

CLASS MARK

ACCESSION NUMBER

91364

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

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

FEDERAL COURT CRIMINAL APPEAL NO. X12 of 1966
(Muar High Court Emergency Criminal Trial
No. 30 of 1965)

B E T W E E N :

THE PUBLIC PROSECUTOR

Appellant

- and -

OOI WAN YUI alias WONG KAM CHIN

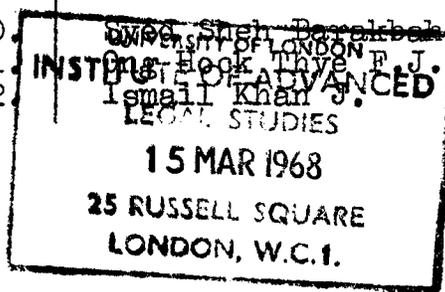
Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT OF MALAYSIA</u> <u>HIGH COURT OF MALAYA</u>		
1.	Charge Sheet	20th November 1965	1
2.	Notes of Evidence	20th November 1965	3
	<u>Prosecution Evidence</u>		
3.	Abdul Hamid bin Musa	20th November 1965	4
4.	Yean Yoke Khin	20th November 1965	6
5.	Ahgoram Visvanathan	20th November 1965	7
6.	Terence Anthony Keane	20th November 1965	8
7.	Abdul Majid bin Haji Abdul Rahman	20th November 1965	9
8.	Mohamad bin Daemon	20th November 1965	10

No.	Description of Document	Date	Page
9.	Oh Cheng Kooi	20th November 1965	10
10.	Lim Eng Guan	20th November 1965	13
11.	Mohamad Noh bin Yaacob	20th November 1965	14
12.	Sadikon bin Ashaari	21st November 1965	15
13.	Ahman Surahman	21st November 1965	18
14.	Sutikno bin Tjetrosumarto	21st November 1965	21
15.	Lim Teong Kooi	21st November 1965	26
16.	Ooi Wan Yui	21st November 1965	29
17.	Addresses by Counsel as to Statement	21st November 1965	32
18.	Lim Teong Kooi - recalled	21st November 1965	32
19.	John Yardley Sanders	26th March 1966	33
20.	Further Evidence of Yean Yoke Khin	26th March 1966	36
21.	Further Evidence of Abdul H Hamid bun Musa	26th March 1966	36
22.	Application to Amend Charge	26th March 1966	36
	<u>Defence Evidence</u>		
23.	Ooi Wan Yui	26th March 1966	37
24.	Notes of Final Addresses by Counsel	26th March 1966	38
25.	Conviction and Sentence	26th March 1966	39
26.	Grounds of Judgment	30th March 1966	40
27.	Oral Notice of Appeal		47
	<u>IN THE FEDERAL COURT OF MALAYSIA</u> <u>(APPELLATE JURISDICTION)</u>		
28.	Particulars of Trial	-----	47
29.	Petition of Appeal	2nd May 1966	49
	Notes of Argument:-		
30.	Small Khan J.	9th May 1966	51
31.	Small Khan J.	9th May 1966	54
32.	Small Khan J.	9th May 1966	56



No.	Description of Document	Date	Page
33.	Judgment of Ong Hock Thye F.J.	12th July 1966	59
34.	Order of Federal Court	12th July 1966	71
<u>IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL</u>			
35.	Order allowing Special Leave to Appeal to His Majesty the Yang di Pertuan Agong	27th February 1967	72

E X H I B I T S

Mark	Description of Document	Date	Page
A	Consent under Section 80 of Internal Security Act 1960	20th September 1965	74
B	Certificate under Regulation 4 of Emergency (Criminal Trial) Regulations 1964	20th September 1965	75
P9	Certificate of Destruction of two handgrenades	28th May 1965	77
P10	Caution Statement	10th September 1964	78

LIST OF EXHIBITS NOT INCLUDED IN THE RECORD

Mark	Description
P1	Sten Gun F.G.5174
P2	353 rounds of 9 mm. ammo
P3	3 empty magazines
P4	1 compass
P5	Paratrooper's uniform
P6	Dry rations - 7 packets
P7	Wearing apparel
P8	Personal effects

1.

IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

No. 17 of 1967

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

FEDERAL COURT CRIMINAL APPEAL NO. X12 of 1966

(Muar High Court Emergency Criminal Trial
No. 30 of 1965)

B E T W E E N :

10

THE PUBLIC PROSECUTOR Appellant

- and -

OOI WAN YUI alias WONG KAM CHIN
Respondent

RECORD OF PROCEEDINGS

No. 1

CHARGE SHEET

EMERGENCY (CRIMINAL TRIALS) REGULATIONS, 1964

Certificate under Regulation 4

Muar High Court Emergency Criminal Trial No.30 of 1965

20 PUBLIC PROSECUTOR Vs. OOI WAN YUI @ WONG KAM CHIN

I, Ajaib Singh, Deputy Public Prosecutor, in accordance with the provisions of regulation 4 of the Emergency (Criminal Trials) Regulations, 1964, hereby certify that the above case in which Ooi Wan Yui @ Wong Kam Chin is charged is a proper one to be tried under the aforesaid regulations.

(F.L.N.
286/1964)

30 And in accordance with regulation 5 of the aforesaid Regulations, I prefer the following charges against the said Ooi Wan Yui @ Wong Kam Chin to be tried in the High Court at Muar:

In the Federal
Court of
Malaysia

No. 1

Charge Sheet.

20th November
1965.

In the Federal 1ST CHARGE
Court of
Malaysia

No. 1

Charge Sheet.

20th November
1965 -
continued.

That you between the 2nd day of September, 1964 and the 7th day of September, 1964 in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N. 245 of 17th August, 1964, namely, Tenang, Kampong Labis, in the District of Segamat, in the State of Johore, consorted with members of Indonesian Armed Forces who carried firearms and ammunitions 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 such members of the Indonesian Armed Forces in a manner prejudicial to the public security and you have thereby committed an offence punishable under section 58 (1) of the Internal Security Act, 1960.

10

2ND CHARGE

That you between the 2nd day of September, 1964 and the 7th day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N. No. 245 of 17th August, 1964, namely Tenang Kampong Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession firearms, to wit, one sten gun No. MK 2 FG 5174, without lawful authority and that you have thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act, 1960.

20

3RD CHARGE

That you between the 2nd day of September, 1964 and the 7th day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N. No. 245 of 17th August, 1964, namely, Tenang, Kampong Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession ammunition, to wit, 353 rounds of 9 mm ammunition, and two hand grenades, without lawful authority and you have thereby committed an offence punishable under section 57(1) (b) of the Internal Security Act, 1960.

30

40

Dated this 20th day of November, 1965.

Sd. Ajaib Singh

Timbalan Penda'awa Raya.

No. 2

NOTES OF EVIDENCE

IN THE HIGH COURT IN MALAYA AT MUAR

IN THE STATE OF JOHORE

MUAR EMERGENCY CRIMINAL TRIAL NO. 30 of 1965

Public Prosecutor

versus

Ooi Wan Yui @ Wong Kam Chin

NOTES OF EVIDENCE

In the Federal
Court of
Malaysia

No. 2

Notes of
Evidence.

20th November
1965.

10 20th November, 1965 In open Court.

Inche Ajaib Singh for the Public Prosecutor.

Inche T. Thalayasingam for the accused, assigned.

Thalayasingam:

I was assigned on 16.11.65. I went to see the accused on 17.11.65. He refused to give me any instructions, saying that he had already retained T.T. Rajah.

20 I inform accused that Mr. T.T. Rajah sent a letter dated 12th November, 1965 to Court to say that he was no longer acting for the accused.

Accused:

I ask Court to assign Mr. T.T. Rajah to defend me as I have confidence in him. I have no confidence in the lawyer assigned.

I adjourn case for half an hour to enable accused to give his assigned counsel instructions before proceeding with the trial.

(Signed) S.S. Gill.

30 Court resumed after 1½ hours. Inche Thalaya-singham says that he has now received some instructions.

In the Federal Court of Malaysia

No. 2

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

Notes of Evidence.

20th November 1965 - continued.

Charges:

- (1) Consorting with members of Indonesian Armed Forces, Section 58 (1) of the Internal Security Act,
- (2) Possession of a Sten gun, Section 57 (1) (a) of the Internal Security Act, 1960,
- (3) Possession of 353 rounds of 9 m.m. ammunition, Section 57 (1) (b) of the Internal Security Act, 1960.

10

The three charges read over and explained to accused. Claims trial on all three charges.

Inche Ajaib Singh opens case for the prosecution and calls evidence.

Prosecution Evidence

No. 3

20

EVIDENCE OF ABDUL HAMID bin MUSA

No. 3

ABDUL HAMID bin MUSA, affirmed, states in English:

Abdul Hamid bin Musa.

I am a Police Inspector stationed at Kluang Police Headquarters, Johore. In September, 1964 I was stationed at Johore Bahru and was attached to the Special Branch Headquarters. On 3.9.64 I was sent to Labis to do special duties.

On 7.9.64 at about 8.10 p.m. Captain Sanders of 1/10 Gurkha Rifles brought before me two male Chinese. One of them was Ooi Wan Yui, the accused in this case. I interrogated the accused in order to obtain intelligence for immediate operational use. During the course of the interrogation I did not use any force or inducement, nor did I make any promise to the accused.

30

I interrogated the accused for about 3½ hours.

I placed the accused formally under arrest. After my interrogation I had the accused put in the Police lockup at Labis Police Station.

In the Federal
Court of
Malaysia

I interrogated the accused in an office room. Only the accused and I were present during the interrogation. The accused was handcuffed for security reasons. I was not in uniform. I gave the accused a chair to sit on when I interrogated him.

Prosecution
Evidence

No. 3

10 The accused did not make any complaint to me of any sort.

Abdul Hamid
bin Musa -
Examination
- continued.

I interrogated the accused for intelligence. I was not concerned with the investigation of any criminal offence which he might have committed.

That was the only occasion on which I interrogated the accused.

20 Cross-examined: I spoke to the accused in Malay. He understood my Malay. I put questions to the accused. He answered my questions. He answered most of my questions, but kept quiet in the case of some of my questions.

Cross-
examination.

I took $3\frac{1}{2}$ hours to interrogate the accused because he kept quiet when I put some questions to him and I gave him time to think.

30 I put some questions to him a number of times. I would have released him earlier if he had answered all my questions without waiting. If I had not got all the information I wanted from him in $3\frac{1}{2}$ hours, I would have detained him longer. If the accused had not answered my questions, I would have sent him to the lockup. If he had remained silent I would have repeated the questions to him many times before I sent him to the lockup.

I did not assault the accused during my investigation. I was not in uniform then, but I think the accused was aware that I was a Police officer.

40 By Court (at Ajaib Singh's request): When the accused was brought in and handed to me by Captain Sanders, Inspector Yean Yoke Khin was present. I saw Captain Sanders bring in ammunition, a Sten gun and other things together with the accused. I received the accused from him, and he handed in the

In the Federal Court of Malaysia

Sten gun, ammunition and other things at the Enquiry Office of Labis Police Station.

Prosecution Evidence

(No questions by Thalayasingam arising out of the above questions to witness.)

No.3

By Court: I did not reduce to writing the information which I obtained from the accused during the course of the interrogation.

Abdul Hamid bin Musa - Cross-examination - continued.

No.4

No. 4

Yean Yoke Khin - Examination.

EVIDENCE OF YEAN YOKE KHIN

YEAN YOKE KHIN, affirmed, states in English:

10

I am an Inspector of Police stationed at Kluang. In September last year I was stationed at the C.I.D. Headquarters, Johore Bahru. On 3.9.64 I was sent to Labis on special duty.

On 7.9.64 at about 8 p.m. I was at Labis Police Station. At that time one Captain Sanders of 1/10 Gurkha Rifles handed to me an assortment of military equipment consisting of this Sten gun bearing number FG 5174 (put in and marked P.1), 353 rounds of 9 m.m. ammunition (produced and marked P.2), 3 empty magazines (produced and marked P.3), one compass (produced and marked P.4), a paratrooper's camouflage overall (produced and marked P.5), seven packets of dry rations (produced and marked P.6), one webbing equipment (produced and marked P.7), some wearing apparel and personal effects (produced and marked P.8) and two hand-grenades complete with detonators. The two hand-grenades are not in Court today. I have had these exhibits in my possession ever since.

20

30

On 14.9.64 at about 11 a.m. at Segamat Police Station I handed the Sten gun (P.1) and the ammunition (P.2) to Inspector A. Visvanathan (called in and identified) for examination. I received P.1 and P.2 back from Inspector Visvanathan on the same day.

On 15.9.64 some time in the afternoon I handed the handgrenades to Staff Sergeant T.A. Keane (called in and identified) at Labis Police Station. I gave him the reference of the case, namely, Labis Report 450/64 and exhibit group number 23. I did not receive back the handgrenades from Sergeant Keane.

No cross-examination.

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.4

Yean Yoke Khin
- Examination
- continued.

No. 5

No. 5

10

EVIDENCE OF AHGORAM VISVANATHAN

AHGORAM VISVANATHAN, affirmed, states in English:

Ahgoram
Visvanathan -
Examination.

I am an Inspector of Police stationed at Johore Bahru. I am the Police Armaments Officer for Johore and Malacca. I have been an Armaments Officer for 5 years.

On 14.9.64 at about 11 a.m. I received a Sten gun FG.5174 (P.1) and 353 rounds of 9 m.m. ammunition similar to P.2 from Inspector Yean (P.W.2) at Segamat Police Station.

20

I examined the Sten gun, test-fired it and found it to be serviceable. I also examined the 353 rounds of ammunition and found them to be in a serviceable condition. I fired two of the rounds. I used another Sten gun to fire the two rounds of ammunition. This is the appropriate type and calibre of ammunition for the Sten gun.

30

The Sten gun which I examined (P.1) had been fired since it was last cleaned, but I could not say when it had been last fired. I have had past experience in examining this type of Sten gun and ammunition. I did a special course on arms and ammunition at the Federal Police Armoury Workshop at Kuala Lumpur for one year in 1960. I successfully completed the course.

