23/81

IN THE PRIVY COUNCIL No. 56 of 1980

ON APPEAL

FROM THE COURT OF APPEAL OF SINGAPORE

BETWEEN:-

HAW TUA TAU Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal by special leave from a Judgment of the Court of Criminal Appeal of Singapore (Wee Chong Jin, C.J., T. Kulasekaram and D.C. D'Cotta, JJ.) dated 7th September 1979, which dismissed the Appellant's appeal against his conviction on the 17th day of March 1978 in the High Court, Singapore (F.A. Chua and A.P. Rajah JJ.) of the murder of one Phoon Ah Leong and one Hu Yuen Kheng and his sentence of death.

2. The relevant statutory provisions in this Appeal are sections 181 and 186A of the Criminal Procedure Code, Cap.113 (as amended pursuant to the Criminal Procedure Code (Amendment) Act, No.10 of 1976)(hereafter referred to as the Criminal Procedure Code). Those provisions read as follows:-

Section 181 [188]*

"(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.

* The numbers in square brackets are the numbers of the corresponding sections in the Reprint of the Criminal Procedure Code (Cap.113) dated the 31st July, 1980.

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(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."

Section 186A /1957

"(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 advocate 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 offence 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 grounds 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 to give evidence."

S.181(1) /188(1)/ first became part of the law of Singapore in 1960 (see the Criminal Procedure Code (Amendment) Ordinance 1960 No.18 of 1960 s.16). Ss.181(2) /188(2)/ and 186A /195/ first became part of the law of Singapore on the 24th August, 1976 (see the Criminal Procedure Code (Amendment) Act, 1976 No.10 of 1976 ss.16 and 16 which did not purport to amend any part of the Constitution of Singapore).

3. The relevant Articles of the Constitution of Singapore in this Appeal are:-

PART I

PRELIMINARY

Article 2(1)

In this Constitution unless it is otherwise provided or the context otherwise requires -

"commencement", used with reference to this Constitutuion, means the day on which this Constitution comes into operation;

"existing law" means any law having effect as part of the law of Singapore immediately before the commencement of this Constitution;

"law" includes written law and any legislation of the United Kingdom or other enactment or instrument whatsoever which is in operation in Singapore and the common law insofar as it is in operation in Singapore and by custom or usage having the force of law in Singapore;

"written law" means this Constitution and all Acts and Ordinances and subsidiary legislation for the time being in force in Singapore.

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PART II

THE REPUBLIC AND THE CONSTITUTION

Article 4

This Constitution is the supreme law of the Republic of Singapore and any law enacted by the legislation after the commencement of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

Article 5

(1) Subject to this Article ....., the provisions of this Constitution may be amended by a law enacted by the legislature.

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

Article 9

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

Article 12

(1) All persons are equal before the law and entitled to the equal protection of the law.

Article 156

Subject to the provisions of Part XIV, this Constitution shall come into operation immediately before the 16th day of September, 1963.

Article 162 /part of Part XIV/

Subject to this Article, all existing laws shall continue in force on and after the commencement of this Constitution and all laws which have not been brought into force by the date of the commencement of this Constitution may, subject as aforesaid, be brought into force on or after its commencement, but all such laws shall, subject to this Article, be construed as from the commencement of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution".

4. Two further provisions of the law of Singapore are relevant, both forming part of the law of Singapore before the 16th September, 1963:-

Evidence Act (Cap.5) s.2(2)

"All rules of evidence not contained in any written law, so far as such rules are inconsistent with any of the provisions of this Act, are hereby repealed".

Criminal Procedure Code (Cap.113) s.5

"As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force in Singapore the law relating to criminal procedure for the time being in force in England shall be applied so far as the same does not or is not inconsistent with this Code and can be made auxiliary thereto.

5. The trial of the Appellant took place in the High Court of Singapore (Chua and Rajah, JJ.) between the 6th and 17th of March 1978 upon charges that on or about the 12th December 1976, at about 6 pm, at Block 40A Margaret Drive Hawkers' Centre, Singapore, he murdered one Phoon Ah Leong and one Hu Yuen Kheng, contrary to Section 302 of the Penal Code (Cap.103).

