23/81

IN THE PRIVY COUNCIL   No. 56 of 1980

ON APPEAL

FROM THE COURT OF CRIMINAL APPEAL OF THE REPUBLIC OF SINGAPORE

B E T W E E N :

HAW TUA TAU   Appellant

- and -

PUBLIC PROSECUTOR OF SINGAPORE   Respondent

CASE FOR THE APPELLANT

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CASE FOR THE APPELLANT

1. This is an appeal, pursuant to leave granted by the Board (Lords Fraser of Tullybelton, Scarman and Bridge of Harwich) on the 17th December 1980, from the Judgment, dated 7th September 1979, in Criminal Appeal No. 1 of 1978 of the Court of Criminal Appeal of the Republic of Singapore (Wee Chong Jin, C.J., Kulasekaram and D'Cotta JJ.) dismissing the Appellant's appeal from his conviction by the High Court of Singapore (Chua and Rajah JJ.) in Criminal Case No. 31 of 1977, dated 17th April 1978, for two offences of murder under Sections 299 and 300 of the Singapore Penal Code (Chapter 103) and sentence of death under Section 302.

2. The sole issue in this appeal is :-

Whether Sections 181, 182 and 186A of the Singapore Criminal Procedure Code (Chapter 113), which effectively take away the accused's privilege against self-incrimination at his trial and shifts the onus of proof to the defence on a <u>prima facie</u> case having been established, are unconstitutional as not being "in accordance with law" within Article 9(1) of the Constitution of the Republic of Singapore, on the ground that the said sections violate a fundamental rule of natural justice: <u>Ong Ah Chuan v. Public Prosecutor for Singapore</u> (1980) 3 W.L.R. 855.

<u>FACTS</u>

3. On the 12th December 1976 at about 6.p.m. the Appellant was operating a food stall (No. 538) at the Margaret Drive Hawkers' Centre; the deceased, Phoon Ah Leong and Hu Yuen Kheng who were son and mother, were assistants at another food stall (No. 501) at the same Centre. Quarrelling broke out between the operators of the two stalls; this related to the cleaning of their respective eating tables by members of the other stall. Because of a failure on the part of the stall holders of No. 506 to clean a table properly, the Appellant left his stall to go over to the deceased's stall, carrying a bearing scraper wrapped in paper . The Appellant walked over to stall No. 506 where Phoon Ah Leong was standing and thrust the scraper into his chest, causing him to collapse and die. Phoon Ah Leong's mother, Hu Yuen Kheng, witnessing the incident, remonstrated with the Appellant and engaged in a struggle with him, whereupon she received a stab in the chest causing her death.

4. At the close of the case for the prosecution. the presiding Judge, Chua J, announced that the court found a _prima facie_ case against the Appellant on both charges of murder indicating that if the charges were unrebutted the _prima facie_ case would warrant conviction. The learned judge proceeded to outline the Appellant's rights and duties in relation to his giving evidence in the following manner ;-

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"Will you tell the accused that we find that the prosecution has made out a case against you on both the charges on which you are being tried which if unrebitted would warrant your conviction. Accordingly, we call upon you to enter upon your defence on both the charges.

Before any evidence is called for the defence we have to inform you that you will be called upon by the court to give evidence in your own defence. You are not entitled to make a statement without being sworn or affirmed and accordingly if you give evidence, you will do so on oath or affirmation and be liable to cross-examination. If after being called by the Court to give evidence you refuse to be sworn or affirmed or having been sworn or affirmed you, without good cause, refuse to answer any question, the court in determining whether you are guilty of the offence charged, may draw such inferences from the refusal as appear proper.

There is nothing in the Criminal Procedure Code which renders you compellable to give evidence on your own behalf and you shall accordingly not be guilty of contempt of court by reason of a refusal to be sworn or affirmed when called upon by the court to give evidence. We now call upon you to give evidence in your own defence. If you have any difficulty in deciding whether or not you wish to give evidence on your own behalf you may consult your counsel".