No cross-examination.

In the Federal Court of Malaysia

No. 6

EVIDENCE OF TERENCE ANTHONY KEANE

Prosecution Evidence

TERENCE ANTHONY KEANE, affirmed, states in English:

No.6

I am a Staff Sergeant, Malaysian Armed Forces, stationed at Majidee Barracks, Johore Bahru. I am an ammunition technician.

Terence Anthony Keane - Examination.

On 15.9.64 at about noon at Labis Police Station Inspector Yean (P.W.2) handed to me two handgrenades complete with detonators for examination.

The two handgrenades were of Chinese manufacture and were copies of a Russian pattern grenade known as PF.1 grenade. These are high explosive fragmentation grenades. The two detonators were of the type associated with these grenades. Both items were serviceable. 10

I took possession of the handgrenades, retained them at Majidee Barracks until May 1965 when with Police permission I disposed of them because it was unsafe to store them. I prepared a certificate of disposal which I now produce (put in and marked P.9). I signed the certificate. 20

When the handgrenades were given to me, Inspector Yean (P.W.2) gave me the references which are set out in the disposal certificate.

I have been an Army ammunition technician for the last 12 years. I underwent a 9-month specialist course in Bromley, England. I successfully completed the course.

In the course of my duties I have had experience in examining this type of handgrenades before, and I have given evidence in Court on approximately 10 previous occasions. 30

I am familiar with this type of handgrenade of Chinese manufacture.

Cross-examination

Cross-examined: I ascertained that the handgrenades were serviceable by visual examination. The only other test would be to explode the handgrenade with the detonator.

No re-examination.

Adjourned until 2.30 p.m.

(Signed) S.S. Gill.

Hearing resumed at 2.30 p.m.

40

No. 7

EVIDENCE OF ABDUL MAJID bin HAJI ABDUL RAHMAN

In the Federal
Court of
Malaysia

ABDUL MAJID bin HAJI ABDUL RAHMAN, affirmed, states
in Malay:

Prosecution
Evidence

No.7

I am Police Sergeant No. 3697 stationed at
Labis. I am O.C.S. Labis since 1962.

Abdul Majid
bin Haji
Abdul Rahman -
Examination.

10 I remember 7.9.64. On that day at about 7 p.m.
a Gurkha and European soldiers brought two Malaysian
Chinese to Labis Police Station. Inside the Police
Station at that time were Police Inspectors. One
of them was Inspector Abdul Hamid (P.W.1). One of
the Malaysian Chinese who was brought in is the
accused. According to the register, the accused is
Ooi Wan Yui. I was in charge of the Labis Police
lockup. The accused was detained in the Police
lockup. As O.C.S. I was responsible for all the
inmates of the lockup. I used to visit the lockup
cells and inquire whether the inmates had any
complaints.

20 During the time the accused was in the lockup
he did not complain to me. He was not ill-treated
by any one. The accused was detained in Labis
lockup until 7 p.m. on 8.9.64 after which he was
sent to Johore Bahru under Police escort. Corporal
Mohamad (called in and identified) was the escort.
The accused was sent together with other prisoners.

30 Cross-examined: I left the Police Station on
7.9.64 only to take my food. Otherwise I was on
duty all the time, round the clock. I know that
the accused was interrogated by Inspector Abdul
Hamid. I do not know for how long. I was doing my
work while the accused was being interrogated. I
cannot remember what time the accused was returned
to the lockup. I went on rounds to the Police
lockup three or four times in the day and the same
number of times at night. On the night of 7.9.64
I made only one round at about 2 a.m. (8.9.64).
As far as I can remember, the accused was in the
cell at that time.

Cross-
examination

No re-examination.

In the Federal
Court of
Malaysia

No. 8

EVIDENCE OF MOHAMAD bin DAEIMON

Prosecution
Evidence

MOHAMAD bin DAEIMON, affirmed, states in Malay:

No.8

I am Police Corporal No. 8502 stationed at the Central Police Station, Johore Bahru. In September last year also I was stationed there.

Mohamad bin
Daemon -
Examination.

On the evening of 8.9.64 I was at the Labis Police Station. On instructions I escorted some prisoners from Labis Police Station to Johore Bahru Special Branch Headquarters. I left Labis at about 7.55 p.m. and arrived at the Special Branch, Johore Bahru at 11.05 p.m. Three prisoners were under my charge. They were Chinese. I do not know their names. One of them is in Court today. He is the accused. At the time when I handed over the accused at the Special Branch, Johore Bahru I came to know that his name was Ooi Wan Yui. We travelled from Labis to Johore Bahru in the Black Maria. On the journey no one spoke to the accused. We did not stop on the way.

10

20

The three prisoners were handed to me at Labis by the O.C.S. Labis (points to P.W.5). I handed the prisoners at the Enquiry Office of the Special Branch, Johore Bahru.

During the journey the accused did not make any complaint to me. He was handcuffed while in the Black Maria. Those were my instructions. The other prisoners were also handcuffed. None of the other prisoners made any complaint to me.

Cross-
examination.

Cross-examined: The accused appeared to be normal when I received him at Labis for escort to Johore Bahru. I did not ask him if he had any complaint to make.

30

No re-examination.

No.9

No. 9

EVIDENCE OF OH CHENG KOOI

Oh Cheng Kooi
- Examination.

OH CHENG KOOI, affirmed, states in English:

I am an Inspector of Police stationed at Contingent Special Branch Headquarters at Johore

Bahru. I am Officer-in-Charge of detainees since the end of 1963.

In the first week of September some prisoners were brought from Labis and Segamat to the Special Branch at Johore Bahru.

10 On 8.9.64 three prisoners were brought down from Labis by a Police party. They were detained at the Special Branch. There were so many prisoners then that I cannot remember whether these prisoners were kept inside the cells or outside within the perimeter fence.

These were mixed prisoners, Indonesians as well as Malaysian Chinese and Malays. Most of the prisoners were Indonesians. Only some were Chinese or Malays.

20 The three prisoners brought in on 8.9.64 were Malaysian Chinese. One of them was the accused whose name is Ooi Wan Yui. The accused was detained in Johore Bahru for 2 days. On 10.9.64 at about 11.45 a.m. he was handed over to a Police party to be taken to Segamat. There were a few other prisoners who were sent to Segamat together with the accused. Inspector Lim Eng Guan (identified) was the officer in charge of the Police party which took the accused and some other prisoners to Segamat.

30 As O.C. detainees I am responsible for the welfare of the detainees and to keep a record of them. In the course of my duties I visited the cells to check the number of detainees, to inquire if they had any complaints and whether they got their normal food. Every morning a Government doctor visits the headquarters to check on prisoners.

During his stay in Johore Bahru for two days the accused made no complaints to me. I visited the lockup once a day but at no fixed hours. I have no assistants.

40 The accused did not request medical treatment during the two days that he was at the Special Branch. The doctor told me of no complaint from the accused.

I did not in any way ill-treat the accused.

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.9

Oh Cheng Kooi
- Examination
- continued.

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.9

Oh Cheng Kooi
Cross-
examination

Cross-examined: The accused was returned to Johore Bahru from Segamat. I cannot remember the date on which he was brought back. I do not know why the accused was sent to Segamat.

I do not know whether the accused was interrogated at Johore Bahru. I know interrogations are carried out by the Special Branch at the Headquarters. I did not interrogate the accused at all.

I do not know whether statements are recorded from the detainees at the Special Branch. I did not interview the accused. I did not assault him.

10

The doctor comes to the Special Branch every day to see if any detainees require medical attention. It is not part of my duty to take him round the cells. I do not know how the doctor performs his duties. I do not meet him when he comes.

I deny that I assaulted the accused while he was detained at Johore Bahru.

I did not know whether the accused was sent to Segamat for a statement to be recorded from him. I did not have any discussion with the accused. I saw him at the lockup. I did not go up and talk to him. If he had any complaint he could make it when I went on rounds.

20

There is a book kept in which the doctor would record the complaint made to him by any prisoner and I would be the first one to receive such complaint.

Re-
examination

Re-examined: During the two days I found no entry of any complaint by the accused to the doctor. The doctor comes in the morning before 7 a.m. to examine prisoners and leaves before I arrive in the office. The Ketua Guard would bring the book to me if any complaint is recorded by the doctor. The doctor is a Government doctor. He comes early in order to go to the Hospital later.

30

No.10

EVIDENCE OF LIM ENG GUANIn the Federal
Court of
MalaysiaLIM ENG GUAN, affirmed, states in English:Prosecution
Evidence

I am an Inspector of Police stationed at Muar since 13th May, 1965. In September last year I was stationed at the C.I.D. Headquarters, Johore Bahru.

No. 10

Lim Eng Guan
- Examination

10 I remember 10.9.64. At about 12 noon on that day I was instructed to escort a number of prisoners from the Special Branch, Johore Bahru to Segamat Police Station. I cannot remember how many prisoners I escorted. The accused was one of them. His name is Ooi Wan Yui. I took over the prisoners from Inspector Oh Cheng Kooi (P.W.7). I conveyed the accused and the other prisoners to Segamat in two Black Marias, arriving at Segamat at about 3 p.m. I handed them at the Enquiry Office, Segamat Police Station from where they were taken to the lockup.

20 I did not bring back the accused to Johore Bahru at any time. After delivering him and the other prisoners at Segamat I returned to Johore Bahru.

During the journey neither I nor any one else spoke to the accused. No one threatened him or put him in fear. I had some Police personnel with me who were seated at the rear of the vehicle outside the cages in the Black Marias. Only the prisoners were in the locked compartments. We did not stop on the way from Johore Bahru to Segamat.

30 Cross-examined: I was not told why the accused and the other prisoners were being taken to Segamat. In the month of September 1964 I had not taken any other prisoners on any other day from Johore Bahru to Segamat. I do not know when the prisoners were returned to the Special Branch at Johore Bahru.

Cross-
examination

No re-examination.

In the Federal Court of Malaysia

No.11

EVIDENCE OF MOHAMAD NOH bin YAACOB

Prosecution Evidence

MOHAMAD NOH bin YAACOB, affirmed, states in Malay:

No. 11

I am Police Sergeant Major 1512 attached to the Federal Reserve Unit No. 5, Queens Town, Singapore. In September last year I was O.C.S. Segamat Police Station.

Mohamad Noh bin Yaacob - Examination

On 10.9.64 at about 3 p.m. some prisoners were brought from Johore Bahru to Segamat and kept in the Police lockup. I cannot remember whether the accused was one of the prisoners. About 9 to 10 prisoners were brought. Between 10 to 15 prisoners were already there previously, so that there were about 25 prisoners there. There were Indonesian, Malay and Chinese prisoners.

10

As O.C.S. my responsibility was to see that the cells of the lockup were clean, to see about the food for the prisoners and to inquire about their welfare. It was my duty to inquire from the prisoners whether they had any complaints to make.

20

The 10 prisoners who came on 10.9.64 remained there for about 3 days, as far as I can remember. Then they were returned to Johore.

I made daily rounds to the cells, twice or thrice during the day and once or twice at night. None of the 10 prisoners made any complaint to me during the time they were in Segamat either about their food or any ill-treatment. I did not in any way threaten them or ill-treat them.

Cross-examination

Cross-examined: I did ask some of them whether they wanted to make any complaints, but they did not make any complaint. I cannot remember whether I asked the accused if he had any complaint to make.

30

I do not know why they were brought to Segamat Police Station from Johore Bahru. Statements were taken from some of them while they were in Segamat. I cannot remember well from how many of them statements were taken.

Re-examination

Re-examined: I asked prisoners questions such as, how about the food? are you well? are you sick?

40

The prisoners brought from Johore Bahru were kept in cells. There were 2 or 3 in some of the cells. In some of the cells there was only one prisoner. I directed my questions to all the inmates where there were 2 or 3 in a cell. I asked similar questions of prisoners who were singly in each cell.

Adjourned until 9 a.m. tomorrow.

(signed) S.S. Gill

In the Federal Court of Malaysia

Prosecution Evidence

No. 11

Mohamad Noh bin Yaacob
- Re-examination -
continued.

No.12

No. 12

10

EVIDENCE OF SADIKON bin ASHAARI

21st November, 1965

Muar Emergency Criminal Trial No. 30/65

Hearing continued. Counsel as before.

SADIKON bin ASHAARI, affirmed, states in Malay:

20

I am an Indonesian, now a detainee in Johore Bahru prison. I am 39 years old, married. In Indonesia I was a soldier in the Indonesian Army. I was Corporal Class I. I became a soldier in the Indonesian Army 16 years ago. I was attached to the Pasokan Gerak Tjepat.

I came to Malaya on 1.9.64 by an Indonesian Hercules aircraft. We left Jakarta at about 5 p.m. for Medan arriving there at 9 p.m. We left Medan by the same plane at about midnight on the night of 1.9.64. There were 48 persons in the plane when we took off from Jakarta and Medan.

30

I was wearing a camouflage military uniform of a paratrooper similar to P.5. The other 47 persons were wearing similar uniforms. I was carrying a G3 gun, ammunition and 2 handgrenades. I also carried food rations similar to P.6, civilian clothing, a steel helmet and toilet accessories. The remaining 47 persons also carried similar type of things.

Sadikon bin Ashaari -
Examination

In the Federal
Court of
Malaysia

Some of them were carrying G3 guns, some rifles and some Sten guns. Some of the 48 persons were Chinese and the rest Indonesians.

Prosecution
Evidence

No. 12

Sadikon bin
Ashaari -
Examination
- continued.

We were divided into sections. Each section consisted of 6 paratroopers. I was in Section No.7. I was the section leader. The other members of my section were Umod, a Chinese named Lee Ho Boon, another Chinese named Tan Swee, Niman Sari and Ahman Suratman (identified). Umod and Niman Sari are now dead. Of the two Chinese in my section the accused (points to accused in the dock) was one. He is Tan Swee. I know him as Tan Swee.

10

After the plane had taken off from Medan we jumped out of the plane as ordered into Malayan territory at about 1 a.m. on 2.9.64. We jumped out in the order of our section. My section was the second last to jump.

