak again.

Examination continued

I administered the caution to the accused at about 4 a.m. on 11.3.65. I was then in my office. I spoke to P.W.1 in Malay and P.W.1 also spoke to me in Malay. P.W.1 fully understood what I said to him in Malay and I fully understood his Malay. I read out the caution from a printed form in the Malay language. It was the form of caution laid down in the Internal Security Act, 1960. This is the form I used (marked P.26). It is in English and Romanised Malay. P.W.1 interpreted the caution to the accused in Mandarin, as was stated to me by P.W.1. The accused answered my questions through P.W.1. I recorded the accused's statement which was interpreted to me by P.W.1. After the accused had finished making his statement, I read it back. P.W.1 interpreted. P.W.1 said to me, after the accused had spoken to him, that the statement represented what the accused had told me through him. There was normal flow of conversation between P.W.1 and accused. The impression the accused gave me was that he was willing to give a statement. I formed the impression that P.W.1 and the accused understood each other. During the course of the statement I did not get the impression that the accused was being pressed or induced to make a statement.

After the accused had confirmed through P.W.1 that the statement was correct, I signed it and P.W.1 also signed it. I also signed after the caution was administered, and so did P.W.1.

In the High
Court in
Malaya

(As Enche T.T. Rajah is objecting to the
admissibility of the statement, I allow him to
cross-examine this witness at this stage).

Prosecution
Evidence

No.4
Palany Samy
28th August
1965

Cross-examined: I was a Court Prosecuting
Officer for about 2 years, in 1964 and this
year. I am not a full time Court prosecutor now.
I have not been a full time Court prosecutor since
1964. Prior to 1964 also I had prosecuted in
Court once in a while. I have been in the Police
force for 20 years. I have given evidence in so
many cases.

10

Examination
continued

I administered the caution in this case in
accordance with the law. After administering the
caution I told the accused that he would be charged
under the Internal Security Act, 1960. I used the
English words for the Act. I also told him that he
would be charged with the offences of possession of
firearms and ammunition and consorting with Indone-
sians. I am sure I said all this. In spite of that
the accused made a statement voluntarily.

I cannot understand any Chinese dialect. I
cannot tell one Chinese dialect from another. I
read the caution in Malay from the printed form,
word by word. My impression was that P.W.1. under-
stood the caution in Malay. I did not know whether
P.W.1 had passed any test in the Malay language.
It is not true that the caution was not given to
the accused. It is not true that I did not say to
the accused that he would be charged with offences
under the Internal Security Act. There was a trans-
lation of the caution in Mandarin previously. On
that night the form was not available.

20

30

I did not instruct P.W.1 to administer the
caution in Mandarin. P.W.1 told me that he spoke
to the accused in Mandarin. He mentioned only
Mandarin. I am aware that P.W.1 said in his
statement to the Police that I instructed him to
administer the caution in Mandarin. The accused
did not appear to be frightened when I recorded
his statement. I do not know what happened to the
accused before he was handed to me. I first saw
the accused at 3.30 a.m. on 11.3.65 in the Enquiry
Office of Kota Tinggi Police Station. He was
wearing a white vest with short sleeves and
trousers. I do not know at what time he was
brought to the Police Station. I cannot remember
whether the accused was handcuffed when I first

40

saw him. It is not true that the accused was handcuffed during the whole of the period of the statement. I am telling the truth.

In the High Court in Malaya

After the caution and the mention of charges the accused said that he understood. The words used by P.W.1 were "Saya paham". By that I understood the accused to mean that he fully understood.

Prosecution Evidence

10 It is not true that while I was recording the statement there was one other person present, apart from the three of us. It is not true that one Malay was present a number of times and that he assaulted and tortured the accused when his statement was being recorded. The accused was not bleeding from his mouth. The statement was completed by about 6.30 a.m.

No.4
Palany Samy
28th August
1965

Cross-examination continued

20 After returning from the hut I did not take a further statement from the accused. I do not know whether anybody else took a statement from the accused. I typed the accused's statement. I did not record any of his statement in handwriting. It is not true that I forced the accused to sign a typewritten statement.

The accused was later sent to the Special Branch in Johore Bahru, but I cannot say when he was sent.

I recorded the statement at 4 a.m. on instructions from my superiors.

30 It is not true that I discovered the exhibits on information received from Chong Hian Shin. It is true that I asked the accused to wear P.23 and P.24. He put them on, and they fitted him. It is not true that the statement made by the accused was not a free and voluntary statement.

(At this stage I recall P.W.1.)

No.3
EVIDENCE of LIM KOK BEE

P.W.1 LIM KOK BEE (on his former oath):

40 By Court: I remember a gist of what I said to

No.3
Lim Kok Bee
recalled by
Court
28th August
1965

Re-examination

In the High
Court in
Malaya

Prosecution
Evidence

No.3

Lim Kok Bee
recalled by
Court
28th August
1965

Re-examination
continued

Defence
Evidence

No.5
Lee A Ba
28th August
1965

Examination

the accused while interpreting the caution to him. What I said to him was, "My duty is to warn you that you are not compelled to say anything or answer any question, but anything you say whether consistent with truth or otherwise may be used as evidence".

The accused appeared to be frightened, but I cannot say of what he was frightened.

(Enche T.T. Rajah calls the accused to give evidence on the question of his cautioned statement)

10

No. 5

EVIDENCE OF LEE A BA 28th August 1965

LEE A BA alias LEE CHEE HUA, affirmed, states in Hokkien:

I was taken to the Police Station half an hour after I was arrested by soldiers. Not long after that, it could be five minutes, I was taken into the room where P.W.1 and P.W.2 were. A person looking like a Malay and wearing a shirt with floral designs took me into the room.

20

I do not know what happened to the Malay who was arrested by soldiers. He looked like a Malay.

I made two statements. After my first statement I was taken to Pasak. I was made to sit there. The Police went round and recovered something. I do not know what that something was. Then I was taken back to the Police Station where I made a second statement. I do not know why I was assaulted. I was assaulted even while I was making a statement. It was not fair for them to assault me. They made me frightened. I did make a report to the doctor, but not to the head of the Police about the assault because I was afraid to do so. The doctor looked like an Indian. He wore a white gown. I made a report to the doctor when I was in the Special Branch at Johore Bahru. I reported to the doctor on 15.3.65. I was given treatment by the doctor.

30

40

By Court: I do not know why the Police assaulted me.

(T.T. Rajah says that is the only evidence which he wishes to call at this stage).

In the High Court in Malaya

Defence Evidence

No.5
Lee A Ba
28th August
1865

Examination continued

No.4
EVIDENCE OF PALANY SAMY

Prosecution Witness

P.W.2 recalled.

P.W.2 PALANY SAMY (reaffirmed):

No.4
Palany Samy recalled
28th August
1965

10 This is the statement I recorded from the accused (marked P.27). I now wish to make a correction. The statement from the accused was taken down in writing. It was typed soon after it was recorded, but not in the presence of the accused. The accused was not made to sign any typewritten statement.

Re-examination

20 (Inche T.T. Rajah applies that the statement be now rejected in view of the previous evidence of this witness and P.W.1 that the statement was typed. Refer to Yap Keong and Anor. v. P.P. (1947) M.L.J. 90. I disallow Enche T.T. Rajah's application. Witness recalled).

Witness reads the statement.

Adjourned until 10 a.m. tomorrow.

(Signed) S. S. Gill

29th August 1965

Emergency Criminal Trial No. 32/65

Hearing continued. Counsel as before.

In the High
Court in
Malaya

Prosecution
Witness

No.4
Palany Samy
recalled
28th August
1965

Re-
examination
continued

P.W.2 PALANY SAMY (reaffirmed and
continuing his evidence):

I see P.25. The sketch on the first page shows the general view of the kongsi house. The kongsi house is also shown on the second page of the sketch plan. A on this part of the sketch plan represents a long plank built bunk. B represents a short length wooden bunk. C represents a wooden table with its legs dug in the ground. D represents the kitchen in the kongsi. The kongsi house was open on three sides with a plank wall on the fourth side. The kitchen was also open on all sides.

10

Cross-
examination

Cross-examined: P.27 is written in my hand-writing. It was not recently rewritten. It is not true that I have suppressed certain documents relating to this case from the Court. It is not true that I asked the accused to sign a typed statement. I unintentionally made a mistake when I said yesterday that the statement was typed. I do not know whether P.W.1 also made a mistake. It is not true that I coached P.W.1 as to what evidence to give. It is not true that I took a second statement from the accused after returning from the hut. I believe in God. I am not telling lies.

20

I do not know at what time the accused was brought to the Police Station on the night of 10th March, 1965. I know Major Lane. I met him at Kota Tinggi Police Station at about 3.30 a.m. on 11.3.65. I was in the house that night. I arrived at the Police Station at 3.30 a.m. It is not true that Major Lane saw me and handed over the weapons at 1.45 a.m. I was not the duty officer at Kota Tinggi Police Station that night (witness allowed to see his diary). I do not know who was the duty officer that night. The O.C.P.D. of Kota Tinggi then was Enche Samad bin Sinin, A.S.P.

30

I had the accused produced in Kota Tinggi Court on three charges (1) possession of machine gun and revolver on 8.3.65 (2) possession of 115 rounds 9 mm. and two handgrenades and (3) consorting

40

with armed Indonesians, all offences under the Internal Security Act, 1960.

In the High Court in Malaya

No re-examination.

Prosecution Witness

No.4
Palany Samy recalled
28th August 1965

Cross-examination continued

No.3
EVIDENCE OF LIM KOK BEE

No.3
Lim Kok Bee recalled
29th August 1965

P.W.1 LIM KOK BEE (recalled at Enche Rajah's request and reaffirmed):

Cross-examination

10 Yesterday I was asked what the accused appeared to be frightened of. My impression was that the accused was frightened of being imprisoned or sentenced to death.

It is not true that on my return from the hut on the morning of 11.3.65 I continued acting as interpreter for P.W.2.

20 The accused's statement was taken down by P.W.2. I do not know whether it was taken on the typewriter or taken down in handwriting. I was there from 4 a.m. to 6.30 p.m. I was interpreting to P.W.2 what the accused said. Yesterday I said P.W.2 took the statement on a typewriter. Now I say I cannot recollect definitely whether the statement was taken on a typewriter. It is not true that P.W.2 and I rehearsed what evidence to give in this case. It is not true that I deliberately deceived this Court yesterday.

Re-examined: My impression was that the accused was afraid of being sentenced to death by the Court.

re-examination

30 (Enche Rajah again applies that the statement of accused be rejected. I disallow the application).

In the High
Court in
Malaya

No.6
EVIDENCE OF KAT KIM HIN
29th August 1965

Prosecution
Evidence

P.W.3 KAT KIM HIN, affirmed, states in Hakka:

I am Detective Sergeant No. 258 stationed at Johore Contingent Headquarters, Johore Bahru.

No.6
Kat Kim Hin
29th August
1965
Examination

On 11.3.65 at 10.55 a.m. I reported for duty to P.W.2 at Kota Tinggi Police Station. On his instructions I took these two photographs (now marked P.2a and P.2b). These are the negatives of the photographs (marked P.2an and P.2bn).

10

No cross-examination.

No.7
Terence Keane
29th August
1965

No.7
EVIDENCE of TERENCE KEANE
29th August 1965

Examination

P.W.4 TERENCE KEANE, affirmed, states in English:

I am Staff Sergeant with the Malaysian Armed Forces. My trade is that of an ammunition technician. On 15.3.65 at 10 a.m. at Kota Tinggi Police Station P.W.2 handed to me 8 detonators and 7 handgrenades for examination. The detonators and handgrenades were similar to those shown in P.2a and P.2b. Two of the detonators are shown separately in P.2a. These two detonators were of the type used with the Indonesian handgrenades and they were serviceable. They were a copy of a British handgrenade known as 36 mm handgrenade. The other six detonators were also of the same type and serviceable.

20

30

I also examined the 7 handgrenades. They were separate from the detonators. On 31.5.65 I disposed of the handgrenades. I produce the disposal certificate (marked P.28). I knew that the detonators and grenades would be required to be produced in Court at some stage. I destroyed them because they were unsafe.

Cross-
examination

Cross-examined: A handgrenade does not explode without its detonator being attached. A detonator could explode by itself if hit on hard surface.

40

There was need to destroy both the detonators and the handgrenades. The filling of the grenade is TNT.

In the High Court in Malaya

Prosecution Evidence

No.7
Terence Keane
29th August
1965

Cross-examination continued

Re-examined: Because of the filling of the handgrenade with TNT it is unsafe to store it.

Re-examination

No.8
EVIDENCE OF AGORAM VISVANATHAN
29th August 1965

No.8
Agoram
Visvanathan
29th August
1965

10

AGORAM VISVANATHAN, affirmed, states in English:

Examination

I am a Senior Inspector of Police attached to Police Contingent Headquarters, Johore Bahru. I am the Armaments Officer for Johore and Malacca.

20

On 20.3.65 at about 3 p.m. P.W.2 came to my office and requested me to examine certain firearms. I had seen similar firearms before. I see the firearms in Court (P.7, P.9, P.12, P.14). I examined all these firearms. I also examined the ammunition now in Court. I found the arms and the ammunition to be serviceable. After my examination I returned the firearms and ammunition to P.W.2 on the same day.

I see P.7. It is called a sten gun or a sub-machine gun. P.8 is the appropriate type and calibre of ammunition for P.7.

No cross-examination.

In the High
Court in
Malaya

No.9
EVIDENCE of JOHN MURRAY LANE
29th August 1965

Prosecution
Evidence

JOHN MURRAY LANE, affirmed, states in English:

No.9
John Murray
Lane
29th August
1965

I am a Major in the British Army seconded to the Malaysian Armed Forces. On 10.3.65 at about 4.30 p.m. I was based at Kota Tinggi Police Station. Acting on information received and accompanied by Inspector Tan (Inspector Tan Thin Loy identified) I went to the area of a hut beyond the rubber estate due east from Kota Tinggi about 5 miles away. 10

Examination

At about 6.30 p.m. a body of troops joined me together with Second-Lieutenant Kadir. At about 8.30 p.m. we had partially surrounded the hut in question. At about 10.30 p.m. acting on my previous instruction Second Lieutenant Kadir challenged the occupants of the hut and asked them to come out one by one. Soon after this I went round the other side of the hut and by torch light saw a group of civilians. Five of them I had seen before, and there were three others. Two of these I now know to be the accused and an Indonesian called Kampto. The accused was dressed in a Tee shirt, dirty white colour, on which was an advertisement of a mechanical handsaw and dark trousers and flip-flop type of shoes. This was the Indoensian (Sujatino bin Kartesentomo identified). I apprehended the accused and the Indonesian. 20

I had reason to believe that there should have been three more suspects. However, a search of the immediate area proved fruitless. I returned to the hut and gave instructions for a search to be made of it. Amongst the items which were brought to me in the hut were 2 grenade detonators, 2 compasses and an amount of money, I think, \$18/-, a stamped and addressed but unposted letter and a small note book which contained some figures and Chinese characters. I cannot remember any of the other articles. The two compasses were similar to these compasses (P.3). The two detonators were similar to the detonators shown in P.2a and P.2b. This was the note book (marked P.29 for identification). I then carried out a search of the immediate area as I believed there would be weapons concealed in it. In this search 30 40

I was led by the Indonesian. It proved fruitless. So we returned with the accused and the Indonesian to Kota Tinggi Police Station.

In the High Court in Malaya

Soon after our return to Kota Tinggi Police Station I handed over the accused and the Indonesian to Inspector Samy (P.W.2).

Prosecution Evidence

10 Early next morning at about 6.45 or 7 o'clock accompanied by Inspector Samy, some other Police officials and some of my soldiers, the accused and the Indonesian, I returned to the hut. I accompanied Inspector Samy who was led by the accused to a spot on the ground in the area, quite close to the hut (about 35 to 40 yards). I noticed that the ground had been disturbed, and after somebody else had dug, there were revealed two pairs of jungle boots, one with leather soles with metal studs on surface and one with rubber soles, and a pair of long trousers. The jungle boots were similar to P.5. I saw many boots during those operations. I am almost certain that one of the boots had leather soles with metal studs. The trousers was similar to this (P.6.)

No.9
John Murray
Lane
29th August
1965

Examination continued

30 After that I was led by the Indonesian to a spot about 25 yards inside the jungle area which was about 250 yards from the hut. After a search the Indonesian pointed to what appeared to be a large parcel concealed in the undergrowth. I ordered him to pick it up and it proved to be a bundle of weapons wrapped up in oil-cloth and also a small sack and a biscuit type of tin. I handed these over to Inspector Samy and we returned to the hut.

