tried between the parties involving their rights as directors, the funds and assets of the second plaintiff company, the allotment of new shares of that company, and other alleged breaches under the Companies Act, 1965, and that until the action was tried, a case had been made out for the preservation of the property in the meantime in *status quo*. (See *Nicholas & Ors.* v. *Gan Realty Sdn. Bhd. & Ors.*[11]) The court also considered that damages would not be an adequate remedy to the parties, especially to the plaintiffs and that it would cause greater inconvenience to the plaintiffs if the injunction was not granted than the inconvenience which the defendants would be put if the injunction was granted. On the other hand, in order to dissolve or vary an *ex parte* injunction, the defendants/applicants had to satisfy the court that the facts upon which the said injunction was granted no longer exist or that it was obtained by misrepresentation or suppression of material facts (Per Raja Azlan Shah J. (as he then was) in *Gan Realty Sdn. Bhd. & Ors.* v. *Nicholas & Ors*[12]). In the circumstances of this case I was satisfied that the defendants/applicants had not made out a case in favour of dissolution of the temporary or interim injunction granted by me on February 13, 1980. I therefore refused to exercise my discretion in favour of them and dismissed their said notice of motion with costs.

Order accordingly

Solicitors: *Presgrave & Matthews; Lim Cheng Poh & Chong.*

PUBLIC PROSECUTOR v. LIM RE SONG & ANOR.

[O.Cr.J. (Mohamed Azmi J.) July 24, 1981]

[Kuala Lumpur – Federal Territory Criminal Trial No. 12 of 1978]

Criminal Law & Procedure – Charge of being in possession of primed handgrenades – Whether "ammunition" – Internal Security Act 1960, ss. 2 & 57(1)(b).

Internal Security – "Ammunition" – Internal Security Act 1960, s. 2.

Internal Security – Charge of being in possession of handgrenades – Proof of exclusive control – Convicted and sentenced to death.

The first and second accused who were husband and wife were jointly charged for being in control of 9 primed handgrenades without lawful excuse and authority at a house in Setapak, an offence under section 57(1)(b) of the Internal Security Act 1960. This arose out of an early morning raid by the police acting on a tip-off. The house was cordoned and the front door was forced open by the police. One A.S.P. Salleh went to room 'K' and found it was locked. He banged the room door and requested it to be opened. The second accused unbolted it from the inside. Not far from the mattress on which the accused were sleeping, A.S.P. Salleh found a paper bag containing 9 primed hand-grenades and 27 pairs of jungle green shorts and jungle green trousers, 29 jungle green shorts, 12 grey hammocks, 1 piece of green cloth cut out for a cap and 6 pieces of putties. 2 sewing machines were also recovered from the house.

Held: (1) the Prosecution had established beyond reasonable doubt that both the accused had exclusive control of the 9 primed grenades and they also had full knowledge of their existence, and that they were in joint control of the incriminating exhibits at the material time;

(2) the handgrenades had been proved to be serviceable by an expert through examination and by exploding one of them; it is self-evident that they contain explosive and it is unnecessary to prove the type of explosive contained in the various parts of the handgrenades;

(3) in both cases the conduct of the accused as regards the uniforms gives rise to the necessary *mens rea* in that they knew that the uniforms were for unlawful purpose. The existence of the jungle green uniforms with the handgrenades is sufficient for the court to conclude by circumstantial evidence that both the accused had knowledge of the grenades at all material times.

Cases referred to:–

(1) *Public Prosecutor* v. *Sihabduin bin Haji Salleh & Anor.* [1980] 2 M.L.J. 273.
(2) *Public Prosecutor* v. *Chai Yee Ken* [1977] 1 M.L.J. 167.
(3) *Public Prosecutor* v. *Leong Kuai Hong* [1981] 1 M.L.J. 246.
(4) *R.* v. *Khoo Guan Teik* [1957] M.L.J. 128.
(5) *Lee It Leo* v. *R.* [1954] M.L.J. 215.
(6) *Sia Soon Suan* v. *Public Prosecutor* [1966] 1 M.L.J. 116.
(7) *Su Ah Ping* v. *Public Prosecutor* [1980] 1 M.L.J. 75.

