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Judgment
21
1956

IN THE PRIVY COUNCIL

No. 2 of 1956

ON APPEAL FROM THE SUPREME COURT OF
THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR

BETWEEN

SUBRAMANIAM son of MUNUSAMY Appellant
- and -
THE PUBLIC PROSECUTOR Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
W.C.1.
19 FEB 1957
INSTITUTE OF ADVANCED
LEGAL STUDIES

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19 FEB 1957

INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL No. 2 of 1956

16011

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B E T W E E N :

SUBRAMANIAM son of MUNUSAMY Appellant

- and -

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RECORD OF PROCEEDINGS

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LIST OF EXHIBITS not
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P.1.	Belt with three pouches		
P.2.	17 rounds of live ammo plus 3 rounds of spent ammunition		

1.

IN THE PRIVY COUNCIL

No.2 of 1956

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION
OF MALAYA IN THE COURT OF APPEAL AT
KUALA LUMPUR

BETWEEN :

SUBRAMANIAM son of MUNUSAMY Appellant

and

THE PUBLIC PROSECUTOR Respondent

RECORD OF PROCEEDINGS

10.

NO.1

CHARGE

FEDERATION OF MALAYA

IN THE HIGH COURT

AT JOHORE BAHRU

In The High
Court at
Johore Bahru

No.1
Charge
14th July
1955

Emergency Criminal Case No.1 of 1955

Public Prosecutor

Versus

Subramaniam s/o Munusamy

THE CHARGE

20

Subramaniam s/o Munusamy, You are charged at the instance of the Public Prosecutor, and the charge against you is :-

That you on the 29th April, 1955, in the Rengam District, in the State of Johore, did have in your possession ammunition, to wit 20 rounds of .303 ammunition, without lawful authority therefor and

In the
High Court
at Johore
Bahru

you thereby committed an offence punishable under
regulation 4(1)(b) of the Emergency Regulations,
1951.

No.1
Charge
14th July
1955
(continued)

Dated at Johore Bahru
this 14th day of July, 1955

Sgd. R.H. Hickling,
Dy Public Prosecutor.

NO. 2

NOTES OF EVIDENCE

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT JOHORE BAHRU

No.2
Notes of
Evidence
1st August
1955.

Emergency Trial
No. 1 of 1955

10

P.P. v. Subramaniam s/o Munusamy

Charge: Under reg. 4(1)(b) E.R. 1951.

Coram : Storr, J.

1st August 1955.

DPP, Hickling, for PP

Murugason (assigned) for accused.

Accused charged: I understand charge. I claim to
be tried.

"A" Cert. under E.(C.T.) R. 1948 - "A"

"B" Acknowledgement of statements - "B"

20

Assessors called : 1. K.T. Thomas;
2. Muthuraman Meiyappan;
3. R. Manicam;
4. Ramsel Anthony.

I select : 1. K.T. Thomas (Kunnumpuram Thomas)
2. R. Manicam (Ramalingam)

I explain duties to Assessors.

D.P.P. opens. Refers to charge and evidence that
he will call in support.

Calls.

30

NO. 3

EVIDENCE OF ROY PUGHIn the High
Court at
Johore Bahru

10 P.W.1. a/s in English. Roy Pugh, L/Cpl. "A" Coy
1st Bn. E. Yorks: British; aged 19. On 26.4.55
onwards I was in operation, east of Sonda Estate
I remember the morning of 29.4.55. On that
morning I was put in charge of the guard; at about
11 a.m. a patrol came in and reported to the
platoon commander about a contact; the platoon
commander was 2nd Lt. Dugmore (Michael Arnold
Neville Dugmore p. & id.) Cpl. Massey who was in
charge of the patrol reported to Lt. Dugmore about
the contact and immediately Lt. Dugmore asked if he
had any kills. Lt. Dugmore then took a patrol out
to go to the bandit camp; I was part of the patrol;
there were about 7 of us; I cannot remember at what
time we arrived at the camp; at first we did nothing
at the camp and then we searched the surrounding
area and we found a dead male Chinese; I searched
20 him and found an automatic .45 pistol on him and a
handgrenade, which I handed over to Cpl. Joss (p.
& id) and he passed them on to platoon commander.
We continued our search of the area and captured one
male Indian who was hiding in the buttress of a tree.
The accused is the Indian I saw; I searched him and
took 20 rounds of ammo. from his waist. He shouted
first "Dont shoot; don't shoot; I am a rubber
tapper" or words to that effect in broken English.
He did not take anything from his person or wave
30 anything; I took the rounds of ammo. from a belt with
3 pouches; the end ones held 5 rounds and the middle
one ten; I took the belt off the accd. and kept it
and the ammo. myself until that night when I handed
it over to Insp. David (Frank David; Insp. p. & id.).

40 I could recognise the belt; this is it - the one
I took from him with the 3 pouches. (Tendered; no
obj. marked P1). I am familiar with .303 ammo.
(seventeen .303 rounds and 3 cases marked for id. "X").
When I took the belt and ammo. all 20 rounds were
live rounds. The accd. was wearing sand-shoes,
blue slacks, putties that came up to his knees and
a vest. He was injured; he was injured in the back
of the head; there were 2 injuries on biceps and 2
fingers and some small cuts on his neck. I rendered
first-aid on the spot by putting a field dressing
on him; we then brought him back to our base camp.

50 On the following day we broke camp altogether and
I handed him over to platoon commdr. and Reg. M.O.
took him over to the hospital. That afternoon I met
Insp. David between 3 and 4 p.m. and I then handed
over P.1 and contents to him.

 Prosecution
Evidence

 No. 3
Roy Pugh

Examination

1st August
1955

In the High
Court at
Johore
Bahru

Prosecution
Evidence

No. 3
Roy Pugh

Cross-
Examination
1st August
1955

XXd. by Murugason. I cannot say exactly, but it was roughly about 1½ to 2 hrs. after the report at 11 a.m. that I came into contact with the accd. Yes, there were 7 of us on this scene. Pte. Schofield came upon accd. first; I was about 2 yds. behind him; I first saw the accd. at the same time as Schofield - a few seconds after; I knew he saw accd; he shouted "Bandit"; he gave the alarm first; when he shouted "Bandit" I saw the accd. crouching behind tree; that is all I saw; we surrounded the tree and we captured him; he did not surrender; when we got to him he had to get up or be shot; he got up; we were about 3 ft. away when accd. said something like "Don't shoot; I am not a bandit". Schofield saw accd. first; we surrounded the tree and I was the first to get to him; I was 3 ft. away from him; yes I was practically next to him; yes it was then he had to jump up or be shot; if he had not jumped up he would have been shot.

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We made out that he said "Don't shoot; I'm not a bandit; I'm a rubber tapper"; something like that; he did not put up his hand; he just stood there; when I got to the accd. Schofield covered me, while I searched him. He handed a piece of ordinary silver cigarette paper to us; I do not know from where he took the cigarette paper; it was just an empty cig. paper. I cannot remember if he said anything when giving the silver paper. Yes I alone took the belt and ammo. from the accd. The accd. did not resist when I took the belt from him. Accd. was about 20 to 30 yds. from the bandit camp; I counted the ammo. roughly in the bandit camp. I did not notice if the ammo. was dated or not; I just counted the ammo. Accd. did not resist when we took him away. Accd. could not understand fully what we said; if we wanted him to go anywhere we had to push him to show him the way; yes accd. could walk; he walked to our base camp and the following day he walked from the base camp out of jungle. Yes accd. was conscious when we surrounded him.

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No. re-exam.

No. 4
Albert
Schofield
Examination
1st August
1955

NO. 4

EVIDENCE OF ALBERT SCHOFIELD

P.W.2 a/s in English. Albert Schofield, Pte.
19 yrs. of age. British. "A" Coy. 1st Bn. E.

Yorks. I was on operation on 26.4.55. On 29.4.55 I was on operation east of Senda Estate, Rangam; yes I was in the base camp at 8 a.m. that day. Cpl. Massey took on party, but I remained at the camp. That party returned to camp about 11 to 12 noon. They reported and I then went with a party from our camp to the C.T. camp to follow up. There were 9 in our party; Lt. Dugmore was in command of the party; we got to the bandit camp between 2 and 3 p.m. The rest of the party were with me when we arrived at the camp. There were Cpl. Joss, Cpl. Pugh (PW1).