40 I was present when these objects were undone and noted that there were these three armalite rifles (P.14), this .303 rifle (P.12), this sub-machine gun (P.7), this pistol in a leather holster (P.9). From the sack were taken out these military webbing and straps (P.20). There were also 6 handgrenades, some more detonators and a variety of rounds of ammunition for these types of weapons and loaded magazines for the .303 rifle and the Armalite rifles and the sub-machine gun. The detonators and handgrenades were similar to those shown in P.2a and P.2b.

In the High
Court in
Malaya

Prosecution
Evidence

No.9

John Murray
Lane
29th August
1965

Cross-
examination

Cross-examined: I arrived at Kota Tinggi Police Station with the accused and the Indonesian between 1.30 and 2.30 a.m. on 11.3.65. I remember making a statement to Inspector Tan on 12.3.65. If I said in that statement that it was 1.45 a.m. that would be a more accurate statement. The compasses, etc. I handed in at the Police Station.

There is no doubt in my mind that I handed the accused and the Indonesian to Inspector Samy on arrival at the Police Station. I do not remember handing them to Inspector Samy immediately upon arrival but I did so within 30 minutes. I was living in the Police Station at that time. I did not sleep that night. I spent most of my time writing out my report in the Operations Room on the first floor of the Police Station. I do not remember seeing the accused and the Indonesian until next morning when they were taken to the hut. I did not interrogate the accused or the Indonesian. It was not my job. I did not see any one interrogating the accused or the Indonesian at the Police Station. I slept for about 1 hour before we went out next morning. I did not notice any marks on the face of the accused. His appearance was similar as when I saw him at the hut. When I say that I apprehended the accused I mean I had him under my control. I was not by his side all the time. For a short time I was looking for three other suspects.

I cannot say who recovered the 2 detonators and the compasses, etc. I cannot say which soldier handed them to me. I was sitting in the hut when they were brought to me and put on the table beside me. The room was lit with oil lamps, about three or four lamps. Only one or two lamps were lit before the apprehension. The others were lit afterwards.

The purpose of going back to the hut in the morning was to continue the search. I may have had a conversation with Inspector Samy before we went back but I cannot remember the details of the conversation. This was a combined operation, Police and Military. I acted on information received on the morning of 10.3.65.

10

20

30

40

(Question: Did you receive any information with regard to boots and trousers? Question disallowed).

In the High Court in Malaya

I met this person on the morning of 10.3.65 (Chong Hian Shin identified). I also met him in the afternoon of the same day.

Prosecution Evidence

No.9

John Murray
Lane
29th August
1965

Cross-examination continued

10 Re-examined: When the operation was over I handed the accused and the Indonesian to the Police and for that period of time my responsibility was over. I am sure I handed the accused to P.W.2.

Re-examination

No.10

EVIDENCE OF TAN THIN LOY 29th August 1965

No.10
Tan Thin Loy
29th August
1965

P.W.7 TAN THIN LOY, affirmed, stated in English:

Examination

I am a Senior Inspector of Police attached to District Police Headquarters, Kota Tinggi.

20 As a result of information received I accompanied P.W.6. and some other members of the Malaysian Armed Forces to the FLIDA area adjacent to Pasak Estate. P.W.6 identified the area. We arrived at a hut. We cordoned off the hut. Second-Lieutenant Kadir of the Armed Forces challenged the occupants of the hut to come out. This was after 9.30 p.m. In all 30 8 persons came out of the hut after the challenge. Amongst the persons who came out of the hut were the accused and this Indonesian (Sujatino bin Kartesentomo identified).

I carried out a search of the hut. In the hut there was a wooden box placed on a sleeping

In the High
Court in
Malaya

Prosecution
Evidence

No.10
Tan Thin Loy
29th August
1965

Examination
continued

wooden platform. In the box I found this Identity Card of the accused (P.1), this small note book (now marked P.29), 2 handgrenade detonators, \$18 in cash and these two compasses (P.3). The detonators were similar to the detonators shown in P.2a and P.2b. I see P.25. The box was found on the platform marked "A" in P.25. The money I found was similar to this (P.4). Then Chong Hian Shin, an occupant of the hut, handed me this stamped but unposted envelope (marked P.30). This is Chong Hian Shin (Chong Hian Shin identified). We then returned to Kota Tinggi Police Station, arriving there at about 1 a.m. on 11.3.65. After I had made a report at the Police Station Inspector Samy arrived. I made the report at 3.05 a.m. on 11.3.65. I handed over the accused and the Indonesian to Inspector Samy together with the exhibits. 10

On 11.3.65 at about 6.45 a.m. I accompanied P.W.6 together with the accused, the Indonesian and Inspector Samy to the same area and to the hut. The accused took us to a place about 30 yards from the hut where we discovered a hole in which one leather boot, a pair of jungle green rubber shoes and a pair of trousers were found. The jungle green rubber shoes were similar to P.5. The trousers was similar to P.6. Inspector Samy took possession of these things. 20

Shortly after that the Indonesian brought us to the jungle edge about 300 yards from the hut where we recovered a dump. There were three Arma-lite rifles, a mark I .303 rifle, a sten gun wrapped up in a plastic sheet. In the same dump was a biscuit tin in which there was a pistol. I had seen similar weapons before. These were the 3 Arma-lite rifles (P.14), this the sten gun (P.7), this the .303 rifle (P.12) and this the pistol (P.9). 30

The dump also contained some ammunition which I did not check up. There was a gunny sack with some webbing kit similar to P.20. This was the tin in which the pistol was found (P.22). Inspector Samy took possession of all the exhibits. 40

Adjourned to 2.30 p.m.

Signed: (S.S. GILL)

Resumed at 2.30 p.m.
P.W.7. TAN THIN LOY (on former oath):

In the High
Court in
Malaya

Cross-examined: I found the identity card (P.1), the cash (P.4), the two detonators and the two compasses (P.3). I am definite I found them in a box on the platform marked "A" in the sketch plan. I stick to what I say in spite of what P.W.6 said. I remember I made a report at about 3 p.m. What I said there was that the following articles were found on a bedstead in the hut. That is correct. I did not say in that report that I found the articles. I found them. It is not true that the detonators were found outside the hut.

Prosecution
Evidence

No.19
Tan Thin Loy
29th August
1965

Cross-
examination

I did not find any other detonators in the hut before returning to the Police Station that night. I next went to the hut at about 6.45 a.m. on 11.3.65. I did not then find any detonators in the vicinity of the hut. I do not know how many handgrenades were found in the dump.

Chong Hian Shin gave the information. He was not a paid informer. There was a previous arrangement with him about a signal. He was to walk out of the hut with a torch light in his hand. He also informed me where the boots and trousers were hidden. He gave this information on the morning of 10.3.65. It was around 9 a.m. He said he knew the place. He was among the party when the boots and the trousers were found. I had this information beforehand, but I did not know the location. I cannot very well remember who pointed out this place but the accused and Chong Hian Shin were in the party. The Indonesian pointed out the arms dump.

No re-examination.

No.11
EVIDENCE OF LEE GEN CHAI 29th
August 1965

No.11
Lee Chin Cha:
29th August
1965

P.W.8 LEE GEN CHAI, affirmed, states in Hokkien:

Examination

I live at the 36th milestone, Jalan Johore,

In the High Court in Malaya

Prosecution Evidence

No.11
Lee Chin Chai
29th August
1965

Examination continued

Pontian. The accused in the dock is my son. He was born in Pontian. I procured an Identity Card for the accused. This is the Identity Card which I procured for my son (P.I).

Some time in May 1964 that he was leaving my house to look for a job. He has not returned to my house since. I did not know where he went in search of work.

I have been living in Malaya for 40 or 50 years. My son lived with me until he left my house some time in May 1964. I am a citizen of this country. My son is also a citizen of this country. I obtained a Citizenship Certificate for him.

10

I became anxious about my son's disappearance. I did make inquiries or cause inquiries to be made to ascertain my son's whereabouts. During his absence my son did not communicate with me by telephone, letter or any other means. I did not know where he had gone. I thought he was looking for a job within Malaya. I came to know about his whereabouts only some time this year, but I cannot remember the date.

20

No cross-examination.

No.12
Chong Hian Shin
29th August 1965
Examination

No.12
EVIDENCE of CHONG HIAN SHIN
29th August 1965

P.W.9 CHONG HIAN SHIN, affirmed, states in Hakka:

I am a contractor with the Federal Land Development Authority in Kota Tinggi. On 9.3.65 at about 8 p.m. I was in the small kongsi house in the land development area known as Pasak about 4½ miles away from Kota Tinggi town. My work there was to prune the land. I had 5 labourers under me, all living in the same kongsi house.

30

On 9.3.65 at about 8 p.m. my 5 labourers were with me in the kongsi. My labourers were Liew Chon, Lai Thian Swee, Chia Chan Wah, Long Thian Hee and Leong Chew. This is Ah Hee (Keong Tham alias Ah Hee), one of my labourers. This is Lai Thian Swee (identified), this Chian Chan Wah

40

(Che Chiang Hua identified) and this Liew Chon (Low Chin identified). My fifth labourer is not here. The kongsi house was lighted with one kerosene lamp. Normally two lamps were lighted, but as we were about to go to sleep then only one lamp was lighted. The light lamp was suspended and it had two lights. It was quite bright.

In the High Court in Malaya

Prosecution Evidence

10 At about that time a Chinese came to the kongsi house. He entered the kongsi house. He was dressed in khaki. He was the accused (points to accused). The colour of his dress was the same as that of the Police Inspector Samy's uniform (brown khaki). The accused's dress was dirty. When the accused first came he was alone. Later on he went out and came in again bringing 4 others with him.

No.12 Chong Hian Shin 29th August 1965

Examination continued

20 When the accused came first he asked me for food. He introduced himself to me as Lee Chee Hua. He told me he was in the military, and when I asked him in what military, he replied that he was in the Indonesian army. I asked him what he had come for, and he said he had come to smash Malaysia.

30 Later he came back with 4 other persons, 2 of whom were in military uniforms and the other two in civilian clothes. All 4 of them looked like Malays. I could not understand their language. I thought they were Indonesians. The accused introduced them to me as Indonesians. I was quite frightened when I came to know that they were Indonesians. They were all soldiers, including the accused, because they carried firearms. I do not know the names of the Indonesians but I can identify all of them if they are shown to me. These were two of the Indonesians who came with the accused (Sujatino bin Kartesentomo and Tarmudji bin Dju Remi identified).
40 When the accused came into the kongsi house by himself he was not carrying a Firearm. He asked me for food. He said he had not eaten food for days. He told me that he had been driven by soldiers and had lost his way. I gave him food.

I can identify the arms which the accused and the Indonesians were carrying. There was one

In the High
Court in
Malaya

Prosecution
Evidence

No.12
Chong Hian
Shin 29th
August 1965

Examination
continued

firearm (P.7) like this. The accused was carrying this. One of the four Indonesians was carrying this (P.14). All these four firearms (P.12 and P.14) were carried by the Indonesians. The accused was carrying this pistol (P.9) tied to his waist. The accused was also carrying these two things (P.3). These magazines (P.11) were on the person of the accused. I saw the Indonesians carrying ammunition like P.15. Every one of the four Indonesians had some magazines similar to P.16. I see P.2a. I do not know what the two small things in this photograph are, but I think they have something to do with handgrenades. I saw similar things after the arrival of the accused. He took two of these things from his person, wrapped them in a piece of oil paper and put them back on his person again.

10

I have seen this tin before (P.22). The accused borrowed it from me at 5 a.m. on 10.3.65. 20

I cooked rice when the accused asked for food. Before the rice was cooked he went out and came back with the Indonesians. Later they all had food. After they had had their food, the accused borrowed P.22 from me. The accused told me that he required the tin for his bullets. He made use of the tin. He put bullets into it. After that he carried it out of the house. This took place at about 5 a.m. on 10.3.65. Besides the Bullets the accused also placed 6 or 7 hand-grenades, a pistol, magazines, and two of the things shown on top of P.2b into the tin which he took away from the house at 5 a.m. on 10.3.65.

30

The accused and the Indonesians passed the night in my kongsi house. The four Indonesians left the kongsi with all their firearms and went towards the jungle. The accused remained in the kongsi house. The Indonesians carried away the tin (P.22) at about 5 a.m. on 10.3.65. The Indonesians carried away all the arms including those which were carried by the accused. The accused had no firearms left with him but kept two articles similar to those shown in P.2a. The accused was awake when the Indonesians left. After that he went back to sleep. I also went back to sleep.

40

I woke up at 6.30 a.m. on 10.3.65. The

accused woke up at the same time. After that the accused asked me to assist him in buying shoes, clothes and cigarettes. The accused gave me \$50 and I left the house at about 8 a.m. The accused was then in the house.

In the High
Court in
Malaya

10 I went to Kota Tinggi town and saw P.W.7 at the Police Station. I told him about the accused and the Indonesians. I then took him to a place about 20 chains from my kongsi house and showed him the kongsi house. P.W.7 then left, telling me that he would come to the hut with soldiers at 10 p.m. on that day. He told me to give him some signal with my torch light. I left with P.W.7, went to Kota Tinggi town, bought the articles which the accused wanted and returned to the kongsi house.

Prosecution
Evidence

No.12
Chong Hian
Shin
29th August
1965

Examination
continued

20 That evening I was in the kongsi house with my 5 labourers, the accused and the four Indonesians. The Indonesians came back to the kongsi house at 5 p.m. on 10.3.65. We all went to bed.

30 At about 10 p.m. I went out and signalled with my torch light as arranged with P.W.7. About 5 minutes later soldiers arrived. After giving the signal I went back to the kongsi. I heard voices of soldiers outside calling us to surrender. We all went out to surrender. I went out to surrender. The soldiers arrested the accused and also one of the four Indonesians who is now outside the Court. This was the Indonesian whom the soldiers arrested (Sujatino identified). All of us came out of the kongsi house. The other three Indonesians escaped.

40 After arresting the accused and the Indonesians the soldiers carried out a search of the area. P.W.7 was amongst the soldiers. A search was made inside the hut. In the kongsi the two articles shown in P.2a and also the two compasses were recovered. I cannot remember what else was recovered. P.W.7 recovered the articles from the kongsi house. (Shown P.25). This is a sketch of the kongsi. I see the second sheet. "A" in the sketch plan is a sleeping platform. I was sleeping at the top end of "A". The accused was sleeping next to me. The Indonesian who was arrested was next to the accused.

In the High
Court in
Malaya

Prosecution
Evidence

No.12

Chong Hian
Shin
29th August
1965

Examination
continued

I was present when P.W.7 found the compasses and the two articles shown in the photograph. They were found on the bed of the accused, at the area where his head rested. The two articles recovered were the two articles I had previously seen the accused take off his person, wrap them up in oil paper and put back on his person when he first came.

I have seen P.23 and P.24 before. The accused was wearing them when he first came to the kongsi on the night of 9.3.65. The accused was not wearing P.23 and P.24 when the soldiers came in the night of 10.3.65. Two hours after arriving at the kongsi house the accused took off P.23 and P.24 and put on my clothes instead. He put P.23 and P.24 in the kongsi house. Later I gave them to Inspector Samy (P.W.2).

10

Adjourned to 9.30 a.m. tomorrow.

(Signed) S. S. GILL

No.12

Chong Hian
Shin
30th August
1965

Cross-
examination

30th August, 1965

Emergency Criminal Trial No.32/65

20

Hearing continued. Counsel as before.

CHONG HIAN SHIN (reaffirmed):

Cross-examined: I do not know what a detonator is. I have never seen one in my life. I made a statement to the Police. I was asked if I knew that the accused was in possession of 2 detonators. I told the Inspector that I saw two articles and that I was not sure whether they were two handgrenade detonators. I described the two articles as of the same size as my little finger. I did not use the word "detonators". I described what they looked like. I was not sure what they were. I had never seen such things before that day. I described the two articles but I did not know what they were.

30

On 9.3.65 I saw the accused taking these two articles out and wrapping them in a piece of oil paper at about 9.30 a.m. after he had taken his meal. On the night of 10.3.65 I was present when they searched my kongsi house. I saw Inspector

40

Tan (P.W.7) recovering the identity card. I cannot remember seeing any one recovering money. I also saw P.W.7 recovering two articles of the size of my little finger. They were on the bed inside a small wooden box. I am sure the box was on the bed where the accused slept, not under the bed. If I said in my statement to the Police that the accused was keeping them under his place of bed that would be incorrect. I saw the contents of the wooden box. I was sleeping next to the accused. Inside that box were 2 articles of the size of my little finger and also two compasses. There were other articles but I cannot remember them now. The wooden box is not here. The wooden box was not taken away by the soldiers because it belonged to me. The accused had borrowed it.