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5. After consulting with his counsel, the Appellant elected to give evidence on oath. The Appellant gave evidence that he constructed an implement with a rounded handle and sharp point as a satay grill scraper and spare stool leg, which he had wrapped in a rag. He picked up a rag and failed to realise that he was carrying the implement in it. In the course of complaining to the stallholders at No. 506 about dirty tables, both deceased attacked the Appellant with choppers, and in warding them off the Appellant raised his hand in which he held the rag which unbeknown to him contained the implement that caused the death of both deceased.

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6. The High Court of Singapore (Chua and Rajeh JJ). on 17th March 1978 rejected the Appellant's version of the incident on 12th December 1976 and accepted the version recounted by two prosecution witnesses, a brother of the female deceased and the other a female assistant, who tried to intervene the incident; they were corroborated by three independent witnesses, customers at the stall. The Court held that it had no doubt that the Appellant intentionally inflected the stab wounds on the two deceased. Accordingly the Appellant was convicted on both charges of murder and sentenced to death.

PROCEEDINGS BEFORE THE SINGAPORE COURT OF CRIMINAL APPEAL

7. The Appellant appealed to the Court of Criminal Appeal against his conviction and sentence of death. A number of grounds of appeal were raised in the Petition of Appeal dated the 7th December 1978 and in a supplemental petition dated 17th February 1979, but none was seriously advanced in argument. By an additional supplemental petition of appeal,

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dated 7th April 1979, the Appellant raised two points relating to Sections 181(2) and 186A which had been enacted in the Criminal Procedure (Amendment) Act 1976, coming into force on 1st January 1977. Two submissions were made :

(a) The Appellant had a substantial right, which accrued to him when he was charged with murder on 13th December 1976, of making an unsworn statement from the dock, in accordance with the criminal procedure then in force; and that Sections 181(2) and 186A could not operate retrospectively so as to deprive the Appellant of his accrued substantive right;

and, if contrary to the Appellant's contention in (a),

(b) Sections 181(2? and 186A were void as being repugnant to Article 7 of the Malaysian Constitution (which is law in Singapore by virtue of the Republic of Singapore Independence Act 1965) and proscribes any retrospective penal law.

The Court of Criminal Appeal held that the right of a person charged with a criminal offence to make an unsworn statement from the dock was a right vested in him <u>at his trial</u>, and that such right of an accused person had been abolished before the Appellant's trial took place. By the same reasoning, the two sections - 181(2) and 186A - did not violate Article 7 of the Malaysian Constitution.

RELEVANT SINGAPORE LAW OF CRIMINAL PROCEDURE

8. The Criminal Procedure Code (Chapter 113) provides in Sections 181, 182 and 186A as follows :-

"S. 181(1) When the case for the prosecution is concluded the Court, if it finds that no case against the accused has been made out which if unrebutted would warrant his conviction, shall record an order of acquittal, or if it does not so find, shall call on the accused to enter on his defence.

(2) Before any evidence is called for the defence the Court shall tell the accused that he will be called upon by the court to give evidence in his own defence and shall tell him in ordinary language what the effect will be if, when so called upon, he refuses to be sworn or affirmed, and thereupon the court shall call upon the accused to give evidence.

S.182(1) The accused or his advocate may then open his case, stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution.

(2) He may then examine his witnesses (if any) and after their cross examination and re-examination (if any) may sum up his case.

(3) If any accused person elects to be called as a witness, his evidence shall be taken before that of other witnesses for the defence.

(4) Any accused person who elects to be called as a witness may be cross examined on behalf of any other accused person.

(5) The accused shall be allowed to examine any witness not previously named by him under the provisions of this Code if that witness is in attendance.