In the High Court at Johore Bahru

Prosecution Evidence

No. 4
Albert Schofield

Examination
1st August 1955
(continued)

When we got to the bandit camp, there was a blood trail leading down to the swampy ground; we followed it and it led to a dead Chinese male; the last witness searched the dead body. He found one .45 colt automatic. Then we started to search the surrounding area for more C.T.s; we found a wounded C.T. I would recognise him; he is the accd; he was wounded in 2 fingers, his arm and his head. I first saw the accd. when he was crouching down near a tree root; I first saw his hand holding on to the tree root - over it. PW1 and Cpl. Joss were with me when I first saw this hand. When I first saw the hand I thought it was another dead C.T. I went to the side of the tree root to see if I could get him out. When I got to the tree the accd. stood up; I was then about 2 ft. from him. When accd. got up he said to me: "Don't shoot Johnny; I am not a bandit; I am a rubber tapper"; I think he was speaking to me. By that time PW1, Cpl. Joss and the Sgt. came up. The tree was in a slope leading down to a swamp; it was a fairly steep slope. I approached the tree from below; the base of the tree was roughly 12 to 14" round.

After accd. had spoken to me he gave me a piece of silver paper which he said was his passport, but there was no passport in it; he said that in broken English. I took the piece of silver paper from him; I examined it and found it to be just a piece of silver paper. After opening it and finding there was nothing inside, I just threw it away. Cpl. Pugh (PW1) searched the accd. I saw him search the accd. He found round his waist a bandoleer on a leather belt containing 20 rounds ammo; also some documents. Yes I saw Cpl. Pugh look in the pouch; there were 20 rounds; I counted them as well. Yes I recognise Pl as the belt worn by accd. at the time. Yes I saw the contents of the pouch on the belt; in the belt there were rounds wrapped in that plastic material. I recognise the type of ammo; it

In the High Court at Johore Bahru was .303 ammo. "X" for id. is the type of ammo. I saw 20 rounds; they were all live rounds at that time. (PW1) Cpl. Pugh took possession of the rounds and belt.

Prosecution
Evidence

No. 4
Albert
Schofield
Examination
1st August
1955

Accd. was injured in right hand, right arm, left forehead and middle of back. Accd. had no hat at the time, but white shirt, blue pants and rubber shoes. First aid was rendered to accd. at the time by Cpl. Pugh; we then returned to our base camp and took accd. with us. Following morning we broke camp altogether; accd. walked with us.

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(Continued)

Cross-
Examination

XXd. by Murugason. I sighted the accd. first; I was not leading the search; when we are searching a place like that we go in different directions. We were looking for tracks. Cpl. Pugh (PW1) was just behind me when I found the C.T. There was no one just ahead of me when I first saw accd.

Cpl. Pugh was about $1\frac{1}{2}$ yds. behind me when I first saw accd; the first thing I saw of him was his wounded hand; it was not stretched; it was holding on to a root; he had his head tucked well down; he was trying to hide; I saw this from about 4 or 5 yds. away; I can't say exactly; there was a clear patch of swamp between me and the accd. and the tree he was behind. No, when I first saw the accd. I could only see his hand, not the rest of his body. That was because he was crouching down in the roots of the tree; he remained in the same position till I got right up to the tree and then he stood up; he raised his left hand if I remember correctly; when he did that I was standing right in front of him; PW1, Cpl. Pugh, was right at back of me; yes he could see it. He said "Don't shoot me, Johny, please, I am a rubber tapper; I have a passport." He gave me a piece of silver paper and said it was his passport; the piece of silver paper was about 2" by $\frac{3}{4}$ " and it was folded over. There was nothing in the silver paper; nothing at all; no passport; no id. card. No he did not try to run away; I got him covered by my Owen gun. He had no weapon whatever. Yes we searched the whole area but found no weapon.

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PW1, Cpl. Pugh, took the belt off his waist; I was covering him when he searched him. No, I don't think he tried to resist when the belt was being removed. I counted the ammo as well; the belt had 3 partitions. There were 15 rounds in clips and rest without. The tree was on the edge of the bank and there were trees at the back growing up.

No re-exam.

By Court: We were all armed.

NO. 5

In the High
Court at
Johore BahruEVIDENCE OF FREDERICK ROBERT JOSSProsecution
Evidence

P.W.3 a/s in English. Frederick Robert Joss,
Cpl. 20 "H" Coy. 1st Bn. E. Yorks. British.
On 26.4.55 I went on operation. On 29.4.55 I was
operating in jungle N.E. of Senda Estate, Rengam
Dist. Yes that morning, about 8 a.m., a patrol went
out; it returned about 11 a.m. The platoon Commr.
ordered me to collect a party of men and go to
bandit contact; there were 9 in this party,
including myself. Lt. Dugmore was in the party.
Cpl. Pugh, Pte. Schofield were also there. We
reached our objective about 2.45 p.m.

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No.5
Frederick
Robert JossExamination
1st August
1955.

When we arrived at camp, we spread out to search
and then proceeded into camp and searched it.
Then we found a slope that went down to a small
valley where there was a stream; there we found a dead
Chinese male; I stood about 5 yds. away covering
him in case he turned out to be alive, and Cpl. Pugh
searched him and took off him a .45 automatic pistol,
2 rounds of ammo. and a .36 grenade and various
documents. Cpl. Pugh handed them to me and I handed
them to platoon Cmdr. We carried on searching and
proceeded to the other side of the stream and spread
out with an extended line. I started to go up hill;
Pte. Schofield then said he had seen something and
Cpl. Pugh who was nearest him went towards him and
then a wounded male Indian emerged from the
buttress at the foot of a large tree; I saw this
Indian; I would recognise him; the accd. is the man.

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I examined the Indian and he appeared to be badly
wounded; he had a wound on the right side of his
forehead, the top of his arm and one of his hands
was shot. The Indian mumbled about something, but I
could not hear what he said; it was something about
"John". He was about 5 yds. from me at the time.
Yes I saw Cpl. Pugh search accd. He took a belt
from round accd.'s waist containing pouches; yes
I recognise Pl as the belt. After Cpl. Pugh (PW1)

In the High Court at Johore Bahru had given 1st aid to accd., he began to examine the belt and pouches - the contents of the pouches were .303 ammo. Ammo. for id. is the type that was taken from pouches. There was one clip containing 5 rounds, but the rounds in the others were wrapped in plastic material. When we counted the ammo., there were 20 rounds; as far as I can recollect they were all live rounds; the plastic material was similar to that in which rounds of "X" for id. are wrapped. 10

Prosecution Evidence
 No. 5
 Frederick Robert Joss
 Examination 1st August 1955
 (Continued)

Cross-Examination

Accd. was wearing white vest, blue slacks, putties, P.T. shoes. Then we returned to base camp; we carried the accd. so far, but he decided to walk as he probably thought we were not so gentle.

XXd. by Murugason. Yes accd. was able to walk when surrounded by us, but I would not say he could walk far without aid; we gave him a shot of morphia and carried him out of bandit camp to a track and then he walked. Yes from the time we left our base camp to time we reached the scene was about 3 hours. We went very slow. No I did not see the position the accd. was in when he uttered words. Accd. had no weapon in his hands. Yes we searched for his weapon - an extensive search - but did not find it; we searched for about 1½ hrs. When I first saw accd. Pte. Schofield (PW2) was covering him and ordering him to come out from behind the tree. 20

No re-exam.

No. 6
 Michael Arnold Neville Dugmore

NO. 6

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EVIDENCE OF MICHAEL ARNOLD NEVILLE DUGMORE

Examination 1st August 1955

P.W.4 a/s in English. Michael Arnold Neville Dugmore; 2nd Lt., 22; British; support Coy. 1st E. Yorks. On 26.4.55 I was on operations with my platoon in jungle east of Senda Estate, Rengam. On morning of 29.4.55 I sent a patrol from my platoon to search a particular area at about 8 a.m. The patrol returned approx. 11 a.m. The patrol reported that they had had a contact and I immediately went out with a patrol of myself and 2 NCOs. and approx. 7 men in follow-up operation - an NCO, Cpl. Joss and Cpl. Pugh, a soldier named Schofield and one named Hoen - I cannot remember the rest. 40

I arrived at the C.T. base camp approx. 2 p.m. When I arrived I surrounded the camp and then ascertaining there was no one inside I moved in. I then searched the area of the camp and found a blood trail by a small tree in the middle of the camp. Finding the escape route down into the stream bed, I went on down the track to where the stream was and just on the other side of the stream was the dead body of a Chinese male C.T. I detailed a search of the body and then moved on approx. 15 yds. in the same direction. The next thing happened very quickly. I was trying to find the follow-up track again when I saw on my right a male Indian C.T. stand up within the buttress of a tree. I detailed the search of this C.T. to one of my NCOs. I noticed that the C.T. was wounded; he was wounded in the hand and appeared to have a wound on the forehead; once the search was completed we gave him what aid we could. Having lost the C.T. track we were unable to pick them up again.

