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In the Privy Council.

UNIVERSITY OF LONDON
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No. 5 of 1950
28 MAR 1951
INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL
FROM THE SUPREME COURT OF SARAWAK.

BETWEEN

KONG SIEW YAP - - - - - *Appellant*

AND

THE KING - - - - - *Respondent.*

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
W.C.1.
17 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

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RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF SARAWAK.

BETWEEN

KONG SIEW YAP - - - - - *Appellant*

AND

THE KING - - - - - *Respondent.*

RECORD OF PROCEEDINGS

10

No. 1.
CHARGE.

Case No. 25/49.

*In the
Second
Circuit
Court,
Sibu.*

SECOND CIRCUIT COURT, SIBU, 25th May, 1949.

Name of Accused.

1. KONG SAM MOI, female, 46 years, Cantonese.
2. KONG SIEW YAP, male, 29 years, Cantonese.

No. 1.
Charge,
25th May
1949.

I, John Coleraine Hanbury Barcroft, a Circuit Judge of the Second Circuit Court, do hereby charge you Kong Sam Moi (f) and Kong Siew Yap as follows :—

20

That you Kong Sam Moi (f) and Kong Siew Yap on or about the 20th day of May, 1949, at Sungei Gerinyu, Batang Rejang, did commit murder in your own house by intentionally causing the death by strangulation of a newly born child of Liew Sam Kiew, female, and thereby committed an offence punishable under Section 302 of the S.P.C. and within my cognizance.

And I hereby direct that you Kong Sam Moi (f) and Kong Siew Yap be tried on the said charge.

30

1. Name of Complainant.
2. Name and title of prosecutor, Inspector Martin.
3. Both accused appear.
5. The Charge is read and explained to the Accused.

*In the
Second
Circuit
Court,
Sibu.*

No. 2.

PLEA OF NOT GUILTY.

6. Accused I pleads not guilty claims trial.

Accused II pleads not guilty claims trial.

Both Assessors duly affirmed.

No. 2.
Plea of
Not Guilty,
25th May
1949.

No. 3.
Case for
Crown,
25th May
1949.

No. 3.

CASE FOR CROWN.

PROSECUTION on the 20/5/49 at 8.45 p.m. a report was received from Liew Fatt Soh alias Kong Sam Moi (f) Acc. I that her daughter Liew Sam Kiew who was 5 months pregnant was severely assaulted by her husband and parents-in-law and as a result she gave premature birth to a daughter. 10

This report was proved by investigation to be absolutely false. To give a brief outline of what actually occurred.

Some time in 1948 prior to Liew Sam Kiew's marriage to Kong Yu Fang in November, 1948, she had sexual intercourse with a school teacher Kong Siew Yap Acc. II.

After her marriage she cohabited with her husband.

On the 18th May, 1949, Kong Yee Fang discovered that his wife was due to give birth. He was much astonished as they had only been married about 6 months. The same day he sent his wife to her mother Accused I's house. That night Liew Sam Kiew gave birth—in attendance were Accused I and a midwife called Chin Moi (f). The baby was a boy alive and born after a full term of pregnancy. Soon after the birth the cry of the baby was heard and this went on at intervals until the night of the 19th. 20

Liew Kian Nyuk the brother of Liew Sam Kiew was sent by his mother Accused I on the morning of the 19th of May to inform Accused II of the birth and to call him to the house. At 9 p.m. of the same evening Accused II arrived at the house and conspired with Accused I to kill the baby. The baby disappeared and though every effort was made to trace the body it has not been found. The prosecution will prove to the Court that the death of a child has taken place and that the death was caused as a result of the act of the two Accused and that the act of the Accused was done with the intention of causing such death. 30

The prosecution will now call witnesses to give their evidence.

CROWN EVIDENCE.

No. 4.

Liew Sam Kiew. Evidence-in-chief.

*In the
Second
Circuit
Court,
Sibu.*

*Crown
Evidence.*

*No. 4.
Liew Sam
Kiew,
25th May
1949.
Evidence-
in-chief.*

LIEW SAM KIEW, female, 19 yrs. Cantonese, affirmed, in Chinese.

I gave birth, on the 18th May this year at my mother Accused I's house at S. Gerinyu. This was at night. My mother was present, Chin Moi (f) acted as midwife. The baby boy was born alive. The father of the baby was Kong Siew Yap Accused II. I am married to Kong Yee Fang. I have been married to him for about six months. I had sexual intercourse with Accused II before my marriage. He seduced me. I was very young and innocent.

I do not know what has happened to the baby. The baby was killed by Accused II on the 19th of May. Accused II strangled the baby with his own hands. I saw him with my own eyes. My own mother Accused I was present at the time. It was night. I was sick and too weak to resist or even protest. Accused II said nothing to me except that it was better that the baby should be done away with so that I should not get into trouble and my shame be known. I was too ill to resist.

I first had intercourse with Accused II in the 7th or 8th Moon last 20 year.

Accused I no question.

Accused II no question.

No cross-examination.

No. 5.

Chin Moi. Evidence-in-chief.

*No. 5.
Chin Moi,
25th May
1949.
Evidence-
in-chief.*

CHIN MOI, female, Cantonese, 50 yrs. affirmed in Chinese.

I know Accused I. On the 18th of May she called me to her house. She sent her son to fetch me, as her daughter was about to give birth. I went and assisted at the child birth. The baby a boy was born alive. It appeared a normal full time baby and cried testily. Accused I was present at the birth. I returned home before dawn and the baby was then alive and well. The following evening I returned to the house. I did not see the baby but I heard it crying and Accused I said it was quite well. I never saw the baby again and I don't know what has happened to it.

I remember that Liew Sam Kiew was married in the 11th or 12th Moon last year. I know Accused II in the dock. Prior to her marriage Sam Kiew (f) was very friendly with Accused II.

On the morning of the 20th Liew Kian Nguk came to see me. He told me that if any one questioned me I was to say that his sister Sam Kiew had given premature birth to a 3 months old baby. I was very surprised and suspicious but I said nothing.

Accused I and II no question.

No cross-examination.