S.186A (1) In any criminal proceedings except an inquiry preliminary to committal for trial, the accused shall not be entitled to make a statement without being sworn or affirmed, and accordingly, if he gives evidence, he shall do so on oath or affirmation and be liable to cross-examination; but this subsection shall not affect the right of the accused, if not represented by an advocate, to address the court otherwise than on oath or affirmation on any matter on which, if he were so represented, the advoate could address the court on his behalf.

(2) If the accused -

(a) after being called upon by the court to give evidence or after he or the advocate representing him has informed the court that he will give evidence, refuses to be sworn or affirmed; or

(b) having been sworn or affirmed, without good cause refuses to answer any question, the court, in determining whether the accused is guilty of the offfence charged, may draw such inferences from the refusal as appear proper.

(3) Nothing in this section shall be taken to render the accused compellable to give evidence on his own behalf, and he shall accordingly not be guilty of contempt of court by reason of a refusal to be sworn or affirmed in the circumstances described in paragraph (a) of subsection (2).

(4) For the purposes of this section a person who, having been sworn or affirmed, refuses to answer any question shall be taken to do so without good cause unless -

(a) he is entitled to refuse to answer the question by virtue of subsection (4) of Section 120 of the Evidence Act or of any other written law or on the ground of privilege; or

(b) the court in the exercise of its discretion excuses him from answering it.

(5) Nothing in subsection (2) shall apply to an accused if it appears to the court that his physical or mental condition makes it undesirable for him to be called upon to give evidence.

THE CONSTITUTION OF SINGAPORE

Article 4: "This Constitution is the supreme law of the Republic of Singapore and any law enacted by the Legislature after the commencement of this Constitution shall, to the extent of the inconsistency, be void.

Article 5:(1) "Subject to this Article and Article 8, (which is the power to amend the constitutional protection of the sovereignty of the Republic of Singapore) the provisions of this Constitution may be amended by a law enacted by the Legislature.

(2) Except as provided in clause 3, a Bill seeking to amend any provision in this Constitution shall not be passed by Parliament unless it has been supported in Second and Third Readings by the votes of not less than two-thirds of the total number of the Members thereof.

(3) Any amendment consequential on such a law as is mentioned in clause (1) of Article 39 (which provides for the number of elected Members, the number presently being sixty-nine) shall be excepted from the provisions of clause 2.

(4) In this Article "amendment" includes addition and repeal.

(This Article substituted by Act No. 10 of 1979 Article 90 of the Constitution of Singapore 1963 which provided that

(1) "the provisions of the Constitution may be amended by a law enacted by the legislature"; and

(2) an "amendment" included "addition" and "repeal").

Article 9:(1) "No person shall be deprived of his life or personal liberty save in accordance with law.

(2) Where a complaint is made to the High Court or any Judge thereof that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the Court and release him.

(3) 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.

(4) Where a person is arrested and not released, he shall, without unreasonable delay, and in any case within twenty-four 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.

(5) Clauses (3) and (4) shall not apply to any enemy alien.

(6) - (which was inserted by Constitution (Amendment) Act 1978 (Art. 5 of 1978 and coming into force on 10th March 1978) Nothing in this Article shall invalidate any law -

(a) in force before the 16th day of September 1963, which

authorises the arrest and detention of any person in the interests of public safety, peace and good order; or
(b) relating to the misuse of drugs which authorises the arrest and detention of any person for the purpose of treatment and rehabilitation,
by reason of such law being inconsistent with clauses (3) and (4), and, in particular, nothing in this Article shall affect the validity or operation of any such law before the 10th day of March, 1978.

SUBMISSIONS

A. The Status and Effect of the Constitution of the Republic of Singapore

9. The provision in Article 9(1) of the Constitution that no person shall be deprived of his life or personal liberty "Save in accordance with law", is identical with Article 5 of the Constitution of Malaysia 1957 which was adopted by the Constitution of Singapore on the latter claiming independence in 1963. The Constitution of Malaysia was founded on the Westminster model and in that part of it that guarantees the fundamental liberties to all individual citizens the reference to law in the context of "in accordance with law" is a reference to a system of law that incorporates those fundamental rules of natural justice forming an essential ingredient of the common law of England that was in operation in Singapore at the commencement of the Constitution: see Ong Ah Chuan v. Public Prosecutor (1980) 3 W.L.R. 855.