6. The prosecution called material evidence which disclosed the following facts:-

(i) the Appellant operated a food stall (No.538) at the Margaret Drive Centre and that the deceased who were mother and son, helped to operate another food stall (No.506) in the same Centre.

(ii) Petty quarelling occurred between the two stalls, relating to the cleaning of their respective tables by members of the other stall.

(iii) Because of a failure on the part of the deceased properly to clean a table, the Appellant left his stall carrying a bearing scraper wrapped in paper, walked over to stall 506 where the deceased Phoon Ah Leong was standing, and thrust the scraper into his chest, causing him to collapse and die. Phoon Ah Leong's mother, the deceased Hu Yuen Kheng, upon seeing the incident, became involved in a struggle with the Appellant who stabbed her in the chest, causing her death.

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7. At the close of the prosecution's case Counsel for the Appellant when called on by Chua, J. told the Court "..... at this stage I do not propose to make my submissions". (See p.618 in Volume III of the Record of Appeal before the Court of Criminal Appeal).

8. Pursuant to sections 181 [188] and 186A [195] of the Criminal Procedure Code Chua, J. then addressed the Appellant in the following terms:-

> "..... 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 unrebutted 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."

9. The Appellant consulted his Counsel and then elected to give evidence in his defence. In short summary, he said that he had made an implement with a rounded handle and a sharp point as a satay grill scraper and spare stool leg, which he had wrapped in a rag. He picked up a rag and did not realise he was carrying the implement inside it. In the course of his complaining about dirty tables, both the deceased attacked him with choppers. In warding them off the Appellant raised his hand holding the rag, which unbeknown to himself contained the implement which caused the deceased's death.

10. The Appellant's wife and eldest daughter gave evidence on his behalf.

11. On the 17th day of March 1978 the Court convicted the Appellant on both charges of murder and sentenced him to death.

12. On the 17th day of April 1978, the Court delivered its written grounds of decision. After setting out the charge and summarising the evidence for the prosecution and the defence the learned Judges concluded:-

> "We had no doubt that the accused intentionally inflicted the stab wounds on the two deceased, which caused their death, and that when he inflicted those wounds he did it with the intention of killing them.
>
> We therefore found the accused guilty on both the charges and he was convicted".

13. The Appellant appealed to the Court of Criminal Appeal, Singapore. The grounds of Appeal are set out in a petition of Appeal dated the 7th December 1978, a supplemental petition of Appeal dated 17th February 1979 and an additional supplemental petition of Appeal dated 9th April 1979.

14. On the 7th September 1979 the Court of Criminal Appeal, Singapore (Wee Chong Jin C.J., T. Kulasekaram and D.C. D'Cotta JJ.) delivered their judgment dismissing the appeal. The Respondent apprehends that none of the grounds of Appeal argued on behalf of the Appellant in the Court of Criminal Appeal will be pursued before the Board, as they formed no part of the argument before the Board on the giving of special leave to appeal.

15. From the Petition for Special Leave to appeal herein it would appear that the basic question in this Appeal may be formulated as follows:-

> Are ss.181 [1887] and 186A [1957] of the Criminal Procedure Code of Singapore or any part of those sections inconsistent with any fundamental rule of natural justice that formed part of the Common law of England which was in operation in Singapore on the 16th September 1963?

16. It is respectfully submitted that the determination of that question involves a consideration of the decision of the Board in Ong Ah Chuan v Public Prosecutor [1980] 3 W.L.R. 855 and in particular to p.865 D-F where Lord Diplock on behalf of the Board said, in respect of clauses 9(1) and 12(1) of the constitution of Singapore -

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"In a constitution founded on the Westminster model and particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, reference to 'law' in such contexts as 'in accordance with law', 'equality before the law', 'protection of the law' and the like, in their Lordships' view, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution."

