
O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

WONG SWEE CHIN
ALIAS BOTAK CHIN Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

CASE FOR THE RESPONDENT

1. This is an appeal from an order of the Federal Court of Malaysia by which the Federal Court refused leave to the Appellant to appeal out of time against his conviction before the High Court on each of two charges of unlawfully having under his control (a) firearms and (b) ammunition in contravention of Section 57(1) (a) and (b), Internal Security Act, 1960. P 24

2. The Appellant had appeared before Chang Min Tat, J. in the High Court of Malaya at Kuala Lumpur and having pleaded guilty to each of the said charges was sentenced to death on 11th January, 1977. P 7

3. The Appellant's application to the Federal Court for leave to appeal out of time was heard by the Federal Court (Gill, C.J. Ong Hock Sim and Raja Azlan Shah FJJ) on 1st April, 1977, when the application was refused. A reasoned judgment of the Court was delivered by Gill C.J. on 10th June, 1977. P 24

4. Special leave to appeal in Forma Pauperis was granted to the Appellant by His Majesty the Yang di-Pertuan Agong on the advice of the Judicial Committee of the Privy Council on 17th May, 1978.

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5. This appeal raises an issue which was not considered by the High Court or by the Federal Court but which should, in the submission of the Respondent, be considered by your Lordships. This issue arises as a result of the decision of the Privy Council on 11th December, 1978, in Teh Cheng Poh v. The Public Prosecutor, Malaysia (Appeal No.15 of 1978) in which it was held that the Essential (Security Cases) Regulations, 1975, as amended by the Emergency (Security Cases) (Amendment) Regulations, 1975, (hereinafter referred to as "the Regulations") were invalid and unconstitutional.

6. It was held that this was so because the Emergency (Essential Powers) Ordinance No.1, 1969, which gave to the Yang di-Pertuan Agong the power to make regulations, and under which the Yang di-Pertuan Agong purported to make the Regulations, was itself promulgated under the provisions of Article 150(2) of the Constitution. Article 150(2) gave to the Yang di-Pertuan Agong power to promulgate ordinances having the force of law, during a period when Parliament was not sitting, if an emergency was proclaimed. But the said Article provided that such power to promulgate ordinances should only be exercisable during the period from the proclamation of the emergency until both Houses of Parliament first sat thereafter. As the regulations were made after both Houses of Parliament had, following the relevant proclamation of emergency, sat, and as the Regulations, except in name, were no different from an ordinance having the force of law, the Regulations were invalid.

7. By Regulation 2 of the Regulations an offence (such as the offences charged against the Appellant) against Section 57, Internal Security Act, 1960, was included in the category of special offences called 'security offences'. By Regulation 3 the Regulations were to have effect with respect to security cases notwithstanding anything to the contrary contained in any written law. By Regulations 5 to 18 special provisions were made for the conduct of trials of persons accused of

security offences and some of these provisions differed from, and were less favourable to the accused person than, the provisions for the conduct of the trials of persons accused of criminal offences which would have applied had the offences not been security offences. In particular the Regulations provided (by Regulation 6(1)) that there should be no preliminary inquiry by a magistrate before the accused was committed for trial by the High Court.

8. At the time of the trial of the Appellant it was thought by the Respondent that the Regulations were valid as the Federal Court had, on 14th August, 1976, so decided in the case of Public Prosecutor v. Khong Teng Khan & Ors. (1976) 2 MLJ 166.

The trial of the Appellant before Chang Min Tat, J., was, therefore, conducted in accordance with the provisions of the Regulations and not in accordance with the provisions of the Criminal Procedure Code that would otherwise have been applied.

9. In these circumstances the Respondent is of opinion that the trial of the Appellant in the High Court was a nullity and is unable to adduce before Your Lordships any arguments to the contrary.

For these reasons the Respondent would not wish to oppose an order that the appeal be allowed and the case be remitted to the Federal Court for consideration whether or not the Appellant should be retried in accordance with the normal provisions of the Criminal Procedure Code.

10. The Respondent, therefore, humbly submits that this appeal should be allowed for the following

REASON

The trial of the Appellant in the High Court was conducted in accordance with the provisions of the Regulations which have since been held to be invalid and unconstitutional and, therefore, the trial was a nullity.

IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

ON APPEAL
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- and -

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 Respondent

RESPONDENTS CASE

STEPHENSON HARWOOD
Saddlers' Hall
Gutter Lane
London EC2V 6BS

(Tel.01-606 7733 Ref.35/)