*In the
Second
Circuit
Court,
Sibu.*

*Crown
Evidence.*

No. 6.
Liew Kim
Shui,
25th May
1949.
Evidence-
in-chief.

No. 6.

Liew Kim Shui. Evidence-in-chief.

LIEW KIM SHUI (m), 24 yrs. Cantonese, affirmed in Chinese.

I live at S. Gerinyu. I know Accused I she lives in the same house as I do. She has a daughter Sam Kiew who came back to our house on the 18th of May. She had pains in her stomach. She gave birth to a child. I did not see it but I heard it crying. Chin Moi (f) and Accused I were present at the birth. I do not know what happened to the baby.

(Witness is obviously very frightened and reluctant to give evidence, he is slightly abnormal and stutters badly.) 10

It is dead. Both Accused I and II were in Sam Kiew's room when the baby died. I went into the room it was at night about 9 p.m. I saw Accused I with the baby in her hands she was squeezing the baby's throat with her hands. Accused II was standing by and he struck the baby on the neck with the side of his hand. Accused II also squeezed the baby neck. That night at about 11 p.m. the baby's dead body was thrown into the river. I myself saw Accused I throw the body into the river.

On the night of the 19th Accused II came to the house at about 8 p.m. and left again at 11 p.m. as soon as the body had been thrown in the river. I do not know why the Accused killed the baby but I with my own eyes saw them do so. 20

Cross-
examined
by
Accused I.

Xd. by Accused I.

I did see you and Accused II kill the baby and I am quite ready to take an oath in the Chinese Temple.

Cross-
examined
by
Accused II.

Xd. by Accused II.

I did see you take the baby's throat in your hands and squeeze. You did come to the house on the 19th and you left after the baby's body had been thrown in the river.

No. 7.
Kong Yee
Fang,
25th May
1949.
Evidence-
in-chief.

No. 7.

Kong Yee Fang. Evidence-in-chief.

30

KONG YEE FANG (m), 21 yrs. Cantonese, affirmed in Chinese.

I am the husband of Liew Sam Kiew. We married on the 12th of the 11th Moon last year. (1948)

In May this year my wife announced that she was about to give birth and I sent her back to her mother's house. My wife told me that the child was not begotten by me. She told me that Kong Siew Yap Accused II was responsible. Previous to this I had noticed that my wife was pregnant and I was suspicious. I heard that my wife did give birth in May but that the baby died (hearsay).

Xd. by Accused I.

My wife told me that the child was the son of Accused II. Before she gave birth she told me that Accused II was responsible for her pregnancy. I do not know the cause of the baby's death. I did not assault my wife when I know of her pregnancy. I did send my wife back to your house to give birth because she told me that the child which she was about to give birth was not mine. I myself escorted my wife to the landing stage of my mother-in-law's house and the latter received her there. I told you that after my wife had given birth you could send her back to me.

*In the
Second
Circuit
Court,
Sibu.*

*Crown
Evidence.*

No. 7.
Kong Yee
Fang,
25th May
1949.

Cross-
examined
by
Accused 1.
Cross-
examined
by
Accused 2.

10 *Xd.* by Accused II.

I did not assault my wife. I did not beat up my wife but I accused her of infidelity and she admitted it with you. She said that you had given her a ring, twenty dollars and three suits of clothing. Nobody assaulted my wife.

No. 8.

Liew Kian Nguk. Evidence-in-chief.

No. 8.
Liew Kian
Nguk,
25th May
1949.
Evidence-
in-chief.

LIEW KIAN NGUK (m), 14 yrs. Cantonese, affirmed in Chinese.

20 Accused I is my mother. I live together with her. Liew Sam Kiew my sister is married to Kong Yee Fang. She was married about the middle of the 11th Moon last year and then lived together with her husband. Last month my sister returned to our house. My sister was not well. She said that she had been assaulted and beaten up by her husband. I know nothing about my sister giving birth. It is true that Chin Moi (f) came to our house that evening but I do not know the reason. I went and called her to come but I do not know the reason for my mother wanting to see Chin Moi (f). I do not know whether or not my sister gave birth. She is now in hospital and she told me that her husband had assaulted her. My mother also told me that my sister had been assaulted by her husband. I did not hear of any crying of any baby. I did not go and call Accused II
30 nor as far as I know did he come to our house on the 18th or 19th. I met Accused II in the bazaar on the 19th and told him that my sister had been assaulted. I told Accused II this quite casually. I don't know why my sister was assaulted.

Prosecution produces statement made by witness to police on 24.5.49.

Witness. I wish to withdraw the statement I made to the police. I was threatened by the interpreter who said I should be held in prison until I agreed that my sister had murdered her child. The prosecutor was present but said nothing. (*Court.* Witness obviously is badly frightened.)

Statement
made by
Witness on
24th May
1949 put
in. See
Exhibit A.

*In the
Second
Circuit
Court,
Sibu.*

No. 9.

L/Cpl. Juki. Evidence-in-chief.

L./Cpl. JUKI No. 677 affirmed.

*Crown
Evidence.*

I can identify Accused I. She came to the Police Station and made a report. I ask leave to read this report. Report 361/49 dated 20.5.49 (certified copy filed with record) reads.

No. 9.
L/Cpl. Juki,
25th May
1949.
Evidence-
in-chief.
Report
361/49
dated 20th
May 1949
put in.
See
Exhibit B.

Accused I and II no questions.

No. 10.

Liew Kai. Evidence-in-chief.

No. 10.
Liew Kai,
25th May
1949.
Evidence-
in-chief.

LIEW KAI (m), 58 yrs. Cantonese, affirmed in Chinese.

10

I accompanied Accused I to the Police Station on the 20th. I acted as interpreter. I signed the report book. The report was read back to me in Malay and then I signed the book after Accused I had agreed that the report was correct.

No cross-
examina-
tion.

Accused I and II no questions.

No. 11.

Corpl. Rajak. Evidence-in-chief.

No. 11.
Corpl.
Rajak,
25th May
1949.
Evidence-
in-chief.

Corpl. RAJAK No. 552, affirmed.

On 24.5.49 I was ordered to proceed to S. Gerinyu to investigate the alleged murder of a newly born baby. I made a thorough search for the 20 body without success. I found no clue.

