

7, 1968

No.2 of 1967

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

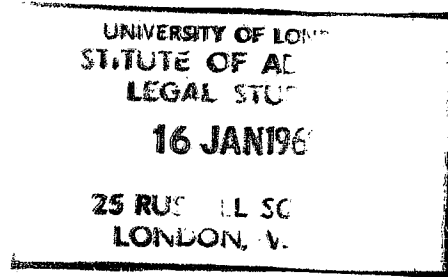
ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

B E T W E E N :

LIEW SAI WAH (Defendant)  
Appellant

- and -

PUBLIC PROSECUTOR (Prosecutor)  
Respondent



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CASE FOR THE APPELLANT

1. This is an Appeal from the Federal Court of Malaysia (Appellate Jurisdiction) dated 24th June, 1966 dismissing the Appellant's appeal from an Order of the High Court of Singapore dated 17th November, 1965 whereunder the Appellant was convicted of the offence of possession of ammunition without lawful authority contrary to Section 57 (1) (b) of the Internal Security Act 1960 and sentenced to death. p.73 p.46

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2. The charge against the Appellant ran as follows:-

"You, Liew Sai Wah (NRIC NO.S6C 03848) are charged that you, on or about the 21st day of March 1965 at or about 5.00 p.m. at the Railway Station, Singapore, which is a security area did have in your possession ammunition to wit, six hand-grenades without lawful authority and you have thereby committed an offence under Section 57 (1)(b) of the Internal Security Act, 1960, and punishable under Section 57 (1) of the said Act." p.49,1.12.23

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3. The Appellant petitioned the Privy Council for Special Leave to appeal against the above decision in forma pauperis and one of the grounds of the Petition was that the Appellant was not in possession of six hand-grenades as alleged in the charge but p.73,1.12 to 74 end

was in possession of six hand-grenade bodies and that the hand-grenade bodies were not ammunition within the meaning of the Internal Security Act 1960, hereinafter called the said Act.

p.73.74

4. On the 16th January 1967 it was ordered by the Privy Council that the Appellant be granted leave to appeal in forma pauperis on the question of the construction of the said Act, but refused leave to appeal in relation to the other matters in the said Petition.

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5. Accordingly the sole question in issue in the Appeal is whether on the evidence those parts of the hand-grenade, of which the Appellant was in possession were ammunition within the meaning of the said Act.

6. The Prosecution called an expert witness, Sergeant Christopher Clifton who examined the contents of a bag being carried by the Appellant. The effect of his evidence in examination-in-chief is summarised in the judgment of CHOOR SINGH J., the trial judge, in the following passage

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"Sergeant Clifton's evidence was as follows. The six hand-grenades he received from Inspector Piara Singh, Singapore (which were part of the contents of the bag referred to above) were 36M grenades and had no levers, safety pins or detonators. They were in fact grenade bodies which are normally filled with 2 oz. 7 drams. of a high explosive called Barratol which is one of the more powerful explosives. The grenades were not their normal colour. There were traces of black paint and slight traces of yellow paint which is normal marking for Indonesian grenades of the same type. The detonators are normally removed for safety during transit and storage. If levers, safety pins and detonators were attached to the six grenades in question they could be used. All grenades have their explosives inside them unless they are drill or dummy grenades. If the six grenades were

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p.53, 1.22

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used together with other explosives, they would still explode and cause damage although they were without their component parts. In certain boxes that had been found in Singapore, placed by Indonesians, such grenades had been found in the bottom of the boxes together with other items of explosives. If grenades are placed in boxes with other explosives and the boxes are exploded there would be fragmentation. The object would be to get the flying fragments to do injury or damage. On the 26th March 1965 Inspector Koh Lian Bee (P.W.10) handed him five base plugs (Exhibit P.5) and five levers. The five base plugs were of British manufacture. As regards the five levers, it was not possible to determine their origin because they were very badly corroded. The five base plugs and the five levers handed to him by Inspector Koh Lian Bee could be fitted to the six hand grenades handed to him by Inspector Piara Singh. On the 8th July 1965 Inspector Piara Singh and a photographer came to see him at Beach Road Magazine and he produced the six hand grenades which he had received from Inspector Piara Singh at the Railway Station. These hand-grenades were photographed and exhibits A.9 and A.10 show the six hand-grenades. The six hand-grenades had been dumped into the sea because they were not considered safe for prolonged storage. The five levers were in a state of corrosion.

7. The following is an extract from cross-examination of the said witness,

- Q. Would you agree with me, one of the most important component parts of a grenade is the detonator?
- 40 A. Yes.
- Q. The most important part?
- A. Yes.
- Q. The most important component part is the detonator and in fact not even one detonator was given to you for examination?
- A. That is correct.

p.18, 1.9  
to  
p.21, 1.19

Q. My knowledge is acquired from legal experience; can you tell us whether you have heard of a Sergeant Keane?

A. A colleague of mine.

Q. He is on the Federation side and you are on the Singapore side?

A. Yes.

Q. A hand-grenade consists of two parts, part one is the detonator assembly?

A. Yes.

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Q. And the detonator assembly consists of nearly about six parts?