10. In so far as any part of the conduct of a criminal trial in Singapore involves a fundamental rule of natural justice, the Singapore legislature had power to amend any provision of the Constitution until Act No. 10 of 1979

by a simple majority (see Article 90(1) Singapore Constitution), and thereafter by a two-thirds majority of members on a second and third reading (see Article 5 of the Constitution). No law enacted by the Singapore legislature inconsistent with the Constitution of Singapore could amend that Constitution by implication; only an express amendment of the Constitution will suffice to amend the Constitution.

B. The Privilege Against Self-Incrimination

11. The origin of the privilege against self;incrimination can be traced to early Judaeo-Christian society. Indeed, it is to be found in an extreme form in Talmudic law, as summarised by Professor Levy in his work "Origins of the Fifth Amendment: "The Right Against Self-Incrimination":-

> "Woven into the texture of this criminal procedure of the old Rabbinic courts was the maxim ein adam meissim atsmo rasha, the Hebrew equivalent of nemo tenetur seipsum prodere. Literally translated it means, a man cannot represent himself as guilty, or as a transgressor. At several points in the Soncino edition of the Talmud, the English translation is given as "no one can incriminate himself". That rule was an absolute and could not be waived or relinquished In Anglo-American jurisprudence the right exists only with respect to compulsory self-incrimination. A voluntary confession of guilt is regarded as the best evidence, and a plea of guilty results in a sentence. The defendant goes to trial only if he should plead not guilty. He cannot be placed on the stand to give testimony, but may volunteer. If he fails to do so neither the prosecution nor the court may comment adversely on that fact. However, if he takes the stand to testify in his own behalf, he relinquishes his right to remain silent to incriminating questions and may be cross-examined. In the United States a witness, other than the Defendant, may refuse to answer to any question that might tend to incriminate him, but once he freely discloses an incriminating fact, he has, knowingly or not, waived his right to refuse answers to all related facts. The rule of the Talmud was quite different.

> In Talmudic law there was no such thing as a plea of guilty, no distinction between voluntary and compulsory self-incrimination, and no waiver rule. Anglo-American law vests the individual with the option of claiming a right against self-incrimination if he chooses, at his discretion, to do so; Talmudic law, by contrast, prohibited the admission in evidence of any self-incriminatory testimony even if voluntarily given. The rule was, no one could be permitted to confess or be a witness against himself criminally. The opposite rule prevailed with respect to civil liabilities. If a man acknowledged in court that he owed a debt or confessed to an act of negligence that exposed him to civil damages, his testimony, according to a Talmudic maxim, was the equivalent of the evidence of a hundred witnesses. But if his words revealed his culpability for a crime, he was not liable to punishment under the criminal law. The court simply excluded his incriminating statements. There was no way he could convict himself of a crime by testimony from his own mouth. Indeed, in a criminal case, the accused was permitted to speak only in his own behalf. The court examined him not to secure his conviction but to find reasons for acquittal; once acquitted, he was protected by the law against double jeopardy: "The verdict may be reversed for acquittal only but not for condemnation.""

12. Under the common law of England the development of the privilege against self-incrimination occurred against the backcloth of the struggle for the supremacy of the common law courts over ecclesiastical jurisidiction, and in particular through the granting of writs of prohibition to prevent enforced testimony by an accused before the High Commission. Having its origins in the Sixteenth Century, it developed into a fundamental rule that no man is bound to betray himself: Nemo tenetur prodere (or accusare) seipsum. The first reported case in which such a rule was successfully asserted is Collier v. Collier 72 E.R. 987. Thereafter, and particularly in the constitutional struggles of the Seventeenth Century, it gradually became an entrenched principle. As Frankfurter J. said in Watts v. Indiana 338 US 49, 54 (1949):

> "Ours is the accusatorial as opposed to the inquisitorial system. Such has been the characteristic of Anglo-American criminal justice since it freed itself from practices borrowed by the Star Chamber from the Continent... Under our system society carries the burden of proviing its charges against the accused not out of his own mouth."

