

1967/21
[11]

Appeal No. 36 of 1966

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N

LEE A BA alias LEE CHEE HUA

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

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

SUPPLEMENTAL C A S E FOR THE RESPONDENT

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RECORD

1. On the 23rd day of May 1967 the Appellant applied for and was granted special leave to Appeal in forma pauperis from the said Judgment and Order of the Federal Court of Malaysia dated the 10th day of November 1965 upon the additional ground (in relation to his conviction upon both counts) that a person taken prisoner in circumstances such as those of the Appellant was entitled to treatment as and the privileges to be accorded to a prisoner of war, and that accordingly the Appellant was not liable to be prosecuted or convicted or sentenced in respect of the offences charged.

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p.79

2. Accordingly, the following additional issues are raised in this appeal:-

(d) whether the Appellant was a prisoner of war within the meaning of the Geneva Conventions Act 1962 (No. 5 of 1962) and as such was entitled to protection under the Geneva Convention Relative to the Treatment of Prisoners of War (The Third Schedule to the Act).

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(e) whether in the circumstances of the case a burden lay upon the prosecution to prove that the Appellant was disentitled

RECORD

to be treated as a prisoner of war under the Act. It is submitted that it was for the Appellant to show that he was entitled to the protection of the Act. This he did not do and neither at his trial nor in the appeal before the Federal Court of Malaysia made any claim to be so entitled.

(f) whether, if there was any onus upon the prosecution to show that the Appellant was disentitled to be treated as a prisoner of war under the Act, such onus was discharged. 10

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

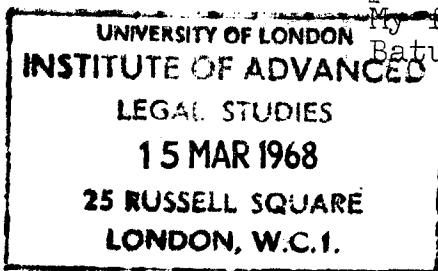
4. It is respectfully submitted that the prosecution evidence established that the Appellant was a national and a citizen of Malaysia and in any event was domiciled and resident in that country. 20

p.22 The Appellant's identity card, which was found by Inspector Loy (P.W.7) in the house where the Appellant spent the night of the 9th March 1965, was produced in evidence as Exhibit P.1. This described him as "Warga Negara Persekutuan", a citizen of the Federation of Malaya. 30

p.24 The Appellant's father, Lec Gen Chai (P.W.8), testified that the Appellant was born in Pontian, that he (the witness) procured an identity card for the Appellant, and Exhibit P.1. was the identity card so procured.

The Appellant in his own statement (Ex.P.27) said:

p.87 "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." 40



The statement went on to describe how the Appellant had left Malaya by sea on the 18th May 1964 and undergone training in the Indonesian armed forces, returning together with 4 armed Indonesians in a motor-boat on the 25th February 1965.

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

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R E A S O N S

1. BECAUSE the Appellant was not a prisoner of war within the meaning of the Geneva Conventions Act 1962.
2. BECAUSE the Appellant was a defector to the enemy and as such was not entitled to be treated as a prisoner of war.
3. BECAUSE the Appellant was in breach of his duty of allegiance to His Majesty the Yang di-Pertuan Agong and was accordingly upon a
20 proper construction of the Geneva Conventions Act 1962 and by the law of nations to which such Act gives expression and effect not entitled to the protection of the Act.
4. BECAUSE it was for the Appellant to show that he enjoyed the status and privileges of a prisoner of war and this he did not do.
5. BECAUSE no facts or circumstances were shown
30 to oust the Court's jurisdiction to try the offences charged according to the ordinary processes of law.
6. BECAUSE there was no evidence that if there was either a "declared war" or an "armed conflict" between Malaysia and any other Power, that other Power was a "High Contracting Party" or had accepted and applied the provisions of the Geneva Convention so as to make the Government of
40 Malaysia bound by it and so give the material provisions of the Third Schedule any legislative force.

RECORD

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

MONTAGUE SOLOMON.

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C A S E F O R T H E R E S P O N D E N T

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