No cross-
examina-
tion.
Medical
Report
put in. See
Exhibit C.

Accused I and II no questions.

Prosecution wishes to submit to Court a medical report in respect of Liew Sam Kiew (read and filed with record).

Court desires that Medical Officer be called to give evidence.

No. 12.

Doctor Wallace. Evidence-in-chief.

*In the
Second
Circuit
Court,
Sibu.*

DOCTOR WALLACE, D.M.O., affirmed.

Liew Sam Kiew was admitted into hospital on the 20th May. I examined her on 21st May. She stated that she had been assaulted and as a result had an abortion. I examined and these bruises and signs of injuries which might have caused an abortion. Later I made a vaginal examination to endeavour to ascertain the period of pregnancy. I put this at from 3 to 7 months. Later the woman said that it was nearly a full term by which I took it that she meant 7 to 8 months. This was consistent with my examination.

*Hearing
resumed
11th June
1949.**Crown
Evidence.*No. 12.
Doctor
Wallace,
11th June
1949.
Evidence-
in-chief.

Questioned. It would not surprise me to hear that the baby was born alive and was normal and full term. In the case of a premature birth of 6 months the child might live a few hours, in the case of seven months it might well survive and grow up. It would be normal for a premature baby to cry. A premature birth certainly could be caused by violence. From my examination I should say that it is possible that the child was a seven or eight month child and born alive. It is very difficult to be definite in these cases especially if the patient deliberately misleads the Doctor.

Accused I and II no questions.

No cross-
examina-
tion by
Accused.

EVIDENCE FOR DEFENCE.

No. 13.

Accused No. 1 (Kong Sam Moi). Evidence-in-chief.

*Evidence
for Defence.*No. 13.
Accused
No. I
(Kong Sam
Moi)
11th June
1949.
Evidence-
in-chief.

Accused I has her position fully explained and elects to go in the witness stand and give her evidence on oath. She is affirmed and states in Chinese.

Accused II told me that to kill the baby would be no offence. Accused II advised my daughter to conceal her shame by doing away with the child. It was his suggestion that I should report the premature birth. I have nothing more to say. Accused II gave me thirty dollars and told me never to say a word. I did not strangle the baby Accused II did so.

Xd. by prosecution.

Cross-
examined.

My daughter gave birth on the night of the 18th May. I was present and so was Chin Moi (f). The baby was born alive it was a boy. It lived until about 9 p.m. on the 19th of May. Accused II heard of the birth and came to my house. He wished to conceal the birth. I did not send my son to call Accused II. I told Accused II that he was responsible for my daughter's pregnancy. He seduced before her marriage and the child was his son. On the night of the 19th Accused II strangled the baby and went off with the body. At the time the baby was killed I, my daughter and

*In the
Second
Circuit
Court,
Sibu.*
*Evidence
for Defence.*

Accused II were the only persons present. I did not try and prevent Accused II as he told me that it was no offence to kill a newly born child. I believe Accused II. I thought that it was wrong to kill the child but Accused II said no. I just did what I was told. I admit that I made a false report to the Police. I do not know what happened to the baby's body, it was taken away by Accused II. Accused II arrived at my house between 8 p.m. and 9 p.m. by Chinese launch.

No. 13.
Accused
No. I
(Kong Sam
Moi),
11th June
1949.
Cross-
examined,
continued.

No. 14.

Accused No. 2 (Kong Siew Yap). Evidence-in-chief.

No. 14.
Accused
No. II
(Kong Siew
Yap),
11th June
1949.
Evidence-
in-chief.

ACCUSED II elects to give evidence on oath and is affirmed. 10

The prosecution story is entirely untrue. Liew Sam Kiew was pregnant and her husband and his family beat her to make her tell who was the father. After Sam Kiew had been beaten several time she stated that I was responsible for her condition. As a result of the beating she had an abortion. Now her family want to get me into trouble. The father sent Sam Kiew back to her mother with a letter saying that I was responsible for her condition. The girl's family were very much afraid that they would be called to refund the dowry etc. and they sent for me. The son encountered me in Sibu Bazaar and told me what had occurred. I denied being responsible for the girl's condition and I refused to go. I did not go. 20
At about 8 p.m. on the 19th I went to the Tai Wha Book Stall, Sibu to inquire about the sale of the school sweep tickets I found out that they had only sold \$15 worth of tickets and I persuaded the proprietor to buy another ten tickets. After I had been in the bookstall for half an hour I came out and met Kong Shaw Kim the Chairman of the Yuk Choi school and I told him that the tickets were not selling well. The Chairman and I then went to the Wha Kiaw Coffee Shop in Market Road to talk things over. A little later we were joined by a third man Kong Fui Min. Then we went for a stroll and at about 10 p.m. went into another Coffee shop near the Customs Godown. This was at 10 p.m. we then dispersed and I went for a stroll 30
round the Kampong all night till morning with a friend of mine whose name I cannot remember Early in the morning I bought some vegetables and returned home. It is clear that I have an alibi and could not have committed the crime. A few days later I was arrested. I did not go to Accused I's house on the 18th or 19th.

No cross-
examina-
tion.

Prosecution no questions.

Accused I states that she does not wish to call any witness.

Accused II states that he wishes to call two witnesses.

No. 15.

Chee Tit Sin. Evidence-in-chief.

*In the
Second
Circuit
Court,
Sibu.*

CHEE TIT SIN (m), 48 yrs., Shanghainese, affirmed.

I am the proprietor of the Tai Wha Book Stall. I have owned it for about two years and I have lived in Sarawak for about three years. I know Accused II quite well he used to buy books from my shop. He has often been to my shop. I can't remember the last occasion on which Accused II came to my shop but it was two or three weeks ago. He came to enquire about the school lottery tickets. It was between 7 p.m. and 8 p.m. and he stayed between 10 to 15 minutes. I can't remember the date or even the day of the week.

*Evidence
for Defence.*

No. 15.
Chee Tit
Sin,
11th June
1949.
Evidence-
in-chief.
No cross-
examina-
tion.

Prosecution no questions.

