

7, 1968

IN THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL

No. 2 of 1967

FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
16 JAN 1969  
25 BROADWAY SQUARE  
LONDON, W.C.1.

B E T W E E N:

LIEW SAI WAH                      Appellant

- and -

PUBLIC PROSECUTOR              Respondent

CASE FOR THE RESPONDENT

Record

10    1. This is an appeal in forma pauperis by  
special leave from a judgment dated the 24th June  
1966, of the Federal Court of Malaysia (Appellate  
Jurisdiction) (Tan Ah Tah F.J., Buttrose and  
Winslow JJ.) dismissing an appeal against a con-  
viction dated 18th November, 1965, of the High  
Court at Singapore (Choor Singh J.) whereby the  
Appellant was convicted upon a charge under  
section 57(1)(b) of the Internal Security Act,  
1960, of having in his possession on or about the  
20    21st March, 1965, at or about 5 p.m. six hand  
grenades without lawful authority.

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p.63

2. One of the grounds on which the Appellant  
sought special leave to appeal was that the said  
hand grenades were not ammunition within the  
meaning of section 2 of the said Act. The said  
special leave to appeal was granted solely on the  
question of the construction of the said section  
2, leave to appeal being refused in relation to  
the other matters in the Petition.

pp.73-4

30    3. The said Internal Security Act, 1960, pro-  
vides so far as is relevant to this appeal in  
section 2 as follows :-

" 'ammunition' means ammunition for any firearm as hereafter defined and includes grenades, bombs and other like missiles whether capable of use with such a firearm or not any any ammunition containing or designed or adapted to contain any noxious liquid, gas or other thing."

pp.1-27

4. The only witness whose evidence is relevant to this appeal is that of Sergeant Christopher Clifton.

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p.2

Sergeant Clifton gave evidence that he was handed six grenades by Inspector Piara Singh, which were British 36 hand grenades, the six grenades were in fact grenade bodies, being without levers, safety pins or detonators. Such grenade bodies are usually filled with 2 oz. 7 drams of explosive material commonly known as Baratol.

p.3

p.21

The grenade body by itself is not a complete hand grenade. A hand grenade consists of two main parts, one called a detonator assembly and the other the body of the grenade. The grenade body consists of the plug, the lever pin and the safety pin.

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p.23

A detonator consists of a fuse, a percussion cap and a detonator tube.

p.19

A grenade without a safety pin cannot be used for the purpose for which it was designed, namely, for throwing.

p.5

If the grenade bodies were used together with other explosive they would still explode and cause damage.

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p.24

The grenade body can be used for fragmentation purposes; it is not necessary to throw them.

p.5

The grenade bodies already have their explosive in unless they are drill or dummy grenades which these were not because they did not have holes bored in them.

p.24

p.21

It is possible to remove the baratol from the grenade body. Sergeant Clifton did not look into the grenade bodies to see if they contained Baratol. There was nothing about the six grenades bodies to suggest that the Baratol filling had been removed.

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p.25

3.

The grenade bodies were dumped into the sea because they were not considered safe for prolonged storage. If the Baratol exudes it could be dangerous.

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p.23

5. At the close of the case for the prosecution counsel for the Appellant submitted that there was no case to answer on the basis that the grenade bodies were not ammunition within the said Act.

pp.27-30

pp.40-45

10 The learned trial judge ruled that the said grenade bodies fell within the definition of ammunition in the said Act because :-

p.46

" ... the word "Ammunition" includes grenades and any ammunition containing or designed to contain any noxious liquid gas or other thing. The word "Ammunition" ... includes grenades. Therefore, a grenade containing or designed or adapted to contain any noxious thing comes within the definition of ammunition.

p.46

20 In this case the evidence shows that the six grenade bodies found in the accused's bag were designed to contain Baratol, which is a noxious thing. The grenade bodies are, therefore, ammunition within the meaning of the Internal Security Act, 1960."

30 6. The Appellant was convicted on the 18th November, 1965, and sentenced to death. By a Notice of Appeal filed in the High Court of Singapore on the 19th November, 1965, the Appellant sought to appeal against the said conviction on the grounds that the said conviction and sentence were unreasonable.

p.47

7. The learned trial judge delivered the grounds of his decision on the 11th February, 1966, and repeated his reasons for finding the said grenade bodies to fall within the definition of ammunition in the said Act, having summarised the evidence of Sergeant Christopher Clifton.

pp.49-61

pp.51-53

40 8. The Appellant appealed to the Federal Court of Malaysia (Appellate Jurisdiction) which

pp.63-71

delivered its judgment on the 24th June, 1966.

pp.69-70

p.70

9. In considering the definition of ammunition within the said Act, the Federal Court decided that the six hand grenade bodies came within the said definition in the light of Sergeant Christopher Clifton's evidence.

10. The Respondent respectfully submits that the six hand grenade bodies are "grenades" within the said definition of ammunition because, although they were without their detonator assemblies, they could still explode and cause damage by fragmentation if used together with other explosives. They were designed to contain a noxious thing. It is submitted that a complete hand grenade with its detonator assembly but without any Baratol would be a grenade designed to contain a noxious thing. The Respondent therefore submits that it does not follow from the possibility that the six grenade bodies did not contain any Baratol that they were not "grenades" designed to contain a noxious thing within the said definition.

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11. The Respondent respectfully submits that it is not an essential ingredient of "grenades" within the said definition that they should be capable of being thrown and that it is sufficient for the purposes of the said definition if the grenade bodies in question by their appearance, classification and explosive qualities (or design to contain any noxious thing) are properly called "grenades".

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12. The Respondent respectfully submits that the decisions of the learned trial judge and of the Federal Court as to the meaning of "grenades" within the said definition are properly in accordance with the prevention of a mischief sought to be prevented by the said Act, and that any construction of the said definition that would take the six hand grenade bodies outside the said Act would facilitate the evasion of a mischief sought to be prevented by the said Act, namely that of the carrying or possession of explosive objects or of objects designed for explosive purposes so as to jeopardize public security.

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13. The Respondent respectfully submits that the judgment of the Federal Court of Malaysia (Appellate Jurisdiction) was right and ought to be affirmed and this Appeal ought to be dismissed, for the following (amongst other)

R E A S O N S

1. BECAUSE on a proper construction of section 2 of the Internal Security Act, 1960, the six hand grenade bodies fall within the definition of "ammunition".
2. BECAUSE on a proper construction of the said section, the six hand grenade bodies are grenades within the said definition.
3. BECAUSE of the other reason given in the judgment of the Federal Court.

STUART N. MCKINNON.

No. 26 of 1969

JUDICIAL COMMITTEE OF THE  
IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

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B E T W E E N:

LIEW SAI WAH                      Appellant

- and -

PUBLIC PROSECUTOR              Respondent

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C A S E

FOR THE RESPONDENT

*Ldget 22/9/69*

CHARLES RUSSELL & CO.,  
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