The accused was carrying a Sten gun similar to P.1. He was also carrying 2 handgrenades and ammunition. I do not know how many rounds of ammunition. He was wearing a uniform. We were all given money in the plane after we left Medan. It was \$300/- in Malayan currency in one-dollar notes. Each of us was given that amount of money.

20

The overall commander of the 48 men was Lieutenant Sutikno (called in and identified).

Our instructions after landing were to regroup and find our commander Sutikno. I would have followed any further orders given by him. Each of us was given a compass to help find our way in the jungle. I was given a compass similar to P.4. The remaining 47 men were given similar compasses.

30

When I landed I consulted my compass for a direction of 150 degrees north. This was according to instructions given while we were landing. After landing I met Ahman Suratman and I'id Suriani. I'id Suriani was from another section. I was in the jungle for 15 days before I was captured. After my capture I met the accused at the Police Depot, Johore Bahru and later at the Johore Bahru prison. I saw the accused in Johore Bahru prison several times. I am positive that he was one of the Chinese in my section.

40

I jumped out from the plane complete with my arms, ammunition and other equipment. The other people were also under orders to jump out similarly armed and equipped.

In the Federal
Court of
Malaysia

Prosecution
Evidence

No. 12

10 I first met the accused on 1.9.64 at Jakarta before we boarded the plane and when he was assigned to my section. In fact he was assigned to my section on the night previous to the day of our departure from Jakarta. That would be on 31.8.64 at about 8 p.m. He was together with me from that time. I do not know his real name. I refer to him as Tan Swee.

Sadikon bin
Ashaari -
Examination
- continued.

Cross-examined: There were about 16 Chinese in the plane. The accused was assigned to my section on 31.8.64. He was introduced to me as Tan Swee. He introduced himself to me. I do not know how and why he came to be assigned to my section. The other Chinese in my section was Lee Ho Boon. I do not know how and why he was assigned to my section. He himself gave his name to me.

Cross-
examination.

20 I was not interrogated on the date of my arrest. I was interrogated ten days later. I was interrogated about 7 times. I was treated well. I volunteered all information which I gave to the Police. The Police gave me no undertaking that I would be treated well.

I was captured when I was sitting on the ground in a field in Kampong Labis where I was surrounded.

30 I came here to help the people of Malaya to liberate Malaya. It was natural that I did not want to be captured by the Police. When I was captured by the Police I was not afraid. I did not know what the Police were going to do to me. I expected the Police to treat me well, even though I had come heretto liberate the country. I would expect Indonesia to treat any Malayan who went from here to liberate Indonesia similarly.

40 It is not true that I gave a statement to the Police because I was given an assurance that I would be treated well. I can identify some of the Chinese who were in the plane by their faces and appearances. I do not know that the name of the accused is Ooi Wan Yui or Wong Kam Chin.

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.12

Sadikon bin
Ashaari- Cross
Examination
continued

Lieutenant Sutikno kept a record of the names of persons in the plane. He did not show me the record. Lieutenant Sutikno assigned the accused to my section. Names were read over and allotted to the various sections. Lee Ho Boon and Tan Swee were allotted to my section. Accused introduced himself to me as Tan Swee.

From my section I was the first person to jump. I was No. 37 to jump. The others in my section were numbered 38, 39, 40, 41 and 42. Umod was No. 38, Lee Ho Boon No. 39, Tan Swee No. 40, Niman Sari No. 41 and Ahman Suratman No. 42. I did not see the other members of my section jump.

10

Three days after my capture I saw the accused again.

Between 8 p.m. on 31.8.64 and 5 p.m. on 1.9.64 I was in the Asrama (Camp). The other 47 persons were also in the Asrama. We were in barracks. We were all together.

20

Re-examination

Re-examined: We were mixed in the barracks.

No.13
Ahman
Surahman

No.13
EVIDENCE of AHMAN SURAHMAN

AHMAN SURAHMAN, affirmed, states in Malaya:

I am 25 years old. I am a member of the Indonesian Army assigned to the Pasokan Gerak Tjepat. Now I am in Johore Bahru prison. I am married.

I joined the Indonesian Army in 1962. I am a private Class II. I came to Malaya on 1.9.64 by a Hercules aeroplane belonging to the Indonesian Air Force. There were 48 of us in the plane.

30

We left Indonesia from Jakarta at 5 p.m. on 1.9.64 with all 48 of us on board. We landed at Medan at 9 p.m. We left Medan at about midnight, all 48 of us. There were Indonesians and Chinese in the plane. There were about 14 Chinese

in the plane.

The 48 persons in the plane were divided into sections of 6 persons each. Corporal Sadikon (identified P.W.10) was the lead of my section. My section was section No.7. There were 4 Indonesians and two Chinese in my section. One of the Chinese in my section is in Court today. He is the accused.

10 I was in camouflage uniform similar to P.5. The other 47 persons were wearing the same type of uniform. I was carrying a G.3 gun, 2 handgrenades, 160 rounds of ammunition, a whistle, a compass, some civilian clothing, food rations similar to P.6, a tiffin carrier and other personal effects.

20 The other 47 persons also carried arms and ammunition. The accused was in a paratrooper's uniform like mine. He carried a Sten gun similar to P.1, ammunition and 2 handgrenades, apart from other military equipment. He also carried food rations like P.6 and a compass.

All the Indonesian paratroopers carried G.3 guns. Some of the Chinese carried Sten guns and some carried rifles.

30 We left Medan at about midnight. In the plane we were ordered to get ready our parachutes, and we were given packets of money - \$300 in Malayan currency in one-dollar notes. At a certain place at about 2 a.m. on 2.9.64 we were ordered to jump out of the plane. Corporal Sadikon (P.W.10) was the first person from my section to jump. The accused jumped out before me, complete with his arms, ammunition and other equipment. I also jumped out complete with my arms and equipment.

The commander of our force was Lieutenant Muda Sutikno (called and identified).

40 Upon landing we were to regroup. After landing I met Corporal Sadikon (P.W.10) and I'id Suriani who was from a different section. The three of us remained together in

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.13

Ahman
Surahman

Examination
continued

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.13
Ahman
Surahman

Examination
continued

the jungle for 15 days after which we were captured. We were together when we were captured. I did not meet the accused in the jungle. After my capture I met the accused at the Police Depot on the day after my capture. Later I met him in Johore Bahru prison. Previous to today I had seen him several times in Johore Bahru.

I am positive that the accused was one of the two Chinese in my section. I did not know his name when I was in the plane. I came to know his name when I received the subpoena. His name is Ooi Wan Yui. 10

I first met the accused on the day we left Jakarta. Before we left Jakarta we were housed in Harlim Asrama (Camp). The other 47 persons were in the same camp. The accused was also in the same Asrama. On 1.9.64 at 1 p.m. while we were lined up the accused joined my section. The other Chinese were assigned to some other sections. 20

Cross-
examination

Cross-examined: I met the accused on 1.9.64 when we were about to take off from Jakarta. We were then near the plane. At that time he was assigned to my section.

We were kept together in the same Asrama before we took off from Jakarta. The accused was there. I came to know in the Asrama that the accused was assigned to my section. I made a mistake when I said that he was assigned to my section at the airport. I came to know that he was assigned to my section when we were assembled at the air-port before the take-off. Lieutenant Sutikno assigned the accused to my section. The accused was not introduced to me by name. 30

I say that I first saw the accused at the Asrama on 1.9.64. There were 14 Chinese. I can recognize each of them if I see them again.

When I met the accused at the Police depot after my capture I did not speak to the accused. Six of the Chinese from my force were then at the Police Depot. I just saw them. The Police did not point them out to me. 40

I was interrogated by the Police about 4 times. At the time of our capture we were surrounded and we surrendered. I was afraid when I was arrested. I gave information to the Police voluntarily. I was not given any assurance that I would be treated well if I gave information. I just gave my story to the Police about how I left from Jakarta. I was not afraid to give information.

In the Federal Court of Malaysia

Prosecution Evidence

No.13

Ahman
Surahman

Cross-examination continued

10 I was afraid to be shot when I was captured. That was why I put my hands up. When I was surrounded I was afraid I was going to be shot. I was also afraid after my capture that I would be shot, but I was not shot. After the charge in Court against me was withdrawn I ceased to be afraid. The charge was withdrawn against me on 4th April, 1965. I was last
20 interrogated by the Police on 20.9.64 after which I was sent to Johore Bahru prison. After that I was not interrogated.

At the time I gave my statement to the Police my fear of being shot was still there. I did not hope that after I gave my statement I would be spared by the Police.

It is not true that I cannot really recognize the accused as one of the Chinese in the plane.

No re-examination.

30 By Court: We were seated in the plane before the jump. We were seated by sections. The accused was seated next to me. He was No.40 and I was No.41. I jumped immediately after him. Niman Sari was No.42. I am quite sure that I jumped before Niman Sari. He was to jump after me.

Court adjourned and resumed after 15 minutes.

No.14
EVIDENCE of SUTIKNO BIN TJETROSUMARTO

No.14
Sutikno
Tjetrosumarto
Examination

40 P.W.12 SUTIKNO bin TJETROSUMARTO, affirmed, states in Malay:

In the Federal
Court of
Malaysia

I am Lieutenant Muda in the Indonesian Air Force, now held as a prisoner-of-war in Malaya. I am held under detention in Kuala Lumpur.

Prosecution
Evidence

I am 40 years old and married. I joined the Indonesian Army in September, 1945 and was absorbed into the Indonesian Air Force in 1950. I became Lieutenant Muda in 1962.

No.14

Sutikno
Tjetrosumarto

In February 1964 I was given special instructions to train some volunteers to form a special force to be known as Pasokan Gerak Tjepat. All the P.G.T. members were Indonesians. They were trained in jungle guerilla warfare and sabotage work. In July 1964 I trained some Malayan Chinese in the Rhio Islands in the use of arms, handgrenades and explosives. The purpose of this training was to carry on a confrontasi campaign against Malaysia.

10

Examination
continued

On 25th August, 1964 I was recalled to Jakarta from the Karimon Islands in the Rhio group, from where I went to Bandoeng. On 30th August, 1964 I went to Jakarta again and I was ordered to collect a force for the confrontation campaign against Malaysia. On 1st September, 1964 after the briefing I was given a command over 47 persons, of whom 14 were Malayan Chinese and the rest Indonesians. There were two female Malayan Chinese in my team.

20

The force under my command was divided into 8 sections of 6 persons each. I was included in the first section as the commander with five other persons in my section.

30

I left Jakarta with my force by a Hercules plane belonging to the Indonesian Air Force at about 4.30 p.m. on 1.9.64 arriving at Medan at about 9 p.m. From Medan we took off by the same plane at about 11.30 p.m. I was the commander of the force. I knew our destination. Our destination was Malaya. We were to land in Malaya by parachutes.

40

All 48 of us were in camouflage uniform of the Air Force similar to P.5. I was armed with a pistol and ammunition. The Indonesian members

of my force carried G.3 guns, ammunition, 2 handgrenades, dry food rations similar to P.6, medicines, civilian clothes and \$200 in Malayan one-dollar currency notes. They also carried compasses like P.4.

The Chinese in my force were also wearing similar uniforms as the Indonesians. They carried either Lee Enfield rifles or Sten guns similar to P.1, ammunition, 2 handgrenades and other similar equipment as the Indonesians.

After taking off from Medan we went towards Malaya. Just before 2 a.m. on 2.9.64 there was a signal for us to get ready to bale out from the plane. We were seated in the plane according to the sections. Before we left Jakarta I had assigned a number to each person as regards the order of jump. I was to jump first and my number was 1. The others were to follow me according to their numbers.

When the signal to jump was given the door of the plane opened. I first baled out the crates containing our military equipment, etc. After that I baled out.

After landing I did not meet any of my men during the night. Next morning on opening the map I discovered that I had landed at Tenang, Labis, Johore. At about 4.30 p.m. on the same day I met one of my men called Sali. For 20 days I was together with Sali, after which I was captured together with Sali in Kampong Tenang. During the 20 days none of my other comrades met me in the jungle.

The purpose of my bringing out my team to Malaya was to liberate Malaya from neo-colonialism by doing sabotage work in order to crush the economy of Malaysia. We were to blow up bridges, railway lines and special buildings.

Upon landing my men were required to find me and regroup around me. They were given directions to follow the course of 170 degrees

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.14
Sutikno
Tjetrosumarto

Examination
continued

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.14
Sutikno
Tjetrosumarto
Examination
continued

southeast. In fact I was not able to regroup my men. Further instructions to my men were to be given after regrouping. I was not the sole person in charge. I was to receive further instructions from my superior, Lieutenant Suroso. I was not able to contact him.

I can identify the faces of the Chinese who were in my team, but I do not know their names. The man inside the dock (the accused) was one of the Malayan Chinese in my force. He was in section No.7. The section leader of section 7 was Corporal Sadikon. He is in Court (points to P.W.10). The numbers in section 7 started with number 37. The number of the accused was 40.

10

After my capture, which was on 21.9.64, I saw the accused at the Police Depot, Johore Bahru on 22.9.64. I next saw him in the Police lockup at Muar two days ago.

From the Police Depot at Johore Bahru I was taken to Kuala Lumpur for about 2 months, sent back to Johore Bahru for 2 months and then back to Kuala Lumpur where I am now detained. I was never detained in Johore Bahru prison. I was all the time detained in a separate place from my men. The accused was detained at the Police Depot in Johore Bahru when I saw him. I do not know where he was taken after that.

20

I first met the accused on 1.9.64 at 1 p.m. at Halim Airbase, Jakarta. He was lined up with the other men. That was the first parade. There was a second parade at about 3.30 p.m. when I allotted the numbers to my men. An hour later we took off from Jakarta.

30

Cross-
examination

Cross-examined: I was not seated close to the accused in the plane. There were 14 Malayan Chinese altogether in the plane. I can identify all the Chinese who were in the plane.

I remember the accused's face well. I saw him at Jakarta, at Medan and then at Johore Bahru. It is not true that I say that the accused was one of the Chinese because I saw

40

him under detention at Johore Bahru.

