

(i)

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 29 of 1968

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N:

1. INSPECTOR SHAABAN BIN HUSSIEN,
2. A.S.P. HASSAN BIN DAUD,
3. THE GOVERNMENT OF MALAYSIA (Respondents) Appellants

- and -

1. CHONG FOOK KAM,
2. CHIN SAN (Appellants) Respondents

(In the Matter of Civil Suit No. 35 of 1965
in the High Court of Malaya at Raub)

B E T W E E N:

1. CHONG FOOK KAM,
2. CHIN SAN Plaintiffs

- and -

1. INSPECTOR SHAABAN BIN HUSSIEN,
2. A.S.P. HASSAN BIN DAUD,
3. THE GOVERNMENT OF MALAYSIA Defendants

R E C O R D O F P R O C E E D I N G S

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1.

No. 29 of 1968

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N:

10 1. INSPECTOR SHAABAN BIN HUSSIEN,
2. A.S.P. HASSAN BIN DAUD,
3. THE GOVERNMENT OF MALAYSIA (Respondents)
Appellants

- and -

1. CHONG FOOK KAM
2. CHIN SAN (Appellants)
Respondents

R E C O R D O F P R O C E E D I N G S

NO. 1

WRIT OF SUMMONS

IN THE HIGH COURT IN MALAYA AT RAUB
STATE OF PAHANG

20 Civil Suit No. 35 of 1965

B E T W E E N

1. Chong Fook Kam
2. Chin San Plaintiffs

- and -

1. Inspector Shaaban bin Hussien,
2. A.S.P. Hassan bin Daud,
3. The Government of Malaysia Defendants

The Hon'ble Dato Syed Sheh Barakbah P.M.N.,
D.P.M.K., P.S.B., Chief Justice of the High

In the High
Court of
Malaya at
Raub

No. 1

Writ of Summons
11th September
1965

In the High
Court of
Malaya at
Raub

Court of Malaya in the name and on behalf of
His Majesty, the Yang Di-Pertuan Agong.

To:-

No. 1
Writ of Summons
11th September
1965
(continued)

1. Inspector Shaaban bin Hussien,
Area Inspector, Mentakab,
Pehang.
2. A.S.P. Hassan bin Daud, O.C.P.D.
Temerloh, Pahang.
3. The Government of Malaysia,
Kuala Lumpur.

10

WE COMMAND YOU, that within eight days
after the service of this writ on you,
inclusive of the day of such service, you
do cause an appearance to be entered for
you in an action at the suit of Chong Fook
Kam and Chin San, No. 39 Main Street,
Mentakab, Pahang.

AND TAKE NOTICE, that in default of
your so doing the Plaintiffs may proceed
therein and judgment may be given in your
absence.

20

WITNESS MOHD EUSOFF BIN CHIN, Assistant
Registrar of the High Court of Malaya the
11th day of September, 1965.

Sgd: Xavier & Thambiah Sgd: ?
Plaintiffs Solicitors Assistant Registrar,
High Court, Raub.

(L.S.)

N.B. This writ is to be served within twelve
months from the date thereof, or if renewed
within six months from the date of last
renewal including the day of such date,
and not afterwards.

30

The Defendant (or defendants) may
appear hereto by entering an appearance
(or appearances) either personally or by
solicitor at the Registry of the High
Court at Raub.

A Defendant appearing personally,
may, if he desires, enter by post, and the

40

NO. 2

NOTICE IN LIEU OF SERVICE

In the High Court of Malaya at Raub

IN THE HIGH COURT IN MALAYA AT RAUB

No. 2

Civil Suit No. 35 of 1965

Notice in Lieu of Service

BETWEEN

11th September 1965

- 1. CHONG FOOK KAM
 - 2. CHIN SAN
- Plaintiffs

- and -

- 1. INSPECTOR SHAABAN BIN HUSSEIN
 - 2. A.S.P. HASSAN BIN DAUD
 - 3. THE GOVERNMENT OF MALAYSIA
- Defendants

10

To:-

- 1. INSPECTOR SHAABAN BIN HUSSEIN,
Area Inspector, Mentakab, Pahang.
- 2. A.S.P. HASSAN BIN DAUD, O.C.P.D.
TEMERLOH, PAHANG.
- 3. THE GOVERNMENT OF MALAYSIA,
KUALA LUMPUR.

TAKE NOTICE that Chong Fook Kam and Chin San of 39 Main Street, Mentakab, Pahang have commenced a suit against you in our High Court in Malaya at Raub by writ of the Court dated 11th day of September, 1965 which writ is indorsed as follows:-

20

"The Plaintiffs' claim is:-

- (a) for an order that the Defendants do pay to the Plaintiffs damages for false imprisonment.
- (b) for costs and
- (c) for such other and further relief as the Honourable Court may deem fit."

30

This Writ was issued by Messrs: Xavier & Thambiah of Kuala Lumpur whose address for

service is No. 4 Klyne Street, Kuala Lumpur,
Solicitors for the said Plaintiffs who reside
at No. 39 Main Street, Mentakab, Pahang.
And you are required within (8) days after the
receipt of this notice to defend the said
suit by causing an appearance to be entered
for you to the said suit: and, in default, of
your so doing, the said Chong Fook Kam and
Chin San may proceed therein and judgment
may be given in your absence.

10

You may appear to the said writ by
entering an appearance personally or by your
Advocate & Solicitor at the Registry of the
High Court at Raub.

By order of the Court.

Sgd.

Assistant Registrar,
High Court, Raub.

The 11th day of September, 1965

INDORSEMENT OF SERVICE

20

This Notice was served by me at
on the day of
1965 at the hour of

Indorsed this day of 1965

(Signed)

(Address)

In the High
Court of
Malaya at
Raub

No. 2

Notice in
Lieu of
Service

11th September
1965

(continued)

In the High
Court of
Malaya at
Raub

NO. 3

STATEMENT OF CLAIM

IN THE HIGH COURT IN MALAYA AT RAUB

No. 3

Civil Suit No. 35 of 1965

Statement of
Claim

BETWEEN:

26th September
1965

- 1. Chong Fook Kam
 - 2. Chin San
- Plaintiffs

- and -

- 1. Inspector Shaaban Bin Hussein
 - 2. A.S.P. Hassan bin Daud
 - 3. The Government of Malaysia
- Defendants 10

STATEMENT OF CLAIM

1. The First Plaintiff is and was at all material times the driver of a lorry belonging to Temerloh Timber Trading Company Limited, 5th M.S. Karak Road, Mentakab, Pahang and resides at No. 39, Main Street, Mentakab.

2. The Second Plaintiff is and was at all material times the attendant of the said lorry belonging to Temerloh District Timber Trading Company Limited, 5th M.S. Karak Road, Mentakab and resides at No. 39, Main Street, Mentakab. 20

3. The First Defendant is an Inspector with the Royal Malaysian Police and stationed at Mentakab Police Station as an Area Inspector.

4. The Second Defendant is an Assistant Superintendent of Police with the Royal Malaysian Police and stationed at Temerloh as Officer-in-Charge Police District, Temerloh.

5. The Third Defendant is the employer of both Defendants. 30

6. On the 11th day of July, 1965 at about 5.15 a.m. the first Plaintiff was driving motor lorry bearing registration number C 8200 in the company of the second Plaintiff as the attendant of the said lorry and on reaching Bukit Tinggi both Plaintiffs were stopped by

7.

the Police at about 7.00 a.m. and after prolonged questioning were taken to Bukit Tinggi Police Station.

In the High Court of Malaya at Raub

7. At about 6.00 p.m. the same day both the Plaintiffs were locked up in separate cells at Mentakab Police Station by the third Defendant and kept falsely imprisoned till 6.00 p.m. on the 13th day of July, 1965 when both the Plaintiffs were released.

No. 3

Statement of Claim

26th September 1965

(continued)

10 8. By reason of the premises the Plaintiffs have been injured in their reputation and suffered pain of body and mind and were prevented from attending to their business and suffered damages.

PARTICULARS

1. Loss of wages and overtime for 3 days for both Plaintiffs (11.7.65 to 13.7.65).. \$50.00

And the Plaintiffs claim:-

- 20 (a) For an Order that the Defendants do pay to the Plaintiffs damages for false imprisonment.
- (b) Special damages \$50/-
- (c) Costs
- (d) For such other and further relief as the Honourable Court may deem fit.

Dated this 26th day of November, 1965.

Sgd: Xavier & Thambiah
Plaintiffs' Solicitors.

30

In the High Court of Malaya at Raub

This Statement of Claim is filed by Messrs. Xavier & Thambiah, Advocates & Solicitors, whose address for service is No. 4 Jalan Klyne, Kuala Lumpur, Solicitors for the above named Plaintiffs.

No. 3

Statement of Claim

26th September 1965 (continued)

No. 4

Defence of Defendants Nos. 1, 2 & 3

22nd December 1965

NO. 4

DEFENCE OF DEFENDANTS
Nos. 1, 2 and 3

IN THE HIGH COURT IN MALAYA AT RAUB

CIVIL SUIT No. 35 of 1965

10

BETWEEN:

- 1. Chong Fook Kam
 - 2. Chin San
- Plaintiffs

- and -

- 1. Inspector Shaaban bin Hussien
 - 2. A.S.P. Hassan bin Daud
 - 3. The Government of Malaysia
- Defendants

DEFENCE OF DEFENDANTS NOS. 1, 2 and 3

1. The 1st, 2nd and 3rd Defendants have no knowledge of the allegations in paragraphs 1 and 2 of the Statement of Claim and will put the Plaintiffs to strict proof thereof.

20

2. Paragraphs 3, 4 and 5 of the Statement of Claim are admitted.

3. Paragraph 6 of the Statement of Claim is admitted. The Defendants aver that the motor lorry was lawfully stopped by the Police in the course of duty.

4. Paragraph 7 of the Statement of Claim is

denied. The Defendants aver that the Plaintiffs were lawfully detained under the provisions of the Criminal Procedure Code and in accordance with the authority of a Magistrate.

5. Paragraph 8 of the Statement of Claim is denied.

6. The Defendants will contend that the Plaintiffs' claim is bad in law and discloses no cause of action.

7. The Defendants pray that the Plaintiffs' claim be dismissed with costs.

Dated this 22nd day of December, 1965.

Sd. Au Ah Wah

Senior Federal Counsel
(Solicitors for the Defendants)
Nos. 1, 2 and 3)

To: Messrs. Xavier & Thambiah,
Advocates & Solicitors,
No. 4 Jalan Klyne,
(Solicitors for the Plaintiffs)

Filed on this day of December, 1965
at a.m./p.m.

In the High
Court of
Malaya at
Raub

No. 4

Defence of
Defendants
Nos. 1, 2 &
3

22nd December
1965
(continued)

10

20

In the High Court of Malaya at Raub

NO. 5
NOTES OF EVIDENCE

No. 5
Notes of Evidence
30th November 1966
Plaintiffs' Evidence
Chong Fook Kam

IN THE HIGH COURT IN MALAYA AT RAUB

CIVIL SUIT NO. 35 of 1965

BETWEEN:

- 1. Chong Fook Kam
 - 2. Chin Sen
- Plaintiffs

- and -

- 1. Inspector Shaaban bin Hussien
 - 2. A.S.P. Hassan bin Daud
 - 3. The Government of Malaysia
- Defendants 10

NOTES OF EVIDENCE AS RECORDED BY
RAJA AZLAN SHAH J.

30th November 1966

D.R. Seenivasagam with Xavier for Plaintiffs.

Au Ah Wah for Defendants.

Xavier addresses:

Facts.

Detained - 2 nights and 3 days. 20
Calls.

EVIDENCE OF CHONG FOOK KAM

P.W.1.

Chong Fook Kam affirmed, state in Hakka.

On 11.7.1965 I was a lorry attendant of lorry C.8200. On that day I was with lorry driver, the Second Plaintiff.

On reaching Bukit Tinggi we stopped our lorry and had a drink. That was about 7.00 a.m.

Two P.Cs. stopped our lorry. They were in uniform. They told us that they had 30

instructions from their superior officers to stop our lorry. I asked the P.Cs., they said they did not know what were the instructions. They told us they wanted to stop our lorry. They did not ask for our N.R.I.Cs or driving licence. We waited at Bukit Tinggi till 2.00 p.m.

10 At 2.00 p.m. four persons arrived. One of them was my employer. The other three, two were Malays and one Chinese. They were all police officers. They were not in uniform. The two Malay police officers are the first two Defendants. The Chinese is not in Court.

20 As soon as they arrived they separated us. The two Malay officers took me. They asked me whether I knew of a road accident at Mentakab. They did not tell me the nature of the accident. They also asked me if our lorry was involved in the accident. I said no.

30 They asked us to drive our lorry to Bukit Tinggi Police Station. They did not ask us to produce our N.R.I.Cs or driving licence. We arrived at Police Station at about 3.00 p.m. Second Plaintiff was together with me. No further questioning at Police Station. They did ask about our movements the previous day or that morning.

They told us the date of the alleged accident was 10th July, 1965. They did not tell us the place of accident. After that we went into our employer's car together with the three police officers. We went to Mentakab.

40 When we arrived at Mentakab it was about 5.00 p.m. We went to Mentakab Police Station at about 5.00 p.m. I told the police officers of my movements on the 10th and 11th morning. They did not check my movements. But they checked my driver's movements. The police officer asked me to wait at the Station. Then they took second Plaintiff away. About 30 to 40 minutes

In the High Court of Malaya at Raub

—
No. 5

Notes of Evidence

30th November 1966

Plaintiffs' Evidence

Chong Fook Kam

(continued)

In the High
Court of
Malaya at
Raub

No. 5

Notes of
Evidence

30th November
1966

Plaintiffs'
Evidence

Chong Fook

Kam

(continued)

later they returned to the station. My employer also returned with the police officers. Then he left the station.

When my employer had left the police detained both us. They did not tell us anything. They just told us they wanted to detain us. They did not give the reason for detaining us. I told the police that I wanted to make a 'phone call to my employer. I cannot remember the police I asked. I asked a police constable. The police told me that it was not necessary to make the call. I did not protest at the attitude of the police.

10

When we were detained it was about 6.00 p.m. We told the police we needed food. But the police told us that meal time was at 5.00 p.m. The police who looked after the detainees.

The first two defendants were not at the station. As soon as my employer left, I did not see them anymore.

20

At about 7.00 p.m. we got our food. We were put up in the lock-up for the night.

At about 10.00 a.m. on 12.7.1965 second plaintiff and I were handcuffed by the police and we were brought to Temerloh. Two P.Cs and one Corporal, a Chinese, accompanied us to Temerloh.

When we reached Temerloh they brought us to an office. We did not know what office it was. They uncuffed us in the office and asked us to attach our signatures to a form. I did not know what form it was because it was written in English. I asked the person who asked us to sign the form, the contents of the form. He was a Chinese. He was not in uniform. The Chinese asked me to sign a form. When I asked him why I must attach my signature on the form, he explained to me that the form was for purposes of detention and food.

