

6/79

No. 24 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE
JURISDICTION)

B E T W E E N:

WONG SWEE CHIN
ALIAS BOTAK CHIN

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

RECORD OF PROCEEDINGS

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD

STEPHENSON HARWOOD,
Saddlers Hall,
Gutter Lane,
London EC2V 6BS

Solicitors for the Appellant

Solicitors for the Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE
JURISDICTION)

B E T W E E N:

WONG SWEE CHIN ALIAS BOTAK CHIN Appellant

- and -

THE PUBLIC PROSECUTOR Respondent

RECORD OF PROCEEDINGS

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No.1
Particulars of trial

In the High
Court in
Malaya

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
FEDERAL TERRITORY CRIMINAL TRIAL NO: 25 OF 1976

No.1
Particulars
of trial

PUBLIC PROSECUTOR vs: WONG SWEE CHIN @ BOTAK CHIN

PARTICULARS OF TRIAL

- 10 1. Where was the trial held: In the High Court at
Kuala Lumpur.
2. Date of trial: 11th of January, 1977.
3. Name of Trial Judge: The Hon'ble Mr.
Justice Chang Min Tat.
4. For what offence was the conviction: (1) Section 57(1)(a)
of the Internal Security Act, 1960. (2) Section
57(1)(b) of the Internal Security Act, 1960.
- 20 5. What was the sentence: Death.
6. Annex hereto a list of exhibits: Bound to record.
7. Was a certificate given by the trial Judge: No.
8. Was the Accused defended by Counsel: No. (Counsel assigned
was rejected by Accused).
9. State the name of Counsel: Mr. Jagjit Singh of Kuala
Lumpur.
- 30 10. State the name of the shorthand writer: Nil
11. Was the Accused admitted to bail before trial: No

In the High
Court in
Malaya

No.2
Charges

No.2
Charges
3rd January
1977

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

IN THE FEDERAL TERRITORY

SELANGOR CRIMINAL TRIAL NO.25/76

(In the matter of Kuala Lumpur Magistrate's Court
Arrest Case No.5258/76)

Public Prosecutor

vs. Wong Swee Chin @
Botak Chin

10

C H A R G E S

You are charged at the instance of the Public
Prosecutor and the charges against you are :

FIRST CHARGE

That you on the 16th February, 1976
at about 8.45 p.m. at the office of Eng Leong
Sawmill, No.572, 3½ miles 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 firearms
to wit,

20

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

and

- (3) a 6.35 Beretta automatic pistol No.E
18866

30

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

SECOND CHARGE

That you on the 16th February, 1976 at
about 8.45 p.m. at the office of Eng Leong

Sawmill, No.572, 3½ miles 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,

In the High Court in Malaya

No.2 Charges

3rd January 1977

(Contd.)

(1) 41 rounds of 9 mm ammunitions,

10

(2) 34 rounds of .32 ammunitions

and

(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.

Dated this the 3rd day of January, 1977.

(EE CHIN SENG)

Timbalan Pendakwa Raya.

No.3

Notes of Proceedings

In the High Court in Malaya

No.3

Notes of proceedings

11th January 1977.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
FEDERAL TERRITORY CRIMINAL TRIAL NO. 25 OF 1976

Public Prosecutor

10

v.

Wong Swee Chin @ Botak Chin

Charges: Sec. 57(1)(a) & (b) I.S.A.

Before Justice Chang Min Tat

In Open Court,
11th January, 1977.

NOTES OF PROCEEDINGS

For P.P.: Mahalingham (Ee Chin Seng with him).

" Acc.: Jagjit Singh (assigned).

In the High
Court in
Malaya
No.3

Notes of
proceedings
11th January
1977.
(Contd.)

D.P.P.: consent tendered in lower Court defective:
"Offence" should be "offences."

Now applies to tender fresh consent - P.1.

Counsel: no objection.

Accused charged.

Charges read over and explained to accused. 10

Accused says he pleads guilty to both charges
and understands the nature and consequences
of his plea. He does not want counsel
(Jigjit Singh) who has been assigned
to represent him.

Court: I ask accused to reconsider.

I will give him time to think or have
another counsel assigned, if he wants.

Accused: I do not wish to reconsider my plea.

I maintain my pleas of guilty. 20

D.P.P.: facts of the case.

At 8.45 p.m. on 16 Feb. 1976, a police party
arrived at Eng Leong Saw Mill.

The party met with gun fire. After an
exchange, at 10.30 p.m party left sawmill.
Area cordoned off. At 11 p.m., accused
was discovered lying in office of
sawmill, semi-conscious, with the
firearms and ammo. in the charges,
without any lawful excuse or lawful 30
authority.

Now produce:

- (1) 7.65 mm Walther automatic pistol - P.2.
- (2) 9 mm Luger pistol - P.3.
- (3) 6.35 Beretta - P.4.
- (4) 2 Primed hand-grenades - P.5
& P.6.
- (5) 41 rounds 9 mm - p.7
- (6) 32 " .32 - P.8.

Accused was then arrested and charged.

Accused: I admit the facts,
in mitigation nothing.

I ask for the return of my personal
belongings.