And at pp.865 G-866A as follows:-

"One of the fundamental rules of natural justice in the field of criminal law is that a person should not be punished for an offence unless it has been established to the satisfaction of an independent and unbiased tribunal that he committed it. This involves the tribunal being satisfied that all the physical and mental elements of the offence with which he is charged, conduct and state of mind as well where that is relevant, were present on the part of the accused. To describe this fundamental rule as the 'presumption of innocence', may, however, be misleading to those familiar only with English criminal procedure. Observance of the rule does not call for the perpetuation in Singapore of technical rules of evidence and permitted modes of proof of facts precisely as they stood at the date of the commencement of the Constitution. These are largely a legacy of the role played by juries in the administration of criminal justice in England as it developed over the centuries. Some of them may be inappropriate to the Conduct of criminal trials in Singapore. What fundamental rules of natural justice do require is that there should be material before the court that is logically probative of facts sufficient to constitute the offence with which the accused is charged".

17. It is respectfully submitted that the fundamental rules of natural justice which formed part and parcel of the common law of England that was in operation in Singapore on the 16th September, 1963 for determining whether a person should be punished for an act or omission constituting a criminal offence include the following:-

(i) that the accused should be informed of the charge made against him;

(ii) that the accused should be informed that, as should be the fact, the conduct (the subject-matter of the charge) is an offence contrary to a specific law;

(iii) that, prior to the accused being called upon to answer the charge, the prosecution should present material to an independent and unbiased tribunal which is logically probative of facts sufficient to constitute the offence with which the accused is charged;

(iv) that the tribunal of fact before convicting the accused should, upon the basis of all the material before it, be satisfied of the guilt of the accused, the burden of establishing such guilt being upon the prosecution.

(v) that the accused should be entitled to give evidence himself, to call evidence and to make representations to the court as advocate whether by himself or by his Counsel.

These fundamental rules are to be read in conjunction with ss.381 and 382 of the Criminal Procedure Code (Cap.113) which provide as follows:-

"381.(1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless in the opinion of the appellate court a failure of justice has been occasioned thereby.

(2) If the appelate court thinks a failure of justice has been occasioned by an omission to frame a charge it shall order that a new trial shall be had.

382. Subject to the provisions hereinbefore contained no finding sentence or order passed or made by a court of competent jurisdiction shall be reversed or altered on account of -

(a) any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code; or

(b) the want of any sanction required by section 128; /providing for sanction to be required for prosecution in certain cases/ or

(c) the improper admission or rejection of any evidence,

unless such error, omission, improper admission or rejection of evidence, irregularity or want has occasioned a failure of justice".

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S.54 of the Supreme Court of Judicature Act (Cap.15) provides for the powers of the Court of Criminal Appeal.

18. It is respectfully submitted that no question is raised in this appeal that ss.181 /188/ and 186A /195/ of the Criminal Procedure Code are inconsistent with the fundamental rules set out in sub-paragraphs (i), (ii) and (v) of paragraph 17 supra.

19. The fundamental rule enunciated in paragraph 17 (iv) supra was affirmed as a principle of the common law of England by the House of Lords in Woolmington v D.P.P. /1935/ A.C.462. The effect of this rule is that if there is reasonable doubt at the end of the case as to whether the accused committed the criminal offence with which he is charged, he is entitled to be acquitted. The question of the accused's guilt is determined "at the end of and on the whole of the case" (see Woolmington v D.P.P. at p.481). The Respondent respectfully adopts the words of Lord Diplock in Sweet v Parsley /1970/ A.C.132 at p.164:

> "Woolmington's case affirmed the principle that the onus lies upon the prosecution in a criminal trial to prove all the elements of the offence with which the accused is charged.
>
> It does not purport to lay down how that onus can be discharged as respects any particular elements of the offence. This under our system of criminal procedure is left to the jury."