A. Yes.

Q. I have here a certified copy of the recorded evidence given by Sergeant Keane; there he told the Court, subject to correction, a detonator assembly consists of: a safety pin, a lever, a spring, a striker, an explosive cap, and a detonator tube?

A. Yes.

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Q. A grenade consists a detonator and the various components that make the second part, the shell, the grenade body?

A. Yes.

Q. A detonator assembly consists of a safety pin, a spring, a striker, an explosive cap and lastly a detonator tube fuse?

A. A detonator consists of a safety fuse, a percussion cap and a detonator tube.

Q. All these are parts of the detonator?

A. No.

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Q. What would you classify them as?

A. It is the complete grenade.

Q. You do not include them as the detonator assembly?

A. The detonator assembly are those three items I have just mentioned.

Q. What is a safety pin?

A. Part of the chain of events.

- Q. It is a part of the grenade itself?  
A. An integral part of the hand-grenade.
- Q. Can the hand-grenade be used without a safety pin?  
A. Not for the purpose designed to use.
- Q. The purpose for which it is designed to use is to throw, that is the purpose?  
A. Yes.
- 10 Q. The lever which you have seen, five of them very corroded, what do you classify that, part of the hand-grenade, integral part of the hand-grenade?  
A. Yes.
- Q. The spring the same, an integral part of the hand-grenade?  
A. It can be.
- Q. And the striker?  
A. Yes.
- 20 Q. Now, an explosive cap; is there such a thing as an explosive cap?  
A. Yes.
- Q. Is that also an integral part of the hand-grenade?  
A. Yes.
- Q. And lastly you have a detonator tube, a length of safety fuse?  
A. Yes, a piece of fuse into the grenade.
- Q. There is a time fuse?  
A. Yes, a safety fuse.
- 30 Q. What is it called?  
A. A length of fuse inserted into the detonator; one piece going into the detonator from the cap to the detonator.
- Q. What would you call that?  
A. That is what I call a detonator assembly.

- Q. Which in turn consists of a detonator cap, safety fuse and the detonator itself?  
 A. Yes.
- Q. And then the other part is also in the body, the shell or frame of the grenade, talking of the lever, striker, spring, explosive cap, detonator assembly and safety pin?  
 A. That is the grenade body.
- Q. All that were given by Inspector Piara Singh on the 21st March at the railway station was the grenade body, nothing else? 10  
 A. Nothing else.
- Q. Now the grenade body you said normally it consists of baratol?  
 A. Yes, an explosive.
- Q. Would you agree in this particular case you would not know what was inside the frame itself, because you did not open it?  
 A. Yes. 20
- Q. Normally a grenade body itself would consist of baratol?  
 A. Not quite so. What I said was a British hand-grenade filled with baratol.
- Q. But you did not open this yourself?  
 A. I did not.
- Q. You also said unless they are used for drill or as dummy, normally there will be some?  
 A. Yes, but you could tell a drill or dummy because a drill has holes bored in it. 30
- A. Would you agree in some hand-grenades they have T.N.T. filled in?  
 A. Yes, a content of T.N.T. or a percentage.
- Q. And you also told the Court the contents are only 2 ozs. and 7 drams?  
 A. Yes.
- Q. By carrying it you cannot feel it; it is so light?  
 A. It is within the grenade.

Q. Is it possible to remove baratol from the hand-grenade body?

A. Yes.

8. Section 57 of the said Act is in the following terms:

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

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- (a) Any fire-arm without lawful authority therefor; or
- (b) any ammunition or explosive without lawful authority therefor,

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

9. The case for the Prosecution is that the hand-grenade bodies constituted ammunition within the meaning of this Section. Both the terms "ammunition" and "explosive" are defined in Section 2 of the said Act in the following terms;

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"ammunition" means ammunition for any fire-arm as hereafter defined and includes grenades, bombs and other like missiles whether capable of use with such a fire-arm or not and any ammunition containing or designed or adapted to contain any noxious liquid, gas or other thing.

"explosive" -

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(a) means gunpowder, nitro-glycerine, dynamite, guncotton, blasting powder, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and

(b) includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as above defined; and

(c) includes any substance declared to be deemed an explosive by notification under Section 4 of the Explosives Enactment of the Federated Malay States; and

(d) includes any material for making any explosive and any apparatus, machine, implement or material used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive, and any part of any such apparatus, machine or implement. 10

10. On this issue in the grounds of decision dated 11th February 1966 CHOOR SINGH J. decided as follows:-

At the close of the prosecutive case, counsel for the defence submitted that the accused had no case to answer. His submission was as follows. "Ammunition" is defined in Section 2 of the Internal Security Act, 1960. The definition makes no mention of the component parts of a hand-grenade. In this case only grenade bodies had been recovered and these grenade bodies had not been opened and their contents, if any, were unknown. It is possible to remove Baratol from a grenade body. A grenade body is by itself not a complete hand-grenade. By way of comparison, it will be seen that the definition "explosive substance" in Ordinance No. 43 of 1958 of the Federation of Malaya, includes "any part of such bomb, grenade, apparatus, machine or implement". Again, the definition of "fire-arm" in Section 2 of the Internal Security Act, 1960, contains the expression "and includes any component part of any such weapon as aforesaid." A grenade body is not "ammunition" within the meaning of the definition in Section 2 of the Internal Security Act, 1960, and the accused, therefore, had no case to answer. 20 30 40