[Cases cited but not mentioned in Judgment: *Chong Kim Seng* v. *Public Prosector* [1949] M.L.J. 109; *Saad Ibrahim* v. *Public Prosecutor* [1968] 1 M.L.J. 158; *Emperor* v. *Santa* A.I.R. 1944 Lah. 339; *Loke Tham Chuan* v. *Public Prosecutor* (1954) 3 M.C. 45; *Tan Too Kia* v. *Public Prosecutor* [1980] 2 M.L.J. 187; *Pyare Lal Bhargava* v. *State of Rajasthan* A.I.R. 1963 S.C. 1094; *Emperor* v. *Bhagwandas* A.I.R. 1941 Bom. 50; *Public Prosecutor* v. *Law Say Seck & Ors.* [1971] 1 M.L.J. 199; *Chan Pean Leon* v. *Public Prosecutor* [1956] M.L.J. 237; *Lockyer* v. *Gibb* [1966] 2 All E.R. 653; *Warner* v. *Metropolitan Police Commissioner* [1968] 2 All E.R. 356; *Teoh Sin Kuan* v. *Public Prosecutor* Selangor Cr. App. 14 of 1977 *(unreported)*; *Loh Chan Wan* v. *Public Prosecutor* [1939] M.L.J. 84; *Mat* v. *Public Prosecutor* [1963] M.L.J. 263; *Public Prosecutor* v. *Teh Cheng Poh* [1980] 1 M.L.J. 251; *Kong Wai & Anor.* v. *Public Prosecutor* [1948-1949] M.L.J. Supp. 170; *Lee Yoon Choy & Ors.* v. *Public Prosecutor* [1948-1949] M.L.J. Supp. 167; *Tai Chai Keh* v. *Public Prosecutor* [1948-1949] M.L.J. Supp. 105; *Saminathan & Ors.* v.

Public Prosecutor [1955] M.L.J. 121; *Liew Kaling & Ors.* v. *Public Prosecutor* [1960] M.L.J. 306].

CRIMINAL TRIAL.

Gooi Soon Seng (Deputy Public Prosecutor) for the Prosecution.

Karpal Singh and *Ngeow Yin Ngee* for the first accused – retained.

Sidney Augustin for the second accused – retained.

Cur. Adv. Vult.

Mohamed Azmi J.: In this security case, the First and Second Accused, who are husband and wife, are jointly charged for being in control of nine (9) primed handgrenades without lawful excuse and authority at house No. 663, Jalan Air Lombong, Setapak, at about 1.30 a.m. on September 5, 1977, an offence under section 57(1)(b) of the Internal Security Act, 1960.