Court: I convict the accused on
his plea on both charges
and pass sentence of death.

In the High
Court in
Malaya

No.3
Notes of
proceedings
11th January
1977.

(Contd.)

10

Sgd. CHANG MIN TAT
JUDGE.

Certified true copy.

Secretary to Judge,
Kuala Lumpur. 11/4/78.

No.4

List of Exhibits

In the High
Court in
Malaya

No.4

List of Exhibits

20

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
FEDERAL TERRITORY CRIMINAL TRIAL NO.: 25 OF 1976

PUBLIC PROSECUTOR vs: WONG SWEE CHIN @ BOTAK CHIN

LIST OF EXHIBITS

<u>NO.</u>	<u>Description</u>	<u>Whether or not included in record</u>
P.1	Consent	Yes
P.2	7.65 m.m. Walther automatic pistol	No
P.3	9 mm. luger pistol	No
P.4	6.35 Beretta	No
P.5 & 6	2 Primed hand-grenades	No
P.7	41 rounds 9 m.m. ammunition	No
P.8	32 rounds .32 ammunition	No

30

5.

In the High
Court in Malaya
No.5

No.5
Exhibit P.1 Consent
to Prosecute

Exhibit P.1
Consent to
Prosecute

8th January 1977

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

IN THE FEDERAL TERRITORY

SELANGOR CRIMINAL TRIAL NO. 25/76

(In the matter of Kuala Lumpur Magistrate's
court Arrest Case No. 5258/76.)

Public Prosecutor vs L. Wong Swee Chin @
Botak Chin

10

CONSENT TO PROSECUTE

In exercise of the powers conferred upon
the Public Prosecutor by Section 80 of the
Internal Security Act, 1960, I, TAN SRI DATUK
HAJI ABDUL KADIR BIN YUSOF, Public Prosecutor,
Malaysia hereby consent to the prosecution of
one WONG SWEE CHIN @ BOTAK CHIN, I/C No;
8032788 for two offences under Section 57 (1)
(a) and 57 (1) (b) of the Internal Security
Act, 1960 alleged to have been committed
at about 8.45 p.m. on 16th February, 1976
at the office of Eng Leong Sawmill, No. 572,
3½ miles Ipoh Road, Kuala Lumpur, vide Sentul
Report No. 781/76.

20

Dated this 8th day of January, 1977.

(TAN SRI DATUK HAJI ABDUL KADIR BIN YUSOF)
Public Prosecutor,
Malaysia.

[KL.IP.1104/76 - TPR. 4/77 (U)]

30

No.6
Grounds of Decision

In the High
Court in
Malaya

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
FEDERAL TERRITORY CRIMINAL TRIAL NO: 25 OF 1976

No.6
Grounds of
Decision

Public Prosecutor

v.

Wong Swee Chin @ Botak Chin

10

GROUNDS OF DECISION

At the trial, on being charged, the accused pleaded guilty and admitted the truth of the facts constituting the offences.

On this plea and admission, I was bound to convict him, which I did. I then passed the only sentence provided by law - death by hanging.

Kuala Lumpur,

12th April, 1978

(DATUK CHANG MIN TAT)
JUDGE,
HIGH COURT, MALAYA.

20

Certified true copy.

Secretary to Judge,
High Court,
Kuala Lumpur. 12/4/78

In the Federal
Court

No.7

Notice of
Motion
21st March
1977

No. 7
Notice of motion

IN THE FEDERAL COURT IN MALAYSIA AT KUALA LUMPUR

CRIMINAL APPLICATION No. 2 OF 1977

B E T W E E N:

WONG SWEE CHIN @ BOTAK CHIN

... Applicant

And

10

THE PUBLIC PROSECUTOR

... Respondent

(In the matter of Selangor Criminal Trial
No. 25 of 1976 in the High Court in Malaya at
Kuala Lumpur

B E T W E E N:

THE PUBLIC PROSECUTOR AND WONG SWEE CHIN @ BOTAK CHIN)

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on
Friday the 1st day of April 1977 at 9.00 O'clock
in the forenoon or as soon thereafter by Counsel on
behalf of the Applicant for an Order that the
Applicant abovenamed be granted an extension of time
from the 21st day of January, 1977 within which to
file a Notice of Appeal to the Federal Court in
respect of Selangor Criminal Trial No. 25 of 1976,
on the grounds appearing in the following Affidavit.

20

Solicitors for the Applicant

Dated at Kuala Lumpur this 21st day of March, 1977

Chief Registrar

This Notice of Motion is filed by Messrs. Jagjit

30

Singh & Co., Solicitors for the Applicant
abovenamed whose address for service is at
Room 1104, 11th Floor, Lee Yan Lian Bldg.,
Jalan Tun Perak, Kuala Lumpur.

This Notice of Motion will be supported
by the Affidavit of the Applicant affirmed
on the 17th day of March 1977 and filed
herein.

In the Federal
Court

No.7

Notice of
Motion
21st March
1977

(Contd.)