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p.55 1.36

In my view, a grenade body falls within the definition of "ammunition" laid down in Section 2 of the Internal Security Act, 1960, because the word "ammunition" includes



and any ammunition containing or designed or adapted to contain any noxious liquid, gas or other thing. The word "ammunition" which appears in the fourth line of the definition, in my opinion, includes grenades. Therefore a grenade containing or designed or adapted to contain any noxious thing comes within the definition of "ammunition". In this case, the evidence showed that the six grenade bodies, found in the accused's bag, were designed to contain Baratol, which is a noxious thing. The grenade bodies were therefore ammunition within the meaning of the Internal Security Act, 1960.

11. The Appeal to the Federal Court of Malaysia (Appellate Jurisdiction) came on for hearing before TAN AH TAH F.J. Buttrose and Winslow J.J. and in a unanimous judgment dated 24th June 1966 the learned judges dealt with this issue as follows:-

On this aspect of the case it is necessary to consider Sergeant Clifton's evidence which was that these 6 hand grenades were British 36 M grenades but they had no levers, safety pins or detonators attached to them. They were grenade bodies which are fitted with a high and powerful explosive called Baratol and they all had Indonesian markings. If levers, safety pins and detonators were attached to them they could be used.

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All grenades have their explosives inside them unless they are drill or dummy ones which these were not. If these 6 grenade bodies were used together with other explosives they would still explode and cause damage although they were without their component parts.

In the light of this evidence we are of the opinion that the 6 grenade bodies come within the definition of 'ammunition' referred to above.

12. The Appellant contends that the learned trial judge was correct in holding that a hand-grenade body was not a hand-grenade and therefore did not come within the scope of the definition as that word is used in the first line of the sub-section of Section 2 defining ammunition. The Appellant contends that

the learned trial judge was wrong in concluding that a hand-grenade body comes within the scope of the word 'ammunition' as that word appears in line 4 of the said sub-section. It is contended that the learned trial judge failed to give proper weight to the fact that the word 'ammunition' is repeated in line 4 and wrongly construed the sub-section as if it had run ".....and any article containing or designed or adapted to contain any noxious liquid, gas or other thing."

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13. The Appellant contends that it is not clear from the judgment of the Court of Appeal whether the learned judges were of opinion that the hand-grenade bodies came within the scope of the word 'ammunition' as that word is used either in the first or the fourth lines of the definitions, or possibly within both. If the Court of Appeal were of opinion that it came within the meaning of the word 'ammunition' as set out in line 1 the Appellant contends that the Court of Appeal were wrong for the reason given by the trial judge. If the Court of Appeal were of this opinion that it came within the scope of the word as it appears in line 4, the Appellant contends that the Court of Appeal were wrong for the reason set out in the preceding paragraph.

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14. The Appellant further contends that for the purposes of this Appeal it should be assumed that the hand-grenade bodies did not in fact contain Baratol at the time when they were in the possession of the Appellant. These hand-grenade bodies passed into the possession of the Prosecution. The Prosecution did not produce them. The Prosecution dumped them in the sea. The Prosecution had an opportunity to examine the contents before dumping or alternatively the Prosecution could have exploded them under safety conditions in the event that they did contain Baratol. In the circumstances it is contended that a Court should not act on a conjecture that the hand-grenade bodies did contain Baratol.

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15. The Appellant further relies on the following words which appear in the definition

of explosive, set out above and repeated here for convenience.

(b) "includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridge, ammunition of all descriptions and every adaptation or preparation of an explosive as above defined; and"

10 The fuse, the percussion-cap and the detonator are all part of a hand-grenade, and the omission to include in such definition the term hand-grenade body, which is a well recognized term, indicates that this component of a hand-grenade was not intended to be included within the scope of the definition.

16. By reason of the foregoing your Appellant humbly submits this Appeal should be allowed, that the Judgment and Order of the Federal Court of Malaysia (Appellate Jurisdiction) be reversed and the conviction and sentence of the Appellant will be set aside for the following, among other,

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R E A S O N S

Because:

1. The hand-grenade bodies were neither "Ammunition" nor "Explosive" within the meaning of the Section 57 (b) of the said Act.
2. A part of a hand grenade is not a hand grenade within the meaning of Section 57 (b) of the said Act.
3. There was not sufficient evidence to entitle the Court to hold that the hand-grenade bodies contained Baratol.
- 30 4. The hand-grenade bodies were not Ammunition designed or adapted to contain any noxious liquid, gas or other thing.

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2 OF 1967

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B E T W E E N :

LIEW SAI WAH (Defendant)  
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- and -

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