The brief facts of Prosecution case are as follows. In the early hours of September 5, 1977, a Special Branch Police party led by ASP Mohd. Salleh (P.W.2) raided house No. 663, Jalan Ayer Lombong, where the two Accused had rented a room, marked 'K' in the sketch plan (Exhibit P.16). After the house had been cordoned, ASP Salleh and the remaining members of his party forced open the front door, and on entry they broke into three groups. The group led by ASP Salleh which comprised of Woman Inspector Ramlah (P.W.3) and Detective Corporal Yaacob (P.W.9) went to room 'K' where ASP Salleh tried to break open the room door. Failing to do so, he banged the room door; identified himself as a police officer and requested the occupants to open it. When the Second Accused unbolted the door from inside, ASP Salleh entered the room with P.W.3 and P.W.9, where they found the First Accused had just awaken from sleep on a mattress on the floor. Being the only occupants of the room, both the Accused were detained and in their presence, ASP Salleh conducted a search. Not far from the mattress on which the Accused were sleeping, he found a paper bag (Exhibit P.6) containing 9 primed handgrenades wrapped in ordinary Chinese newspapers (Exhibits P.7, P.7A, P.4A, Exhibits P.7D1 to D9) and 3 unprimed grenades (Exhibit P.9). Near the paper bag, the ASP also found other exhibits which included 27 pairs of jungle green shorts and jungle green trousers (Exhibit P.10 and P.11), 29 jungle green shorts (Exhibit P.14), 12 grey hammocks (Exhibit P.12), 1 piece of green cloth cut out for a cap (Exhibit P.13) and 6 pieces of putties (Exhibit P.15). Exhibits recovered from other parts of the house including two sewing machines were also seized and listed in a Search List (Exhibit P.17). At 4.00 a.m. the same morning, ASP Salleh lodged a report on Police Form 55 at his Special Branch office, and at 8.30 a.m he handed the Police Report (Exhibit P.18) together with the 9 primed handgrenades (whose detonators had then been disengaged for safety reasons) as well as the 3 unprimed handgrenades to the Investigating Officer, Inspector Omar (P.W.5) at Jalan Bandar Police Station. On October 21, 1977, Inspector Omar personally handed over the 12 handgrenades with 9 detonators to ASP Wong Ban Foo (P.W. 7), the Contingent Armament Officer, who on examination found them to be home-made, and that 9 of the grenades and the 9 detonators (the subject-matter of the present charge) to be complete grenades and serviceable. On June 19, 1980, two of the 9 grenades and one of the 9 detonators were again handed by Inspector Omar to ASP Wong Ban Foo who extracted some sample of the powdered explosive from one of the two grenade casings. He successfully exploded the second grenade casing by using a factory-made detonator (Exhibit P.7A). He also exploded the home-made detonator (Exhibit P.7D9) which he had taken from Inspector Omar. The explosive substance extracted from one of the grenade casings (Exhibit P.3A) including the casing itself (Exhibit P.4A) were sent to the Government Chemist, Mr. Lau Cheng Siew (P.W.1) on June 23, 1980, and on analysis, Mr. Lau found the sample substance Exhibit P.3A and the contents of the grenade casing Exhibit P.4A to be trinitrophenetol which is an explosive substance. The two Accused were originally charged for being in control of 9 primed handgrenades and 3 unprimed handgrenades, but the latter were dropped from the charge since without detonators, they do not constitute complete grenades.

Notwithstanding the provisions of Regulations 13 and 17 of the Essential (Security Cases) (Amendment) Regulations 1975, the Federal Court has held in the case of *Public Prosecutor* v. *Sihabduin bin Hj. Salleh & Anor.*[1] that the Defence of an accused in a security trial need not be called if the Prosecution have not established a *prima facie* case. At the close of case for the Prosecution, it is the submission of Mr. Karpal Singh for the First Accused and also of Mr. Augustin for the Second Accused that the Prosecution have failed to prove that the two Accused were in control of the 9 primed grenades. It is also their sub-

mission that the Prosecution have failed to prove that the 9 primed handgrenades are grenades within the definition of "ammunition" under section 2 of the Internal Security Act 1960. It is further contended that the chain of evidence is broken as regards the 9 primed grenades and, as such, it is fatal to the Prosecution case. Having considered the reply of the learned Deputy Public Prosecutor, I am of the view that the Prosecution have established a *prima facie* case against both Accused which, if unrebutted, would warrant a conviction.