30

The first two defendants were not in the office. I did not ask the chinese for the reason of detention.

40

After signing the form we were handcuffed again. We were brought to Temerloh Magistrate's Court. Distance between the office and the Court was about 25 yards. We waited in the Court. There was no sitting at the time. We waited for about 15 minutes. The second plaintiff requested the corporal to make a 'phone call to our employer so that he could bail us out. Second plaintiff made the 'phone call. At about 11.00 a.m. we left the court for Mentakab, arriving about 12.00 noon. I never saw both the defendants on 12.11.1965. After 3.00 p.m. I saw both the defendants.

10

20

30

At Mentakab we were detained in separate cells. At about 3.00 p.m. second plaintiff was called to the office. He came back at about 3.30 p.m. At about 4.00 p.m. I was called to the office. I was questioned by defendant No. 1. He asked me whether I knew of the accident of 10.7.1965. I told him that on 10.7.1965 at about 6.00 p.m. I was at the sawmill. He told me that we were involved in the accident and that we failed to make a report. I told him that we were not involved in the accident. He asked me what happened on the 10th. I told him that after 6.00 p.m. we loaded the lorry with planks. He told me that we were involved in the accident and so he wanted to detain us as we failed to make a report. He did not tell me that there was a Court Order to detain us. After the questioning I went back to the lock-up. I was not taken to the place of the accident. I slept in the lock-up that night.

40

Nothing happened on 13.11.1965 except that we were released after 5.00 p.m. No questioning on that day. Defendant No. 2 released us. He asked us whether we wanted to go home. There was no mention of the accident.

Cross-examination

Age, 26 years. Bachelor. I was first detained at Mentakab when I was taken from Bukit Tinggi. It was about 5.00 p.m.

Second plaintiff did ask for the reason why our lorry was stopped at Bukit Tinggi. I

In the High Court of Malaya at Raub

No. 5

Notes of Evidence

30th November 1966

Plaintiffs' Evidence

Chong Fook Kam

(continued)

Cross-examination

In the High
Court of
Malaya at
Raub

No. 5

Notes of
Evidence

30th November
1966

Plaintiffs'
Evidence

Chong Fook
Kam
Cross-
examination
(continued)

did not know what the police told second plaintiff. They told us that their superior officers were on their way from Mentakab.

Defendants Nos. 1 and 2 arrived at about 2.00 p.m. at Bukit Tinggi. It was after 2.00 p.m. when they arrived with my employer, Mr. Yap. They came in Yap's car.

Second plaintiff enquired for the reason from our employer. Employer did not tell driver reason.

10

The police separated us. I was then sitting in the coffee-shop. The police took the driver to another coffee-shop. Driver came back to my coffee-shop. Driver then drove lorry to Bukit Tinggi Police Station.

Then we left for Mentakab in our employer's car. Lorry remained at Bukit Tinggi Police Station.

I was also questioned by the police in the coffee-shop of defendant No. 2. There was a Chinese Corporal who acted as interpreter. At first he asked me whether we had made a report at the Police Station after the accident. Defendant No. 2 told me that we had failed to make a report at the Station. I did not know what the accident was. I was told that the accident involved the death of a person. Defendant No. 2 told me. He told us that our lorry was involved in the accident. The reason why we were taken to Mentakab Police Station was because our lorry was involved in a fatal accident.

20

30

I saw a Chinese man at the Temerloh office on 12.11.1965. I did not know him. He was not an interpreter. He was sitting in the office.

Not true that defendant No. 1 escorted me to the office. Two P.Cs and one Corporal escorted me to the office. The Chinese did not take us to any office but he asked us to sign on a form. I did not know what was the form. He told me that if I wanted to have food in the lock-up I must sign the form.

40

I did not see a young Malay with a moustache in that office.

I do not know if I was taken before a Magistrate that morning. I was not told.

It is not true that defendant No. 1 took me to see a Magistrate that morning. It is not true that the Magistrate explained to me that I would be detained from that date to 18.11.1965.

10 I did not know who the Chinese was.

Subsequently I was taken across to the Magistrate's Court. I was not told that the police took me there to get a warrant of remand.

During the detention I enlisted the help of my employer. When we called for him he came. We asked him to bail us out, but the corporal told him that since we have signed the form we could be bailed out.

20 I did sign a form in the office, but I did not know what it was about.

Re-examination:

Nil.

EVIDENCE OF CHIN SAN

In the High Court of Malaya at Raub

No. 5

Notes of Evidence

30th November 1966

Plaintiffs' Evidence

Chong Fook Kam
Cross-examination
(continued)

Chin San

P.W.2.

Chin San, affirmed, states in Hakka.

On 10.7.1965 at 6.15 p.m. I was in the sawmill.

30 On 11.7.1965 I was driving lorry C.8200 with P.W.1 from Ment-kab to Kuala Lumpur. A Corporal and two P.Cs. stopped my lorry at Bukit Tinggi at about 7.00 a.m. The police told us that they stopped us because they had received instructions from their superior officers. But they did not tell me the reason why they stopped my lorry. They told us they received instructions through telephone

In the High
Court of
Malaya at
Raub

—
No. 5

Notes of
Evidence

30th November
1966

Plaintiffs'
Evidence

Chin San
(continued)

to stop my lorry. They took my driving licence and N.R.I.C. I remember a Sergeant took my driving licence and my N.R.I.C. They did not return these documents to me. They asked me to wait because their superior officers would come later. I told the police that I was transporting the planks to Kuala Lumpur. They asked me to wait. After 2.00 p.m. my employer and three other persons came. Between 7.00 a.m. and 2.00 p.m. I was waiting at Bukit Tinggi. 10

Two of the three other persons are defendants Nos. 1 and 2. Defendant No. 1 took me to another coffee-shop and he questioned me there. He asked me where was I the previous night. I told him that at about 6.00 p.m. I arrived at Mentakab from the saw-mill at Temerloh. I did not ask him why he was asking me that question. He told me that I was involved in a road accident and I failed to lodge a report at a police station. He did not tell me where the accident was or the nature of the accident. I told him from where I started my journey and I told him that I had my food in Mentakab. These were my movements on 10.7.1965. I gave him the names of the persons and places where I had been the previous day. He did not tell me the reason why I was detained. He questioned me for about half-an-hour. 20

Later he told me he wanted to detain me in Mentakab. I did not ask him why. He told me that he did not believe my story. That was why he wanted to detain me. 30

Then defendant No. 1 asked me to drive the lorry to Bukit Tinggi Police Station. As soon as I had parked my vehicle I went to Mentakab in my employer's car. I arrived in Mentakab about 5.00 p.m. No further questioning in Mentakab Police Station.

Then defendant No. 1 took me out to a food shop in Mentakab where I had taken my food earlier on 10.7.1965. Defendant No. 1 asked the proprietor questions. I was there for about ten minutes. I did not know what questions he asked the proprietor. 40

After that he took me to a barber's shop. There defendant No. 1 asked questions from that shop. I had been to that shop on 10.7.1965 at about 8.00 p.m.

In the High Court of Malaya at Raub

From there I was taken back to Mentakab Police Station. I was confined in separate cells. Both defendants left the station. Employer also left. My employer also went with me and defendant No. 1 to the two shops in Mentakab.

No. 5

Notes of Evidence

30th November 1966

Plaintiffs' Evidence

Chin San
(continued)

On 12.7.1965 at about 10.00 a.m. the attendant and I were handcuffed and taken to Temerloh Court. Two P.Cs and one Corporal took us upstairs. They asked me to sign a form. The corporal asked us to sign a form. That was inside a room. None of the two defendants were in that office.

There was another man in the office. He was a Chinese. He asked me to sign a form. He told me that the form was for purposes of detention and food. He did not tell me why I was detained. He did not explain to me anything. Form was in English. It was not explained to me.

After that I was brought to the Court. I was not brought before a Magistrate. I was there for about half-an-hour. I obtained from the police permission to telephone my employer. I telephoned my employer from a coffee-shop to ask him to come in order to render us help. From there we were taken back to Mentakab Police Station by the same police party. Arrived at about 11.30 a.m.

We were put back in the cells. At about 3.00 p.m. I was questioned by defendant No. 1. He said that I was involved in an accident and I ran away. I told him I was not involved in an accident and I also related to him my movements. He did not tell me the details of the accident. I was questioned for about 40 minutes. After that I was put back in the lock-up. No further questioning. I did not see any of the defendants after that.

On 13.7.1965 I was released between

In the High Court of Malaya at Raub

5.00 p.m. and 6.00 p.m. No questioning on that day. A P.C. released me. Defendant No. 2 was there.

No. 5

Cross-examination:

Notes of Evidence

I am 34 years old. Driver of this lorry for some time.

30th November 1966

On 10.7.1965 at 6.15 p.m. I had already loaded my lorry. Saw-mill located on Mentakab-Karak road, 5th milestone. From saw-mill I was proceeding towards Mentakab. Lorry was loaded with timber. Colour of bonnet of lorry was red. I had not taken my food then. I was proceeding to Mentakab to have my food. I also said I went to the barber's shop.

Plaintiffs' Evidence

10

Chin San (continued)

Cross-examination

It is true my lorry was parked opposite the Caltex Station at Mentakab. It is true that my lorry was parked there till 12.00 midnight.

I left Mentakab at 5.15 a.m. on 11.7.1965 for Kuala Lumpur. At 12.00 midnight I was nowhere I was nowhere near my lorry. That night I slept in a room at Mentakab.

20

At Bukit Tinggi I was stopped by the police. I asked them, and they told me that they had instructions from their superior officers. The police said they were waiting for their superior officers. They arrived at about 2.00 p.m.

The first thing defendant No. 1 told me was that my lorry was involved in an accident. He did not tell that it was a fatal accident. He said I killed a person as a result of the accident and I ran away. Because of that reason he took me back to Mentakab Police Station.

30

Arrived late in the evening at Mentakab. 11.7.1965 was a Sunday. Next day I was taken to Magistrate's Court at Temerloh at about 10.00 a.m.

Defendant No. 1 did not escort me to the Court. It is not true Defendant No. 1 took me before a Magistrate. The 'upstairs' to which I referred earlier is the office building near the Court.

40

I signed only one form. I did not know

what was the form. The Corporal asked me to sign the form and I signed. I did not ask him for the reason. He said if I wanted food I must sign the form. It is not true that I did not sign any form. Not true that defendant No. 1 took me before a Magistrate and the Chinese acted as interpreter. Not true Magistrate through the interpreter told me I would be detained for one week.

In the High Court of Malaya at Raub

No. 5

Notes of Evidence

30th November 1966

Plaintiffs' Evidence

Chin San (continued)

Cross-examination

10 Re-examination

Nil.

Case for plaintiffs

EVIDENCE OF INSPECTOR SHAABAN BIN HUSSEIN

Defendants' Evidence

Inspector Shaaban bin Hussein

D.W.1.

Inspector Shaaban bin Hussein, affirmed, states in English. Area Inspector, Mentakab, in July 1965.

20 On 10.7.1965 at about 10.15 p.m. as a result of a 'phone call from the police station I went to Inquiry Office, Mentakab Police Station.

30 I read this police report - Exh. DI. I discovered an offence disclose under sect. 304A P.C. I then informed defendant No. 2. I interrogated the complainant, Mr. Kanniah, about the description of the vehicle. It was a timber-lorry with trailer loaded with sawn timber, with red bonnet. Defendant No. 2 instructed me to main road blocks. I then instructed O.C.S. Temerloh, O.C.S. Kuala Krau, O.C.S. Berdan, O.C.S. Lanchang, to man the road-blocks.

I then together with complainant went to place of incident at 3rd mile Mentakab-Bentong road, just at the double bend. On

In the High
Court of
Malaya at
Raub

No. 5

Notes of
Evidence
30th November
1966

Defendants'
Evidence

Inspector
Shaaban bin
Hussein
(continued)

arrival I found broken glasses on grass-verge, left side of road, as one faces Bentong. At scene I also discovered broken sawn timber.

From there I went to Mentakab Hospital and saw deceased was kept in the mortuary, Deceased's name was Govindan.

I made enquiries. I received information that between 9.00 p.m. and 10.00 p.m. on 10.7.1965 a timber lorry loaded with sawn timber and red bonnet was seen coming from Bentong side towards Mentakab town. As a result of the information at 12.00 midnight I saw a timber lorry C.8200 parked further up Mentakab town towards Temerloh, in front of Caltex Station. Bonnet was red. I suspected the vehicle to have been involved in the accident.

10

I then sent for the complainant to come to the spot, and he identified the vehicle as a similar vehicle to that which was involved with his vehicle. I looked for the driver. I could not find him. I saw the name-plate at the back of the driver's seat - District Temerloh, Sawmill, and also telephone number there. I know the sawmill is at 5th mile Mentakab-Karak road. That is the saw-mill as described by the second plaintiff, I detailed two P.Cs to guard the vehicle and to bring the vehicle and the driver, if available, to the police station. The vehicle was facing towards Temerloh.

20

I went round Mentakab town and Temerloh and checked all the road blocks to inquire whether any vehicle of the same type had passed the road blocks. No vehicle of similar description had passed the road blocks. I also checked the three saw-mills in Mentakab to find out whether there was any similar vehicle of the description there, but I found none.

30

As there was no other vehicle in that district, I believe that vehicle C.8200 was the vehicle involved in the accident. I also instructed the corporal in charge of the Inquiry Office, Mentakab, to relieve the two P.Cs who were guarding the lorry. I then returned home.

40

At about 5.00 a.m. on 11.7.1965 I went to the place where the lorry was seen by me previously. I found that the vehicle had disappeared. I then informed defendant No. 2 who instructed me to inform Karak Police Station and Bukit Tinggi Police Station to stop lorry C.8200. I rang up both the O.C.Ss and informed them that the lorry was involved in a fatal accident and to be detained at the scene and to inform me immediately.

10

At 11.00 a.m. I was informed by O.C.S. Bukit Tinggi that he had detained the said lorry. At 11.00 a.m. I then informed defendant No. 2 and the owner of lorry, Mr. Yap, who agreed to take me and defendant No. 2 to Bukit Tinggi. I, with defendant No. 2, Yap, and police photographer went to Bukit Tinggi in his motor-car. Arrived at Bukit Tinggi at about 1.00 p.m.

20

I saw the vehicle C.8200 parked in front of a coffee-shop. I then took the driver and defendant No. 2 took the attendant.

I took attendant to a coffee-shop and told him that his lorry was strongly suspected of having been involved in a fatal accident at the 3rd mile and I started interrogation. I told him the reasons why he was detained. I was not satisfied with his explanation. I then told him that he would be detained for further interrogation.

30

After taking the photograph of the vehicle I told Yap that both driver and attendant were to be detained at Mentakab and if he had other drivers the lorry could be driven to Kuala Lumpur. No extra driver at that time. Yap agreed that the lorry should be kept at the station for safe keeping.

40

I then together with defendant No. 2 and driver, and attendant, and Yap, returned to Mentakab Police Station.

It is normal that the attendant of a timber lorry can drive the vehicle.

