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No. 32 of 1950 UNIVERSITY OF LONDON
W.C.1.

28MAR1951

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA
(COURT OF APPEAL)

BETWEEN

SAMBASIVAM - - - - - Appellant

AND

THE PUBLIC PROSECUTOR OF THE FEDERATION OF
MALAYA - - - - - Respondent

RECORD OF PROCEEDINGS

STANLEY JOHNSON & ALLEN,
426 SALISBURY HOUSE,
LONDON WALL, E.C.2,
Solicitors for the Appellant.

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

**INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.**

In the Privy Council.

ON APPEAL
 FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA
 (COURT OF APPEAL)

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

BETWEEN

SAMBASIVAM *Appellant*

AND

THE PUBLIC PROSECUTOR FEDERATION OF MALAYA *Respondent.*

RECORD OF PROCEEDINGS

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INSTITUTE OF ADVANCED
 LEGAL STUDIES.
 25, RUSSELL SQUARE,
 LONDON,
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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA (COURT OF APPEAL)

BETWEEN

SAMBASIVAM

Appellant

AND

10 THE PUBLIC PROSECUTOR FEDERATION OF
MALAYA

Respondent.

RECORD OF PROCEEDINGS

No. 1.

CHARGE in Charge Book.

COPY OF CHARGE IN THE CHARGE BOOK.

(Sgd.) A. Rauf Mohd. Sa'at

Magistrate, Muar.

(L.S.) Magistrate,
State of Johore.

FEDERATION OF MALAYA
STATE OF JOHORE

In the Magistrate's Court at Muar

Criminal Case No. 573 of 1948

CHARGE

That you on or about 10 a.m. on 13.9.48 at Bt. Kepong, Panchor were found in possession of arms to wit one .38 Serviceable revolver and 10 rounds of ammunition without lawful authority an offence punishable under sec 4 (i) (a) & (b) of the Emergency Regls 1948.

*In the
Court of
the
Magistrate
at Muar.*

No. 1.
Charge in
Charge
Book,
undated.

20

*In the
Court of
the
Magistrate
at Muar.*

No. 2.

PROCEEDINGS before Committing Magistrate.

In open Court, Muar

Before me,

(Sgd.) A. Rauf B. Hj. Mohd Sa'at

13.2.49

No. 2.
Proceedings
before
Com-
mitting
Magistrate,
13th
February
1949.

Criminal Case 573/48.

P.P. *vs* Shivam S.O. Narayanasamy
acd. Shivam S.O. Narayanasamy

Sec : 4 (i) (a) & (b) of the Emergency Regulations 1948. 10

C.I. Abdul Gani says.

Acid has been in hospital since 13.9.48. To-day is the first time acid. is brought to Court.

Charge explained to acid.

Acid. I understand the charge.

At this stage C.I. Abdul Gani says

I am ready now with the case. I have received the Certificate under the Emergency from the D.P.P. (tendered, admitted and marked Ex : P1).

Acid. in person. 20

C.I. A. Gani for Prosecutor.

Charges under the certificate (Ex : P1) :—

(i) Offence Punishable under Regulation 4 (i) (a) of the Emergency Regulations 1948.

(ii) Offence Punishable under Regulation 4 (i) (b) of the Emergency Regulations 1948.

Charges under the Certificate (Ex : P1) read and explained to acid.

Acid. I understand both charges.

Court Inspector. Acid. was arrested on 13.9.48.

Since then acid. has been in hospital Muar. Accused has been suffering 30 from wounds caused by parang. To-day is the 1st time accused is brought to Court.

Intd. A.R.

13.2.49

Certified True Copy

(Sgd.) A. RAUF B. HJ. MOHD. SA'AT
Magistrate, Muar

13.2.49.

(L.S.) Magistrate
State of Johore.

40

No. 3.

COPY OF CHARGE on which committed.

COPY.

COPY OF CHARGE UNDER CERTIFICATE.

1. That he at about 10 a.m. on 13th September, 1948, at Bukit Kepong, Muar in the State of Johore, carried a .38 revolver which he was not duly licenced to carry, and he has thereby committed an offence punishable under Regulation 4 (i) (a) of the Emergency Regulations, 1948 ; and

10 2. That he at about 10 a.m. on 13th September, 1948, at Bukit Kepong, Muar, in the State of Johore, had in his possession 10 rounds of .38 ammunition without lawful authority therefor and he has thereby committed an offence punishable under Regulation 4 (1) (b) of the Emergency Regulations, 1948.

Read over and explained to the accused.

(Sgd.) A. RAUF B. MOHD. SA'AT.

(L.S.) MAGISTRATE

STATE OF JOHORE.

Magistrate, Muar.

*In the
Court of
the
Magistrate
at Muar.*

No. 3.
Charges
on which
committed,
undated.

No. 4.

LIST of Prosecution Witnesses.

20

Panchor I.P. 33/48.

THE EMERGENCY (CRIMINAL TRIAL) REGULATIONS, 1948.

List of witnesses to be summoned in Magistrate's Court Criminal Case No. 573 of 1948.

P.P. v. Sivam alias Sambasivam s/o Narayanasamy.

1. Mohd Said bin Alam, Kampong Tui, Bukit Kepong, Muar.
2. Saebun bin Kamat, Kampong Tui, Nukit Kepong, Muar.
3. Abdul Aziz bin Tampok, Kampong Tui, Bukit Kepong, Muar.
4. Ali bin Mustaffa, Penghulu of Bukit Kepong, Muar.
- 30 5. Sgt. Major Abdullah bin Mohd. Shah, Muar Police Station.
6. Sgt. No. 3597, Sohan Singh, Muar Police Station.
7. Sgt. No. 2226, Ismail bin Abdul Samad, Muar Police Station.
8. Prob : Asiatic Inspector Abdul Razak, O.C.P.D. Panchor, Muar.
9. S. Krishnan, Asst. Local Security Officer, Muar.
10. No. 6975 P.C. Kassim bin Siran, Lenga Police Station.
11. No. 8115 L.C. Abu Bakar bin Ahmad, Muar Police Station.

(Sgd.) W. M. McCALL

Deputy Public Prosecutor
For Solicitor-General.

Johore Bahru,

40 25th November, 1948

No. 4.
List of
Prosecution
Witnesses,
25th
November
1948.

*In the
Court of
the
Magistrate
at Muar.*

No. 5.
List of
Witnesses
for
Defence,
13th
February
1949.

**No. 5.
LIST of Witnesses for Defence.**

MALAYAN UNION.

STATE OF JOHORE

List of Witnesses for the Defence.

In the Magistrate's Court at Muar Criminal Case No. 573 of 1948.

Accd. says " I have no witness ".

Intd. A.R.

13.2.49.

(Sgd.) A. RAUF B. HJ. MOHD. SA'AT. 10

Magistrate.

No. 6.
Committal
Order,
13th
February
1949.

**No. 6.
COMMITTAL ORDER.**

I hereby commit accd. to stand trial before the High Court at Johore Bahru on such date as the High Court shall fix.

Accused to be remanded in custody pending trial.

(Sgd.) A. RAUF B. HJ. MOHD SA'AT.

Magistrate, Muar.

13.2.49.

Certified True Copy

20

(Sgd.) A. RAUF B. HJ. MOHD. SA'AT

Magistrate, Muar

13.2.49.

**(L.S.) Magistrate
State of Johore.**

No. 7.
PARTICULARS under Section 147, Criminal Procedure Code.

FROM THE COURT OF A MAGISTRATE AT MUAR.
TO THE HIGH COURT AT JOHORE BAHRU.

Particulars required under section 147 of the Criminal Procedure Code.

*In the
Court of
the
Magistrate
at Muar.*

No. 7.
Particulars
under
Section 147
of
Criminal
Procedure
Code,
13th
February
1949.

A.	The Serial No.	Muar Cr. Case No. 573/48.
B.	The date of the commission of the offence	13.9.48.
10 C.	The date of the complaint, if any . .	Nil.
D.	The name and residence of the complainant, if any	Nil.
E.	The name, residence, if known, and nationality of the accused	Shivam S/o Narayanasamy.
F.	The offence complained of and the offence proved, and the value of the property, if any, in respect of which the offence has been committed	1st Charge : Carrying firearms—Reg. 4 (i) (a) of the Emergency Reg. 1948. 2nd Charge : Being possession of 10 rounds of ammunition—Reg. 4 (1) (b) of the Emergency Reg. 1948.
20 G.	The date of the summons or warrant, and of the return day of the summons, if any, or on which the accused was first arrested	Nil.
H.	The date on which the accused first appeared or was brought before the Magistrate	13.2.49.
I.	The name and title of the officer or name of the advocate conducting the prosecution and the name of the advocate (if any) appearing for the accused	Inspector Abdul Gani Bin Yasin.
30 J.	The date of the making of each adjournment or postponement, if any, and the date to which such adjournment or postponement was made and the grounds of making the same	Case 1st mentioned on 27.9.48—Accused in Hospital. Ppd. 4.10.48 Acc. in Hosp. " 11.10.48 " " " 18.10.48 " " " 1.11.48 " " " 15.11.48 " " " 22.11.48 " " " 29.11.48 " " " 6.12.48 " " " 13.12.48 " " " 20.12.48 " " " 27.12.48 " " " 3. 1.49 " " " 9. 1.49 " " " 16. 1.49 " " " 23. 1.49 " " " 30. 1.49 " " " 6. 2.49 " " " 13. 2.49 Accused brought to Court— Charges explained to Accused.
40		
50		

<i>In the Court of the Magistrate at Muar.</i>	K. The date on which the proceedings terminated	13.2.49.	
	L. The order made	To stand trial before the High Court at Johore Bahru on such date as the High Court shall fix.	
No. 7. Particulars under Section 147 of Criminal Procedure Code, 13th February 1949, <i>continued.</i>	M. The Depositions	Nil.	
	N. The statement of accused under section 142 (ii)	Nil.	
	O. The charge	1st Charge : under Reg. 4 (1) (a) of the Emergency Regulations, 1948.	10
		2nd Charge : under Reg. 4 (1) (b) of the Emergency Regulations, 1948.	
	P. List of witnesses given by accused ..	Enclosed—Nil.	

(Sgd.) A. RAUF B. MOHD SA'AT,
(L.S.) Magistrate, State of Johore.

13th February, 1949.

In the Supreme Court of Johore.

No. 8. Charge, 2nd March 1949.

**No. 8.
CHARGE.**

In the Supreme Court of Johore at Johore Bahru
State of Johore.

IN THE SUPREME COURT OF JOHORE AT JOHORE BAHRU.
Emergency Criminal Case No. 6 of 1949.

PUBLIC PROSECUTOR

Versus

SIVAM s/o NARAYANASAMY

Sivam s/o Narayanasamy, You are charged at the instance of the Public Prosecutor, and the charges against you are :—

First : That you at about 10 a.m. on 13th September, 1948, at Bukit Kepong, Muar, in the State of Johore, carried a fire-arm, to wit a .38 revolver Webley No. 18282, which you were not duly licensed to carry under any written law for the time being in force, and you have thereby committed an offence punishable under Regulation 4 (1) (a) of the Emergency Regulations, 1948 ;

Second : That you at about 10 a.m. on 13th September, 1948, at Bukit Kepong, Muar, in the State of Johore, had in your possession ammunition, to wit, 10 rounds of .38 ammunition, without lawful authority therefor, and you have thereby committed an offence punishable under Regulation 4 (1) (b) of the Emergency Regulations, 1948.

Sd. W. MARTIN McCALL,

Deputy Public Prosecutor. 40

Dated at Johore Bahru this 2nd day of March, 1949.

No. 9.

NOTES OF EVIDENCE.

SUPREME COURT, JOHORE BAHRU.

Emergency Case No. 6 of 1949.

P. P.

V.

SHIVAM s/o NARAYANASAMY

McCALL

CHARRY for accused assigned.

2nd March, 1949.

*In the
Supreme
Court of
Johore.*No. 9.
Notes of
Evidence,
2nd March
1949.

10 Cor. LAVILLE, J.

D.P.P. hands in Emergency Certificate. Put in Ex. A and B receipt of prosecution statements signed by Mr. Charry. He states accused has read and understood these statements. Ex.A and B.

Accused answers to name of Sambasivam alias Shivam s/o Narayanasamy. Indian Tamil aged 23 years.

Accused is charged in absence of Assessors :—

20 1. That he about 10 a.m. 13-9-48 at Bukit Kepong, Muar, carried a firearm, to wit, a .38 revolver Webley No. 18282 which he was not duly licensed to carry under any written law, contrary to sec. 4 (1) (a) Em. Regulations, 1948.

2. At same time and place was in possession of 10 rounds of .38 ammunition without lawful authority, contrary to sec. 4 (1) (b) E.R., 1948.

Accused says : I understand each charge. As to 1st charge, I admit possession of a revolver that was given me by a Chinese to keep.

I ask accused before pleading further to consult his counsel. He does so, and then claims trial on 1st charge ; also on 2nd charge.

Assessors recalled into Court. I call upon Mr. C. F. Anthoniz and Mr. Thong Hong Kee to assist the Court and excuse Che Rohani b. H. Abdul Latiff. 30

McCall opens and calls :

PROSECUTION EVIDENCE.

*Prosecution
Evidence.*

No. 10.

Witness No. 1.

MOHAMED SAID BIN ALAM affirmed. Malay.

No. 10.
Mohamed
Said bin
Alam,
2nd March
1949,
Examina-
tion.

Rubber tapper Bukit Kepong. 13-9-48 morning I set out from house to go to get my rice ration at village of Bukit Kepong. I left about 7.30 a.m.

40 I had with me a short parang. On my way I met 2 other Malays, Saebun and Abdul Aziz, bound on same errand. They also had with them

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

No. 10.
Mohamed
Said bin
Alam,
2nd March
1949,
Examina-
tion,
continued.

each a knife. About 1 mile away from Bukit Kepong we came on 2 Chinese and an Indian ; place was near a coconut estate as we walked along a path. The two Chinese and an Indian were coming on the path from Bukit Kepong. As they approached about 6 ft. from me, one of the Chinese drew a rifle from his waist. I said to him, Why the rifle ? He made no answer but fired at me. I was in the middle of us 3 Malays. I drew my knife and charged at him. I managed to hit him with the knife.

Saebun attacked the Indian. I don't know what Aziz did. The Chinese I hit fell down. The other Chinese fired at me, so I charged at him and he ran away and I chased him, but could not catch him. When I came back I found the first Chinese I had hit was dead. 10

The Indian was alive. He was fighting with Saebun ; fight stopped as I arrived. The Indian was standing still, but was wounded and Saebun said he had wounded the Indian.

I see this revolver. I saw it with the Indian. I now say I saw it in Saebun's hand and Saebun told me he had got it from the Indian. (Marked X for identification.)

Then I, Saebun and Aziz went to Penghulu's house, leaving the Indian lying on ground wounded and bleeding ; he had collapsed on the ground. 20

The Penghulu's house was about 1 mile away. Saebun handed over revolver to Penghulu and we told him what had happened. I went back with Penghulu and found and arrested the Indian. The Chinese was lying dead about 1 chain away from Indian. I pointed out his body to Penghulu. Accused is the Indian.

Cross-
examina-
tion.

Xx.—I knew one of the Chinese named Ah Kow. When we met them, I didn't ask him where he was going. He didn't say what has it got to do with you.

There was no talk at all between my party or me and any of the Chinese or Indian. I actually saw with my own eyes that each of the Chinese and the Indian were carrying a weapon. One Chinese had a cut down .303 and the other a similar one, and the Indian a revolver. The Revolver X was at the Indian's waist. I saw it there ; it was tucked into top of his trousers. He was not holding it ; I actually saw it in the top of his trousers. I deny X was tied up in a rag and in accused's right hand trouser pocket. 30

When I came back after chasing the 2nd Chinese, the Indian and Saebun were still fighting. The Indian saw me then and stopped fighting. Saebun also stopped fighting then. 40

Indian at that time was wearing a shirt and trousers. I can't say if his shirt was in his trousers or outside it. I didn't see any gashes on Indian's body, but I did see blood on his trunk (points to chest and sides). Saebun was the only man who had fought him. When we left to go to Penghulu the Indian was still standing up.