In the High
Court in
Malaya

Prosecution
Evidence

No.12
Chong Hian
Shin
30th August
1965

Cross-
examination
continued

It is not true that I am not telling the Court the truth about the detonators. It is not correct there were no detonators.

On 9.3.65 at about 8 p.m. the accused was the first person to come to the kongsi house. He came unarmed. Then he went out and came with the 4 Indonesians. I still maintain that is correct. When he came back he was armed with a sub-machine gun and a pistol. I did not say in my statement, "As soon as the male Chinese entered the kongsi hut, 4 male Indonesians (2 dressed with green uniforms and 2 civilian clothes) followed him." What I have told the Court is true. If I said in my statement to the Police that the accused came armed with a pistol and a sten-gun that would not be correct.

The four Indonesians left the next morning. The accused was awake and he assisted the Indonesians by putting the bullets in the tin. This was at 5 a.m. If I said in my Police statement that the accused was still sleeping when the Indonesians left that would be incorrect.

Normally I go to sleep at about 10 p.m. When I go to sleep I leave one lamp lighted. On the night of 9.3.65 when the accused came there was one lamp burning. It was a lamp with a double wick. The lamp gave light. It was

In the High
Court in
Malaya

Prosecution
Evidence

No.12
Chong Hian
Shin
30th August
1965

Cross-
examination
continued

bright light.

All five of them were together when they had their meals. I said in my statement that during the time of taking food three were eating and two were standing outside the kongsi guarding the kongsi hut. That is correct. The eating together happened on the second night. On the first night they did not sit together to have their meals.

I told the Indonesians to keep their fire-arms under the bed when they came on the first night. I am sure that the accused gave me \$50/-. It is true that he gave me \$50/- to buy things for him. The Indonesians gave me no money.

10

I did not tell the accused or the Indonesians that I was going to the Police Station. I did not receive any money from the Government authorities before I made the report to the Police. (I disallow question about any reward afterwards).

20

I gave the information to P.W.7. I cannot remember whether he recorded anything. I arrived at the Police Station at about 8 a.m. on 10.3.65. I was with P.W.7 for about half an hour. I had conversation with P.W.7. No other Police Officer talked with me. P.W.7 was the first Police Officer I contacted and spoke to. I think P.W.7 wrote something. I did not sign it. He did not read back to me what he wrote.

(Enche Rajah asks that this information be produced as first information report. I disallow application as P.W.7 was not asked anything about it).

30

I went back to Kota Tinggi Police Station at about 2 p.m. on the same day. On this occasion I spoke to P.W.7 and another officer. On this occasion nothing was taken down. That was the time when I made arrangements about the signal to be given that night. I had already bought the things for the accused before that.

40

When the accused came to the kongsi house on 9.3.65 he spoke to me first in Mandarin. I understood his Mandarin. Later he spoke to me in

10 Hokkien as well. Teowchew and Hokkien are similar. I cannot differentiate. I believe they are different, but I cannot speak either of them. If I said in my statement to the Police that the accused spoke to me in Teochew when he came it would be correct. He spoke to me in Teochew. When I could not understand his Teochew he switched on to Mandarin. He told me in Teochew that he was an Indonesian soldier. What he said sounded more or less like Teochew or Hokkien. I understood him a little but not fully. It is not true that no Mandarin was used. It is not true that I spoke to accused in Hokkien.

20 I knew where the shoes and trousers were buried. I knew because the accused borrowed my changkol to bury them. I knew the spot about 30 yards away from the kongsi house where they were buried. I did not point out that spot to the Police. I do not know who pointed out. I was not present when they were taken out. It is not true that I was present.

I do not understand the Indonesian language. I did not talk to the Indonesians.

It is not true that my story about the articles about the size of my little finger is a fabrication.

30 On the night of 10.3.65 the four Indonesians were in the kongsi house. No one was guarding outside. When the security forces arrived the accused and one of the Indonesians were sleeping. The other three Indonesians were awake.

Re-examined: Although I do not speak Teochew I understood the accused when he told me in Teochew that he was an Indonesian soldier.

No.13
EVIDENCE OF KEONG TAM 30th August 1965

P.W.10 KEONG TAM, affirmed, states in Hakka:

40 I am an odd job labourer living in Pulau New Village. In March this year I was working in a new Development near Kota Tinggi. I was working under P.W.9, a sub-contractor, and I lived in a kongsi house. I was clearing the land. There

In the High Court in Malaya

Prosecution Evidence

No.12
Chong Hian Shin
30th August 1965

Cross-examination continued

Re-examination

No.13
Keong Tam
30th August 1965

Examination

In the High
Court in
Malaya

Prosecution
Evidence

No.13
Keong Tam
30th August
1965

Examination
continued

were six labourers including myself and P.W.9 I started work at a little past 6 a.m. returned for food at 11 a.m. and then worked from about noon until past 4 p.m. All six of us lived in the kongsi house.

I remember 9.3.65. At about 8 a.m. on that day I was inside the kongsi house. I was repairing a motor cycle belonging to P.W.9. At that time a Chinese stranger came to the kongsi. I can recognise him. He is the accused in the dock. He was dressed in khaki clothes. He was alone when he came. He went out for a whole and came back with four other men. When the accused came back he was carrying a gun. I cannot say what type of gun. When he came first I did not see if he had any gun. The accused was carrying this gun (points to P.7 from amongst the 5 guns). I have seen P.9 before. The accused was wearing it on his waist. I have seen these guns before (P.12 and P.14). I saw them when they were carried by the Malays who entered the kongsi house. They looked like Malays. Some of these people who looked like Malays were dressed in military clothes and some in civilian clothes. I can identify them if I see them again. These are two of the Malays who came to the kongsi with the accused (Sujatino and Tarmudji identified).

10

20

P.W.9 asked me to cook rice, which I did. The accused and the four Malays ate the rice. I served the rice to them. Then I went to sleep.

30

Next morning I got up at some time past 5 or 6 a.m. When I got up I did not see the four Malays there, but the accused was still in the kongsi. Then I left for work between 6 and 7 a.m. Five of us left for work. The accused followed us later from behind. The accused helped us in the work. At a little past 11 a.m. I returned to the kongsi and the accused followed.

I saw the Malays again at past 5 a.m. That night I went to bed at past 8 p.m. The accused and the four Malays were in the kongsi house when I went to bed.

40

At about 10.30 p.m. Government soldiers surrounded the kongsi house. They shouted out telling us to go out and surrender. I went out. Every

one from the kongsi house went out. The soldiers told us to sit on the ground. The soldiers patrolled the area and searched the area. Three Malays escaped. The accused and one of the Malays who is outside were caught by the soldiers. I can identify the Malay who was caught. This is the Malay who was caught (Sujatino identified).

In the High Court in Malaya

Prosecution Evidence

No.13

Keong Tam
30th August
1965

Examination continued

10 I see P.2a. I see those things (pointing to P.3) in this photograph. I do not see anything else. I see these two little things in P.2a. They are clips of a handgrenade. I know what a handgrenade is. I have seen clips of a handgrenade before. The accused brought them to the kongsi house. I saw the accused take out things similar to P.3 from his person. The accused brought the clips to the kongsi on 9.3.65.

20 Cross-examined: The accused came to the kongsi house at about 8 p.m. on 9.3.65. I saw him. When he came in first I did not notice whether he had anything on him. I made a statement to the Police. I said in my statement that the accused came into the kongsi armed with a gun about 2½ feet in length. He had the gun when he came the second time. I said in my statement that he was holding the gun in his left hand. I also said in my statement to the Police that he was armed with a pistol. I further said that very shortly four
30 other persons (all Indonesians and all armed with various types of weapons) entered the hut. I do not know why in my police statement there is no mention about the accused coming first, going out and coming back with the Malay. I believe I told the Police about it.

Cross-examination

It is not true that my evidence about the accused coming to the kongsi house, going out and coming back is a fabrication.

40 I did not hear any conversation between the accused and P.W.9. I was not sleeping when the accused came. I was repairing the motor cycle just by the side of the hut near the entrance. When the four Malays entered the kongsi house I was already inside. When the accused came I had already gone in. It was bright inside the hut. I could see the whole body of the accused. At that

In the High
Court in
Malaya

Prosecution
Evidence

No.13

Keong Tam
30th August
1965

Cross-
examination
continued

time I did not see any arms. He did not do anything. He came in for a while and then went out. He came in, asked me for food and then went out. I heard him ask P.W.9 for food. The accused asked for food in Teochew dialect. I did not hear him say anything else. The accused was about 23 to 25 feet from me when he asked for food. The other four workers were sleeping. The accused went out of the hut after a while, stood for a moment and left. I could hear him speak in Teochew. When he first came he had nothing on his body. I did not notice clips on his person when he first came. I saw the clips after he came in the second time. He placed them on a table when he took off his clothes. I did not go closer to the table to look but I could see from where I was. I was 4 to 5 feet from the table. At that time I did not know what those clips were. I was not shown the clips when I was at the Police Station to make a statement. I was not asked any questions about detonators. I was not asked any questions about clips. I was not asked how the detonators came to be in the hut. I did say in my statement that the accused brought the detonators in the Kongs. I described a piece of thing curved at one end. I said it was a little thing (indicating with a finger). I told the Police it was a clip.

10

20

It is not true that P.W.9 and I rehearsed our evidence about the clip. The accused had nothing other than the things I have mentioned.

30

The soldiers searched the hut that night. I was outside the hut. P.W.9 was also outside. The soldiers did not take me away that night. I went back into the kongs after the soldiers had taken away the accused and the Malay. After that I went to sleep. All of us went in after the soldiers left. We were outside for quite a long time, for about one hour, including P.W.9. P.W.9 and I would not know what was found inside the hut.

Accused worked with me on the morning of 10.3.65 until 11 a.m. When I got up that morning there was a lamp burning in the kongs. I went to Kota Tinggi in the afternoon on that day. I returned to the kongs at past 4 p.m. When I returned two of the Malays were in the kongs. I did not see the other two. I said earlier I saw the Malays again at past 5 p.m. That is not correct. I only

40

saw two. At past 7 p.m. all of them were in the kongsi house.

In the High Court in Malaya

I did not go to Kota Tinggi Police Station on the afternoon of 10.3.65. I met P.W.9 in the town and he told me that he had made a report to the Police.

Prosecution Evidence

No.13
Keong Tam
30th August
1965

Cross-examination continued

Re-examination

10

Re-examined: When the soldiers arrived there was no confusion. There were many soliders scattered about. P.W.9 was with us all the time. P.W.2 was not sitting next to me. I was not keeping him in view all the time.

By Court (at Enche Rajah's request): I did not see any of the soldiers hitting or kicking the accused.

Adjourned until 2.15 p.m.

(Signed) S. S. GILL

Resumed at 2.30 p.m.

20

No.14
EVIDENCE OF TARMUDJI BIN DJUREMI
30th August 1965

No.14
Tarmudji bin Djuremi
30th August
1965

P.W.11 TARMUDJI BIN DJUREMI, affirmed, states in Malay:

Examination

I am a Lance Corporal attached to the Police Force in Indonesia. Now I am in detention in Malaya. I was arrested on 13.3.65.

30

In December 1964 I was at Tanjong Pinang, Bintan in Indonesia in the Rio Archipelago. I was in a team consisting of 12 men. I was armed. I had bought my arms from Jakarta. I was armed with an Armalite. I cannot remember the

In the High
Court in
Malaya

Prosecution
Evidence

No.14
Tarmudji bin
Djuremi
30th August
1965

Examination
continued

number. I was supplied with 700 rounds of ammunition. In Tanjong Pinang I had no uniform. I brought with me a pair of uniform from Jakarta.

I stayed in Tanjong Pinang for 1½ months. When I was about to leave for this country I was issued with rations, 2 handgrenades and ammunition. I was supplied with a green uniform.

I left Indonesia on 24.2.65. Ten of us including me left in a group. I can recognise the persons who were in my group. No one out of my group is in this Court. My group consisted of two volunteers. One of the volunteers was Dainu and the other was Lokman. The whole team consisted of Indonesians. I reached Malaya on the morning of 25.2.65. We went into the jungle. No one showed me the way into the jungle. I do not know whether the members of my group were Muslims. I know the difference between a Chinese and an Indonesian. 10

This is the firearm which I was carrying (P.14) bearing No. 000693. Some of my friends were carrying the same type of firearms. The volunteers carried a firearm similar to this (P.12). I have never seen any one carrying P.9. Volunteers carried a firearm similar to this (P.9). Lokman was carrying a firearm similar to P.9. 20

Having arrived in this country we were scattered about. Finally I went to a hut in the jungle. Four of us went into this hut.

I was arrested in a jungle on a new road. 30

I do not know why I was sent to this country. I came here on instructions from superiors to help the people free themselves from the colonial powers.

No cross-examination.

No.15
Sujatino bin
Kartesentomo
30th August
1965

Examination

No.15
EVIDENCE OF SUJATINO BIN KARTESENTOMO
30th August 1965

P.W.12 SUJATINO BIN KARTESENTOMO, affirmed,
states in Indonesian:

40

I am a member of Police Force, Second Class Constable. I am now under detention in this country. I was arrested in the house of a Chinese. At the time I was arrested I was with four colleagues and a Chinese. When we were together the Chinese identified himself as Ah Kwa. He is in Court today. He is the accused in the dock.

In the High Court in Malaya

Prosecution Evidence

No.15

Sujatino Bin Kartesentomo
30th August 1965

Examination continued

10 I first met the accused in the jungle two days before I was arrested. I remained in the jungle together with my friends. The accused was in the house.

20 I was armed when I landed in this country. I can identify the firearm which I was carrying. This is the firearm I was carrying (P.14 bearing number 000957). Ten of us landed in this country. They were all armed. Eight of us carried the same type of firearms as I. Of the other two, one was carrying a firearm similar to this (P.12) and the other a firearm similar to this (P.7). Dainu was carrying a firearm similar to P.12. Lokman carried a weapon similar to P.7.

Cross-examined: I met the accused at the edge of the jungle.

Cross-examination

30 By Court: The four colleagues were myself, Tarmudji (P.W.11), Oyotaryono and Ladino. The accused and I were arrested at about 11 p.m. on one night. My three Indonesian companions were not arrested at that time. I was arrested inside the house, and so was the Chinese. I stayed in the house only during the night time. I was roused from sleep by the sound of gun fire. I was asked to come out of the house with my hands raised. I came out of the house with my hands raised. The accused also came out with his hands raised. About a quarter of an hour later I was taken along with the accused to the Police Station at Kota Tinggi. I went to the house at approximately 7 p.m. on the night of my arrest. I was not in the house during the day. I slept in the same house on the previous night but I left the house while it was still dark. My three Indonesian companions were with me. I do not know whether they slept in the same house. At times I left the house by myself and at times

In the High Court in Malaya

Prosecution Evidence

No.15
Sujatino bin Kartesentomo
30th August 1965

Cross-examination continued

with a companion. I spent two nights in that house. I first slept there in the night with my three Indonesian companions and the accused. I had something to eat in the house. Food was given to us. The food was already on the table when we arrived. This witness (points to P.W.9) invited us to have the food.

Four of us carried arms when we went to the house. The accused did not carry firearm. At the time of my arrest I had no firearms. When I went to sleep on the night of my arrest my three companions were not there, but I had gone with them to the house that night. 10

After my arrest I took the Police to recover the firearms from inside the jungle. The Police recovered firearms from a place I pointed out. These firearms (P.7, P.9, P.12 and P.14) are similar to the firearms they recovered, but not the pistol holster.

We tied up our arms and kept them in the jungle. P.W.2 was one of the persons I took to the jungle. 20

By Court (at Enche Rajah's request): I had no instructions to reach any particular place in Malaya. When I left Indonesia I was not told my destination. I do not know what I was supposed to do in this country as I had received no instructions from my commander. My commander gave me instructions to use the firearms. But I had no occasion to use the firearms. We did not leave the firearms in the jungle because we had no intention to use them any more. 30

I first met the accused in the jungle in the vicinity of the house, not near the house but quite a distance away.

Court adjourned and resumed after 10 minutes.

At this stage Tunku Zaid says that he can call or offer Chia Chan Fah, Lai Teng Sui and Low Chin for cross-examination. Enche Rajah applies for adjournment. 40

Case adjourned to 20.9.65 at 9 a.m.

Signed (S.S.GILL)

20th September 1965

Emergency Criminal Trial No. 32/65

Hearing continued. Counsel as before.

Tunku Zaid says he will offer certain witnesses for cross-examination.