In the High Court of Malaya at Raub

—————
No. 5

Notes of Evidence

30th November 1966

Defendants' Evidence

Inspector Shaaban bin Hussein
(continued)

In the High
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Raub

No. 5

Notes of
Evidence

30th November
1966

Defendants'
Evidence

Inspector
Shaaban bin
Hussein
(continued)

Therefore, as I did not know then who was the driver of the said vehicle I had to detain the attendant as well.

During interrogation the driver told me his movements of the evening of 10th July. Driver told me he was driving the vehicle from the 10th July to 11th July. Driver told me that he had taken food at a shop and from there to a barber's shop at Mentakab. Driver took me to the food shop and also the barber's shop.

10

At the food shop, driver pointed to a particular man to be his witness. I questioned that man. He was reluctant to answer my question. Driver also took me to a barber's shop and pointed to a girl. I also questioned the girl. She also was reluctant to answer any question.

I then returned to the Station together with driver and questioned the attendant. During the interrogation he told me a similar story as told to me by the driver.

20

I informed defendant No. 2 and he instructed me to detain both of them for further interrogation. It was then about 6.15 p.m.

First on the morning of 12.7.1965 I put up my I.D. It was at 8.00 a.m. - exh. D2. I then took escort, one Corporal and one P.C., and took both driver and attendant to court house at Temerloh. I met the chine interpreter and registered the names of both driver and attendant in the register book. I took both of them with the Chinese interpreter and two escorts to the government office before a Magistrate, Che Kadir. He is the Assistant District Officer.

30

I produced my I.D. to the Magistrate and the Magistrate read it and informed the suspects through the interpreter that they were going to be detained till 18.7.1965. The order of detention was explained to both driver and attendant.

40

I took them back to the Court house to wait for the W/Remand - Exh.D3. I took both

suspects back to Mentakab Police Station and detained them. During that time I went out to investigate and to get witnesses. I recorded their statements the whole day, and in the evening I recorded both the statements of the suspects.

10 On 13.7.1965 I had recorded all the statements concerned and by 3.00 p.m. I received a telephone call from O.C.P.D. Temerloh (defendant No. 2) whether I had completed my investigation. I told him 'yes'. He instructed me to release the suspects if there was not sufficient evidence. I then took D2 and went to see the Magistrate to get an order of release. The suspects were released on 13.7.1965.

Cross-examination:

20 When I knew that timber lorry used to have two drivers I detained the attendant. On 12.7.1965 I did not know who was driving the lorry. Plaintiff No. 2 told me that he was driving the lorry on the 10th and 11th July at Bukit Tinggi during my first interrogation. I was not sure at that time who was the driver of the lorry.

I recorded statements from food-stall owner, from the girl, and the clerk of the saw-mill. On night of 10.7.1965 I did ring the saw-mill in question but there was no reply.

30 D2 refers.

I.D. written on 12.7.1965 I was certain that lorry C.8200 was involved. I prepared I.D. in order to get the Magistrate's order.

I have been in the police force for 15 years.

I was not sure that second plaintiff was the driver of the lorry.

Lorry C.8200 had a trailer.

40 I had made enquiries but I did not find any lorry with red bonnet except lorry C.8200.

In the High Court of Malaya at Raub

No. 5

Notes of Evidence
30th November 1966

Defendants' Evidence

Inspector Shaaban bin Hussein
(continued)

Cross-examination

In the High Court of Malaya at Raub

We left Mentakab Police Station at 8.30 a.m. for the Court on 12.7.1965. I took them before the Magistrate.

No. 5

I did not ask for the driver's N.R.I.C. and driving licence.

Notes of Evidence
30th November 1966

I prepared I.D. (D2) on 12.7.1965 at 8.00 a.m.

Defendants' Evidence

I was told by O.C.S. Bukit Tinggi that the two suspects were detained at 7.40 a.m. on 11.7.1965.

10

Inspector Shaaban bin Hussein

W/Remand prepared by Court Interpreter.

Cross-examination (continued)

There are 5 A.D.Os at Temerloh.

D3 is not Che Kadir's signature.

D2 bears Che Kadir's signature.

It was necessary to handcuff the suspects. Instructions from Commissioner of Police.

Re-examination

Re-examination:

I do not know the reason for the delay in transmitting the message by O.C.S. Bukit Tinggi at 11.00 a.m.

20

A call from Bukit Tinggi had to pass through the Kuala Lumpur Exchange and the Mentakab Exchange.

No wireless set at Bukit Tinggi.

I do not know who signed D3.

At the first available opportunity on Monday 12.7.1965 I took both of them before the Magistrate.

(Adjourned to a date to be fixed)

Certified true copy

30

Sgd.

.....
Secretary to Judge,
Kuala Lumpur.
13.2.1967.

NO. 6

FURTHER NOTES OF EVIDENCE

In the High
Court of
Malaya at
Raub

No. 6

Further Notes
of Evidence

17th February
1967

Defendants'
Evidence

A.S.P. Hassan
bin Daud

IN THE HIGH COURT IN MALAYA AT RAUB

RAUB CIVIL SUIT NO. 35 of 1965

BETWEEN:

- 1. Chong Fook Lam. Plaintiffs.
- 2. Chin San.

10

- and -

- 1. Insp. Sha'aban bin
Hussein. Defendants.
- 2. A.S.P. Hassan bin Daud,
O.C.P.D.
- 3. The Government of
Malaysia.

Parties as before. 17th February 1967

EVIDENCE OF A.S.P.HASSAN
BIN DAUD

D.W.2.

20

A.S.P. Hassan bin Daud affirmed, states in English. Now attached as O.C.P.D. Temerloh. On 10.7.1965 at 10.20 p.m. while I was in my quarters I was informed by D.W.1. that an accident had taken place at 2nd milestone Mentakab-Karak road where an Indian, a passenger in the car, died as a result of a piece of sawn timber falling off a motor-trailer on to the car.

30

I was also informed that the lorry had a red bonnet and that was the only description given to me.

I was also informed that this trailer did not stop and the whereabouts of the trailer was not known to them.

I then instructed D.W.1. to put up road blocks at Triang, Maran, Kuala Krau and Lanchang

In the High
Court of
Malaya at
Raub

No. 6

Further Notes
of Evidence

17th February
1967

Defendants'
Evidence

A.S.P. Hassan
bin Daud
(continued)

and to stop any motor-trailer with red bonnet carrying sawn timber for purpose of investigation.

After that I instructed D.W.1. to investigate the case, which offence I classified under sect. 304A of P.C.

The next morning, 11.7.1965, at about 5.50 a.m. D.W.1. rang me up at my quarters and informed me that a lorry with red bonnet was in fact detained at Mentakab near the Caltex petrol kiosk and that lorry had disappeared.

10

I instructed him to contact Lanchang, Bukit Tinggi police stations and if possible Gombak police station to stop this lorry C.8200.

At about 10.30 a.m. on same day D.W.1. again informed me that this lorry was stopped at Bukit Tinggi.

I told D.W.1. that I would be going with him to Bukit Tinggi. I instructed him to contact the Manager of the Timber. I instructed him to contact the Manager of the Timber Company to which the lorry belonged and to take him along to Bukit Tinggi.

20

At 11.15 a.m. the same day the Manager of the Company, Mr. Yap, D.W.1. and myself proceeded to Bukit Tinggi and arrived there at about 1.00 p.m.

On arrival I met both the plaintiffs and also the O.C.S., Bukit Tinggi.

30

I first took P.W.1 and interrogated him. I told him that we suspected that his lorry was involved in the accident.

After interrogating him, I then went to P.W.2 and interrogated him. I found some discrepancies in what they had said, in that P.W.1 stated that they went for Makan on the night of 10.7.1965 and afterwards they went to have their hair cut. P.W.1. stated that they did not bring the trailer to the barber's shop, whereas P.W.2. stated that the trailer was brought to the barber's shop.

40

Further to that, on my arrival the O.C.S. informed me that the moment the trailer was stopped the driver told him that he had not met with any accident. During that time also D.W.1. informed me that in the course of his investigation he had met a Chinese known as Kurus and D.W.1 stated that Chinese had informed him that the driver was

In the High
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Malaya at
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Further Notes
of Evidence

17th February
1967

Defendants'
Evidence

A.S.P. Hassan
bin Daud
(continued)

10 (Objection sustained).

As a result of what D.W.1. had told me about Kurus, I suspected that that trailer was the one involved in that accident. Further to that, D.W.1. told me that the road block manned that night did not find any trailer carrying timber with red bonnet passing through any of the road blocks that night.

20 I saw the motor-trailer C.8200 there, and the colour of the bonnet was red. It was a Mercedes lorry and it was carrying sawn timber.

As a result of that I decided to bring both plaintiffs back to Mentakab for the purpose of further investigation and after detaining the lorry at the police station with the consent of the Manager, at about 3.05 p.m. on 11.7.1965 we left for Mentakab, arriving there at about 5.00 p.m.

30 On arrival at Mentakab I instructed D.W.1. to carry on with the investigation and if it could not be completed, to obtain a Court order to detain both of them under sect. 117 of the C.P.C.

On 13.7.1965, at about 3.00 p.m., I was at Kertau police post, and from there I contacted D.W.1. and asked him if he had completed his investigation or otherwise.

40 D.W.1. informed me that he had completed his investigation and that we did not have sufficient evidence to connect the lorry or the two plaintiffs with the accident case. So I instructed D.W.1. to release them.

In the High Court of Malaya at Raub

Cross-examination:

Plaintiffs denied they were involved in the accident.

No. 6

Further Notes of Evidence

I instructed D.W.1. to stop lorry with red bonnet for purposes of investigation into the case.

17th February 1967

I did not instruct D.W.1 to give the reason, only the lorry was to be detained if it was stopped at a road block.

Defendants' Evidence

I was not aware that P.W.2 was taken out into town for interrogation by D.W.1.

10

A.S.P. Hassan bin Daud

P.W.2. admitted at the coffeee-shop at Bukit Tinggi that he was the driver of the lorry at the material time.

Cross-examination

P.W.1 said he was the attendant and P.W.2 was the driver at the material time.

I detained both of them because normally these timber lorries have two drivers. The attendant can also drive.

I thought that was a reasonable ground for detaining both the plaintiffs.

20

On 12.7.1965 I was away on duty. I did not receive any call from D.W.1.

On morning of 13.7.1965, when I visited the lock-up, I saw both plaintiffs in the lock-up. I checked and found that there was a warrant of remand against these two persons. After that I tried to contact D.W.1. but he was not in.

I telephoned D.W.1 at 3.00 p.m.

Re-examination:

30

Nil.

EVIDENCE OF ABDUL KADIR BIN NGAHD.W.3.

Abdul Kadia bin Ngah affirmed, states in English. Assistant Commissioner of Land Revenue, Rompin.

In July 1965 I was A.D.O. Temerloh. I was ex-officio, Second Class Magistrate.

10 About 8.30 a.m. to 9.00 a.m. on 12.7.1965 I was D.W.1. in my office. He brought the Chinese Interpreter and two Chinese - the two plaintiffs identified.

D.W.1 produced and I.D. - Exh. D2.

I asked the Interpreter to do the interpretation. Then I approved the detention for one week. This is my signature.

I did not sign the remand warrant. I was out on my official duties after that.

Cross-examination:

20 At 8.30 a.m. on 12.7.1965 I went to office.

Only four persons entered my office that morning. My office is on ground floor.

The Court Interpreter prepared the warrant of remand.

I came to know that I was to be a witness two days ago.

30 I discussed case with D.W.1. By reading the I.D. I remember two persons came to see me. D.W.1 told me that two persons had come.

D.W.1 said he could not complete the investigation of the two persons.

Warrant of remand signed by Mr. Liew, Chinese Affairs Officer. He is also a Magistrate.

In the High Court of Malaya at Raub

No. 6

Further Notes of Evidence

17th February 1967

Defendants' Evidence

Abdul Kadia bin Ngah

Cross-examination

In the High Court of Malaya at Raub

I think I went out on 12.7.1965 after approving the I.D. I wrote the approval passage on the I.D.

No. 6

I agree I used two different pens. I read the I.D.

Further Notes of Evidence

The two Chinese came.

17th February 1967

Che Nordin prepared the warrant of remand. I recognise his writing.

Defendants' Evidence

I saw both the plaintiffs again on 14th or 15th July.

Abdul Kadia bin Ngah Cross-examination (continued)

I signed for their release on 13th.

10

This is the first occasion where a remand was asked on one day and the release asked for on the following day. I consider that strange.

Liew Mun Lin

EVIDENCE OF LIEN MUN LIN

D.W.4.

Liew Mun Lin affirmed, states in English. Chinese Affairs Officer, Raub.

In July 1965 I was stationed in Temerloh as C.A.O. Also gazetted ex-officio Second Class Magistrate.

20

Exh. D3 refers.

This is my signature. Seal of Court is also affixed to the warrant.

Before I signed the warrant of remand I had ascertained that the detention had been approved. Exh. D2 identified.

Cross-examination

Cross-examination:

Court Interpreter Nordin brought the warrant to me. He also brought the I.D. to me. It was in the morning. Before 1.00 p.m. Nordin came alone to see me.

30

On 12.7.1965 I did not see D.W.1. I did not see either of the plaintiffs on that day.

EVIDENCE OF MAHUMD BIN LAMAND.W.5.

Mahmud bin Laman affirmed, states in Malay, P.C.22927, stationed at Bukit Tinggi.

On 11.7.1965 I was stationed at Bukit Tinggi. On that day I received instruction from O.C.S. Corporal No. 8255 to put up a road-block in order to stop lorry C.8200. That was at 7.45 a.m.

10 I was going to 20th milestone to put up a road-block. P.C. 22182 also came with me.

At 7.55 a.m. I arrived in front of a shop at the 20th milestone.

At the time I saw motor-lorry C.8200 stationary in front of a shop. I cannot now remember the colour of bonnet. Lorry was carrying sawn timber.

20 I enquired for the driver. P.W.2. admitted he was the driver. I told P.W.2 that I had received instruction from my O.C.S. that the driver was suspected of being involved in a motor accident.

At 8.05 a.m. O.C.S. arrived at the scene. I handed driver to O.C.S.

Cross-examination:

Nil.

EVIDENCE OF SATAN BIN SIBOND.W.6

30 Satan bin Sibon affirmed, states in Malay. Corporal No. 8255, Bentong Police Station.

In July 1965 I was O.C.S. Bukit Tinggi.

At 7.20 a.m. on 11.7.1965 I received instruction from D.W.1 to detain a motor-lorry carrying sawn timber coming from Mentakab

In the High Court of Malaya at Raub

No. 6

Further Notes of Evidence

17th February 1967

Defendants' Evidence

Mahmud bin Laman

Cross-examination

Satan bin Sibon

In the High
Court of
Malaya at
Raub

No. 6

Further Notes
of Evidence
17th February
1967

Defendants'
Evidence

Satan bin
Sibon
(continued)

to Kuala Lumpur. Number of lorry given
was C.8200.

I instructed D.W.5 and another P.C. to
go to the 20th milestone and put up a road-
block to stop this lorry.