10 To:- The abovenamed Respondent
s/o The Attorney General's Chambers,
Kuala Lumpur

Filed this 21st day of March 1977

Chief Registrar
Federal Court Malaysia
Kuala Lumpur

In the Federal
Court

No.8

Affidavit of the
Appellant
17th March 1977

No.8

Affidavit of the Appellant

IN THE FEDERAL COURT IN MALAYSIA AT KUALA LUMPUR

CRIMINAL APPLICATION NO. 2 OF 1977

B E T W E E N

Wong Swee Chin @ Botak Chin

...Applicant

And

The Public Prosecutor

...Respondent

(In the matter of Selangor Criminal Trial
No. 25 of 1976 in the High Court
in Malaya at Kuala Lumpur

10

B E T W E E N

The Public Prosecutor and Wong Swee Chin @ Botak Chin)

A F F I D A V I T

I, WONG SWEE CHIN @ BOTAK CHIN (I/C No.
8032788 (R)) of full age and at present awaiting
the sentence of death by hanging at the Pudu Jail
in Kuala Lumpur, do solemnly affirm and say as
follows :-

20

1. I am the Applicant abovenamed.
2. I was charged in the High Court at Kuala Lumpur with the following offences:-

First Charge

That you on the 16th February, 1976
at about 8.45 p.m. at the office of Eng
Leong Sawmill, No. 572, 3½ miles 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 firearms
to wit,

30

- (1) a 7.65 Walther automatic pistol No.
271053

- (2) a 9mm Erfurt 96 automatic luger pistol No. 5796 (8788) and
- (3) a 6.35 Beretta automatic pistol No. E 18866 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.

In the Federal Court
No.8
Affidavit of the Appellant
17th March 1977
(Contd.)

10

Second Charge

That you on the 16th February, 1976 at about 8.45 p.m. at the office of Eng Leong Sawmill, No. 572, 3½ miles 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 authority did have under your control ammunitions, to wit,

20

- 1) 41 rounds of 9 mm ammunitions
- 2) 34 rounds of .32 ammunitions and
- 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.

30

3. I pleaded guilty to both the charges in Selangor Criminal Trial No. 25/76 on the 11th day of January, 1977. I was convicted and sentenced to death by hanging.

40

4. I have been remanded in Pudu Prison since the 23rd day of March, 1976. From the very first day of remand, I have been placed in solitary confinement in a "bilek akhir" which is a cell for condemned prisoners awaiting a date for hanging. Furthermore even though I was severely injured I was not given proper medical attention. In fact the conditions were so depressing that I gradually lost the will to live. Subsequently about three (3) months after being remanded in solitary confinement I tried to commit suicide by hanging from my medical bandages, but was unsuccessful because the prison guards discovered it in time. I was already unconscious at that time. In my highly depressed state of mind, I decided that I might as well plead guilty and have a quick death. I had no

In the Federal
Court

No.8

Affidavit of the
Appellant
17th March 1977
(Contd.)

more will to live. I just wanted to die
as soon as possible.

6. For my trial I was assigned a Solicitor, one Mr. Jagjit Singh, by the High Court, I was very sceptical that he would do his best for my case as I had neither personally retained the said Solicitor nor was I personally acquainted with the said Solicitor. 10
7. Although the said Solicitor visited me a few times in Pudu Prison before the trial, I was not prepared to give him instructions as I had already made up my mind to plead guilty and die as soon as possible.
8. Furthermore I felt very sure that I would not get a fair trial with all the adverse publicity given to me by the Police in the Press over a long period of time in the course of the nationwide hunt for me for alleged criminal offences, many of which I had never committed but I was nevertheless blamed for them. 20
9. Soon after being convicted and sentenced to death at the trial, I realised that I have been overhasty in pleading guilty to the said charges without obtaining legal advise.
10. I realise the time to file the Notice of Appeal has lapsed. From the time I was sentenced to death by hanging right until today, I have been in constant contact with the said Solicitor, Mr. Jagjit Singh who has now earned my respect and confidence and I believe that he will do his utmost for me. Furthermore he has made me realise that I had acted in a very rash manner in pleading guilty to the said charges without giving myself an opportunity to defend myself and explain to the Court the circumstances which led me to be present at the Eng Leong Sawmill on the 16th day of February, 1976. 30 40
11. In the circumstances I am advised by my Solicitors and verily believe that I need to obtain leave from this Honourable Court for an extension of time to file a Notice of Appeal to the Federal Court.
12. I am further advised by my Solicitors and verily believe that I have good grounds of Appeal against the legality of the offences, the conviction and sentence against me. 50

13. I therefore pray that this Honourable Court will grant me an extension of time from 21st January, 1977 to file the Notice of Appeal.

14. I therefore pray for an Order in Terms of my Application herein.

In the Federal Court
No.8
Affidavit of the Appellant
17th March 1977
(Contd.)

10 AFFIRMED by the said WONG SWEE)
CHIN @ BOTAK CHIN in Pudu Prison) Wong Swee Chin
In the Federal Territory this 1st)
day of March, 1977 at 3.15 p.m.)