In the High
Court in
Malaya

Prosecution
Evidence

No.15

Sujatino bin
Kartesentomo
30th August
1965

Gross-
examination
continued

No.16

EVIDENCE OF CHEH CHONG WAH
20th September 1965

No.16

Cheh Chong
Wah
20th September
1965

Examination

10 P.W.13 CHEH CHONG WAH, affirmed, states in
Cantonese:

On 9.3.65 at about 8 a.m. I was in the
kongsi house in a Land Development area at
Pasak, Kota Tinggi.

20 Cross-examined: I can remember dates. I
remember the date on which the soldiers came
to the kongsi. It was on the night of 9th
March, 1965, next morning being 10th March,
1965. P.W.9 was the contractor who also
lived in the same kongsi. The persons in
the kongsi that night were the contractor
(P.W.9), myself, an old man called Low Chan
and one Tin Swee. There were no other people.
There were also strangers in the kongsi, five
strangers. One of the strangers came first.
He went out and came back with four others.
Soldiers arrived at 8 p.m. When the soldiers
came I was lying in bed but awake. Lying next
to me was a Hainanese, a fellow worker from
the same kongsi. This Hainanese is not here
30 today. I had persons lying on either side of me.

Cross-
examination

When I went to sleep the light in the kongsi
house was still burning but it was fairly dim.
It was dim throughout the night. The light was

In the High
Court in
Malaya

Prosecution
Evidence

No.16

Cheng Chong
Wah
20th September
1965

Cross-
examination
continued

Re-examination

the same before I went to sleep. Because of the dimness of the light it was not possible to see faces clearly. The person lying on my other side was Tin Swee. There were strangers lying down. All the five strangers were lying down but I do not know whether they were asleep. I am not able to identify any of the strangers. There was a stranger lying next to me, but I do not know who he was. I did not see anything on him.

10

Re-examined: The strangers spent one night in my kongsi. The soldiers came the next night. The strangers were there on the night the soldiers arrived.

The first person on the sleeping platform from one side was a Hainanese. I was next to him. A place next to me was vacant. One of the kongsi workers was sleeping next to the vacant place.

Then a stranger came and lay down in the vacant place.

20

The strangers came on the night of 9th and the Government soldiers came on the night of 10th.

No.17
Lai Teng Sui
20th Septem-
ber 1965

Examination

No.17
EVIDENCE of LAI TENG SUI
20th September 1965

P.W.14 LAI TENG SUI, affirmed, states in Hakka:

On 9.3.65 at about 8 p.m. I was in a kongsi house at a place called Pasak near Kota Tinggi.

Cross-
examination

Cross-examined: I remember the night when I was asked by soldiers to come out of the kongsi. It was either on the 9th or 10th of March this year during the night. The soldiers came between 9 and 10 p.m. When the soldiers arrived I was sleeping. I went to sleep that night at 7 or 8 p.m. Just

30

before I went to bed I saw some outsiders there. There were five of them. When I went to bed that night two of the strangers were on the sleeping platform. I cannot say where the others were.

In the High Court in Malaya

Prosecution Evidence

No.17

Lai Teng Sui
20th September
1965

Cross-examination continued

10 When I went to sleep an oil lamp was burning but it did not throw very good light. Of the two strangers on the sleeping platform, one was a Chinese and the other appeared to be a Malay. The Chinese had come to work with us on that day. I saw him on the evening of the same day. He had no firearms on his person.

20 The soldiers who came to the kongsi that night found some things, but I cannot say what those things were. They found those things in the kongsi. They found the things from a wooden box on the sleeping platform. When the soldiers made a search I went into the kongsi house. It is true that I went outside along with others, and I was guarded by soldiers. But later with the permission of the soldiers I went into the kongsi to get my cigarettes. I saw the soldiers searching the box and taking things out of it. The box was lying on the sleeping platform. I do not remember the soldiers who searched the box. This officer (P.W.6) came to the kongsi house. I cannot say whether it was he who was searching the box.

30 This officer was there when the box was opened. I cannot remember how many soldiers were there. There were two or three. This person (P.W.7) was there at the place and time of search. I cannot remember whether he opened the box. I saw things being taken out of the box but I do not know what they were. There were two articles both round in shape. There was nothing else. I cannot remember so much now. Besides the two round articles there were other things which I saw but which I cannot describe.

40 The box is not here. I do not know what happened to the box.

I can recognise the Malay who was one of the two strangers on the sleeping platform. He is in Court. He is P.W.12 (identifies P.W.12 sitting in Court). I do not know to whom the two round things belonged. I have never seen detonators in my life. I made a statement to the Police on

In the High Court in Malaya

Prosecution Evidence

No.17

Lai Teng Sui
20th September
1965

Cross-examination continued

Re-examination

17.3.65. I cannot remember if I said in my statement, "I do not know to whom the two detonators and two compasses belonged to, which were taken away by the Security Forces." I cannot say whether I told the Inspector about the two round objects. I did not describe anything else.

Re-examined: I cannot remember whether P.W.6 was moving about in the kongsi, but I remember seeing him there. He was present when the box was opened, but I was not paying attention to him all the time.

I can identify the Chinese stranger who was lying on the platform. He is the accused.

No.18
Low Chin
20th September
1965

Examination

No.18
EVIDENCE of LOW CHIN 20th
September 1965

P.W.15 LOW CHIN, affirmed, states in Cantonese:

On 9.3.65 at about 8 p.m. I was sleeping in my kongsi house in Pasak Estate near Kota Tinggi. 20

Cross-examination

Cross-examined: I remember the night the soldiers came and I was asked to come out of the kongsi. That night there were five outsiders in the kongsi. One of them was a Chinese and the others looked like Malays. I first saw this Chinese on 9th March in the morning when I was cooking my breakfast. I saw him with the four Malays. I did not speak to him. When I saw him he was sitting at the dining table. He was not armed. 30

I was employed as a cook at the kongsi house. I do not know whether the soliders searched the kongsi.

Re-examined: No one helped me to cook. If any one wanted to do the cooking he was free to do so.

Enche T.T. Rajah applies to recall P.W.12.

In the High Court in Malaya

Prosecution Evidence

No.18
Low Chin
20th September
1965

Re-examination

No.15
EVIDENCE OF SUJATINO BIN
KARTESENTOMO

No.15
Sujatino bin
Kartesentomo

P.W.12 SUJATINO bin KARTESENTOMO (Reaffirmed)

Recalled
20th September
1965

10 I first saw the accused in the jungle. I remember I was arrested together with the accused. I first met the accused one day before I was arrested. I am sure about this. I was with three others when I first saw the accused.

Cross-
examination

I made a statement to the Police on 19.3.65. I admit saying in that statement that I, Lee A Ba and 8 other Indonesians on 25.2.65 at approximately 2 a.m. arrived at the south-east coast of Johore. When I made that statement my mind was not normal.
20 What is stated there is not true. Whatever I said in that statement about Lee A Ba is not correct.

Re-examined: I admit making the statement but my mind was then not normal.

Re-examination

(Enche T.T. Rajah says that he would like to call P. Samy to prove this witness's statement, but as the witness has admitted what he said in the statement and has given an explanation as to why he made that statement it is not necessary for the statement to be proved).

30 Case for the prosecution.

In the High
Court in
Malaya

No.19
Addresses
by Counsel

20th September
1965

No.19
ADDRESSES BY COUNSEL

Enche T.T. Rajah addresses Court:

Court is primarily concerned with the evidence adduced, as the Federal Court said in a recent case. The first charge, in law and in fact, is untenable. Definition of ammunition in Section 2 of Internal Security Act, 1960. Detonator is only a component part of a handgrenade. It does not come within the definition. A reasonable doubt on the facts whether the accused was in possession of detonators. P.W.6 said that one of his soldiers recovered the detonators. The evidence of P.W.7 must be treated with caution and suspicion. His evidence not consistent with his statement to the Police. Evidence of other witnesses of no value. Contradictions in the evidence of P.W.9. Box not brought to Court. Evidence of P.W.1 about the accused being frightened. His evidence when recalled. Accused statement, and his mental state. Court can even at this stage reject statement: Sarkar on Evidence (11th Edition) page 235. 10 20

Second Charge: Only evidence that of P.W. 12. No corroboration. Evidence of P.W.9. Definition of consorting: Soo Sing and two others v. P.P. (1951) M.L.J. 143, 144; P.P. v. Tan Thoy (1951) M.L.J. 186. Evidence of P.W.9 must be rejected. He is a trap witness, interested in the success of the trap, a partisan witness. His evidence requires corroboration: Refer to Woodroffe & Ameer Ali (10th edition) Vol. III, page 1648. The evidence of P.W.9 full of contradictions and inconsistencies. Said he was present when search was made. Evidence of P.W.10 that P.W.9 was outside. Story about the box completely unfounded. Why was it not produced? Discrepancies on major points in the evidence of P.W.9. Evidence of P.W.10 must be treated with caution. No consorting at 8 p.m. on 10th March, 1965. Guilty intent cannot be presumed. It must be proved. 30 40

Tunku Zaid addresses Court:

Facts quite clear on the evidence. As regards charges, Court has power to alter the charges

by substituting "9th March, 1965" for "10th March 1965". Prosecution has established prima facie case in both charges. Detonator does come within the definition: Chong Kim Seng v. P.P. (1949) M.L.J. 109, 111. Evidence of Sergeant Keane. Not for prosecution to prove serviceability.

In the High
Court in
Malaya

No.19
Addresses by
Counsel

20th September
1965

continued

10 Not necessary for prosecution to produce everything: Hockin v. Ahlquist Brothers (1943) 2 All E.R. 722. Whether box produced or not is immaterial.

Cautioned statement properly admitted.

Accused and the Indonesians armed when they arrived at the camp. Discovery of arms later. Firearms produced in Court.

20 Evidence of witnesses cannot be rejected merely because there are discrepancies and contradictions. Discrepancies often show that the witnesses are telling the truth and are not tutored. Prosecution have established prima facie case on both charges.

On the evidence I amend both charges by altering the date from "10th March, 1965" to "9th March, 1965". Charges as amended explained to accused. Enche T.T. Rajah applies to recall some of the witnesses.

No.12
EVIDENCE OF CHONG HIAN SHIN

No.12
Chong Hian
Shin

P.W.9 CHONG HIAN SHIN (recalled and reaffirmed):

Recalled
20th
September
1965

30 On 9.3.65 at about 8 p.m. the accused came to the kongsi first. When he first came he was unarmed. He remained there and talked with me for about 5 minutes and then left. Then he came back. He was then armed. He was carrying a gun and a pistol or revolver tucked at his waist. That is all.

Cross-
examination

I said in my statement that as soon as the male Chinese entered the kongsi hut, 4 male Indonesians (2 donned with green uniform and 2 civilian

In the High
Court in
Malaya

No.12

Chong Hian
Shin
Recalled
20th September
1965

Cross-
Examination
continued

clothes) followed him. I was referring to the accused coming the second time. The Chinese spoke to me in Teochew language. I understand some of what he said, not all. He did say, "I am an Indonesian soldier."

The light in the kongsi was bright. One could see quite clearly.

It is not true that the accused did not go out after coming to the kongsi unarmed. The accused was armed with a gun about 3 feet long. I can identify it. It was similar to Exhibit P.7. 10

No.17

Lai Teng Sui
Recalled
20th September
1965

Cross-
examination

No.17

EVIDENCE OF LAI TENG SUI

P.W.14 LAI TENG SUI (recalled and reaffirmed):

I remember the day previous to the day on which the soldiers came and surrounded the camp. On the evening previous to the evening on which the soldiers came, a Chinese and 4 Malays came to the kongsi at about 8 p.m. The Chinese came first. I did not see him carrying any arms. Then he went out and after a while he came back. This time he came with 4 Malays and every one of them was armed. This is the truth. I saw all of them carrying arms, including the Chinese. I am not now working for P.W.9. I left his service about one month after this incident. I can recognise this Chinese. 20

I did say in my statement to the Police, "I did not notice if the male Chinese was armed or not". I cannot remember whether I said in my statement that the accused came armed. If it is recorded in my statement "If the male Chinese came armed, it is possible I wouldn't have seen", it must be correct. I think I said that. 30

The light in the kongsi house was not bright, but it was bright enough to see one another and to see what one was carrying. I saw the Chinese who came in. I saw he was dressed in khaki. It is not true that the Chinese did not 40

go out and come back.

I was in Court on 30th August, 1965.
After that no one interviewed me about this case.

In the High
Court in
Malaya

Prosecution
Evidence

No.17
Lai Teng Sui
Recalled
20th September
1965

Cross-
Examination
continued

No.16
EVIDENCE of CHEAH CHONG WAH

P.W.13 CHEAH CHONG WAH (reaffirmed and recalled):

No.16
Cheah Chong
Wah
Recalled
20th September
1965

10 I remember the night on which the
soldiers surrounded our kongsi house. On
the previous night some people came to the
kongsi house. I cannot say who came to the
kongsi house first. I was lying on the
sleeping platform. I did not see a male
Chinese come in. Subsequently I got up from
bed. I came down from bed, went out to
urinate and saw 5 persons. Four were Malays
and one Chinese. I saw that they had guns.
20 I cannot say if all of them had arms. When
I first saw them they were not eating rice.
They ate rice afterwards. I did not hear
any of them speak.

Cross-
examination

I saw a Chinese that night but I cannot
say whether the accused was the Chinese. I
did not see the chinese carry any firearms.

Enche T.T. Rajah does not wish to recall
any other witnesses.

Adjourned until 2.45 p.m.

(Signed) S. S. GILL

In the High
Court in
Malaya

No.19
ADDRESSES BY COUNSEL

Resumed at 2.45 p.m.

No.19
Addresses
by Counsel

20th September
1965

Enche T. T. Rajah further addresses Court:

Repeat what I said. Not an iota of evidence that accused carried detonators. Evidence of P.W.9. Evidence of P.W. 14 and P.W.13 when recalled. Case not proved beyond reasonable doubt.

Tunku Zaid further addresses Court:

Prosecution has proved case on both amended charges. 10

I hold that there is a case to answer against the accused on both charges as amended and call on his defence. I explain the three courses open to the accused. Accused says that on the advice of his counsel he wished to say nothing on the charges against him and elects to remain silent.

Enche T. T. Rajah says that in view of his previous submission he does not wish to say anything more except to say that the case has not been proved. He applies to recall P.W.7 on the subject of first information obtained from P.W.9. I refuse the application. 20

Tunku Zaid says that the accused has not said anything in his defence to create any doubt as to the truth of the prosecution case.

No.20
CONVICTION AND SENTENCE

I find the accused guilty on both charges and convict him. I sentence accused to death on both charges. 30

(Signed) S. S. GILL

Accused gives oral notice of appeal.

(Signed) S. S. GILL

Certified true copy
Signed: Wong Yik Ming, Secretary to Judge
Kuala Lumpur - 5.10.1965

No.21
GROUNDS OF JUDGMENT

In the High
Court in
Malaya

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

IN THE STATE OF JOHORE

J. B. EMERGENCY CRIMINAL TRIAL No. 32/65

No.21
Grounds of
Judgment

5th October
1965

PUBLIC PROSECUTOR

versus

LEE A BA alias LEE CHEE HUA

10

GROUNDS OF JUDGMENT

The accused in this case was charged, firstly, with unlawful possession of two handgrenade deronators in contravention of Section 57(1)(b) of the Internal Security Act, 1960, and, secondly, with consorting with armed members of Indonesian Armed Forces in contravention of Section 58(1) of the same Act. At the end of the case for the prosecution I substituted "9th March, 1965" for "10th March 1965" in both charges and allowed
20 defence counsel to recall witnesses.

The evidence against the accused, apart from his own cautioned statement to which I shall refer at a later stage, although evidence of it was given in the initial stages of the trial, was as follows.

The accused left his father's house in Pontian some time in May, 1964 as testified by his father Lee Gen Chai (P.W.8), and has not since returned to his house. On 9th March, 1965 at about 8 p.m. he appeared at a small kongsi house in the Land Development Area
30 known as Pasak about 5 miles from Kota Tinggi. This kongsi house was then occupied by a contractor named Chong Hian Shin (P.W.9) and five of his labourers.

The accused was dressed in khaki and was not armed when he first appeared at the Kongsi house. He introduced himself as Lee Chee Hua to the contractor and said that he was in the Indonesian Army and had come to smash Malaysia, and asked for food. After this he went out of the kongsi house and came back later with four other persons who looked like Malays and

In the High
Court in
Malaya

No.21
Grounds of
Judgment

5th October
1965
continued

of whom two were in military uniforms and the other two in civilian clothes. He introduced his companions to the contractor as Indonesians. At this stage the accused and his four companions carried firearms. Rice was cooked for them and they passed the night in the kongsi house after having had their meals.