The P.Cs. left at 7.45 a.m. 20th
milestone is about a quarter mile from the
police station.

I arrived at 20th milestone at 8.05 a.m.

I saw motor-lorry C.8200 already there.
D.W.5 told me that he had detained two
Chinese. P.W.1 and P.W.2 identified.

10

P.W.2 asked me what wrong he had done.
I told him that I had received instruction
from Mentakab to detain him on suspicion of
a fatal road accident case. P.W.1 was also
there. He could have heard also. P.W.1
was near me.

I then informed D.W.1 by telephone at
9.00 a.m. I could not get him.

20

At 9.10 a.m. D.W.1 phoned me from Mentakan.
I spoke to him. D.W.1 asked me to wait near
the lorry until he arrived.

D.W.1 arrived at about 1.00 p.m. with
the O.C.P.D.

I handed the matter to D.W.1 and D.W.2
They questioned both the plaintiffs.

The motor-lorry was taken to Bukit
Tinggi police station at 2.55 p.m. Later,
both plaintiffs were taken to Mentakab at
3.05 p.m.

30

Cross-examination:

Nil.

EVIDENCE OF WONG TONG SANGD.W.7

Wong Tong Sang affirmed, states in English. Interpreter, Sabak Bernam.

In July 1965 I was Court Interpreter, Temerloh.

On the morning of 12.7.1965 D.W.1 brought two persons to the Court. P.W.1 and P.W.2 were the two persons.

10 All of us then appeared before D.W.3 at about 9.00 a.m. I acted as interpreter for the two Chinese.

When we entered the room we informed D.W.3 that we had two persons to produce before him under sect. 117 C.P.C.

20 I explained to the two plaintiffs that they were detained under sect.117 C.P.C. and that they would be released if no offence was disclosed against them. I also informed them that an order was given that they be detained for seven days.

Cross-examination

I took them upstairs, first floor. This is a four-storey building. Ground floor is used as a car park.

I did not explain to the plaintiffs anything except the purpose of the detention.

I did not ask them to sign any form.

Re-examination:

30 Nil.

Case for defence

In the High Court of Malaya at Raub

No. 6

Further Notes of Evidence

17th February 1967

Defendants' Evidence

Wong Tong Sang

Cross-examination

In the High
Court of
Malaya at
Raub

MR. AU AH WAH ADDRESS

Mr. Au Ah Wah addresses:

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Further Notes
of Evidence
17th February
1967
Defendants'
Evidence
Au Ah Wah
Address

Paras. 7 and 8 of Statement of Claim refer.
Imprisonment lawful and in accordance
with law.

Lorry detained at 7.55 a.m. at Bukit
Tinggi.

Left Bukit Tinggi at 3.05 p.m.
Arrived at Mentakab at 5.00 p.m.

It was a Sunday.

Both Plaintiffs detained.

On 12.7.1965 at 8.00 a.m. I.D. prepared.
D.W.5 and D.W.6 informed plaintiffs the
reason for detention.

Christie v. Leachinaky (1947) AC 573,
586.

Technical language not necessary.

Matter of substance.

Sect. 23 C.P.C.

Sect. 28 C.P.C.

Plaintiffs did not ask for bail.

John Lewis v. Tims (1952) A.C.676,683.

Trebeck v. Croudace (1918) 1 K.B. 158,
163, 165.

Dallyson v. Caffery (1964) 2 AER 610, 616.

Wilshire v. Barrett (1965) 2 AER 271.

Warrant of Remand - Exh. D3.

Sect. 5 Courts Ordinance 1948.

10

20

Mr. Xavier
Address

MR. XAVIER ADDRESS

Mr. Xavier Addresses

Whether police acted on reasonable
suspicion.

What is reasonable? - 25 Halsbury 358.

Test is objective.

Case for plaintiff No. 1

O.C.P.D.'s evidence. P.W.2 driver,
corroborated by P.W.1 and D.W.1.

Police acted on mere suspicion which
is not reasonable.

No evidence against plaintiff No. 1.

Sarkhar, p.54 - "reasonable suspicion".

Dallyson's case, p.619. N - honest and
probable cause.

Art. 5 of Constitution.

Barber and stall-holder's interview.

Sect. 29 C.P.C. - Bail.

30

40

Damages:

Plaintiff No. 1 - 3 nights and 2 days
in custody.
Liberty and reputation (1957) MLJ
327, 240.

In the High
Court of
Malaya at
Raub

No. 6

Costs:

Wong Kok San v. Sault (1952) MLJ 204,
209.

Further Notes
of Evidence

17th February
1967

Defendants'
Evidence

Mr. Xavier
Address
(continued)

C.A.V.

10

Kuala Lumpur.

28th February, 1967

Delivery of judgment.
Xavier for plaintiffs.
Sr. Federal Counsel Au Ah Wah for
defendants.

Plaintiffs' claim dismissed with
costs.

(Sgd) RAJA AZLAN SHAH.

JUDGE
HIGH COURT.

20

In the High Court of Malaya at Raub

NO. 7

FOUNDATIONS OF JUDGMENT

IN THE HIGH COURT IN MALAYA AT RAUB

CIVIL SUIT NO. 35 of 1965

B E T W E E N:

No. 7
Foundations of Judgment
28th February 1967

- | | |
|-------------------|------------|
| 1. Chong Fook Kam | Plaintiffs |
| 2. Chin San | |

- and -

- | | | |
|----------------------------------|------------|----|
| 1. Inspector Shaaban bin Hussien | | |
| 2. A.S.P. Hassan bin Daud | Defendants | 10 |
| 3. The Government of Malaysia | | |

JUDGMENT OF RAJA AZLAN SHAH, J.

This case is nothing more than a re-assertion and re-application of the statutory powers of the Police with regard to arrest without warrant.

The plaintiffs in this case claim damages against the defendants for wrongful arrest and detention. The first and second plaintiffs respectively the attendant and driver of motor-lorry C.8200 belonging to Temerloh Timber Trading Co. Ltd., 5th milestone, Karak Road, Mentakab. I will for the sake of convenience refer to them as the attendant and driver respectively. The first and second defendants are respectively the Area Inspector, Mentakab, and the O.C.P.D., Police District, Temerloh. I will refer to them as the Inspector and O.C.P.D. respectively. It is common ground that the third defendant is their employer.

The facts that are not in dispute can be stated as follows: At about 9.25 p.m. on 10.7.1965 a fatal road accident occurred at the 2nd milestone, Karak. One Kanniah was driving his motor-car BC 6912 with four passengers.

At about 9.25 p.m. he crossed a motor-lorry pulling a trailer loaded with sawn timber

at the 2nd milestone, Karak Road, while doing so, a length of timber fell off the trailer and smashed the screen of the car, injuring three of the occupants and killing the fourth. As it was dark, Kanniah could not identify the registration number of the said lorry but he was positive that the lorry failed to stop and had proceeded in the direction of Mentakab. The Inspector was subsequently informed of the fatal accident at 10.15 p.m. when Kanniah lodged a report at the police station. Prima facie an offence under section 304A of the Penal Code was disclosed. The Inspector interrogated Kanniah who informed him of the description of the motor trailer and added that it had a red bonnet. The Inspector then informed the O.C.P.D. who instructed him to put up road blocks at various places in order to stop for the purpose of interrogation any lorry with trailer answering to the description furnished by Kanniah. The Inspector accordingly carried out the instruction. Together with Kanniah he also proceeded to the scene of the accident which was at a double bend and found broken glass on the grass verge as well as broken sawn timber. From there they went to see the deceased person at the mortuary. The same night the Inspector made enquiries and obtained information that between 9.00 p.m. and 10.00 p.m. on 10.7.1965 a timber lorry with red bonnet and loaded with sawn timber was seen travelling from the direction of Bentong towards Mentakab. At about 12.00 midnight the Inspector saw a timber lorry C.8200 with red bonnet parked in front of the Caltex petrol station on the Mentakab-Temerloh road. He sent for Kanniah who identified the lorry as being similar to the one involved in the accident. The inspector tried to locate the driver of the said lorry but was unsuccessful. He obtained particulars of the owner of the lorry from the name-plate which was fixed to the back of the driver's cabin and telephoned the saw mill in question but received no reply. He then detailed two police constables to guard the said lorry and to bring the vehicle to the police station if its driver turned up. He then went round

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Mentakab and Temerloh and discovered that no vehicle of the description as furnished by Kanniah had passed through any of the road blocks. He further checked the only three saw mills in Mentakab and discovered that there was no vehicle which answered to that description. In the light of those enquiries the Inspector had grounds to suspect that lorry C.8200 was the vehicle involved in the accident. Before returning to his quarters that night the Inspector gave instructions to relieve the two police constables guarding the lorry.

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At about 5.00 a.m. on 11.7.1965 the Inspector went to the Caltex petrol station and found that the said lorry had disappeared. He informed the O.C.P.D. who instructed him to contact the police stations at Lanchang and Bukit Tinggi and, if possible, at Gombak to stop the said lorry for purposes of investigation. The first defendant rang up the police stations and instructed them to stop lorry C.8200 as it had been involved in a fatal road accident and to inform him accordingly. At 7.20 a.m. the O.C.S. Bukit Tinggi received the instruction from the Inspector. He then instructed PC.22927 and another to proceed to the 20th milestone which was about a quarter-mile from the police station and to put up a road block in order to stop the said lorry. The police constables arrived at the 20th milestone at 7.55 a.m. He saw motor-lorry C.8200 loaded with sawn timber stationary in front of a coffee-shop. The said police constable, after having been told by the second plaintiff that he was the driver, informed him that he had received instructions from his O.C.S. that he (the driver) was suspected of being involved in a motor accident. At 8.05 a.m. the O.C.S. arrived at the scene. He was then asked by the driver what wrong he had done and the O.C.S. told him that he had received instructions from Mentakab to detain him on suspicion of being involved in a fatal road accident. The attendant was then within hearing distance of them.

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There may be discrepancies about the time the Inspector received the news from the O.C.S. Bukit Tinggi that the lorry had been

detained. But after considering all the circumstances in this case I accept as a fact that the Inspector received the news at 9.10 a.m. for otherwise the O.C.P.D., whose evidence I have no reason to reject, would not have received the information at 10.30 a.m. from the Inspector.

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10 Both the defendants and the owner of the lorry, Mr. Yap, arrived at Bukit Tinggi at 1.00 p.m. The O.C.S. then handed the case to his superiors.

Having stated the undisputed facts, I now consider the subsequent events as told by both sides which would seem to be completely at variance.

20 Both the plaintiffs testified that they stopped their lorry at Bukit Tinggi at about 7.00 a.m. Two police constables stopped them and told them that they had instructions to do so from their superiors and to wait for their arrival from Mentakab. But the plaintiffs vehemently denied that the police constables told them the reason for their detention. The attendant said that the police constables did not ask for their N.R.I.Cs or driving licences, but the driver said he remembered a Sergeant took his driving licence and N.R.I.C. which were never returned. As soon as the defendants together with Mr. Yap arrived at 2.00 p.m. they interrogated the plaintiffs separately. They denied that their lorry was involved in the accident. The attendant said that although he was not told by the defendants of the nature of the accident. On the other hand, the driver said that he was neither told the place of the accident nor the nature of it. The Plaintiffs were then asked to drive their lorry to Bukit Tinggi police station. They arrived there at about 3.00 p.m. and from there the plaintiffs, defendants, and Mr. Yap left for Mentakab police station in the latter's car, arriving in Mentakab at about 5.00 p.m.

40 At the station the plaintiffs were further interrogated. The attendant told

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the defendants of his movements on 10th July and the morning of the 11th, but he said the defendants did not verify them. The driver also told the defendants of his movements. The Inspector together with Mr. Yap then took the driver to town where the Inspector questioned a stall-keeper and a barber. Both the plaintiffs were later detained in the police lock-up for the night.

At about 8.00 a.m. on 12.7.1965 both the plaintiffs were handcuffed and brought to Temerloh by two police constables and a Chinese Corporal. At Temerloh they were taken to an "upstairs" office where their handcuffs were removed. They were then asked by a Chinese who was not an interpreter to affix their signatures to a form written in English and which they were told was for the purposes of detention and food. The plaintiffs said that they were not told the reason for their detention and the nature and contents of the said form. Both the defendants were not there at that time. Having affixed their signatures on the form they were again handcuffed and taken to the Magistrate's Court 25 yards away where they had to wait for 15 to 30 minutes. The driver was given permission to telephone for his employer who came and was asked by the plaintiffs to bail them out, but they were told by the Corporal that since they had signed the form that could not be done. They denied that they were taken by the Inspector before a Magistrate who, through the court interpreter, explained to them that they were to be detained for one week. From the Court the plaintiffs were taken back to Mentakab at 12.00 noon and detained in separate cells. In the afternoon both were interrogated by the Inspector and at 5.00 p.m. on the following day, 13.7.1965, they were released by the O.C.P.D.

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The Defendants' version is as follows. The Plaintiffs were detained at 7.55 a.m. on 11.7.1965 by P.C.22927. That was a Sunday. That police constable and subsequently the O.C.S. told the plaintiffs the reason for

their detention. Their evidence was never challenged. If that was so, then the principle as reflected in Christie v. Leachinsky (1) that in ordinary circumstances an arrested man must be informed of the substantial ground of arrest has been fulfilled. The defendants arrived at the scene at 1.00 p.m. That was corroborated by the O.C.S. whose evidence on that point was not challenged. The defendants then interrogated the plaintiffs separately and jointly. It was argued somewhat mildly by counsel for the plaintiffs that the defendants had not stated correctly which person each had interrogated. In my view, if there was any discrepancy between their evidence and that of the plaintiffs they were of such a trivial nature that I do not consider it has any bearing on their veracity as witnesses.

