

APPEALS FROM ACQUITTAL IN THE HIGH COURT

Public Prosecutor v. Tai Chai Geok (1978) 1 MLJ 166.

Public Prosecutor v. Lim Eng Chye (1978) 1 MLJ.

In 1976 section 50 of the Courts of Judicature Act, 1964 was amended by Act A324 of 1976 so as to provide in effect that the Federal Court shall have jurisdiction to hear and determine any appeal against any decision made by the High Court in the exercise of its original criminal jurisdiction, "subject to this or any other written law regulating the terms and conditions upon which criminal appeals may be brought". Further it was provided that an appeal by the Public Prosecutor shall be either against acquittal or sentence provided notice of such appeal is given by or with the consent in writing of that officer only.

Prior to that amendment the Federal Court had only power to hear and determine appeals by a person convicted by the High Court in the exercise of its original criminal jurisdiction. The purpose of the amendment was therefore to enable an appeal to be brought against an acquittal by the High Court in the exercise of its original criminal jurisdiction.

In *Public Prosecutor v. Tai Chai Geok* (1978) 1 MLJ 166 the Federal Court has severely restricted the effect of the amendment. In that case on a charge under s.39B of the Dangerous Drugs Ordinance, 1952 the jury had returned a majority verdict of not guilty by 5 to 2. The accused was therefore acquitted. The Public Prosecutor appealed to the Federal Court. It is not clear what were the grounds of appeal in that case. Ong Hock Sim Ag. C.J. Malaya in giving the judgment of the Federal Court said that Senior Federal Counsel referred them to section 2 of the Criminal Appeal Act 1968 of the United Kingdom which in effect provides that the Court of Criminal Appeal may allow an appeal against a conviction if they think

- (a) that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory;
- (b) the judgment of the court should be set aside on the ground of a wrong decision of any question of law; or
- (c) that there was material irregularity in the course of the trial

It seemed that at the appeal the Federal Court was asked to apply the converse of section 2 and to hold that they may reverse an acquittal by a Jury if they are of opinion that on the evidence adduced the verdict was unsupportable or unreasonable. Ong Hock Sim Ag. C.J. stated that the matter was unique and unprecedented in the history of criminal justice and held that it was not proper or within the competency of the Federal Court to overrule the verdict of the jury and (1) substitute the verdict of

the Court for that of the jury or (2) order a retrial even if the Court was satisfied that there are good and sound reasons for doing so.

The matter is no doubt unique and unprecedented – but with respect the Federal Court failed to consider that the law in Malaysia has been amended but that the law in England has not. Reference was made to what Sir Patrick Devlin said in "Trial by Jury" to the effect "the power to order a new trial is not included among the powers of the Court of Criminal Appeal". Section 60 of the Courts of Judicature Act, 1964, however, expressly gives the Federal Court power to order a retrial.

Next what Chief Justice Pratt said in *R. v. Jones* (1924) 8 Mod. 201 was referred to. "It was never yet known that a verdict was set aside by which the defendant was acquitted in any case whatever upon a criminal prosecution. While the judge might put the matter very strongly in his summing up, he cannot direct a verdict of guilty or refuse to accept a verdict of not guilty if returned. In short there cannot in law be a perverse verdict of acquittal".

But is this not because the position is based on statute and statute in England does not enable the prosecution to appeal against a verdict of acquittal in the High Court?

Ong Hock Sim Ag. C.J. also referred to section 229 of the Criminal Procedure Code which provides that "If the verdict is not guilty either unanimously or by a majority the Judge shall record judgment of acquittal". As thus enacted, he says the court or a judge has no discretion but to accept the jury's verdict.

Section 230 of the Criminal Procedure Code likewise provides that if the verdict is guilty unanimously judgment shall be entered accordingly and here too the court or a judge has no discretion but to accept the jury's verdict and proceed to pass sentence on the convicted person. Yet surely it cannot be argued that there can be no appeal against such conviction!

It may be that what the Federal Court intended to decide in this case is that where the jury has returned a verdict of acquittal and there are no other grounds of appeal, other than that the verdict is unsupportable or unreasonable, then the appeal must be dismissed.

Ong Ag. C.J. however went further. He said, "As the law stands we are of the view that no power to quash an acquittal is permitted". Perhaps these words have to be limited to the facts of this case, for in fact there would appear to be no other grounds adduced in support of the appeal.

In any case it would appear that the view so expressed does not apply where the trial is before a Judge sitting alone.

In *Public Prosecutor v. Lim Eng Chye* (1978) 1 MLJ the trial was before a Judge sitting alone, instead of before a Judge and a Jury. The trial judge acquitted the respondent on charges of possession of a firearm and ammunition, as he held that the evidence left the court in doubt that the gun and ammunition were found in the possession or exclusive control of

the respondent. The Public Prosecutor appealed. The appeal was dismissed but this was because the Federal Court (again presided over by Ong Hock Sim F.J.) held that the question raised in the appeal related to the credibility of the witnesses and as the appellate court did not have the advantage of seeing and evaluating them, as the learned judge had, it would be slow to interfere. There were also, they found, serious gaps in the prosecution case.

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NOTES ON LEGISLATION

SUBORDINATE COURT (AMENDMENT) ACT 1978 (Act A434)

Fundamental changes have been made in the structure of the subordinate courts by the Subordinate Courts (Amendment) Act, 1978, which came into force with effect from the 1st. July 1978.

It is proposed in this note to outline the changes as they affect the various Courts.

SESSIONS COURT

There will be only one type of Sessions Court in future. A Sessions Court shall have jurisdiction to try all offences other than offences punishable with death (section 63). A Sessions Court may pass any sentence allowed by law other than the sentence of death. (section 64)

Section 41 of the Dangerous Drugs Ordinance, 1952, as amended, provides that a Sessions Court shall have jurisdiction to try any offence under the Ordinance and power to impose the full punishment or penalty provided for such offence by the Ordinance or by any regulations made thereunder, other than the death penalty.

It might be noted that section 10 of the Firearms (Increased Penalties) Act, 1971 as amended by Act A427 of 1978 provides that notwithstanding any written law to the contrary, a Sessions Court shall have jurisdiction to try all offences under the Act, except offences under section 3 or 3A thereof, and to impose for any offence so tried the full punishment or penalty provided for the offence by the Act, except the penalty of death.

Subject to the limitations contained in the Act, a Sessions Court shall have jurisdiction to try all actions and suits of a civil nature where the amount in dispute or the value of the subject matter does not exceed twenty-five thousand ringgit. (section 65(1)).

The civil jurisdiction of the Sessions Court may be modified by agreement between the parties. Where the parties to an action or suit, which if the amount in dispute did not exceed the limit of the jurisdiction, would be cognisable by a Sessions Court have entered into an agreement in writing that the Sessions Court shall have jurisdiction to try the action or suit the Sessions Court shall have jurisdiction to try such action or suit, although the amount of the subject matter thereof may exceed the value limit of jurisdiction. Every such agreement shall be filed in the Sessions Court and when it is so filed the parties to it shall be subject to the jurisdiction of the Sessions Court (section 65(3) and (4)). The provisions in respect of counterclaims in the Sessions Courts, relinquishment of part