On the issue of control of the 9 primed handgrenades, there is evidence before the court that at the material time of the raid, the two Accused were the sole occupants of Room 'K' as paying tenants of Fan Yeng (P.W.4), and the 9 primed grenades were found wrapped in Chinese newspapers (Exhibit P.8) in a paper bag found on the floor of the room about 10 feet away from the mattress where the two Accused were sleeping. It is not seriously challenged that the Accused had rented the room from Fan Yeng about seven days before their arrest at $50/- per month. The room which was only 12 feet by 15 feet in area had a door which could be bolted from inside and locked by means of a padlock from outside. From the evidence of the landlady Fan Yeng, the Accused bought the padlock and at the time of the police raid, it is not in dispute that it was the Second Accused who unbolted the door from inside. Although there were four other occupants of the house, they were the landlady herself and three members of her family, and according to the landlady's evidence none of them ever entered the Accused's room irrespective of whether the Accused were in the room or not. She also testified that the Accused had no visitors at all before their arrest and that she had never seen the handgrenades and the jungle green clothing found by the police in Accused's room. In all the circumstances of the case, I am of the view that the Prosecution have established a *prima facie* evidence that both the Accused were not only the sole occupants of the Room 'K' at the material time, but they were also in joint control of both the primed and unprimed grenades in the paper bag. Having regard to the small size of the room, and the position of the unsealed paper bag in the room, and particularly the presence of numerous jungle green uniforms near the paper bag, the only reasonable inference to be drawn is that both the Accused must have known the existence of the 12 primed and unprimed grenades in the paper bag. The police raid at 1.30 a.m. must have been unexpected. The two Accused were more or less caught red-handed with the incriminating exhibits in their joint control. When ASP Salleh banged the room door and identified himself, there was nothing else the Accused could do. There was no way they could hide the exhibits since the only furniture in the room was the mattress on the floor and a plastic cupboard. Nor could they have thrown out the exhibits through the window since the house had been cordoned and the window had a wire mesh. Although close proximity is not sufficient to prove possession or control, having regard to the evidence surrounding the recovery of the grenades and the circumstances under which they were recovered, I am satisfied the Prosecution have established beyond reasonable doubt that both the Accused had exclusive control of the 9 primed grenades and they also had full knowledge of their existence, and that they were in joint control of the incriminating exhibits at the material time. On the issue of control, the facts in the present case are somewhat similar to those in *Public Prosecutor* v. *Chai Yee Ken*[2], except the subject-matters in that case were pistols and there was only one accused. Although the conviction was quashed on appeal to the Federal Court, in the absence of written judgment, it would appear from the Notes of Wan Suleiman F.J. that the appeal was allowed on other grounds and not on the issue of conscious and exclusive control of the incriminating exhibits. (See F.C.C.A. No. 52/76).

On the issue of whether the 9 primed grenades are grenades within the statutory definition of 'ammunition' under section 2, Internal Security Act, there is evidence based on the testimony and written reports of ASP Wong Ban Foo, the Contingent Armament Officer, that the 9 home-made detonators were with the 9 handgrenades. In his first Report (Exhibit P.22), it is clear from paragraph 2 that the 9 primed grenades are complete grenades. Each of them has a casting with serrations, and each of the 9 home-made detonators consists of commercial detonator, a safety-fuse 1½ inches in length, a brass cup containing the cap of .32 ammunition and an upper brass cup which contains firing pin and striker. In the second Report (Exhibit P.23) from one of the casing, there is *prima facie* evidence that all the 9 casings contained explosive and this is confirmed not only by the evidence and the Report of the Government Chemist (see Exhibit P.5), but also by the test carried out by ASP Wong Ban Foo when he exploded one of the 9 grenade casings and as well as one of the 9 homemade detonators. I accept the evidence of ASP Wong that he did not use the home-made detonator to explode the grenade because it was unsafe

to do so for the test. I also accept the evidence of ASP Salleh that after recovery of the 9 primed grenades, he detached the detonators from the grenade casings for safety reasons. In this case, the Defence seems satisfied that the 9 grenade casings do contain explosives, but they complain that the Prosecution have not proved that the commercial detonator attached to the aluminium cup in fact contains explosive. Similarly, they say the Prosecution have not proved that the cup of the .32 ammunition in the brass cup contains gunpowder. It is their contention that at least one of the home-made detonators recovered from the Accused's room should have been sent to the Chemist for analysis of the substance found in the commercial detonator and the cap of the .32 ammunition. For this proposition, the Defence rely on the Federal Court decision in *Public Prosecutor* v. *Leong Kuai Hong*[3] where an appeal against my judgment was dismissed. In my view, that case does not help the Defence. In that case,. when the two handgrenades were thrown by the respondents, they did not explode and the non-explosion was not due to any defect in the mechanism of the grenades but because the grenades were devoid of any explosive substance. In my view, it was because it was non-explosive due to absence of any explosive that the Federal Court held that "..... in the case of a grenade there must be proof that it must be a complete grenade and that it must at any rate contain explosive, in which event it is unnecessary to prove its serviceability". The Federal Court did not rule that serviceability is totally irrelevant. In my view, where, as in the present case, the handgrenades have been proved to be serviceable by an expert through examination and by exploding one of them, I think it is self-evident that they contain explosive and it is unnecessary to prove the type of explosive contained in the various parts of the handgrenades. In any event, the grenade casings in the present case have been proved to contain explosive. The commercial detonator attached to the aluminium cup is "explosive" as defined by section 2 of the Explosives Act 1957 (Revised 1978). So is "cartridges" and "ammunition of all descriptions" like .32 ammunition.