Before me,

PESUKOHJAYA SUMPAM
Mahkamab Tinggi

Commissioners for Oaths,
Kuala Lumpur

20 I hereby certify that the above-written Affidavit was read, translated and explained by me to the deponent who seemed perfectly to understand them, declared to me that he did understand them and made his signature thumb print thereto in my presence.

PESUKOHJAYA SUMPAM
Mahkamab Tinggi

Commissioner for Oaths,
Kuala Lumpur

30 This Affidavit is filed by Messrs. Jagjit Singh & Co., Solicitors for the Applicant abovenamed whose address for service is at Room 1104, 11th Floor, Lee Yan Lian Building, Jalan Tun Perak, Kuala Lumpur.

In the Federal
Court

No.9
Affidavit of Abdul
Aziz Bin Haji Idris

No.9
Affidavit of
Abdul Aziz Bin
Haji Idris
31st March
1978

IN THE FEDERAL COURT IN MALAYSIA AT KUALA LUMPUR

CRIMINAL APPLICATION NO.2 OF 1977

Wong Swee Chin @ Botak Chin Applicant

And

The Public Prosecutor Respondent

(In the matter of Selangor Criminal Trial No. 23 of
1976 in the High Court in Malaya at Kuala Lumpur

B E T W E E N:

10

The Public Prosecutor

and

Wong Swee Chin @ Botak Chin

A F F I D A V I T

I, ABDUL AZIZ BIN HAJI IDRIS, I.C.No.3458912
of full age and residing at G1 Sam Mansion, Kampong
Atap, Kuala Lumpur do hereby affirm and state as
follows :-

1. I am the Deputy Superintendent of Pudu Prison
Kuala Lumpur.

2. At about 11.00 a.m. on the 23rd March, 1976
Wong Swee Chin @ Botak Chin was admitted to Pudu
Prison, Kuala Lumpur.

20

3. He was treated on the under-mentioned dates
by a qualified Doctor from the General Hospital,
Kuala Lumpur at Prison Hospital, Pudu Jail, Kuala
Lumpur:-

- (1) 8th July, 1976
- (2) 28th August, 1976
- (3) 14th September, 1976
- (4) 3rd November, 1976
- (5) 10th November, 1976
- (6) 12th November, 1976
- (7) 17th December, 1976

30

4. The aforesaid person was treated for cough by
a qualified Hospital Assistant at Prison Hospital,
Pudu Jail, Kuala Lumpur on the under-mentioned

dates :-

- (1) 12th October, 1976
- (2) 26th November, 1976
- (3) 5th January, 1977

In the Federal Court

No.9

Affidavit of Abdul Aziz Bin Haji Idris

31st March 1977

(Contd.)

10

5. From the 23rd of March, 1976 to 11th January, 1977, the said person was never kept in Bilik Akhir but he was kept in the Maximum Security Block of Pudu Prison, Kuala Lumpur.

6. He was kept in the said Maximum Security Block during the said period because I thought that he might make an attempt to escape or commit suicide.

20

7. He pleaded guilty to the charges against him at High Court, Kuala Lumpur on the 11th of January, 1977.

8. When he was escorted for trial at the High Court, Kuala Lumpur on the 11th January, 1977 he appeared normal to me.

AFFIRMED BY the said
ABDUL AZIZ BIN HAJI IDRIS,
at Kuala Lumpur this 31st
day of March 1977
at 4.20 p.m.

} Sgd. A.A.B. Idris
}

Before me,

.....
Commissioner for Oaths,
KUALA LUMPUR.

M. GOVINDASAMY
PESUROHJAYA SUMPAH
MAHKAMAH TINGGI
KUALA LUMPUR.

30

In the Federal
Court

No.10

No.10
Affidavit of
Kenneth James
Woodworth

Affidavit of Kenneth James
Woodworth

31st March
1977

IN THE FEDERAL COURT IN MALAYSIA AT KUALA LUMPUR

CRIMINAL APPLICATION NO. 2 OF 1977

BETWEEN

Wong Swee Chin @ Botak Chin ... Applicant

And

10

The Public Prosecutor ... Respondent

(In the matter of Selangor Criminal Trial No.
23 of 1976 in the High Court in Malaya
at Kuala Lumpur).

BETWEEN

The Public Prosecutor And Wong Swee Chin @
Botak Chin

A F F I D A V I T

I, KENNETH JAMES WOODWORTH of full age and
residing at No.209J, Siewdor, Brickfields, Kuala
Lumpur do hereby affirm and state as follows :

20

1. I am an Assistant Superintendent of Police
in the Royal Malaysian Police Force.
2. I am attached to Sentul Police Station.
3. At about 11.00 p.m. on the 16th of February,
1976 at the office of Eng Leong Sawmill, No.572,
3½ miles Ipoh Road, Kuala Lumpur, Wong Swee
Chin @ Botak Chin was arrested by the Police.
4. At the time of his arrest he was injured.
5. Shortly after his arrest he was admitted to
the General Hospital, Kuala Lumpur.
6. From the 16th of February, 1976 to 23rd March,
1976 he was a patient in the said hospital.
7. While he was a patient at the said hospital,
he was treated by specialist doctors.