Re-examina-
tion.

Ex. C.
Ex. D.1.
D.2.

Re-Xd.—When I saw the 2 Chinese and Indian, the latter carried this leather dispatch case (put in Ex. C). These 2 rotan bags were carried one each by Chinese D.1 and D.2. Penghulu took them.

Charry.— C was in Indian's right hand.

Assessors.—N.Q.

When I saw Indian and Chinese 1st time they were one chain away from me. What Abdul Aziz did, I didn't see at all. I saw the revolver X at accused's waist when we first came upon the 3 men, at the moment the Chinese fired at me. They carried the cut down guns at their waist also. I noticed this before the Chinese fired at me.

Of Ex. X, I saw only the butt in accused's waist. When I came back I saw it in Saebun's hand. I can't say if the Chinese and Indian
10 saw us when we saw them a chain away.

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

—
No. 10.
Mohamed
Said bin
Alam,
2nd March
1949,
Re-examina-
tion,
continued.
By leave of
Court.

No. 11.

Witness No. 2.

SAEBUN BIN KAMAT affirmed—Malay :—

I am a Kampong dweller on my own land at Bukit Kepong. 13.9.48 morning about 7.30 a.m. I set out to Kepong to get my rice ration. On way I met Abdul Aziz who joined up with me and later Mohd Said joined us on the way. I was armed with a knife and so were the other two.

As we walked along path about a mile from Kepong we met 2 Chinese
20 and an Indian walking together. As we drew near they stopped us and fired. I had not and did not speak to them before they did this. Mohd Said did speak to them and said "Mana pergi." The reply of one of the Chinese was "Now don't ask": he spoke in Malay "Skarang punya undang ta boleh tegor" (under the present rules you cannot ask). No further conversation took place but at once a shot was fired: they were 6 feet from us: one of the Chinese fired it.

I had seen while the conversation took place that one of the Chinese, the man who fired the shot later had a cut down rifle at his waist. He drew it and fired. I did not notice what if anything the other 2 carried.

30 When the shot was fired I suspected them of being Communists. After the Chinese fired the shot the Indian drew a revolver. I saw it in his hand but I can't say from where he drew it. He was in front of me.

I then drew my knife and cut the Indian on the side of head and also at back of shoulder and I also stabbed him through the body in front. When I did this he fell down. Revolver fell from his hand and I picked it up. This X looks like it. Now put Ex. E. While I was fighting with Indian I didn't notice what Mohd Said and Aziz were doing. When I finished I found that one of the Chinese was lying dead on the path and the other had disappeared. Then I and Mohd Said and Aziz
40 went to Penghulu and told him what had happened. I handed him Ex. E and brought him back to scene, where Indian lay wounded and Chinese dead.

Accused is the man, the Indian.

In addition to pistol I saw in Indian's hands he carried this bag Ex. C in his left hand.

The 2 Chinese were each carrying Ex. D.1 and D.2 respectively.

No. 11.
Saebun bin
Kamat,
2nd March
1949.
Examina-
tion.

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

No. 11.
Saebun bin
Kamat,
2nd March
1949,
continued.
Cross-
examina-
tion.

Xx.—I saw Md. Said after I had finished fighting with Indian : he came up when we were fighting and after a little we stopped fighting. The Indian fell down wounded and so the fight stopped. When Md. Said arrived the Indian was already on the ground. I was already in possession of revolver. I had snatched it from his hand. What I mean is I hit with side of my hand on his biceps and that caused him to drop the revolver and I snatched it up. When Md. Said came up I had the revolver.

The path was a Kempong path ; there was only one house there : that was the only path at that spot. It was the main path to Bukit Kepong. The Chinese and Indian were coming from Kepong ; the path is only well frequented in the evening, not during the day, but people who don't work go in to Kepong in early morning. 10

I could only see bolt of the cut down rifle at Chinese waist ; barrel was in his trousers and butt inside his shirt and bolt sticking out of his shirt opening.

The Chinese wore shorts and khaki shirt ; shirt hung outside his pants. I knew at once when I saw the bolt head that he carried a rifle. The 2 Chinese and accused were walking one behind the other. The front man had bolt sticking out. I did look at the other 2 men. I saw their fronts. 20

Accused was the middle man of the 3. I didn't then notice anything at his waist. I think if anything has been visible I would have seen it.

Accused was wearing long trousers and a shirt.

I don't know how revolver came into his hand.

I fought with accused for about half an hour. He pointed revolver at me and attempted to shoot me. I had the upper hand from first. After I stabbed him 3 times he fell down ; there was a struggle before I stabbed him.

While fight went on Mohd Said was not there. Aziz was behind me. I can't say what he was doing. 30

Assessors.—No question.

Court.

I and Mohd Said and Aziz were walking one behind the other. I was in front, not Mohd Said. I attacked Indian because he pulled a gun on me. I had passed the Chinese when he fired.

To 2.15 p.m.

2.30 p.m. Court resumes.

Court examines witness :

I examined revolver Ex. E only at Penghulu's house. It was loaded with 6 bullets. When we got back to accused his body ; I had taken leather bag Ex. C to Penghulu's house I didn't examine it first. It was examined at Penghulu's house and 4 more bullets found in it. 40

This Ex. E, I have no doubts that this E is the revolver accused had carried that day.

No. 12.
Witness No. 3.

*In the
Supreme
Court of
Johore.*

ABDUL AZIZ BIN TAMPOK affirmed—Malay :

*Prosecution
Evidence.*

No. 12.
Abdul Aziz
bin
Tampok,
2nd March
1949,
Examina-
tion.

Kampong Kepong : Kampong worker ; 13.9.48 I went that morning to collect rice ration and met on way Mohd Said and Saebun. We each carried a knife. 1 mile or so from Kampong Kepong we met 3 persons, 2 Chinese and an Indian coming from Kepong towards us. As they came I saw that the Chinese in front had a cut down rifle ; he had it at his waist. The Indian was carrying leather bag Ex. C ; it was under his left arm. 10 My party did not speak to the other party as we approached. I now say Mohd Said did say " Mana pergi " to the others. One of the Chinese said " apa pasal tanya " (why do you ask me) Mohd Said said what is the harm in asking. Nothing further was said. The Chinese then fired at Moh Said and Mohd Said stabbed him. I then drew my knife and approached but could not get an opportunity to stab. The Indian had a pistol ; he took it from his left trouser pocket. I now say he was carrying the bag under his right arm. He drew the pistol with his left hand. I saw the Indian do this and aim at Saebun. Saebun attacked him grasped his hand and stabbed him. I saw Saebun knock revolver from his hand and pick it 20 up. I saw it. This is the revolver (identifies Ex. E).

Meanwhile Mohd Said killed the Chinese who fired and the other escaped. By time Mohd Said came back from pursuing the other Chinese, Saebun had just got the best of the Indian.

Then we three left the dead Chinese and wounded Indian on ground and went to Penghulu's house with pistol E and case Ex. C. There Ex. C was examined. Ex. C was also taken to Penghulu's house. I see accused. He is the Indian. We met these 3 men about 10 a.m.

Xx.—When Mohd Said addressed the Chinese he called him Ah Kow. I and Mohd Said both knew Ah Kow well. It is not true I associated with 30 Ah Kow. There had been no ill feeling between us. Why Ah Kow shot at Mohd Said I can't say. I deny that there was any altercation between us and Ah Kow's party and that we were of same gang. Ah Kow had a cut down rifle tucked in his shirt so that only the bolt handle could be seen. I thought he was carrying a gun.

Cross-
examina-
tion.

I saw the Indian carrying a revolver. When it was in his pocket I couldn't see it, but I saw him getting it out. It was not wrapped in a bag. The fight between accused and Saebun lasted about 5 minutes ; the Indian fell down, it was 5 or 6 minutes when Indian fell down. Before he fell 40 down revolver was in his hand the whole time. Saebun held him by the wrist of hand i.e. his left hand, by his own left hand and stabbing with his right hand. After stabbing him he got the revolver from accused's hands and released him and he fell down.

Bag Ex. C was taken to Penghulu's house by Mohd Said and also the other baskets Ex. D1 and D2.

I didn't see Ex. C or D1 and D2 examined as I was outside on ground. Mohd Said and Saebun went into Penghulu's house. I was a bit away from Said and Saebun when they fought say about 20 feet. I was in the rear when they met the Chinese and Indian. It was a rice issuing day. I knew the 2 were going to Kepong because they told me.

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

No. 12.

Abdul Aziz
bin
Tampok,
2nd March
1949,
Cross-
examina-
tion,
continued.

Mr. Anthoniz—I remember now that it was under the right arm Indian carried the bag.

Ah Kow used to live in my Kampong but was not living there then. I hadnt seen him there for 1 month before 13.9.48.

I didnt know the Indian before. I had never seen him.

Chinese—No question.

Court—The 2nd Chinese had a gun and fired and then ran away. I actually saw accused put his left hand into his left trouser pocket and pull out the revolver. Accused did not fire his revolver ; he had no opportunity to do so. I saw the Chinese fire his gun and heard the report. 10

Ah Kow was a rubber tapper.

No. 13.

Ali bin
Mustapha,
2nd March
1949,
Examina-
tion.

No. 13.

Witness No. 4.

ALI BIN MUSTAPHA affirmed—Malay.

Penghulu Kepong. I know Mohd Said and Saebun and Abdul Aziz. 13.9.48 about 10 a.m. I was in my house. Mohd Said, Saebun and Abdul Aziz came to my house ; they reported they had met 3 communists on way between Kepong and Kampong Tai ; they said they had fought with them and managed to capture their arms ; they handed me Ex. E. Saebun gave it to me. Ex. C also was handed me by Saebun ; I examined 20 Ex. E at Police Station and saw it was loaded. I didnt open the bags either.

I didnt know why they had been attacked.

The 3 men took me to scene and there I found accused lying seriously wounded and also the body of a Chinese. I had accused taken to Kepong. Revolver Ex. E and bag Ex. C I took to Police ; I handed bag C to Sgt. Major Abdullah. Revolver to O.C.P.D. Lenga Police Station.

This cut down gun I have never seen before.

Cross-
examina-
tion.

Xx.—I have been Penghulu for over 11 years at Kepong. I know Ah Kow ; this was dead body found. The 3 Malays told me a revolver, 30 a short gun and 3 bags. This is the short gun. Put in Ex. F. That was first time I had seen Ex. F. Prior to this I had never seen such a gun as Ex. F.

13.9.48 at Police Station I handed over Ex. F too. I made a report as soon as I arrived.

Re-examin-
ation.

Re-exd.—I saw that Ex. E contained 6 rounds of ammunition when it was opened by the police at the police station as soon as I arrived.

I didnt see Bag Ex. C opened.

Mr. Anthoniz—I didnt examine revolver or leather case at my house. I deny that revolver or case was opened at my house. I handed Ex. C 40 over to police myself on 14.9.48. I didnt see it opened there.

Chinese—No question.

Court—The Malays did not give names of any of the communists but said they were 1 Indian and 2 Chinese. They did give the name of Ah Kow as one.

I now say the revolver E was loaded when I saw it in my house. When the 3 men came and reported about the communists Saebun told me he had got the revolver E from the Indian.

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

No. 14.
Witness No. 5.

KASSIM B. SIVAN affirmed—Malay.

No. 13.
Ali bin
Mustapha,
2nd March
1949,
continued.

10 P.C. 6975 Lenga Police Station—13.9.48 afternoon accused was brought to me by Penghulu Ali bin Mustapha. It was about 4 p.m. Penghulu made a report. I recorded it. This is it. Tendered and put in Ex. G.

No. 14.
Kassim
bin Sivan,
Examina-
tion.

At the same time Penghulu handed me Ex. E a revolver. I took it ; it was loaded with 6 bullets. I sent accused to hospital at Muar.

Later at Lenga Police Station I handed Ex. E to Sg. 2226 Ismail.

Xx.—When Penghulu brought gun Ex. E and accused to police station he also brought 2 bags Ex. D1 and 2. I examined the bags. In one of them I found 7 rounds .303 ammunition.

Cross-
examina-
tion.

20 *Re-exed.*—I did find in one of the bags D revolver ammunition like this shown me (.38 ammunition). I found 4 rounds of it. It was on day Penghulu arrived with accused.

Re-examin-
ation.

I entered it in complaint book. I now say I didnt. I handed Sgt. 2226 the 4 rounds when he came back from patrol on 13.9.48.

Assessors—No question.

Court—I see Ex. C. I didnt see it on 13.9.48. I never saw it at all. Penghulu didnt bring Ex. C to the police station on 13.9.48. He did bring Ex. F the rifle.

To 10 a.m. to-morrow.

30 3rd March, 1949.

No. 15.
Witness No. 6.

ISMAIL B. ABDUL SAMAD affirmed—Malay :

No. 15.
Ismail bin
Abdul
Samad,
3rd March
1949,
Examina-
tion.

Sgt. 2226 Bukit Kepong. 13.9.48. afternoon P.C. Kassim b. Sivan at police station gave me one revolver and one cut down rifle and 10 rounds of revolver ammunition and 7 rounds of .303 ammunitions and 3 bundles of documents and 2 rottan baskets. This is the revolver Ex. E. Shortly after O.C.P.D. Pandhor told me to take the revolver and ammunitions to Sgt. Major at Muar. He came to Lenga police station and told me to hand
40 them to L/C 8115 I handed them over on 14th to him at Lenga.

XX.—No question.

Assessors—No question.

Court—I have never seen Ex. C.

Cross-
examina-
tion.

*In the
Supreme
Court of
Johore.*

No. 16.

Witness No. 7.

ABU BAKAR B. AHMAD affirmed :—

*Prosecution
Evidence.*

L/C 8115 Muar. 14.9.48. I went to Lenga Police Station. There Sgt. 2226 handed me a revolver. This is it Ex. E ; and Ex. F a cutdown rifle and these 2 bags Ex. D1 and D2 with papers in them ; also 10 rounds of revolver ammunitions and 7 rounds of .303. Ex. C I have seen before. I saw it police station at Lenga. It was handed to me by Sgt. 2226 on 14th. I took these things to Muar and handed them to Inspector there.

No. 16.

Abu
Bakar bin
Ahmad,
Examina-
tion.

XX.—No question.

10

Cross-
examina-
tion.

*Mr. Anthoniz—*Ammunition was handed to me separately from the bags D1 and D2.

*Chinese—*No question.

*Court—*Even if Sgt. 2226 says he has never seen Ex. C before I say it was handed over to me by him at Lenga.

No. 17.

Sohan
Singh
Sgt. 3597,
Examina-
tion.

No. 17.

Witness No. 8.

SOHAN SINGH affirmed : Sikh.

Sgt. 3597 Muar. 13.9.48 or 14.9.48 I received Ex. E and ten rounds of revolver ammunitions and Ex. D1 and 2 rottan bags. Ex. C was not handed to me. Ex. F rifle was handed to me. All these by L/C 8115. I have had them in my custody ever since except when Sgt. Major took revolver Ex. E and ammunitions for testing.

Cross-
examina-
tion.

XX.—No question.

No. 18.

Abdullah
bin Modh.
Shah,
Examina-
tion.

No. 18.

Witness No. 9.

ABDULLAH B. MOHD. SHAH affirmed :—

Sgt. Major Muar. 14.9.48 I went to Lenga police station. There Sgt. 2226 showed me Ex. E and 10 rounds of revolver ammunitions and also Ex. F and 7 rounds of .303 ammunitions, and also Ex. D1 and 2. I told the Sgt. to give them to L/C 8115 to take to Muar. I then went to house of Penghulu Kepong at Kepong.