At about 5 a.m. on 10.3.65 the four Indonesians left the kongsi, taking away with them all the firearms and ammunition and other equipment. The ammunition was put into a biscuit tin which was borrowed by the accused from the contractor. The accused stayed back in the kongsi.

10

The contractor left the kongsi house at about 8 a.m. and went to Kota Tinggi Police Station where he met Senior Inspector Tan Thin Loy (P.W.7) and informed him about the accused and the Indonesians. He then took the Senior Inspector to a place about 20 chains from the kongsi house and from there showed the Inspector the kongsi house. The Inspector left after informing the contractor that he would come back to the hut with soldiers at 10 p.m. on that day and after making an arrangement for the contractor to give a signal with his torch light.

20

That evening Major John Murray Lane (P.W.6), accompanied by Inspector Tan, went to the area of the hut. At about 6.30 p.m. a body of troops, including Second-Lieutenant Kadir, joined them. By about 8.30 p.m. they had partially surrounded the kongsi house. At about 10.30 p.m. Second-Lieutenant Kadir challenged the occupants of the hut and asked them to come out one by one. The occupants of the hut, including the accused, came out of the hut. Major Lane apprehended the accused and an Indonesian named Sujatino bin Kartesentomo (P.W.12).

30

The kongsi house was searched on the instructions of Major Lane and amongst the items which were brought to him in the hut were two handgrenade detonators, two compasses, \$18/- in cash, a stamped addressed but unposted letter and a small note book which contained some figures. A search of the immediate area was made, but it proved fruitless, so Major Lane and his men returned with the accused and the Indonesian to Kota Tinggi

40

Police Station.

In the High
Court in
Malaya

No.21
Grounds of
Judgment

5th October
1965

continued

10 Early next morning at about 6.45 or 7.00 o'clock Major Lane, accompanied by Inspector Samy (P.W.2), some other Police officials and some of his soldiers, the accused and the Indonesian returned to the hut. The accused led Major Lane and Inspector Samy to a spot about 35 to 40 yards from the hut, where Major Lane noticed that the ground there had
10 been disturbed. The place was dug and there there were revealed two pairs of jungle boots and a pair of long trousers. After that Major Lane was led by the Indonesian to a spot about 25 yards inside the jungle area which was about 250 yards from the hut. After a search the Indonesian pointed to what appeared to be a large parcel concealed in the undergrowth.

20 The large parcel proved to be a bundle of weapons wrapped up in oil cloth and also a small sack and a biscuit type of tin. Major Lane handed these over to Inspector Samy. When the parcel was undone, it was found to contain three Armalite Rifles, a .303 rifle, a sub-machine gun, a pistol and a leather holster, handgrenades, detonators, loaded magazines and a variety of arms and ammunition for the types of weapons found.

30 The above evidence, which I have endeavoured to set out in chronological order, in my opinion stood uncontradicted in spite of lengthy cross-examination of witnesses by defence counsel. There were contradictions and discrepancies in the evidence of the various witnesses, as there are bound to be in any case, but to my mind they did not detract from the value of the evidence of which I have given a summary.

40 As regards the first charge, the evidence of Palany Samy (P.W.2) was that Inspector Tan Thin Loy handed to him an Identity Card No. 3723873 bearing the name of Lee A Ba alias Lee Chee Hua (P.1), two miniature compasses (P.3), \$10/- in cash (P.4) and two handgrenade detonators similar to the detonators in the photograph marked P.2a. From the arms dump in the jungle he found, amongst other things, 7 handgrenades and 6 detonators

In the High
Court in
Malaya

No.21
Grounds of
Judgment
5th October
1965
continued

similar to the handgrenade and detonators shown in the photograph marked P.2b. On 15.3.65 at 10 a.m. he handed the 7 handgrenades and 8 detonators to Sergeant Terence Keane (P.W.4) who took them away. Sergeant Keane confirmed that P.W.2 handed to him 8 detonators and 7 handgrenades on 15.3.65 at 10 a.m. at Kota Tinggi Police Station for examination, and that the detonators and handgrenades handed to him were similar to those shown in photographs P.2a and P.2b. He further stated that he examined the detonators and found them to be serviceable. He destroyed them on 31.5.65 because it was unsafe to store them, and issued a Disposal Certificate (P.28).

10

The evidence of Inspector Tan Thin Loy (P.W.7) was that he carried out a search of the kongsi house on the night of 10.3.65 and that in the course of the search he found on a sleeping wooden platform a wooden box which contained the Identity Card of the accused (P.1), two compasses (P.3), \$10/- cash (P.4), a small notebook (P.29) and two handgrenade detonators similar to the detonators shown in P.2a and P.2b. At about the same time Chong Hian Shin (P.W.9), an occupant of the hut, handed to him a stamped but unposted envelope (P.30). He handed these exhibits to Inspector Samy when he arrived at the Police Station after he had made a report at 3.05 a.m.

20

30

The evidence of Major Lane (P.W.6) was that after he gave instructions for a search to be made, amongst the items which were brought to him were two handgrenade detonators. He said he could not say who recovered the two detonators and which soldier handed them to him. He was sitting in the hut when they were brought to him and put on the table beside him.

It was argued by defence counsel that the evidence of Major Lane destroyed the evidence of Inspector Tan as regards his finding of the detonators, because Inspector Tan was not one of the soldiers in the party. I did not think there was much substance in this argument. Obviously Major Lane did not know who recovered the detonators, and Inspector Tan's evidence

40

was definite on the point that it was he who recovered the detonators. I was therefore satisfied that there was nothing suspicious about the evidence of Inspector Tan.

In the High
Court in
Malaya

No.21
Grounds of
Judgment
5th October
1965
continued

10 On the subject of handgrenade detonators, Chong Hian Shin (P.W.9), when he was shown P.2a, said that he did not know what the two small things in the photograph were, but he thought that they had something to do with
handgrenades. He went on to say that he saw
similar things after the arrival of the
accused. The accused took two of those things
from his person, wrapped them in a piece of
oil paper and put them back on his person
again. He further said that he was present
when Inspector Tan (P.W.7) found the compasses
and the two articles shown in the photograph
on the bed of the accused at the area where
his head rested, and that the two articles
20 recovered were the two articles he had
previously seen the accused take off his
person, wrap up in oil paper and put back on
his person when he first came. He also said
that he was sleeping next to the accused and
was sure that the box was on the bed where the
accused slept.

30 Keong Tam (P.W.10), one of the labourers employed by P.W.9, said that the two little things in the photograph P.2a were clips of a handgrenade and that the accused brought them to the kongsi on 9.3.65. Under cross-examination he said that he did not notice clips on the person of the accused when he first came, but saw them after the accused came in the second time. The accused placed them on a table when he took off his clothes. The witness denied that P.W.9 and he had rehearsed their evidence about the clips.

40 From all the evidence which was given by the various witnesses about the two detonators, I was satisfied that the accused had two handgrenade detonators in his possession when he arrived at the kongsi house on 9.3.65. I was further satisfied beyond reasonable doubt that those two detonators were found in a box on that part of the sleeping platform where the accused slept. They were found in a box which was lent to the accused by P.W.9, and what was more significant was the fact that they were

In the High
Court in
Malaya

No.21
Grounds of
Judgment

5th October
1965

continued

found along with an identity card of the accused and the two compasses which, according to the evidence, were also in the accused's possession. Thus, even without taking into consideration the cautioned statement of the accused, I was satisfied that the prosecution had proved the first charge against the accused beyond any reasonable doubt. In my opinion a detonator comes within the definition of "ammunition" in Section 2 of the Internal Security Act, 1960. 10

As regards the charge of consorting, there was overwhelming evidence that the accused appeared at the kongsi house on 9.3.65, went out for a while and came back with four armed Indonesians. I had no reason whatsoever to doubt the story of P.W.9 that the accused told him that he (the accused) was in the Indonesian Army and had come to smash Malaysia. I also had no reason to doubt that the accused told P.W.9 that he had been driven by soliders and had lost his way. 20

The evidence of P.W.9 was substantially corroborated on this point by Keong Tam (P.W.10). Cheh Chong Wah (P.W.13) who testified that five strangers came to the kongsi on the night of 9th March, 1965 and that Government soldiers came on the night of the 10th. Lai Teng Sui (P.W.14) testified that the accused was one of the strangers who came to the kongsi and whom he saw lying on the platform. 30

Sujatino (P.W.12), an Indonesian under detention in this country, said that he first met the accused in the jungle two days before he was arrested (later he said one day), and that at that time he was with three other Indonesians. He went on to say that the accused and he were arrested at about 11 p.m. on one night. According to him, the accused did not carry firearms. He confirmed that he took the Police to recover the firearms from inside the jungle. 40

Tarnudji (P.W.11) said in evidence that he left Tanjong Pinang in Indonesia on 24.2.65 in a group of ten men and reached Malaya on the morning of 25.2.65 and that finally he went to a hut in the jungle where he was subsequently arrested.

He said he was carrying a firearm when he arrived in Malaya, and he identified P.14 bearing No.000693 as the firearm which he was carrying. He further said that he came to Malaya on instructions from his superiors to help the people free themselves from the colonial powers. This witness was identified by Sujatino as one of his colleagues.

In the High
Court in
Malaya

No.21
Grounds of
Judgment

5th October
1965
continued

10 On the evidence relating to this second charge, I was satisfied beyond reasonable doubt that the accused was consorting with armed Indonesians under circumstances which clearly indicated that his association with them was something more than a casual meeting. The finding of five firearms in the jungle as pointed by Sujatino lent credence to the stories of the witnesses that the accused was in fact carrying a firearm. Whether he was carrying a firearm or not, of course, was irrelevant
20 to the charge, the charge against him being that of consorting with Indonesians whose being armed was not seriously challenged by the defence. The Indonesian witnesses were no doubt accomplices, but there was ample corroboration of their evidence.

As I have stated above, the witnesses were cross-examined at great length. I have not considered it necessary to set out in greater detail the evidence of those witnesses because,
30 as I have stated above, there was no doubt in my mind that the prosecution had established the two charges against the accused up to the hilt even without the cautioned statement of the accused. It was argued by defence counsel that P.W.9 was a trap witness. I did not think there was any substance in that argument. P.W.9 certainly did not lure the accused and his companions into the kongsi house. He became frightened, and in informing the Police he was
40 merely doing his duty as a loyal citizen.

I now come to the cautioned statement which was taken from the accused within two and a half hours of his arrival at Kota Tinggi Police Station by Inspector Samy with the assistance of Detective Police Constable Lim Kok Bee (P.W.1) acting as Interpreter. The Inspector spoke to the Interpreter in Malay and the Interpreter spoke to the accused

In the High
Court in
Malaya

No.21
Ground of
Judgment

5th October
1965

continued

in Mandarin. Both the Inspector and the Interpreter told me that they had no difficulty in understanding each other in Malay, and the Interpreter said that he fully understood the accused's mandarin and the accused fully understood his Mandarin. He went on to say that he had studied in a Chinese school in Paloh for six years and he could speak Mandarin quite well. He could speak Malay because he had been in the Police Force for 13 years. According to him, the Inspector read out the caution to him in Malay and he interpreted it to the accused in Mandarin because Mandarin is common and because the accused told him that he (the accused) understood Mandarin. He denied that he spoke to the accused in a mixture of Mandarin and Hokkien.

10

Both the Inspector and the Interpreter stated in evidence that there were no other Police or military officers in the office in which the cautioned statement of the accused was taken, and that neither of them made any threat, inducement or promise to the accused. They denied that the accused was handcuffed or that he was assaulted both before and during the course of the statement. The Inspector further said that the accused answered his questions spontaneously. There was normal flow of conversation between the Interpreter and the accused, and the impression the accused gave him was that he was willing to make a statement. He also formed the impression that P.W.1 and the accused understood each other. All this was brought out during the cross-examination of the Inspector.

20

30

The accused'd story was that he does not know Mandarin or knows only a little. He further said that after his arrest by 30 or 40 soldiers he was assaulted. The soldiers asked him to put his hands on his head and sit down, and said that if he did put his hands down he would be shot. After this one of the soldiers came round and slapped him on his face and the same soldier pulled his head up by his hair. Another soldier came and kicked him. He was then taken to Kota Tinggi Police Station where his hands were untied and he was handcuffed. Later that night P.W.1 saw him. A person who appeared to be a Malay had seen him before that and assaulted him in a room in which P.W.1. and P.W.2 were also present. In the

40

room P.W.1 spoke to him in Hokkien mixed with Madarin. No words of caution were said to him by P.W.1. before his statement was taken, and as his statement was recorded he was assaulted by 5 or 6 persons who entered the room. He was hit on the head with a ruler and a stone used as a paper weight. As a result of the assault he was bleeding. He stated, however, that neither P.W.1 nor P.W.2 assaulted him at any time. Under cross-examination he admitted that he studied in a Chinese school in which the medium of instruction was Mandarin and that he passed Standard 5. He also admitted that the soldiers untied his hands at the Police Station and that thereafter he had nothing to do with the soldiers, nor could he see any soldiers around after that. He said he did not know why the soldiers assaulted him. He also said that he did not know Malay, and as far as he could remember he had never spoken to anybody in Malay all his life.

In the High Court in Malaya

No.21
Grounds of Judgment

5th October 1965

continued

On the evidence on the question of admissibility of the cautioned statement, I was satisfied that P.W.1 knows Mandarin. From the cross-examination to which P.W.1 was subjected on the question of his knowledge of the Malay language, I was satisfied beyond any doubt that he knows the Malay language and can speak the colloquial Malay in which the Inspector spoke to him. I was satisfied that the accused knows Mandarin and that he understood P.W.1. perfectly well. In my opinion the accused was telling lies when he said that he did not know Mandarin. P.W.1 told the Court what the gist of the caution which was administered to the accused was, and on that evidence and the evidence of the Inspector I was fully satisfied that a caution as required by law was duly administered to the accused before his statement was taken.

The soldiers may have handled the accused roughly after his arrest, but I was satisfied that he was not assaulted in the fashion in which he said he was assaulted. I had no reason to disbelieve the evidence of the Inspector that the accused was not bleeding from the mouth. In any event there was not a scrap of evidence to suggest that the soldiers assaulted the accused with a view

In the High
Court in
Malaya

No.21
Grounds of
Judgment
5th October
1965
continued

to extracting a confession from him. P.W.1 said that the accused appeared to be a little bit frightened and ventured the opinion that the accused was afraid of being sentenced to death or imprisonment. The evidence of the Inspector, however, was that the accused appeared to be physically and mentally normal when he was handed to him and during the course of the statement. The impression which P.W.1 formed as to the reason why the accused appeared to be frightened, in my opinion, was irrelevant. All he was doing was giving an opinion evidence. The accused may well appear to have been frightened because of his arrest, but that did not vitiate his cautioned statement. On the evidence as a whole I was satisfied beyond reasonable doubt that the accused made his statement freely and voluntarily after the caution was explained to him. I therefore held that his cautioned statement was admissible. 10 20

When the Inspector was recalled to put in the cautioned statement and he took the statement out of a sealed envelope, he said that he wished to correct himself. He had stated earlier in evidence that the accused's statement was typed. The evidence of the Interpreter was also to the same effect, but, looking at the statement, the Inspector said that the statement from the accused was taken down in writing and that it was typed only after it was recorded and that the typing of the statement was not done in the presence of the accused, nor was the accused made to sign any typewritten statement. The defence counsel at that stage applied that statement be rejected, but I disallowed the application. I accepted the Inspector's explanation that he had made a mistake when he had stated earlier in evidence that the statement was typed. I failed to see what advantage he was going to gain by telling a lie on which he was bound to be caught on the production of the actual statement. The Interpreter was recalled and questioned on this point and he said that he could not remember whether the statement was typed or taken down in manuscript. 30 40

10 The cautioned statement of the accused speaks for itself and no useful purpose will be served by my attempting to paraphrase it. He has stated clearly in his statement how he went to Indonesia, received military training there, left Indonesia on 24.2.65 with four armed Indonesians, landed somewhere on the east coast of Johore and subsequently arrived at a kongsi house at Pasak, Kota Tinggi, with his Indonesian comrades, where he was arrested.

In the High Court in Malaya

—
No.21
Grounds of Judgment
5th October 1965
continued

On the evidence before me I held that there was a case to answer against the accused on both charges as amended, and the accused, on the advice of his counsel, elected to say nothing and to remain silent. I therefore found the accused guilty on both charges, convicted him and sentenced him to death on each charge.