There are no special marks by which I recognize the accused. I know him. I can identify him. It is not true that I have recognized him just because he is in the dock.

My men did not know their destination when we left from Medan. Only I knew that we were going to Malaya.

10 I was surrounded and captured. As a soldier I was prepared to accept any fate on capture. Whether they were to shoot me or hang me was up to them. Even though my life has been spared, I am still not happy because I am not a free man. If I were to choose, I would prefer to be made a prisoner rather than to be shot.

20 When I was arrested, I thought that I might possibly be shot. I cannot be sure even now that I will not be shot. I have not been assured by any person in authority that I will not be shot.

I was interrogated by the Police many times. I gave the Police as much information as I could. I gave in voluntarily and not because of any promise. I was not given any undertaking that my life would be spared or that I would be treated well if I gave information.

30 The crates which I baled out from the plane contained food rations, ammunition, digging instruments such as spade and medical supplies but no arms.

No re-examination.

Adjourned until 2.15 p.m.

(Signed) S. S. GILL

Resumed at 2.30 p.m.

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.14
Sutikno
Tjetrosumarto

Cross-
examination
continued

In the Federal
Court of
Malaysia

No.15
EVIDENCE of LIM TEONG KOOI

LIM TEONG KOOI, affirmed, states in English:

Prosecution
Evidence

I am an Assistant Superintendent of Police now stationed at Ipoh as O.C. Courts. In September last year I was stationed at Kuala Lipis, Pahang. In early September last year I was sent on special duty to Segamat and Labis.

No.15
LIM TEONG
KOOI

Examination

On 10.9.64 at 5.40 p.m. at Segamat Police Station I recorded a statement from one Ooi Wan Yui who had other names which I cannot remember. Ooi Wan Yui is the accused in this case. 10

I recorded a statement from Ooi Wan Yui in an office room on the first floor of the Police Headquarters building at Segamat. During the recording of the statement only the accused and I were present in the room.

I ascertained from the accused in what language he wished to speak. He chose to speak in Hokkien which is my mother tongue.

I administered a caution to the accused in terms of the caution set out in the Internal Security Act, 1960. I administered that caution in the Hokkien dialect after which I asked the accused if he understood the caution to which he replied in the affirmative. Then the accused said that he would give his statement to me willingly and voluntarily. I proceeded to record his statement. 20

After I had completed recording the statement I read it back and explained it to the accused in the Hokkien dialect. He was satisfied that the statement represented what he wanted to say. He had no additions or alterations to make. I signed the statement. I signed the statement at two places, after the caution and at the end of the statement. 30

I finished recording the statement at about 7.30 p.m. After that I sent the accused back to the lock-up.

The language I spoke throughout to the accused was Hokkien. He also spoke to me in Hokkien. There was no difficulty whatsoever in our understanding each other. Hokkien is my mother tongue. I am proficient in that language. I speak that language at home and to my friends.

In the Federal
Court of
Malaysia

Prosecution
Evidence

10 I did not at any time offer any threat, promise or inducement to the accused. He did not complain to me of any ill-treatment. He was seated on a chair at a table opposite to me as he made the statement. He was not in any way restrained. He was not handcuffed. I was in plain clothes. I was not carrying any weapons.

No.15
Lim Teong
Kooi

Examination
continued

I wrote out the statement in my own handwriting. The accused appeared to me to be normal. He was in civilian clothes.

20 (Inche Ajaib Singh asks witness to produce statement. Inche Thalayassingam objects to the statement being produced as he has instructions to challenge it on the ground that it was not a free and voluntary statement. I allow Inche Thalayasingam to cross-examine.)

30 Cross-examined: I interviewed the accused at 5.40 p.m. on 10.9.64. I had no idea where he was brought from I arrived in Segamat in the early part of September 1964. I was already at the Police Station to record the accused's statement. I did not know that he was going to make a statement until I spoke to him. I was not aware at that time that he had been brought from Johore Bahru for the purpose of recording a statement from him.

Cross-
examination

40 My purpose in interviewing the accused was to record a statement from him. It was my duty to check up in the lock-up to ascertain if there were any prisoners whose statements had not been recorded. I had recorded statements from other persons before that, but I cannot remember the actual order in which I recorded the various

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.15
Lim Teong
Kooi

Cross-
examination
Continued

statements, In all I recorded four statements in Segamat and Labis.

I visited Segamat Police lock-up in the morning on 10.9.64. As far as I can remember, he was not there then.

Before recording the statement from the accused I went to the office room upstairs and gave instructions for the accused to be brought before me as I then knew that he was in the lock-up. 10

The statement was recorded at one sitting. I am quite sure that no one else was present throughout the recording of the statement. There were no other two persons in jungle green uniform present as I was recording the statement.

As soon as the accused was brought before me I had his handcuff removed by escort. I sent the escort away, gave the accused a chair to sit on and started a conversation with him by asking him in what dialect he wished to speak. He chose to speak in Hokkien. I got all his personal particulars from him. As I got his particulars I became satisfied that he spoke Hokkien dialect which I understood. Having satisfied myself that he understood Hokkien, I administered the caution to him. I did not ask him anything else before administering the caution. After that the accused made a statement without any prompting at all. 20

I started a question. The accused gave a narration. I put specific questions to him only when some points were required to be cleared. 30

It is not true that two other persons were present when I recorded the statement and that those two persons and I assaulted and kicked the accused during the recording of the statement. It is not true that I forced the accused to admit certain facts which I then recorded as his statement.

The statement was not recorded on two consecutive nights. It was recorded at one sitting. The accused answered all my questions. I did not have to put certain questions to him several times. 40

I say that the accused made the statement voluntarily after I had administered the caution without any threat, promise or inducement from me.

In the Federal Court of Malaysia

The accused did not at any time refuse to make a statement.

Prosecution Evidence

No.15
Lim Teong
Kooi

Cross-examination
continued

10 Re-examined: I recorded the statement from the accused as part of the investigation into this case. If after I had administered the caution the accused had elected not to give a statement I would have stopped at that and sent him back to his cell. I would not have made further attempts to get a statement from him.

Re-examination

(Inche Thalaysingam calls the accused to give evidence).

No.16
EVIDENCE OF OOI WAN YUI

No.16
Ooi Wan Yui

20 NG WAN NYU, affirmed, states in Hokkien:

Examination

I have heard the evidence of the last witness as to how a statement was recorded from me on 10.9.64.

30 On 10.9.64 I was brought to Segamat Police Station. In the evening when the lights were on I was brought into an upstairs room. I was brought into this room by a Policeman. When I entered the room I saw three persons there. One of them was a Chinese dressed in civilian clothes. The other two were dressed in green uniforms and they looked to me to be Malays. Each of the persons in green uniform had a gun. I

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.16
Ooi Wan Yui
Examination
continued

cannot identify the Chinese. He was a rather tall man.

The Chinese said to me, "You had better give me a statement. If you don't, these two persons in green uniforms will take you out and kill you." He then said, "whatever I ask you, you answer." He then said, "You came down by a parachute, didn't you?" I said, "No". He then fisted me on my abdomen. After this I got frightened. I remember that he then asked me many questions. I answered them, but I cannot remember what I said. I cannot remember how many times I was assaulted, but each time I said something which was unsatisfactory I received a blow. I cannot say how many blows I received, but the statement which was recorded from me took two nights and not one night. 10

I was assaulted that night by three persons, namely, the Chinese who recorded my statement and the two men in green uniforms. All three fisted me. I was also assaulted on the second night. I was assaulted in the course of my statement being taken. The same three persons were present on the second night. Up to today I feel the pain in my abdomen, but there were no visible marks of the assault. The assaults were painful. 20

I did not know whether my statements would be reduced to writing. I had been previously interrogated by the Police. 30

The Chinese did not administer to me a caution to the effect that I was not obliged to say anything or answer questions but that, if I did, it might be used in evidence. He did not ask me at the beginning whether I wanted to make a statement.

In the course of the recording of the statement sometimes I was seated and sometimes I was standing up. I was handcuffed. On the second night I was questioned again. I cannot remember what questions I was asked. 40

10 Cross-examined: I did not complain to anyone that I was assaulted. I did request medical attention because of the pain in my abdomen when I was sent back to Johore Bahru. I made a complaint about the abdominal pain to the doctor who visited the lockup. He gave me two pills each time I complained to him. I cannot remember how many times I complained to the doctor. I cannot say whether the doctor visited the cells daily. I did tell the doctor that I was beaten but he just smiled. I am not calling the doctor to support my evidence.

20 I cannot remember the date on which I made my statement. It was in the evening of the day of my arrival in Segamat from Johore Bahru. I cannot identify any of the three persons who were present when my statement was recorded. The Chinese looked like P.W.13.

It is not true that I was never assaulted by any one. It is not true that no persons other than the Chinese were present. The Chinese did the talking. He spoke to me in Hokkien. I am speaking in Hokkien now.

30 Size does not count. I say three of them assaulted me. I am not very sure, but I think I was kept in Segamat for two or three nights. This happened more than a year ago. I cannot remember everything in detail.

No caution in any form was administered to me. If he had cautioned me I would remember it.

40 I had not met that Chinese or the other two persons before that day at all. I had not met P.W.13 before that day. I heard the evidence of P.W.13 in Court today. What he has said is not true. I do not know why he should come and say such things against me. We had no ill-feeling or grudge against each other.

I deny the suggestion that I am not telling the truth. I deny the suggestion that

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.16
Ooi Wan Yui

Cross-
examination

In the Federal
Court of
Malaysia

P.W.13 administered a caution after which I
elected to make a statement voluntarily.

Prosecution
Evidence

No.16
Ooi Wan Yui

Cross-
examination
continued

re-examination

Re-examined: I did not make a complaint at
Segamat because I did not know that I had a
right to make a complaint at the Police
Station.

If P.W.13 had administered a caution I
would have made a true statement giving all
the facts, but not if they were going to
implicate me.

10

No.17
Addresses by
Counsel as
to Statement

21st November
1965

No.17
ADDRESSES BY COUNSEL AS TO STATEMENT

Inche Thalayasingam addresses Court:

I leave the matter to the Court. It is
the evidence of P.W.13 against that of the
accused. It seems doubtful that the accused
would have made a statement if he knew that
it was going to be used against him.

Inche Ajaib Singh addresses Court:

Evidence of P.W.13 that the accused
made a statement to him freely after a caution
was administered to him and he understood it.

20

No.18
Judges find-
ing as to
Statement
21st November
1965

No.18
JUDGES FINDING AS TO STATEMENT

COURT: I am satisfied that the accused made a
voluntary statement to P.W.13 after a caution was

In the Federal
Court of
Malaysia

Prosecution
Evidence

No.19
John Yardley
Sanders

Examination
continued

Indonesian to the School, checked their arms, ammunition and equipment and after a short while took them, their arms and ammunition, including the dead Indonesian, to Labis Police Station. I reported the matter to my commanding officer. I handed the captured Chinese to a Police Officer whom I cannot now identify. I also handed the arms and ammunition and other equipment to the Police Officer. This was at about 8 p.m.

10

One of the two Chinese prisoners we captured was the accused. We took from the accused 1 Sten gun, 2 handgrenades unprimed, a quantity of ammunition and various other military equipment.

The accused was dressed in olive green shirt and trousers, commonly known as jungle-green, and was wearing what appeared to be a pair of ammunition boots.

We had been called in earlier on a report that there had been a landing of Indonesian paratroopers and our task was to seek out and destroy or capture the enemy. The reason for my Company being where it was was that this was the centre of the landing zone. The school where we had our headquarters was in a rural development area with a kampong there.

20

To the best of my knowledge, there was no other engagement by our battalion in that area on that day. This was the first successful engagement we had. We had moved into that area two or three days earlier.

30

(Shown P.1). I cannot say whether this was the very Sten gun which I captured from the accused without looking at my statement in which I mentioned the number of the gun. It is the same type of gun.

(Shown P.2). The ammunition captured from the accused was similar to this ammunition. It was counted by my men.

40

I think the accused and the arms and ammunition were handed to the same Police Officer. There were other officers in the area.

Cross-examined: Rifleman Bednerayas Limbu and I were both chasing the accused. He went to ground in some bushes in a small area of swamp. He was eventually seen by Bednerayas Limbu who ordered him to come out of the bushes, which he did after putting his hands up. He was taken about 25 yards on to an area of dry ground where we took him. I ordered him to be searched and his hands secured behind his back. Limbu apprehended the captured Chinese in my presence and within my sight. He did not have his arm and ammunition when he was apprehended. He had his personal effects on him. When ordered to surrender, the accused gave himself up.

10

In the Federal Court of Malaysia

Prosecution Evidence

No.19
John Yardley Sanders

Cross-examination

I may have seen the accused, after he was captured, at Labis Police Station.

The accused was with me in my presence for about two to three hours and the mere fact that we had captured him his face stuck in my mind. I have no hesitation in identifying him today.

20

The arms and ammunition were picked up from the area of the incident and taken back to the school from where we started. On arrival at the school the accused identified his weapon and equipment. The arms and equipment were taken from the point where the three of them had been originally resting.

30

Re-examined: The accused identified his Sten gun, 2 handgrenades, magazines and 9 mm. ammunition in loose form in a box. We were between 100 and 150 yards from the three persons when we opened fire. From there we could see what weapons they were carrying. The accused was carrying a Sten gun.

Re-examination

We took a total of three weapons, 1 Bren gun and 2 Sten guns.

40

I handed the accused and the weapons at Labis Police Station at night. I was there only for about 15 minutes. That is one of the

In the Federal
Court of
Malaysia

of the reasons why I am not able to identify
the Inspector to whom I handed them.
Moreover, it was dark.

Prosecution
Evidence

By Court: The accused and the other Chinese
started running away. We caught the other
Chinese first. They dropped everything and
ran.