In the High Court at Johore Bahru

Prosecution Evidence

No.6
Michael Arnold Neville Dugmore.

Examination
1st August
1955
(Continued)

I detailed that the body of the dead Chinese and wounded Indian should be taken up into the C.T. base camp area. Then we proceeded to make 2 stretchers to carry the dead and the wounded man back to the base camp. All documents and weapons, etc. were held by the people themselves. We then marched out of the base camp and proceeded along a fairly well worn track and after proceeding about 75 to 100 yds. we found the going very heavy with the wounded Indian and I decided that if he could walk we would be able to get him back quicker to our base and give him better medical treatment. The wounded Indian was helped along by the 2 people who were carrying him. I reached my base camp at about 6.45 p.m. The following morning I moved out of my base camp and proceeded to Senda Estate, Rengam. There I was met by Coy. Cmdr. and medical officer who took the wounded Indian away in my presence. The wounded Indian was dressed in brown plimsoles dark trousers, khaki putties. I had a very good look at him. The accused is the man. The result of the search of the Indian was 20 rounds of .303 and some documents - that was all. I saw the ammo myself.

XXd. by Murugason. I cannot honestly say which member of our party saw the accused first. My first sight of the accused was when I tried to look over my right shoulder and saw him standing in the buttress of a tree; when I saw him he was just standing up. There was very little difference in the distances, but I should say Pte. Schofield (PW2)

In the High Court at Johore Bahru was the nearest to the accused. Pte. Schofield was approx. 7 yds. away from the accused. When I turned round the Indian was standing. The accused mumbled slightly, but I do not know exactly what he said.

Prosecution Evidence
 No. 6
 Michael Arnold Neville Dugmore
 Cross Examination
 1st August 1955
 (continued)

The area between Pte. Schofield and accused was at the bottom of a stream bed; he could walk straight to him. I do not know if he raised his hands at any time. The accused stepped from where he was searched by the persons I ordered to do so. The accused made no effort to surrender. He had no weapon in his hand. We searched the camp area to try and find his weapon; we searched for about 15 minutes. I searched the area where accused was standing - I mean myself and the patrol. I made a search because it was thought he lost his weapon. The accused was conscious when I came up to him; he could stand and stagger; I did not notice if he was wounded in his leg; I saw him stagger; that is how I know he staggered.

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Yes it was 3 hours from the time we left our base and got to the bandit camp. We had to search our way very carefully.

20

No re-exam.

No.7
 Frank
 David

NO. 7

EVIDENCE OF FRANK DAVID

Examination
 1st August 1955

P.W.5 a/s in English. Frank David, 30, Police Insp. at Police HQ., Rengam. On 30.4.55 I went to Senda Estate Rengam. I met O.C. of "A" Coy. 1st Bn. E. Yorks, Major Bates; I also saw a military party. I did not receive anything from any military personnel; I was waiting for a dead body to be brought out from the jungle. I recognise Lt. Pugh (PW1); I saw him on the afternoon at Senda Estate; it was approx. 3.30 p.m. I received a green pouch attached to a belt from Cpl. Pugh; it contained 20 rounds of .303 ammo. I examined the pouch and saw it had 3 compartments. P1 is the belt and pouch I recovered from PW1 (Cpl. Pugh). In the 2nd compartment of P1 there were 5 rounds in clips. In the centre compartment there were 10 loose rounds of ammo which were wrapped up in plaster material - waterproof; that is the material the rounds in "X" for id. were wrapped in; one of the clips was also wrapped up in plastic material; I examined this ammo; it was undated. I took the ammo. and marked on each of the rounds the letter "N". "X" for id. is the

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ammo. I marked: I have kept this ammo. in my custody until today; when I received the 20 rounds of ammo. from PW1 they were all live.

In the High Court
at Johore Bahru

On 4.5.55 at about 11.30 a.m. I took the 20 rounds of ammo. to the Rifle Range at Rengam and took out a round from each compartment of P1 to test it to find out if it was serviceable or not; they were serviceable; they fired. Those are the 3 cartridge cases of the rounds I fired in "X" for id. ("X" for id. tendered; no obj; marked Ex.P2).

Prosecution Evidence

No.7
Frank David
Examination
1st August
1955
(Continued)

I remember going to Kluang Military Hospital on May 2nd, 1955. One interpreter, Narasingam, accompanied me. (Muthu Narasingam p. & id.) At the hospital I saw the Sgt. in charge; I saw the accused there; that was at about 2.45 p.m. My purpose in going to see the accused was to take a cautioned statement from the accused. Narasingam was with me when I saw the accused. I administered the caution to accused. It was the caution as laid down in the Em. Regs. My signature is on the document and it is the statement I took from the accused. The statement was given by accused, in Tamil; Narasingam acted as interpreter from Tamil to English and vice versa; I wrote statement in my own handwriting; this is the original statement I recorded. (Marked for id. P3).

No. 8

EVIDENCE OF MUTHU NARASINGAM

No. 8
Muthu Narasingam

DPP: May I call interpreter now.

Examination
1st August
1955

To Court, Murugason: No objection.

P.W.6 a/s in English. Muthu Narasingam; Police clerk and interpreter; Dist. Police HQ., Kluang; 38; Indian. I have been employed as such for about 15 yrs. I am familiar with the Tamil language. I passed School Cert. Exam. with English and Tamil and I also passed the interpreters' exam. in Tamil; Tamil is my mother tongue. I remember going to Kluang Mil. Hospital on 2.5.55; I went at about 2.45 p.m. I was accompanied by Insp. David; I was taken by Insp. David to be an interpreter for a person named Subramaniam; the accused is the same Subramaniam. He was in the ward, lying on the bed; Insp. David asked me to act as interpreter and to caution Subramaniam; P3 for id. bears my signature. I interpreted the warning on top of P3 for id. to accd.

In the High Court at Johore Bahru

 Prosecution Evidence

 No. 8 Muthu Narasingam
 Examination 1st August 1955
 (Continued)
 Cross-Examination

I did it from a printed card. I have certified in P3 for id. that I have interpreted the warning. When the statement had been recorded I read the whole thing back in Tamil to accused. I then signed my signature on last page of P3 for id. Accused acknowledged the statement to be correct.

XXd. by Murugason. Yes I saw the accused lying on a bed; yes I delivered the caution in Tamil; I read it only once and explained to him; he appeared to understand what I told him; I asked him if he understood and he said Yes. Yes, accused understood the warning; he understood perfectly; he answered all the questions I asked. Yes I read warning to a sick man, but he could understand and reply clearly. The Statement was made by questions and answers; yes I interpreted the questions to the accused in Tamil and interpreted his answers to Insp. in English and it was recorded. The accused said he understood the caution. I read it to him and asked if he understood it and he said he did. Yes the 3rd question I put to him and he told his whole story; I cannot remember if I asked any questions in between or not up to the next question, No.4. The accused was able to understand my questions and I to understand his answers. I cannot say whether he had recovered from his illness or not; yes accused had wounds on his head. The accused did not ask me any questions.

No re-exam.

By Court: I was quite satisfied that accused understood me and I understood his replies in Tamil; his replies were clear and in a firm voice; he did not complain to me that he was ill and could not make a statement; he asked me for a drink once or twice; the statement took about one hour to record.

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No. 9
 Frank David
 (recalled)

NO. 9

EVIDENCE OF FRANK DAVID (re-called)

Cross Examination
 1st August 1955.

P.W.5 on former oath.

DP.P. I tender P3 for id.

Murugason: I object to the statement going in before I have xxd. this witness.

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XXn allowed.

10 XXd. by Murugason. I did make attempts to get statement from accused but I did not see him personally. I was not allowed to see the accused. I was told so by C.O., B.M.H. I was told he had a fractured skull and could not record a statement; that was probably at 11.45 a.m. on 2.5.55; about 3 hours later I recorded a statement through an interpreter. Later that day I was permitted to record a statement because surgeon said skull was not fractured. At the time I recorded the statement accused was in a fit and proper condition to make a statement; the statement was recorded by question and answer. Accused was giving his statement comfortably. I do understand Tamil; I only understand colloquial Tamil; not grammatical Tamil. No I could not administer a caution from English to Tamil; the statement took about 1 hour to record the accused did not ask any question while giving the statement.

In the High Court at Johore Bahru

Prosecution Evidence

No. 9
Frank David
(recalled)
Cross Examination
1st August 1955
(Continued)

20 No re-exam.

By Ct. I faithfully recorded all the answers given to me by the interpreter. I recorded my questions.