20

(S.S. GILL)
JUDGE, HIGH COURT, MALAYA

Kuala Lumpur
5th October, 1965

Tunku Zaid bin Tunku Zakaria for Public Prosecutor.

Enche T. T. Rajah for accused, retained.

Certified true copy

30 Sgd. Wong Yik Ming
Secretary to Judge
Kuala Lumpur
6.10.1965

In the Federal
Court of
Malaysia

No.22
PETITION OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

CRIMINAL APPEAL No. X10 of 1965

No.22
Petition of
Appeal
21st October
1965

B E T W E E N:

LEE A BA @ LEE CHEE HUA Appellant

- and -

PUBLIC PROSECUTOR Respondent

PETITION OF APPEAL

10

TO THE HONOURABLE THE JUDGES OF THE FEDERAL COURT

Lee A Ba @ Lee Chee Hua, the appellant above-named having given notice of appeal to the Federal Court against the decision of the Honourable Mr. Justice S. S. Gill given in the High Court at Johore Bahru in the State of Johore on the 20th day of September, 1965 states the following grounds for his said appeal:-

1. The learned trial Judge erred both in law and in fact when he admitted the evidence of the disputed statement which was alleged to have been made by your appellant to P.W.2 (Inspector Samy) at about 4.00 o'clock in the morning of the 11th day of March, 1965 for the following reasons: 20

A. UNDER SECTION 75(1)a) OF THE INTERNAL SECURITY ACT, 1960

(i) P.W.1 (Lee Kok Bee, a detective police constable) deposed that the "accused appeared to be frightened but I cannot say of what he was frightened". 30

On being recalled to clarify the above, he stated in unmistakable words "Yesterday I was asked what the accused appeared to be frightened of. My impression was that the accused was frightened of being imprisoned or sentenced to death by the Court. The learned trial Judge seriously erred in law when he stated in his grounds of judgment that in his opinion this evidence was irrelevant. He also stated that "all he (P.W.1) was doing was giving an opinion evidence". His serious error was more clearly shown when he admitted as relevant similar "opinion" evidence from the mouth of the recording officer, Inspector Samy (P.W.2.)

In the
Federal
Court of
Malaysia

No.22
Petition
of Appeal
21st October
1965
continued

(ii) The learned trial Judge had entertained a reasonable doubt in his own mind on the issue of the use of physical violence and other improper practices on your appellant by the soldiers when he stated in his grounds that "the soldiers may have handled the accused roughly after his arrest". In the circumstances, bearing in mind (a) the repetition of the word "appears" twice in this sub-section of the said Internal Security Act and (b) the sworn evidence of your appellant on the question of physical violence used on him, namely that he was subjected to brutal assaults which resulted in bleeding and other indignities, the learned trial Judge ought to have rejected the disputed statement which was recorded at about 4.00 o'clock in the morning and (c) the fact that your appellant was brought by P.W.6 (Major Lane) to Kota Tinggi Police Station in the early hours of the same date.

B. UNDER SECTION 75(1)(b) OF THE INTERNAL SECURITY ACT 1960

(i) Your appellant stated that no caution was administered to him, but P.W.1 (Police Interpreter) deposed that he administered caution. It will be contended that even

In the Federal
Court of
Malaysia

No.22
Petition of
Appeal
21st October
1965
continued

if a so-called caution was administered, it was not in accordance with the caution prescribed in the law.

(ii) The evidence of P.W.1 (the police interpreter) and P.W.2 (the recording officer, Inspector Samy) ought to have been rejected as unreliable in so far as the disputed statement was concerned, main particulars whereof are:-

(a) Two conflicting versions were given by P.W.1 (the police interpreter) and P.W.2 (the recording officer). P.W.2 (Inspector Samy) deposed that:-

10

"after administering the caution I told the accused that he would be charged under the Internal Security Act, 1960I also told him that he would be charged with offences of possession of firearms and ammunition and concerting with Indonesians. I am sure I said all this." "It was not true that I did not say to the accused that he would be charged with offences under the Internal Security Act, 1960".

20

P.W.1 (the police interpreter) testified on this issue in the following words:-

"The Inspector did not say to the accused that he was facing two charges. The Inspector did not say anything about the Internal Security Act, 1960."

30

(b) Prior to your appellant giving evidence on oath, both P.W.1 (the police interpreter) and P.W.2 (Inspector Samy) maintained that Inspector Samy (P.W.2) wrote down the accused's statement on a typewriter. P.W.2 (Inspector Samy) testified that "I typed the accused's statement. I did not record any of his statements in handwriting." After your appellant had given evidence on oath, P.W.2 (Inspector Samy) stated that he unintentionally made a mistake when he said the previous day that the statement was typed. He also added "I do not know whether P.W.1 (the police interpreter)

40

also made a mistake." On this issue, your appellant testified that "P.W.2 (Inspector Sany) was writing down my statement. I am very sure that he was writing and not typing."

In the Federal
Court of
Malaysia

(c) The Malay language of P.W.1 (the police interpreter) was inadequate for the purpose of recording a highly important document such as the statement. He was not proficient in the Malay language. On cross-examination, he admitted that his knowledge of Malay was that of colloquial Malay.

No.22
Petition of
Appeal
21st October
1965

continued

10

20

2. Your appellant was originally charged with three offences namely (1) possession of a machine gun and a revolver, (2) possession of 115 rounds of 9 m.m. ammunition etc. and (3) consorting with members of Indonesian Armed Forces. At the commencement of the trial your appellant faced only two charges NAMELY (a) possession of 2 handgrenade detonators on the 10th day of March, 1965 at about 8.00 p.m. and (b) consorting as above on the same date and time.

After the submissions made by both counsel at the close of the prosecution case, the learned trial Judge amended both the charges by altering the date "10th March, 1965" to "9th March, 1965".

30

It will be contended that apart from the strenuously challenged and disputed statement which was obtained through illegal, improper and unsavoury methods and in flagrant violation of the Judges Rules, there is no legally proved or legally acceptable evidence on the first charge against your appellant, main particulars where are as follows:-

40

(i) P.W.9 (The Contractor) deposed that your appellant carried with him a pistol tied to his waist and that he (the appellant) was also carried a sten gun. P.W.10 (the employee of P.W.9) also testified to the same effect. A reasonable query and doubt cropped up as to why your appellant was not charged with possession of firearms etc. in the light of the evidence of these two witnesses and in view of the fact that the original 3 charges as above enumerated were not proceeded with. The only irresistible inference that could be drawn therefrom was that the evidence of these two witnesses

In the Federal
Court of
Malaysia

No.22
Petition of
Appeal
21st October
1965
continued

were not regarded as trustworthy. This coupled with the fact that another prosecution witness P.W.12 (Sujatino) stated on oath that your appellant did not carry firearms and the fact that your appellant was alleged to have stated in his disputed statement that he carried no firearms raised grave doubts as to the possession of the two detonators by your appellant.

(ii) On cross-examination, both P.W.9 (the contractor) and P.W.10 (his employee) stated that they did not know what a detonator was. P.W.9 (the contractor) also said that he never saw one in his life and that he described the articles as of the same size as his little finger. He also deposed that he was not sure what they were. Where in his statement to the police, this witness stated as follows:- 10

Q. "Do you know accused was in possession of two detonators and those were under the bed of (Lee A Ba) before the capture?" 20
A. "I was aware (Lee A Ba) was in possession of 2 detonators and that he was keeping them under his place of bed."

On the issue of the detonators P.W.10 (the employee of P.W.9) stated in examination in chief in the following words:-

"I have seen clips of a handgrenade before". On Cross-examination, he stated that "at that time I did not know what those clips were. I was not shown the clips when I was at the police station to make a statement. I was not asked any questions about clips. I was not asked how the detonators came to be in the hut. I did say in my statement that the accused brought the detonators in the kongsi. I described a piece of thing curved at one end. I said it was a little thing (indicating with a finger) I told the police it was a clip." 30 40

In his statement to the police, he said as follows:-

Q. "Do you know how the detonators and compasses came to be in the hut you live?"

In the Federal
Court of
Malaysia

A. "They were brought by the said Chinese. I saw these detonators and compasses in the hands of the male Chinese on the night of 9.3.1965."

No.22
Petition of
Appeal

21st October
1965

continued

10 P.W.13 (Cheh Chong Wah) another employee of P.W.9, the contractor stated in his evidence that the light was dim and that because of the dimness of the light, it was not possible to see faces clearly. Another prosecution witness Lai Teng Sui (P.W.14) also substantially corroborated this issue when he stated that the oil lamp did not throw good light.

20 In the circumstances, the evidence adduced by the prosecution on the issue of the two detonators was valueless and raised reasonable doubts on the evidence of the prosecution witnesses.

3. The learned trial Judge gravely erred both in law and in fact when he found your appellant guilty of the offence of consorting with members of Indonesian Armed Forces, main particulars whereof are as follows:-

30 (i) The prosecution produced two Indonesian witnesses namely P.W.11 (Tarmudji) and P.W.12 (Sujatino) to prove the charge of consorting with members of the Indonesian Armed Forces etc. The evidence of both these witnesses was, in law, worthless and ought to have been rejected in toto by reason of the fact that P.W.11 (Tarmudji) stated on oath that "No one out of my group is in this Court." He further stated "the whole team consisted of Indonesians."

40 P.W.12 (Sujatino) the other Indonesian witness deposed that he first met the accused at the edge of the jungle two days before he was arrested. He said he remained in the jungle together with his friends but that the appellant was in the house. In his evidence,

In the Federal
Court of
Malaysia

No.22
Petition of
Appeal

21st October
1965

continued

he stated that ten persons landed in this country but he did not state that your appellant was one of those ten persons who landed. On being re-called this Indonesian witness (P.W.12) stated that he first met your appellant one day before he was arrested. He also deposed that whatever he said in the police statement about A Ba was not correct.

10

In the circumstances, the learned trial Judge ought to have completely rejected the evidence of these two witnesses. On the contrary, he gravely erred in law when he accepted them as witnesses of truth and stated in his grounds that "there was overwhelming evidence".

- (ii) The next piece of evidence on the charge of consorting was the evidence of P.W.9 (the contractor) and P.W.10 (his employee). Their evidence ought to have been rejected completely in view of their contradictory statements made by them to the police in the course of investigation. P.W.9 (the contractor) deposed that he did not say the following words in his statement, namely "As soon as the male Chinese entered the kongsi hut, 4 male Indonesians followed him." P.W.10 (Keong Tam) also stated in his evidence that he did not know why in his police statement "there was no mentioned about the accused coming first, going out and back with the Malays". In the light of these statements and the evidence of the two Indonesian witnesses, the issue of consorting has not been proved by reliable and trustworthy evidence.

20

30

- (iii) P.W.9 (the contractor) was a partisan witness. He was a very interested witness in the result of the case namely the conviction of your appellant. Moreover, his evidence was shaken and discredited in his cross-examination.

40

4. The learned trial Judge gravely erred in law when he totally failed to warn himself of the invariable rule of practice which has the force of law when he accepted the evidence of the two Indonesian witnesses. This has resulted in a failure of justice.

In the Federal
Court of
Malaysia

No.22
Petition of
Appeal

21st October
1965
continued

5. The learned trial Judge erred in law when

10

(i) he failed to reject the evidence of disputed statement when new evidence was produced after its admission. This new evidence raised grave doubts as to the voluntariness and authenticity of the disputed statement.

(ii) he accepted the evidence of P.W.9 (the contractor) whose position, in law, was that of an abettor.

20

(iii) he refused an application for the re-call of Inspector Tan Thin Loy (P.W.7) on the question of the first information report lodged by P.W.9 (the contractor).

And the appellant above named therefore prays that the conviction and sentence on him may be set aside.

DATED this 21st day of October 1965

Signed: T. T. RAJAH

SOLICITOR FOR THE APPELLANT

30

The address for service of the abovenamed appellant is care of Mr. T.T. Rajah, Advocate and Solicitor, 3A, Prince Street, Singapore 1, Solicitor for the Appellant.

In the Federal
Court of
Malaysia

No.23
NOTES OF ARGUMENT (THOMSON L.P)

No.23
Notes of
Argument
(Thomson L.P)
20th November
1965

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR (APPELLATE JURISDICTION)

Federal Court Criminal Appeal No. X.10 of 1965
(Johore Bahru High Court Emergency Criminal Trial
No.32/65)

Lee A Ba alias Lee Chee Hua Appellant

- v -

The Public Prosecutor Respondent

Cor: Thomson, Lord President, Malaysia
Ong Hock Thye, Judge, Federal Court
Suffian, Judge 10

NOTES OF ARGUMENT RECORDED BY THOMSON,
LORD PRESIDENT, MALAYSIA

10th November 1965

For Appellant: Rajah

For Respondent: Hamid

Rajah:

Appellant's statement was wrongly admitted.

Reads P/A. 20

Detective not identified.

When he made his statement P.W.I. said he looked
frightened.

Woodroffe (10th Ed.) II, 664.

Inspector who took the statement did not have
an adequate knowledge of Malay.

Appellant was originally charged with possession
of arms. But this was dropped.

The witness did not know what detonators were.

Ismail b. Hj. Ibrahim v. P.P. (1949) M.L.J. 139, 140.

No evidence any detonators found in possession of appellant.

As regards consorting there was the evidence of the kongsi people and of the Indonesians.

- 10 P.W.11 (Indonesian) did not implicate Appellant. P.W.12 did implicate him but very slightly.

Golder, Jones & Porritt 45 C.A.R. 5.

No evidence of consorting.

Appellant was working at the site.

Toohy v. Metropolitan Police Comm. 49 C.A.R. 148.

Woodroffe III, p.1649

- 20 J. did not warn himself of accepting evidence of Indonesians without corroboration

Tan Yook Suan v. Reg. (1954) M.L.J. 116, 117.

Woodroffe (10th Ed.) I, 38.

J. refused application to re-call P.W.7 to produce first information by P.W.9.

Case for Appellant.

Hamid:

Not called upon.

Appeal dismissed (per Ong, F.J.)

Intld. J.B.T.

10.11.65

- 30 TRUE COPY - Tneh Liang Peng - Secretary to the Lord President - Federal Court of Malaysia - 20 DEC 1965

In the Federal Court of Malaysia

No.23
Notes of Argument
(Thomson L.P.)
20th November 1965

continued

Colloquial Malay, instead of strict compliance with the form of words prescribed, is not good enough.

p.10 L.14-20 cf. p.5.

Use of typewriter -

p.4 L.21 "wrote"

p.11 L.17

p.12 - why 2 statements?

Authenticity of document is in doubt.

In the Federal
Court of
Malaysia

No.24
Notes of
Argument
(Ong A.C.J.)
20th November
1965
continued

10 Ground 2:

Original charges 3

Eventually 2 charges.

See p.26 L.2

p.38 L.8 Sujartino

Detonators - p.28 - 29

Ismail bin Haji Ibrahim v. P.P.

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

p. 33 L.9

20 Ground 3: Consorting -

P.W.11 at p. 35 - 36 L.9

P.W.12 at p. 37, 37-38, 38, 42-43

Golder, 45 C.A.R. 5 @ p.11

p. 32-32 - re work

p. 11

p. 28-28 - cf. p.34 - refinding of detonators

In the Federal
Court of
Malaysia

No.24
Notes of
Argument
(Ong A.C.J.
10th November
1965
continued

Toohy v. Metropolitan Police Commissioner
49 C.A.R. 148 @ 162

Woodroffe - p.1649 - Vol.III

Self-warning - lacking in judgment

Tan Yook Suan v. Regina (1954) M.L.J. 116,117

Davies v. Director of Public Prosecutions,
(1954) 2 W.L.R. p.343, 351

P.W.7 - application for recall.

D.P.P. not called on to reply

Appeal dismissed

10

(Sg.) H. T. Ong
AG. C. J.

10.11.'65

Certified true copy

B. E. Nettar

Ag: Secretary to Judge,
Federal Court,
Kuala Lumpur

No.25
NOTES OF ARGUMENT (SUFFIAN J.)

In the Federal
Court of
Malaysia

Federal Court Criminal Appeal No.X.10/65

Rajah for appellant

Hamid D.P.P. for respondent

RAJAH ADDRESSES

No.25
Notes of
Argument
(Suffian J).
10th November
1965

Ground 1

Statement should not have been admitted

(i) Refers to record p.12 line 7, 15 line 8,
15 line 27.

10 P.W.1. said appellant frightened at time of
recording statement - yet Judge admitted statement.

Inspector Samy p.9 line 37 said appellant then not
pressed to give statement. Judge wrongly accepted
this and wrongly rejected P.W's evidence.

Refers to p.58 line 10

Woodroffe 10th Edition Volume 2, p.663-4,
para.3, on opinion evidence.