20. It is respectfully submitted that in certain cases the tribunal of fact will be justified at common law in drawing adverse inferences from an accused's failure to give any explanation of apparently damning circumstances adduced in evidence by the prosecution (see generally Cross on Evidence 5th Edition pp.48-54). It is submitted that a tribunal of fact is entitled in a proper case to have regard, in deciding on all the material before it whether or not the correct inference is that the accused is guilty, to the fact that the accused did not give evidence (see, for example, R v Corrie and Watson (1904) 68 JP 296, Kops v R /1894/ A.C.651 (see especially the reasoning of the majority in the Supreme Court of New South Wales in R v Kops (1893) 14 N.S.W.L.R.150) and R v Jackson /1953/ 1 W.L.R.591. The Respondent further submits that this is the principle underlying the line of cases beginning with R v Rhodes /1899/ 1 Q.B.77 (and see, for example, R v Wickham and Ferrara (1971) 55 Cr. App. Rep. 199 and R v Sparrow /1973/ 1 W.L.R.488). In the context of trials by judge alone (there being no trials by jury generally in Singapore since 1960 and in capital cases since 1969), it is respectfully submitted that it would be contrary to reason and commonsense to expect judges as the tribunals of fact not to draw proper inferences in appropriate cases should an accused choose not to give evidence once the prosecution has made out at least a prima facie case. And in such circumstances, it is to be expected, it is submitted, that an accused should be warned of the danger of not giving evidence in terms such as those set out in ss.181/188/ and 186A/195/ of the Criminal Procedure Code (Cap.113).

21. The fundamental rule set out in paragraph 17 (iv) supra is complemented by the fundamental rule set out in paragraph 17 (iii) supra (see R v Appelby (1971) 3 C.C.C. (2nd) 354 at 365-6). The English law on this subject may be set out as follows:-

(i) that in a summary trial the justices should properly uphold a submission of no case to answer when (a) there has been no evidence to prove an essential element of the offence or (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it. If a reasonable tribunal might convict on the evidence so far laid before it there is a case to answer and as a matter of practice the accused should be called upon to answer it. (See Practice Direction (submission of no case) [1962] 1 W.L.R. 227; Stonely v Coleman [1974] Crim, L.R. 254).

(ii) that in committal proceedings examining justices must discharge an accused if there is insufficient evidence to put him on trial by jury. (Magistrates Courts Act 1952 S.7(1)).

(iii) that in a trial on indictment a judge may properly direct a jury to enter a verdict of not guilty in favour of an accused if at the close of the prosecution case there is insufficient evidence to justify the case being left to the jury. (R v Young [1964] 1 W.L.R.717).

There are similar provisions to be found in Singapore in ss.173 [179] and 181(1) [188] of the Criminal Procedure Code (Cap.113), providing for the prosecution to make out at least a prima facie case before the accused can be called on to enter on his defence.

22. It is respectfully submitted that tribunals of fact in criminal trials in England have never been restricted by the common law from drawing such inferences as appeared proper if the accused chose not to give evidence in support of his defence or from the way in which the accused chose to conduct his defence (for example, by not calling other witnesses to contradict or explain incriminating evidence) once the prosecution had made out a prima facie case that the accused had committed the offence charged. In protest against the inquisitorial methods of the ecclesiastical courts, the maxim nemo tenetur prodere (or accusare) seipsum ("no man is bound to accuse himself") was brought forward in England late in the sixteenth century: the maxim was particularly directed against the

procedure of the Courts of Star Chamber and High Commission whereby a person was put on trial and compelled upon oath to answer questions to his detriment before a proper charge had been laid against him.

From at least 1700 until the Criminal Evidence Act 1898 the accused could not give evidence upon oath in criminal trials in the Common law courts. He was, however, given freedom to conduct his case and could accordingly, if he wished, make statements in argument during the trial concerning the law and facts. If he chose to put forward no argument concerning the case against him, then in a proper case inferences could and would be drawn against him (see Stephen's History of the Criminal Law Volume I pp.439-441(1883)). In 1837, the Prisoners' Counsel Act was passed allowing the accused to employ counsel to defend the case on his behalf. While in the period 1700-1898 no inferences could be drawn from an accused's absence from the witness-box because he was not a competent witness, there was nothing to prevent adverse inferences being drawn in a proper case if an accused failed to contradict or explain incriminating evidence by the evidence of other witnesses. There was no opportunity for the common law to develop, even if it had been desirable to do so, any notion that adverse inferences should not be drawn from an accused's failure to testify, once the prosecution had made out a prima facie case. Indeed, it seems that the practice of allowing an accused to make an unsworn statement which developed in the nineteenth century resulted from a desire of the judges to curtail the presentation to the jury of the so-called "right to silence" by Counsel for the accused as a disability (see generally The Proof of Guilt 3rd Edition 1963 by Glanville Williams pp.37-63, 8 Wigmore on Evidence paragraph 2250 and Stephen op. cit. pp.439-441). Furthermore, it is unclear how or why the provision in Article V of the American Bill of Rights that no man "shall be compelled in any criminal case to be a witness against himself" came to be included in that document as drafted in 1791 and there is no historical evidence to suggest that the intention was to confer the far-reaching privilege developed by the United States Supreme Court after the decision in Malloy v Hogan 378 U.S.1 (1963) - see 8 Wigmore paragraph 2250. It is respectfully submitted that such a wide privilege against self-incrimination (including, for example, the right of an accused to decide when to give evidence during the presentation of his case - see Brooks v Tennessee 406 U.S.605 (1971)) never formed part of the English common law.