No.19
John Yardley
Sanders

Re-
examination
continued

No.20
Further
Evidence
of Yeap
Yoke Khin
Further
examination

No.20
FURTHER EVIDENCE OF YEAP YOKE KHIN

YEAP YOKE KHIN (recalled and re-affirmed):

10

I have stated in my evidence earlier that
on 7.9.64 at about 8 p.m. I received from
Captain Sanders a Sten gun (P.1.) and 353
rounds of 9 mm. ammunition (P.2), 3 empty
magazines (P.3), one compass (P.4), 2 hand-
grenades and various other items of equipment.
P.W.14 is the Captain Sanders from whom I
received these exhibits.

No cross-examination.

No.21
Further
evidence of
Abdul Hamid
bin Musa
Further
examination

No.21
FURTHER EVIDENCE of ABDUL HAMID BIN MUSA

ABDUL HAMID BIN MUSA (recalled and re-
affirmed):

20

P.W.14 was the Captain Sanders who
handed the accused to me on 7.9.64 at about
8.10 p.m.

No cross-examination.

No.22
Application
to Amend
Charge

No.22
APPLICATION TO AMEND CHARGE

Inche Ajaib Singh applies to amend second
charge by deleting from it the words "No.MK2.

30

FG 5174" in line 7 after the word "Sten gun".
No objection by Inche Thalayasingam. Charge
amended accordingly and explained to accused.
Counsel do not wish to recall any of the
witnesses.

In the Federal
Court of
Malaysia

Prosecution
Evidence

Case for the prosecution.

Inche Thalayasingam says that he does
not wish to address Court at this stage.

No.22
Application
to Amend
Charge
continued

10 I hold that there is a case for the
accused to answer and call on his defence.
Three courses open to him explained to accused.

Accused elects to make a statement from
the dock.

No.23
STATEMENT of OOI WAN YUI

Defence
Evidence

OOI WAN YUI, stating from the dock:

No.23
Ooi Wan Yui
Examination

20 Some time in May 1964 I was invited by some
friends to go for a swim at Pantai. We went
out by boat towards the sea. In the evening when
it was quite dark, we headed for the shore.
Unfortunately we came across an Indonesian
boat which stopped our boat and forced all of
us into that Indonesian boat. Then we were
taken to a certain island where we were
detained for one week. After that we were
taken by boat to a big military camp. I was
then forced to take part in drill and training
in the use of firearms. At first I refused to
undergo training. The Indonesians assaulted
30 me. So I was compelled to undergo training.
I thought of escaping from this military
camp but the Indonesians had sentries all
over the place. I could not find an escape
route.

In the course of 3 months' training I
also underwent a course in parachute jumping.
Each time I went out for parachute jumping I
was fully equipped with a gun and ammunition
and other things.

40 On 1.9.64 I was told to get ready for

In the Federal
Court of
Malaysia

Defence
Evidence

No.23
Ooi Wan Yui
Examination
continued

parachute jumping practice at night. I was asked to equip myself fully for that practice. I went into a lorry with several others. The lorry was driven to a certain aerodrome. We reached the aerodrome at nightfall. At a given signal we were instructed to jump. I jumped out with all the others in the plane and landed at a place which I later came to know was Malaya. I was never told that we were going for practice jumping in Malaya. I was told that on landing I should meet members of my group and there wait for further instructions. I was told that a lorry would come and convey us to a certain military camp.

10

I looked for my friends but found no one. Subsequently I found Lee Hoo Boon. On the third day Lee Hoo Boon and I met an Indonesian. All the three of us wandered about in the jungle aimlessly. I threw away my gun, ammunition and all the other equipment. On 7.9.64 I saw soldiers. The soldiers also saw us. They called upon us to surrender. I surrendered. I did not know at the time of my surrender that I was surrendering to Malaysian soldiers. I only came to know that they were Malayan soldiers when they brought me to Labis Police Station. That is all.

20

Inche Thalayasingam says that he is not calling any witnesses.

30

Case for the defence.

No.24
Notes of
final
Addresses by
Counsel

No.24
NOTES OF FINAL ADDRESSES BY COUNSEL

Inche Thalayasingam addresses Court:

Charges against accused. Evidence for the prosecution. Date of capture of accused. Evidence of Captain Sanders. No weapon with accused when he was captured. Whether Captain Sanders really saw accused carrying a Sten gun? Rifleman actually captured accused.

40

Statement of accused from dock. Forced to undergo training. Not told where he was going.

Merely taken to an aerodrome. Later asked to jump. Instructions to regroup. Surrendered when asked to do so.

In the Federal Court of Malaysia

Inche Ajaib Singh addresses Court:

10 Being forced no defence By virtue of Section 59 of Internal Security Act, 1960 when read in conjunction with Section 94 of Penal Code. Once possession is established by prosecution, onus on accused to show lawful excuse or lawful authority under Section 57 (3).

No.24
Notes of final Addresses by Counsel
continued

All the ingredients of the element of possession have been proved in this case. Evidence of Captain Sanders. Accused's own cautioned statement. Evidence of Indonesian witnesses. Purpose of entry into Malaya as stated by Sutikno.

20 Accused's story about being forced to undergo training far fetched. Case against accused proved beyond reasonable doubt. Accused has raised no doubt.

No.25
CONVICTION AND SENTENCE

No.25
Conviction and Sentence

Court: I find the accused guilty on all three charges, convict him and sentence him to death on each charge.

Accused gives oral notice of appeal.

(Signed) S. S. GILL

Certified true copy

30 Wong Yik Ming
Secretary to
Mr. Justice Gill
22.7.1966

In the Federal
Court of
Malaysia

No.26
GROUNDS OF JUDGMENT

IN THE HIGH COURT IN MALAYA AT MUAR

IN THE STATE OF JOHORE

MUAR EMERGENCY CRIMINAL TRIAL No.30 of 1965

No.26
Grounds of
Judgment

Public Prosecutor

versus

Ooi Wan Yui @ Wong Kam Chin

GROUNDS OF JUDGMENT

This is yet another case arising out of the landing of Indonesian troops in Johore in September 1964. The accused was charged with (i) consorting with members of Indonesian Armed Forces, (ii) possession of a Sten gun and (iii) possession of 353 rounds of 9 mm. ammunition in contravention of Section 58 (1), Section 57(1) (a) and Section 57(1) (b) respectively of the Internal Security Act, 1960. The evidence for the prosecution may be conveniently divided into three parts. Firstly, there was the evidence of three members of the Indonesian Armed Forces who were captured by the local Security Forces and are now held under detention. Secondly, there was the evidence of the capture of the accused when he was in the company of another Chinese and an Indonesian who was killed in a brief encounter by Gurkha troops. Thirdly, there was the evidence of the accused's own cautioned statement.

The evidence of the three Indonesians may be summarised as follows. On 1st September, 1964 Lieutenant Muda Sutikno of the Indonesian Armed Forces led a force of 48 paratroopers in a Hercules plane belonging to the Indonesian Air Force. The plane took off from Jakarta at about 4.30 p.m. and arrived at Medan at about 9 p.m. From Medan it took off at about 11.30 p.m. and proceeded to Malaya. The paratroopers baled out from the plane at about 2 a.m. on 2.9.64 and

landed at Tenang, Labis in the State of
Johore.

In the Federal
Court of
Malaysia

Each of the paratroopers wore a
camouflage uniform and carried a firearm, a
quantity of ammunition, 2 handgrenades and
other military equipment. The force was
divided into 8 sections of 6 persons each.
The commander belonged to the first section
and there were five other persons in his
10 section. Before leaving Jakarta he had
assigned a number to each person as regards
the order of jumping. The leader of Section
7 was Corporal Sadikon. The other paratroopers
in Section 7 were Umod, Niman Sari, Ahman
Surahman and two Chinese, one of whom was
the accused. The firearm which the accused
carried was a Sten gun.

No.26
Grounds of
Judgment
continued

When the signal to jump from the plane
was given, Sutikno was the first to bale out,
20 followed by the others according to their
numbers. Corporal Sadikon was No. 37 to
jump and the accused No. 40. After landing
from the plane Sutikno met one of his men
called Sali, with whom he remained in the
jungle for about 20 days before they were
both captured. Corporal Sadikon met Ahman
Surahman from his section and a paratrooper
called Iid Suriani from a different section
after the landing, and these three remained
30 together until they were captured about
15 days later. After his capture Corporal
Sadikon met the accused at the Police Depot
and later at the Prison, Johore Bahru. Ahman
Surahman met the accused at the Police
Depot on the day of his capture and later
he met the accused in Johore Bahru Prison.
Lieutenant Sutikno next met the accused at
the Police Depot on 22.9.64.

The purpose of the expedition to Malaya
40 was to liberate Malaya from Neo-colonialism
by doing sabotage work in order to crush the
economy of Malaya. Upon landing the para-
troopers were to find their commander and
regroup around him. They were to receive
further instructions after regrouping. In
fact the men were not able to regroup as
instructed, and the commander received no

In the Federal
Court of
Malaysia

No.26
Grounds of
Judgment
continued

further instructions from his superior,
Lieutenant Suroso.

Evidence about the capture of the accused was as follows. Captain Sanders of A Company, 1/10 Gurkha Rifles was in his Company Headquarters in a school in the Tenang area of Labis at about 4 p.m. on 7.9.64 when an observation post reported seeing three persons 500 yards across the valley from the Company Headquarters. Captain Sanders saw the three men and put in an immediate attack on them. After a brief burst of fire he and his men captured two Chinese and killed an Indonesian. The accused was one of the captured persons. The two captured Chinese and the dead Indonesian were taken to the school where their arms, ammunition and equipment were checked. The accused identified his Sten gun, two handgrenades, magazines and 9 mm. ammunition in loose form in a box. Subsequently the two captured Chinese and the dead Indonesian together with their arms, ammunition and other equipment were taken to Labis Police Station. 10 20

Inspector Yean Yoke Khin was at Labis Police Station on 7.9.64 at about 8 p.m. when Captain Sanders handed to him a Sten gun, 353 rounds of 9 mm. ammunition, two handgrenades and other military equipment. On 14.9.64 at about 11 a.m. at Segamat Police Station Inspector Yean handed the Sten gun and ammunition to the Police Armament Officer, Inspector Visvanathan, for examination. Inspector Visvanathan examined the Sten gun and the ammunition and found them to be serviceable. On 15.9.64 Inspector Yean handed the two handgrenades to Staff Sergeant Keane. Sergeant Keane on visual inspection found the handgrenades to be serviceable. He kept them until May 1964 when with Police permission he destroyed them because it was unsafe to store them. 30

The accused was handed to Inspector Abdul Majid bin Musa by Captain Sanders on 7.9.64 at about 8.10 p.m. Inspector Musa placed the accused formally under arrest and interrogated him for about 3½ hours in order to obtain intelligence for immediate operational use. He was not concerned with the investigation of any criminal offence which the accused might have committed, 40

and he did not use any force, inducement or promise to the accused during the course of his interrogation. After the interrogation the accused was put in the lock-up at Labis Police Station. On 8.9.64 at about 7.55 p.m. the accused was sent to the Special Branch, Johore, under the escort of Corporal Mohamed. On 10.9.64 at about 11.45 a.m. Inspector Lim Eng Guan escorted the accused and some other prisoners to Segamat Police Station and handed them to Sergeant Major Mohamad Noh. At about 5.40 p.m. on the same day at Segamat Police Station A.S.P. Lim Teong Kooi recorded a cautioned statement from the accused.

10

20

30

40

The accused gave evidence about the statement which he was alleged to have made to A.S.P. Lim Teong Kooi. His evidence briefly was that on the evening of 10.9.64 he was taken to an upstairs room at Segamat Police Station where he saw three persons, one of them being a Chinese dressed in civilian clothes, and the other two, who looked like Malays, being dressed in green uniforms. Each of the Malays in green uniform had a gun. The Chinese said to him, "You had better give me a statement. If you don't, these two persons in green uniform will take you out and kill you", and fisted him on the abdomen. He got frightened and therefore answered the questions put to him, but he could not remember what he said. Each time he said something which was unsatisfactory he received a blow. He was assaulted that night by all three persons. He was also assaulted on the second night by the same three persons. He was unable to say whether his statements were reduced to writing. The Chinese did not administer to him a caution that he was not obliged to say anything or answer questions and he was not asked at the beginning whether he wanted to make a statement.

I did not accept the accused's story that no caution was administered to him or that he was beaten up by three persons in the course of his statement. A.S.P. Lim Teong Kooi had stated in his evidence that he recorded the statement from the accused in an office room on the first floor of the

In the Federal
Court of
Malaysia

No.26
Grounds of
Judgment

continued

In the Federal
Court of
Malaysia

No.26

Grounds of
Judgment

continued

Police Headquarters building at Segamat and that during the recording of the statement only he and the accused were present in the room. The statement was recorded at one sitting and there were no other two persons in jungle green uniform present. As soon as the accused was brought before him he had the handcuff removed by the escort and sent the escort away. He gave the accused a chair to sit on and started a conversation with him, asking him in what dialect he wished to speak. The accused chose to speak in Hokkien. Having got all the particulars of the accused, he administered the caution. The accused said he understood the caution and that he would give his statement willingly and voluntarily. After that the accused made a statement without any prompting at all. After recording the statement he read it back and explained to the accused in the Hokkien dialect. The accused had no additions or alterations to make. The recording of the statement finished at 7.30 p.m. after which he sent the accused back to the lock-up.

10

20

The accused made no other complaints about his being threatened or forced to make a statement. He made no complaints against Inspector Abdul Majid who had interrogated him on the date of his arrest. The prosecution produced evidence about the accused's movements from the time he was arrested until he made the cautioned statement. On all the evidence produced before me I was satisfied that the accused made his statement voluntarily after a caution had been duly administered to him. I therefore allowed the statement to be given in evidence.