Note word "appears" in S.75(1) first proviso
Internal Security Act

20 (ii) Judge p.57 line 43 admits soldiers may have
treated appellant roughly. Refers to appellant's
evidence p.14 to 15C - he was assaulted by soldiers.
P.16A to C. There was a mark on appellant.
Statement recorded at 4 a.m.

Caution not properly administered. Refers to p.12
line 2 where P.W.1 gave gist of caution. Caution
given to P.W.1 by Inspector Samy in Malay when his
Malay is only colloquial, p.5 line 21.

30 Refers to p.10 line 14 Inspector Samy's evidence -
p.10 line 14.

But Interpreter at p.5 line 12 says something else -
says Inspector did not mention charges.

In the Federal
Court of
Malaysia

No.25
Notes of
Argument
(Suffian J.)
10th November
1965
continued

P.W.1 and P.W.2 first said statement
was typed. Appellant sure no typewriter.
Refers to p.4 line 18 to p.11 line 17

Two statements were record - pp.16 & 12

So doubt as to authenticity of the
statement

P.W.1 not proficient in Malay

Ground 2

Refers to contractor P.W.9's evidence
p.25-26

10

Yet Appellant not charged with possession
of sten gun and pistol - because P.W.9
unreliable witness. Refers to p.38 line 8 p.39
line 31 (appellant had no firearms)

P.W.9 on detonator p. 27-28

Ismail b. Hj. Ibrahim v. P.P. 1949 M.L.J.
139, 140 (2nd column).

P.W.10 p. 33 line 9 on detonators, p.34,
32 line 15.

Submit appellant had no detonators at all

Ground 3 (consorting)

20

Prosecution witnesses consist of (1)
Indonesians and (2) contractor and his men

As to Indonesians:-

Refers to P.W.11, p.36 line 10

Refers to P.W.12, pp.37 line 14, 38 line 8
38 line 30, 43 line 13
45 Cr. A. Rep. 5, 10-11

Refers to judgment p.54 last line.

Refers to p.32 line 37 P.W.10, p.41 line 9
appellant working that day.

P.25 line 44 - appellant had lost his way,
driven by soldiers.

30

So not consorting.

P. 25 line 18 - submit this is fabrication -
as seen from p.30 line 41, 31 line 14

p.29 from line 22

P.W.9 partisan witness.

1965 49 Cr. A.R. 148, 162 - Toohy's case

P.W.9 an abettor, took part in a trap

1954 M.L.J. 116 Tan Yook Suan, 117.

Ground 5

10 D.P.P. not called upon.

Oral judgment of Court delivered by Ong
Ag. C.J.

Appeal dismissed.

M.S.

Certified True copy

Mrs. Wee Kim Swee

Secretary to Suffian J.

In the Federal
Court of
Malaysia

No.25
Notes of
Argument
(Suffian J.)
10th November
1965
continued

In the Federal
Court of
Malaysia

No.26
ORAL JUDGMENT (ONG A.C.J.)

FEDERAL COURT CRIMINAL APPEAL No.X 10 of 1965
(J.B. High Court Emergency Crim. Trial 32/65)

No.26
Oral Judgment
(Ong A.C.J.)
10th November
1965

LEE A BA alias LEE CHEE HUA Appellant

vs

THE PUBLIC PROSECUTOR Respondent

Coram: Lord President, Malaysia,
Ong, Ag. C.J., Malaya,
Suffian, J.

10

ORAL JUDGMENT OF ONG. AG. C.J.

The appellant appeals against his conviction on two charges, namely, possession of two handgrande detonators, in contravention of section 57(1)(b) of the Internal Security Act, 1960, and consorting with members of the Indonesian Armed Forces, in contravention of section 58(1) of the same Act, for which he received sentence of death. These offences were committed on the night of March 9th 1965.

On any view of the evidence there can be no possible shadow of doubt that, on the uncontradicted evidence alone, the convictions were right.

20

The evidence of Chong Hian Shin (P.W.9) the labour contractor could not be challenged. On the night of March 9th, 1965 the appellant first appeared alone and unarmed at the kongsi-house which sheltered the contractor and five of his labourers. The appellant was dressed in khaki, he introduced himself, asked for food and said that he was in the Indonesian army and had come to smash Malaysia. Not being denied, he went out and returned with four Indonesians, two of whom were in military uniform and the other two in civilian clothes. This time all were carrying arms, including the appellant, who had gun and a pistol at his waist.

30

They were given food and shelter for the night.

That night the appellant took off his uniform and put on clothes belonging to Chong, the contractor. The khaki uniform (Ex. P.23 & P.24) was subsequently handed over by Chong to the Police and they fitted him properly.

In the Federal
Court of
Malaysia

No.26

Oral Judgment
(Ong A.C.J.)
10th November
1965

continued

10 While undressing and changing his clothes, the appellant was seen by Chong and one of his labourers, Keong Tam (P.W.10), handling the two detonators, wrapping them in oil paper. These
10 detonators were kept in a wooden box borrowed by the appellant from Chong and subsequently were found in the same box with other personal possessions of the appellant, including his identity card. The box was used presumably as a head-rest, on the portion of the sleeping platform occupied by the appellant. Chong slept next to him and said so. Inspector Tan Thin Loy (P.W.7), after the capture of the appellant
20 and one Indonesian at the kongsi-house the following night, found the box and its contents, with the detonators, on the sleeping platform where the appellant had been resting before he surrendered. Inspector Tan handed over the box and its contents to Inspector Samy (P.W.2) at the same time that he delivered the appellant as his prisoner. There was and could be no missing link in the chain of evidence connecting the appellant
30 with the detonators, the subject-matter of the first charge. Any decision which ignores these facts must surely be perverse.

As to the second charge, quite apart from the appellant's own statement to Chong when he first made his appearance, the irresistible inference from the evidence and the circumstances is that he first appeared unarmed and alone at the kongsi-house to reconnoitre on behalf of the Indonesians whom he subsequently showed into the house. He slept there with his Indonesian comrades that night, and he was still in their
40 company the second night until he and one Indonesian soldier were captured by the Security Forces.

He had had abundant opportunity during the day of March 10th to dissociate himself from the Indonesians but he did not choose to do so. After the close of the prosecution the appellant

In the Federal
Court of
Malaysia

No.26
Oral Judgment
(Ong A.C.J.)
10th November
1965
continued

elected to say nothing in his own defence, not even to deny that he was wearing military uniform and that the uniform (Ex. P.23 & P.24) belonged to him. In our opinion the second charge was no less conclusively proved.

We think it hardly necessary to refer to the cautioned statement except in passing. The learned trial Judge accepted it and in our opinion it contains intrinsic evidence that it was self-exculpatory and voluntarily given, in support of the Judge's finding. In any event, in support of the conviction on both charges, the cautioned statement added nothing that was necessary or useful.

10

The appeal is accordingly dismissed.

Taken down by me and seen by the Hon. Judge.

B. E. NETTAR

Ag: Secretary to Judge,
Federal Court,
Malaysia

20

ORDER GRANTING SPECIAL LEAVE TO APPEAL IN FORMA
PAUPERIS TO HIS MAJESTY THE YANG DI-PERTUAN AGONGMalaysia
SealCOURTS OF JUDICATURE ACT, 1964
(No. 7 of 1964)ORDER UNDER SECTION 76(1)

10 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 11th day of July, 1966, in the words following, viz:-

20 "WHEREAS by virtue of the Malaysia (Appeals to Privy Council) Orders in Council 1958 and 1963 there was referred unto this Committee a humble Petition of Lee A Ba alias Lee Chee Hua 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 desires to obtain special leave to appeal in forma pauperis from an Order of the Federal Court of Malaysia (Appellate Jurisdiction) made on the 10th day of November, 1965 whereby his Appeal against his conviction in the High Court was dismissed: that in the High Court at Johore Bahru on the 20th day of September, 1965 the Petitioner was convicted upon two charges namely (1) under section 57 (1) (b) of the Internal Security Act, 1960 of possession on the 9th day of March 1965 at about 8 p.m. of two grenade detonators and (2) under section 58(1) of the said Act of consorting with armed members of the Indonesian armed forces in circumstances which raised a reasonable presumption that he intended to act with such members in a manner prejudicial to public security and was sentenced to death: And humbly praying the Head of Malaysia to grant him special leave to appeal in forma pauperis from the said Order of the Federal Court of Malaysia (Appellate Jurisdiction) dated the 10th day of November, 1965 and for such other Order as may seem fit:

30

40

In the Judicial
Committee of
the Privy
CouncilNo.27Order granting
special leave
to appeal in
forma pauperis
to His Majesty
the Yang di-
Pertuan Agong21st October
1966

In the Judicial
Committee of
the Privy
Council

No. 27

Order granting
special leave
to appeal in
forma pauperis
to His Majesty
the Yang di-
Pertuan Agong

21st October
1966 -
continued.

THE LORDS OF THE COMMITTEE in obedience to the said Orders in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree to report to the Head of Malaysia as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Order of the Federal Court of Malaysia (Appellate Jurisdiction) dated the 10th day of November 1965 in relation to his conviction on the first charge namely on the question whether or not he was found in possession of ammunition but that leave to appeal ought not to be granted to him in relation to the other grounds mentioned in the Petition.

10

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

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.

30

DATED this 21st day of October, 1966.

BY COMMAND

(Sd.) ISMAIL BIN ABDUL RAHMAN

MINISTER OF JUSTICE.

(F. C. Crim. App. X.10/65).

E X H I B I T S

Exhibits

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

"A"

Public Prosecutor

Consent under
Section 80 of
the Internal
Security Act,
1960.

Vs.

Lee A Ba @ Lee Chee Hua

14th April
1965.

10 I, Hamzah bin Mohd, Selleh, Deputy Public
Prosecutor hereby consent to the prosecution of the
above-named person accused of two offences under
sections 57(1)(b) and 58(1) of the Internal
Security Act 1960 committed at about 8.00 p.m. on
10th March, 1965 at Federal Land Development
Authority, Pasak, in the District of Kota Tinggi.

Dated this 14th day of April, 1965.

Sgd. HAMZAH BIN MOHD. SALLEH

Deputy Public Prosecutor

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

"B"

P.P. vs: LEE A BA @ LEE CHEE HUA

Certificate
under Regula-
tion 4 of the
Emergency
(Criminal
Trials)
Regulations
1964 and
Charges.

20 I, HAMZAH BIN MOHD. SALLEH, D.P.P. in accord-
ance 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.

14th April
1965.

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

30 C H A R G E S

1st CHARGE

That you on 10th March, 1965, at about 8.00 p.m.
in a Security Area as proclaimed by the Yang Di-

Exhibits

"B"

Certificate
under Regula-
tion 4 of the
Emergency
(Criminal
Trials)
Regulations
1964 and
Charges.

14th April
1965 -
continued.

Pertuan Agong by Federal L.N. 245 of 17th August, 1964, namely at Federal Land Development Authority, Pasak, in the District of Kota Tinggi, in the State of Johore, without lawful excuse did had in your possession ammunition to wit, two handgrenade detonators without lawful authority and that you have thereby committed an offence punishable under Section 57(1)(b) of the Internal Security Act No. 18 of 1960.

2nd CHARGE

10

That you on the same date, time and place, consorted with members of Indonesian Armed Forces who carried firearms, ammunitions and grenades in contravention of the provisions of Section 58(1) of the Internal Security Act 1960 in circumstances which raised a reasonable presumption that you intended to act with such members of the Indonesian Armed Forces in the manner prejudicial to the public security and that you have thereby committed an offence punishable under Section 58(1) of the said Act.

20

Sgd. HAMZAH BIN MOHD. SALLEH

Deputy Public Prosecutor

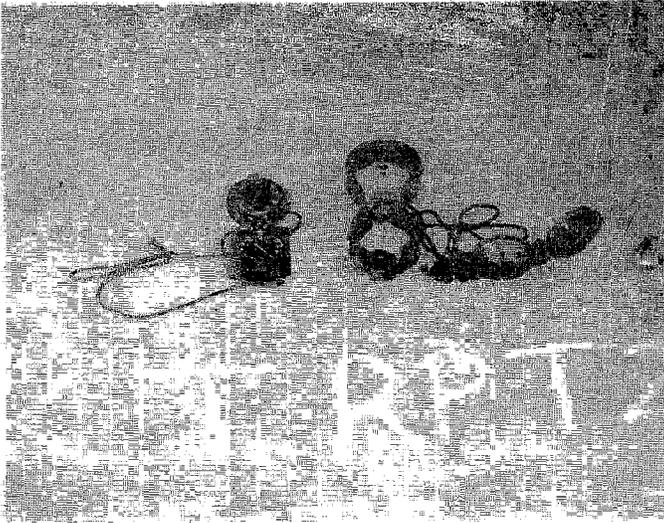
Dated this 14th day of April, 1965.

Exhibits

"P2A"

Photograph

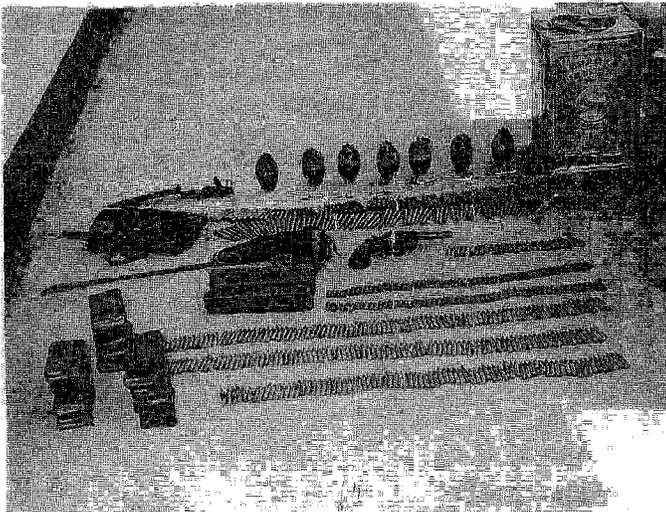
28th August
1965.



"P2B"

Photograph

28th August
1965.



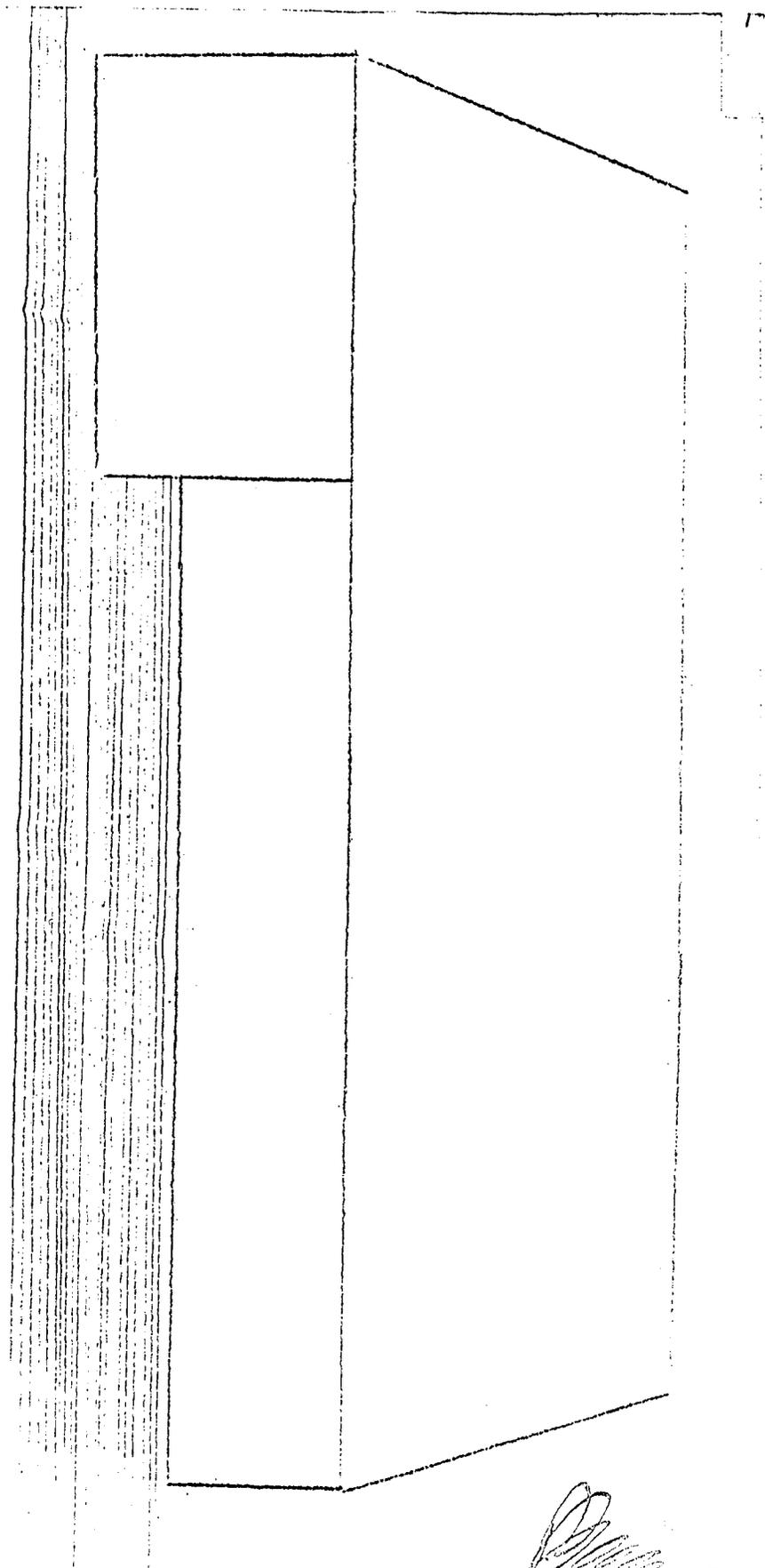
"P.25"

KT REPORT 232-33/65

SKETCH-PLAN

(NOT TO SCALE)

EXTERNAL VIEW OF KONGSI HOUSE



Exhibits

"P25"

Sketch Plan
and Key.