23. If the privilege against self-incrimination in English common law extended to the courts not being permitted to draw such inferences as appeared proper (in the circumstances set out in paragraph 22 supra), then such privilege would require that the courts should not be permitted in any case to allow the fact that the accused has chosen not to give evidence to weigh with them in reaching their decision. It is respectfully submitted that in proper cases since 1898 the English courts on a proper analysis have been as a matter of common law entitled to draw adverse inferences from an accused's refusal to

testify (see the reasoning of the majority in R v Kops (1893) 14 N.S.W.L.R.150): such entitlement could only arise (as in the Singapore Criminal Procedure Code) where the prosecution has made out at least a prima facie case. There is nothing in English law to prevent the trial Judge or a co-accused from commenting on the accused's failure to testify.

24. It is respectfully submitted that, assuming the common law of England to have included a rule that the Courts should not draw such inferences as appeared proper from an accused's failure to testify (in the circumstances set out in paragraph 22 supra), such rule never acquired the status of a fundamental rule of natural justice.

25. It is respectfully submitted that in criminal trials in Singapore the burden of proving the guilt of an accused person remains throughout on the prosecution. Sections 181 /188/ and 186A /195/ of the Criminal Procedure Code (Cap.113) have not changed that position. The accused is not a compellable witness, as is expressly provided in section 186A(3) /195(3)/ of the Criminal Procedure Code (Cap.113) and in the Evidence Act (Cap.5) as itself amended in 1976 and the Court is not entitled to call on the accused to enter on his defence until the prosecution has made out at least a prima facie case that the accused committed the offence charged.

26. If and in so far as it may be necessary to do so the Respondent will refer to:-

(i) the Criminal Law Revision Committee's 11th Report - Evidence (General) Command 4991 (1972) particulary to paragraphs 27 and 110 and to Annex 1 thereto containing the Draft Criminal Bill;

(ii) the Evidence (Amendment) Act 1976 (No.11 of 1976) wherein, inter alia ss.54 and 120 of the Evidence Act (Cap.5) are amended to provide safeguards concerning the cross-examination of an accused as to his character.

(iii) s.132 of the Evidence Act (Cap.5) - part of the law of Singapore before 1963 - which had the effect of abolishing the privilege against self-incrimination but the answers of an objecting witness may not be used against him in any criminal trial other than a prosecution for perjury in the giving of such evidence (see s.5 of the Canada Evidence Act 1952 for a similar provision and generally Cross on Evidence 5th Edition pp.280-282).

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27. The Respondent should refer to the case of Ong Kiang Kek v Public Prosecutor (1970) 2 M.L.J. 283 wherein the Court of Criminal Appeal in Singapore construed s.177c of the Criminal Procedure Code (Cap.113) (which became s.181(1) [188(1)] as providing for the prosecution to establish the guilt of the accused beyond reasonable doubt at the close of its case and before the accused could be called on to enter on his defence. If Ong Kiang Kek's case is correct then the accused is given the considerable benefit of the opportunity of an acquittal at the close of the prosecution's case if at that stage there is any reasonable doubt as to the accused's guilt. In this appeal, it is respectfully submitted, the learned trial judges would have been entitled to find the case, if unrebutted, made out beyond reasonable doubt at the close of the prosecution's case and would without doubt have convicted in the event whether or not the Appellant gave evidence.