He handed me Ex. C, leather bag. I opened it. In it I found a piece of stockings a bottle of oil and a razor set ; that is all. I took C back to Muar with me. It was coconut oil. On 20.9.48. I took Ex. E and 10 rounds of .38 ammunition from Sgt. Sohan Singh. I tested the revolver with .38 ammunition not out of the 10 rounds but similar. The revolver exploded the ammunition effectively. I fired one round only.

This morning 3.3.49 I tested Ex. E with one of the 10 rounds .38 ammunition handed me by Sgt. Sohan Singh on 20.9.48. This is the empty shell. That round exploded effectively. Put in H. 9 rounds, and

exploded round H1. I have tried to trace revolver in Muar register ; it is not licensed. Accused man's name is not on register either to carry arms or possess ammunitions.

XX.—No question.

Mr. Anthoniz—I tested Ex. F ; it exploded a bullet. Ex. F will not fire .38 ammunition ; I fired .303 ammunition with it.

Chinese—No question.

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

No. 18.
Abdullah
bin Modh.
Shah,
Examina-
tion,
continued.
Cross-
examina-
tion.

No. 19.

Witness No. 10.

10 S. KRISHNAN affirmed :—

I am police inspector, Special Branch C.I.D., Johore Bahru. On 20.9.48 I was Asst. Local Security Officer at Johore Bahru. On 20.9.48 I took a statement at Muar from accused. I cautioned him in these words : “It is my duty to warn you that you are not obliged to say anything, but what you say may be given in evidence at your trial.”

I recorded this statement in hospital at Muar. There was also present a Tamil detective ; accused was quite coherent and understood what I said. I took it down in writing. I handed the statement to officer in charge Special Branch C.I.D. (A copy tendered. I exclude this from evidence
20 as there is no evidence to show that original is lost or cannot be produced.)

XX.—I do know Tamil.

Assessors—N.Q.

No. 19.
S.
Krishnan,
Examina-
tion.

Cross-
examina-
tion.

No. 20.

JUDGE'S NOTE.

Case for Prosecution closed.

Charry has nothing to say at this stage.

I give accused the usual election, and say before he elects he can consult his counsel. He consults his counsel and elects to give evidence on affirmation.

No. 20.
Judge's
Note.

30

No. 21.

DEFENCE WITNESS No. 1.

SAMBASIVAM S/O NARAYANASAMY affd. Tamil.

I am also known as Sivam. On 13.9.48 I was looking for work. I was out of work. About 10 a.m. I left Bukit Kepong to seek work in the kampongs around ; with me were 2 Chinese. I was in the centre, and one Chinese behind and one in front of me. I did not know the 2 Chinese.

I had with me Ex. C. On the way the 2 Chinese and Mohd. Said, Saebun and Abdul Aziz (points to them) had a fight. I mean the Malays
40 fought with parangs and the Chinese shot at them.

No. 21.
Accused,
Examina-
tion.

*In the
Supreme
Court of
Johore.*

No. 21.
Accused,
Examina-
tion,
continued.

The two parties met ; the Malays asked the Chinese : Where are you going ? Then the fight started. The Malays attacked first. I was watching and was then about to go on when Saebun attacked me. He hit me with a parang on left side of head.

(Witness, at request of counsel, bares his body and shows 2 stabs in chest and lower abdomen, in outer left forehead and a cut on the right ribs and cut on left leg.)

These wounds were inflicted by Saebun. As he inflicted them, I caught his right hand and while struggling my left thumb was cut (shows small scar). While I was being cut in the thumb, another man stabbed 10 me on back ; he was Abdul Aziz. I fell down on ground. I was $\frac{3}{4}$ hour on ground. Then some Malays came and put me on sack and carried me to Muar direct.

Cross-
examina-
tion.

Xx.—I see Ex. E.

Q. Did you have a revolver with you ?

A. I did.

Q. Where did you get it ?

A. One of the two Chinese wrapped a revolver in a piece of cloth and gave it to me. I did not know that what was wrapped up was a revolver. I did not know what it was. 20

Q. When did you find it was a revolver ?

A. Only when the police told me in Muar that I was in possession of revolver.

Q. Why did Chinese give it to you ?

A. He asked me to carry it. I don't know why, and I didn't ask him.

Q. Why not ?

A. I was frightened and they wished me to carry it, and so I did.

Q. How long had you known them ?

A. About one month.

I don't know why the Chinese were with me at that time. The wrapped 30 up bundle was given me on the road after leaving Kepong. About 20 minutes before we met the Malays. I don't know where the Chinese produced the bundle from. I didn't notice. He just said : Carry this. It didn't strike me to ask. Not true it was because I knew it was a revolver. It was wrapped up like this (wrapped in a towel) I couldn't feel it was a revolver because I have never handled one before and it was wrapped in a thick cloth. I didn't know the Chinese was carrying guns like F. till police at Muar told me. Put to me that in my evidence in chief I said "No Chinese shot at the Malays," I agree I said it, but I didn't see the shots fired ; only heard them. 40

I didnt run as soon as shots were fired, but I was just about to do so when Saebun attacked. I now say I looked round as the shots were being fired and then started to go when I was attacked.

I was conscious till I fell down. I don't know if I was conscious till Malays left to go to Penghulu's house. The Malays didn't search my body. This wrapped up bundle I had in one of my trouser pockets. I think it was left. I am not sure. Put to me Saebun's evidence is I pulled it out of my

pocket not wrapped up, I say it is not true. I don't know why they should tell an untruth.

I didn't know Chinese were armed. I didn't even know whether Malays or Chinese shot; I just heard shots. I only thought Chinese shot because police at Muar told me. Put to me I had Ex. E knowingly and knew the Chinese were armed, I deny it.

Mr. Anthoniz—I am certain two people attacked me.

Ch. Assessor—I was living with the 2 Chinese at Bukit Kepong. I didn't run away because it happened too suddenly. I didn't see one Chinese killed and the other run away. I didn't see what happened to them. I don't know why the Malays attacked me and left the Chinese.

*In the
Supreme
Court of
Johore.*

—
No. 21.
Accused,
Cross-
examina-
tion,
continued.
Court.

No. 22.

JUDGE'S NOTE.

No. 22.
Judge's
Note.

CASE FOR DEFENCE.

12.15 p.m. Charry addresses. (Carrying must imply knowledge; possession not necessarily.)

12.30 p.m. McCall addresses.

To 3.15 p.m.

3.30 p.m. I sum up.

4.50 p.m. Assessors retire.

20 4.55 p.m. Assessors return.

Mr. Anthoniz returns a verdict of not guilty on 1st charge.

Mr. Thong Hong Kee returns a verdict of not guilty on 1st charge.

Mr. Anthoniz returns a verdict of not guilty on 2nd charge.

Mr. Thong Hong Kee returns a verdict of not guilty on 2nd charge.

I do not agree with the finding of the Assessors on the first charge and therefore order a re-trial.

I do agree with the finding of the Assessors on 2nd charge and therefore acquit the accused.

(Sgd.) L. V. J. LAVILLE, Judge.

SUMMING UP.

J. Bahru Emergency Case No. 6/49.

Summing-up by LAVILLE, J.

*In the
Supreme
Court of
Johore.*No. 23.
Summing
Up.

Gentlemen,

You have heard the evidence for the prosecution and the defence and the addresses of Counsel on both sides. It now remains for me to sum-up the evidence to you and to instruct you on the law which should be applied in this case so as to enable you to come to your finding.

I need not remind you that this is a serious matter that you are dealing with and that you should approach it in a spirit of honest enquiry. At the same time you must not be overwhelmed by your responsibility or allow the gravity of the occasion to affect your judgment in any way. Your responsibility is limited. Your sole business is to decide on the evidence and on proper inferences that can be drawn from it whether the accused is guilty of the offences with which he is charged, namely, the carrying of a firearm without a licence to do so, and being in possession of ammunition, also without proper authority or whether he is not guilty of these offences. That is the sole scope of your responsibility. You are not responsible for what the effect of your finding is. That is a matter laid down by the law. Your responsibility is solely to decide: Did this man carry a firearm without licence, and did he have in his possession ammunition also without a licence? About the result of your finding you need not care.

It is for you to say, after considering the evidence, which set of facts you will accept as true and which aspects to those facts you believe. Having come to that conclusion, you must apply those facts which you accept as true the law as I shall explain to you, and so come to your decision. In regard to the facts I may, if it seems good to me, express my opinion on them, but at the same time I must tell you that you are not bound by any opinion I may express on facts. It is your duty by your own independent examination of the evidence to come to a decision on the facts of this case. But in regard to the law, you must accept the law from me. If I make a mistake in law, that will be remedied in another place.

In regard to the question of proof, you may find it difficult to understand what is meant by "proved". Well, Gentlemen, I will read to you the definition of the word "proved" in the Evidence Enactment. That Enactment says: (Reads) You will see from that that what is required in a criminal matter is not mathematical or absolute proof. There are few things in the affairs of human beings in this world that is capable of being proved mathematically or absolutely. The standard of proof required is such a certainty as men reasonably and soberly considering a serious matter affecting their own private lives or business in which they dare not take a risk would act on. That is the standard of proof that is required in a criminal case.

I will now come to the question of the onus of proof, i.e. on which side rests the burden of proving the guilt of the accused. In regard to that, you must approach this case with the assumption that the accused is

innocent. Legally, innocence is the natural state of man. Therefore the accused will remain innocent until the prosecution can, if they do, satisfy you beyond all reasonable doubt that he is guilty. In other words, you must continue in the assumption of accused's innocence until you can no longer as reasonable and sensible men consider him, owing to the weight of the prosecution evidence against him, to be innocent. Unless the prosecution by their evidence can upset that assumption of innocence, the accused is entitled to go on being considered innocent and therefore entitled to be acquitted. The prosecution say that the accused is guilty.

*In the
Supreme
Court of
Johore.*

—
No. 23.
Summing
Up,
continued.

- 10 The law therefore says that it is the business of the prosecution to prove to you that he is guilty. That is to say, the law lays the onus on the prosecution. At no part of the case is the onus placed on the accused to prove that he is innocent. In other words, unless the prosecution satisfy you that the accused is guilty, then you are entitled to assume that he is innocent and to acquit him. But there are certain matters in which the onus is cast on the accused, not to prove his innocence but to show mitigating circumstances or circumstances which are within his own peculiar knowledge. In regard to this case, such circumstances arise in regard to the question whether the accused is
- 20 authorised or not to carry firearm or to be in possession of ammunition. The only authority to carry a firearm or to be in possession of ammunition is a licence. The accused is in the best position to know whether he had a licence to carry a firearm or to possess ammunition or not. Therefore the onus is on the accused to prove that he has such a licence, if he has one.

- In regard to the quantum of proof, or how much proof is required, Gentlemen, you have already heard from the learned Counsel for the defence that the prosecution must prove their case beyond all reasonable doubt. I must remind you that it does not mean beyond all possible doubt. As I have said, in regard to proof such a thing is impossible. The prosecution
- 30 must prove their case beyond all reasonable doubt. It is a reasonable doubt, not a fanciful or fantastic doubt, nor an excuse on your part to avoid a distasteful duty or the tedious examination of the evidence ; it must be a genuine, honest doubt. In regard to the accused, whenever the onus is cast upon him to prove anything, he has a less difficult task. The accused need only satisfy you that the balance of probability, however slight that balance, is in his favour. If he so satisfies you, then he is entitled to the benefit of that slight probability.

- Finally, Gentlemen, if the evidence on any particular point or on the whole case appears to you so equally balanced that you cannot decide in
- 40 favour of the accused or the prosecution, then you must decide that point or the case in favour of the accused. If you have any reasonable doubt, again I say reasonable doubt, you must give the benefit of that doubt to the accused. That is all I have to say on the preliminary points.

- The accused is charged under sec. 4 (1) (a) of the Emergency Regulations, 1948, with carrying a firearm, namely that revolver there (Ex. E) on the 13th September, 1948, at Bukit Kepong, Muar, which he was not duly licensed to carry under any written law for the time being in force in this country. Therefore the prosecution must first of all prove that the accused man had this revolver either on his person or in his hand, and
- 50 secondly they must prove that he knew it was there—on his person or in his hand—and that he knew it was a revolver or a firearm. The next

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No. 23.
Summing
Up,
continued.

thing required to be proved by the prosecution is that this thing which they say the accused was carrying is a firearm, a lethal weapon, from which by some explosive means a missile which would cause death can be ejected. They have also to prove that the accused man is not authorised or licensed to carry that particular firearm. The accused is also charged under sec. 4 (1) (b) of the Emergency Regulations with being in possession of ammunition. You know what ammunition is. It is an explosive by means of which a bullet which would cause death can be ejected from a firearm. The prosecution must prove, in regard to this charge, that the accused was in possession of ammunition and that he had no authority to be in such possession. 10

In regard to the first charge, Gentlemen, you will see that the weapon has been produced. You see that weapon, Ex. E, and it is for you to say whether it is a firearm or not. In regard to that you have the evidence of the Sgt. Major, Abdullah bin Mohd. Shah. He says that on 20th September, 1948, with .38 ammunition, he tested the weapon and that it exploded the ammunition. That is the prosecution evidence on that point. In regard to the second charge, you have again the evidence of the Sgt. Major that to-day, this morning, he fired one of these 10 rounds of ammunition handed to him by Sgt. Sohan Singh and that that particular bullet exploded and discharged a lethal missile. That is the prosecution evidence in regard to whether Ex. E is an effective firearm and whether this ammunition is effective ammunition. It is for you to say whether the prosecution have proved beyond all reasonable doubt that Ex. E is an effective firearm and this ammunition is effective. 20

In regard to the question whether the accused had legal authority to carry a firearm or to be in possession of ammunition, I have told you that the onus is on the accused to prove that he has such authority. However, the prosecution have given a certain amount of evidence on that point. They have shown you by the evidence of the Sgt. Major that, as far as the records of the Muar District go, this firearm is not registered and that the accused's name does not appear on the register as being licensed either to carry firearms or to possess ammunition. The accused himself had nothing to say on that point. I must tell you again that in regard to the question of licence the onus is on the accused to prove that he has a licence. In the evidence he gave he makes no mention at all that he has such licence. 30

I now come to the main point in this trial. The essence of the charge is that the accused was carrying this revolver, Ex. E, that is to say, having consciously on his person with the knowledge of what it was. In regard to that, the prosecution evidence is the evidence of 3 men, Mohd. Said, Saebun, and Abdul Aziz. The main evidence is that of Saebun. All these 3 witnesses are certain that they saw that the accused was carrying this revolver. Mohd. Said who gave evidence first says that he saw this revolver E. at the accused's waist. This is what he says: "I actually saw with my own eyes that each of the Chinese and the Indian were carrying a weapon; one Chinese had a cut down .303 and the other a smaller one, and the Indian a revolver. The revolver was at the Indian's waist." The accused, you will remember, says in his evidence that he had the revolver wrapped up in his left trouser pocket. Mohd. Said was cross-examined on this point and he says: "I deny X (i.e. the revolver) was tied up in a rag in accused's right hand trouser pocket." That is Mohd. 40 50

Said's evidence in regard to the accused's having this revolver. His evidence is that he saw it tucked in accused's waist and that it was not wrapped and kept in accused's trouser pocket. Later he says: "I saw the revolver at accused's waist when we first came upon the 3 men."

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We next come to the evidence of Saebun. His evidence is that he saw this revolver in the accused's hand and that it was there all the time till he disarmed the accused and took it. This is what he says: "After the Chinese fired the shot the Indian drew a revolver. I saw it in his hand but I can't say from where he drew it." He says the accused pointed
10 the revolver at him and attempted to shoot him. He then says that he cut the accused with his knife and eventually took the revolver from him.