On the issue of break in the chain of evidence in respect of the incriminating exhibits, it is the submission of the Defence that failure on the part of the Prosecution to call one Inspector Zainal, to whom (according to a note on the original of the Search List Exhibit P.17) the grenades had been handed at 4.20 a.m. on September 5, 1977 is fatal. Decisions in *R.* v. *Khoo Guan Teik*[4]; *Lee It Leo* v. *R.*[5] and *Sia Soon Suan* v. *Public Prosecutor*[6] have been cited to support this proposition. But the latest legal proposition on the subject has been dealt with by the Federal Court in *Su Ah Ping* v. *Public Prosecutor*[7] where at page 76 Suffian L.P. had this to say:

> "The complaint before us was not that there had been no proof that the exhibits were serviceable, but simply that there was a "break in the chain of evidence", and the prosecution should have called as witnesses all the officers through whose hands the exhibits passed from Inspector Takbir to the armourer and back to the Inspector. We do not think there is merit in this point. The question was whether the exhibits the Inspector produced were the guns and ammunition he found at the scene, and as when he produced them as those very guns and ammunition there was no objection by the defence, it would have been a waste of judicial time to call the intervening handlers. In our experience much judicial time is spent unnecessarily, notably in subordinate courts, in ensuring no break in the chain of evidence. In our judgment, if the officer who picked up an object at the scene produced it and identified it as that very object, that is enough, and there is no need to call every other officer who handled it.
>
> For this reason it is desirable for a police officer who picked up an object that is easily marked such as a gun, to mark it well, in case it may be needed later on as an exhibit. There are, however, objects such as blood samples and the like that cannot be easily marked; it is only in the case of such objects that it may be necessary to call everybody who has handled it – then only if there is doubt as to identity."

In this case, the 9 home-made primed handgrenades recovered by ASP Salleh were identified by him when the exhibits were produced in court. They were recovered at about 1.30 a.m. on September 5, 1977 and included in the Search List as well as the Police Report which was lodged at 4.00 a.m. the same morning. The exhibits were then handed to the I/O – Inspector Omar (P.W.5) – at 8.30 a.m. who also identified them. Thus, Inspector Zainal could only handle the exhibit between 4.20 a.m. (as recorded in the notes) and 8.30 a.m when they were handed by ASP Salleh to Inspector Omar. It is a matter of less than four hours and there is no evidence before the court to doubt the 9 primed handgrenades produced in court are the ones actually recovered from Accused's control. Notwithstanding the fact that ASP Salleh has referred to the marginal note as 'mysterious', there is no ground to suspect any tampering of the exhibits by Inspector Zainal or by anyone else whilst they were in police custody. The failure of the Prosecution to call him is, therefore, not fatal as it does not occasion any miscarriage of justice. (See also *Lee It Leo* v. *R.* – *ante*). To facilitate easy identification of the exhibits, it would, of course, have been better for ASP Salleh to have marked the 9 primed grenades, as suggested

by the Lord President in *Su Ah Peng case*. Unfortunately, the advice of the Lord President was not available to the police in 1977. In any event, since all the primed handgrenades are home-made, I have no reason to doubt ASP Salleh's ability to identify them positively in court as the very grenades he recovered from Accused's room during the police raid.

In the circumstances of the present case, I find that the Prosecution have proved a *prima facie* case against both the Accused. I therefore call for their Defence.

In their Defence, both the Accused elected to give evidence on oath, and they call the landlady's daughter, Lai Lin Ho (D.W.4), and son-in-law, Loke Mun Meng (D.W.3), as witnesses. Their Defence is a complete denial of any knowledge of the handgrenades. They even deny that the incriminating exhibits were recovered from their room. It is the submission of Defence Counsel that the grenades were planted in Accused's room either by a police informer, or by a 20-year old girl named Ah Mei or, alternatively, by some unknown person or persons.