30

8. At about 11.00 a.m. on the 23rd March, 1976 he was discharged by the General Hospital, Kuala Lumpur.

9. At about 11.00 a.m. on the 23rd day of March, 1976 I and a party of Police escorted him to Pudu Prison, Kuala Lumpur.

10 10. On the 10th of May, 1976 I and a party of Police escorted him from Pudu Prison to General Hospital, Kuala Lumpur for treatment by the Orthopaedic Unit.

11. On the 25th August, 1976 I and a party of Police escorted him from Pudu Prison to General Hospital, Kuala Lumpur for treatment by the Orthopaedic Unit.

20 12. On the 20th September, 1976 I and a party of Police escorted him from Pudu Prison to General Hospital, Kuala Lumpur for treatment by the Orthopaedic Unit.

AFFIRMED by the said
KENNETH JAMES WOODWORTH
at Kuala Lumpur this
31st day of March 1977 at
4.20 p.m. }

Sgd. K.J. Woodworth

Before me,

.....

Commissioner for Oaths,
Kuala Lumpur

30

M. GOVINDASAMY
PESUROHIAYA SUMPAH
MAUKAM TINGGI
KUALA LUMPUR.

In the Federal
Court

No.11
Notes of argument
recorded by Gill
C.J.

1st April 1977

No.11

Notes of Argument recorded
by Gill C.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CRIMINAL APPLICATION 2 OF 1977

(Federal Territory Criminal Trial No. 25 of 1976)

10

Between

Wong Swee Chin @ Botak Chin

Applicant

And

Public Prosecutor

Respondent

Coram: Gill, Chief Justice, Malaya,
Ong Hock Sim, Judge, Federal Court,
Raja Azlan Shah, Judge, Federal Court.

NOTES OF ARGUMENT RECORDED BY
GILL C.J.

Kuala Lumpur,

20

1st April 1977.

Encik Jagjit Singh for Applicant.

Encik Mahalingam for Respondent.

Jagjit Singh:

This is an application for leave to file
a notice of appeal out of time. The applicant
was charged and convicted on 11th January
1977. He had two weeks within which to appeal.
That period has now lapsed. The present
application was filed on 21st March 1977,
approximately.

30

two months after the lapse of time.

I refer to the applicant's affidavit
in which he has set out the circumstances
under which he pleaded guilty. The
applicant was wrongly charged under the

In the Federal
Court

Internal Security Act. He should have been charged under the Arms (Increased Penalties) Act.

No.11
Notes of argument
recorded by Gill
C.J.

I have not been able to take instructions on the affidavits filed by the respondent.

1st April 1977
(Contd.)

10 My strongest ground is that the applicant should not have been charged under the Internal Security Act. I also emphasise the applicant's frame of mind at the time he pleaded guilty. I concede that the facts of the case and the consequences of the applicant's plea were explained to him.

I would urge the Court to grant the application.

Mahalingam:

20 From the English authorities it is abundantly clear that the Federal Court has inherent jurisdiction to order a new trial where conviction is based on a plea of guilty which is a nullity. It is for the applicant to show that he tendered his plea of guilty under pressure or threats or the like in circumstances in which the accused had no free choice but was driven to adopt a certain course whether he liked it or not.

30 The applicant states in his affidavit that he was in such a state that he was unable to come to a rational decision with regard to the case against him. Assuming that there is some truth in his statement, can it be said that he had lost his power to make a voluntary and deliberate choice. Refer to paragraph 10 of his affidavit which conflicts with paragraph 5.

40 Refer to Christopher Ingleson 11 C.A.R. 21; George Edward Griffiths 23 C.A.R. 153, R. v. Cain (1976) Cr. Law Review, page 464; Wong Lai Fatt v. P.P. (1973) 2 MLJ. 31; R. v Ease 1976 - Cr. Law Review 119. Jagjit Singh (in reply)

There is no conflict between paragraphs 5 and 10 of the applicant's affidavit. Applicant discharged me before he pleaded guilty.

Application dismissed.

TRUE COPY.

Sd. S.S. Gill.

Secretary to Chief Justice
High Court Malaya

12/4/78

In the Federal
Court

No.12

Notes of Argument
Recorded by H.S.
Ong, F.J.

1st April 1977

No.12

Notes of Argument
recorded by H.S. Ong,
F.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CRIMINAL APPLICATION NO.2/1977

10

(Kuala Lumpur Criminal Trial No. 25 of 1976)

Between

Wong Swee Chin @ Botak Chin ... Applicant

and

The Public Prosecutor ... Respondent.

Coram: S.S. Gill, C.J.
H.S. Ong, F.J.
Raja Azlan Shah, F.J.

NOTES OF ARGUMENT RECORDED BY H.S.
ONG, F.J.

20

Friday,
1st April 1977.

Mr. Jagjit Singh for Applicant.

Mr. P.M. Mahalingam for Respondent.

Mr. Jagjit Singh:

Application to file Notice of Appeal out of time.

Charged and convicted on January 11, 1977.

Notice to be filed within 2 weeks.

Last day to file was January 25.

30

Present application filed March 21, 1977.

Refers to affidavit - frame of mind of
applicant - paras. 4,5, 6-13.