No. 23.
Summing
Up,
continued.

The evidence of Abdul Aziz is that he saw the accused take a revolver (Ex. E) from his left hand trouser pocket and point it at Saebun. Abdul Aziz later says that he saw Saebun struggle with the accused and take the revolver from him.

Gentlemen, you have therefore the evidence of these 3 men. One of them says that the accused had the revolver at his waist, and the other two say that the accused had the revolver in his hand and that he tried to use it at Saebun. The evidence of Saebun and Abdul Aziz agree in
20 that they say they saw the accused had the revolver in his hand. Abdul Aziz was behind, according to him, and so was in a position to see what happened. The other 2 were engaged in fighting for their lives and their attention was therefore possibly concentrated on the men they were fighting.

Gentlemen, if you believe the evidence of Saebun and Abdul Aziz that they actually saw the accused with the pistol and if you believe the accused's evidence, then I do not know how you can come to any other conclusion than that the accused was carrying this weapon, Ex. E. However, there are contradictions and discrepancies in the evidence of
30 these prosecution witnesses. You must consider the character of each witness as disclosed to you in the way they gave evidence and you must consider how far they are reliable. Also you must take into consideration the circumstances in which they had to exercise their observation. Each of these men at that particular time was being attacked, according to them and to the evidence of the accused, and it seems reasonable to suppose that the whole of their minds and part of their powers of observation were concentrated on one particular point at that time. You must consider whether in such a situation the observation of these witnesses is likely to be accurate and exact. You must say how far any weight
40 you attach to their evidence should be qualified by the discrepancies in their evidence, having regard to the circumstances in which they were placed at that time. Gentlemen, that is the situation. The main evidence of these men is that the accused was carrying this revolver. You must consider that evidence and at the same time you must consider the character of these people and the circumstances in which they had to exercise their powers of observation; then you must also consider the discrepancies in their evidence. Between Saebun and Abdul Aziz you may perhaps find that there is no discrepancy. Both of these witnesses say that they saw the accused man with a revolver in his hand.

50 I now come to the discrepancies. The first discrepancy is in regard to the conversation when these two parties met—the accused's party

*In the
Supreme
Court of
Johore.*

No. 23.
Summing
Up,
continued.

and the Malays. Mohd. Said in his main evidence says : " As they (the Chinese) approached, about 6 ft. from me one of the Chinese drew a rifle from his waist. I said to him Why the rifle ? He made no answer but fired at me." He contradicts himself in cross-examination where he says that there was no talk at all between the two parties. In regard to this contradiction, you must consider what value you put on it as to his credibility as a witness, and how far you think that should weigh in considering his main evidence.

In regard to the conversation, Saebun says : " Mohd. Said did speak to them (the Chinese) and said ' Mana pergi.' The reply of one of the Chinese was ' Now don't ask.' He spoke in Malay." 10

In regard to Abdul Aziz again there is contradiction. He first said his party did not speak to the other party as they approached. Immediately afterwards he said : " I now say Mohd. Said did say ' Mana pergi ' to the others. One of the Chinese said ' Apa pasal tanya ' (Why do you ask me ?). Nothing further was said."

There, Gentlemen, you have the situation. Was there any conversation between these two parties ? Mohd. Said says that he said something about the rifle. In cross-examination he said there was no conversation at all. Saebun said there was conversation between Mohd. Said and the Chinese. Abdul Aziz first said there was no talk. Immediately afterwards he said there was. Therefore you have contradiction in the evidence of these witnesses. It is for you to say how far that contradiction will affect the evidence of these witnesses on the main point as to whether or not the accused at that time was carrying a revolver. You must decide whether you should reject their evidence completely because they have made this contradiction on this subsidiary matter. 20

There is another contradiction, and that is regarding the bag Ex. C. Saebun said that the accused carried it in his left hand. Mohd. Said said the accused carried the bag in his right hand. Again you have contradiction, and again, Gentlemen, you must consider whether this contradiction in this subsidiary matter reduces the value of their evidence on the main issue. 30

You have also the question of the 4 bullets. In regard to that Saebun says he gave the bag, Ex. C, to the Penghulu at his house and that it was examined there and 4 bullets were found therein. But the Penghulu says that he did not examine the bag at all. He says he handed it the next day to Sgt. Major Abdullah.

There is also a further discrepancy in regard to the report made by Penghulu to the police, Ex. G., and that is on the question of the weapons. 40 The evidence of the 3 Malay witnesses is that the 2 Chinese carried cut down rifles and the accused carried a revolver. In the Penghulu's report he says : " All the 3 persons came to my house and informed me that they were going to Bukit Kepong when half way through the journey were met with 3 Communists carrying 2 pistols and one short gun. On meeting the 3 persons above-mentioned, the Communists threatened them by producing the pistols and firing." He further says that the Malays were able to snatch away one pistol and one short gun ; one Indian was arrested, one Chinese died, while another Chinese escaped carrying a pistol. Therefore you will see that according to this report the Penghulu says there were 2 pistols 50

and one short gun, but according to the 3 Malay witnesses there were two short guns and only one pistol. It is for you to say how much weight you will attach to this discrepancy.

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Supreme
Court of
Johore.*

—
No. 23.
Summing
Up,
continued.

I think these are the main contradictions and discrepancies in regard to the evidence of the main prosecution witnesses. You must consider what weight you will rightly attach to them. You must remember that the fact that a witness contradicts himself in regard to one part or one point in the evidence does not necessarily vitiate his entire evidence ; it does not necessarily mean that you must disbelieve all that he says. You are
10 entitled to take into consideration the discrepancies and contradictions and the other evidence which does not contradict itself or is not contradicted by other witnesses and decide what weight you will give to those discrepancies and contradictions, and whether they make you to discard the whole of their evidence. If you consider that the discrepancies are such that you cannot believe the main evidence in regard to the carrying of the firearm, then of course you must acquit the accused. If however you consider these discrepancies are minor discrepancies on minor points and minor circumstances which the witnesses were not in a position to observe with accuracy, then it is possible for you, in spite of those discrepancies,
20 to believe the main evidence. But it is a matter for you to consider and for you to weigh.

In regard to the defence. You have heard the evidence of the accused man. He admits possession of this revolver. He says that it was given to him by one Chinese wrapped up in a cloth. You will remember therefore that though he admits possession, he says it was unconscious possession in other words he said he did not know that it was a revolver, because it was wrapped up in cloth. This was put to Saebun and Abdul Aziz and they both deny that the revolver was wrapped up. It is for you to say which
30 story you believe. Do you believe the story of the accused that though he had the revolver he did not know that it was a revolver, or do you believe the story of the prosecution witnesses that he had the revolver in his hand, not wrapped up, and that he pointed it at Saebun who then attacked him and got the revolver from him ? In regard to the defence, you will see that there is no allegation by the accused of any ill-feeling with these 3 Malays. There is no explanation as to why Saebun or any of the Malays should attack him.

Gentlemen, you must consider which of these 2 stories you consider more probable. If you are satisfied beyond all reasonable doubt that the accused man was on that occasion carrying a revolver and that he had it in
40 his hand, not wrapped up, then you will be justified in returning a verdict of guilty. If, on the other hand, you consider that the prosecution evidence is not acceptable, that you do not believe the story of Saebun and Abdul Aziz and Mohd. Said, and that the discrepancies in their evidence are so great that they cause you to consider that it is totally unreliable in regard to what they said as to the events that took place there, in short if you have any doubt, any reasonable doubt, in regard to the prosecution story, then you must give the benefit of that doubt to the accused and acquit him.

It is not necessary for you to agree in your finding, but it is of course more desirable if you do so. I will ask you to give a finding on each of the
50 2 charges.

*In the
Supreme
Court of
Johore.*

No. 23.
Summing
Up,
continued.

I will now further deal with the second charge, i.e. that of being in possession of ammunition. The only evidence in regard to that is the evidence of Saebun and the Penghulu. Saebun says: "I examined the revolver E. only at Penghulu's house. It was loaded with 6 bullets." He further says that the bag, Ex. C., was also examined at the Penghulu's house and that 4 bullets were found in it. In regard to this, Gentlemen, you will remember that Penghulu's evidence. He says: "I did not examine the revolver or the leather bag at my house. I deny that revolver or case was opened at my house. I handed E. and C. (revolver and bag) over to the police myself on 14.9.48. I did not see it opened there." 10
But when he was questioned by the Court he says: "I now say the revolver E was loaded when I saw it in my house." There is also the evidence of Kassim who received the revolver from the Penghulu. He says: "At same time Penghulu handed me Ex. E., a revolver, I broke it; it was loaded with 6 bullets." That is the evidence as to the 6 rounds of ammunition.

In regard to this, Gentlemen, you must remember that the accused man is charged with being in possession of 10 rounds of .38 ammunition at this path near Bukit Kepong at 10 a.m. on the 13th September, 1948. The prosecution evidence is that 6 rounds of ammunition were found in the 20
revolver E. at the Penghulu's house. In regard to the 4 rounds of ammunition Saebun says that these were found in the bag C. again at the Penghulu's house. The Penghulu denies it, and says he never saw the bag opened at all. There is no further evidence to show that these bullets were seen on the person or in the hands or in the possession of the accused. It is for you to say whether the prosecution have proved that the bullets were in the possession of the accused at the time and place alleged by them.

I do not think, Gentlemen, there is anything further for me to say. I have to remind you again that if you have any reasonable doubt, I 30
emphasise the word "reasonable", in regard to the prosecution case, you must give the benefit of that doubt to the accused. You must return a separate verdict on each of the 2 charges. If you wish to retire and consult with each other you may do so.

Taken down by me

(Sgd.) A. GEORGE,
Secretary to Judge,
Supreme Court,
Johore Bahru.

No. 24.

CHARGE.

STATE OF JOHORE.

*In the
Supreme
Court of
Johore.*

IN THE SUPREME COURT OF JOHORE
At Johore Bahru.

No. 24.
Charge,
21st March
1949.

Emergency Criminal Case No. 6 of 1949

PUBLIC PROSECUTOR

*versus*SIVAM *alias* SAMBASIVAM

10

THE CHARGE.

Sivam *alias* Sambasivam, You are charged at the instance of the Public Prosecutor, and the charge against you is :—

That you at about 10 a.m. on 13th September, 1948, at Bukit Kepong, Muar, in the State of Johore, carried a firearm, to wit, a .38 revolver, which you were not duly licensed to carry under any written law for the time being in force, and you have thereby committed an offence punishable under Regulation 4 (1) (a) of the Emergency Regulations, 1948.

Dated at Johore Bahru, (Sgd.) W. MARTIN McCALL
this 21st day of March, 1949. Dy. Public Prosecutor.

20

No. 25.

NOTES OF EVIDENCE.

JOHORE BAHRU ASSIZES.

No. 25.
Notes of
Evidence,
21st March
1949.

21st March, 1949

Johore Bahru Emergency Trial No. 6 of 1949

PUBLIC PROSECUTOR

*v.*SIVAM *alias* SAMBASIVAM s/o NARAYANASAMY*Charge* : Regulation 4 (1) (a) Emergency Regulations, 1948.

For P.P. Martin McCall.

30

For Prisoner P. V. Charry.

Cor. : Storr J.

D.P.P.s certificate and acknowledgement of receipt of statements handed up.

*In the
Supreme
Court of
Johore.*

Those called as Assessors not present.

McCall—I propose putting in a statement of the accused taken by a Police Officer. I have served Charry with a copy.

No. 25.
Notes of
Evidence,
21st March
1949,
continued.

Charry—I have duly received a copy. Those called as Assessors return.

Accused charged—I understand the charge and claim trial.

Assessors called—1. Che Gholam bin Mohamed Som.

2. Seah Swee On.

3. G. S. Kumar.

I choose—Che Ghoman bin Mohamed Som.

10

Govin Sukumar Kumar.

McCall opens—

Refers to charge and facts sought to be proved.

Main evidence—3 Malays.

Saebun bin Kamat—tackled accused.

3 Malays put to flight 2 Chinese and laid the accused low, badly wounded by parang.

Saebun will say he snatched revolver from accused.

Calls—

*Prosecution
Evidence.*

PROSECUTION EVIDENCE.

20

No. 26.
Evidence of
Mohamed
Said bin
Alam,
Examina-
tion.

No. 26.

Witness No. 1.

P.W.1 affirmed states in Malay.

MOHAMED SAID BIN ALAM. I live at Bukit Kepong and am a rubber tapper. I can remember the morning of 13th September, 1948. On that morning I left my house at Bukit Kepong to get my rice ration. On my way I met 2 Malays known to me, named Saebun and Abdul Aziz and I continued on with these 2 Malays. We were walking in a file along the parit path. When I was about a mile or $1\frac{1}{2}$ miles from Bukit Kepong I met 3 persons. Saebun was walking in front, Abdul Aziz was the last, and I was in the middle. The persons I met were coming from the opposite direction. They were walking in a file also. They were 2 Chinese and one Tamil. The Tamil was at the rear. I knew one of the Chinese by the name of Ah Kow. He was the first of the three. I have known him a long time. He lived in a Kampong near my kampong. I have known him for the last 2 or 3 years. There was a conversation between our party and the others. I greeted Ah Kow and he replied—he shouted the reply—and I thought it was a rude reply. Then he took his rifle and

30

fired at me—it was tucked in his waist. I then took my parang and slashed him—it was about 1 foot long. I saw the Indian fighting with Saebun. I did not see anything in his hand. My attention was almost wholly taken up with the Chinese I was fighting. The Chinese I was fighting died on the spot at the same place. It was about a chain away from the place we were fighting. During the struggle we were moving and the last spot was where he died. When he died I was no longer there. I was at that time about 1 chain away from Saebun and the Indian. Having disposed of my Chinese I returned to the place where Saebun and the Tamil were fighting, and I saw Saebun standing and the Tamil standing. When I arrived they were not doing anything—the Indian was standing with wounds. He was standing for about 10 minutes when I was there. I saw they were not doing anything but the Tamil was wounded. When I saw Saebun was not doing anything. I then took Saebun to Penghulu's house. When we left he was standing seriously wounded. Saebun showed me a revolver and the Tamil who had been wounded. He had the revolver in his hand. Saebun said he got it from the hand of the Tamil. He did not say to me how he got, only that he got it from the Tamil. The other Chinese fired at me also. He fought with Abdul Aziz and he (Chinese) ran away. I did not see him again. Leaving the Indian standing there wounded we all then went to the Penghulu's house which is from here to the Causeway (approximately $\frac{1}{2}$ mile). There we told the Penghulu what happened and there Saebun handed over the revolver. We then took the Penghulu back to the place where the fight occurred. The Tamil was still there. He had fallen to the ground and looked as though he was going to die. The Penghulu called the police and the Indian was subsequently taken to Lenga. The accused is the Indian who was in the fight with the Chinese. It was from him Saebun said he took the revolver. He was wearing a shirt and a pair of trousers. I did not see the accused carrying anything as he was approaching us along the path. I saw that revolver—I saw it in Saebun's hands. (Marked P.1 for identification.) That is Saebun bin Kamat (produced and identified). That is Abdul Aziz bin Tampak (produced and identified). That is the Penghulu (Ali bin Mustapha produced and identified).

Xcnd. by Charry—Yes, I had known Ah Kow for 2 years. Formerly there was no ill-feeling between me and Ah Kow. When I met him on 13th September, 1948, I met him as a friend and I greeted him—the greeting was the usual one. He did not want to tell me where he was going. Immediately he started firing at me. I cannot give any reason why he should do that. When I asked him the question he was about 2 fathoms from me (Indicates in Court distance). When he fired at me he was nearer—about 1 fathom away. He missed me. Immediately he fired at me I pounced on him. I cannot remember how many times I stabbed him. He tried to move. The struggle between us only lasted 2 or 3 minutes. I was facing him. Ah Kow moved backwards but not in the direction of the other Chinese and Tamil. The other Chinese was about 3 fathoms away from me when he fired at me. Yes, I took something to the Penghulu. I carried that mat bag and that rifle. (Put in and marked D.1.) Saebun was carrying the leather bag. (Marked D.2 for identification.)

