

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

BETWEEN

WONG SWEE CHIN @ BOTAK CHIN Appellant

And

PUBLIC PROSECUTOR Respondent

CASE OF THE APPEAL

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RECORD

1. The circumstances out of which the Appeal arises

1.1 The Appellant was charged for two (2) offences under the Internal Security Act, 1960. The charges read as follows:-

First Charge

p. 2

That you on the 16th February, 1976 at about 8.45 p.m. at the office of Eng Leong Saw mill, No. 572, 3½ miles Ipoh Road, Kuala Lumpur, being a Security Area as proclaimed by the Yang Di-Pertuan Agong vide P.U.(A) 148 dated 15th May, 1969 without lawful excuse and without lawful authority did have under your control firearms to wit,

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- 1) a 7.65 Walther automatic pistol No. 271053;
- 2) a 9 mm Erfurt 96 automatic luger pistol No. 5796 (8788) and

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3) a 6.35 Baretta automatic pistol No. E18866 and that you have thereby contravened Section 57(1)(a) of the Internal Security Act 1960 punishable under Section 57(1) of the said Act.

Second Charge

p. 2-3

That you on the 16th February, 1976 at

the office of Eng Leong Sawmill, No. 572, 3½ miles RECORD
Ipoh Road, Kuala Lumpur, in the Federal Territory
of Kuala Lumpur, being a Security Area as
proclaimed by the Yang Di-Pertuan Agong vide P.U.
(A) 148 dated 15th May, 1969 without lawful excuse
and without lawful authority did have under your
control ammunitions, to wit,

- 1) 41 rounds of 9 mm ammunitions
- 2) 34 rounds of .32 ammunitions and
- 10 3) 2 primed hand grenades

and that you have thereby contravened section 57(1)
(b) of the Internal Security Act 1960 and punishable
under Section 57(1) of the said Act.

1.2 The Appellant pleaded guilty to both the afore p.4-5
said charges and was accordingly convicted and
sentenced to Death by hanging on the 11th January,
1977.

1.3 The time within which to file the Notice of
Appeal is two (2) weeks from the date of sentence
20 and hence the last date to file the Notice of Appeal
was the 25th January, 1977. The period to file the
Notice of Appeal lapsed and consequently the p.20-29
Appellant filed the Notice of Motion in the Federal
Court vide Criminal Application No. 2 of 1977 for
leave to file the Notice of Appeal out of time.
The Application was heard on the 1st day of April,
1977 and was dismissed.

1.4 Subsequently an Application was filed in the p.30
Privy Council for leave to Appeal against the
30 decision of the Federal Court and on the 17th May,
1978, the Privy Council granted the leave.

2. The Contentions to be urged by the Party
lodging the case of Appeal

2.1 The main contention of the Appellant is that p.11-12
he was not in the proper frame of mind when he
pleaded guilty in the High Court on the 11th
January, 1977. After his arrest the Appellant was
placed in a solitary confinement in the Pudu Prison.
Both his hands were then in Plaster of Paris and he
40 had been shot some six (6) times. The Appellant had
lost the will to live and in fact whilst in custody

he tried to commit suicide by hanging himself with the medical bandages from his hands. He fell unconscious but was discovered in time and was revived by the Prison Authorities. Furthermore as a condemned man, he had received adverse publicity in the Press given by the Police from time to time. Consequently when the case came up for Hearing on the 11th January, 1977 he has made up his mind to die. He was under the impression that once he had pleaded guilty, within a matter of hours or a few days he would be hung and that would end his agony. He did not at that time realise that the period for Appeal must lapse, the period to seek pardon from the King must also lapse and certain other administrative procedures must also be complied with before the sentence of hanging can be effected on him.

2.2. Even when the facts of the case were given by the Prosecution to the trial Judge, the Prosecution conceded the fact that the Appellant was in a semi-consciousness state when he was arrested by the Police. p.4

3. The Reasons for the Appeal

3.1 The Appellant was charged for two (2) offences under the Internal Security Act. What really is the Internal Security Act? In this connection the preamble to the Internal Security Act gives an idea what was the purpose of the Internal Security Act. The preamble reads:-

30 "WHEREAS action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia:

- 1) to cause, and to cause a substantial number of citizens to fear, organised violence against persons and property; and
- 2) to procure the alteration, otherwise than by unlawful means of the lawful Government of Malaysia by law established;

40 AND WHEREAS the action taken and threatened is prejudicial to the security of Malaysia AND WHEREAS Parliament considers it

necessary to stop or prevent the action;
the Internal Security Act 1960 was
established.

RECORD

3.2 In the present case the Appellant was charged
merely for possession of weapons and ammunition. p.2-3
There was no evidence whatsoever of any organised
violence or crime. There is also no evidence what
soever that the Appellant acted in the manner
prejudicial to the security of Malaya nor had he
10 acted in any manner with the intention to overthrow
the Government of Malaysia.

3.3 Any person who is found in unlawful possession
of firearms can be charged under three (3) different
laws:-

- i) the Arms Act, 1960
- ii) the Firearms (Increased Penalties) Act
1971
- iii) the Internal Security Act, 1960.