28. If and in so far as it may be necessary to do so, the Respondent will respectfully submit that the case of Ong Kiang Kek v Public Prosecutor (1970) 2 M.L.J. 283 was not correctly decided because s.181(1)[188(1)] of the Criminal Procedure Code (Cap.113), properly construed, requires, in effect, that the prosecution should make out a prima facie case before the Court is entitled to call on the accused to enter on his defence.

29. The Respondent respectfully submits that this appeal should be dismissed and the Judgment of the Court of Criminal Appeal, Singapore should be affirmed for the following, among other

REASONS

1. BECAUSE sections 181 [188] and 186A [195] of the Criminal Procedure Code are not inconsistent with the Constitution of Singapore, whether by reference to Articles 9(1) or 12(1) thereof or otherwise.

2. BECAUSE sections 181 [188] and 186A [195] of the Criminal Procedure Code are not inconsistent with any fundamental rule of natural justice that formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution.

3. BECAUSE by the common law of England tribunals of fact in criminal trials were never restricted, once the prosecution had made out a prima facie case logically probative of facts sufficient to constitute the offence charged, from drawing such inferences as appeared proper if the accused chose not to give evidence in support of his defence.

4. BECAUSE, alternatively to 3. above, if and in so far as tribunals of fact in criminal trials were ever restricted by the common law of England from drawing such inferences as appeared proper in the circumstances set out in 3. above, then such restriction did not and does not constitute a fundamental rule of natural justice, so as to give rise to sections 181 /188/ and 186A /195/ of the Criminal Procedure Code or any part thereof being declared unconstitutional as inconsistent with the Constitution of Singapore.

5. BECAUSE in criminal trials in Singapore the burden of proving the guilt of an accused remains throughout upon the prosecution.

6. BECAUSE in criminal trials in Singapore it is only after the prosecution has made out a case which if unrebutted would warrant his conviction that the court is entitled to call on the accused to enter on his defence and give evidence.

7. BECAUSE in criminal trials in Singapore the accused is not a compellable witness, but by section 120(3) of the Evidence Act (Cap.5) merely a competent witness in his own behalf.

8. BECAUSE sections 181 /188/ and 186A /195/ of the Criminal Procedure Code (Cap.113) in the context particularly of a trial by Judges alone are not inconsistent with the common law of England.

9. BECAUSE section 181(1) /188(1)/ of the Criminal Procedure Code was part of the existing law of Singapore at the commencement of the Constitution.

10. BECAUSE the common law of England concerning criminal procedure and evidence is only applicable to Singapore insofar as it is not inconsistent with the Criminal Procedure Code (Cap.113) and the Evidence Act (Cap.5).

11. BECAUSE the learned trial Judges acted properly in accordance with the provisions of sections 181 /188/ and 186A /195/ of the Criminal Procedure Code (Cap.113).

12. BECAUSE the learned trial Judges were entitled to find on the evidence that the Appellant was guilty of the offences as charged.

13. BECAUSE the learned trial Judges were entitled (Counsel for the Appellant having declined to make submissions at that stage) to make their finding in accordance with s.181(1) /188(1)/ of the Criminal Procedure Code (Cap.113) that the prosecution had made out a case which if unrebutted would warrant the Appellant's conviction.

14. BECAUSE of the other reasons set out in the Grounds of Decision of the learned trial Judges and in the Judgment of the Court of Criminal Appeal.

15. BECAUSE the Appellant has suffered no miscarriage of justice.

16. BECAUSE if Ong Kiang Kek's case was correctly decided it does not affect the result of this appeal.

17. BECAUSE if and in so far as it may be necessary for the Respondent so to contend, Ong Kiang Kek's case was not correctly decided in that the prosecution at the close of its case is required to make out no more than a prima facie case.

STUART McKINNON, Q.C.

JONATHAN HARVIE.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL

OF SINGAPORE

B E T W E E N :

HAU TUA TAU Appellant

- and -

THE PUBLIC PROSECUTOR
Respondent

CASE FOR THE RESPONDENT

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