Court. to Murugason: Do you still object to statement?

Murugason: I leave it to Ct.

Statement P3 for id. admitted as P.3. Statement read out and interpreted to accused sentence by sentence.

Ex P3.

DPP: That is the case for the prosecution.

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NO. 10

JUDGES NOTE

I call on accused for his defence. Accused given usual alternatives; will wait till tomorrow.

No.10

To 10.30 a.m. 2.8.55.

Judges Note
1st August 1955

I ask accused what he wishes to do.

Accused: I elect to give evidence on oath.

In the High
Court at
Johore Bahru

NO. 11

EVIDENCE OF SUBRAMANIAM S/O MUNUSAMY

Defence Evidence
No. 11
Subramaniam
s/o
Munusamy
Examination
2nd August
1955

D.W.1 a/s in Tamil. Subramaniam s/o Munusamy; I was born in India. I came to this country when I was 2 years old; my parents have died. My father died after my mother; he died during Jap occupation; my father was working at Rengam Tokyo Estate; I have no relations alive in this country. My last employment was on Young Peng Estate, "C" Div. as a rubber tapper; I worked there for about 4 years. I was getting about \$70 to \$80 p.m. I was satisfied with that salary; during my spare time I would paint - pictures like that (points to portrait of Laville, J.) I was trying to get something for what I was doing in my spare time; I did not get any job as a painter although I was trying to get one. I was last working under Joseph (p. & id.) Mandor in "C" Div. Yong Peng Estate; I was working in Feb. 1955 on the estate. The last date I worked was the 4th Feb; it was 2 days before Taipusam. 10

I went to Singapore on 6.2.55. Yes I know a man named Kulanthavelu (p. & id.); I have known him for about 1 yr. My clothing and rice card are in Kulanthavelu's house. I returned from S'pore; I was not feeling well when I returned from S'pore; because I was not feeling well and tapping was a heavy job for me, I was looking for a job for painting; I returned to estate; I stayed at estate for a day and then went to CEPL (Consolidated Eastern Plantations Ltd.) I went to see a friend of mine - a countryman - Perumal (p. & id.) I stayed with him; I do not remember how long I stayed with him - you may ask him. I stayed there a day at least. CEPL Est. is near Rengam. I had been previously to this estate to see this man. Perumal knew my father when he was alive. Perumal is a married man with 6 children. When I left CEPL Estate I returned to my estate; I returned in a bus to Yong Peng. From Yong Peng town there is a bus running to Kankar Bahru. My estate is about 1½ miles away from K. Bahru; I walked that distance; I did not reach the estate that day. When I reached Kankar Bahru it was roughly 4.30 p.m. I do not quite remember the date, but I think it was 2nd March; I had walked about ½ mile and when I was just walking down a small hill, where there was lallang at the sides, a Chinese came out and asked me to halt; I did not know then that he was a communist; he came from behind me. I asked him why are you stopping me? 30 40

I want to return home. He spoke in Malay and I replied in Malay. He then asked me Do you know who I am? and so saying he drew out a revolver from behind him; to all appearance he was a civilian; he pointed that pistol at me and said "I am a communist" and it was then I knew that he was one. He asked me to produce my I.Card; when he looked at my I.C. he spoke something in his own language and 2 others came out; the 3 then surrounded me; of the other 2 one had a pistol and the other had a rifle about a yard long; they told me I could not return home; two of them had knives like sickles.

In the High Court at Johore Bahru

Defence Evidence

No.11 Subramaniam s/o Munusamy

The 3 had some argument; two said I was to follow them and the other said "No, let him go." One of them told me "It is getting late and dangerous here; you follow me and you can explain to our leader." The explanation was that I wanted to return home; I could tell him of my reasons for wanting to return home; also he said If we leave you here, perhaps you will make a report at the police station. I was frightened and I took off my wrist watch and fountain pen and thought if I hand them to them they might let me go. One said; "We are not thieves," They did not accept them and they did not allow me to go home and asked me to follow them; one was in front and 2 behind and they led me away. No rubber tapper was ever taken into the jungle from my estate during the 4 years. I was there. At the time they led me they told me the leader was quite close and told me to hurry so that I could give my explanation and return. When we had walked a short distance I got frightened and stopped; I still proceeded although I was frightened; I did not meet the leader that day.

Examination 2nd August 1955 (continued)

Court: I tell Murugason hear say evidence is not admissible and all the conversation with bandits is not admissible unless they are called. Intld.P.S.

I made a complaint eventually, but they did not allow me to return; at that time I did not do any work in the jungle. Yes I walked in jungle; they did not allow me to move freely; they did not have any trust. I met the leader on the following morning. Ten days later they gave me work; they asked me to carry water, cook, split firewood, clean and dry ammo., and I had to wash plates too. One or two would follow me when I carried waters; they said they followed me for my protection, but it was that they did not trust me; I would carry 2 buckets; they carried none; I do not remember how far away this was from my estate; perhaps very far away.

In the High Court at Johore Bahru

 Defence Evidence

 No. 11
 Subramaniam
 s/o
 Munusamy
 Examination
 2nd August
 1955
 (Continued)

I complained to the leader that you have spoiled me; I do not like this kind of work; please send me back somehow; he did not allow me to return; I was not able to return; their number was great and they kept watch at night and that was why I could not leave; I tried to get away but could not. While I was in the jungle they gave me training, but only with a round stick which was meant to be a rifle; they did not give me any weapon; it was about one month after that I was found by security forces. At the place where I was found there were about 4 of us; my leader was a Chinese named Chan Ngien; there were 12 in all including Chan Ngien; all had weapons; I had no weapon with me. That belt P1 was not my own; it was given to me to wear; anyone could have worn it; Chan Ngien handed P1 to me to wear. It was given to me 10 days before, but every evening they would take it away and keep it with them. Ammo would also be given and that too would be taken away every evening; sometimes 10 rounds; sometimes more; it depends on the use; by use meant sometimes they went on a tour of destruction and sometimes they would use more and sometimes less.

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The belt P1 was given to me 10 days before the incident; in the evening Chan Ngien would take it and keep it with him; yes I had this belt from morning to evening continuously. I did not use the ammo. myself and I did not know if it could be used at all. The others would use the ammo.

Q. How could they when you had it on you? 30

A. The method of using the ammo. was that some were given more and some less, and in a case where we were attacked and if some were wounded, in such a case when I was carrying ammo. I would be told to retreat first; another would also be asked to take command from these who were wounded. Sometimes people would use my ammo. The leader would take and hand to others; he would take it out of my pouch and hand it to the others; I would hand with the belt to the leader and he would hand to the others. When the belt went on my waist in the morning I was not allowed to take it off until the evening; I only know it was in the jungle when I was wounded that day; I had no weapon with me on that day; they did not trust me and thought I would steal one of them and escape. It could be about 10 or 11 a.m. when I was wounded that day; I was wounded on right head, right arm and spine. At the time I was wounded I had been given a paper and I was reading it; I did not notice whether the other 50

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comrades were wounded or not or whether they ran away; they might have done. When I was shot in the head I went giddy and so I went a little distance and drank a little water. Because I was bleeding the flies were swarming round my head, so I covered my head with my shirt and sat near the roots of a tree in the shade. When I was sitting there I thought to myself, if the soldiers came up I would surrender; I was not wounded in the leg; I was able to walk; yes I could have gone away if I had wanted to. After some time - I can't say how long - soldiers came up to me; yes this belt (Pl) was on me at that time; yes I could have taken it off; I did not take it off. When the soldiers came up I lifted my left hand to surrender. When I raised my left hand, soldiers came and took off my belt; also my wrist watch. I was a little giddy and can't remember what language I spoke; I said I was not a communist and I also told them I was a rubber tapper; whatever came I spoke. I could not refuse wearing the belt; if I had refused they would have done anything to me.

In the High Court at Johore Bahru

Defence Evidence

No. 11
Subramaniam
s/o Munusamy

Examination
2nd August
1955
(Continued)

XXd. by DPP. Yes it is correct that I have no relations here or in India; I have no family outside Malaya at all. No I did not give any notice to leave my employment in Feb. as a rubber tapper. I went to S'pore on Feb. 6th to celebrate the festival of Taipusam. My intentions were to look for a job in painting; yes I was dissatisfied with rubber tapping. Yes on a day in March I walked from Kanka Bahru to my estate; I was walking alone; no I did not see any others on that road besides the 3 that I mentioned. Yes I said the encounter took place at 4 p.m. Yes I know that road well; yes it is frequented at that time; cyclists would go that way; the nearest house would be about a mile away; I thought you meant my house; the nearest house was at Kanka Bahru, $\frac{1}{2}$ mile away. Yes first one man and then 2 accosted me along that road. They spoke in Malay to me; among themselves they spoke in Chinese. Yes, they argued; one said I should proceed and 2 said I should go with them.