No re-examination.

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

*No. 26.
Evidence of
Mohamed
Said bin
Alam,
Examina-
tion,
continued.*

P.1.

*Cross-
examina-
tion.*

D.1.
D.2.

*In the
Supreme
Court of
Johore.*

No. 27.

Witness No. 2.

P.W.2 affirmed states in Malay.

Prosecution
Evidence.

No. 27.
Evidence of
Saebun bin
Kamat,
Examina-
tion.

SAEBUN BIN KAMAT—I live at Bukit Kepong, rubber tapper. On morning of 13th September, 1948, I set off to Bukit Kepong to get my rice ration and on the way I met Abdul Aziz and later on Mohamed Said, and then all 3 of us proceeded on our way. We were walking in single file. I was first in the file, then Mohamed Said second and Abdul Aziz third. Mohamed Said and I were nearer to one another than Mohamed Said and Abdul Aziz. I had a knife on me, similar to a bayonet—a commando knife about 6 inches long. I saw 2 Chinese and an Indian coming along the same path towards us. It was about 10 a.m. They were walking in single file also. The Indian was at the rear also. I did not know any of those men. At that time I could not see the Indian very clearly as the view was obstructed by the Chinese. There was a little conversation between Mohamed Said and the other party. He said, "Mana mau pergi." The reply was given in a rude way. The Chinese after replying rudely drew a rifle from his waist and fired. At that time we were within a few feet of the 2 Chinese and Indian. I saw the Indian draw a revolver. By this time the Indian was clearly in sight and I could see clearly. I saw him drawing the revolver from his waist—it was from the centre of his stomach. He was wearing a shirt and a pair of trousers. It was wrapped up in a small towel, but not entirely wrapped up; only part of it. It was only tied up, not entirely wrapped up. (Witness demonstrates in Court.) The towel was wrapped round the butt. This is how he drew it from his waist band (demonstrates). I cannot remember seeing the lanyard hanging down when he drew it. I could see quite clearly the barrel, trigger, trigger guard and Chamber. I knew it was a revolver and he pointed it at me. I rushed at him with drawn knife and I managed to disarm him. I was holding the knife in my right hand and when I rushed at him I hit him with my left hand and stabbed with my right. The pistol fell down to the ground. I stabbed him many times. The first time I stabbed on his left forehead. The second time on the back, the third time in the abdomen. By that time he was almost hopeless. I picked up the revolver. I was fully occupied with the Indian and did not notice particularly what happened to the other Chinese with Abdul Aziz and Mohamed Said. I know now that Abdul Aziz chased one Chinese and Mohamed Said killed one. Mohamed Said killed him—Chinese—about one chain away from where I and the Indian were. I saw Mohamed Said come back from that place. I showed him the revolver. When he came back I said, "Here is one pistol and a bag", and I told him I got it from the Indian. Abdul Aziz knows about the revolver because he was there. When I confronted the Indian he had his revolver in one hand and the bag D.2 in the other hand. He was carrying it at the trail. P.1 looks similar to the revolver I took from Indian—it is the same kind. We all then went to the Penghulu to report leaving the Indian and dead Chinese behind. When I left the Indian was lying down. I reported the matter to the Penghulu and handed the revolver to the Penghulu. I then returned to the scene with the Penghulu and found the Indian still there. The accused is the Indian concerned and it was from him I seized the pistol. That is Abdul Aziz and the Penghulu (produced and identified).

Xnd. by Charry—Yes, the revolver was wrapped in a towel. It is not here. It was a small towel, smaller than a handkerchief. After I had stabbed 3 times the accused fell down. After he fell down I stabbed him some more. Yes, when Mohamed Said came he found the accused lying prostrate on the ground. Yes, I reported to Penghulu and carried a pistol and the bag D.2. Mohamed Said carried a rifle and 2 mat bags. Aziz was not carrying anything. I do not know which had clothes and papers in it. I think some clothes and papers were in all the bags. There was nothing loose—everything was contained in these three bags. (Third bag put in and marked D.3.)

Re-examination—When I picked up the revolver from the ground the towel was not wrapped round it.

By Court.

1st Assessor—I do not know if the revolver was loaded.

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

No. 27.
Evidence of
Saebun bin
Kamat,
continued.
Cross-
examina-
tion.
D.3.
Re-examin-
ation.

No. 28.

Witness No. 3.

P.W.3 affirmed states in Malay.

ABDUL AZIZ BIN TAMPOK, rubber tapper, Bukit Kepong. On morning of 13th September, 1948, I was going to Bukit Kepong to collect my rice ration, and on the way I met the last 2 witnesses and proceeded on our way to Bukit Kepong. We were walking in single file—I was bringing up rear. At about 10 a.m. I saw some people coming towards us—2 Chinese and one Tamil. The Tamil was at the rear. As we approached Mohamed Said greeted the Chinese. He said, “Mana pergi.” The Chinese replied in a rude form. Then both Chinese fired. I had a knife with me. I drew the knife and stood there. There was one Chinese who fired and ran away. I chased him but could not get at him. I saw Saebun fighting an Indian before I chased the Chinese. I saw there was a pistol in the right hand of the Indian. He pointed the pistol at Saebun. Saebun rushed at him and got the revolver. I saw before I chased the Chinese that the Indian had the pistol in his hand and it was when I came back I learned from Saebun how he got the revolver. I was about 5 fathoms away when Saebun and Indian were fighting—from here to that pillar (39 feet approximately). When I got back from chasing the Chinese the Indian was lying down. Saebun was there. It was then he told me about the revolver. It was similar to that P.1. I was there when Mohamed Said came back from killing his Chinese and I heard Saebun tell him about the revolver. We left the Indian behind and went to nearest Penghulu, who returned with us to scene and we found the Indian still there. The Indian was taken down to Lenga subsequently. The accused is the Indian I referred to. That is the Penghulu (Ali bin Mustapha identified).

Xnd.—by Charry—The pistol in the Indian’s hand came from his waist. I thought it was definitely a pistol. I cannot say if he drew

No. 28.
Evidence of
Abdul
Aziz bin
Tampok,
Examina-
tion.

Cross-
examina-
tion.

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

something from his left hand trouser pocket. I did not see. As far as I know I did not see if he took out anything from his left trouser pocket. I did not search him. I saw him draw the pistol from his waist. I did not see well if there was anything wrapped round the pistol when he drew it from his waist. (Charry mentions this is a re-trial. I inform him he must not mention such a thing. Intld. P.S.).

No. 28.

No re-examination.

Evidence of
Abdul
Aziz bin
Tampok,
Cross-
examina-
tion,
continued.

To 2.15 p.m.

(Sgd.) PAUL STORR.

2.15 p.m. case continued.

10

No. 29.

Evidence of
Ali bin
Mustapha,
Examina-
tion.

No. 29.

Witness No. 4.

P.W. 4 affirmed states in Malay.

ALI BIN MUSTAPHA, Penghulu of Bukit Kepong. I remember morning of 13th September, 1948. Shortly before 10.30 a.m. the last 3 witnesses (points out) came to my house. They said they had met 3 bandits and they brought with them some articles they had taken from the 3 bandits. Among the articles was this pistol P.1. I recognise it. I saw there was a number in the revolver but I cannot remember the number—also recognise it by the lanyard and in all other respects it is identical. 20
Saebun gave me P.1. He said that on his way to Bukit Kepong the 3 of them met 3 Communists and there was a fight and he got the revolver from one Indian. I returned with the 3 witnesses to the scene of the incident. When I got there I found that accused lying seriously wounded on the ground and a short distance away, between 20 and 25 feet, was a Chinese lying. I cannot remember what articles were lying close to the accused. The four of us carried the accused down to Bukit Kepong and then to the Police Station at Lenga. I there handed the accused and the revolver that had been handed to me by Saebun to P.C. 6975. (Kassin bin Siran produced and identified.) 30

Cross-
examina-
tion.

Xwd. by Charry.—Those 3 witnesses (points to P.W.1, 2 and 3) brought with them a revolver P.1, a rifle, and 2 mat bags and a leather bag (D.1, D.2 and D.3). When P.1 was handed over to me it was like that—nothing particular about it. Yes, I have seen a revolver with a lanyard on it before. There are some big revolvers and some small.

No Re-examination.

No. 30.
Witness No. 5.

*In the
Supreme
Court of
Johore.*

P.W.5 affirmed states in Malay.

KASSIM BIN SIVAN, P.C. 6975 stationed at Lenga Police Station. At about 4.30 p.m. on 13th September, 1948, those 4 witnesses (P.W.1, 2, 3 & 4) brought the accused to Lenga Police Station. P.W.4 handed me one pistol and one sawn off rifle. This is the revolver that was handed to me. I know it by the number—it is 18282. P.1 is the revolver. (McCall : I ask for it to be admitted in evidence, P.1). At the same time he made a
10 report which I recorded in the report book. A short while afterwards the Sergeant i/c of the Police Station returned and I handed the revolver to him. That is the Sergeant 2226 (Ismail bin Abdul Samad produced and identified).

*Prosecution
Evidence.*

No. 30.
Evidence of
Kassim
bin Sivan,
Examina-
tion.

Xand. by Charry.—Yes, I found some ammunition in one of the mat bags—this one D.3. (Note : I tell Charry this is irrelevant. He says it is part of his defence which has not yet been disclosed. Intld. P.S.). Yes, I found 4 rounds. Yes, they were .38 cartridges which would fit P.1.

Cross-
examina-
tion.

Re-examination—When I received the revolver from the Penghulu it was loaded with 6 rounds.

Re-examina-
tion.

20

No. 31.
Witness No. 6.

No. 31.
Evidence of
Ismail bin
Abdul
Samad,
Examina-
tion.

P.W.6 affirmed states in Malay.

ISMAIL BIN ABDUL SAMAD, P.C. 2226 i/c Lenga Police Station. On 13th September, 1948, I returned from rounds at about 4.30 p.m. When I returned I found P.Ws.1, 2, 3 and 4 (pointed out), and the accused, who was in a seriously wounded condition in the Police Station. P.C. 6975, last witness, who had been left in charge of Police Station said Penghulu, P.W.4, had made a report. He handed me 1 revolver, 10 rounds of ammunition and a rifle and 7 rounds ammunition. P.1 is the revolver
30 that he handed to me. I recognise it by the number 18282. O.C.P.D. Panchor arrived shortly afterwards and took accused to Muar Hospital. On the following day I handed P.1 to L/Cpl. 8115 on the instruction of Sergeant Major Abdullah and at the same time I handed over D.1 and D.3 to the Lance Corporal.

Xx. by Charry—No questions.

Cross-
examina-
tion.

*In the
Supreme
Court of
Johore.*

No. 32.

Witness No. 7.

P.W.7 affirmed states in Malay.

*Prosecution
Evidence.*

ABU BAKAR BIN AHMAD, L/Cpl. 8115 stationed at Muar Police Station. On 14th September, 1948, I accompanied a party of police to Lenga under Sergeant Major Abdullah. While there I was handed by the last witness, Sergeant 2226, P.1. D.1 and D.3 with instruction to take them to Muar Police Station and hand them over to the Guard Room.

No. 32.
Evidence of
Abu Bakar
bin
Ahmad,
Examina-
tion.

Xcnd. by Charry—No questions.

No. 33.
Evidence of
Abdullah
bin Modh.
Shah,
Examina-
tion.

No. 33.

10

Witness No. 8.

P.W.8 affirmed states in Malay.

ABDULLAH BIN MOHAMED SHAH, Sergeant Major of Police stationed at Muar. On 14th September, 1948, I went with a party of police to Lenga Police Station to investigate a case of possession of arms. On arrival there I was handed P.1, D.1 and D.3. P.1 is the revolver. I know it by the number—it is 18282. I instructed last witness to take it to Muar. On my return to Muar some time later I examined the Arms Register to see if the revolver was registered. There was nothing about it in the Register. Bukit Kepong is in Muar Police Circle. I tested P.1. 20
I fired one .38 round and found it serviceable.

Cross-
examina-
tion.

Xcnd. by Charry—I tested it with a fresh bullet. I tested on 2nd March the revolver with one of the bullets handed to me.

No Re-examination.

No. 34.
Evidence of
Abdullah
bin Omar,
Examina-
tion.

No. 34.

Witness No. 9.

P.W.9 affirmed states in English.

ABDULLAH BIN OMAR, Senior Inspector stationed at Muar. On 13th September, 1948, at about 9 p.m. I recorded a statement from the accused in Muar Hospital. D.P.C. 823 was present. I satisfied myself 30
that the accused was fit to make a statement. I had the permission of medical authorities to approach him. He appeared to me to be quite clear minded and knew what he was talking about. He was in bed. There were other beds nearby. Before taking a statement from the accused I cautioned him. I said: "It is my duty to warn you that you are not

obliged to say anything but anything you say may be used in evidence at your trial." It is in compliance with Regulation 33, Emergency Regulations, 1948. I learnt it off by heart. That caution was interpreted into Tamil by D.P.C. 823. After the warning the accused was willing to make a statement. He then proceeded to make a statement which was interpreted by D.P.C. 823 from Tamil into Malay and I took it down into English. When I had taken it down in English I read it back to accused through D.P.C. 823 and he agreed it was correct. The first part he volunteered but later I asked him questions.

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

No. 34.
Evidence of
Abdullah
bin Omar,
Examina-
tion,
continued.

10

Q. Will you indicate in blue pencil where the questions started ?

A. Yes, I have done so.

No force, inducement, threat or promise was used to get the statement. I am satisfied that the statement was purely voluntary.

Xvnd. by Charry—I do not understand Tamil.

No Re-examination.

Cross-
examina-
tion.

McCall—Witness, owing to an error, is not available but will be in a few minutes. There were 2 interpreters used in this case and only one turned up. I apologise. Would Your Lordship adjourn for a few minutes ?

Charry—No objection.

20

3.20 p.m. Court adjourns.

(Sgd.) PAUL STORR

3.44 p.m. case continued.

No. 35.

Witness No. 10.

P.W.10 affirmed states in English.

No. 35.
Evidence of
Kasipillai
Raja,
Examina-
tion.

30

KASIPILLAI RAJA, D.P.C. 823 stationed at Central Johore Bahru. At about 9 p.m. 13th September, 1948, I acted as an interpreter for that accused to Inspector Abdullah (P.W.9). That was in the hospital at Muar. The accused was in bed. He was quite able to understand what was being said to him and was coherent enough to make a reply. Inspector Abdullah spoke in Malay to me and I translated into Tamil to the accused. I am a fluent Malay speaker. I was born at Kluang. My mother tongue is Tamil. I have been speaking Malay and Tamil since infancy. I cautioned the accused and translated the Inspector's caution to the accused. The Inspector's caution was more or less, "If you want to say anything you can ; if you don't you needn't ; but if you do it may be used in evidence at your trial." Having translated that warning to accused, he expressed his willingness to make a statement. I then proceeded to interpret the statement the accused made from Tamil into Malay. The statement came from the lips of the accused and not from questions. When it was completed

40

*In the
Supreme
Court of
Johore.*

*Prosecution
Evidence.*

No. 35.

Evidence of
Kasipillai
Raja,
Examina-
tion,
continued.
P.2.
Cross-
examina-
tion.

the Inspector read it back to me in Malay and I interpreted to the accused and he agreed it was correct, and it was after that that the Inspector started to ask questions. Neither I nor the Inspector used any threat, promise, force, or inducement to obtain the statement. There were many others on hand in the same room in the hospital as the accused. I recognise this as the statement recorded by Inspector Abdullah (Marked for identification P.2 not shown to Court or Assessors).