I.S.A. Applicant should not have been charged under

In the Federal
Court
No.12
Notes of
Argument
Recorded by H.S.
Ong. F.J.
1st April 1977
(Contd.)

Concede facts fully explained.

Mohamed Sidin v P.P. 1967 - 1 M.L.J. - 106.

- doctrine of classification.

Mr. Mahalingam:

10 Federal Court has inherent jurisdiction where conviction is based on a plea of guilty which is a nullity.

For applicant to satisfy that his plea was induced by pressure or threat or the like circumstances in which accused had no choice.

Applicant said he was in such a state that he was unable to come to a rational decision with regard to his case.

See paragraph 10 of his affidavit.

Christopher Ingleson 11 C.A.R. 21.

George Edward Griffiths 23 C.A.R. 153.

20 R. v Cain 1976 - C.L.R. -464.

Wong Lai Fatt 1973 - 2 M.L.J. -31.

R. v Ease 1976 -C.L.R. - 119.

Mr. Jagjit Singh:

Submit no conflict between paragraphs 5 and 10.

Court: Application dismissed.

Sgd: H.S.O, - 1.4.77.

Certified true copy.

30 (LEE YOKE WENG)
Secretary to Tan Sri Dato Justice
H.S. Ong
Federal Court,
Kuala Lumpur.

10/4/78

In the Federal
Court

No.13

Notes of
Argument recorded
by Raja Azlan
Shah F.J.

1st April 1977

No.13

Notes of Argument recorded
by Raja Azlan Shah F.J.

IN THE FEDERAL COURT OF MALAYA HOLDEN AT KUALA LUMPUR
(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPLICATION NO. 2/1977

10

(Kuala Lumpur Criminal Trial No.25 of 1976)

Between

Wong Swee Chin @ Botak Chin Applicant

And

The Public Prosecutor Respondent.

Coram: Gill, C.J. Malaya,
H.S. Ong, F.J.
Raja Azlan Shah, F.J.

NOTES OF ARGUMENT RECORDED BY RAJA
AZLAN SHAH, F.J.

20

KUALA LUMPUR,
FRIDAY, 1ST APRIL, 1977

Jagjit Singh for Applicant.

Mahalingam for Respondent.

Jagjit Singh :-

Charged and convicted on 11.1.1977.

Two weeks to file Notice of Appeal.

Since lapsed. 21.3.1977 filed present application
(approximately 2 months). Applicant received 5-6
bullet wounds.

30

1. Strongest ground - applicant charged under
Internal Security Act. Wrong.

2. Frame of mind - locked up in solitary cell.

Mohamed Sidin v. P.P. (1967) 1 M.L.J. 106.

In the Federal Court

No.13

Notes of Argument Recorded by Raja Azlan Shah F.J.

1st April 1977

(Contd.)

Mahalingam :-

Inherent power in Federal Court to order new trial. Applicant unable to come to a rational decision? Para 10 inconsistent with para. 5 affidavit.

Christopher Ingleson 11 C.A.R. 21.

George Edward Griffiths 23 C.A.R. 153.

10 R. v. Cain (1976) CR.L.R. 464.

Wong Lai Fatt v P.P. (1973) 2 M.L.J. 31 F.C.

R. v. Peace (1976) CR.L.R. 119.

Reply:-

No conflict between paras. 5 and 10.

Applicant discharged me before he was sentenced.

Application dismissed.

Sd. R.A.S.

1.4.1977

20 Salinan Yang di-akui benar.

19.5.78

.....

Setia-usaha Hakim
Kuala Lumpur

In the Federal
Court
No.14

No.14
Judgment

Judgment 10th
June 1977

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CRIMINAL APPLICATION 2 of 1977

(Federal Territory Criminal Trial No.25 of 1976)

Between

Wong Swee Chin @ Botak Chin Applicant 10

and

Public Prosecutor Respondent.

Coram: Gill, Chief Justice, Malaya,
Ong Hock Sim, Judge, Federal Court,
Raja Azlan Shah, Judge, Federal Court.

JUDGMENT OF THE COURT

The applicant made an application to this Court by way of notice of motion for an order that he be granted an extension of time from the 21st day of January 1977 within which to file a notice of appeal to this Court, in respect of Selangor Criminal Trial No. 25 of 1976 in which he was charged with the following offences:- 20

- (1) That you on the 16th February, 1976 at about 8.45 p.m. at the office of Eng Leong Sawmill, No. 572, 3½ miles 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 firearms to wit, 30
 - (i) a 7.65 Walther automatic pistol No. 271053;
 - (ii) a 9 mm Erfurt 96 automatic luger pistol no. 5796 (8788) and
 - (iii) a 6.35 Beretta automatic pistol No. E.18866 40

In the Federal
Court

No.14
Judgment 10th
June 1977

(Contd.)

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

10 (2) That you on the 16th February, 1976
at about 8.45 p.m. at the office
of Eng Leong Sawmill, No. 572, 3½
miles 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,

(i) 41 rounds of 9 mm ammunitions,

(ii) 34 rounds of .32 ammunitions and

20 (iii) 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.