Cross Examination

Q. How did you know what they were saying?

A. I understood by the signs they were making with their hands. The argument took about 2 minutes.

Yes I was in fear at that time; I thought they would do something to me; they had surrounded me and I could not run away; no I did not see them after that; I described their clothes to the police, but

In the High Court at Johore Bahru

 Defence Evidence

 No. 11
 Subramaniam
 s/o Murusamy

not about their figures because nobody asked me.
 Yes on 2.5.55 I made a statement to the police; the police have taken a statement, but I do not remember. Yes I heard that statement read over to me in Court yesterday afternoon. Yes I said in my evidence that I was given work and also given a stick for training purposes. Yes I said in my statement that I stayed in that place for about one month. I was in pain as a result of an operation and it was in that state that I said "After this training I was given a rifle and 28 rounds of ammunition".

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Murugason: May that be put to the witness again.

Cross-
 Examination
 2nd August
 1955
 (continued)

Question put again.

Q. Did you say in your statement "After this training I was given a rifle and 28 rounds of ammunition?"

Witness: I should have stated in another way, but because of loss of memory I said so.

Yes, I might have said something about the ammo. I was carrying on my waist, but I do not remember now. Yes, I said I was given a stick for purposes of training; yes it was meant to be a rifle; yes others were receiving training too at the same time; there were about 50 to 60 of them receiving training; the others had rifles with them; yes all the others had rifles except me. I was ashamed; in fact I laughed when a stick was given to me; the others did not think it was humorous; in fact they were annoyed about it; they said that after a period of 6 months, and if they trusted me, they would give me a rifle. No I was not waiting to get a rifle when I was captured; I was worried as to what they would do with me.

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Q. Did you ever attempt to escape from the training camp when you were there,

A. I tried once; that is, I suggested I should be a sentry, but they put me off by saying I did not know how to shoot. Yes there were other Indians in the camp with me and there still are. No I did not discuss with them about escape.

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Q. Instead of drilling with a stick, could you not have done other work?

A. Yes, I could have, but they thought I might be useful at a future date.

Yes, I left the camp with approx. 12 men; yes I said the party went on tours of destruction; I did not know what was their purpose.

In the High Court at Johore Bahru

Q. Who chose this party?

A. The leader in authority; I do not know his name, but he is a Chinese.

Defence Evidence

10 Yes some members of the party were fellow recruits of mine who had training with the rifle. No they were not old friends; they were all divided in groups and this was one of the groups. I do not remember how many of the party of 12 had been training with me; some of them in the party were known to me from that camp. I did not say any particular group went for destruction, but it is their job to destroy; I never joined this party on any of its aggressive operations. Yes there were times when the greater number went out and I was left alone; sometimes 4 or 8 went out and 4 were left and they would return. Yes on the day I was wounded we were in fact 8 in number; the other 4 stayed back at the place we were wounded; 12 left as a party and at the place I was wounded 4 were left and 8 proceeded on; the 4 including me; the other 3 were chinese communists. Chan Ngien was one; I do not know the other two; the 3 had weapons; no I did not have any weapon.

No.11 Subramaniam s/o Munusamy

Cross-Examination 2nd August 1955 (Continued)

20 Q. In your statement you said; "When I was shot, one of the Chinese C.Ts. took away my rifle". Is that correct?

30 A. It is a mistake; when the soldiers asked me how many we were, I said 4.

Yes I had ammo. at that time in that engagement; 4 of us were there and I had ammo. with me. In the training at the camp I never used a rifle; I have seen one loading a rifle; but don't know how to load one; yes I have seen my comrades load during the 10 days I was carrying ammo.

Q. If they did not trust you to carry a rifle, why did they trust you to carry ammo?

40 A. They knew I could not use the ammo. against them and even if I took it away with me it would not serve me in any way.

Yes, I and the rest of the party were subject to discipline. If one picked up a rifle without permission one would be tied up and after that I

In the High Court at Johore Bahru

Defence Evidence

don't know. Once they had cooked snakes and I was asked to eat and I did not and was tied up for it; I was tied up for about one hour; that was the only punishment I received and I received a warning too for the same offence.

No. 11
Subramaniam
s/o
Munusamy

Yes I said I could still walk after I was injured on 29.4.55; yes I knew security forces were still in the area. I saw one of my party was carried and he was dead; there were 4 of us there when that man was killed; I do not know where the other 2 went; shooting was going on and I was wounded; if I had walked out then I would have been shot, so I waited till it subsided; I was then myself wounded; I could use one hand; the other was wounded, I could have then thrown the belt away, but I did not do so, because I thought if I told the truth I would be pardoned. Yes I have made 2 contradictory statements about possession of a rifle by me, but that is because of my loss of memory.

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Cross-Examination
2nd August
1955
(continued)

Re-Examination

Re-exam. When my statement was recorded I was suffering from headache and giddiness; my hand was wounded; I could not lift it and there was pain.

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P.Ws. 1, 2, 3, and 4 released.

To 2.30 p.m.

No.12

NO.12

Judges Note
2nd August
1955

JUDGES NOTE

To Court. DPP; I am satisfied charge omitting "without lawful excuse" is in order P.C. case did not have it.

Murugason: I am not raising the point.

I am satisfied charge is in order as it stands.

30

Defence Evidence

NO.13

EVIDENCE OF JOSEPH S/O RAMAN

No.13
Joseph s/o
Raman

D.W.2 a/s in Tamil. Joseph s/o Raman. Mandore; Yong Peng Estate "C" Div. I know the accused. He was working on that estate under me; he was working for the last 3 years; he worked up to Feb. this year; he

Examination
2nd August
1955

left the estate and told me he was going to do some painting elsewhere. He was a very good worker and his conduct was good too; he was liked by others there and he did not pick up any quarrel; he terminated his services on 11.2.55; he said he wanted to start his own painting in a shop at Muar on his own; he did not say he had a job; he said he was going to start his own painting.

In the High Court at Johore Bahru

Defence Evidence

No.13
Joseph s/o Raman
Examination
2nd August 1955
(Continued)
Cross-Examination

10 XXd. He told me verbally 10 days before he left he was going to leave.

No re-exam.

(Witness released)

No. 14

No. 14

EVIDENCE OF KULANTHAVELU S/O KARUPPANDAN

Kulanthavelu s/o Karuppandan

20 D.W.3. a/s in Tamil. Kulanthavelu s/o Karuppandan; rubber tapper; Yong Peng Estate "C" Div. I know accused; he was working there; I have known him one year; the accused is a good man; when not working he used to draw persons - cinema actors - and other things. I have the accused's clothes, cookery and some of his pictures are also with me; his rice card with his things is with me; his N.R.I. Card is not with me; he has not picked any quarrel with me or others at any time. Yes I know accused had stopped work; he was perfecting his art of drawing and he was going to start on his own; he also said rubber tapping was difficult.

Examination
2nd August 1955

XXd. N.Q.

NO. 15

No. 15

30 EVIDENCE OF PERUMAL S/O NARAYANASAMY

Perumal s/o Narayanasamy

40 D.W.4 a/s in Tamil. Perumal s/o Narayanasamy; rubber tapper; I work at Rengam, No.4 CEPL Estate; I know accused. I have known him for about 8 to 10 years. I knew his father; he is now dead. Accused has come twice to my estate; I do not know the month, but he has come once to me this year; I think it was 5 or 6 months. ago; he did not stay with me; he stayed for about 2 or 3 hours; when he came to me I asked Where are you coming from, and he said Yong Peng, and I asked what work he was doing and he said Tapping rubber; he said he was working.

Examination
2nd August 1955

XXd. N.Q.

In the High Court at Johore Bahru

NO. 16

JUDGES NOTE

No.16

Judges Note
2nd August
1955

Murugason: Case for defence.

Murugason addresses: Pros. evidence. Accused shot; approx. 3 hours after being shot, accused taken by security forces. Accused could walk; he did not; he showed his intention to surrender; he said so in his evidence; innocent conduct through out. Discrepancy in statement to police and evidence in this Court. But he was in pain; did his best.

10

Duress - forced to do what he did.

Had not possession of ammo.

Refers to Toh Ah Loh and Anor. v. Rex. (1949) 15 MLJ. 54; must have exclusive possession.