3.4 Article 8 of the Constitution of Malaysia
20 states:-

"All persons are equal before the law and
are entitled to equal protection of the law"

3.5 The discretion under which law a person could
be charged for mere possession of a firearm is entirely
upon the Attorney General. This basically comes within
the ambit of what is called the "Doctrine of
Classification". On what basis does the Attorney
General classify under which law a person should be
charged? This arbitrary classification by the Attorney
30 General is a form of discrimination which contravenes
the provisions of Article 8 of the Constitution.

3.6 The Federal Court of Malaysia has held that
the Attorney General can discriminate without
contravening Article 8 of the Constitution.

3.7 The Federal Court has materially erred in its
Judgment when hearing the Notice of Motion by the
Appellant for an extension of time to file the Notice
of Appeal in that it had erroneously assumed that the
hearing of the Notice of Motion was in itself the
40 Hearing of the Appeal proper.

3.8 The Notice of Motion was merely an RECORD
Application for leave to file the Notice of Appeal p.24-28
out of time but the Federal Court had dealt with
the Application as though it was the Hearing of
the Appeal itself. Hence the Federal Court was
prejudiced right from the start and had caused a
miscarriage of justice to the Appellant. In the
grounds of Judgment, the Federal Court were of the
opinion that "there was nothing to suggest that on
10 the merits the Appeal was likely to succeed".
(Page 5 of the Grounds of Judgment).

3.9 The Constitution is the supreme law of
Malaysia. Parliament forms laws which are called
Acts of Parliament. The Internal Security Act 1960
was passed by Parliament for the purposes states in
the preamble. The procedure for all criminal cases
are regulated by the Criminal Procedure Code. The
procedure regulating trials under the Internal
Security Act is also governed largely by the
20 Criminal Procedure Code.

3.10 In 1969, owing to an Emergency situation
arising in the country, the Agong passed the
Emergency (Essential Powers) Ordinance 1969. The
Essential (Security Cases) Amendment Regulations
1975 is a subsidiary regulation made under the said
1969 Emergency Ordinance. However, the said 1975
Security Regulations which were made under the said
1969 Emergency Ordinance has been made to govern
the procedure of all cases triable under the Internal
30 Security Act, a separate Act of Parliament
altogether. It is the Appellant's respectful
submission that the Subsidiary Legislation made
under one Act of Parliament cannot be used to govern
the procedure of another Act of Parliament, namely
the Internal Security Act. The said 1969 Emergency
Ordinance does not and did not create any specific
offences. Hence there is no purpose at all of having
a specific procedure laid out by way of subsidiary
legislation to govern the hearing of cases within the
40 said 1969 Emergency Ordinance.

3.11 Furthermore basically, Parliament can legislate
any law when it sits. If parliament is not sitting the

Agong may properly promulgate any law. This is provided for by Article 150(3) of the Constitution.

RECORD

3.12 In 1969, the Agong passed the Emergency (Essential Powers) Ordinance 1969 because Parliament had not been formed or sitting. Once Parliament has been elected it is and should be the principal law making body of the country. If the Agong can make laws as and when he likes, then it is submitted that there is no point in having a Parliament.

10 3.13 Under Article 150(2) of the Constitution the Agong cannot pass any law when Parliament is sitting. If the Agong cannot pass any law when Parliament is sitting, then the Agong also cannot pass any Regulations under any existing law when Parliament is sitting. To argue otherwise, that is, the Regulations under Section 2 of the said Emergency Ordinance may be made by the Agong whether Parliament is sitting or not, would mean that the Agong arms himself with a reservoir of powers to pass any type of laws even when Parliament
20 is sitting. If this is so, then there is no need to have Parliament at all. It is quite clear that the Agong has powers to make laws only when Parliament is not sitting under Article 150(3).

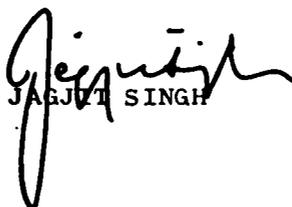
4. Conclusion

4.1 The Members of the Bar in an Extraordinary General Meeting held on the 18th October, 1977 passed a Resolution urging members of the Bar not to appear in trials held under the Essential (Security Cases) (Amendment) Regulations 1975. Subsequently the
30 Attorney General amended the charges of all Accused who had previously been charged for offences punishable under Internal Security Act 1960 and the Essential (Security Cases) Amendment Regulations 1975 to one under the Firearms (Increased Penalties) Act, 1971. However, numerous cases which have already been heard and concluded, and whenever found guilty, the Accused were all sentenced to death whilst others, who were previously charged for offences under the Internal Security Act, 1960 have all had their charges amended

and reduced to one under the Arms Act, 1960 or Firearms (Increased Penalties) Act, 1971. All those accused persons have very quickly pleaded guilty for fear that if they did not do so, then they would be recharged with offences punishable under the Internal Security Act, 1960.

RECORD

4.2 It is therefore the Appellant's humble Submission that Your Lordships will allow him the liberty to appeal.


JAGJIT SINGH

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL
NO. 24 of 1978
ON APPEAL FROM THE FEDERAL COURT
OF MALAYSIA
(APPELLATE JURISDICTION)

BETWEEN:

WONG SWEE CHIN alias
BOTAK CHIN
and
THE PUBLIC PROSECUTOR

CASE FOR THE APPELLANT

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