13. For a modern English recognition of the rule see: R. v. Sang (1980) A.C. 402 per Lord Diplock at 436 D-E and per Lord Scarman at 455 C-E. Stephen in his History of the Criminal Law, Ch. XII, pp 439 ff. describes the rule that a prisoner was an incompetent witness (until the Criminal Evidence Act 1898) as the most important of the only four rules of evidence that can be said to be peculiar to criminal proceedings. He described it as one of the most characteristic features of English criminal procedure, as contributing greatly to the "dignity and apparent humanity of a criminal trial. It effectually avoids the appearance of harshness and not to say cruelty, which often shocks an English spectator in a French Court of Justice....the fact that a prisoner cannot be questioned stimulates the search for independent evidence." It was described by Mr. Justice Coleridge in R. v. Scott (1856) Deans & B. 47, 61; 169 E.R. 909 as "a maxim of our law as settled, as important and as wise as almost any other in it."

14. Dean Wigmore in his classic work on Evidence (8 Wigmore, Evidence, Chap. LXXVIII, paragraphs 2250 - 2284) traces the history and cites Lord Chancellor Hardwicke's judgment in Harrison v Southcote (1751) 2 Ves. Sr. 389, 394 as "a rule of great justice and tenderness" to indicate

the antiquity and considerably high importance attached to the privilege, while concluding himself that courts should unite to keep the privilege strictly within the limits dictated by historic fact, cool reasoning and sound policy.

15. "Historic fact, cool reasoning and sound policy" in favour of the privilege is reflected in the various constitutional instruments framed on the Westminster model for former colonial territories under the Crown. The following countries expressly provide that no person who is tried for a criminal offence shall be compelled to give evidence at his trial.

(i)	Bahamas:	Article 20(7) Bahamas Independence Order 1973
(ii)	Bangladesh:	Article 35(4), Bangladesh Constitution, 1972
(iii)	Barbados:	Article 18(7), Barbados Independence Order, 1966
(iv)	Botswana:	Article 10(7), Botswana Independence Order, 1966
(v)	Fiji:	Article 10(7), Fiji Independence Order, 1970
(vi)	Gambia:	Article 18(7), Gambia Independence Order, 1965
(vii)	Grenada:	Article 8(7), Grenada Independence Order, 1973
(viii)	Guyana:	Article 10(7) Guyana Independence Order, 1966.

(ix)	India:	Article 20(3), Indian Constitution 1949 as amended up to 1976
(x)	Kenya :	Article 21(7) Kenya Independence Order, 1963
(xi)	Kiribati (formerly Gilbert Islands)	Article 10(7) Kiribati Independence Order 1979
(xii)	Lesotho:	Article 12(7) Lesotho Independence Order 1966
(xiii)	Malawi:	Article 18(7), Malawi Independence Order 1964
(xiv)	Malaysia:	Article 7, Federation of Malaysia Independence Order in Council, 1957
(xv)	Malta:	Article 40(10) Malta Independence Order, 1964
(xvi)	Mauritius:	Article 10(7) Mauritius Independence Order, 1968
(xvii)	Nigeria:	Article 21(9), Nigeria (Constitution) Order in Council 1960
(xviii)	Soloman Islands:	Article 10(7), Soloman Islands Independence Order 1978
(xix)	St. Lucia:	Article 8(7), St. Lucia (Constitution) Order 1978
(xx)	Swaziland:	Article 10(7), Swaziland Independence Order 1968
(xxi)	Trinidad & Tobago:	Article 4(6), Constitution of Trinidad & Tobago 1974
(xxii)	Uganda:	Article 13(7), Uganda Constitution Order in Council, 1962

(xxiii)	Western Samoa:	Article 9(5), Western Samoa Constitution, 1961
(xxiv)	Zambia:	Article 20(7), Zambia Independence Order, 1964.