In their testimony, both the Accused admit the police raid on September 5, 1977 at 1.30 a.m. and also their arrest in Room 'K' at house No. 663. They also admit occupying Room 'K' as paying tenants of landlady Fan Yeng (P.W.4) about a week prior to their arrest. According to their evidence, they were married in 1975, and at the time of their arrest, they were doing tailoring business at house No. 663. They had a business arrangement with one Ah Kee, the 'towkay' of Capitol Tailor. Under the arrangement, they were to sew ready cut cloth supplied by Capital Tailor. Ah Mei acted as a messenger girl by delivering the cut cloth to the Accused and collecting the completed clothing for Capital Tailor. Before shifting to house No. 663, they were staying in a flat at Jalan Ipoh for two years, and it was Ah Mei who introduced the Second Accused to the landlady (P.W.4) and recommended the room at house No. 663. On the night of September 4, 1977, they were working late in the hall of the house. They stopped sewing at 12.30 a.m. on September 5, and after supper, they went to bed. Just as they were falling asleep, they heard the front door of the house being broken into. Then they heard people banging their room door. When someone identified himself as police, Second Accused opened the door. They were taken to the hall and shown the grenades in a paper bag (Exhibit P.6). The First Accused testifies that he had not seen the paper bag and handgrenades before although he identifies the jungle green uniforms, grey hammocks and puttees and the unsewn green cap (Exhibits P.10 to P.15) as the tailoring materials sewn by them for Capitol Tailor. It is not disputed that these uniform exhibits were recovered from their room by the police including other exhibits, as shown in the Search List (Exhibit P.17), except for the 9 primed grenades and 3 unprimed grenades.

I have considered the testimony of the two Accused and their witnesses. It is my finding that their denial of the recovery of the 12 grenades from their room is not supported by the evidence. I accept the evidence of ASP Salleh (P.W.2) as corroborated by Woman Inspector Ramlah (P.W.3) and Det. Cpl. Yaacob (P.W.9) that the search of Room 'K' was conducted by ASP Salleh in the presence of the two Accused. It was during this search that a paper bag containing grenades was found on the floor of the room together with jungle green uniforms and other exhibits. The evidence of the three police witnesses is also consistent with the evidence of landlady Fan Yeng (P.W.4) who, though 74 years of age, impresses me as a reliable witness. Their evidence is also consistent with the Search List (Exhibit P.17) and the Police Report (Exhibit P.18). Both the Accused acknowledged the Search List. The allegation of First Accused that he was threatened with a gun to sign the Search List by ASP Salleh must be rejected as it is never put to the ASP during cross-examination. In my view, both Accused are not telling the truth when they deny the recovery of the grenades from their room.

The fact that both the Accused were the sole occupiers of Room 'K' at the time of the police raid has not been challenged. The main issue for determination is whether both or one of the Accused have raised a reasonable doubt as to their knowledge of the existence of the grenades in the paper bag. In my view, it is only probable that both the Accused would not know of their existence in the small-size room, if someone had planted them there on the evening of September 4, 1977. Accepting the evidence of the Accused that they went for half-an-hour stroll after dinner, the planting in all probabilities could only have taken place during that time. According to Second Accused, they finished dinner at 7.45 p.m. and, as such, they must have returned around 8.15 p.m. The question is: is there evidence to support the probability of planting taking place between 7.45 p.m. and 8.15 p.m.? Any planting without the