No. 16.

Yong Moi. Evidence-in-chief.

No. 16.
Yong Moi,
11th June
1949.
Evidence-
in-chief.

YONG MOI (f), 32 yrs., Kheh, affirmed.

I am a widow and I tap rubber. I know Accused II he is a teacher in the Chinese school. I have often seen him passing my house. I know Accused I by sight only. I know Accused's I daughter. I was the match-maker for her marriage. I know nothing about her affairs I only heard that Accused I's daughter gave birth but I do not know if it is true.

Questioned by Accused II. I know nothing about an assault on Accused I's daughter. I did not tell you anything about an assault. I never came to the school to see you.

Cross-
examined
by
Accused II.

Prosecution no questions.

No cross-
examina-
tion by
Crown.

No. 17.

SUMMARY OF CROWN EVIDENCE.

No. 17.
Summary
of Crown
Evidence,
11th June
1949.

PROSECUTION summarises what the prosecution has proved.

Sexual intimacy Accused II and Liew Sam Kiew before the latter's marriage. That Liew Sam Kiew (f) did on the 18th give birth to a living male child this proved by the evidence of the mother, Chin Moi (f) the midwife and Accused I.

The child was seen and heard by witness Kim Shui up to and including the night of the 19th May, 1949. This child has not been seen or heard of

*In the
Second
Circuit
Court,
Sibu.*

No. 17.
Summary
of Crown
Evidence,
11th June
1949,
continued.

since. Accused I and Liew Kim Shui both have testified that Accused II was present in the house on the night of the 19th. That Accused II said that the child should be destroyed to avoid shame falling upon them. They both testify that they actually saw Accused II strangle the child with his own hands. Kim Shui has given evidence that he also was an eye witness to the strangulation and that Accused I aided Accused II in this brutal act and that it was Accused I that disposed of the body in the river. Unfortunately the body was not recovered and it is submitted that the chances of recovery are very small.

It has been proved that the report made on May 20th by Accused I 10 to the Police that the child was born dead was entirely false. Accused I subsequently admitted this.

The expert medical evidence in no way conflicts with the prosecution story but substantiates. The Doctor said that it was quite possible that the child was born alive.

Accused II states that he was in Sibu on the night of the 19th and that he spent from 10 p.m. till dawn walking round the kampongs with a school friend whose name he cannot remember. Neither of the witnesses called by him gave any evidence which was of any value to the defence.

The prosecution contends that although a premature birth may have 20 been caused by the action of the husband or others, the child was in fact born alive and was normal and that Accused II then caused its death by strangulation aided and abetted by Accused I who was present at the time. This act constituted a most brutal and cold blooded murder of quite a defenceless human being.

No. 18.
Statements
by
Accused I
and
Accused II,
11th June
1949.

No. 18.

STATEMENTS BY ACCUSED 1 and ACCUSED 2.

Accused I. I have nothing further to say.

Accused II. I plead my ignorance. I am being framed. The evidence given by the witnesses for the prosecution has been conflicting in detail. 30 I submit that I have proved an alibi.

No. 19.
Judgment
reserved
until 13th
June 1949.

No. 19.

JUDGMENT RESERVED.

Court. Reserves judgment until 9.30 a.m. on the 13th.

No. 20.
SUMMING UP.

*In the
Second
Circuit
Court,
Sibu.*

13th June, 1949.

I do not consider it necessary to sum up at any great length.

Accused I and II are charged with having conspired together to cause the death of a newly born child and that they did murder the child by strangulation.

No. 20.
Summing
up by
Barcroft, J.,
13th June
1949.

The mother of the child, and a woman who is stated to have assisted at the birth and a young man have given evidence all three of them that a male child was born alive and that it lived for a period of about 24 hours. Since then the child has disappeared.

The Mother Liew Sam Kiew (f) has given evidence that she saw Accused II strangle the child.

A witness Liew Kim Shui has given evidence that he saw Accused I and Accused II both strangling the child and that he further saw Accused I throw the body of the child into river.

The prosecution has called evidence to prove that the child was illegitimate and that Accused II was the Father. It is argued that the child was done away with in order to hide the Mother's shame and to avoid the possibility of financial claims, such as the return of dowry, by the legal husband.

Accused I has admitted that the child was strangled but states that Accused II did the act. Now I must warn the Assessors that they must accept the uncorroborated evidence of accomplice.

If however they are satisfied that there is corroboration then they may accept Accused I evidence against Accused II but I feel bound to advise them even then not to attach too much value to such evidence.

Accused I has further admitted that she agreed to the killing of the child and that she was present at the time when it was done.

Accused II has certainly denied the charge and has stated that he did not visit the house in question on the 18th or 19th. He argues that as a result of a beating the woman Sam Kiew gave birth prematurely to a dead child.

Now this argument is to some extent supported by the expert evidence given by Doctor Wallace.

The Doctor gave evidence that Sam Kiew had been assaulted and received injuries which might have caused an abortion—The Doctor further stated that his examination of the woman led to the opinion that the birth had been premature and gave his opinion as to the period from three to seven months.

In reply to a question however the Doctor stated that it would not surprise him to hear that Sam Kiew had given birth to a normal full term baby. He added moreover that a seven month baby might well live to reach maturity.

*In the
Second
Circuit
Court,
Sibu.*

No. 20.
Summing
up by
Barcroft, J.,
13th June
1949,
continued.

If we are to believe that Sam Kiew had an abortion then we must enquire why she and the other witnesses to whom I have referred have given evidence that the child was born alive and subsequently strangled. The answer must be I suppose that as Accused II got Sam Kiew into trouble she and her family wished to revenge themselves upon Accused II. You must ask yourselves whether such an explanation involving so drastic a revenge is a reasonable one.

Accused II has further stated that he was in Sibu at the time that the alleged crime took place. He has called one witness who has given evidence that Accused II was in his shop between 7 and 8 p.m. on a night about 10 three weeks ago. The witness could not remember the date or the day of the week. Accused II stated also that on the night in question the 19th he was between the times of about 8 p.m. to 10 p.m. in the company of the Chairman of the Chinese School and that they visited two coffee shops for refreshment and conversed with friends there. It is, however, distinctly strange that Accused II has not called the Chairman or any of the friends.