30

I was satisfied on the evidence of the Indonesian witnesses that the accused was one of the 48 paratroopers who landed in the Tenang area of Labis in Johore at about 2 a.m. on 2.9.64. I was fully aware that these witnesses were accomplices, but they were so positive about the identity of the accused and about his carrying a Sten gun, ammunition, handgrenades and other military equipment at the time of the landing that I would have had no hesitation in acting on this accomplice evidence without corroboration. However,

40

there was ample corroboration of this evidence by the fact that at the time of his capture the accused was in the company of at least one armed Indonesian and he was found in the vicinity of the landing area. Captain Sanders stated in his evidence quite clearly that he and his men were between 100 and 150 yards from the three persons when they opened fire and that from that distance he could see that the accused was carrying a Sten gun. The accused and the other Chinese with him had dropped everything and started running. The accused was apprehended in his presence and within his sight, although at that stage he did not have his arm and ammunition on him. Then there was the accused's own cautioned statement which in my opinion corroborated the evidence of the Indonesian witnesses and the evidence of Captain Sanders in every material particular. Thus the prosecution proved its case beyond any reasonable doubt. I therefore held that there was case for him to answer and called on his defence.

The accused made a statement from the dock in which he said that some time in May 1964 he went out with some friends for a swim. They went out by boat towards the sea. When they headed for the shore in the evening, an Indonesian boat stopped their boat and forced all of them to get into that boat, after which they were taken first to a certain island where they were detained for one week and later to a big military camp where he was forced to undergo military training, including a course in parachute jumping. On 1.9.64 he was told to get ready for parachute jumping practice at night. He got into a plane and at a given signal jumped out with all the others in the plane and landed at a place which he later came to know was Malaya. After landing he looked for his friends, but found no one. Subsequently he found Lee Hoo Boon. On the third day Lee Hoo Boon and he met an Indonesian. All three of them wandered about in the jungle aimlessly.

In the Federal
Court of
Malaysia

No.26
Grounds of
Judgment
continued

In the Federal
Court of
Malaysia

No.26
Grounds of
Judgment
continued

He threw away his gun, ammunition and all other equipment. On 7.9.64 he saw soldiers who called upon them to surrender, which they did.

The accused's statement from the dock cast no doubt in my mind as to the truth of the prosecution case. In his cautioned statement the accused had stated in no uncertain terms the reason for his going to Indonesia and receiving military training there. In any event duress is no defence to the charges preferred against the accused. There was no evidence whatsoever that the accused made any attempt to come out of the jungle in order to surrender to the Security Forces. The fact that he was not told what the destination was irrelevant to the charge. He had placed himself in a situation in which he was obliged to carry out the orders of his superiors. In the circumstances I found the accused guilty on all three charges, convicted him and sentenced him to death on each charge.

10

20

KUALA LUMPUR,

Signed: S. S. GILL
JUDGE

30th March, 1966

HIGH COURT, MALAYA

Inche Ajaib Singh for Public Prosecutor.

Inche T. Thalayasingam for the accused,
assigned.

Certified true copy

Wong Yik Ming
Secretary to
Mr. Justice Gill
22.7.1966

30

No.27
ORAL NOTICE OF APPEAL

In the Federal
Court of
Malaysia

IN THE HIGH COURT IN MALAYA AT MUAR

EMERGENCY CRIMINAL TRIAL NO. 30 of 1965

No.27
Oral Notice
of Appeal

Public Prosecutor

Vs.

Ooi Wan Yui @ Wong Kam Chin

ORAL NOTICE OF APPEAL UNDER REGULATION 11(1)
OF THE EMERGENCY (CRIMINAL TRIALS) REGULATIONS,
1964

10

Accused: I wish to appeal against the conviction
and sentence.

No.28
PARTICULARS OF TRIAL

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

Form C
(Rule 8)

IN THE FEDERAL COURT OF MALAYSIA
High Court in Malaya at Muar
Criminal Appeal No. X.12 of 1966

No.28
Particulars
of Trial

20 Public Prosecutor -v- Ooi Wan Yui @ Wong Kam Chin

PARTICULARS OF TRIAL

1. Where was the trial held? High Court at Muar.
2. Date of trial. On 20th and 21st November, 1965 and 26th March, 1966.
3. Name of trial Judge: Mr. Justice Gill.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.28
Particulars
of Trial
continued

4. For what offence was the conviction?
For three (3) offences under the Internal
Security Act No.18 of 1960.

5. What was the sentence? Death.

Were any consequential orders made for
restitution of property or otherwise? No.

6. Annex hereto a copy of the list of exhibits.
Annexed.

7. Was appellant defended by an advocate and
solicitor privately or at request of the
Court? At request of the Court. 10

8. State the name of the Advocate & Solicitor.
Enche I. Thalayasingam.

9. Was the appellant admitted to bail before
trial? No.

*After sentence was passed on him the
appellant requested that the same
Counsel, Mr. T. Thalayasingam be
assigned to argue his appeal. His
request was recommended by the
Honourable Judge. 20

No.29
PETITION OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(Holden at Kuala Lumpur)

(CRIMINAL APPELLATE JURISDICTION)

FEDERAL COURT CRIMINAL APPEAL No. X 12 of 1966

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.29
Petition of
Appeal
2nd May 1966

BETWEEN:

Ooi Wan Yui alias Wong Kam Chin Appellant

- and -

10 Public Prosecutor Respondent

PETITION OF APPEAL

TO THE HONOURABLE THE JUDGES OF THE FEDERAL COURT

OOI WAN YUI alias WONG KAM CHIN 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 Muar in the State of Johore on the 26th day of March, 1966 states the following grounds for his said
20 appeal:-

1. The Learned Trial Judge erred both in law and in fact in arriving at the conclusion that the appellant consorted with members of the Indonesian Armed Forces and in holding that the appellant intended to act in a manner prejudicial to public security or the maintenance of public order in Malaya when in fact the evidence before the Learned Trial Judge was otherwise.

30 2. The Learned Trial Judge erred in law and in fact in holding that the cautioned statement or confession was voluntary when in fact the Learned Trial Judge did not sufficiently direct

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

—————
No.29
Petition of
Appeal
2nd May 1966
continued

his mind on the voluntariness of the cautioned statement and His Lordship has failed to give due weight or consideration to the sworn evidence of your appellant.

3. The Learned Trial Judge misdirected himself in holding that the second and third charges were proved beyond reasonable doubt when in fact there was no proper and possible identification of the sten-gun, ammunition and handgrenades and further the prosecution failed to establish the ingredients of possession for the purposes of the said charges. 10

4. The Learned Trial Judge erred in law in failing to draw an adverse inference against the prosecution under section 114 (g) of the Evidence Ordinance 1950 for the failure to call the Gurkha rifleman Limbu a material witness who could have corroborated the evidence of Captain Sanders (P.W.14).

5. The Learned Trial Judge erred both in law and in fact in drawing unjustifiable inferences against your appellant and basing his decision on theories unsupported by prosecution evidence. 20

6. The verdict of the Learned Trial Judge is unreasonable and cannot be supported having regard to the weight of the admissible evidence adduced.

7. In any event the evidence adduced by the prosecution and the defence has the effect of giving your appellant the status of a protected prisoner of war within the meaning of the Geneva Conventions Act 1962 and ought to be treated as such. 30

And the appellant above named therefore prays that the convictions and sentences on him may be set aside or that the sentences on him may be reduced.

Dated this 2nd day of May, 1966

Signed: MESSRS. K. C.YAP & CO.
Solicitor for the Appellant 40

The address for service of the appellant is care of Messrs.K.C.Yap & Co., of No.1 Malay Street, Klang, Selangor, Solicitor for the appellant.

No.30
NOTES OF ARGUMENT
SYED SHEH BARAKBAH C.J.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

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

Federal Court Criminal Appeal No.X.12 of 1966
(Muar High Court Emergency Criminal Trial
No. 30/1965)

No.30
Notes of
Argument
9th May 1966

10 Ooi Wan Yui alias Wong Kam Chin Appellant

- v -

The Public Prosecutor Respondent

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

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

9th May, 1966

Yap for App.

20 Ajaib Singh for Resp.

Yap:

Grds. 2 & 6 abandoned.

Intention.

P. 38 para. 1 - P.25 para. 3.

P.P. v. Wong Kwang Soon 1949 M.L.J. 66.

App. did not know where he was going.

Consorting.

P.P. v. Tan Thoy 1951 M.L.J. 186, 187.

P. 33 line 30.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.30
Notes of
Argument
9th May 1966
continued

Soo Sing & Others v. P.P. 1951 M.L.J. 143, 144.
P.35 para. 5.

Grds. 3, 4 & 5.

State of Delhi v. Shri Ram Lohia A.I.R. 1960
S.C. 490, 492.

Bhuboni Sahu v. The King 1948-9 L.R. I.A.
147, 153.

Grd. 7.

App. born in China

P.15 para. 4, P.16 para.4, P.19-20

10

P.78

Oppenheim 7th Ed. Vol. 2. p. 369 sec 126.
also sec. 88.

Geneva Conventions Act.

Art.4, 10 Schedule p.58.

Art. 4A1 applies.

If not citizen of this country then citizen
of China.

Art.100.

L.N. 244 - 13.8.1964 - Def. of Indonesia shd.
be treated as prisoner of war.

20

Cts. of Jud. Act - sec. 22(1)(c).

Lee Hoo Boon v. P.P. Fed. Ct. Cr. App: X.11/66.

D.P.P.:

P.79 para.1 - Intention to live in Malaysia - Took
active part in politics of Malaysia - domicile
at choice is Malaya. Not an Indonesian.

Adjd. till 11.5.66 at 10.00 a.m.

Sgd. S.S. Barakbah
9.5.66

30

C. A. V.

Sgd. S.S. Barakbah
11.5.66

=

12.7.66

Cor: Syed Sheh Barakbah, Lord President,
Malaysia.
Azmi, Chief Justice, Malaya.
Ong Hock Thye, Judge, Federal Court.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.30
Notes of
Argument
9th May 1966
continued

X.9/66

10 Abraham for App.
Ajaib Singh for Resp.

X.12/66

Yap for App.
Ajaib Singh for Resp.

Judgment of the Court delivered by Ong F.J.

Order: Both appeals allowed.

Sgd. Syed Sheh Barakbah
12.7.66

=

TRUE COPY

20

Tneh Liang Peng
Secretary to the Lord
President Federal
Court of Malaysia

30 JUL.1966

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.31
NOTES OF ARGUMENT -
ONG HOCK THYE F.J.

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

FEDERAL COURT CRIMINAL APPEAL X.12/66

No.31
Notes of
Argument

Monday, 9th May 1966:

ONG HOCK THYE
F.J.
9th May 1966

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

10

NOTES OF ARGUMENT RECORDED BY ONG HOCK THYE, F.J.

K.C. Yap for appellant

Ajaib Singh for respondent

Yap: abandon grounds 2 and 6

Ground 1 - 1st charge

Section 58 - Internal Security Act

"intended to act"?

Appellant, involuntary consorting

20

p. 38 lines 3 - 11

Sutikno - p. 25 line 26

P.P. v. Wong K. Soon, (1949) M.L.J. p.69.

- but see ground 2 - Laville J.

Consorting - what evidence?

P:P. v. Tan Khay (1951) M.L.J. 186

What community of purpose?

Soo Sing & Ors. v. P.P. (1951) M.L.J. 143,
144

S. 82 Internal Security Act.

30

Grounds 3, 4 & 5: 2nd to 9th September 1964 -
 no person saw appellant in possession
 A.I.R. (1960)S.C. (Delhi) 491 @ 493
 (1948/9) L.R. I.A. p.147 @ 153 (3rd para)

In the Federal
 Court of
 Malaysia
 Appellate
 Jurisdiction

Ground 7 - protected prisoner of war:

Born in Lam Wua, China.

P.15 line 27 - p.16 line 25.

Oppenheim, 7th Ed. Vol.2, p.369

Geneva Convention, Article 4, Schedule III

10 No evidence that appellant is a citizen
 of this country - he was born in China

Article 100 - Geneva Convention applies.

L.N. 244 of 13.8.64 - "Indonesian"

Submit - if appellant does not fall under
 Article 4 of Geneva Convention, then there
 is no evidence of his being a subject.

Oppenheim p.270, section 88 - Enemy
 character

20 Submit - he should be treated as prisoner
 of war.

Judicature Act, section 22(1)(c)

Original criminal jurisdiction of High
 Court.

Lee Hoo Boon v. P.P. (X.11/66)

- point never raised.

Ajaib Singh: Though born in China -
 appellant could be tried - see p. 78 line 35 -
 79 - his domicile of choice was Malaya.

30 L.N. 244/64 - appellant does not come
 under this L.N. - his departure was
 secret - not as per s.2(c).

 No.31
 Notes of
 Argument

Ong Hock Thye
 F.J.

9th May 1966

In the Federal
Court of
Malaysia
Appellate
Jurisdiction

"armed forces" - means regulars.

"volunteer" is not within Geneva
Convention.

Domiciled Malayan - is real answer
to the argument.

Both appeals adjourned to 12.5.1966.

No.31
Notes of
Argument

(sg.) H. T. ONG

Ong Hock Thye
F.J.

9th May 1966

continued

Certified true copy

B. E. NETTAR

Ag: Secretary to Judge,
Federal Court,
Malaysia.

10

No.32
Notes of
Argument

No.32
NOTES OF ARGUMENT - ISMAIL KHAN J.

IN THE FEDERAL COURT OF MALAYSIA AT KUALA LUMPUR

(APPELLATE JURISDICTION)

Ismail Khan
J.

9th May 1966

FEDERAL COURT CRIMINAL APPEAL No.X12 of 1966

BETWEEN

Ooi Wan Yui @
Wong Kam Chin

Appellant

20

-and-

Public Prosecutor

Respondent

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

NOTES OF ARGUMENT

9th May, 1966

Mr. K.C. Yap for Appellant.
Mr. Ajaib Singh for Respondent.

Mr. Yap

Relies on Grounds 1, 3, 4, 5 and 7.

Abandons 2 and 6.

Refers to first charge.

Intention can be shown by overt acts at the time. Evidence shows appellant not willing party.

See p.37 para. 1 and p.38 Negatives intention.

10 At time of capture appellant did not know he was in Malaya. See p.25 line 4 - confirms.

Evidence of other witnesses does not establish appellant knew he was going to Malaya.

Agree intention may change from time to time.