knowledge of Accused before 7.45 p.m. or after 8.15 p.m. can safely be ruled out as remote possibilities. Further, if planting had taken place before September 4, 1977, the Accused would have spotted the foreign object on the floor of the small and scantily furnished room. But if the planting had taken place during the half-an-hour, it is probable for both the Accused to have missed the foreign object since they went to bed very late that night, and the electric bulb in the room was only 25 watt. After sewing clothes till 12.30 a.m., it is probable for both Accused to be too tired and sleepy to spot any foreign object on the floor though only 10 feet away. To determine this probability, it is necessary to consider the three alternatives advanced by Defence Counsel. It is the submission of Mr. Karpal Singh that a police informer could have planted the grenades for reward. In my view, the other two alternatives, namely, Ah Mei or some unknown person doing it, have very remote possibilities. In the case of Ah Mei, it is the evidence of the Accused themselves that the last time she came to visit them was two days before their arrest, i.e. on the 6th day of their stay at house No. 663. Although the existence of Ah Mei cannot be disputed, as she was arrested by the Special Branch hours after the two Accused were detained, she could not possibly have planted the grenades between 7.45 p.m. and 8.15 p.m. on September 4, based on the Accused's own testimony. As regards the planting by unknown person or persons, this too should be rejected. It would be difficult for a stranger to know when both the Accused would be going for evening stroll, particularly when they were quite new in that area to observe their movements and strolling habits. In any case, it is most improbable for a stranger, like the occupants of the adjoining house, to own 12 grenades for the purpose of planting. However, I have given anxious consideration to the probability of the police informer planting the exhibits during the half-an-hour. Mr. Karpal Singh submits that the probability of a police informer being responsible is borne out by the fact that ASP Salleh had received information about three or four hours before the raid, i.e. at 9.30 p.m. or 10.30 p.m. on September 4, and, as such, there is a probability that the informer had planted the grenades between 7.45 p.m. and 8.15 p.m. whilst the Accused were having their evening stroll. After considering the whole evidence, it is my conclusion that this probability is also too remote to raise any reasonable doubt in the prosecution case. I find it improbable for a police informer to use large quantities of homemade handgrenades for the purpose of 'fixing' the two Accused. Further, it is cumbersome and unlikely for a police informer to use both primed and unprimed grenades. On the question of time, Woman Inspector Ramlah was requested by ASP Salleh during office hours on September 4, 1977 to be present at a briefing at midnight. It can therefore be inferred that by 4.00 p.m. ASP Salleh already knew of the intended raid of house No. 663 although he knew of the lay-out of the house only later, and, as such, the planting could only have taken place before 4.00 p.m. and not during the material half-an-hour. In the circumstances, I am of the view that the grenades must have been in the joint control of both the Accused not only during the raid but also during the whole of their stay at house No. 663, and that they must have known of their existence in the paper bag.

Further, the presence of large quantity of jungle green uniforms near the grenades gives rise to a reasonable inference that both the Accused must have known the contents of the paper bag and other bags on the floor. Having examined the uniforms and the cut-out green cap, I think I am entitled to apply common knowledge that none of the uniforms nor the unsewn green caps are similar to any uniform worn by Malaysian Armed Forces. The testimony of both Accused that the uniforms were sewn by them in the hall of the house and completed three days before their arrest is not supported by the evidence of the landlady and the other two Defence witnesses (D.W.3 and D.W.4). They only saw the Accused sewing civilian clothes. There are two inferences to be drawn. Either the uniforms were already sewn when they moved into house No. 663, or the Accused had sewn them whenever the landlady and her family had gone to sleep. In both cases, the conduct of the Accused as regards the uniforms gives rise to the necessary *mens rea* in that they knew that the uniforms were for unlawful purpose. The existence of the jungle green uniforms with the handgrenades is sufficient, in my judgment, for the court to conclude by circumstantial evidence that both the Accused had knowledge of the grenades at all material times.

As regards the role of the girl Ah Mei, it is my finding that the testimony of both the Accused are so conflicting and inconsistent, that I cannot help but suspect their credibility. To cite only one example, the First Accused testifies that all the uniforms were ready three days before the police raid, but they were not collected by Capitol Tailor because Ah Mei failed to do so. But according to Second Accused, Ah Mei did come to the house on the fifth day, i.e. three days before the raid. Even on the fourth and sixth day, Ah Mei did come to

the house. In her attempt to save the contradiction, the Second Accused committed yet another contradiction by alleging that Ah Mei did not want to collect the uniforms because there was no urgency. If there was no urgency, then it is inconceivable why the Accused should rush to complete the whole work within four days. On the evidence, I find Ah Mei did not in fact take any role either in respect of the uniforms or the handgrenades.