Finally Accused II stated that from 10 p.m. until dawn he in the company of a school friend whose name he cannot remember wandered around the Kampongs of Sibu.

Although Accused II story of his movements of the night of the 19th 20 is almost unbelievable it is not necessarily untrue.

The fact remains however that he has not proved an alibi.

Now Gentlemen you must consider the evidence very carefully. If you are of the opinion that Sam Kiew (f) had an abortion, that the baby was born dead then the two Accused must be acquitted.

If there exists a reasonable doubt in your mind the Accused must be given the benefit of that doubt.

If you are satisfied that the child was born alive and subsequently died as a result of the intentional act of some person or persons you must say so. 30

If you find that Accused I and II conspired together to cause the death of the child and that the child died as a result of an act done by one of the Accused with the intention of causing death then if the other Accused was present when the act was done they are both equally guilty of murder.

No. 21.
Opinion of
Ah Kim
(Assessor),
13th June
1949.

No. 21.

OPINION of Assessor Ah Kim.

Assessor Ah Kim. I am satisfied that the child was born alive, subsequently done away with. I consider that the two Accused conspired to kill the child, that one or both of them did an intentional act which resulted in the death of the child and that both Accused were present when 40 the act was done. I consider both Accused guilty.

No. 22.

OPINION of Assessor King Kam.

Assessor King Kam. I agree with Mr. Ah Kim and I think both Accused are guilty.

*In the
Second
Circuit
Court,
Sibu.*

No. 23.

JUDGMENT.

Court. Convicts the two Accused of murder.

Accused I and II asked if they have anything to say. Accused I says " Accused II persuaded me to agree to the act—I was misled by him."

10 Accused II continues to plead his innocence.

No. 22.
Opinion of
King Kam
(Assessor),
13th June
1949.

No. 23.
Judgment
of Court,
13th June
1949.

No. 24.

SENTENCE.

Court. The two Accused have been convicted of murder. The punishment for murder is death and this Court is not entitled to impose any other punishment.

The prosecution has described the crime as the cold blooded and brutal murder of an entirely defenceless human being and with this view the Court concurs. In the circumstances therefore the Court does not feel justified in making any recommendation for mercy.

20 Accused I and II you are both sentenced to death and may the Lord have mercy upon your Souls.

Signed. J. C. H. BARCROFT.
13/6/49.

No. 24.
Sentence,
13th June
1949.

No. 25.

GROUND'S OF JUDGMENT.

Criminal Case No. 25/49.

IN THE SECOND CIRCUIT COURT, THIRD DIVISION.

" REX " v. KONG SAM KOI (f), Accused No. 1.
KONG SIEW YAP, " No. 2.

No. 25.
Grounds of
Judgment,
Second
Circuit
Court,
13th June
1949.

30 Charge—Murder, Section 302 S.P.C.

Before His Honour Circuit Judge, Second Circuit Court, J. C. H. BARCROFT, Esq.,

MICHAEL SADIN, Second Class Magistrate.

Assessors—Mr. Ho Ah Kim.

Mr. Liong Kim Kam.

Monday, the 13th day of June, 1949, at Sibu.

Liew Sam Kiew (f) accompanied by her Mother Accused I reported to the Police on 20th May, 1949 that she had been assaulted by her husband and his family and as a result had had an abortion.

*In the
Second
Circuit
Court,
Sibu.*
—
No. 25.
Grounds of
Judgment,
Second
Circuit
Court,
13th June
1949,
continued.

On investigation however it was discovered that in fact the child had been born alive and subsequently done away with. Accused I and II were arrested and charged with murder.

It appeared from the evidence that prior to her marriage Liew Sam Kiew (f) had sexual intercourse with Accused II and it is alleged that he was the Father of the murdered child.

On discovering Sam Kiew advanced pregnancy the husband not unnaturally was incensed, they had only married a few months, and it is probable that he and his family did assault and that the assault was responsible for a premature birth. 10

However of Sam Kiew herself, Midwife Chin Moi and Sam Kiew's Stepbrother a young man of 24 all gave evidence that the child was born alive and lived for about 24 hours.

Sam Kiew and the Stepbrother gave evidence that the child was strangled. The former said that Accused II did the act and the latter that both Accused I and II took part in the murder. Both witnesses agreed however that both Accused were present when the deed was done.

Accused I elected to give evidence on oath and though she had pleaded not guilty she in fact admitted that she had conspired with Accused II to murder the child and that she was present when the act was done. 20

Accused II also elected to give evidence on oath and stoutly maintained his innocence. He insisted that the assault was responsible for a premature birth, and as I have said this is highly probable, and maintained that the child was delivered dead.

In the opinion of the Court however there was conclusive evidence that the child was born alive and lived for about 24 hours. This view is quite consistent with the evidence of the expert witness Doctor Wallace.

Accused II also insisted that he was in Sibu at the time of the alleged crime but he called no witness to prove this and entirely failed to prove an Alibi. 30

Accused I's evidence against Accused II was that of an accomplice and therefore regarded with suspicion but it was corroborated by that of Liew Sam Kiew and of the Stepbrother.

The motive appears to be quite plain. The two Accused desired to conceal the birth of the child, and told the husband to believe that his wife had had an abortion and thus to avoid prosecution and financial loss.

The two Assessors had no hesitation in finding the Accused guilty and the Court did not see fit to make any recommendation for Mercy.

Given under my hand and the seal of the Court this 13th day of June, 1949. 40

Sgd. J. C. H. BARCROFT,
Circuit Judge,
Second Circuit Court.

The Honourable the Chief Justice, Kuching.
The Officer Superintending Constabulary Sibu Sector.
Criminal Docket No. 25/49.

No. 26.

PETITION OF APPEAL.

IN THE SUPREME COURT OF SARAWAK.

(CRIMINAL APPEAL.)

The Hon'ble The Chief Justice, Kuching.

Vide Second Circuit Court Case No. 25/49.