1949 M.L.J. 56, 66.

20 Between 2nd and 7th September no one saw appellant consorting.

1951 M.L.J. 186.

At most, appellant found in the company of armed Indonesians. See p.33 line 31 - p.34 line 2 (As to whether man was Indonesian or not, witness was not cross-examined).

Soo Sing & Ors. v. P.P. 1951 M.L.J. 144.

Deals with:

Grounds 3, 4 and 5

30 Between 2nd and 7th September no one saw appellant with weapon. See Capt. Sander's evidence - p.34. Cannot say if very Sten Gun used by appellant.

Judge did not give reasons for finding. (Ground 5).

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.32
Notes of
Argument
Ismail Khan J.
9th May 1966
continued

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.32
Notes of
Argument
Ismail Khan J.
9th May 1966
continued

Cautioned statement can only confirm or
contradict maker's own evidence.

1948/49 L.R. Indian Appeal, 107 (147).

Ground 7

Appellant born in China.

Page 15 line 27 - p.16. line 25

Page 19, p.78 last paragraph.

Oppenheim on War & Peace, Vol.2, 7th ed.,
369, paragraph 126; 270, section 88.

Geneva Convention - Article 4, p.58.

10

Appellant is therefore member of armed
forces of Indonesia.

Onus on prosecution to prove appellant
subject to jurisdiction of this Court.

Article 100 of Geneva Convention applies.

Definition of word "Indonesian".

See L.N. 244/64.

Interpretation Ordinance not inconsistent
with main Act.

1964 Judicature Act - section 22(1)(c).

20

Lee Ho Boon v. P.P. - X11/66 Federal
Court of Appeal.

Mr. Ajaib Singh

Mere fact appellant was born in China
does not preclude Court from hearing the case.
See his statement. Appellant came to Malaya
and settled in Trong. Intention to be a
national of this country. Participation in
politics, therefore domicile of choice Malaya.

L.N. 244/64 does not apply. Appellant
went to Indonesia secretly. Does not come
within definition of L.N. 244/64.

30

Criminal Appeal X9/66 and this adjourned to 11.5.66.

I.K.

Criminal Appeals X9/66 and X12/66.

11th May, 1966

As before.

C. A. V.

I.K.

In the Federal Court of Malaysia (Appellate Jurisdiction)

No.32

Notes of Argument

Ismail Khan J.

9th May 1966
continued

Certified true copy

10

D.C. Haslaw
Secretary to Judge,
High Court,
Seremban.

26.7.66.

No.33

JUDGMENT OF FEDERAL COURT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT

KUALA LUMPUR (APPELLATE JURISDICTION)

Federal Court Criminal Appeal No.X.9/1966

No.33

Judgment of Federal Court

12th July 1966

20

BETWEEN

OIE HEE KOI

Appellant

- and -

Public Prosecutor

Respondent

AND

Federal Court Criminal Appeal No.X.12/1966

OUI WAN YUI alias WONG KAM CHIN Appellant

- and -

Public Prosecutor

Respondent

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

30

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.33
Judgment of
Federal
Court
12th July 1966
continued

JUDGMENT OF ONG HOCK THYE, F.J.

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

10

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

20

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

Each of them now appeals against his conviction and sentence.

30

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

as overall commander. Of the 48 men 34 were Indonesians and 14 so-called Malayan Chinese. Among the latter were these appellants.

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

10

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

30

40

Ooi Wan Yui, who was 29, in his statement, said that he was born in the Lam Wua district of Fukien, China, where he lived with his mother until the age of 12. In 1948 his father fetched him and his mother to Malaya, where his family settled down in Trong. In brief, the rest of his story told how he left for Indonesia at the end of May 1964, underwent military training there, was parachuted into Johore on September 2, 1964 and was in the company of another Chinese, Lee Hoo Boon (the appellant in Federal Court Criminal Appeal

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

—
No.33
Judgment of
Federal Court
12th July 1966
continued

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.33
Judgment of
Federal Court
12th July 1966
continued

No.X.11 of 1966) and an Indonesian soldier when the three of them came under fire from the security forces, the Indonesian was killed and he and Lee Hoo Boon were captured.

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

10

While these appeals were under consideration the winds of change have happily blown away the miasma of Indonesian confrontation. The military and political solution however, is not the end of the matter, unfortunately, so far as cases pending in the courts are concerned.

20

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

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

30

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

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

40

of war unless there were circumstances which disentitled them to treatment as such.

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

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.33
Judgment of
Federal Court

12th July 1966
continued

10 "any person who, having been ordinarily
resident in the Federation of Malaya,
North Borneo, Sarawak or Singapore on or
after the 8th day of December, 1962, left
the Federation of Malaya, North Borneo,
Sarawak or Singapore, as the case may be,
on or after that date, or who, having been
ordinarily resident in Malaysia on or
after Malaysia Day, left Malaysia on or
after that day, without complying with the
20 appropriate laws relating to national
registration, passports, immigration or
aliens."

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

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

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.33
Judgment
of Federal
Court
12th July 1966
continued

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

It was argued that on the evidence the appellant was a member of the Indonesian military forces. He had associated himself with them. He had been trained by them. He formed part of an organised company with them. He was wearing Indonesian uniform. He was carrying Indonesian weapons. Then it was said that the relationship between this country and the Republic of Indonesia if it did not amount to actual war in the conventional Grotian sense amounted to a state of hostilities as envisaged by the Geneva Conventions of 1949 relating to prisoners of war. In the circumstances the appellant was entitled to the benefit of these Conventions to which this country is a party and which have become part of our municipal law by reason of the Geneva Conventions Act 1962. At the trial he did not claim the protection of the Conventions but we have listened to a long and careful argument to the effect that nonetheless he was entitled to that protection. The grounds on which it has been argued that the appellant was a member of the Indonesian military forces have been stated. There is, however, one other relevant fact and that is that on the appellant's own admission he was born in the State of Johore. There is no other evidence having any bearing on his national status and from the admitted fact that he was born in the State of Johore then in the absence of anything to the contrary it must be presumed that whatever the position as regards citizenship he is at all material times a Johore National.

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

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

"The privileges of members of armed forces cannot be claimed by members of the armed forces of a belligerent who go over to the forces of the enemy and are afterwards captured by the former. They may be, and always are, treated as criminals. The same applies to traitorous subjects of a belligerent who, without having been members of his armed forces, (that is their own armed forces) fight in the armed forces of the enemy. Even if they appear under the protection of a flag of truce, deserters and traitors may be seized and punished."

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.33
Judgment of
Federal
Court

12th July 1966
continued

10

He went on as follows:

"In our view the Geneva Conventions are to be read in the light of that statement which after all is a statement of a principle of International Law by a recognised authority and read in that light the present appellant is not not entitled to the protection of the Conventions even if he did become a member of the Indonesian Armed Forces because he was a traitorous subject of the Ruler of the State of Johore and was engaged in assisting the Republic of Indonesia in armed conflict with this country of which Johore is part."

20

30

40

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

Mr. Yap, of course, was relying on the inverse proposition, that no one but a "traitorous subject" is disentitled to the benefits of the Geneva Conventions. In the

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 33
Judgment of
Federal
Court

12th July 1966
continued

case of his client, Ooi Wan Yui, as against uncontroverted evidence that he was born in China, there was not an iota of evidence to prove that he owed allegiance to His Majesty the Yang di-Pertuan Agong. On the other hand, even in the consorting charge itself which was abundantly supported by the evidence, he was said to be a member of the Indonesian Armed Forces. The onus clearly did not rest on him to prove that he was not a subject of his Majesty or that by reason of his past residence he was owing allegiance at the time he joined the Indonesian Armed Forces, or during the period specified in the charges against him.

10

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

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

20

30

40

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

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

10

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)
No. 33
Judgment of
Federal
Court

12th July 1966
continued

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

20

30

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

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

40

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

On this point it is sufficient to say that

(2) (1820) 4 B. & Ald. 95, 140

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 33

Judgment of
Federal
Court

12th July 1966
continued

the Judicial Committee have clearly laid down that this section does not cast any burden on an accused person to prove that no crime was committed by proving facts especially within his own knowledge: see Attygalle v. R. (3) and Seneviratne v. R. (4) In the instant case Ooi Wan Yui committed no offence that was not committed by an Indonesian member of the same invasion force and Article 16 of the Third Schedule declares that "all prisoners of war shall be treated alike." A distinction to his disadvantage can only arise if at the relevant time he owed a duty of allegiance, which the Indonesians did not. Joyce's case clearly shows that onus lies on the prosecution to prove allegiance. Although the instant case is not a trial for treason, the question of allegiance is no less material if it is to deprive this appellant of the status of prisoner of war. Section 105 of the Evidence Ordinance, of course, does not relieve the prosecution of the necessity of proving allegiance, since the fact is not among "any of the general exceptions in the Penal Code or within any special exception or proviso contained in any other part of the same Code or in any law defining the offence, which of course, is the Internal Security Act, 1960. 10 20

We are accordingly of the opinion that, in the case of Ooi Wan Yui, the prosecution had failed to prove that he was a person owing allegiance at any relevant time: Consequently he should have been held to be a prisoner of war and entitled to the same treatment as was accorded to Lieutenant Sutikno and the Indonesians under his command none of whom were put on trial for any offence under the Internal Security Act, 1960. Moreover, and in particular, the trial had failed to comply with the mandatory provisions of Articles 87, 100 and 104 of the Third Schedule to Act of 1962. His appeal is therefore allowed and the conviction and sentence quashed. 30 40

We turn now to the other appellant, Oie Hee Koi, in whose possession a blue identity card was found, stating under place of birth "China" and under classification of "race", that

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

he is "Warga Negara Persekutuan", a citizen of the Federation of Malaya. The National Registration Act, 1959, provides in section 5, that "Subject to the provisions of any exemptions which may be granted by regulations made under section 6, every person within the Federation shall be registered under and in accordance with the provisions of this Act and of any regulations made thereunder."

In the Federal Court of Malaysia (Appellate Jurisdiction)

No.33

Judgement of Federal Court

12th July 1966
continued

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

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

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

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

40 "23(1). The burden of proving the truth of the contents of any written application for registration under these Regulations, or the contents of an identity card, shall on the applicant, or on the person to whom such identity card has been issued, or on any other person alleging the truth of such contents.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No.33
Judgment of
Federal Court
12th July 1966
continued

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

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

10

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

20

(Sgd.) H. T. ONG
JUDGE
FEDERAL COURT,
MALAYSIA

30

Kuala Lumpur
12th July 1966

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

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

Certified true copy
B.E. Netham
Ag: Secretary to Judge
Federal Court Malaysia

40

NO.34
ORDER OF FEDERAL COURT

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

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

FEDERAL COURT CRIMINAL APPEAL No. X.12 of 1966
(Muar High Court Emergency Criminal Trial
No.30/65)

No.34
Order of
Federal
Court

OOI WAN YUI alias WONG KAM CHIN Appellant

12th July 1966

vs.

10 THE PUBLIC PROSECUTOR Respondent

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

ONG HOCK THYE, JUDGE, FEDERAL COURT,
MALAYSIA;

- and -

ISMAIL KHAN, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT

THIS 12th day of July 1966

20

O R D E R

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

IT IS ORDERED that the Appeal of the above-
named Appellant be and is hereby allowed AND
IT IS ORDERED that the conviction and the

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

sentence be and are hereby quashed.

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

SGD:

No.34
Order of
Federal Court

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

12th July 1966
continued

In the Judicial
Committee of
the Privy
Council

No.35
ORDER ALLOWING SPECIAL LEAVE TO APPEAL
TO HIS MAJESTY THE YANG DI-PERTUAN AGONG

10

No.35
Order allowing
Special Leave
to Appeal to
His Majesty
the Yang di-
Pertuan Agong

(MALAYSIA
SEAL)

COURTS OF JUDICATURE ACT, 1964
(No.7 of 1954)

ORDER UNDER SECTION 76(1)

27th February
1967

WHEREAS there was this day submitted to
His Majesty the Yang di-Pertuan Agong a
Report from the Lords of the Judicial Committee
of the Privy Council dated the 20th day of
December, 1966, in the words following, viz:-

20

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

30

the 26th March 1966 on charges of possession of a firearm and ammunition and of consorting with members of the Indonesian Armed Forces: And humbly praying the Head of Malaysia to grant the Petitioner special leave to appeal from the Judgment of the said Federal Court dated the 12th July 1966 and for further or other relief:

In the Judicial
Committee of
the Privy
Council

No.35
Order allowing
Special Leave
to Appeal to
His Majesty
the Yang di-
Pertuan Agong
27th February
1967
continued

10 THE LORDS OF THE COMMITTEE in obedience
to the said Orders in Council have taken
the humble Petition into consideration
and having heard Counsel in support
thereof and no one appearing at the Bar
on behalf of the Respondent Their
Lordships do this day agree to report
to the Head of Malaysia as their opinion
that leave ought to be granted to the
20 Petitioner to enter and prosecute his
Appeal against the Judgment of the Federal
Court of Malaysia (Appellate Jurisdiction)
dated the 12th July 1966

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
30 the Judicial Committee on the hearing
of the Appeal.

NOW, THEREFORE, His Majesty the Yang di-
Pertuan Agong having taken the said Report
into consideration was pleased to approve
thereof and to order as it is hereby ordered
that the same be punctually observed, obeyed
and carried into execution.

DATED this 27th day of February 1967

BY COMMAND

40 Sgd: ISMAIL BIN DATO ABDUL RAHMAN
MINISTER OF JUSTICE

TRUE COPY

Deputy Registrar,
Federal Court, Malaysia, Kuala Lumpur
(F.C. Crim. App. X.12/66)

Exhibits

'A'
Consent
under
Section 80
of Internal
Security Act
1960

20th September
1965

EXHIBITS

'A'

Internal Security Act, 1960
Consent under Section 80.

Muar High Court Emergency Criminal Trial No.30
of 1965

Public Prosecutor

vs.

Ooi Wan Yui @ Wong Kam Chin

I, Ajaib Singh, Deputy Public Prosecutor,
hereby consent to the prosecution of Ooi Wan
Yui @ Wong Kam Chin accused of offences under
section 58(1), 57(1)(a) and 57(1)(b) of the
Internal Security Act, 1960, committed between
2nd September, 1964 and 7th September, 1964 at
Tenang, Kampong Labis, in the District of
Segamat, in the State of Johore.