With regard to the interrogation at Bukit Tinggi, the Inspector said that he did inform the attendant of his strong suspicion that his lorry was involved in an accident and that as he was not satisfied with his explanation he was detaining him for further investigation. The driver did tell him that he was the driver of the lorry on 10th-11th July, but as it was the normal practice for timber lorries to carry two drivers he was not then in a position to establish the identity of the driver. The Inspector did check the driver's movements on 10.7.1965 but the two persons he had interrogated were reluctant to tell him anything. He further interrogated the attendant but was given the same story. He then informed the O.C.P.D. of the position and was instructed by him to detain the plaintiffs for further questioning. On Monday, 12.7.1965 at 8.00 a.m. the Inspector prepared the investigation diary and at 8.30 a.m. he took both the plaintiffs to the court. There is no resident Magistrate in Temerloh. But there are five ex-officio Magistrates at the District Office a few yards away from the court house. The Inspector saw the Chinese interpreter and

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(1) (1947) A.C. 573

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registered the plaintiffs' names in the register. He then brought them before the ex-officio Magistrate (D.W.3) who, after having taken cognisance of the case, explained to them through the interpreter that they were to be detained till 18.7.1965. The Inspector then took the plaintiffs back to the court house to wait for the warrant of remand which was being prepared by the court interpreter. From there he took both plaintiffs back to Mentakab and after that he recorded statements from witnesses including those of the plaintiffs. On 13.7.1965 he had recorded all the relevant statements and at 3.00 p.m. the O.C.P.D. telephoned him to ask if he had completed investigations and to release the plaintiffs if there was insufficient evidence against them. After satisfying himself that there was insufficient evidence, the Inspector took the investigation diary back to the Magistrate who signed the plaintiffs' release. 10

The O.C.P.D. did not come into the picture on 12.7.1965. On returning to the police station from Bukit Tinggi at 5.00 p.m. on 11.7.1965 he instructed the Inspector to continue his investigations and, if necessary to obtain a court order under sect. 117 of the Criminal Procedure Code. On 13.7.1965 when he was told by the Inspector that there was insufficient evidence to establish a case against the plaintiffs he instructed the Inspector to release them. 30

The ex-officio Magistrate (D.W.3) testified that between 8.30 a.m. and 9.00 a.m. on 12.7.1965 the Inspector brought the two plaintiffs before him for the purpose of detention under sect. 117 of the Criminal Procedure Code. After due consideration he approved the detention for a week. But he did not sign the warrant of remand as he remembered that he went out after that. On 13.7.1965 he signed for their release. An attempt was made to discredit the witness. Questions were put to him to suggest that the Inspector never brought the two plaintiffs before him and that the detention order which he had approved was signed subsequently. That, to my mind, is an attack on the character 40

of what to me seem to be a straightforward and simple witness who had no apparent motive to mislead or deceive the court. The Magistrate's evidence is corroborated by the evidence of the court interpreter (D.W.7) and the other ex-officio Magistrate (D.W.4). The Interpreter said that on the morning of 12.7.1965 the Inspector brought the plaintiffs to the court house. From there all four went to see D.W.3 at about 9.00 a.m. for the purpose of obtaining a detention order. He said that he had explained to the plaintiffs that they were to be detained for one week. In cross-examination he said that he did not ask any of the plaintiffs to sign any form. The other ex-officio Magistrate (D.W.4) testified that he had signed the warrant of remand on 12.7.1965 after ascertaining that the detention order had been approved. If it was contended that the failure of the Inspector to produce the warrant and the suspects before the second Magistrate is vital to the validity of the warrant, I think it is only necessary to state the contention to show that it is utterly unsound.

Of the two, I would prefer the defendants' version. To me, the plaintiffs appeared vague and unconvincing. Each had said that they were stopped by the police constables at 7.00 a.m. while the police constable in question said, and his evidence was unshaken, that he detained the plaintiffs at 7.55 a.m. - a difference of almost an hour. Again, each of the plaintiffs said that the reason for his detention was not given to him. That evidence, if it is tangible, has been negatived by the police constable and O.C.S. whose evidence was also not challenged. The plaintiffs said that the defendants arrived at Bukit Tinggi at 1.00 p.m. while the defendants themselves said that they arrived at 2.00 p.m. That evidence was substantiated by the O.C.S. whose evidence I accept. The plaintiffs said that they were asked by a Chinese who was not an interpreter to sign a form. The court interpreter denied that he had ever asked them to sign any form. The ex-officio Magistrate was not even asked in cross-

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examination whether he had asked the plaintiffs to sign any form. In the absence of any evidence to the contrary, it is fair to infer that he did not ask the plaintiffs to sign any form. The plaintiffs contended that the Inspector did not take them before the Magistrate (D.W.3). That was set right by the unshaken evidence of the court interpreter.

Summing up, I have no hesitation to conclude that the plaintiffs' evidence is unsatisfactory and present improbable features. On the other hand, the defendants' story sounded reasonably credible.

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The extent of a police officer to arrest without a warrant a person whom he suspects of having committed a seizable offence is enumerated in sect. 23(i) (a) of the Criminal Procedure Code, and the procedure to be taken after arrest is contained in sect. 28. To justify a police officer to arrest under sect. 23 (i) (a) there must be a reasonable complaint or suspicion or credible information of the person to be arrested having been concerned in a seizable offence. It is not possible to lay down any abstract rule as to what it may or it may not be a reasonable suspicion or complaint to insist upon without reference to the particular facts and circumstances which are established in the individual case. In any event it must be founded on some tangible legal evidence within the cognisance of the police officer to justify a reasonable person in concluding that the suspect is guilty of a seizable crime. The evidence need not be of such a nature as to constitute proof or to convince a court of law beyond a reasonable doubt; it may, upon examination after arrest, turn out to be insubstantial so long as the arresting officer had some solid basis for believing it to be substantial at the time he acted. Thus it was held in Re Charu Chandra Majumdar (2) that the reasonable suspicion and credible information must be based upon

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(2) A.I.R. (1917) Cal. 25.

definite facts which the police officer effecting the arrest must consider for himself before he acts under sect. 54 of the Indian Criminal Procedure Code which corresponds with sect. 23 of our Code. In Sabodh Chandra v. Emperor, (3) the court had to determine what constituted a reasonable complaint or suspicion or credible information under Sect. 54 of the Indian Criminal Procedure Code where the only information the Calcutta police acted upon in effecting arrest was two telegrams the first of which, in addition to personal description, said, "Wanted for embezzlement"; and the second, in addition to suggestions about possible movements, said, "Embezzlement of money to the value of a couple of lakhs of rupees". Mukerji J. in a judgment of the court said that "the circumstances of each particular case must determine the question as to what is a reasonable complaint or suspicion; but at least this much is clear, that no mere vague surmise or information must be the basis thereof but some definite fact tending to throw suspicion on the arrested person".

In my opinion, reasonable complaint or suspicion may be equated with reasonable or probable cause as found in the English authorities. I find support in this assertion in a passage of Wyatt C.J. in Tan Kay Teck & Or. v. Attorney-General (4) where, after noting that in John Lewis & Co. Ltd. v. Tims (5) an objective test is required of what constitutes a reasonable complaint, said that the reasonable or probable cause required at common law to justify an arrest without warrant of a person suspected of felony is in pari materia with arrest under statutory powers upon a reasonable complaint and that in his view the same principles apply.

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(3) A.I.R. (1925) Cal. 278

(4) (1957) M.L.J. 237.

(5) (1952) 1 All E.R. 1203

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What is a reasonable complaint or suspicion or, to use the English alternative phrase, reasonable or probable cause to justify an arrest without warrant is in my view a state of facts which would lead a man of ordinary care and prudence to believe or entertain an honest and strong suspicion that the suspect is guilty of an offence. A recent authority which is directly germane to our present case is afforded by Dallison v. Caffery. (6) In that case, Diplock L.J. said at p.619:

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"The rule that a person who arrests, detains or prosecutes a suspected felon commits no actionable wrong if he acts honestly and reasonably, applies alike to private persons and to police officers, but what is reasonable conduct in the circumstances may differ according to whether the arrestor is a private person or a police officer. One difference, too well settled now by authority to be altered, is that a private person can only arrest if a felony has in fact been committed, whereas a police officer can do so if he reasonably believes that a felony has been committed; but this, together with the distinction between felony and misdemeanour, is I believe the only respect in which the common law has become fossilized. In all others the rule of reasonableness applies. Where a felony has been committed, a person, whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts which he himself knows or of which he has been credibly informed at the time of the arrest make it probable that the person arrested committed the felony. That is what constitutes in law reasonable and probable cause for the arrest.

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What is reasonable conduct on the part of a police officer in this respect may not be the same as what would be reasonable conduct on the part of a private arrestor".

(6) (1964) 2 All E.R. 610.

In another passage he said:

"One word about the requirement that the arrestor or prosecutor should act honestly as well as reasonably. In this context it means no more than that he himself at the time believed that there was reasonable and probable cause, in the sense that I have defined it above, for the arrest or for the prosecution as the case may be. The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely, whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause. Where that test is satisfied, the onus lies on the person who has been arrested or prosecuted to establish that his arrestor or prosecutor did not in fact believe what *ex hypothesi* he would have believed had he been reasonable (see *Herniman v. Smith*, per Lord Atkin)".

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The present case therefore boils down to this: when the police at Bukit Tinggi were told to stop and did stop the plaintiffs and their lorry, were the facts within the cognisance of the defendants founded upon some tangible legal evidence which in the circumstances constituted reasonable complaint or suspicion? There is overwhelming evidence that at 9.25 p.m. on 10.7.1965 a fatal road accident had occurred at the second milestone Karak road and motor lorry with a trailer loaded with sawn timber was involved. The said lorry did not stop but proceeded in the direction of Mentakab. It was clearly a hit-and-run case. Prima facie an offence under sect. 304A of the Penal Code, a seizable offence, was disclosed. Where that is so, it is in the public interest that the culprit should be caught and punished. Acting on the complaint, the Inspector started investigations. He interrogated the complainant who informed him that the lorry in question had a red bonnet. The Inspector subsequently informed the O.C.P.D. who gave instructions to put up

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road blocks. He later visited the scene together with the complainant and found broken pieces of glass and sawn timber. He also visited the mortuary and saw the dead body. That same night he received information that between 9.00 p.m. and 10.00 p.m. a red bonnet timber lorry was seen heading for Mentakab. At about midnight the Inspector found a red bonnet timber lorry, C.8200, parked in front of the Caltex petrol station on the Mentakab-Temerloh road which answered the description given by the complainant earlier. He brought the complainant to the said lorry and the latter was convinced that it was similar to the one involved in the accident. He made every effort to trace the driver but was not successful. Two police constables were detailed to guard the said lorry with instructions to bring it to the police station when the driver turned up. The Inspector discovered that the owner of the said lorry lived at the 5th milestone Karak road. He therefore tried to get in touch with him but was also not successful. He checked the road blocks at Mentakab and Temerloh and learned that no timber lorry answering to the description given by the complainant had passed through them. He also checked the three saw mills in Mentakab and found that there was no timber lorry answering to that description. Suspicion focussed reasonably enough on the said lorry and it goes without saying on the driver. His suspicion was later confirmed by the disappearance of the said lorry in the early hours of the morning of 11.7.1965 which was a Sunday. He notified his O.C.P.D. who instructed that road blocks be put up at Lanchang and Bukit Tinggi. The Inspector notified the respective O.C.Ss. and at 9.10 a.m. news was received from the O.C.S. Bukit Tinggi that the said lorry had been detained. The facts within the cognisance of the defendants then were therefore circumstantial. There was no direct eye-witness to establish the identity of the driver. The defendants proceeded to Bukit Tinggi and interrogated the plaintiffs. They were told by the driver himself that he was driving the said lorry on 10.7.1965. It was suggested by counsel for

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the plaintiffs that at that stage there was not enough evidence to connect the attendant with the offence in view of the admission of the driver. That may be so, but that was not tangible evidence. That piece of evidence is inadmissible in a court of law. There is the possibility that the driver was lying. The defendants had still to find independent evidence to establish the identity of the driver. The defendants were also confronted by the fact that it is the normal practice for timber lorries to carry two drivers. The attendant of a timber lorry is also a licenced driver. In any event the question to be posed is not whether there is evidence to constitute proof or to convince a court of law beyond a reasonable doubt but whether the defendants had acted honestly and reasonably. The defendants decided to bring both the plaintiffs back to Mentakab for further interrogation. At Mentakab both the plaintiffs told the defendants of their movements at the relevant time. The driver told the Inspector that he had taken food at a shop and afterwards had his hair cut. He willingly co-operated in leading the Inspector to the shops but the interviews produced no result. The Inspector gained no assistance from the persons whom he interviewed. The case presented formidable problems to the Inspector and he therefore briefed his O.C.P.D. of the latest situation and was instructed to carry on with the investigation and if necessary to obtain a remand order under sect. 117 of the Criminal Procedure Code on the following day (Monday) which the Inspector in fact obtained. The investigation ended that night and the plaintiffs were placed in the police lock-up. Why were they not granted police bail that night? The defendants considered that their investigation was not completed and in my view the measures taken were perfectly reasonable in the circumstances in order to do justice not only to the plaintiffs but also to the State. It is apt that I cite a passage from the judgment of Lord Denning M.R., in Dallison v. Caffrey (supra). At p.617 the Master of the Rolls said:

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"When a constable has taken into custody a person reasonably suspected of felony, he can do what is reasonable to investigate the matter, and to see whether the suspicions are supported or not by further evidence. He can, for instance, take the person suspected to his own house to see whether any of the stolen property is there; else it may be removed and valuable evidence lost. He can take the person suspected to the place where he says that he was working, for there he may find persons to confirm or refute his alibi. The constable can put the suspect up on an identification parade to see if he is picked out by the witnesses. So long as such measures are taken reasonably, they are an important adjunct to the administration of justice; by which I mean, of course, justice not to the man himself but also to the community at large. The measures must, however, be reasonable."

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It is my opinion that the defendants had acted honestly and reasonably founded on such facts which I consider established a reasonable complaint on suspicion.

That is not the end of the matter. It was said on behalf of the plaintiffs that they were illegally detained for more than 24 hours. When a police officer has taken a person into custody he shall without unnecessary delay take him before a Magistrate. The person arrested cannot be detained by the police for more than 24 hours unless the police had earlier obtained a remand order under sect. 117 of the Criminal Procedure Code. The period of 24 hours must exclude the necessary time taken for the journey from the place of arrest to the Magistrate's Court. This procedure is to my mind founded on the theory that where policemen are judges, individual liberty and dignity cannot long survive. Therefore the section provides for an independent and impartial observer to judge the validity of the arrest.

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In the State of Hyderabad v. Kankadu (7) the question for decision was whether the accused was in lawful custody after the expiry of 24 hours from 11.30 p.m. on 24.6.1952. In that case the accused was arrested at 11.30 p.m. on 24.6.1952 and was kept in the lock-up. At 8.00 p.m. on 25.6.1952 the police took him to the Magistrate at Narayanpet for a remand order. But the Magistrate was on leave and the police were directed to take the accused for purposes of remand to the District Magistrate at Nahbunagar which is about 50 to 60 miles distant. There was no train or bus available for this purpose. Accused was therefore kept again in the police lock-up to await journey by the next available conveyance which was at 8.00 a.m. on 26.6.1952. Some time between 3.00 a.m. and 6.00 a.m. on 26.6.1952 the accused escaped from the lock-up and was not re-arrested until 9.7.1952. The court held that the accused was in lawful custody, saying that the 24 hours of detention under the section were to be counted up to the time when the accused left the station.

The question for decision here is whether the accused was in lawful custody after the expiry of 24 hours from 7.55 a.m. on 11.7.1965. It is evident from the facts in the present case that up to the time the plaintiffs left the police station 8.30 a.m. on 12.7.1965 they were already in police custody for 24 hours 35 minutes. Sect. 28 of the Criminal Procedure Code expressly states that the necessary time taken for the journey from Bukit Tinggi to the Magistrate's Court at Temerloh must be excluded. The distance between this two places I take it to be more than 50 miles of hilly country which in normal circumstances would take more than an hour. It is therefore fair to say that in the circumstances the plaintiffs were in lawful custody well within 24 hours.