The Petition of Kong Sam Moi (F) and Kong Siew Yap (M) SHEWETH as follows :—

*In the
Supreme
Court of
Sarawak.*

No. 26.
Petition of
Appeal
from
Judgment
of Second
Circuit
Court,
28th June
1949.

1. Your Petitioners the above-named Kong Sam Moi and Kong Siew Yap were committed for trial in The Second Circuit Court, Holden at Sibu, on 25th May, 1949, on charge of murder and punishable under Section 302 of The S.P.C.

2. Your Petitioners were convicted as charged and sentence of death was passed on 13th June, 1949.

3. Your Petitioners are dissatisfied with the said judgment on the following grounds :

(I) That the evidence of Liew Sam Kiew (F) before and during the trial was highly conflicting in that she had reported to Dr. Wallace that she had an abortion after sustaining an assault. Accused II humbly submits that the effect of abortion and assault coupled with the alleged sexual intimacy might have so worked on her mentality that for reasons best known to herself she laid the sole blame on Accused II.

(II) That the evidence of Chin Moi (M) proves the birth but not the actual cause of death. Her statement that it was a full term baby was disproved by medical evidence.

(III) That the evidence of Liew Kim Shui (M) termed as abnormal by the Court is too vivid to be true, for to give evidence in such details necessitates his very presence in the room where the alleged crime was committed and the spot where the body was disposed of, and further, why had he not reported the matter to the Authorities in the first place ?

(IV) That the only evidence that can be safely relied upon is the expert evidence of Dr. Wallace who puts the period of pregnancy to be between 3 to 7 months. He further stated that in his opinion, the assault may cause an abortion.

(V) That an abortion is evident in that prematured birth took place the same day she was assaulted. (18.5.49)

(VI) That the evidence of Dr. Wallace shows that it is possible for a prematured child to live. "6 months possible to live a few hours ; 7 months, it might well survive and live up." It is reasonably assumed that a doctor must be in attendance in above cases.

(VII) That the evidence of Kong Sam Moi (Accused I) might be the outcome of a disillusioned and prejudiced mind, and that the

*In the
Supreme
Court of
Sarawak.*

No. 26.
Petition
of Appeal
from
Judgment
of Second
Circuit
Court,
28th June
1949,
continued.

prematured child might have been born alive and subsequently died a natural death is not impossible as shown in Medical Evidence.

(VIII) That, apart from the evidence of Liew Sam Kiew (F) and Liew Kim Shui (M) the Prosecution is unable to produce any material evidence to support the charge. The absence of the dead body has denied the Court to determine the actual cause of death and the actual disposal was never proved on anyone in particular.

(IX) In this circumstance, therefore, the accused humbly submit that there exist grave doubts as to the actual cause of death and as such they should be given the benefit of the doubt. 10

(X) Your petitioners therefore pray that such judgment or sentence may be reversed or that such order may be made thereon as justice may require.

Kuching : 28th June, 1949.

KONG SAM MOI (F) Appellant
R. T. P.
KONG SIEW YAP (M) Appellant.
Signed in Chinese.

No. 27.
Judge's
Notes,
12th July
1949.

No. 27.
JUDGE'S NOTES.
(Criminal Case)

20

SUPREME COURT, Kuching, 12th July, 1949.

Names of Accused/Appellants.

1. KONG SAM MOI (f).
2. KONG SIEW YAP.

A joint appeal against the convictions of murder and sentences of death passed by the Second Circuit Court in Criminal Case No. 25/49.

Fee \$15.-

1. Name of Respondent—Rex.
2. Name and title of prosecutor—The Hon. the Att. General. 30
3. Appellants appear.
4. Respondent appears.

Appellt. No. 1—Nothing to add to petition, but asks for clemency.

No. 2—Knows nothing about the case, and says he was framed.

A.G. Addresses Court.

Deals with points in petition.

Summing up satisfactory—verbal error in transcript as to corroboration.

Only one conclusion possible.

- Reply. No. 1. Nothing further. 40
No. 2. Refers to alibi raised at trial. Case a "frame-up."

Grounds of judgment attached.

Appeal dismissed ; conviction and sentence confirmed in each case.

Sgd. R. Y. HEDGES,
C.J.
12/7/49.

No. 28.

GROUNDS OF JUDGMENT.

*In the
Supreme
Court of
Sarawak.*

No. 28.
Grounds of
Judgment,
12th July
1949.

(1) In this case there was no preliminary inquiry. Such an inquiry is not essential under the Criminal Procedure Code, section 138 being permissive. Nevertheless the absence of a preliminary inquiry is looked upon with disfavour by this Court, and in the case of *R. v. Maran Ratoh* (cited in Supreme Court Reports, 1948, at p. 4) I had occasion to say :

10

“ The holding of such an inquiry is not compulsory in law, but it is the practice to hold one in offences affecting life, and I do not regard administrative difficulties in finding a Magistrate with the requisite qualifications as sufficient reason for departing from that practice.”

In this case I cannot say that the absence of a preliminary inquiry occasioned a failure of justice.

(2) Section 291 of the Criminal Procedure Code provides that no judgment or order of a Magistrate's Court (which now includes a Circuit Court) shall be reversed or set aside unless it is shown to the satisfaction of the Court above that such judgment or order was either wrong in law or against the weight of the evidence.

20

(3) The trial Judge and the assessors were unanimous in their finding as to the facts ; I am satisfied that there was ample evidence to support that finding and that there is no ground on which I could interfere.

Sgd. R. Y. HEDGES,
Chief Justice.

No. 29.

ORDER dismissing Appeal.

(CJ. 259/49.)

No. 29.
Order
dismissing
Appeal,
12th July
1949.

IN THE SUPREME COURT OF SARAWAK.

30 KONG SAM MOI (f)
KONG SIEW YAP
v.
THE KING

} Second Circuit Court Criminal Case
No. 25/49
Sibu.

THE COURT, having read the record of proceedings in the Second Circuit Court and the petition of appeal dated the 28th day of June, 1949, and heard the appellants and the learned Attorney-General for the Crown, DOTH ORDER that the appeal is dismissed ; the conviction is confirmed in each case ; and the sentence of death is confirmed in each case.

Given under my hand and the seal of the Court this 12th day of July, 1949.