10

Dated this 20th day of September, 1965

Sgd: AJAIB SINGH

Deputy Public Prosecutor

20

Exhibit 'B'
 CERTIFICATE UNDER REGULATION 4 OF
 EMERGENCY (CRIMINAL TRIAL)
 REGULATIONS 1964

EMERGENCY (CRIMINAL TRIALS) REGULATIONS,
 1964

Certificate under Regulation 4

Muar High Court Emergency Criminal Trial
 No.30 of 1965

Exhibits

'B'
 Certificate
 under Regulat-
 ion 4 of
 Emergency
 (Criminal
 Trial)
 Regulations
 1964

20th September
 1965

10 PUBLIC PROSECUTOR vs. OOI WAN YUI @ WONG
 KAM CHIN

I, Ajaib Singh, Deputy Public Prosecutor,
 in accordance with the provisions of
 regulation 4 of the Emergency (Criminal
 Trials) Regulations, 1964, hereby certify
 that the above case in which Ooi Wan Yui @
 Wong Kam Chin is charged is a proper one to
 be tried under the aforesaid Regulations.

(F.L.N.
 286/1964

20 And in accordance with regulation 5 of the
 aforesaid Regulations, I prefer the following
 charges against the said Ooi Wan Yui @ Wong Kam
 Chin to be tried in the High Court at Muar.

1st CHARGE

30 That you between the 2nd day of
 September, 1964 and the 7th day of September,
 1964 in a Security Area as proclaimed by the
 Yang Di-Pertuan Agong vide Federal L.N.
 No. 245 of 17th August, 1964, namely,
 Tenang, Kampong Labis, in the District of
 Segamat, in the State of Johore, consorted
 with members of Indonesian Armed Forces who
 carried firearms and armunitions in contra-
 vention 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
 such members of the Indonesian Armed Forces
 in a manner prejudicial to the public
 security and you have thereby committed
 40 an offence punishable under section 58(1)
 of the Internal Security Act, 1960.

Exhibits2nd CHARGE

'B'
 Certificate
 under
 Regulation 4
 of Emergency
 (Criminal
 Trial)
 Regulations
 1964
 20th September
 1965
 continued

That you between the 2nd day of September, 1964, and the 7th day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N. No.245 of 17th August, 1964, namely, Tenang, Kampong Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession firearms, to wit, one sten gun No. MK 2 FG 5174, without lawful authority and that you have thereby committed an offence punishable under section 57 (1)(a) of the Internal Security Act, 1960.

10

3rd CHARGE

That you between the 2nd day of September, 1964, and the 7th day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N. No.245 of 17th August, 1964, namely, Tenang, Kampong Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession ammunition, to wit, 353 rounds of 9 mm. ammunition, and two handgrenades, without lawful authority and you have thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960

20

DATED This 20th day of November, 1965

Sgd: AJAIB SINGH

Timbalan Penda'awa Raya

EXHIBIT 'P.9'
CERTIFICATE OF DESTRUCTION

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

Tali No. JB 3356 Ext. 55
7421/al/23

Date: 23/5/65

Exhibits

'P.9'
Certificate
of
Destruction

28th May 1965

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

CERTIFICATE OF DESTRUCTION

It is hereby certified that item/s listed below and known by the following reference Labis Rpt. 450/64 Group 23 have been destroyed being unsafe for storage.

ITEMS

2 CHINESE 'F1' GRENADES WITH
DETONATORS

20 Signature Sgd: T. KEANE

Name T. Keane

Rank: S/Sgt.

Exhibits

'P.10'

Caution
Statement
10th
September
1964EXHIBIT P.10CAUTION STATEMENT

POLIS DI-RAJA MALAYSIA

PERCHAKAPAN DALAM PEMERIKSAAN

No.Report:450/64. Rumah Pasong: Labis

Perchakapan bagi Ooi Wan Yui @ Ng Kin Chee @
Wong Kam Chin

Tempat di-peranakan: Lam Wua, Hokkien, China

Nama bapa: Ooi Hooi, laki2. Bangsa: Hokkien.

Umor: 29 tahun. Kerja: Indonesian paratrooper
dudok di 41, N/V

10

Trong, Taiping. Du-terima oleh ASP. Lim di-
Office, Segamat

pada 10 September, 1964 jam 5.40 p.m.

Jurubhasa Self daripada Hokkien kepada English

A Before recording the statement I
administered the undermentioned caution
to the Accused in Hokkien,"It is my duty to warn you that you
are not obliged to say anything or answer
any question but whatever you say, whether
in answer to any question or not may be
given in evidence".

20

The Accused admitted that he fully
understood the caution and elected to make
the following statement:-

Sd. Lim Teong Kooi

(LIM TEONG KOOI) ASP

Investigation Officer,
10/9/64

30

I was born in Lam Wua, Hokkien, China.
I lived in China with my mother until I
reached the age of 12 years. Before I was
born my father OOI HOOI came to Malaya to

earn a living. Sometime in 1948 when I attained the age of 12 years, my father came to China and brought my mother and I to Malaya where we settled down in Trong.

Exhibits

'P.10'
Caution
Statement

10 I received Chinese education for 6 years at See Sin Chinese School in Trong. After leaving school I went into partnership with a friend in the rubber business. Due to lack of business experience and knowledge in the business we had to close the shop. Since then I had been doing odd jobs such as white washing building, selling ice-water and vegetable gardening.

10th
September
1964
continued

In 1959 I became a member of the Labour Party of Malaya in Taiping and in 1961 I was elected pro-tem Chairman of Labour Party of Malaya, Trong Branch.

20 In the middle of May, 1964 a friend of mine by the name of CHEN CHIN YAU paid a visit to my house and both of us discussed political situation in Malaysia. He told me that Malaysia had attained independence in name only when in actual fact she was still under the American and the British. CHEN CHIN YAU went further to say that the Labour Party of Malaya could never hope to capture the Government by constitutional means. It could only do so by force of arms. I did not agree with his point of view at first
30 but he kept on coming to see me until finally succumbed to his persistency in his viewpoint.

40 One day CHEN CHIN YAU came to my house and asked me to be a member of a clandestine organisation known as "MIN CHOK KAI HONG TONG MIN", whose aim was to liberate Malaya from British and American imperialism. I agreed to become a member. That day about 8 of us gathered in my house and took an oath which was spoken by CHEN CHIN YAU and repeated by us all. Before we parted CHEN CHIN YAU told us all that as a member of that underground organisation we could not refuse if we were ordered to go anywhere.

At about 7.00 - 8.00 p.m. on 29.5.64

Exhibits

'P.10'

Caution
Statement

10th

September

1964

continued

CHEN CHIN YAU came to my house and told me that he would take me to a place to see a "secret weapon". We would be away for about one week. We were to leave Trong on the morning of 30.5.64.

At about 7.30 a.m. on 30.5.64 another two members of the underground organisation by the name of LEE HOCK LIM and ONG AH THAY and I left Trong by bus for Taiping.

On arrival at Taiping I rang up CHEN CHIN YAU informing him of our arrival. About 5 minutes later he came and joined us at a coffee-shop. He then gave us \$4/- each and told us to proceed by bus to Pantai and to wait for him at the Labour Party of Malaya building until about 3.00 p.m. when he arrived with about 12 male Chinese. At about 3.30 p.m. LEE HOCK LIM, ONG AH THAY, myself and 3 others were taken by a car, a Ford Prefect, to a spot about 5 miles from Pantai where we alighted from the car. There were already 5 male Chinese there before us. While we were waiting more and more people arrived. Altogether there were about 16 persons gathering at the rendezvous including CHEN CHIN YAU.

10

20

At about 7.30 p.m. that night a fishing boat came and all of us went on board that boat. Before we pushed off, CHEN CHIN YAU instructed us not to show ourselves above the gunwale of the boat. We did as instructed by him. Our boat then pushed off into the open sea. While on board the boat, I had the impression that we were trying to locate something or some object as they did not travel in a straight course but kept on turning to the right then changing its course several times. This went on until about 2.00 a.m. on 31.5.64 when we met an Indonesian patrol boat. We were all transferred to this patrol boat which immediately proceeded towards Indonesia.

30

At about 8.00 p.m. that night we arrived on an island which had a jetty. At the jetty there were two Military vehicles waiting for us. From here we were taken by the military vehicles to a house about $\frac{1}{2}$ a mile away. We waited in this house till about 10.00 p.m. when we were

40

transported by the same vehicles to a coconut plantation where we alighted from the vehicles. From here we passed on foot through the coconut grove until we reached a spot where a motor-boat was waiting for us. We then went on board the motor-boat which took us to another island 2 hours away from the first island. There were about 50 to 60 persons on this island excluding the 16 of us. We remained on this island for about one week during which period we were put on weapon training and basic paratroop jumping course. There were altogether about 70-80 persons undergoing the course. Our instructors were Indonesians.

At the end of the week's course 42 of us were selected from the 70-80 trainees. I was among those selected. We were then taken on board an Indonesian patrol boat which took us to Djakarta. Our patrol boat anchored at the wharf where uniforms and other military equipment were loaded into the boat. We were then issued with uniforms and equipment in the patrol boat after which we left the boat and proceeded to the wharf where three military lorries were waiting for us. From here we were transported to a parachute training camp in Bandoeng. In this camp we were put on a course consisting of paratroop training, weapon training and training on the use of explosives. Altogether I made six trial jumps during daylight and once during the night from aircrafts.

I continued training with the rest of my comrades until on or about 29.8.64 when we were informed that we would be transferred to an unknown destination. We were then issued with firearms, mostly sten guns and some with rifles. I was given one sten gun with 4 magazines and 300 rounds of 9 mm. ammunition. At about 2.30 p.m. on 29.8.64, 41 of us were transferred from Bandoeng to Djakarta in two military buses. We camped here for three nights in a military base. The original 42 Indonesian trained Chinese paratroopers had one casualty at Bandoeng when one was killed in one of the trial jumps when his parachute failed to open up. One day after our arrival at Djakarta, we were issued with a compass, a whistle, a pair

Exhibits

'P.10'
Caution.
Statement

10th
September
1964

continued

Exhibits

'P.10'

Caution
Statement

10th

September

1964

continued

of jungle boots, a pair of leather shoes, one suit of jungle green, two suits of civilian clothings and other personal effects.

On 1.9.64 about 16 of us Indonesian trained Chinese paratroopers were attached to about 32 Indonesian paratroopers forming 8 sections of 4 Indonesians and 2 Chinese in one section. We formed up in the airfield in our respective sections and each were given a number in order of jumps. I was given number 40. At about 4.30 p.m. 48 of us boarded a four-engine aircraft and the plane took off. At about 10.30 p.m. that night the plane touched down on an airfield where we were allowed to come down and ease ourselves one at a time. Before the aircraft took off again, we had our meals after which we were told to put on the harness of our parachutes. We were then given \$300/- each in Malayan currency of one dollar denomination. After about 2½ hours of flying, the hatch of the aircraft opened and I saw 3 crates of supplies attached to parachutes were pushed out of the hatch by the Indonesian paratroopers. Before we jumped off the aircraft one of the Indonesian crew to follow a direction of 33 degrees North in order to contact our officer-in-charge, Lt. Sutake Nor. We were also told to blow our whistles when we were separated from our comrades.

10

20

A short while later Lt. Sutake Nor gave the order to jump. I was the 40th trooper to jump out of the plane. My parachute was caught by the wind and I found great difficulty in controlling the direction I wanted to land. I remained in the air for more than 5 minutes before I landed on swampy land. I then released myself from the parachute harness and groped in the dark to find my comrades. I then began to blow my whistle. I heard replies from my comrades and just before dawn I met two of my comrades one of whom was LEE HOO BOON @ LEE CHENG HOE @ HAN CHIANG and the other was an Indonesian paratrooper whose name I do not know. As it was still dark to look for the rest of our comrades three of us slept in the jungle until daylight when we ate our rations. After we had had our meal we followed the direction by means

30

40

of our compasses as earlier instructed.

We wandered about in the jungle to contact our men but without success. During that period I heard gunfire on 2 or 3 occasions from far away. Each time we heard gunfire we stopped walking and concealed ourselves. On 7.9.64 at about 3.30 p.m. we entered a Malay kampong where we saw several houses. We found a pipe-stand from which we filled our water bottles after which we settled down to have some dry rations. About 5 minutes later, Gurkha soldiers approached us without our knowing and when they were about 20 to 30 feet away, they ordered us to surrender at the same time we took to our heels but was immediately fired upon. I ran for about 100 yards hotly pursued by the soldiers. They soon caught up with me in a small drain when I tried to hide myself. I then heard gunfire again. I was then taken back to the Malay kampong where I saw my comrade, LEE HOO BOON @ LEE CHENG HOE @ HAN CHIANG who had also been captured by Gurkha soldiers. We were then taken to the Police Station together with our firearms.

Exhibits

'P.10'
Caution
Statement
10th
September
1964
continued

10 Q. Can you remember the number of your sten-gun?

A. No. I cannot.

20 Q. Can you identify your sten gun or hand-grenades?

A. No. I cannot identify them.

30 Q. When the Gurkha soldiers first saw you were you having your sten gun?

A. My sten gun was on the ground beside me and I was in the act of eating my ration.

Q. Where were your ammunition and handgrenades when the Gurkha soldiers first saw you?

40 A. My spare ammunition were in a pouch on the ground beside me while the ammunition in the magazines were attached to my belt. My two handgrenades were kept in a pouch attached to my belt which I discarded as I was running away from the soldiers.

Exhibits
'P.10'
Caution
Statement
10th
September
1964
continued

Before concluding the statement, it was read over to the Accused in Hokkien and he fully understood it. He had no alteration to make or anything further to add.

No threat, inducement or promise was made to the Accused in recording his statement.

Signed: Illegible

(LIM TEONG KOOI)

Investigation Officer,

10.9.64.

10