Xcnd. by Charry—Yes, Inspector Abdullah spoke to me in Malay. He read the statement to me in Malay and I interpreted into Tamil. I cannot remember if he in reading the statement P.2 back to the accused just 10 gave me the statement sentence by sentence or just the gist. I told the accused the exact interpretation of what was given to me by Inspector Abdullah.

No Re-examination.

No. 36.
Evidence of
Abdullah
bin Omar,
recalled.

No. 36.

Witness No. 9 recalled.

P.W.9 recalled by permission. On former oath.

I initialled the place where the cross-examination started. This P.2 is the original statement taken down by me in my own handwriting. When I read it back to accused I read it sentence by sentence and I heard 20 D.P.C. 823 interpret it sentence by sentence. The accused having heard it all agreed it was correct.

McCall—I only tender that portion of the statement that was given voluntarily, that is, down to the blue mark that is initialled by the Inspector.

Charry—I cannot object to the statement going in.

By Court—*Q.* When did you write the remark about the warning under Emergency Regulations, 1948 ?

A. At the same time as giving the warning. I wrote it there and not at the top.

Charry—I do not wish to cross-examine about the warning. 30

By Court—I signed the statement taken on the 13th September, 1948. No questions were asked the accused on that day. The questions I referred to were asked on a subsequent occasion. On the 13th September, 1948, I have marked in blue where questions asked and have put "xxd."

Note : I admit the statement P.2 subject to all parts after "xxd" on page 3 coming out.

Note : Statement P.2 read to Court by Inspector Abdullah and read over to accused by Tamil Interpreter sentence by sentence.

Xcnd. by Charry—No questions.

McCall—That is the case for the prosecution. 40

No. 37.
JUDGE'S NOTE.

*In the
Supreme
Court of
Johore.*

4.35 p.m.

I call on accused for his defence.

Accused given 3 alternatives.

Accused—I am tired and would like to consider the matter by tomorrow and consult my counsel.

To 10.30 a.m. 22.3.49.

Sgd. PAUL STORR.

No. 37.
Judge's
Note.

10

Tuesday, 22nd March, 1949.

Cor. : STORR, J.

E.R. Case 6/49 contd.

Accused given 3 alternatives.

Accused—I wish to give evidence on affirmation.

Charry—No witnesses.

No. 37a.

DEFENCE WITNESS.

Accused affirmed states in Tamil.

No. 37a.
Accused
Evidence,
22nd March
1949.
Examina-
tion.

20 SAMBASIVAM s/o NARAYANASAMY *alias* SIVAM—I was a clerk of the Labour Union, Segamat. I lost the job some time in July last year. Since then I was seeking for a job. I do not remember where I was on 9th September, 1948. Yes, I know a Chinese by name Ah Kow. I met him at Segamat while I was still a clerk at the Labour Union—that is while I was unemployed but still staying at Segamat. I did not meet Ah Kow prior to this incident (Refers witness to his statement P.2). I did not make a statement and this is not correct.

Q. Did you, after being warned, state to the Police referring to Ah Kow, "He asked me to stay at Pagoh that night as he wanted to find me a job in a Chetty estate at Segamat?"

30

A. No.

Ah Kow never told me that he would be going to Segamat on 13th September, 1948. I met Ah Kow at Bukit Kepong on the 13th September, 1948, at about 9.30 a.m. He was not alone. He was with another Chinese. I did not know the other Chinese. When he saw me he asked me where I was going and I replied I was going in search of employment, whereupon Ah Kow remarked: "Oh, you have no work", and then he said they were on their way to Segamat and then I said in that case I would also come, and then we all three walked along. At the time I was carrying that bag D.2 wherein I had all my clothing. Apart from that I did not carry anything else. I carried it in my hand. I do not remember which hand—my right or left. On the way we met 3 Malays. On meeting the Malays asked where they were going. On hearing that

*In the
Supreme
Court of
Johore.*

No. 37.
Accused
Evidence,
22nd March
1949,
Examina-
tion,
continued.

one of the Chinese said in Malay, "What do you care". Whilst these words were being exchanged I continued to walk leaving them behind, and then they all had a fight. Then I heard somebody firing gun-shots. Immediately after I heard the shot I saw one of the 2 Chinese overtaking me—he was running away—and then I started to run when P.W.2, Saebun, attacked me with a knife. First I was hit on my forehead and then in my abdomen and then I became unconscious and fell down. I regained full consciousness at the Muar hospital. That is all. I regained consciousness about 2 or 3 days after the attack. I have seen Inspector Abdullah several times. He used to visit me at the hospital very frequently. I was bedridden the whole time. I do not know the total number of wounds I had but I had 4 very serious ones and the worst one was in my abdomen. Since the incident I was in hospital and discharged on the 28th Februray, 1949. I am still in the gaol hospital. Externally my wounds are all right but I still have pains internally in my abdomen. I find difficulty while I urinate. Yes, I have heard the evidence of the witnesses in this case. It is not true that I was carrying P.1 and tried to shoot P.W.2, Saebun. 10

Cross-
examina-
tion.

Xand. by McCall—Yes, I am conscious today, but I am not quite clear minded. (Looks quite normal.) At the present moment I am all right but sometimes I get dizzy. Yes, I have told the Court the truth and I have a clear recollection of what happened that morning. The 2 Chinese were walking abreast and I was following them. I was behind them. Yes, I remember saying that the Malays said "Where are you going?" and one of the Chinese said "What's that to you?" Yes, it was immediately after that that they started to fight. Yes, I passed them by the side while they were fighting. The Malays were unknown to me and one of the Chinese was unknown to me and the other was not a friend, and so why should I wait. Yes, when I heard the noise of blows I turned round and looked. I could not see the parangs and knives. I could only see the movements of people and people striking each other. Yes, I heard a shot. I was then only from here to that bench (30 feet). As soon as I heard the shot I was very frightened and I was about to run. As I was very frightened I could not run—my legs would not help me. I could only walk. Yes, that is my explanation of not running away. No.P.1 the revolver was not in my possession. If Saebun says it was, it is not true. I know of no reason why Saebun should say so and I did not know him, but perhaps as he dealt me some very severe blows he is saying so to protect himself and telling an untruth. Yes, the same thing applies to Abdul Aziz, P.W.3, as he also assaulted me. I cannot say whether the revolver P.1 was a plant by the Malays or whether one of the Chinese had it, but I am sure I did not have it. I cannot assign any reason why I was attacked. It is not true that they assaulted me because I was in possession of the revolver and they were justified in their attack. Yes, I and the 2 Chinese were coming from Bukit Kepong that morning. I arrived at Bukit Kepong on the same morning. I went to Bukit Kepong by a boat from Muar. Yes, I arrived on the morning of the 13th September, 1948, in search of work. Yes, it is an out of the way place where travel is very difficult. I do not know how far it is from Muar, but it is easy to get there by sampan. I had reasonable hopes of getting work at Bukit Kepong. I arrived at about 9.00 a.m. Yes, a little time after I arrived at Bukit Kepong I met Ah Kow in the village. The little time I was at Bukit Kepong I spent in 20
30
40
50

a Chinese coffee shop. I had not travelled all night. I spent that night of the 12th at Lenga and from Lenga I came to Bukit Kepong. I arrived at Lenga on evening of 12th and spent the night at Lenga on a bench that was on the 5-foot way of a shop. The last time I had met Ah Kow was about 2 months ago at Segamat village, and I did not meet him again until the morning of the 13th at Bukit Kepong village. While I was having coffee at a Chinese coffee shop Ah Kow came in. I met Ah Kow in the coffee shop and after I had finished my coffee I then walked along to a Chetty estate about 1 mile from the village in order to find work there and

10 when I left the coffee shop Ah Kow was still there. I went to see a Chetty estate and my main object in visiting this estate was to see if the estate was a good producing property—whether the soil was good and the trees were good. Having found the area was no good I decided not to look for employment there. That happened on the morning of the 13th. I did not give that story to Mr. Charry because he did not ask me about it. Yes, I never made the statement P.2 to the Inspector. I do not remember having given a statement and even if I had given one I do not know what I would have said. I do not remember if I made the statement P.2 or not. I say I did not make the statement P.2 to the Inspector.

20 Q. Then how could the Inspector know about Ah Kow trying to get work if you did not tell him ?

A. About 2 months after this attack on me a Mr. Krishna from the Police came and took down a statement from me. •

No, I do not suggest that P.2 was ante-dated by the police. I disagree with it. I do not remember the date. What I say is that that Inspector Abdullah P.W.9 and that Detective P.W.10 never came and took a statement from me. I do not know whether I made a statement on the 13th or not. I am quite clear that the two people, P.W.9 and P.W.10, never came and took a statement from me. I do not know whether I made

30 this statement on the 13th or not. I do not know whether I told the Inspector, P.W.9, on the 13th that Ah Kow gave me a revolver. I am not suggesting P.W.9 and P.W.10 are lying. I did not make a statement and I cannot agree with it.

Re-examination—So far as I am aware I only made one statement to the police and that was roughly about 2 months after the incident. I made that statement to 2 Indian Police Officers. The name of one is Krishnan. I do not know what time I reached the Muar hospital on the 13th. I do not know what happened after I got to the hospital.

40 *By Court*—I did not know Bukit Kepong well. I had never been there before. I was trying to get a tapping contract, not the work of a clerk. I have no witnesses.

*In the
Supreme
Court of
Johore.*

No. 37.
Accused
Evidence,
22nd March
1949,
Cross-
examina-
tion,
continued.

*Re-examin-
ation.*

JUDGE'S NOTES of Argument of Counsel for Accused.

*In the
Supreme
Court of
Johore.*

12.10 p.m.

No. 38.
Judge's
Notes of
Argument
of Counsel
for Accused

Charry addresses—

Refers to charge.

Involves 3 things : 1. Accused present at time carrying a revolver with him.

2. If he carried a revolver it is P.1 and no other.

3. Whether accused had licence for the particular revolver if he in fact had one. 10

The word " carry " is a single word and means what it says.

Refers at length to Rules of Evidence.

Refers at length to Evidence Enactment.

Oral Evidence.

Section 3, Evidence Enactment " proved ".

Some facts are proved to your satisfaction ; some are not. It is for you to decide.

Refers to p. 118 Woodroffe on Evidence.

Proof in civil and criminal cases.

Refers to facts of case and prosecution witnesses. 20

Comments on prosecution case.

Story—3 men walking along with unconcealed arms. A friendly greeting with Malays. Rude reply from Ah Kow.

P.W.1—fortunate in not being hit by Ah Kow.

P.W.2—Rushed at accused when he drew revolver. Gave him a blow and revolver dropped. Accused falls down.

Discrepancy—P.W.1 and P.W.2's evidence.

P.W.2 and accused both standing, not accused lying down.

P.W.3 says lying down. 30

Refers to : P.W.5's cross-examination as to D.3 Re-examination—about loaded revolver.

I brought all about rounds and other arms out in evidence as I could not get any instructions from accused as to how he became associated with the revolver. I made my own theory. That is, that if .38 cartridges were found in a bag not belonging to the accused then the revolver probably belonged to the man who owned the bag.

You must examine possible explanation which favour accused. From this evidence it is possible that you might say that the revolver might have been planted by the 40

Refers to statement of accused—P.2.

Must bear in mind accused wounded. Was he fit to make a statement ? No doctor called to say he was. Accused says he does not know anything about statement P.2.

You must decide whether you believe statement or evidence accused gave in witness box.

Differences very apparent.

Statement cannot be relied upon. You are put into very awkward situation with regard to statement. Reasonable doubt—no sentimentality.

If there is a reasonable doubt then say so.

1.10 p.m.

To 2.30 p.m.

(Sgd.) PAUL STORR.

*In the
Supreme
Court of
Johore.*

—
No. 38.
Judge's
Notes of
Argument
of Counsel
for
Accused,
continued.

10

No. 39.

NOTES of Argument of Counsel for Prosecution.

2.34 p.m. *case contd.*

McCall addresses—

Case very simple before Charry's address.

However, there is no need for you to acquire a great knowledge of Rules of Evidence.

One issue only—was accused carrying the firearm produced on the morning of 13.9.48 ?

20 In the main, case rests on 3 Malay witnesses—P.W.1, 2 & 3—but also accused's own statement which virtually agrees with 3 Malay witnesses.

Prosecution evidence straightforward.

P.W.2 & 3 saw him point revolver at P.W.2.

No discrepancy on issue as to whether accused had or did not have the revolver.

The discrepancy is irrelevant.

*Statement P.2—*Could Inspector have given details in statement. He says he took it at 9 p.m. on 13.9.48.

Accused's denial an attempt to get rid of that evidence.

30 Suggestion that Malays have given police evidence to save themselves *but* both accused and Malays say a shot was fired, and it is not suggested the Malays carried arms.

Ammunition raised by Charry for his defence that revolver must have belonged to the man with the bag which had ammunition *but* that is no evidence that revolver never in Possession of accused.

Charry's comment that no doctor said he was capable of making a statement, but Inspector Abdullah and D.P.C.823 had no difficulty in getting statement. The hospital authorities, according to Inspector and D.P.C., said he was O.K. and they said so too.

40 Charry could have called doctor for accused.

2.52 p.m. I sum up.

3.18 p.m. Assessors retire.

3.26 p.m. Assessors return.

No. 39.
Judge's
Notes of
Argument
of Counsel
for
Prosecution

*In the
Supreme
Court of
Johore.*

No. 40.

OPINION OF ASSESSORS.

No. 1 Assessor Che Gholam bin Mohamed Som.

I am of the opinion that the accused is guilty of the charge.

No. 2 Assessor G. S. Kumar.

I am of the opinion that the accused is guilty of the charge.

I concur in the opinions of the two Assessors.

I convict the accused accordingly.

Accused—I still maintain I am not guilty.

I pass sentence of death.

10

Accused—I wish to appeal against my conviction and sentence.

(Sgd.) PAUL STORR.

22.3.49.

TRUE COPY.

(Sgd.) CHIN SEN BOO,

Secretary to Judge,
Ipoh.

No. 41.
Summing
Up of
Mr. Justice
Storr.

No. 41.

SUMMING UP.

SUPREME COURT, JOHORE BAHRU.

20

Johore Bahru Emergency Case 6/49.

PUBLIC PROSECUTOR

v.

SIVAM *alias* SAMBASIVAM s/o NARAYANASAMY

SUMMING UP OF STORR J.

Gentlemen,

You have heard the evidence for the prosecution and you have heard the evidence for the defence. You have also heard the addresses of the learned counsel for the defence and the learned Deputy for the prosecution. It is now my duty to sum up to you the evidence in this case and to instruct you on the law insofar as it is applicable. 30

In this country there is a presumption in law that every man is innocent until he is proved to be guilty beyond all reasonable doubt. When

I say "reasonable doubt" I do not mean a fantastic doubt. It is the type of doubt which you would use in your every day affairs or in your every day business. It is not the type of doubt that would allow you to shirk your responsibility; it is again not the type of doubt in which you can say, "I was not there; I did not see it; I do not know; so how can I make up my mind?" You are here to make up your mind on the evidence that is before you and on nothing else.

*In the
Supreme
Court of
Johore.*

No. 41.
Summing
Up of
Mr. Justice
Storr,
continued.

It may be that during my summing up I may comment on the evidence of witnesses. If I do, that comment need have no weight with you at all.
10 It is for you to come to your own opinions. At the end of my summing up I shall ask you for your separate opinions as to whether or not you consider the accused is guilty of the charge with which he is charged. You must base your opinions on the facts, that is to say, on the evidence you have heard in this Court, and on nothing you may possibly have heard outside the four walls of this Court. Anything you may have heard outside this Court you should dismiss from your minds.