40

Sgd. R. Y. HEDGES,
Chief Justice.

Copy to :—His Honour the Second Circuit Judge, Sib.
Commissioner, Sarawak Constabulary.
Superintendent of Prisons.

*In the
Privy
Council.*

No. 30.

ORDER IN COUNCIL granting special leave to appeal.

No. 30.
Order in
Council
granting
special
leave to
appeal,
3rd
February
1950.

AT THE COURT AT SANDRINGHAM.

The 3rd day of February, 1950

Present

**THE KING'S MOST EXCELLENT MAJESTY
LORD CHANCELLOR
VISCOUNT HALL
SIR ALAN LASCELLES**

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 12th day of January 1950 in the words following, viz. :—

L.S.

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Kong Siew Yap in the matter of an appeal from the Supreme Court of Sarawak between the Petitioner Appellant and Your Majesty Respondent setting forth (amongst other matters) : that this is a Petition for special leave to appeal from the Judgment of the Supreme Court of Sarawak given on the 12th July 1949 dismissing the Appeal of the Petitioner against his conviction for murder and the sentence of death passed by the Second Circuit Court sitting at Sibu Sarawak on the 13th June 1949 : that the Petitioner was charged jointly with Kong Sam Moi (mother of Liew Sam Kiew) with the murder of the newly-born child of Liew Sam Kiew (who married her husband Kong Yee Fang in November 1948) : that the case for the prosecution was that the Petitioner was the father of Liew Sam Kiew's child who was born on the 18th May 1949 and that when her husband discovered his wife's condition he sent her home to her mother's house to give birth to the child and that in the evening of the day following the birth the Petitioner came to the house and killed the baby by strangulation in which Kong Sam Moi actively participated and that the Petitioner then threw the body into the river : that the case for the Petitioner was that he was not the father of the child and had not visited the mother's house on the 19th May and had no concern with the murder of the infant if the infant had been murdered: that he suggested that when the husband discovered his wife's condition he and his family beat her to make her disclose who was the father and that the beating caused either an abortion or a premature birth which the infant did not long survive : that the Petitioner submits that the proceedings were marked by serious irregularities constituting a violation of the essential principles of natural justice and a disregard of the forms of legal process appropriate to the conduct of a trial for murder for the following among other reasons :—(1) There was no preliminary enquiry before a Magistrate. (2) Neither Accused was legally represented. (3) Evidence was received in several instances notwithstanding that

it was hearsay : And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Supreme Court dated the 12th July 1949 or for further or other relief :

*In the
Privy
Council.*

No. 30.
Order in
Council
granting
special
leave to
appeal,
3rd
February
1950,
continued.

10

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to the Petitioner to enter and prosecute his Appeal *in forma pauperis* against the Judgment of the Supreme Court of Sarawak dated the 12th day of July 1949 and (2) that the leave granted to the Petitioner to proceed *in forma pauperis* ought not to apply to the costs of the present Petition :

20

“ And Their Lordships do further report to Your Majesty 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 Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor of Sarawak as High Commissioner for Brunei for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

Exhibits.

Exhibit A.

Exhibit A.
Statement
by Liew
Kian Nguk,
24th May
1949.

STATEMENT by Liew Kian Nguk (Report No. 361/49).

A/3.

Nama Liew Kian Nguk
Bangsa Cantonese Laki 2 Umor 14 years
Perkerjaan Rubber tapper and School Boy
Pada waktu dan haribulan 12.50 a.m. 24/5/49

Di-tempat OSS Office nama jurubahasa Ijika ada) N.B. Sen Kata-nya :—

On 18/5/49 at 6 p.m. I returned home from football, and saw my sister Liew Sam Kiew in the house. She was lying in bed moaning in pain. 10
Then at 8 p.m. Foong Sui Yong came to the house in order to talk over the matter of Liew Sam Kiew as related to him by Kong Kho (the father-in-law of Sam Kiew), Sui Yong asked me to send for my brother Kian Shui in order to discuss matters over. I then went out at 9 p.m. to my brothers house. At half way I met my brother, who was on his way to our house. Before reaching our house we past Foong Sui Yong's house and found Sui Yong at home. He called my brother in and I went home. Arriving home my mother (Kong Sam Moi) asked me where my brother was. I told her that he is on his way here. My mother then told me to go and call for Chin Moi, as my sister was due to give birth. I went to call Chin Moi at 20
10 p.m. and she came to the house. She attended to my sister who gave birth at about 12 midnight. I know she gave birth, because my mother told me of it. I did not see the baby, nor have I heard the baby cried but my mother told me the baby is alive.

On the 19/5/49 I too did not hear the baby cry. In the evening Chin Moi was invited to a makan for being a mid-wife to my sister's birth. After the makan, my mother told me that she had presented her with "Ang Pow" of \$2/-. At about 7.30 p.m. Chin Moi returned.

The next morning at 6.30 a.m. when I woke up, my mother told me that Kong Siew Yap had came to the house last night and asked my mother to 30
kill the baby. She did not tell me the reason and I had not inquired from her.

I then asked my mother where the baby was. She replied that the baby was thrown into the river last night but did not say who did it.

My mother did not tell me whether the baby was dead or alive when disposed of. She did not say in what manner it was disposed of.

QA. It was about 7 a.m. when my mother and Sam Kiew left for Sibuh by M.L.Nam Yong.

QA. I did go to Chin Moi's house on the morning of 20/5 because it was raining and I could not tap rubber I went there just for a visit—I did 40
not tell her anything about the baby.

24/5/49 at 4.30 p.m.

The letter EX. "A" and photo EX. "B" were brought to the house by Liew Kian Shui. I have read the letter. I do not know who wrote the letter, but my sister told me that Kong Koh wrote it. I first saw the letter and photo on the night of 18/5/49.

Q.A. Siaw Yap did not give me his portrait. I do not know why my name was written on the back of the portrait. *Exhibits.*

Q.A. This portrait was given to my sister by Siaw Yap. She told me herself. But she did not tell me when she received it. It was on 18/5 night when I saw the portrait that I asked my sister. *Exhibit A. Statement by Liew Kian Nguk, 24th May 1949, continued.*

Q.A. I still maintain that my mother told me she had thrown the baby into the river.