16. The most recent constitutions granted to former British colonial territories provide constitutionally that, no person shall be compelled to give evidence at his trial, provided that the law shall not prevent the prosecution or the court from commenting on the accused's failure to give evidence on his own behalf or from drawing inferences from such failure.

(i)	Dominica:	Article 8(7), Commonwealth of Dominica Constitution Order 1978
(ii)	Saint Vincent:	Article 8(7), The Saint Vincent Constitution Order, 1979
(iii)	Zimbabwe:	Article 18(8) and (13), The Zimbabwe Constitution Order 1979.

17. The privilege against self-incrimination is not simply a rule of evidence, rather it is a fundamental principle of liberty and justice:

(a) In Trining v. New Jersey 211 US 78, 103, 108, 110 (1908) the U.S. Supreme Court did treat the privilege against self-incrimination as an evidential rule, but that decision was reversed in Malloy v. Hogan 378 US 1, 6 (1964) and Miranda v. Arizona 384 US 436 (1966):

(b) Although the English Criminal Evidence Act 1898 rendered the accused at his trial a competent witness and provided that the trial judge (but not the prosecution) may comment on the failure to give evidence on oath, the common law principle that an accused should not be compelled to incriminate himself was by implication preserved.

(c) The Royal Commission on Criminal Procedure 1981, while describing the accused's right of silence at his trial as a rule of evidence, thought (with only one dissentient member) that any modification of the rule aimed at requiring the accused to answer a <u>prima facie</u> case established by the prosecution would be likely to weaken the initial burden of proof that the accusatorial system of trial places upon the prosecution; the accused should not be obliged either to enter the witness box or to mount any defence (see paragraph 4.66, Vol. I).

C. <u>The Ingredients of the Privilege Against Self-Incrimination</u>

18. (a) Since the burden of proving the accused's guilt rests, as a matter of fundamental principle, throughout the trial on the prosecution, (see <u>Public Prosecutor v. Yuvaraj</u> (1970) A.C.913, 921) any compulsion on the accused to give evidence would tend to contribute towards proof of guilt and thus erode the fundamental principle.

(b) Any law that provides for anything more than the competency of the accused as a witness at his trial, and for inferences to be drawn from the absence of evidence by the accused, breaches the privilege against self-incrimination.

(c) The accusatorial system of trial demands that the prosecution should produce the requisite evidence against the accused by its own independent labours, rather than by the simple expedient of compelling evidence from the accused's own mouth.

D. The Nature of Sections 181, 182 and 186A of the Singapore Criminal Procedure Code (Ch. 113)

19(a) Although Section 186A(3) makes it clear that the section does not override the rule that the accused cannot be compelled to give evidence, and also that he is not to be treated as guilty of contempt of court if he refuses to do so, this saving provision merely recognises that an accused cannot in the alternate event be obliged either to enter the witness box or mount a defence. Its effect is to oblige the accused to make the inescapable choice between going into the witness box and exposing himself to self-incrimination or remaining silent, with the inevitable adverse consequence referred to hereafter.

(b) The combined effect of Section 181(1) and (2) with Section 186A(3) is to forewarn the accused that at the

conclusion of the prosecution case he will stand convicted unless he rebuts the case against him and that he is bound to give evidence, and that refusal to answer questions will further buttress the unrebutted case against him. Failure to answer any questions may have less significance if there is only a weak case made out; the stronger the case against the accused the more significant will be the failure to answer questions. Since a conviction would be warranted if the case is unrebutted (Section 181(2) the compulsion upon the accused to attempt to rebut the case against him is overwhelming. Hence there is no substance left in any privilege against self-incrimination.