Having considered the case as a whole, I find the Defence of both the Accused have not raised any reasonable doubt in the Prosecution case. I am satisfied beyond reasonable doubt that the 9 primed grenades were found under the exclusive control of both the Accused without lawful excuse and authority, and that they knew of their existence at the material time. In the circumstances, I find both Accused guilty and convict them of the charge. The mandatory death sentence is accordingly passed.

Convicted and sentenced accordingly.

Solicitors: *Karpal Singh & Co.; Ngeow & Co.; Augustin Negrin & Co.*

ABU SEMAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Chong Siew Fai J.) August 21, 1981]
[Sibu – Criminal Appeal No. 1 of 1981]

Election – Bribery – Inducing electors to vote – Appeal against conviction and sentence – Fine enhanced – Election Offences Act 1954, ss. 10(a) & 11(1).

The appellant was charged on 3 counts of giving cash $5 to each of the 3 electors on September 19, 1979 in order to induce them to vote and thereby committed offences under section 10(a) of the Election Offences Act 1954, punishable under section 11(1) thereunder. The learned magistrate convicted him of all the charges and sentenced him to 5 days' imprisonment and $100 fine in default 2 weeks' imprisonment under each offence. The imprisonment sentences were to run consecutively. The appellant appealed.

Held: (1) The offence of corrupt practice may, in law, be committed irrespective of whether the person, who is otherwise liable, is or is not an agent for any political party or election candidate;

(2) what is material therefore is the intention of the giver of the money, not that of the elector who was given the money;

(3) it is unnecessary to prove inducement to vote for a certain political party. It is sufficient if it is proved that money was given in order to induce the elector to vote;

(4) in determining whether there had been bribery the court will always look to the essence of the transaction whether the act was done with a view to influencing a voter in relation to his vote. The intention of a person against whom a charge of bribery is made must be proved and this may be established from his acts and other circumstances of the case;

(5) the appellant had not shown how the learned trial magistrate failed to give any or any proper or adequate consideration to the defence of the case or how the verdict was unreasonable or unsatisfactory or cannot be supported as alleged;

(6) the appeal against conviction was dismissed. The sentences were varied: the imprisonment sentences were to be made concurrent and the fine under each offence was increased from $100 to $250. In default of payment of the sum of $150 being the increased amount under each offence, the appellant was to be imprisoned for 2 weeks.

Cases referred to:

(1) *Balasingam* v. *Public Prosecutor* [1959] M.L.J. 193.
(2) *The Westminister Case* 1 O' M. & H. 89.
(3) *Kingston-Upon-Hull* 6 O'M. & H. 372, 389.
(4) *Blackburn Case* 1 O'M. & H. 198, 202.
(5) *Darus* v. *Public Prosecutor* [1964] M.L.J. 322.
(6) *Jayanathan* v. *Public Prosecutor* [1973] 2 M.L.J. 68
(7) *R.* v. *King* [1970] 2 All E.R. 249.
(8) *R.* v. *Saleem* (1964) Crim. L.R. 482.
(9) *R.* v. *Walsh* (1965) Crim. L.R. 248.
(10) *R.* v. *Hockey* (1980) Crim. L.R. 594.

CRIMINAL APPEAL.

Teo Chong Lee for the appellant.

Nik Hashim bin Nik Abdullah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chong Siew Fai J.: The appellant was charged on 3 counts of giving cash $5.00 to each of the 3 electors namely Ganai anak Brayun (P.W.2), Ali anak Nari (P.W.3) and Luan anak Nari (P.W.4) on September 19, 1979 at about 12 noon at Rumah Nari, Sungei Gamuan, Binatang, Sarawak, in order to induce them to vote and thereby committed offences under section 10(a) of the Election Offences Act 1954, punishable under section 11(1) thereunder. The appellant claimed trial but was convicted upon all the charges and sentenced to 5 days' imprisonment and $100.00 fine in default 2 weeks' imprisonment under each offence; the imprisonment sentences were to run consecutively. Against the convictions and sentences the appellant now appeals.

The facts of the case are brief and may be summarised as follows:–

In September 1979 a State Assembly election