Salmond - Jurisprudence, p.284, 298, 299.

Submits accused did not have exclusive control. Interpretation of possession. Accused was a servant; it was not his possession.

Submits accused was not in possession in law.

DPP addresses: Refers to charge; pros. story not attacked. Accused's story. Duress - no evidence of that. Pros. evidence clear; offence committed.

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3.25 p.m. I adjourn to formulate questions.

3.43 p.m. I sum up.

4.08 Assessors retire.

4.15 Assessors return.

Question No.1.

Answer

1st Assessor: Yes

2nd Assessor: Yes

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I agree with the answer.

Question No.2

1st Assessor: I am doubtful. From the pros. evidence he was under constant

watch of C.Ts. in the jungle, so it may be interpreted as that he was acting under duress. From statement given in hospital, he stated he was on patrol duty to collect foodstuffs; that means he was acting with full awareness of his work. Comparing these 2 we are unable to find a satisfactory solution; so we are doubtful.

In the High Court at Johore Bahru

 No.16
 Judges Note
 2nd August
 1955
 (continued)

10

2nd Assessor: I am doubtful. Having been in the jungle, he was at the mercy of the communists; had he not obeyed them he would have risked his life, but the duress has not been proved; that is why I say it is doubtful.

I am unable to accept these answers.

Question No.3

20

1st Assessor: Yes. When security forces reached them, he raised his hands up and shouted "Johnny, I am not a terrorist; I am a tapper". In order that the security forces would not shoot him he took a silver paper to attract the attention of the security forces; if he wanted to remove the belt he could have done it without much difficulty since one of his hands was not injured; he was not completely disabled by the shots and it was given in evidence that he could walk; so I think by raising his hand he was showing a sign to surrender.

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2nd Assessor: Yes. He had a good record of service and was a good man, as testified by his colleagues; having been a good man, it was quite impossible for him to join hands with terrorists; so he was making an effort to escape.

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Court: I cannot agree with these answers.
 I find accused guilty of the charge and

In the High Court at Johore Bahru

convict him accordingly.
I pass sentence of DEATH.

Sd. Paul Storr.

No.16
Judges Note
2nd August
1955
(continued)

Automatic appeal under sec. 199 CPO.
Accused: I wish to appeal.

Sd. Paul Storr.

No.17
Questions
put to
Assessors
2nd August
1955

NO.17

QUESTIONS PUT TO THE ASSESSORS

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT JOHORE BAHRU

10

Emergency Trial
No. 1 of 1955

PP. v. Subramaniam s/o Munusamy

Questions put to the Assessors

- (1) Are you satisfied that the accused, Subramaniam s/o Munusamy, was in possession of 20 rounds of .303 ammunition on 29th April, 1955, in the Rengam District of the State of Johore without lawful authority?
- (2) If your answer is "Yes", in your opinion, was the accused, when he was in possession of the 20 rounds of .303 ammunition, acting under duress?
- (3) In your opinion, had the accused formed an intention to surrender when he reached the place where he was captured?

20

2nd August, 1955

Sgd. Paul Storr,

JUDGE.

NO. 18

SUMMING UP OF STORR J.In the High
Court at
Johore Bahru

Gentlemen,

No.18

Summing
up of Mr.
Justice
Storr.
2nd August
1955

10 You have heard the evidence for the prosecution in this case and also 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 the evidence in this case and at the end of my summing up to ask you certain questions and it will then be your duty to answer those questions. I will give you those questions now so that you may read them and bear them in mind during my summing up. (Questions handed to the Assessors who read them).

20 When you are considering the evidence in this case, if there are any points on which you have a reasonable doubt, then you must give the benefit of that doubt to the accused. But you must bear in mind that a reasonable doubt does not mean a fantastic doubt; it is not the type of doubt where you can say "I was not there; I did not see; how do I know?" It is the sort of doubt you come across in your every day affairs.

The accused in this case is charged as follows:

30 (Reads Charge). I will now read to you the regulation referred to in the charge. (Reads). The prosecution have produced evidence to prove the charge. Their evidence was very simple. You have heard the evidence of the 4 members of the security forces. They told you that a patrol went out from their base camp on the morning of the 29th April this year. At about 11 a.m. the patrol returned and reported having made a contact with terrorists. Then you will remember Lt. Dugmore took out a patrol, including himself, and they came upon, what is termed, a bandit camp; they found nothing in the camp; then they searched the area and found a blood trail leading down to a swampy ground; they followed the trail which led to
40 a dead male Chinese who had a pistol, some ammunition and a handgrenade on him; they searched the area further and came across the accused. Pte. Schofield told you that he first saw the accused crouching down near a tree root, his hand holding on to it; Cpl. Joss and L/Cpl. Pugh were also with Pte. Schofield; when Pte. Schofield went to the side

In the High
Court at
Johore Bahru,

No.18
Summing
up of Mr.
Justice
Storr
2nd August
1955
(continued)

of the root, the accused stood up; L/Cpl. Pugh then searched the accused, while Pte Schofield covered him; they found round his waist a bandoleer on a leather belt in which were 20 rounds of .303 ammunition; the accused was wounded in the head and right arm and he had scratches on his back; they started by carrying him back to their camp and later the accused walked with them; when they came out of the jungle Cpl. Pugh said that the belt and ammunition taken from the accused were handed to Insp. David who kept them in his possession until he produced them in court. Insp. David told you that he took out one round from each of the pouches on the accused's belt and tested them and that he found those rounds serviceable; all the 3 rounds fired. These rounds came within the definition of "ammunition" in the Emergency Regulations which I will read to you (Reads).

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Insp. David and police Interpreter Narasingam told you that they went to the Military Hospital at Kluang on the 2nd May and took a statement from the accused where he had been sent for treatment. The statement was read out in court. It was taken by Insp. David on the interpretation of Narasingam, after the accused had been duly warned. In that statement the accused said that he came to Malaya when he was two years old. When he was asked how he came to join the C.T. organisation, you remember he said that he was returning from Yong Peng town to Yong Peng Estate, about half a mile from Kankar Bharu Village, when 3 male Chinese came along, one of them called him and spoke to him in Malay and in the end they took him into the jungle; after some 10 days' march through the jungle they reach the top of a hill where he met about a hundred C.T.s, some of whom were Indians and the rest Chinese; they were all armed with weapons; the accused resided therefor a month where he was given training; after the training, he said, he was given a rifle and 28 rounds of ammunition; on the 10th April he left the camp with 12 others, consisting of 4 Indians and the rest Chinese; after ten days' march they camped at a place where he was later wounded; when he was wounded, he said, his rifle was taken away from him by another C.T. who was with him and there were 8 rounds in the magazine of the rifle; when the security forces came along he told them he was not a communist; they removed his belt containing the 20 rounds and then took him to their camp where he spent the night; on the following day he was taken to a hospital where he made the statement to the police.

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Counter to what the accused has said in his statement to the police, you have another version of the story from him in the witness box. There he told you he was working on Yong Peng Estate as a tapper; in his spare time he used to paint pictures; he thought tapping was a heavy job and wanted to get a job as a painter; so he went to Singapore, but as he could not get a painter's job he returned to the estate, stayed there for a day and then went to CEPL Estate, Rengam, and stayed there with his friend Perumal (DW4) at least for a day; after that he wanted to go back to his own estate; he first travelled by bus to Kanka Bharu, about $1\frac{1}{2}$ miles from his estate, and from Kanka Bharu he walked; while he was walking, he said, 3 terrorists came out and forced him to go into the jungle; he walked with them through the jungle and came to a camp; there he stayed for about a month, doing odd jobs; he was also given weapon training there, but he said he was given only a round stick instead of a rifle. You might consider it a rather peculiar way of training. However, that is what he said. He said there were other recruits in that camp and after about one month, 12 of them, including himself, went to another camp; he had no weapon himself but had only 20 rounds of ammunition in the belt given to him by his leader; all the others he said were armed with weapons; the day he was wounded, he said 8 of the C.Ts. got off and 4 remained; he did not know their whereabouts. The accused admitted that when he was captured he had the belt (P1) with 20 rounds of ammunition; he said he was forced to carry them. This is the evidence he has given from the witness box.

We will now deal with the questions. The first question is: "Are you satisfied that the accused, Subramaniam s/o Murusamy, was in possession of 20 rounds of .303 ammunition on 29th April, 1955, in the Rengam District of the State of Johore without lawful authority?" You will have no difficulty to answer this question, as the accused has admitted that he was carrying the 20 rounds in a belt round his waist. As regards lawful authority, well, if the accused had any lawful authority to carry this ammunition then it is for him to prove that he had any such authority.