7th April
1965.

7th April, 1965.


(P. SAMY) INS PR.

KT.RPT.232-33/65

SKETCH-PLAN

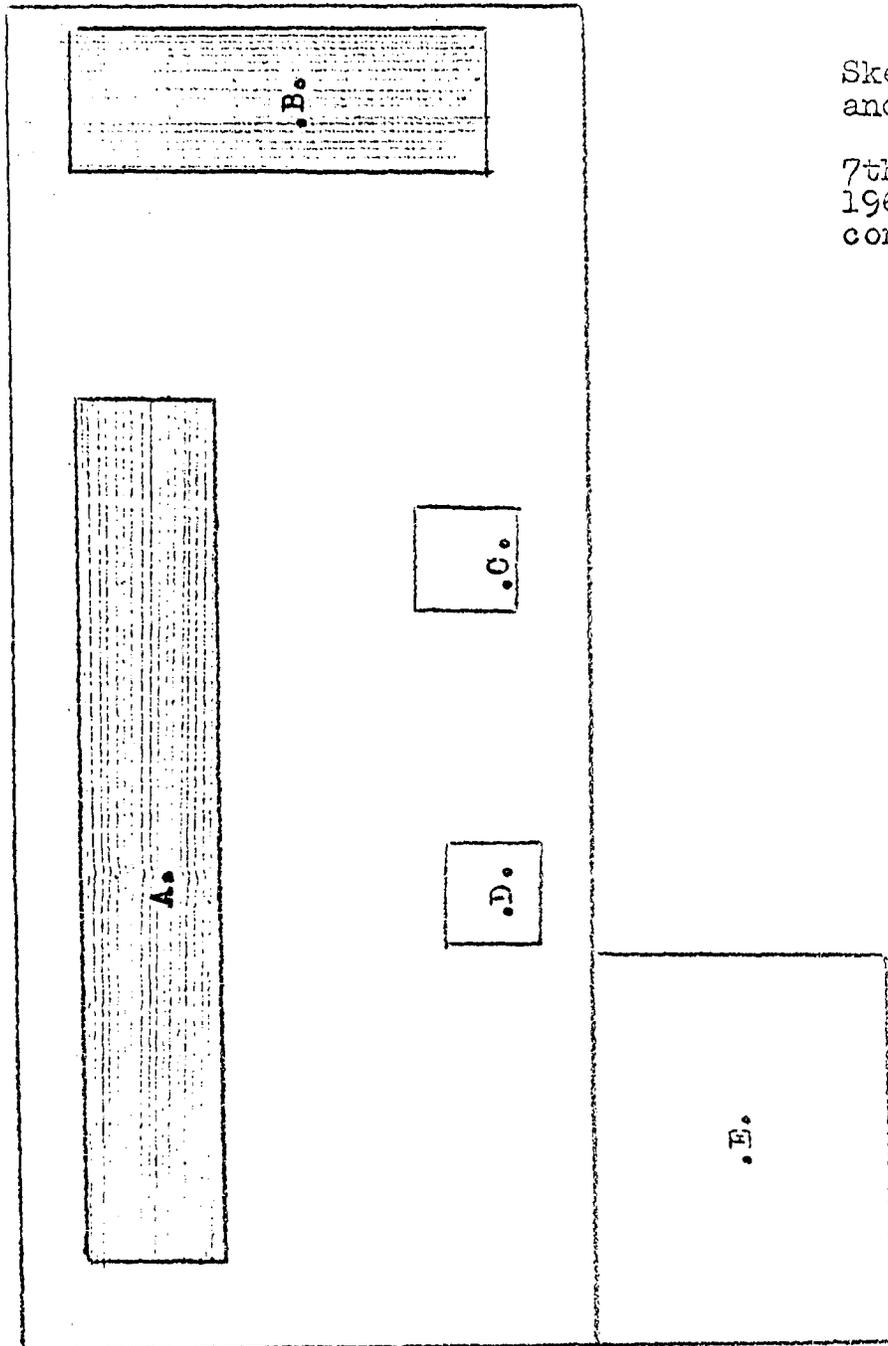
(NOT TO SCALE)

Exhibits

"P25"

Sketch Plan
and Key.

7th April
1965 -
continued



KEY TO PLAN.

- "A" REPRESENTS THE LONG PLANK BUILT BUNK.
- "B" " A SHORT LENGHT BUNK.
- "C" " Permanant table planted to earth.
- "D" " " "
- "E" " KITCHEN IN THE KONGSI.

7th April, 1965


 (P. ARMY)-INSPR.
 OFFICER IN CHARGE OF CASE,
 KOTA TINGGI.

P.27 - ACCUSED'S STATEMENTExhibitsPOLIS DI-RAJA MALAYSIA

"P.27"

NRIC.3723873

ORANG KENA TUDOH

Accused's
Statement.

Pontian (J) 026132.

Undated.

PERCHAKAPAN DALAM PEMEREKSAAN

No.Report 232-233/65 Rumah Pasong Police Station

Kota Tinggi.

Perchakapan bagi LEE A BA @ LEE CHEE HUA nama bapa
LEE KENG CHAI laki2.

- 10 Bangsa HOKKIEN CHINESE Tempat di-peranakan PONTIAN,
JOHORE. Umor 20 tahun. Kerja RUBBER-TAPPER dudok
di No. 27, Batu 36, Jalan Johore, Pontian. Di-terima
oleh Insp P Samy di Office - K.T. pada 11th March,
1965, jam 04.00 HRS.

Jurubhasa - daripada - Kepada -
kata-nya

- 20 Before recording the statement of the Accused,
I administered the following "Caution" through an
Interpreter LIM KOK BEE, DPC 25345 in the Mandarin
Chinese language.

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

"The accused fully understood the above caution".

Q. Do you understand the above caution?

A. Yes.

Sgd:

Sgd:

(LIM KOK BEE)

(PALANYSAMY) INSPR

30 DPC 25345

RECORDING OFFICER

ExhibitsIn answer to my questions:-

"P.27"
 Accused's
 Statement.
 Undated -
 continued.

I was born in Pontian, Johore on 3rd June, 1945. I am a Malayan citizen and I possess a blue Identity Card No: 3723873. My father is still alive living at No. 27, Batu 36, Jalan Johore, Pontian. My mother named Lim Kiew (f) died about a year ago. I have a elder brother named Lee Ah Booi (m) and a younger brother named Lee Wah (m). I have three younger sisters. All my brothers and sisters live at No. 27, Batu 26, Jalan Johore, Pontian.

10

I passed standard V in Chinese Mandarin at Cheow Ming Chinese School, Batu 35, Jalan Johore, Pontian. When I was schooling, I was attending school in the morning and in the afternoon. I tap rubber at Batu 33, Jalan Johore, Pontian. The rubber plantation belonged to my father.

On or about 18th May, 1964 I was in my house at No. 27, Batu 36, Jalan Johore, Pontian. At about 1.00 p.m. one Tan Teng Seng (m), a neighbour of mine, approached me when I was on my way to Pontian along Jalan Johore. Tan Teng Seng (m) requested me to go the sea side at Pontian to eat cuttle-fish. Tang Teng Seng brought me to a boat attached with motor engine. In the motor-boat was a male Chinese - who was the owner. I and Tan Teng Seng got into the boat. The unknown male Chinese in charge of motor-boat started the motor-boat and brought us to the sea. The motor-boat was travelling about one hour - which direction I do not know. There we caught some cuttle-fish, approximate weight about 2 katties. We boiled the cuttle-fish in the boat and ate them. The boat under the command of the unknown male Chinese headed towards the open sea. About three hours later arrived a Island. I do not know the name of the Island. Arriving the Island Tang Teng Seng (m) asked me to go to the Island. The unknown male Chinese with the boat left. I do not know where. Tan Teng Seng brought me to a attap-house. On arrival in the house I met a male Indonesian named Ahmad aged about 30 years. We arrived the Island approximately 12 mid-night 18-19/5/1964. I with Tan Teng Seng passed the night in the house of the Indonesian named Ahmad. The following morning Tan Teng Seng told me that I have to stay with him for some days. Tan Teng Seng did not tell me the reason, neither I asked him why. I lived with Tan Teng Seng in the Indonesian's

20

30

40

Exhibits

"P.27"

Accused's
StatementUndated -
continued.

(Ahmad) house for more than one month. In Ahmad's house was a old Indonesian aged 60 staying. The old Indonesian gave food whilst my stay in the Island. I was treated very well. Whilst my stay in the Island I fell sick. I was brought by Tan Teng Seng and Ahmad the Indonesian to go on board a ship at about 8.00 p.m. which ship was anchored in the sea. Before boarding the ship, I was taken by a motor-boat alongside the ship. I do not know who was in charge of the boat I was taken or the name of the ship. In the ship I saw about 10 Indonesians. Tan Teng Seng and Ahmad returned to the Island leaving me on board the ship. The ship started off. I was in the ship for one night I was brought to Djakarta. A Indonesian soldier whom I do not know brought me to a Military Camp. I was allowed to rest for about a week in the Camp. I was given food and clothings. I underwent a training in the "Armed Forces of Republic of Indonesia". The training started on or about July 1964. The training lasted 8 days. Later I was ordered to go to Pulau Pinang, Rhio. Here again I underwent training for approximately 3 months I received Military Training-- re handling of all sorts of firearms. I happily underwent the training.

On or about the 6th January, 1965 I and 5 others Indonesians made an attempt to come over to Malaya by boat, but we did not make it. The wind and waves were too strong. This was an order to go.

On or about 24/2/1965 at about 7.00 p.m. I and four armed Indonesians left Pulau Pinang, Rhio in a motor-boat. Before the motor-boat left Pulau Pinang, Rhio, I was given with a sten gun No. 53611, 5 magazines and 115 rounds of 9m.m. These arms were given to me by the Sergeant in charge of my group of 5 persons. I do not know his name, but I can identify him. I was also given with a hand-grenade. I am qualified to use arms and grenades. I do not know the names of the other three in my group who had escaped, from being captured by the Security Forces on 10/3/65 night.

On 25/2/1965 at about 3.00 A.M. we arrived at Malayan soil somewhere the East Coast of Johore. All of us were wearing khaki military uniforms. The boat after leaving us in the Malayan shore left towards the sea. I do not know who was the Taikong

Exhibits

"P.27"

Accused's
StatementUndated -
continued.

of the boat. All of us having fully armed with guns headed into the Malayan jungle. The Sergeant-in-charge was always in the lead in the jungle. All the time I was armed with the sten-gun identified to the Police Officer (Inspr.P. Samy). This gun was fully loaded. I was armed with a life grenade. We were in jungle walking for about 10 days. We had our rations to eat. Sometimes we ate roots and leaves in the jungle.

On the 6th March 1965 at about 11.00 A.M. when I and the 4 Indonesians were heading in the jungle, we came across 5 other armed Indonesians all fully armed. I do not know their names, but I can identify them.

10

Whilst chatting, suddenly there was a outburst of fire, apparently by the Security Forces. At this stage the 5 persons of the other group separated from us and we headed towards another direction. I and my group of Indonesians arrived at the edge of jungle of the FLDA Scheme Pasak, Kota Tinggi. I arrived with my group on 8/3/1965 at about 8.00 p.m. I handed my sten-gun, ammunitions with 5 magazines and a handgrenade to the Sergeant in charge. I headed to a Kongsu hut at Pasak FLDA Scheme, Kota Tinggi unarmed. My four friends waited at the jungle edge. At this time I was still wearing Khaki military uniform. On arrival at the hut I met 4 or 5 male Chinese males. I was having my identity card with me. I asked one of the male Chinese C) in the hut for food. I also told the male Chinese that four of my Indonesian friends were waiting at the edge of the jungle. Shortly the 4 Indonesians came into the hut with all arms and ammunitions, a male Chinese C) whom I can identify, name I do not know, told me to tell the 4 Indonesians not to keep the arms and ammunitions in the hut. All of us had rice to eat. Later the 4 Indonesians carried the arms and ammunitions towards the jungle about 200 yards away, whilst I was in the Kongsu. There were 3 armalite guns, one Rifle Mark 3 and one revolver, belonged to the 4 Indonesians. My arms were one sten-gun - 5 magazines with 115 rounds of 9 mm and one grenade. I do not know where the arms were concealed by the four Indonesians. On the night I and the 4 Indonesians passed the night in the Kongsu hut. The following morning (9/3/65) at about 7.00 AM I asked a male Chinese C) whom I met in the Kongsu to buy me clothings to wear. I gave

20

30

40

\$10/-. I also gave a letter addressed to Yoke Heng
 (F) No. 606, Pontian Kechil to be posted. I wrote
 in the letter that I have arrived at Kota Tinggi.
 All the day I was in the Kongsil, helping the persons
 living there, in chopping firewood and cooking rice.
 I did not go out anywhere. I slept the night about
 7.00 pm. About mid-night I was arrested and taken
 to Police Station, Kota Tinggi, my money of \$18/-
 taken away from me.

Exhibits

"P.27"

Accused's
Statement

Undated -
continued.

10 On the 9/3/65 at 7.00 AM I packed up two pairs
 of jungle boots and one jungle green trousers then
 dug a hole about 30 yards from the Kongsil hut and
 put in the boots and jungle green trousers and
 covered with earth. This I did on the direction
 of my Sergeant in charge who had absconded from
 apprehension by the Police on the mid-night of 10-
 11/3/65. I do not know the name of my Sergeant
 in charge.

20 "Read over the above statement to the accused
 and confirmed correct".

Q. Does the above statement represent all the
matter that you know?

A. Yes.

Q. Do you have any additions or correction to make?

A. No.

"No Threat Inducement or Promise was made to
the accused in the course of recording the statement".

Sgd: (Lim Kok Bee) DPC 25345. Sgd: (P.SAMY) INSP.

Interpreter.

Recording Officer.

30 Supreme Court, Johore Bahru
 E.Cr. Trial No. 32/1965
 Exhibit marked "P27"
 Put in by P.W. 2
 This 28th day of AUG: 1965.

Sgd:
 Asst. Registrar.

Exhibits

"P.28" - CERTIFICATE OF DESTRUCTION

"P.28"
Certificate of
Destruction.
31st May 1965.

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

Tali No: JB 3356 Ext. 55
7421/A1/56
Date: 31/5/65.

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

10

CERTIFICATE OF DESTRUCTION

It is hereby certified that item/s listed below
and known by the following reference KOTA TINGGI RPT
232-3/65 have been destroyed being unsafe for storage.

ITEMS

- 7 INDONESIAN HAND GRENADES
- 8 DETONATORS FOR ABOVE GRENADES

Signature: T. Keane
Name: T. Keane
Rank: S/SGT.

20

SUPREME COURT, Johore Bahru
E.C. Trial No. 32/1965.
Exhibit marked "P28"
Put in by P.W.4
This 29th day of August 1965.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.36 of 1966

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

FEDERAL COURT CRIMINAL APPEAL No. X.10 of 1965
(J. Bahru High Court Emergency Criminal Trial No. 32/65)

B E T W E E N:

LEE A BA alias LEE CHEE HUA

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

RECORD OF PROCEEDINGS

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

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

Solicitors for the Appellant

Solicitors for the Respondent