He pleaded guilty to both charges, whereupon he was
convicted and sentenced to death by hanging.

30 The grounds on which he made the application
were set out in his affidavit affirmed on 17th March
1977, which may be summarised as follows. He was
remanded in Pudu Prison since 23rd March 1976.
From the very first day of remand he had been placed
in solitary confinement in a "biliek akhir" which is
a cell for condemned prisoners awaiting death by
hanging. Furthermore, even though he was severely
injured he was not given medical treatment, In
fact the conditions were so depressing that he
gracually lost the will to live. Subsequently
40 about 3 months after being remanded in solitary
confinement, he tried to commit suicide by hanging
from his medical bandages, but was unsuccessful
because the prison guards discovered him in time.
He was already unconscious at that time. In his
highly depressed state of mind he decided that he
might as well plead guilty and die soon. He had
no more will to live and wanted to die as
soon as possible.

For his trial he was assigned a solicitor,
Mr. Jagjit Singh, by the High Court. He was very

In the Federal
Court

No.14
Judgment 10th
June 1977

(Contd.)

sceptical that his solicitor as counsel would do his best for his case as he had neither personally retained the said solicitor nor was he personally acquainted with the said solicitor. Although the said solicitor visited him a few times in Pudu Gaol before the said trial he was not prepared to give him instructions as he had already made up his mind to plead guilty and die as soon as possible. Furthermore he felt very sure that he would not get a fair trial, with all the adverse publicity given to him by the police in the press over a long period of time in the course of the nation-wide hunt for him for alleged criminal offences, many of which he had never committed but was nevertheless blamed for them.

10

With a view to opposing the application, the Public Prosecutor, who was the respondent to the application, filed 2 affidavits. The first of these affidavits was by Kenneth James Woodworth an Assistant Superintendent of Police in the Royal Malaysian Police Force. The gist of what this deponent said in his affidavit was that the applicant was injured at the time of his arrest and that the applicant was treated by specialist doctors for such injuries while he was a patient in the General Hospital, Kuala Lumpur from 16th February to 23rd March 1976, when he was discharged from hospital and escorted by a party of police to Pudu Gaol Kuala Lumpur. The deponent further stated that on 10th May 1976, 25th August 1976 and 20th September 1976 he and a party of police escorted the applicant from Pudu Prison to General Hospital, Kuala Lumpur for treatment by the orthopaedic unit and on each occasion escorted him back to Pudu Prison.

20

30

The second affidavit was by Abdul Aziz Bin Haji Idris, the Deputy Superintendent of Pudu Prison Kuala Lumpur. The substance of his affidavit was that the applicant was treated at the prison hospital by a qualified doctor from the General Hospital Kuala Lumpur on 7 separate occasions from 8th July to 17th September 1976, and that the applicant was treated for cough by a qualified hospital assistant at the prison hospital on 3 separate occasions. This deponent further said that from 23rd March 1976 to 11th January 1977 the applicant was never kept in 'bilek akhir' but was kept in the maximum security block of Pudu Prison because it was thought that he might make an attempt to escape or commit suicide.

40

50

In the Federal
Court

No. 14
Judgment 10th
June 1977

(Contd.)

10 As we have said, the accused was produced
in the High Court on the abovementioned two
charges on 11th January 1977. The charges
were read over and explained to him. He
said that he pleaded guilty to both charges
and understood the nature and consequences
of his plea. He further said that he did
not want counsel (Jagjit Singh) who had
been assigned to represent him. At this
stage the learned Judge asked the accused
to reconsider his plea. The learned Judge
further said that he would give accused further
time to think or have another counsel assigned
if he so wished. The accused replied that
he did not wish to reconsider his plea and
that he maintained his plea of guilty. The
Deputy Public Prosecutor gave the facts
of the case to the Court. The applicant said
20 that he admitted the facts and had nothing
to say in mitigation. He merely asked for
the return of his personal belongings. The
learned Judge then convicted the applicant
on his plea on both charges and passed
sentence of death.

30 Mr. Jagjit Singh appeared before us
on behalf of the applicant. He referred to
the applicant's affidavit and then said
that his strongest ground in support of the
application was that the applicant should not
have been charged under the Internal Security
Act, but should have been charged under the
Firearms (Increased Penalties) Act. Counsel
for the applicant conceded that the facts
of the case and the consequences of the
applicant's plea were explained to him but
emphasised the applicant's frame of mind
when he pladed guilty to the charges.

40 Mr. Mahalingam appeared on behalf of the
respondent. He said that ffrom the English
authorities it was abundantly clear that the
Federal Court had inherent jurisdiction to
order a retrial where conviction was
passed on a plea of guilty which was a nullity.
He then submitted that it was for the applicant
to show that he tendered his plea of guilty
under pressure or threats or in circumstances
in which he could make no free choice but
was driven to adopt a certain course whether
50 he liked it or not.