If I am wrong with the calculation of time, I hold that 11.7.1965 being a (7) A.I.R. (1954) Hyd.89.

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Sunday, it was not possible for the plaintiffs to be produced before the ex-officio Magistrate for purposes of remand. Had they left at 7.55 a.m. on Monday 12.7.1965 (which was within the 24-hour period) they would not, in my opinion, have been produced until 8.30 a.m. or thereabouts, bearing in mind that there is no resident Magistrate in Temerloh and that it would in any event be some time to take the plaintiffs from the court house to the District Office.

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I will therefore dismiss both the plaintiffs' claim with costs.

Sgd. Raja Azlan Shah,

Judge

High Court,

MALAYA.

Kuala Lumpur,
28th February, 1967

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Mr. D.P. Xavier of M/s. Xavier & Thambiah, and
Mr. D.R. Seenivasagam for plaintiffs.

Mr. Au Ah Wah, Senior Federal Counsel, for
defendants.

NO. 8

ORDER OF HIGH COURT

IN THE HIGH COURT IN MALAYA AT RAUB

CIVIL SUIT NO. 35 of 1965

B E T W E E N:

- 1. Chong Fook Kam
 - 2. Chin San
- Plaintiffs

- and -

- 1. Inspector Shaaban bin Hussien
 - 2. A.S.P. Hassan Bin Daud
 - 3. The Government of Malaysia
- Defendants

Before the Honourable Mr. Justice Raja Azlan Shah, Judge, Malaya

IN OPEN COURT
This 28th day of February, 1967.

O R D E R

This suit coming on for hearing on the 30th day of November, 1966, and for continued hearing on the 17th day of February, 1967, in the presence of Mr. D.R. Seenivasagam and D.P. Xavier of Counsel for the Plaintiffs and Mr. Au Ah Wah, Senior Federal Counsel, for the Defendants, AND UPON READING the pleadings herein AND UPON HEARING the Counsel aforesaid and the evidence adduced on behalf of the Plaintiffs and the Defendants, IT WAS ORDERED that judgment be reserved and the cause coming on for judgment on the 28th day of February, 1967, in the presence of Mr. D.P. Xavier of Counsel for the Plaintiffs and Mr. Au Ah Wah, Senior Federal Counsel, for the Defendants, IT IS ORDERED that the Plaintiffs' claim be and is hereby dismissed with costs.

Given under my hand and the seal of the Court this 28th day of February, 1967.

Sd: Anuar Bin Zainal Abidin
Assistant Registrar,
High Court, Raub.

L.S.

In the High Court of Malaya at Raub

No. 8

Order of High Court

28th February 1967

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54.

In the Federal
Court of
Malaysia

NO. 9

NOTICE OF APPEAL

No. 9

IN THE FEDERAL COURT OF MALAYSIA

Notice of
Appeal

AT KUALA LUMPUR

27th March
1967

(Appellate Jurisdiction)

CIVIL APPEAL NO. X 31 of 1967

B E T W E E N:

1. Chong Fook Kam
2. Chin San Appellants

- and -

10

1. Inspector Shaaban Bin Hussien
2. A.S.P. Hassan Bin Daud
3. The Government of Malaysia Respondents

(In the matter of Civil Suit No.
35 of 1965 in the High Court of
Malaya at Raub)

B E T W E E N:

1. Chong Fook Kam
2. Chin San Plaintiffs

20

- and -

1. Inspector Shaaban Bin Hussien
2. A.S.P. Hassan Bin Daud
3. The Government of Malaysia Defendants

NOTICE OF APPEAL

TAKE NOTICE that the above named Appellants, Chong Fook Kam and Chin San, being dissatisfied with the decision of the Honourable Mr. Justice Raja Azlan Shah given at Kuala Lumpur on the 28th day of February 1967, appeal to the Federal Court against the whole of the said decision.

30

Dated this 27th day of March, 1967.
Sgd: Xavier & Thambiah
Solicitors for the Appellants.

To:

1. The Registrar,
Federal Court,
Malaysia,
Kuala Lumpur.
2. The Assistant Registrar,
High Court,
Raub.
3. The Senior Federal Counsel,
Attorney-General's Chambers,
Malaysia, Kuala Lumpur.

In the Federal
Court of
MalaysiaNo. 9Notice of
Appeal27th March
1967

(continued)

10

The address for service on the appellants herein is care of Messrs. Xavier & Thambiah, No. 4 Jalan Klyne, Kuala Lumpur, Solicitors for the Appellants.

NO. 10

NOTES OF ARGUMENT RECORDED BY SYED
SHEH BARAKBAH, LORD PRESIDENT
FEDERAL COURT, MALAYSIA.

No. 10

Notes of
Argument by
Syed Sheh
Barakbah21st March
1968

20

IN THE FEDERAL COURT OF MALAYSIA AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. X.31 of 1967

B E T W E E N:

1. Chong Fook Kam
2. Chin San

Appellants

- and -

1. Inspector Shaaban bin Hussein
2. A.S.P. Hassan bin Daud
3. The Government of Malaysia

Respondents

30

CORAM: Syed Sheh Barakbah, Lord President,
Suffian, Judge, Federal Court,
MacIntyre, Judge, Federal Court.

NOTES OF ARGUMENT RECORDED BY BARAKBAH
Lord President.

Kuala Lumpur 21st March, 1968.
Dato' S.P. Seenivasagam with Xavier for

In the Federal
Court of
Malaysia

No.10

Notes of
Argument by
Syed Sheh
Barakbah

21st March
1968
(continued)

Appellants,
Ajaib Singh for Respondents.
Ajaib Singh: Offences disclosed - 1.304A
Penal Code.
2. 34A Road Traffic Ordinance
(Both seizable offences).

Sec. 23 C.P.C.
Police acted reasonably in all
the circumstances of the case.

Dato:

Tan Kay Teck & Anor. v.
Attorney-General 1957 M.L.J. 237.

10

No reasonable complaint at all.
So. Sec. 23 C.P.C. does not apply.
Page 17A - loaded with planks.

ORDER:

Appeal allowed with costs here
and in the Court below. Agreed
quantum of damages \$2,500 each.
Reasons to be given later.
Deposit refunded to the Appellants.

S.S. Barakbah

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21.3.68

NO. 11

NOTES OF ARGUMENT RECORDED BY
SUFFIAN, JUDGE, FEDERAL COURT,
MALAYSIA.

In the Federal
Court of
Malaysia

No. 11

IN THE FEDERAL COURT OF MALAYSIA AT KUALA
LUMPUR

Notes of
Argument by
Suffian, J.

21st March
1968

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. X 31 of 1967

B E T W E E N:

10 1. Chong Fook Kam
2. Chin San Appellants

- and -

1. Inspector Shaaban bin Hussien
2. A.S.P. Hassan bin Daud
3. The Government of Malaysia Respondents

(In the matter of Civil Suit No. 35 of
1965 in the High Court of Malaya at Raub

B E T W E E N:

20 1. Chong Fook Kam
2. Chin San Plaintiffs

- and -

1. Inspector Shaaban bin Hussien
2. A.S.P. Hassan bin Daud
3. The Government of Malaysia Defendants)

Coram: S.S. Barakbah, Lord President,
Malaysia;
Suffian, Federal Judge, Malaysia;
MacIntyre, Federal Judge, Malaysia.

NOTES OF SUFFIAN, F.J.

30 21st March, 1968 In open court

Dato S.P. Seenivasagam (Xavier with him)
for appellants.

Ajaib Singh for respondents.

In the Federal
Court of
Malaysia

No.11

Notes of
Argument by
Suffian, J.

21st March
1968
(continued)

Ajaib Singh - report p.66 discloses three offences:

- (1) 304A, Penal Code - seizable;
- (2) 34A, Road Traffic Ordinance, rash or negligent driving - seizable also;
- (3) logs not properly secured - but non-seizable.

Case produced by S.P. Seenivasagam:

1957 M.L.J. 237 Tan Kay Teck v. Attorney-General.

10

Decision (after brief adjournment) - appeal allowed, reasons to be given later - counsel withdraw to discuss quantum and report.

(Signed) M. Suffian.
Civil2

Civil Appeal X 31/67

Parties as before.

Quantum - Seenivasagam says it is agreed each of the appellants to be awarded \$2,500/-, costs against the respondents here and in lower court. Judgment accordingly.

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Ajaib Singh confirms above.

(Signed) M. Suffian.

Certified true copy.

(Wong Yik Ming)
Secretary to Federal Judge,
Malaysia,
Kuala Lumpur.

25.5.1968.

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In the Federal
Court of
Malaysia

No.12

Notes of Argument
by MacIntyre, J.

21st March 1968
(continued)

Federal Counsel is asked to justify
arrest.

He says s.304A of the Penal Code refers.

Section 34A of Road Traffic Ordinance
refers.

See case of Dallison v. Caffrey (1965)
1 QBD., 348

Seenivasagam - see (1957) M.L.J. 237.

Section 23 never came into operation -
see page 17.

10

Court adjourns -

Court resumes -

Appeal allowed.

By agreement -

Each of the appellants to be awarded
\$2,500/- and costs here and in the court
below.

Deposit of \$500/- to be refunded.

(Sgd) S.C.M.

Salinan yang di-akui benar.

20

Sgd: B.E. Nettar
Setia Usaha kepada Hakim
Mahkamah Persekutuan
Malaysia
Kuala Lumpur.

61.

NO. 13

JUDGMENT OF SUFFIAN, JUDGE
FEDERAL COURT, MALAYSIA.

In the Federal
Court of
Malaysia

No.13

IN THE FEDERAL COURT OF MALAYSIA AT
KUALA LUMPUR

Judgment of
Suffian, Judge

21st March 1968

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. X 31 of 1967

B E T W E E N:

10 1. Chong Fook Kam
2. Chin San Appellants

- and -

1. Inspector Shaaban bin Hussien
2. A.S.P. Hassan bin Daud
3. The Government of Malaysia Respondents

(In the Matter of Civil Suit No.35 of
1965 in the High Court of Malaya at
Raub

B E T W E E N:

20 1. Chong Fook Kam
2. Chin San Plaintiffs

- and -

1. Inspector Shaaban bin Hussien
2. A.S.P. Hassan bin Daud
3. The Government of Malaysia Defendants)

Coram: S.S. Barakbah, Lord President,
Malaysia;
Suffian, Federal Judge, Malaysia;
MacIntyre, Federal Judge,
Malaysia.

30 GROUND OF JUDGMENT OF SUFFIAN, F.J.

We allowed this appeal. Now I give my
reasons.

On the night of the 10th of July, 1965,
Kanniah was driving car No. BC 6912 towards
Semantan Estate in Mentakab. He had four

In the Federal
Court of
Malaysia

No.13

Judgment of
Suffian, Judge
21st March 1968
(continued)

passengers on board. At Batu 2, Jalan Karak, he passed an oncoming lorry with a trailer laden with timber. As he passed the lorry, a log fell off it on to his car. One of the passengers in the car was killed.

When he arrived in Mentakab the same night, he lodged a report (exhibit D.1) which translated reads:

" At 9.15 p.m. on 10th July, 1965, I was driving motor car No. BC 6912. I was returning to Semantan Estate. In the car I had four friends returning to Semantan Estate. When I arrived at Batu 2, Jalan Karak, in front of me was a lorry with a trailer loaded with timber sawn and unsawn. When we passed each other in the opposite direction, some timber fell off the lorry and hit my windscreen. It hit my friend and my uncle. I immediately stopped my car and saw that my uncle was unable to speak. I took them to Hospital at Mentakab. When I arrived there, I found that my uncle had died and the others were injured. I cannot recognise the lorry nor its number because it was night time and the lorry did not stop, it went straight on towards Mentakab town. The time of the incident was about 9.25 p.m. on 10th July, 1965. This is my report. The name of the dead person was Govindan and of the injured person Persamay."

Inspector Shaaban bin Hussien (the first defendant) was the Area Inspector in Mentakab. I will call him the Inspector. At about 10.15 p.m. he was informed of the report and went to the Inquiry Office at the Police Station. He interrogated Kanniah who gave him a description of the lorry saying that it had a red bonnet. The Inspector then informed A.S.P. Hassan bin Daud the O.C.P.D. (the second defendant). I will call him the O.C.P.D. He instructed the Inspector to put up road blocks at various places in order to stop for the purpose of interrogation any lorry with a trailer answering the description given by Kanniah. The Inspector accordingly carried out the instructions. Together with

10 Kanniah he went to the scene of the accident which was at a double bend and found broken glass on the grass verge as well as broken sawn timber. They went to see the dead person at the mortuary. The same night the Inspector obtained information that between 9 p.m. and 10 p.m. that night a timber lorry with a red bonnet and loaded with sawn timber had been seen travelling from the direction of Bentong towards Mentakab. At about mid-night the Inspector saw a timber lorry C8200 with a red bonnet parked in front of the Caltex Petrol Station on the Mentakab-Temerloh road. He sent for Kanniah, who identified the lorry as being similar to the one involved in the accident. The Inspector tried to locate the driver of the lorry, but was unsuccessful. He obtained particulars of the owner of the lorry from the name plate affixed to the back of the driver's cabin and telephoned the saw-mill in question but received no reply. He detailed two Police Constables to guard the lorry and to bring it to the Police Station if its driver turned up. He went round Mentakab and Temerloh towns and discovered that no vehicle of the description given by Kanniah had passed through any of the road blocks. He further checked the only three sawmills in Mentakab and discovered there was no vehicle answering to that description. He suspected that lorry C8200 was the vehicle involved in the accident. Before returning to his quarters that night the Inspector gave instructions to release the two Constables guarding the lorry.

40 At about 5 a.m. the following day (11th July, 1965) the Inspector went to the Caltex Petrol Station and found that the lorry had gone. He informed the O.C.P.D. who instructed him to contact the Police Stations at Lanchang and Bukit Tinggi and, if possible, at Gombak to stop the lorry for purposes of investigation. The Inspector rang up the Police Stations and told them to stop lorry C8200 as it had been involved in a fatal road accident and to inform him accordingly.

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(continued)

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—————
No.13

Judgment of
Suffian, Judge
21st March 1968
(continued)

It is to be noted that the evidence is that both the Inspector and the O.C.P.D. thought at this stage that there was an offence (which is seizable) disclosed under section 304A, Penal Code, and that the O.C.P.D.'s instruction was to stop the lorry for the purpose of investigation. It is to be further noted that the day was a Sunday.

At 7.20 a.m. the O.C.S., Bukit Tinggi Corporal Satam bin Sibon (D.W.6) received instructions from the Inspector. He then instructed P.C. 22927 and another to go to the 20th milestone which was about a quarter of a mile from the Police Station and put up a road block to stop the lorry. A Police Constable arrived at the 20th milestone at 7.55 a.m. He saw the lorry loaded with sawn timber stationary in front of a coffee shop. He told the driver, the second plaintiff, that he had received instructions from his O.C.S. that the driver was suspected of being involved in a motor accident. At 8.05 a.m. the O.C.S. arrived at the scene. He was then asked by the driver what wrong he had done and the O.C.S. told him that he had received instructions from Mentakab to detain him on suspicion of being involved in a fatal road accident. The attendant, the first plaintiff, was then within hearing distance of them.