The accused, as you know, is charged with carrying a firearm, to wit, a .38 revolver which was not duly licensed and which he was not duly licensed to carry under any written law for the time being in force in this
20 country, at about 10 a.m. on the 13th September, 1948, at Bukit Kepong, Muar. The prosecution, on whom is the onus of proving the facts relating to this charge, seek to prove them by calling a number of witnesses. Their main witnesses were 3 Malays: Mohd. Said bin Alam, Saebun bin Kamat, and Abdul Aziz bin Tampak.

You will remember they told you the story that they were going along a parit path to Bukit Kepong, having met each other some distance away from Bukit Kepong; they were walking in single file when they came across 2 Chinese and an Indian coming from the opposite direction. They have also told you that that Indian is the accused.

30 The first witness Mohd. Said said that he knew one of the Chinese, whose name he gave as Ah Kow, and he had known the Chinese for some time. He greeted the Chinese in the usual way, but he said the Chinese rudely shouted a reply and then proceeded to fire a shot at him. Thereupon the Malays fell upon the 2 Chinese and Indian. In doing so, the 2nd Chinese also apparently fired at the Malays.

Saebun then told you that he closed with the Indian whom he recognised as the accused. He stabbed the Indian with his knife because he said the Indian drew a revolver. This is what Saebun says in his evidence:
40 "I saw the Indian draw a revolver; by the time the Indian was already in sight and I could see clearly. I saw him drawing the revolver from his waist—it was from the centre of his waist. He was wearing a shirt and a pair of trousers. It was wrapped up in a small towel—it was not entirely wrapped up, only part of it; it was only tied up, not entirely wrapped up." Gentlemen, you will remember how he demonstrated it in Court. He goes on: "The towel was wrapped round the butt. This is how he drew it from his waist." You will remember also he showed how to the Court. Then he says: "I can't remember seeing the lanyard . . . I stabbed him many times."

Therefore, Gentlemen, you will see from Saebun's evidence that he
50 says he saw quite clearly that the Indian, whom he said later was the

*In the
Supreme
Court of
Johore.*

No. 41.
Summing
Up of
Mr. Justice
Storr,
continued.

accused, had a revolver and that he drew it from his waist. This is the important evidence on which the prosecution rely.

Next we come to the evidence of Abdul Aziz. You will remember he also says that he saw the Indian with a revolver. This is what he says : " I saw Saebun fighting an Indian before I chased the Chinese. I saw there was a pistol in the right hand of the Indian. He pointed the pistol at Saebun. Saebun rushed at him and got the revolver. I saw before I chased the Chinese that the Indian had the pistol in his hand and it was when I came back that I learned from Saebun how he got the revolver. I was about 5 fathoms away when Saebun and Indian were fighting." 10
Then Abdul Aziz says that when he got back from chasing the Chinese the Indian was lying down and Saebun was there. He recognised the Indian as the accused.

Gentlemen, you will see therefore that both Saebun and Abdul Aziz say that they saw the accused was holding a revolver.

Now we come to the evidence of Mohd. Said. He has given us a story of the fight. He has told you how he killed one of the Chinese, Ah Kow, and on returning to the scene he says he saw Saebun and the Indian standing there. Saebun then had a revolver in his hand, and Mohd. Said says that Saebun then told him that he, Saebun, had got the 20
revolver from the Indian. Mohd. Said recognised the Indian as the accused and said that it was from him Saebun said he had taken the revolver.

Gentlemen, you will remember that Mr. Charry said that there was some discrepancy in the evidence of these 3 Malay witnesses. Well, there was a slight discrepancy and that was in the evidence given by Mohd. Said. He said that when he left with the other 2 Malay witnesses for the house of the Penghulu he saw the Indian, the accused, standing. This evidence is not borne out by the evidence of Saebun or Abdul Aziz ; they both say the accused was then lying on the ground. This is a 30
discrepancy and you must bear this in mind when you come to consider the evidence of this witness, Mohd. Said. The learned Deputy has pointed out that it is a discrepancy which is not relevant to the important point at issue, as to whether or not the accused was carrying a firearm. Nevertheless when you weigh the evidence of Mohd. Said you are entitled to weigh this discrepancy with it. It is for you to say whether because of this discrepancy the evidence of this witness is entirely acceptable.

The evidence then is that these 3 Malays went to report to the Penghulu, taking with them those bags over there and this revolver. The Penghulu went to the scene of the incident with the 3 witnesses and 40
found the accused lying on the ground badly wounded. The accused was then taken to Lenga and from there to the Muar hospital. The revolver, which had been handed to the Penghulu at his house by Saebun, in due course passed from the Penghulu to the P.C. at the Lenga police station (P.C.6975). He passed it to P.C.2226 who was in charge of the Lenga police station. He in turn passed it to L/C 8115 who in turn passed it to the Sgt. Major. The Sgt. Major, you will remember, recognised the revolver by its number, as also did the P.C. who took it from the Penghulu. That, Gentlemen, is the chain of evidence relating to the revolver. It was first handed to the Penghulu by Saebun who had 50
got it, he says, from the accused.

Apart from this evidence the prosecution have put in a statement taken by Insp. Abdullah on the 13th September, 1948, from the accused. You will remember that the Inspector and the detective said that, after due warning was given to the accused in accordance with the Emergency Regulations, the accused made a perfectly voluntary statement and that statement was admitted in evidence. You have a copy of that statement before you. In that statement the accused says he was at one time a clerk in the Labour Union, Segamat. He lost that job and was looking for another job. On the 13th September, when he was still unemployed, he met at about 9 a.m. a Chinese named Ah Kow who was accompanied by another Chinese. The 3 of them walked through a track towards the jungle. Ah Kow then took out a fully loaded revolver and handed it over to the accused for keeping.

The accused also tells you in his statement about his meeting the 3 Malay witnesses coming from the opposite direction and how there was a fight. Then the accused says : " Before I could pull out my revolver from my trouser pocket to shoot him I was punched by the Malay several times. I felt giddy and fell down. The Malay took possession of my revolver and then cut me with his parang several times." Gentlemen, this statement by the accused has been put in and forms part of the prosecution case.

Now we turn to the defence. The accused admits he was there at the scene of the incident ; he admits he was wounded ; he admits that the 2 Chinese were there ; but he says in his evidence in Court that at no time he was in possession of a revolver. He denies he took out a revolver or was carrying a revolver. He also denies he made a statement to Insp. Abdullah. In fact he says that for 2 or 3 days after the incident he was quite unconscious in the hospital and does not remember anything that happened then. You have seen him give evidence and you have heard his story. He says he does not know whether he made a statement to Insp. Abdullah ; then he says he did not make a statement and knows nothing about that statement. So, Gentlemen, you may take that as a denial that he made the statement. That makes a complete denial of the prosecution story and the suggestion is that these Malay witnesses just attacked the accused for no reason at all and inflicted on him wounds as a result of which he had to be in the hospital for about 6 months.

I must tell you, Gentlemen, that the statement is more or less a retracted confession. With regard to the statement, you must first of all satisfy yourselves that it was in fact made. If you are satisfied that it was made, then before you can rely on it as evidence against the accused, you must again consider whether or not it is true. If you consider that it was in fact made and also that it is true, then you must consider it with the rest of the evidence. In considering it with the rest of the evidence you may take it as being in some way corroborated by the evidence of the 3 Malay witnesses.

There, Gentlemen, you have a clear cut issue. If you believe that the statement was in fact made and that it is a true statement, you must take it in conjunction with the rest of the evidence and decide whether the accused was about 10 o'clock on the morning of the 13th September last year carrying this revolver as alleged by the prosecution. You will also have to consider at the same time the defence. The defence is a complete denial—a denial that the accused was carrying a revolver.

*In the
Supreme
Court of
Johore.*

No. 41.
Summing
Up of
Mr. Justice
Storr,
continued.

*In the
Supreme
Court of
Johore.*

No. 41.
Summing
Up of
Mr. Justice
Storr,
continued.

Gentlemen, there is another point on which I must direct you, and that is during the course of this case Mr. Charry produced some evidence with regard to certain ammunition and a rifle. Mr. Charry did so, no doubt, thinking it would be of assistance to the accused in his defence. But, Gentlemen, when coming to your decision, you must dismiss entirely from your minds the question of ammunition and this rifle.

Gentlemen, you have heard the learned Deputy say how that it is very dangerous to act upon a retracted confession without corroborative evidence. If the statement of the accused was the only evidence against him, it would indeed be very dangerous to act upon it, but you have heard 10 other evidence, and, as I have already told you, before you can possibly act on that statement you must be satisfied that it was in fact made as alleged by the prosecution and that it is true, and then look for corroborative evidence. However, if you believe the prosecution witnesses Nos. 2 and 3 who say that they saw the revolver in the accused's hand, then there is corroboration.

Gentlemen, I would now ask you to consider your verdict as to whether the accused is guilty of the charge of carrying a firearm or not.

Taken by Mr. A. George and seen by the Judge.

Sd. CHIN SEN BOO, 20
Secretary to Judge,
Ipoh.

*In the
Court of
Appeal.*

No. 42.
Notice of
Appeal to
Court of
Criminal
Appeal,
23rd March
1949.

No. 42.

NOTICE OF APPEAL to Court of Criminal Appeal.

IN THE COURT OF APPEAL.

Johore Bahru Emergency Cr. Case No. 6 of 1949.

In the case of **SAMBASIVAM** also known as **SHIVAM** s/o
NARAYANASAMY

TAKE NOTICE that I, the undersigned, **SAMBASIVAM** also known as **SHIVAM** s/o **NARAYANASAMY** in J.B. Emergency Cr. Case No. 6 30 of 1949 appeal to the Court of Criminal Appeal against the decision and sentence of the Honourable the Judge of the Supreme Court, Johore Bahru, whereas on the 22nd day of March, 1949, **SAMBASIVAM** also known as **SHIVAM** s/o **NARAYANASAMY** was duly convicted of the offence of carrying arm under Reg. 4 (i) (a) Emergency Regulations 1948 and sentenced to suffer death.

The ground of appeal is that the conviction is against the weight of evidence.

X Right thumb print of
appellant,

SAMBASIVAM also known as
SHIVAN s/o **NARAYANASAMY** . 40

Dated this 23rd day of March, 1949.

To : The Assistant Registrar,
Supreme Court,
Johore Bahru.

No. 43.

FURTHER GROUNDS OF APPEAL.

IN THE HIGH COURT OF THE FEDERATION OF MALAYA.

In the Court of Appeal at Kuala Lumpur.

F.M. Criminal Appeal No. 39 of 1949.

(Johore Bahru Emergency Trial No. 6/49).

SAMBASIVAM also known as SHIVAM son of
NARAYANASAMY*Appellant*

Against

10 THE PUBLIC PROSECUTOR, JOHORE

Respondent.

FURTHER GROUNDS OF APPEAL.

1. The statement of the accused was recorded in a manner and in circumstances which makes this statement valueless and irregular.

2. The evidence of the prosecution witnesses P.W.1, 2 and 3 did not establish beyond doubt that the accused was in possession of a fire-arm.

3. The conviction is against the weight of evidence.

Dated this 25th day of April, 1949.

(Sgd.) E. E. C. THURAISINGHAM,
Solicitor for the Appellant.

20

No. 44.

NOTES of Willan, C.J.

COURT OF APPEAL AT KUALA LUMPUR.

*Thursday, 28th April, 1949.**Coram* : WILLAN, C.J.

BOSTOCK HILL, J.

SPENSER WILKINSON, J.

Criminal Appeal 39/49 :

Thuraisingham for the appellant (retained).

Austin for P.P.

30 *Thuraisingham* :

1st Ground—Statement of accused recorded in circumstances which make it valueless. Statement taken in hospital when accused was in critical condition. (Note—Charry did not object—page 13).^(a) If I fail on this ground of appeal no use proceeding to the other grounds of appeal because statement corroborated.

Informed first ground of appeal fails.

Austin—Not called on.

Sd. H. C. WILLAN.

Appeal dismissed.

Sd. H. C. WILLAN.

40

^(a) Page 33 in this record.*In the
Court of
Appeal.*

No. 43.
Further
Grounds of
Appeal,
25th April
1949.

No. 44.
Notes of
Willan,
C.J.,
28th April
1949.

*In the
Court of
Appeal.*

No. 45.
Notes of
Bostock
Hill, J.,
28th April
1949.

No. 45.

NOTES of Bostock Hill, J.

COURT OF APPEAL AT KUALA LUMPUR.

Thursday, 28th April, 1949.

Coram : WILLAN, C.J.
BOSTOCK HILL, J.
SPENSER WILKINSON, J.

Criminal Appeal 39/49.

SAMBASIVAM (appellant) *v.* PUBLIC PROSECUTOR (respondent).

Mr. Thuraisingham for the appellant. 10

Mr. Austin for P.P.

Mr. Thuraisingham :

1st ground most important.

Statement taken at Muar hospital on same day (13.9.48)—page 10. (^a)

Condition of accused critical.

Surgeon should have been called.

Police should not have gone to take statement that night.

Not entitled to cross-examine—page 12. (^b)

D.P.P. not called on.

Appeal dismissed.

(Sgd.) A. J. BOSTOCK HILL.

20

28.4.49.

(^a) Page 32 in this record.

(^b) Page 33 in this record.

No. 46.
Notes of
Spencer
Wilkinson,
J.,
28th April
1949.

No. 46.

NOTES of Spencer Wilkinson, J.

COURT OF APPEAL AT KUALA LUMPUR.

Thursday, 28th April, 1949.

F.M. Criminal Appeal No. 39/49.

SAMBASIVAM *v.* PUBLIC PROSECUTOR
(Appellant) (Respondent)

30

Coram : C.J., BOSTOCK HILL, J., SPENSER WILKINSON, J.

E. E. C. Thuraisingham for appellant (retained).

Austin D. P. P. for P.P. (Respondent).

Thuraisingham : 1st ground of appeal. Incident on 13th September, 1948. Appellant was stabbed and helpless. On same day at Muar Hospital statement was taken.

Appellant in hospital for a long time. p. 10^(a) of record. Circumstances of man being critically hurt was not the time to take the statement or time when a correct statement should be expected. Surgeon in charge ought to have been called.

In the Court of Appeal.

Even had statement not been a confession it would still be suspect. p. 12.^(b)

No. 46.
Notes of
Spencer
Wilkinson,
J.,
28th April
1949,
continued.

If statement is accepted then the necessary corroboration of the witnesses.

Austin not called on.

10

Appeal dismissed.

(Sgd.) T. C. SPENSER WILKINSON.

^(a) Page 29 in this record.

^(b) Page 33 in this record.

No. 47.

ORDER dismissing Appeal.

No. 47.
Order
dismissing
Appeal,
28th April
1949.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.

In the Court of Appeal.

Holden at Kuala Lumpur.

Federation of Malaya Criminal Appeal No. 39 of 1949

20

(Johore Bahru Emergency Criminal Trial No. 6 of 1949)

SAMBASIVAM *alias* SHIVAM s/o NARAYANASAMY Appellant
against

THE PUBLIC PROSECUTOR Respondent.

CORAM : Sir HAROLD CURWEN WILLAN, Chief Justice, Federation of Malaya.

The Hon. Mr. Justice BOSTOCK HILL.

The Hon. Mr. Justice SPENSER WILKINSON.

IN OPEN COURT

This 28th day of April, 1949.

30

ORDER

This appeal coming on for hearing in the presence of Mr. E. E. C. Thuraisingham, Counsel for the abovenamed Appellant and of Mr. A. M. I. Austin, Federal Counsel on behalf of the Respondent, IT IS ORDERED that this appeal be dismissed.

Given under my hand and the seal of the Court this 28th day of April, 1949.

(Seal) Court of Appeal.

(Sgd.) P. SAMUEL

Federation of Malaya.

Assistant Registrar,
Court of Appeal,
Federation of Malaya.

40

*In the
Court of
Appeal.*

No. 48.

NOTICE of Intention to Appeal to His Majesty in Council.