The second question is: "If your answer is 'Yes', in your opinion, was the accused, when he was in possession of the 20 rounds of .303 ammunition, acting under duress?" You have heard the question of duress raised by the learned Counsel for the

In the High
Court at
Johore Bahru

—————
No. 18
Summing
up of Mr.
Justice
Storr
2nd August
1955
(Continued)

In the High
Court at
Johore Bahru

No.18
Summing
up of Mr.
Justice
Storr
2nd August
1955
(Continued)

defence. Section 94 of the Penal Code reads as follows: (Reads). Gentlemen, that section means that fear to be an excuse for doing an offence, in this case of carrying ammunition, must be the fear of immediate death, and that fear, according to the direction of the law laid down by the Court of Appeal, must be imminent, extreme and persistent. The accused said he was taken into the jungle by force and he was afraid to escape, while in the jungle, for fear of being killed; but you will remember when he was captured there was nobody else with him and he was not in fear of being killed. I must tell you I cannot find any evidence of duress myself.

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The next question is: "In your opinion, had the accused formed the intention to surrender when he reached the place where he was captured?" On the question of surrender, the accused told you that he formed the intention to surrender after he was wounded; of course he also said that he wanted to escape while he was in the jungle under training. It is a question of fact and it is for you to say whether he had formed an intention to surrender when he came to that place with the belt round his waist and 20 rounds of ammunition in its pouches. I must point out to you that if he had the intention to surrender he would have shouted out to the security forces before they found him out. However, it is entirely a matter for you to decide.

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I don't think I have anything further useful to add. Gentlemen, would you like to retire to consider your opinions? (The Assessors retire).

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Taken down by me.

A. George,
Secretary to Judge.

No.19

NO.19

Judgment
of Mr.
Justice
Storr.
2nd August
1955

JUDGMENT OF MR. JUSTICE STORR

Oral Judgment by Storr, J.

The facts of this case are very simple. I have gone into them very fully in my summing up and I do not intend going through them again.

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At the end of my summing up I asked the Gentlemen Assessors three questions. The first question was:

(Reads question). The answer to this question by both of them was "Yes". With this answer I agree.

In the High Court at Johore Bahru

The question of duress was raised by the learned Counsel for the defence. Although I cannot find any evidence of duress, I put to the Gentlemen Assessors a question on that point. My second question was: (Reads question). The first Gentleman Assessor replied: (As in Notes) and the second Gentleman Assessor replied; (as in Notes). With these answers I am unable to agree. I can find no evidence from which duress can be said to have been proved by the defence.

No.19
Judgment
of Mr.
Justice
Storr.
2nd August
1955
(continued)

My third question was: (Reads question). The answer of the first Gentleman Assessor was: (As in Notes) and that of the second Gentleman Assessor was: (As in Notes). I regret I am unable to agree with either of these answers. I can find no evidence that the accused had the intention to surrender until he was surrounded and covered by the security forces.

Considering the evidence as a whole, I am unable to accept the story of the accused as to his entry into the jungle or what he did there. His story does not tally with the story of his friend Perumal (DW4); the accused said he stayed with Perumal for a day at least on the 6th February this year, but Perumal said the accused stayed with him only for 2 or 3 hours. Further, the statement he gave to the police differs from the evidence he gave in this court, and his explanation that the difference arose from loss of memory can hardly be accepted. I am referring especially to his statement that he had a rifle at the time of the attack by the security forces and also the other details he gave to the police. These details could not have been given from loss of memory.

For these reasons, I find the accused guilty of the charge and I convict him.

Taken down by me.

Sd: A. George
Secretary to Judge.

In the
Supreme
Court of the
Federation
of Malaya
(Court of
Appeal)

NO.20

NOTICE OF APPEAL

Take Notice that SUBRAMANIAM s/o MUNUSAMY appeals to the Court of Appeal against the decision of the honourable Mr. Justice Paul Storr given at the High Court, Johore Bahru on the 2nd day of August, 1955, whereby the appellant was convicted on a charge of under Reg. 4(1)(b) of the Emg. Regs. 1951 and sentenced to suffer death.

No.20
Notice of
Appeal
3rd August
1955

The appeal is against conviction and sentence only. 10

Dated this 3rd day of August, 1955.

R.T.P. of Subramaniam s/o
Munusamy

To The Assistant Registrar, Supreme Court,
Johore Bahru.

The address for service of the appellant is c/o
Superintendent of Prisons, Johore Bahru.

FILED this 4th DAY OF AUGUST 1955.

Sgd. V.R.T.Rangam
Assistant Registrar,
Supreme Court, Johore Bahru.

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No.21
Petition
of Appeal
3rd August
1955

NO. 21

PETITION OF APPEAL

To: The Honourable the Judges of the Court of Appeal SUBRAMANIAM s/o MUNUSAMY the appellant above-named, appeals to the Court of Appeal against the decision of the Honourable Mr. Justice Paul Storr given at the High Court, Johore Bahru on the 2nd day of August, 1955 on the following grounds:

The conviction is against the weight of evidence and the appellant above-named therefore prays that the conviction and sentence on him may be set

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aside or that the sentence on him may be reduced.

Dated this 3rd day of August, 1955.

R.T.P. of Subramaniam s/o Munusamy

The address for service of the appellant is c/o
Suptd. of Prisons, Johore Bahru.

FILED THIS 4TH DAY OF AUGUST, 1955.

Sgd. V.R.T. Rangam

Assistant Registrar,
Supreme Court, Johore Bahru.

In the
Supreme
Court of the
Federation
of Malaya
(Court of
Appeal)

No.21
Petition
of Appeal
3rd August
1955
(continued)

10

NO. 22

NOTES OF MATHEW C.J.

12th September, 1955.

Doraswamy Iyer for appellant.

Brown for respondent (P.P.)

DORASWAMY IYER:-

There is nothing I can urge.

APPEAL DISMISSED.

Sd: CHARLES MATHEW.

No.22
Notes of
Mathew C.J.
12th
September
1955.

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NO. 23

NOTES of WILSON J.

In the Supreme Court of the Federation of Malaya
In the Court of Appeal at Kuala Lumpur
Criminal Appeal No.48 of 1955.
(J.B.Emer.Crim.Trial No.1/55)

Subramaniam s/o Munusamy v. Public Prosecutor
(Appellant) (Respondent)

No. 23
Notes of
Wilson J.
12th
September
1955

NOTES OF ARGUMENT

Monday, 12th Sept. 1955.

Doraiswamy Aiyer for Appellant (assigned)

Brown (D.P.P.) for Respondent.

Doraiswamy Aiyer: Cannot urge anything in this appeal
Appeal dismissed.

Sd: H.W.Wilson
12.9.55

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NO. 26

ORDER IN COUNCIL GRANTING SPECIAL LEAVE
TO APPEAL TO HER MAJESTY IN COUNCIL

In the
Privy
Council

No. 26

LS

AT THE COURT AT BUCKINGHAM PALACE

The 25th day of January 1956

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

Order in
Council
granting
Special
leave to
Appeal to
Her Majesty
in Council
25th January
1956

10 Lord Privy Seal (acting for the Lord President)
MR. SECRETARY LLOYD-GEORGE

MR. HEATHCOAT AMORY
DOCTOR CHARLES HILL

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 12th day of January 1956 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 and a
"Supplemental Petition of Subramaniam son of
"Munusamy in the matter of an Appeal from the
"Supreme Court of the Federation of Malaya
"(Court of Appeal at Kuala Lumpur) between the
"Petitioner and the Public Prosecutor Respondent
"setting forth: that on the 14th July 1955 the
"Petitioner was charged in the High Court at
"Johore Bahru with being in possession of 20
"rounds of .303 ammunition without lawful
30 "authority therefor under Regulation 4 (1) (b)
"of the Emergency Regulations 1951: that on the
"2nd August 1955 the Court convicted the
"Petitioner and sentenced him to death:
"that the Petitioner appealed to the Court of
"Appeal at Kuala Lumpur and by an Order dated
"the 12th September 1955 that Court dismissed the
"Appeal: And humbly praying Your Majesty in
"Council to grant the Petitioner special leave to
"appeal against the Order of the Supreme Court of
40 "the Federation of Malaya (Court of Appeal at
"Kuala Lumpur) dated the 12th September 1955 or
"for further or other relief: The Lords of the
"Committee in obedience to His late Majesty's
"said Order in Council have taken the humble
"Petitions into consideration and having heard

In the
Privy
Council
—
No. 26
Order in
Council
granting
Special
Leave to
Appeal
to Her
Majesty in
Council
25th January
1956
(continued)

"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 at
"Kuala Lumpur) dated the 12th day of September
"1955: And Their Lordships do further report to
"Your Majesty that the authenticated copy under
"seal of the Record produced by the Petitioner
"upon the hearing of the Petitions 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".