(c) In Ong Kiang Kek v. Public Prosecutor (1970) 2 MLJ 283 The Court of Criminal Appeal held that the wording of Section 177C of the then Criminal Procedure Code (which is identical to Section 181(1) of the present Criminal Procedure Code) meant that the trial court is required at the close of the prosecution case to determine whether or not the evidence tendered on behalf of the prosecution, if unrebutted, has established the case against the accused beyond a reasonable doubt. If the court finds at that stage of the trial that it has not been so established there is nothing left but to acquit the accused. The Appellant submits that that decision is wrong in that if at the close of the prosecution case the Court has already found that the evidence so far tendered establishes guilt beyond a reasonable doubt, the provisions of Section 186A(2) (which allows the Court to draw inferences from an accused's refusal to give evidence) are rendered superfluous.

On the other hand if, contrary to the Appellant's primary contention, the decision in <u>ONG KIANG KEK v. PUBLIC PROSECUTOR</u> is correct, then the accused is faced with no free choice as to whether or not to give evidence, but is forced to go into the witness box and risk self-incrimination in the certain knowledge that the court has already made up its mind to convict him if he refuses.

(d) The excusal from having to answer any question solely on grounds of legal privilege or as a result of the court's discretionary power in Section 186A(4)(a) and (b) respectively, does not seriously detract from the removal of the privilege against self-incrimination. Likewise, the court's discretionary power not to require the accused to give evidence if his physical or mental condition makes it undesirable for him to do so is only a marginal exception to the removal of the right of silence.

(e) The abolition in Section 186A(1) of the right of an accused to make an unsworn statement from the dock not subject to cross-examination by itself would be an unobjectionable removal of an anachronistic rule. But its abolition, coupled with the insistence that the accused shall give evidence on oath or affirmation subject to adverse inferences being drawn from a refusal to answer any question asked of him, renders the choice before an accused the more stark; he can no longer claim to speak for himself without exposing himself to self-incrimination. Since Section 186A(1) provides that an accused's sole means of telling his story without exposing himself to self-incrimination is to address the court where he is not represented by an advocate, the accused would not have an unfettered choice [illegible]ween defend[illegible] himself in person

or through legal assistance of his own choosing. To choose to be defended by counsel (with state legal aid) is to diminish the protection of the law with regard to the prosecution's burden of proof. An unrepresented accused would retain the privilege against self-incrimination in contradistinction to the represented accused.

(f) Taken as a composite reform of that part of the criminal procedure code of Singapore, Articles 181, 182 and 186A constitute a major departure from the principle that the accused's silence at his trial cannot in any way contribute towards proof of guilt: see Devlin J. in R. v. Adams 7th April 1959. The requirement that the accused shall give evidence (refusal of which permits the court to draw any proper inference) effectively contributes to the proof of guilt and thus breaches the fundamental principle that it is not for the accused at any stage to bear the burden of rebutting the prosecution case.

E. Conclusions

20. The Appellant submits that the judgment and order of the Court of Criminal Appeal for Singapore was wrong and ought to be reversed, varied or altered for the following, among other

REASONS

1. BECAUSE the provisions contained in Sections 181, 182 and 186A of the Criminal Procedure Code are unconstitutional as being in violation of Article

9(1) of the Constitution of Singapore.

2. BECAUSE the provisions contained in Sections 181, 182 and 186A of the Criminal Procedure Code effectively constitute a compulsion upon the accused at his trial to give evidence and thus take away the accused's privilege against self-incrimination.

3. BECAUSE the removal of the accused's privilege against self-incrimination is a breach of a fundamental rule of natural justice and is hence not "in accordance with law" in Article 9(1) of the Constitution.

4. BECAUSE the Criminal Procedure Code (Amendment) Act 1976 which came into force on 1st January 1977 enacting Sections 181(2) and 186A of the Criminal Procedure Code was not a constitutional amendment to Article 9(1) of the Constitution as required by Article 90 of the Constitution

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ALAN NEWMAN