No. 48.
Notice of
Intention
to Appeal
to His
Majesty in
Council,
2nd June
1949.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.

Federation of Malaya Criminal Appeal No. 39 of 1949.

(Johore Bahru Emergency Trial No. 6 of 1949)

SAMBASIVAM also known as **SHIVAM s/o NARAYA-
NASAMY**

Appellant

versus

PUBLIC PROSECUTOR, FEDERATION OF MALAYA Respondent.

The Registrar Court of Appeal
Federation of Malaya,
Kuala Lumpur.

10

WHEREAS I, Sambasivam also known as Shivam son of Narayana-
samy was convicted and sentenced to death under Regulations 4 (1) (a)
of the Emergency Regulations 1948 by the Judge of the High Court at
Johore Bahru on the 22nd day of March 1949.

AND WHEREAS my appeal from the said conviction and sentence
was heard and dismissed by the Court of Appeal Federation of Malaya
holden at Kuala Lumpur on the 28th day of April 1949.

TAKE NOTICE that I intend to apply to His Majesty in Council **20**
(Judicial Committee of the Privy Council) for special leave to appeal from
the decision of the said Court of Appeal.

Dated at Johore Bahru Prison this 2nd day of June 1949.

(Sgd.)
Superintendent of Prison,
Johore Bahru.
2/6/1949

(Sgd.) N. SAMBASIVAM
Appellant.

Filed this 3rd day of June, 1949 at 11.05 a.m.

(Seal)

Sgd. T. R. HEPWORTH
Ag. Registrar, Court of Appeal,
Federation of Malaya.

30

No. 49.

ORDER granting Special Leave to Appeal to His Majesty in Council.

*In the
Privy
Council.*

AT THE COURT AT BUCKINGHAM PALACE

The 29th day of September, 1949

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. STRACHEY

MR. GRIFFITHS

MR. WILSON

SIR LIONEL LEACH

No. 49.
Order in
Council
granting
Special
Leave to
Appeal to
His
Majesty
in Council,
29th
September
1949.

10 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 26th day of July 1949 in the words following viz. :—

20 “ 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 Sambasivam in the matter of an Appeal from the Supreme Court of the Federation of Malaya (Court of Appeal) between the Petitioner Appellant and the Public Prosecutor Federation of Malaya Respondent setting forth (amongst other matters): that the Petitioner was first tried on the 2nd March 1949 by Laville J. sitting with two Assessors for two connected offences one under section 4 (1) (a) and one under section 4 (1) (b) of the Emergency Regulations 1948 viz. :— (1) for carrying an unlicensed firearm to wit a .38 revolver and (2) for having in his possession without lawful authority 10 rounds of .38 ammunition: that both Assessors found the Petitioner not guilty of both offences: that the learned Judge was in agreement with the Assessor's finding on the second charge but disagreed with their finding on the first: that he therefore acquitted the Petitioner on the second charge but ordered or purported to order 30 him to be retried on the first charge: that the new trial of the Petitioner took place on the 22nd March 1949: that it was commenced and conducted throughout under the simplified procedure of the Emergency (Criminal Trials) Regulations 1948 without any certificate applicable thereto having been obtained under section 7 thereof: that the new trial was on a charge merely of carrying an unlicensed firearm: that by his Order dated the 22nd March 1949 the learned Trial Judge concurred in the Assessors' opinion that the Petitioner was guilty and convicted him and sentenced him to death: that the Petitioner appealed to the Supreme Court of 40 the Federation of Malaya (Court of Appeal) which Court by its Order dated the 28th April 1949 dismissed the Appeal without assigning any reasons for its decision: that the Petitioner submits (*inter alia*) (1) that in the absence of a fresh certificate from the Public Prosecutor authorising the new trial of the Petitioner under the Emergency (Criminal Trials) Regulations 1948 the second Trial Court was incompetent to entertain the prosecution (2) that the Deputy Public Prosecutor who signed the certificate in respect

*In the
Privy
Council.*

No. 49.
Order in
Council
granting
Special
Leave to
Appeal
to His
Majesty
in Council,
29th
September
1949,
continued.

of the first trial did not purport to sign it on his own behalf or by virtue of his own power or authority but signed it on behalf of the Solicitor-General who himself had no apparent power to give any such certificate and (3) that the statement alleged to have been made by the Petitioner on the 13th September 1948 cannot be held admissible as having been made 'to or in the hearing of' the Police Inspector in any real sense as the Inspector could not understand one word of it: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal against the Order of the Supreme Court dated the 28th April 1949 or for further 10 or other relief :

“ 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 that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the Supreme Court of the Federation of Malaya (Court of Appeal) dated the 28th day of April 1949 :

“ And Their Lordships do further report to Your Majesty that 20 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 High Commissioner for the Federation of Malaya for the 30 time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

EXHIBITS.

No. 50.

CERTIFICATE of Deputy Public Prosecutor.

Exhibit " A "

Intd.M.S.

A.R.2.3.49.

Panchor I.P.33/48.

The Emergency (Criminal Trials) Regulations, 1948.

I, WILLIAM MARTIN McCALL, Deputy Public Prosecutor, in
 10 accordance with the provisions of section 7 of the Emergency (Criminal
 Trials) Regulations, 1948, hereby certify that the trial of Sivam alias
 Sambasivam s/o Narayanasamy on the following charges, namely :—

1. That he at about 10 a.m. on the 13th September, 1948,
 at Bukit Kepong, Muar, in the State of Johore, carried a .38 revolver
 which he was not duly licensed to carry, and he has thereby com-
 mitted an offence punishable under Regulation 4 (1) (a) of the
 Emergency Regulations, 1948 ; and

20 2. That he at about 10 a.m. on 13th September, 1948, at
 Bukit Kepong, Muar, in the State of Johore, had in his possession
 10 rounds of .38 ammunition without lawful authority therefor
 and he has thereby committed an offence punishable under
 Regulation 4 (1) (b) of the Emergency Regulations, 1948.

is a proper case for trial under the said Regulations and I hereby designate
 Johore Bahru as the place where such trial shall be held.

Dated at Johore Bahru this 25th day of November, 1948.

(Sgd.) W. MARTIN McCALL,

Deputy Public Prosecutor for
 Solicitor-General.

*In the
 Supreme
 Court of
 Johore.*

Exhibits.

No. 50.

A.

Certificate
 of Deputy
 Public
 Prosecutor,
 25th
 November
 1948.

*In the
Supreme
Court of
Johore.*

Exhibits.

No. 51.

B.
Receipt for
Statements
of
Witnesses,
17th
February
1949.

Exhibit
"B."
Intd. M.S.
A.R.
2.3.49.

No. 51.

RECEIPT for Statements of Witnesses.

Johore Bahru Emergency Case No. 6/49.

P. P. V. Sivam s/o Narayanasamy

I hereby acknowledge that I have received from the Deputy Public Prosecutor, Johore, copies of the following statements :—

Report of Ali bin Mustafa ;

Statements :—

1. Mohd. Said bin Alam ;
2. Saebun bin Kamat ;
3. Abdul Aziz bin Tampok ;
4. Ali bin Mustaffa ;
5. Ismail bin a Samad. Sgt. 2226 ;
6. Abu Bakar bin Kunchit, P.C. 8115 ; and
7. Sivam alias Sambasivam s/o Narayanasamy.

10

(Sgd.) P. V. CHARRY.

Date 17.2.1949.

Time 11.30 a.m.

No. 52.

REPORT OF COMPLAINT.

Johore Bahru Emergency Trial No. 6 of 1949.

Exhibit " G "

English Translation
A/M29/11/48Itd.M.M.S.
A.R.*In the
Supreme
Court of
Johore.**Exhibits.*No. 52.
G.Report of
Complaint,
13th
September
1948.

Copy of Report

Report No. 11/48

Police Station : Lenga 2.3.49

10 At 4.10 p.m. on 13.9.48.

Report : Villagers overpowered Bad
people at Bt. Kepong.

Complt. : Ali b. Mustafa

Race : Malay Age : 35

Occupation : Penghulu Bt. Kepong.

Residing at Kampong Bukit Kepong.

The Complainant states :—

At 10 a.m. on 13.9.48 I was at my father's house at Bukit Kepong where came (3) Malays (1) named Said b. Alam ; (2) Aziz bin Tampok ; and (3) Saibon bin Kamat. All the three persons came to my house and informed me that they were going to Bukit Kepong when half-way through the journey, were met with 3 Communists carrying 2 pistols and one short gun. On meeting the 3 persons above-mentioned, the Communists threatened (them) by producing the pistols and firing. At the same time these persons rushed (at them) and were slashed with a parang until they were able to snatch away one (1) pistol and one (1) short gun. One (1) Indian had been arrested and one (1) Chinese had died, while another Chinese escaped carrying a pistol. The person who ran away threw down 2 (blow pipes) pandan pouches containing letters pertaining to Communism.

After that I went to examine the spot where the incident had taken place and I was shown an Indian lying seriously wounded. I sent him to Lenga Police Station and I made a report. This is my report.

My signature

(Sgd.) ALI BIN MUSTAFA.

Before me :

(Sgd.) KASSIM P.C. 6975.

Translated by me :

(Sgd.) A. MAJID B. MD. YUSOFF.

Malay Interpreter,
Supreme Court,
Johore Bahru.

40

*In the
Supreme
Court of
Johore.*

Exhibits.

No. 53.
P2.

Statement
during
Investiga-
tion,
13th
September
1948.

No. 53.

STATEMENT during Investigation.

Ex : " P2 "

Intd. A.R.
22.3.49.

MALAYAN POLICE.

STATEMENT DURING INVESTIGATION.

Report No. : 11/48	Police Station : Lenga	
Statement of : Sivan	Father's name : Narayanasamy	
Nationality : Indian		male 10
Age : 27 years	Place of birth : India	
Address : LU Club, Segamat	Occupation : Ex-Tamil School Teacher J. L. Estate	
	Taken by : Sr. Inspr. Abdullah	

at Hospital on 13th September, 1948, at 9.00 p.m.

Interpreter : D.P.C. 823 from Indian-Malay into English.

Before taking the statement Sivam was warned under the Emergency Regulations, 1948 that whatever statement given will be used as evidence for his trial.

I was a clerk in the L.U. Segamat. When it was closed I was left 20
unemployed. About 1½ months ago I went to S'pore to visit a friend
whose name was Malachasamy, a labourer of Municipal S'pore. He was
staying at Block No. 28 Anderson Rd. I stayed with him for 4 days.
Then I went to B.P. to see a friend by the name of Kolandasamy. He was
staying at the L.U. Club B.P. On the same day I went to Muar and met
Mr. Parrerra at the L.U. Club Muar. I slept at the Club for a night and
then I went to back to Segamat for some days.

On 9th of Sept. 1948 I went to Muar and then by bus to Pagoh. I
arrived Pagoh at 6.00 p.m. on the same evening. While I was standing 30
on the five foot way in front of a Chinese coffee shop on the left side towards
Lenga, I happened to meet a Chinese whose name was Ah Kow. He was
known to me as a member of L.U. Club at Segamat. I did not know his
official duty of being a member at the Club but I happened to meet him
there always. On meeting me he enquired me as to why I came to Pagoh.
I told him that I was looking for a job. He asked me to stay at Pagoh
that night as he wanted to find me a job in a chetty estate at Segamat.
After meeting me for a quarter of an hour he then left and proceeded to
Muar. Before leaving he informed me that he would come and see me at
Pagoh on the 11th Sept. 1948. So that night I slept on the five foot way
at Pagoh village. 40

At about 9.00 a.m. 11/9/48 Ah Kow came to Pagoh and met me at the
same place where I first met him. He said that he wanted to go to Segamat
on 13th Sept. 1948. He invited me whether I like to accompany him to

- Segamat. I replied that I agreed to accompany him. After telling me this he went away. At about 3.00 p.m. 11/9/48 he came again to see me again and asked me to accompany him. I followed him by way to the right side of Pagoh village through rubber estate and then came to a river. From here he hired a sampan manned by an unknown Malay. We then arrived at Bt. Kepong at 9.00 p.m. 11/9/48. When arrived at Bt. Kepong we slept at a vacated hut in the village. The next morning we went to a Chinese coffee shop at Bt. Kepong. He told me to stay at the coffee shop as he wanted to go to his house for his private business. As there was no
- 10 Indian in the village, I went round the Malay Kampong for sight seeing and after that I came back to the same coffee shop to drink. At about 12.00 n. Ah Kow came to see me. He told me that he wanted to leave for Segamat on 13.9.48. He then went away. I then returned to the same vacated hut for the night. Ah Kow did not turn up on 12th Sept. 1948. At 9.00 a.m. 13th Sept. 1948 he came to see me at the corner of the village taking with him a guni sack containing something. He was accompanied by an unknown Chinese. We then walked through a track towards a jungle for a distance of one mile and there stopped. Ah Kow took out a revolver fully loaded and handed over to me for my
- 20 possession. He had also given me another 6 rounds of life ammunitions as an extra and at the same time he took out two cut rifles of which one was given to the Chinese who had accompanied him, and the other cut rifle was used by Ah Kow himself, I did not whether the two cut rifles were loaded but I saw about 30 rounds of .303 life amms in the guni sack. After giving the arms Ah Kow warned us to shoot anyone who tried to obstruct our way. I put the revolver in my left hand trouser pocket. The two cuts rifles were hung on each of their shoulders while they were carrying, and could easily be seen by anyone passing by. We then proceeded on the track for another one mile where we happened to pass
- 30 three Malays who came from the opposite direction. After passing us five or six steps the three Malays rushed on us. The three Malays were armed with parangs. One of the Malays rushed on Ah Kow who then tried to shoot him. The Malay then cut him with his parang. The other two Malays attacked me and the other Chinese. Before I could pull out my revolver from my trouser pocket to shoot him I was punched by the Malay several times. I felt giddy and fell down. The Malay took possession of my revolver and then cut me with his parang several times. I did not know what had happened to the other Chinese. The Malays had taken the guni sack and escaped.
- 40 At about 3.00 or 4.00 p.m. some Malays came to the scene and arrested me. I was then taken to Muar Hospital.

(Sgd.) ABDULLAH 13/9,
C.R.O. Muar.

True Copy

(Sgd.) MAHMUD B. MOHD. SHAH

(Seal)

Assistant Registrar
Supreme Court
Johore Bharu

Examined by

24.3.49

*In the
Supreme
Court of
Johore.*

Exhibits.

No. 53.
P2.
Statement
during
Investiga-
tion,
13th
September
1948,
continued.

*In the
Supreme
Court of
Johore.*

Exhibits

No. 54.
List of
Exhibits,
2nd April
1949.

No. 54.

LIST OF EXHIBITS.

Johore Bahru Emergency Cr. Case No. 6/49.

SAMBASTIVAM also known as SHIVAM s/o NARAYANASAMY (Accused)

List of Exhibits.

Revolver No. 18282	..	..	..	Exhibit " P1 "	
Pandan bag and cut down Rifle	..		..	" " D1 "	
Leather bag	..	..	..	" " D2 "	
2nd Pandan bag	..	..	..	" " D3 "	
Statement of Accused	..	..	..	" " P2 "	10

(Sgd.) MAHMUD BIN MOHD. SHAH,

(Seal)

Assistant Registrar,
Supreme Court,
Johore Bahru.

2.4.49.

NOTE :—

Exhibits P1, D1, D2 and D3 *not* sent.

Copy of Exhibit P2 at pages 8-12.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA (COURT OF APPEAL)

BETWEEN

SAMBASIVAM - - - - - *Appellant*

AND

THE PUBLIC PROSECUTOR OF THE FEDERATION OF
MALAYA - - - - - *Respondent*

RECORD OF PROCEEDINGS

STANLEY JOHNSON & ALLEN,
426 SALISBURY HOUSE,
LONDON WALL, E.C.2,
Solicitors for the Appellant.

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