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

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

W.G. AGNEW.

EXHIBITS

Exhibits

"A"

"A"
Certificate
under the
Emergency
(Criminal
Trials)
Regulations
1948.

Rengam I.P. 52/55
Rengam Report 87/55

THE EMERGENCY (CRIMINAL TRIALS)
REGULATIONS, 1948

30

12th May
1955

I, Douglas Marr Kelso Grant, Deputy Public
Prosecutor, in accordance with the provisions of
regulation 7 of the Emergency (Criminal Trials)
Regulations, 1948, hereby certify that the trial of
SUBRAMANIAM s/o MUNUSAMY on the following charge,
namely :

That you on the 29th April, 1955, in the Rengam
District, in the State of Johore, without lawful
excuse did have in your possession ammunition, to
wit 20 rounds of .303 ammunition without lawful

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authority therefor and you thereby committed an offence punishable under Regulation 4(1)(b) of the Emergency Regulations, 1951;

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 12th day of May, 1955.

Klg. Mag. Case No. PR 84/55
Ex. P1
?

Sgd. D.M.K. Grant,
Deputy Public Prosecutor.

10 for Magistrate, Kluang.

Exhibits
"A"
Certificate
under the
Emergency
(Criminal
Trials)
Regulations
1948
12th May
1955
(Continued)

SUPREME COURT, Johore Bahru,
J.B.E.C.T. No.1 of 1955
Exhibit marked "A"
Put in by D.P.P.
This 1st day of August, 1955.

Sgd. V.R.T. Rangam,
Assistant Registrar.

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List of Witnesses in P.P. vs Subramaniam
s/o Munusamy.

1. L/Cpl. R. Pugh, "A" Coy, 1st East Yorks, Rengam;
2. Pte. Schofield, "A" Coy, 1st East Yorks, Rengam;
3. Cpl. Joss, "A" Coy, 1st East Yorks, Rengam;
4. Lt. Dugmore M.A.N., "A" Coy, 1st East Yorks, Rengam;
5. M. Narasingam, No. 377, Jalan Esa., Kluang; and
6. Inspector David, Police Quarters, Rengam.

12th May, 1955

Sgd. D.M.K. Grant.
Dy. Public Prosecutor.

Klg. Magte. Case No. PR 84/55

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Ex. P2

Sgd. ?

for Magistrate, Kluang.

"B"

Exhibits

"B"
 Acknowledgement of
 Statements

JOHORE BAHRU EMERGENCY CRIMINAL CASE NO.1 of 1955

P.P. v Subramaniam s/o Munusamy

20th July
 1955

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

1. Report of L/Cpl. R. Pugh;

Statements of:

2. L/Cpl. R. Pugh;

3. Pte. A. Schofield; 10

4. Cpl. Joss;

5. Lt. M.A.N. Dugmore;

6. M. Narasingam;

7. Inspector Frank David; and

8. Subramaniam s/o Munusamy.

Sgd. R. Murugason,
 Signature.

Date 20.7.1955

SUPREME COURT, Johore Bahru
 E.C.T. JB No.1 of 1955 20
 Exhibit marked "B"
 Put in by D.P.P.
 This 1st day of August, 1955.

Sgd. V.R.T. Rangan
 Asst. Registrar.

P.3
 Statement
 of
 Subramaniam
 s/o Munusamy
 2nd May 1955

P3

FEDERATION OF MALAYA POLICE

ORANG KENA TUDOH

PERCHAKAPAN DALAM PEMEREKSAAN

No. Report 87/55 Rumah Pasong-Rengam.
 Perchakapan bagi-Subramaniam Nama bapa - Munusamy laki2 30

Bangsa - Tamil Tempat dipernakan - India
 Umor - 29 tahun, Kerja - Ex Rubber Tapper, Yong
 Peng Estate C.Div:
 Dudok di Ex. Yong Peng Estate, Yong Peng.
 Di-terima oleh Insp. F. David diKluang B.M.H.
 pada 2nd May, 1955
 jam 2.45 p.m.
 Jurubahsa P.C. and I.Mr. M. Narasingam
 daripada Tamil kepada English
 Kata-nya.

Exhibits
 P.3
 Statement
 of
 Subramaniam
 s/o
 Munusamy
 2nd May 1955
 (continued)

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Before I began to record accused's statement, I administered to him the following caution through Police Clerk and Interpreter Mr. M. Narasingam from Tamil into English.

"It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence".

Sgd. Insp. F. David 2/5/55

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I certify that I interpreted the above warning to the accused in the Tamil language which he understands properly.

Sgd. M.M. Narasingam 2/5/55

Q When did you come to Malaya?

A I came to Malaya when I was two years old with my parents.

Q When did you join the CT organisation and where?

A I joined the CT organisation on 2nd March, 1955 at "C" Division Yong Peng Estate, Yong Peng.

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Q How did you come to join the CT organisation?

A On 2nd March 1955 at about 4.00 p.m. whilst I was returning from Yong Peng Town to Yong Peng Estate, about half a mile from Kankar Bahru Village, I met three male Chinese CTs, one of them called me and spoke to me in Malay and asked me where I was going. I told him that I was returning to the estate. The CT told me not to go. The three CTs were armed with pistols. The CTs told me to follow them. One walked in front and two followed me from behind. We walked about ten days through jungle and at last arrived on top of a hill, where I met about a hundred CTs consisting

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Exhibits
P.3
Statement
of
Subramaniam
s/o
Munusamy
2nd May 1955
(continued)

of five male Indians, ten female Chinese and the rest all male Chinese. They were all armed with various type of weapons. I resided in this place for a month where I was given training. After this training I was given a rifle and twenty eight rounds of ammunition. On the 10th April, 1955, I left the camp with twelve others, consisting of four Indians and the rest Chinese. The section was commanded by Cheng Nya who was armed with a sten gun. Our mission was to collect foodstuffs, but we were not informed of our destination. After ten days march we camped at the place where I was shot. We were at this camp for two days when we were attacked by security forces. I was shot at about 10.00 a.m. When I was shot, one of the Chinese CTs took away my rifle but did not take my ammunition. My ammunition which was in a pouch was around my waist. The pouch was held with a belt and in the pouch were twenty rounds. The eight rounds were in the magazine in the rifle which was taken away by the Chinese CT. After I was shot I was unconscious and when I recovered, I remember sitting under a tree, and shortly afterwards the security forces arrived. I raised my left hand and said in English "I no communist". I cannot remember if I gave anything to the security forces. I remember the security forces removing my pouch containing the ammunitions. After removing the pouch they rendered me first aid where later I was removed to their camp where they gave me milk. I passed the night in their camp. On the following day I walked to Senda Estate accompanied by the Military where I was given medical treatment. I was placed in a Motor vehicle and brought to Hospital.

Q How were you dressed when you were wounded?

A I was wearing a pair of black trousers, a khaki long sleeved shirt, putees, a pair of rubber shoes and a khaki cap with one red star in front.

Q Have you an identity card before you joined the CT organisation.

A Yes, I had one, it was taken away and torn by the three male Chinese CTs whom I first met. My identity card number is Batu Pahat J. 011700.

Q Do you know what regiment you belong,

A I do not know.

Q Where are your parents?

A My parents are dead.

Q Does that truly represent all which you know about this matter?

A Yes

Q Have you anything to add or correction to make?

A No

Exhibits

P.3
Statement of
Subramaniam
s/o Munusamy

2nd May 1955
(continued)

Before me,

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Sgd. Insp. F. David.

The above statement has been read over and interpreted by me to the accused and stated by him to be correct.

Sgd. M. Narasingam 2/5/55

SUPREME COURT, Johore Bahru
J.B.E.C.T. No. 1 /1955
Exhibit marked P3
Put in by P.W.5
This 18th day of August, 1955.

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Sgd. V.R.T.Rangam
Asst. Registrar.

ON APPEAL FROM THE SUPREME COURT OF
THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR

BETWEEN

SUBRAMANIAM son of MUNUSAMY	Appellant
- and -	
THE PUBLIC PROSECUTOR	Respondent

RECORD OF PROCEEDINGS

STANLEY JOHNSON & ALLEN,
426, Salisbury House,
London Wall, E.C.2.
Solicitors for the Appellant

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand, W.C.2.
Solicitors for the Respondent.