Both the driver and the attendant were detained. Eventually they were handed over to the Inspector and the O.C.P.D. The Inspector and the O.C.P.D. brought the plaintiffs back to Mentakab for further interrogation. At Mentakab both the plaintiffs told the defendants their movements at the relevant time. The driver told the Inspector that he had eaten at a shop and afterwards had his hair cut. He led the Inspector to the shops, but the Inspector got no help from the persons he interviewed there. He informed his O.C.P.D. of the latest situation and was instructed to carry on with the investigation and if necessary to obtain a detention order from a Magistrate under section 117 of the Criminal Procedure Code on the following day, a Monday (12th

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July, 1965). The Inspector accordingly obtained the order from the Magistrate, Temerloh, that day between 8.30 and 9.00 a.m. The investigation ended that night.

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Suffian, Judge

21st March 1968
(continued)

10 On the following day (13th July, 1965) at about 3 p.m. the Inspector reported to the O.C.P.D. that he had completed his investigations but had not obtained sufficient evidence to connect the lorry or the two plaintiffs with the accident. The O.C.P.D. instructed the Inspector to release the plaintiffs. The Inspector saw the Magistrate who ordered the plaintiffs' release. The plaintiffs were released.

20 On these facts the plaintiffs lost their claim for damages for false imprisonment against the first two defendants and their employers, the Government of Malaysia (third defendant). The learned Judge found that the information in the hands of the Police prior to the arrest disclosed a prima facie offence under section 304A of the Penal Code, a seizable offence, and therefore the arrest was lawful.

30 The plaintiffs appealed. In this appeal their counsel agreed that the detention may be divided into two parts: (a) detention prior to the detention order issued by the Magistrate under section 117 of the C.P.C. and (b) detention after that order. Counsel did not claim damages in respect of the second part.

I now state the relevant law.

40 At common law a Police Constable in England may arrest without warrant any person in those cases where a private person may lawfully arrest by common law without warrant. He may also within his district arrest without warrant on reasonable suspicion of felony, whether a felony has or has not been committed. See Halsbury's Laws of England, 3rd edition, volume 38, paragraph 1269.

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Section 3(1) of the Civil Law Ordinance
No. 5 of 1956 provides:-

" Save in so far as other provision
has been made or may hereafter be made
by any written law in force in the
Federation or any part thereof, the
Court shall apply the common law of
England and the rules of equity as
administered in England at the date of
the coming into force of this Ordinance: 10

Provided always that the said
common law and rules of equity shall be
applied so far only as the circumstances
of the States comprised in the
Federation and their respective inhabitants
permit and subject to such qualifications
as local circumstances render necessary."

It is to be noted that the English
common law which governs false imprisonment
would apply in West Malaysia only in the 20
absence of other provision made by any local
written law.

The common law does not apply in this
instance because of the existence of local
written law. Therefore it is unnecessary and
indeed confusing to refer to English
authorities.

The written law on the subject is as
below.

Clause 1(1) of Article 5 of the 30
Constitution provides:

" No person shall be deprived of
his.....personal liberty
save in accordance with law."

The general rule is that no person
may ordinarily be arrested without a warrant
signed by a Magistrate. A person may be
arrested without a warrant only if so
expressly authorised by law. The legal
provision relied on by the defendants in 40
justifying the arrest of the two plaintiffs
is section 23(i) (a) of the Criminal
Procedure Code which reads:

" Any Police Officer ... may without an order from a Magistrate and without a warrant arrest ... any person who has been concerned in any offence committed anywhere in Malaysia which is a seizable offence under any law in force in that part of Malaysia in which it was committed or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned."

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Suffian, Judge

21st March 1968
(continued)

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What happens when a person has been arrested? Clause (3) of Article 5 of the Constitution provides:

" Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice."

20

Clause (4) of the same Article provides:

" Where a person is arrested and not released, he shall without unreasonable delay, and in any case within 24 hours (excluding the time of any necessary journey) be produced before a Magistrate and shall not be further detained in custody without the Magistrate's authority."

30

Section 28 of the Criminal Procedure Code (an earlier enactment) makes the same provision. It reads:

" (i) A police officer making an arrest without a warrant shall without unnecessary delay and subject to the provisions herein as to bail or previous release take or send the person arrested before a Magistrate's Court.

40

(ii) No police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is

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Suffian, Judge

21st March 1968
(continued)

reasonable.

(iii) Such period shall not in the absence or after the expiry of a special order of a Magistrate under Section 117 exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

What happens if a Police Officer finds that he cannot complete his investigation within the period of 24 hours fixed by Section 28 and wishes to further detain the arrested person? He could act under section 117 which reads: 10

" (i) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall forthwith transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before such Magistrate. 20

(ii) The Magistrate before whom an accused person is produced under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a Magistrate having such jurisdiction. 30 40

(iii) A Magistrate authorising under this section detention in the custody of the police shall record

his reasons for so doing."

An order of a Magistrate authorising the detention of the arrested person beyond the period of 24 hours made under section 117 is a judicial act and cannot found a claim for damages against the Magistrate because of section 107(1) of the Courts Ordinance, 1948, which reads:

10 " No ... Magistrate or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of."

20 Nor may such an order found a claim for damages against a Police Officer because section 41(1) of the Police Ordinance No.14 of 1952 (now section 32(1) of the new Police Act No. 41 of 1967) provided:

30 " Where the defence to any suit instituted against a Police Officer is that the act complained of was in obedience to a warrant purporting to be issued by any competent authority, the Court shall, upon production of the warrant containing the signature of such authority and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of such Police Officer."

40 In view of these provisions, counsel for the plaintiffs was right in not claiming damages in respect of the detention following the Magistrate's detention order.

What powers of investigation would the police have in this case if they had not arrested the plaintiffs? The answer is to be found in sections 111 and 112 of the Criminal Procedure Code.

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21st March 1968
(continued)

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Suffian, Judge
21st March 1968
(continued)

Sub-sections (i) and (ii) of section
111 of the Criminal Procedure Code read as
follows:

" (i) A police officer making an investigation under this Chapter may by order in writing require the attendance before himself of any person being within the limits of the police district in which he is making an investigation who from the information given or otherwise appears to be acquainted with the circumstances of the case, and such person shall attend as so required; provided that no person shall be required under this section to perform a journey of more than seven miles from his usual place of abode exclusive of such portion of the journey as may be performed by train or motor car or other vehicle.

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(ii) If any such person refuses to attend as so required such police officer may report such refusal to a Magistrate who may thereupon in his discretion issue a warrant to secure the attendance of such person as required by such order aforesaid."

Section 112 of the Criminal Procedure Code reads as follows:

" (i) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

30

(ii) Such person shall be bound to answer all questions relating to such case put to him by such officer:

Provided that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

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(iii) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

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(iv) A police officer examining a person under sub-section (i) shall first inform that person of the provisions of sub-sections (ii) and (iii)."

Judgment of
Suffian, Judge
21st March 1968
(continued)

10 The defendants admit arresting the plaintiffs, so they have to prove that the arrest was lawful. As already said, they rely on section 23 (i) (a) of the Criminal Procedure Code. That provision can be re-written as follows:

Any police officer may without an order from a Magistrate and without warrant arrest -

- 20 (A) any person who has been concerned in any seizable offence;
- (B) any person against whom a reasonable complaint has been made that he was concerned in a seizable offence;
- (C) any person against whom credible information has been received of his having been concerned in a seizable offence;
- 30 (D) any person against whom a reasonable suspicion exists of his having been concerned in a seizable offence.

40 The defendants say that the facts available to the police officers at the time of the arrest, prima facie disclose an offence against section 304A Penal Code and (their counsel added during the appeal) an offence against section 34A Road Traffic Ordinance, both of which are seizable and therefore the first and second defendants may lawfully arrest the plaintiffs without warrant.

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Suffian, Judge

21st March 1968
(continued)

It would appear that where a person arrested without a warrant is eventually found guilty of a seizable offence, it does not matter - because of (A) above - whether or not the officer who arrested him had received a reasonable complaint or credible information of the accused being concerned in the offence, or whether or not the officer had a reasonable suspicion of the accused having been so concerned. But here the plaintiffs were eventually released without any charge being preferred against them. So the defendants can only rely on (B), (C) and (D) above - which means that they have to prove that they had received a reasonable complaint or credible information or they had a reasonable suspicion that the plaintiffs were concerned in a seizable offence.

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But even if the complaint or suspicion was reasonable and the information was credible, it is important to observe that the complaint, information or suspicion must relate not to any offence; it must relate to a seizable offence. I considered the information available to the police before and even after the arrest. Even assuming that the lorry, the driver and the attendant were involved in the accident, in my judgment the information available to the Inspector and the O.C. P.D. was insufficient to prove prima facie a case against the plaintiffs under section 304A of the Penal Code or under section 34A of the Road Traffic Ordinance. It is true that Govindan's death was tragic and whoever was criminally responsible for it should be caught and punished, but the death alone does not prima facie prove rashness or negligence or reckless or dangerous driving on the part of the driver and still less of the attendant. The timber which fell off might have been properly secured in the first place, but fell off because, unbeknown to the driver and his attendant, it had been interfered with by some mischievous person or it fell off by act of God. In these circumstances, how can it be said that a prima facie offence under

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section 304A of the Penal Code or under section 34A of the Road Traffic Ordinance had been disclosed? In my judgment, in these circumstances the Inspector and the O.C.P.D. were not justified in arresting the driver and the attendant without a warrant.

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Suffian, Judge
21st March 1968
(continued)

10 Mr. Ajaib Singh, for the defendants at this appeal, urged the court to look at the evidence as a whole and to take into account the fact that there are many timber lorries on the road in Pahang and the inconvenience that would be caused to the police if they were not allowed to arrest without a warrant in these circumstances. He cited with approval a passage in the learned Judge's judgment where he said that it is in the public interest that the culprit responsible for Govindan's death should be caught and
20 punished. That may be so, but it is equally in the public interest that no innocent person should be arrested without a warrant merely to serve the convenience of investigation officers, however much one wishes to support the police in their task of securing the safety of road users.

30 With the information available to the police officers at the time of the plaintiffs' arrest, at most the plaintiffs could only be treated as potential witnesses. The law does not, however, empower the police to arrest and detain potential witnesses. The police should have proceeded against them under sections 111 and 112 of the Criminal Procedure Code. Section 111 empowers the police to require their attendance at the police station so that they may be questioned. If they attend, they may under section 112 be
40 questioned. If they do not attend, then under sub-section (ii) of section 111 they may be compelled by a Magistrate to attend. It is of course desired that the public should co-operate with the police in the enforcement of law. So it is important for the police to know and observe the limits of their power to arrest without warrant.

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No.13

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21st March 1968
(continued)

After the commencement by the Court of its decision to allow the appeal, counsel retired briefly to consider quantum of damages. They returned to announce that they had agreed that each of the plaintiffs should be paid \$2,500 by the defendants as well as receive costs here and in the court below. Judgment was entered accordingly.

Kuala Lumpur,
13th May, 1968.

Sgd: (M. Suffian)
Federal Judge,
Malaysia.

10

Counsel:

For appellants - Dato S.P. Seenivasagam
and D.P. Xavier

For respondents - Ajaib Singh

AUTHORITIES CITED

(1957) M.L.J. 237 Tan Kay Teck v. Attorney-
General.

75.

NO. 14

ORDER OF FEDERAL COURT.

DATED 21st MARCH 1968

IN THE FEDERAL COURT OF MALAYSIA AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. X 31 of 1967

B E T W E E N:

1. Chong Fook Kam (Attendant)
2. Chin San (Driver) Appellants

10 - and -

1. Inspector Shaaban Bin Hussein
2. A.S.P. Hassan bin Daud
3. The Government of Malaysia Respondents

(In the Matter of Civil Suit No. 35
of 1965 in the High Court of Malaya
at Raub

B E T W E E N:

1. Chong Fook Kam
2. Chin San Plaintiffs

20 - and -

1. Inspector Shaaban Bin Hussein
2. A.S.P. Hassan Bin Daud
3. The Government of Malaysia Defendants)

CORAM: SYED SHEH BARAKBAH, LORD PRESIDENT,
FEDERAL COURT, MALAYSIA:

SUFFIAN, JUDGE, FEDERAL COURT,
MALAYSIA:

MACINTYRE, JUDGE, FEDERAL COURT,
MALAYSIA.

30 IN OPEN COURT

THIS 21st day of March, 1968

O R D E R

THIS APPEAL coming on for hearing this day

In the Federal
Court of
Malaysia

No.14

Order of
Federal Court
21st March 1968

In the Federal
Court of
Malaysia

No.14

Order of
Federal Court
21st March 1968
(continued)

in the presence of Dato S.P. Seenivasagam (Mr. D.P. Xavier with him) of Counsel for the Appellants above named and Mr. Ajaib Singh, Senior Federal Counsel for the respondents above named AND UPON READING the Record of Appeal herein AND UPON HEARING the arguments of Counsel as aforesaid IT IS ORDERED that this Appeal be and is hereby allowed and that the Respondents do pay each Appellant a sum of \$2,500/- making a total of \$5,000.00 being agreed damages for false imprisonment AND IT IS ORDERED that the costs of this Appeal and the costs in the court below be taxed and be paid by the Respondents to Appellants. AND IT IS LASTLY ORDERED that the sum of \$500/- (Dollars five hundred only) deposited in Court by the Appellants as security for costs of the Appeal be refunded to them.

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Given under my hand and the Seal of the Court this 21st day of March, 1968.

Sg: Au Ah Wah

L.S.

CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

77.

NO.15

ORDER OF FEDERAL COURT
GIVING CONDITIONAL LEAVE
TO APPEAL TO HIS MAJESTY,
THE YANG DI-PERTUAN AGONG
DATED 6th MAY, 1968

In the Federal
Court of
Malaysia

No.15

Order giving
Conditional Leave
to Appeal

6th May 1968

IN THE FEDERAL COURT OF MALAYSIA AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

10 FEDERAL COURT CIVIL APPEAL NO. X 31 of 1967

B E T W E E N:

1. Chong Fook Kam
2. Chin San Appellants

- and -

1. Inspector Shaaban bin Hussein
2. A.S.P. Hassan bin Daud
3. The Government of Malaysia Respondents

(In the matter of Civil Suit No. 35
of 1965 in the High Court of Malaya
at Raub

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B E T W E E N:

1. Chong Fook Kam Plaintiffs
2. Chin San

- and -

1. Inspector Shaaban bin Hussein
2. A.S.P. Hassan bin Daud
3. The Government of Malaysia Defendants)

CORAM: SYED SHEH BARAKBAH, LORD PRESIDENT,
FEDERAL COURT, MALAYSIA:

30 SUFFIAN, JUDGE, FEDERAL COURT, MALAYSIA:

MACINTYRE, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT
THIS 6th DAY OF MAY, 1968

O R D E R

UPON MOTION made unto Court this day by

In the Federal
Court of
Malaysia

No.15

Order giving
Conditional
Leave to
Appeal

6th May 1968
(continued)

Mr. Ajaib Singh, Senior Federal Counsel for the Respondents, in the presence of Mr. C. Thambiah of Counsel for the Appellants above-named AND UPON READING the Notice of Motion dated the 12th day of April, 1968 and the Affidavit of Ajaib Singh affirmed on the 9th day of April, 1968 filed herein in support of the Motion AND UPON HEARING Counsel as aforesaid IT IS ORDERED that conditional leave be and is hereby granted to the Respondents herein to appeal to His Majesty the Yang di-Pertuan Agong from the Order of the Federal Court of Malaysia dated the 21st day of March, 1968 upon the following conditions:

- (a) that the Respondents do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia in the sum of five thousand dollars (\$5,00/-) for the due prosecution of the appeal and the payment of all such costs as may become payable to the Appellants above-named in the event of the Respondents above-named not obtaining an Order granting the Respondents final leave to appeal or of the appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the Respondents above-named to pay the Appellants costs of the appeal as the case may be; and

- (b) that the Respondents above-named do within the said period of three months from the date hereof take the necessary steps for the purpose of procuring the preparation of Records and the despatch thereof to England.