INI. J. MARTIN,

24/5/49.

10 Nama Liew Kian Nguk, Bangsa Cantonese Umor 14 years.

Tempat dudok Sg. Granyu Perkerjaan Rubber Tapper

Di-ambil oleh sahya Inspector Martin Pada 11.30 p.m. on 22/5

Di C.I.D. Office.

Kata nya :—Lire Sam Kiew is my sister. She was married last year to Kong Fan. It was some time in December 1948.

Q.A. I know Chin Moi.

Q.A. I did not call for Chin Moi.

Q.A. I did not know when my sister gave birth.

20 Q.A. She was sent to the house by Kong Koh on 18/5/49—I do not know what time—when I returned from School I heard that she was sent to the house.

Q.A. I had not see her since her arrival. She did not come out for food, bath etc.

Q.A. The next day I heard a baby's cry in my sister's room.

Q.A. I do not know anything else.

INI. J. MARTIN.

*Exhibits.***Exhibit B.**

Exhibit B.
Sarawak
Constabulary
translated
report of
complaint,
20th May
1949.

SARAWAK CONSTABULARY. Translated Report of Complainant Lau Huat Soh.

Report No. 361/49

Police Station Sibü

Time 8.45 p.m.

Date 20.5.49.

Case Causing death of a quick unborn child by an
action amounting to Culpable Homicide

Section 316
S.P.C.

Complainant Lau Huat Soh

Race Cantonese (Chinese)

Occupation Rubber tapper.

Address Sg. Nibong

Place of Birth China

10

Statement of Complainant: On 18.5.49 at 4 p.m. my daughter named Law Sam Kiew (f) was sent back by her husband named Kong Fan who is living at Sg. (Sungei) Pak, Sibü.

When he had sent back my daughter he did not say anything to me. At that time my daughter told me that she was assaulted by 3 people (1) Kong Fan (2) Kong Kho (3) Kong Fan's mother. My daughter had been pregnant for 5 months and on 18.5.49 at about 12 at night her womb dropped on account of being assaulted by those 3 people and on 20.5.49 at 11 a.m. I straightway sent my daughter to hospital. I ask the Government to investigate this matter, that is all.

20

Sgd. R.T.P. of Lau Huat Soh.

Sgd. Cpl. JUKI.

1. This report was received by Constable 12 John Ngumbang by word of mouth.

Sgd. Cpl. JUKI.

2. This report was translated by a Chinese named Lau Kai, Cantonese, living at shop No. 5 Black Smith Road, Sibü.

Sgd. Cpl. JUKI.

3. Complainant came to the Police Station and made this report by her friend named Lau Kai, Cantonese.

30

Sgd. Cpl. JUKI.

4. A Chinese named Lau Sam Liaw (same as Liew Sam Kiew) who had been assaulted was sent to Hospital under escort of Constable No. 873. merom.

Sgd. Cpl. JUKI.

5. Charge Room Officer L. C. 521 Sumar was the man who sent Lau Sam Kiew (f) to Hospital for the examination of the Doctor.

Sgd. Cpl. JUKI.

Sgd. JERRY MARTIN,
O/C C.I.D.

40

Exhibit C.

MEDICAL REPORT by Doctor Wallace.

S.C. 61A.

SARAWAK CONSTABULARY
MEDICAL EXAMINATION REPORT*Exhibits.*Exhibit C.
Medical
Report by
Doctor
Wallace,
21st May
1949.The Medical Officer,
Sibu.Dated 21st May, 1949.
Report No. 361/49.Can you please examine Lau Sam Kiew (f) sent to Hospital on
21st May 1949 and furnish me with a report below.

10

Sgd. J. MARTIN,
O/C C.I.D. Sibu.

	(1)	(2)	(3)	(4)
	Nature and size of injury. Whether cut, wound or bruise.	On what part of the body inflicted.	Whether " Hurt " or " Grievous Hurt."	By what kind of weapon inflicted.
	1. Three small $\frac{1}{2}$ ", $\frac{1}{4}$ ", $\frac{1}{4}$ " scratches	Left side upper back, near midline	Hurt	} Alleged beating with rotan, size finger breadth — said to be used by three people.
20	2. Pain (no evidence of injury except pain on pressure)	Left buttock	Hurt	
	3. Bruise	Right upper thigh $3" \times 4"$	Hurt	
	4. Abrasion	Right upper thigh $\frac{1}{4}" \times \frac{1}{4}"$	Hurt	
30	5. Evidence of Abortion (Vaginal examination)	Uterus retracting from pregnant position	" Grievous Hurt "	The alleged beating could have caused the alleged abortion

Sgd. E. H. WALLACE
Divisional Medical Officer,
Third Division.

*Definitions :— " HURT. " Any bodily pain, disease or infirmity not constituting " Grievous Hurt. "

GRIEVOUS HURT

40

1. Emasculation.
2. Permanent privation of sight of either eye.
3. Permanent privation of hearing of either ear.

Exhibits.

Exhibit C.
Medical
Report by
Doctor
Wallace,
21st May
1949,
continued.

4. Privation of any member or joint.
5. Destruction or permanent impairing of the powers of any members or joint.
6. Permanent disfiguration of head or face.
7. Fracture or dislocation of a bone or tooth.
8. Any hurt which endangers life or which causes the sufferer to be, during the space of 20 days, in severe bodily pain, or unable to follow his ordinary pursuits.

NOTE.—If in the opinion of the M.O. a hurt which is not grievous at the time of examination, may eventually become grievous and note to that effect should be made. 10

Certified true copy

Circuit Judge.

Sibu, 13th June, 1949.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF SARAWAK.

BETWEEN

KONG SIEW YAP - - - - - *Appellant*

AND

THE KING - - - - - *Respondent.*

RECORD OF PROCEEDINGS

JAQUES & CO.,
8 ELY PLACE,
LONDON, E.C.1,
Solicitors for the Appellant.

BURCHELLS,
9 BISHOPSGATE, E.C.2,
Solicitors for the Respondent.