The view which we took was that for the
application to succeed there had to be strong
grounds or substantial reasons. There was

In the Federal
Court

No.14

Judgment 10th
June 1977

(Contd.)

nothing to suggest that the applicant did not understand the points in issue when he was produced before the High Court. After he had pleaded guilty he was asked by the learned Judge to reconsider his decision. The applicant said that he did not wish to reconsider the matter. The facts of the case were explained to him and he admitted them. There was nothing to suggest that on the merits the appeal was likely to succeed. The sentence which was passed on him was the only sentence which could be passed in the circumstances of the case. On the whole we were satisfied that there was no merit whatsoever in the application. We had therefore no option but to dismiss it.

10

S.S. Gill

KUALA LUMPUR,
10th June 1977.

CHIEF JUSTICE
MALAYA.

Encik Jagjit Singh for the applicant.
Messrs. Jagjit Singh & Co.

20

Encik M. Mahalingham for respondent.

TRUE COPY

.....
Secretary to Chief Justice
High Court
Malaya

12/4/78

No. 15

Order

In the Federal
Court

No.15

Order 1st
April 1977

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA
LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CRIMINAL APPLICATION NO.2 of 1977

10 (Kuala Lumpur High Court Criminal Trial No. 25/76)

Wong Swee Chin @ Botak Chin ... Applicant

Vs.

The Public Prosecutor ... Respondent

Coram: Gill, CHIEF JUSTICE, HIGH COURT, MALAYA:
ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA:
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 1st DAY OF APRIL, 1977

O R D E R

20 UPON MOTION preferred unto Court this day by Encik
Jagjit Singh of Counsel for the Applicant in the
presence of Encik P.M. Mahalingam, Deputy Public
Prosecutor on behalf of the Respondent AND UPON READING
the Notice of Motion dated 21st day of March, 1977 and
Affidavit of Wong Swee Chin @ Botak Chin affirmed on
the 17th day of March, 1977 and filed in support of
the Motion AND UPON HEARING Counsel for the Applicant
and the Deputy Public Prosecutor IT IS ORDERED that
this Application be and is hereby dismissed.

30 GIVEN under my hand and the Seal of the Court this
1st day of April, 1977.

ACTING DEPUTY REGISTRAR,
FEDERAL COURT MALAYSIA.

In the Judicial
Committee of the
Privy Council

No.16

Order granting
leave to appeal
in forma pauperis
to His Majesty
the Yang di-Pertuan
Agong

No.16

Order granting leave to
appeal in forma paueris
to His Majesty the Yang di-
Pertuan Agong

17th May 1978

COURTS OF JUDICATURE ACT, 1964

ORDER UNDER SECTION 76(1)

AT THE ISTANA NEGARA AT KUALA LUMPUR

THE 17th DAY OF MAY 1978

WHEREAS there was this day submitted to
His Majesty the Yang di-Pertuan Agong a Report
from the Judicial Committee of Her Britannic
Majesty's Privy Council dated the 9th day of
February 1978 in the words following viz:-

" WHEREAS by virtue of the Malaysia
(Appeals to Privy Council) Orders 1958
to 1969 there was referred unto this Committee
a humble Petition of Wong Swee Chin alias
Botak Chin in the matter of an Appeal from the
Federal Court of Malaysia between the Petitioner
and the Public Prosecutor Respondent setting
forth that the Petitioner prays for special leave
to appeal in forma pauperis from an Order of the
Federal Court of Malaysia dated the 1st April
1977 dismissing the Petitioner's application
for leave to appeal out of time against his
convictions of unlawfully having under his control
firearms and ammuntion in contravention of section
57(1) of the Internal Security Act 1960:
And humbly praying Your Majesty to grant the
Petitioner special leave to appeal in forma peuperis
against the Order of the Federal Court of
Malaysia dated the 1st April 1977 and for
further or other relief:

THE LORDS OF THE COMMITTEE in obedience
to the Malaysia (Appeals to Privy Council)
Orders 1958 to 1969 have taken the humble Petition
into consideration and having heard Counsel
in the matter thereof Their Lordships do this
day agree to report to Your Majesty as their
opinion that special leave ought to be granted
to the Petitioner to enter and prosecute his
Appeal in forma Pauperis against the Order of
the Federal Court of Malaysia dated the 1st
April 1977;

AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Federal Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before the Judicial Committee on the hearing of the Appeal."

10 HIS MAJESTY having taken the said Report into consideration was pleased to approve thereof and to order as it is hereby ordered that the same be punctually obeyed and carried into execution.

WHEREOF the Federal Court and all other persons whom it may concern are to take notice and govern themselves accordingly.

BY COMMAND

PRIME MINISTER

In the Judicial
Committee of the
Privy Council

No.16

Order granting
leave to appeal
in forma pauperis
to Her Majesty
the Yang di-
Pertuan Agong
17th May 1978
(Contd.)

20 (F.C. Criminal Application No.2 of 1977)

No. 24 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE
JURISDICTION)

B E T W E E N:

WONG SWEE CHIN
ALIAS BOTAK CHIN

Appellant

- and -

THE PUBLIC PROSECUTOR

Respondent

RECORD OF PROCEEDINGS

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD

STEPHENSON HARWOOD,
Saddlers Hall,
Gutter Lane,
London EC2V 6BS

Solicitors for the Appellant

Sclicitors for the Respondent