AND IT IS FURTHER ORDERED that the costs of and incidental to the application be costs in the cause.

Given under my hand and the seal of the Court this 6th day of May, 1968.

Sgd: Au Ah Wah
CHIEF REGISTRAR,

L.S. FEDERAL COURT, MALAYSIA.

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79.

NO.16

ORDER OF FEDERAL COURT

IN THE FEDERAL COURT OF MALAYSIA AT KUALA
LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. X 31 of 1967

B E T W E E N:

1. Chong Fook Kam
2. Chin San Appellants

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- and -

1. Inspector Shaaban Bin Hussien
2. A.S.P. Hassan Bin Daud
3. The Government of Malaysia Respondents

(In the Matter of Civil Suit No.
35 of 1965 in the High Court of
Malaya at Raub

1. Chong Fook Kam
2. Chin San Plaintiffs

- and -

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1. Inspector Shaaban Bin Hussien
2. A.S.P. Hassan Bin Daud
3. The Government of Malaysia Defendants)

CORAM: SYED SHEH BARAKBAH, LORD PRESIDENT,
FEDERAL COURT, MALAYSIA:

AZMI, CHIEF JUSTICE, HIGH COURT IN
MALAYA

- and -

ONG HOCK THYE, JUDGE, FEDERAL COURT,
MALAYSIA.

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IN CHAMBERS

THIS 26th day of June, 1967

O R D E R

UPON MOTION made unto Court this day by
Mr. C. Thambiah of Counsel for the Appellants in

In the Federal
Court of
Malaysia

No.16

Order of
Federal Court
26th June 1967

In the Federal
Court of
Malaysia

No.16

Order of
Federal Court
26th June 1967
(continued)

the presence of Mr. Au Ah Wah, Senior
Federal Counsel for the Respondents AND
UPON READING the Notice of Motion dated
12th day of June, 1967 and the Affidavit
of Mr. Doraiswamy Philip Xavier affirmed
on the 12th day of June, 1967 and read
in support of the said Notice of Motion
AND UPON HEARING Mr. Au Ah Wah, Senior
Federal Counsel for the Respondents IT IS
ORDERED that the Appellants be and are
hereby given leave to file the Record of
Appeal in this Appeal within one (1) week from
the date of this order AND IT IS FURTHER
ORDERED that the costs of this Application
be taxed and paid by the Appellants to the
Respondents in any event.

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Given under my hand and the seal of the
Court this 26th day of June, 1967.

Sgd: Hamzah Bin Dato' Abu Samah

CHIEF REGISTRAR,

(L.S.) FEDERAL COURT, MALAYSIA.

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81.

NO. 17

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA AT KUALA
LUMPUR

(Appellate Jurisdiction)

FEDERATE COURT CIVIL APPEAL NO. X 31 of 1967

B E T W E E N:

1. Chong Fook Kam
2. Chin San Appellants

10

- and -

1. Inspector Shaaban Bin Hussien
2. A.S.P. Hassan Bin Daud
3. The Government of Malaysia Respondents

(In the Matter of Civil Suit No.
35 of 1965 in the High Court of
Malaya at Raub)

B E T W E E N:

1. Chong Fook Kam
2. Chin San Plaintiffs

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- and -

1. Inspector Shaaban Bin Hussien
2. A.S.P. Hassan Bin Daud
3. The Government of Malaysia Defendants

MEMORANDUM OF APPEAL

Chong Fook Kam and Chin both of No.39
Main Street, Mentakab, Pahang, the Appellants
above named, appeal to the Court of Appeal
against the whole of the decision of the
Honourable Mr. Justice Raja Azlan Shah given
at Kuala Lumpur on the 28th day of February,
1967 on the grounds:-

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1. The learned trial Judge erred in law
and fact in holding that the Appellants were
informed of the substantial ground of arrest

In the Federal
Court of
Malaysia

No.17

In the Federal
Court
Memorandum of
Appeal

3rd July 1967

In the Federal
Court of
Malaysia

No.17

In the Federal
Court
Memorandum of
Appeal

3rd July 1967
(continued)

by the Respondents and hence the arrest was lawful. The learned trial Judge's pronouncement is against the weight of evidence.

2. The learned trial Judge erred in law in that, after laying down that the test whether there was reasonable and probable cause for the arrest was an objective one, proceeded to apply the subjective test.

3. The learned trial Judge has misdirected himself both in law and fact, in holding that the evidence or the admission of the second Appellant that he was the driver of the vehicle at the material time was not tangible evidence even after holding that it may be a fact that the second Appellant was the driver at the material time and that the Respondents had still to find independent evidence to establish the identity of the driver. The learned trial Judge in doing so, did not give due consideration to the evidence of the first Appellant who had corroborated the evidence of the second Appellant in this respect and whose evidence was not challenged by the Respondents.

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4. The learned trial Judge has erred in law in holding that the evidence and admission of the second Appellant that he was driving the lorry at the material time was inadmissible in a Court of law, especially when this piece of evidence was not challenged by the Respondents at the trial.

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5. The learned trial Judge has failed to direct himself whether the Respondents in ordering the continued detention of the first Appellant even after the investigations by the Respondents disclosed no reasonable or probable grounds for the continued detention of the first Appellant excepting that all timber lorries carried attendants who were also Licensed drivers, acted reasonably and honestly and whether the continued detention of the first Appellant was based on mere suspicion or grounded on reasonable and probable cause or reasonable suspicion.

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6. The learned trial Judge has also failed to consider the adverse effects on the first Appellant caused by the failure of the Respondents to check the movements of the first Appellant at the material time even though the first Appellant told the Respondents of his movements at the relevant time and this has caused a serious miscarriage of justice on the first Appellant.

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Dated this 3rd day of July, 1967.

Sd: Illegible

Solicitors for the Appellants

To:

1. The Assistant Registrar,
High Court,
Raub.
2. The Respondents or their Solicitors,
The Senior Federal Counsel,
Attorney-General's Chambers,
KAULA LUMPUR.

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In the Federal
Court of
Malaysia

No.17

In the Federal
Court
Memorandum of
Appeal

3rd July 1967
(continued)

In the Federal
Court of
Malaysia

No.18

Order granting
Leave to
Appeal to His
Majesty The
Yang Di-Pertuan
Agong

19th August
1968

NO. 18

ORDER GRANTING LEAVE TO APPEAL
TO HIS MAJESTY THE YANG DI-
PERTUAN AGONG

IN THE FEDERAL COURT OF MALAYSIA AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.X 31 of 1967

B E T W E E N:

- 1. Chong Fook Kam
 - 2. Chin San
- Appellants 10

- and -

- 1. Inspector Shaaban bin Hussien
 - 2. A.S.P. Hassan bin Daud
 - 3. The Government of Malaysia
- Respondents

(In the Matter of Civil Suit No.
35 of 1965 in the High Court of
Malaya at Raub

B E T W E E N:

- 1. Chong Fook Kam
 - 2. Chin San
- Plaintiffs 20

- and -

- 1. Inspector Shaaban bin Hussien
 - 2. A.S.P. Hassan bin Daud
 - 3. The Government of Malaysia
- Defendants)

CORAM: ONG HOCK THYE, JUDGE, FEDERAL COURT, MALAYSIA: 30

SUFFLIAN, JUDGE, FEDERAL COURT, MALAYSIA;

MACINTYRE, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT
THIS 19TH DAY OF AUGUST, 1968.

O R D E R

UPON MOTION made unto this Court this

10 day by Enche Ajaib Singh, Senior Federal Counsel for the above-named Respondents, in the presence of MR. G. VADIVELOO of Counsel for the Appellants AND UPON READING the Notice of Motion dated the 31st day of July, 1968 and the Affidavit of Ajaib Singh affirmed on the 29th day of July, 1968 and filed herein AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that final leave be and is hereby granted to the Respondents to appeal to His Majesty the Yang di-Pertuan Agong AND IT IS ORDERED that the costs of this Application be costs in the cause.

GIVEN under my hand and the Seal of the Court this 19th day of August, 1968.

20 (L.S.) Sgd. Au Ah Wah
CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

In the Federal Court of Malaysia

No.18

Order granting Leave to Appeal to His Majesty The Yang Di-Pertuan Agong

19th August 1968
(continued)

ExhibitsEXHIBITS

D.1.

Translation
of Police
Report10th July
1965D.1 TRANSLATION OF POLICE REPORT

Report No: 717-65 Police Station: Mentakab

Time: 10.05 p.m. On: 10.7.1965

Complainant: Kanniah s/o Thangavaloo, (male)

I/C NS 006288 (5210024)

Nationality: Indian Tamil Age: 29 years

Occupation: Rubber tapper.

Residing at Semantan Estate, Mentakab.

Interpreter: Nil

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Complainant States:

At 9.15 p.m. on 10th July, 1965, I was driving motor car No. BC 6912. I was returning to Semantan Estate. In the car I had four friends returning to Semantan Estate. When I arrived at Batu 2, Jalan Karak, in front of me was a lorry with a trailer loaded with timber sawn and unsawn. When we passed each other in the opposite direction, a timber fell off the lorry and hit my windscreen. It hit my friend and my uncle. I immediately stopped 20 my car and saw that my uncle was unable to speak. I took them to Hospital at Mentakab. When I arrived there, I found that my uncle had died and the others were injured. I cannot recognise the lorry nor its number because it was night time and the lorry did not stop, it went straight on towards Mentakab town. The time of the incident was about 9.25 p.m. on 10th July, 1965. This is my report. The name of the dead person was Govindan and of the injured person Persamay.

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Translated by me,

Sd: Illegible

Malay Interpreter,
High Court,
Kuala Lumpur.

D.2 INVESTIGATION DIARY OF INSPECTOR
SHAABAN BIN HUSSIEN

POLIS DI-RAJA MALAYSIA

Investigation Diary of Insp. Sha'aban B. Hussin in Report No. 717/65 - Mentakab Station.

Exhibits

D.2

Investigation
Diary of
Inspector Shaaban
bin Hussien

12th July and
13th July 1965

Date Time	Diary No.	Particulars
2.7.65	1	<p>On 10.7.65 at about 9.20 p.m. a fatal motor accident had taken place at 2nd mile Karak Road Mentakab in which a motor car No. BC.6912 was damaged by a fallen piece of swan timber which was carried by M/Lorry No.C.8200 and a result of it killed one Govindan who was travelling in the said M/Car BC.6912. The said M/Lorry then failed to stop at the place of i incident.</p>
	2	<p>Through Police investigation the M/Lorry No. BC.8200 was stopped at Bukit Tinggi, Bentong on 11.7.65 at about 7.30 a.m. and the driver of the said M/Lorry is one Chin San i/c J.003119/ 7861627 of No.39 Main Street, Mentakab. The attendant is one Chong Fook Kam i/c SL. 003412/3418450 of Temerloh Road, Mentakab. Both the suspected persons were taken back to Mentakab at 4.40 p.m. 11.7.65 from Bukit Tinggi, for further interrogation and the following is the evidence against them:-</p> <p>(a) Description given by complainant is similar to lorry No.C.8200 as in Mentakab Report 717/65.</p>

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Exhibits

D.2.
Investigation
Diary of
Inspector
Shaaban bin
Hussien
12th July and
13th July 1965
(continued)

Date Time	Diary No.	Particulars	
		(b) Lorry C.8200 was at Batu 5 Camp sawmill to load swan timber at approx: 5.00 p.m. on 10.7.65	
		(c) Information received that on 10.7.65 between 9.00 - 10.00 p.m. one lorry trailer with big red bonnet and sawn timber was seen passing the Shell Pump near approach road to Mentakab Police Station proceeding to Mentakab town from Karak.	10
		(d) On 10.7.65 at 8.35 p.m. information received that the driver of lorry C.8200 was seen drinking beer at a coffee shop opposite the approach road to the District sawmill.	20
		(e) Lorry C.8200 was the only one seen after receiving the report that answered the description given by the complainant.	
		(f) It raises reasonable suspicion that the driver knew of the accident when he told O.C.S. Bukit Tinggi that he did not meet with any accident when he was stopped at the road block.	30
	3	As the investigation could not be completed within the period of twenty four (24) hours, I therefore pray for an	40

Exhibits

D.2

Date Time	Diary No.	Particulars	Investigation Diary of Inspector Shaaban bin Hussien 12th July and 13th July 1965 (continued)
10		order to detain the following persons (1) Chin San i/c J.003119/7861627 and (2) Chong Fook Kam i/c SL.003412/3418450 for a period of seven (7) days under Section 117 of the Criminal Procedure Code for further investigation.	
12.7.65		Approved - WR No.118513 dated 12.7.65	
		Magistrate Temerloh 12.7.65	
13.7.65	4	Investigation completed I found there is not sufficient evidence to proceed against the above named persons, I pray for an order of their release.	
20		Order to Release granted.	
		Magistrate Temerloh 13.7.65.	

Exhibits

D.3 WARRANT OF REMAND

D.3.

Warrant of
Remand

12th July
1965

MALAYA

STATE OF PHG.

IN THE MAG. COURT AT T/OH No.118513.

WARRANT OF REMAND

To the Officer in charge of the Lock up T/oh.

Rpt. No.717 of 1965.

WHEREAS (1) Chin San (2) Chong Fook Kam
 (hereinafter called the accused) was this day
 brought before this Court charged under Sec. 117 10
 c.p.c. and it was necessary to remand him.
 This is to authorise and require you the said
 officer to receive him into your custody together
 with this warrant and him safely to keep in
 Prison until the 18th day of July 1965 when
 you shall cause him to be brought before the
 said Court at 10.00 o'clock in the forenoon
 of the said day unless you shall be otherwise
 ordered in the meantime.

Given under my hand and the seal of the 20
 Court this 12th day of July 1965.

(Sgd) Illegible.

Registrar

Magistrate

