DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN JENAYAH NO. B – 09 – 14 – 2005

ANTARA

PENDAKWA RAYA … PERAYU

DAN

RAJISEGAR A/L MUNISAMY …RESPONDEN

(Dalam Mahkamah Tinggi Malaya di Shah Alam
Permohonan Semakan Jenayah No. 43-3-2005

Di Antara

Rajisegar a/l Munisamy

Dan

Pendakwa Raya)

Coram: Gopal Sri Ram, J.C.A
Tengku Baharudin Shah bin Tengku Mahmud, J.C.A
James Foong Cheng Yuen, J.C.A

ORAL JUDGMENT

(Gopal Sri Ram, J.C.A. delivering judgment):

1. This is the Judgment of the Court.

2. On 25 January this year, an incident took place in Subang Jaya. It concerned an assault by one road user on another, resulting in the death of the latter. It is what we now commonly call a case of road rage.

3. The respondent in this appeal was arrested. Investigation commenced.

4. On 4 February 2005, the respondent was produced before the magistrate at the Petaling Jaya Magistrate Court. The investigation diary relevant to this case was made available to the magistrate. Based on the grounds appearing therein, the learned magistrate acting under section 117 of the Criminal Procedure Code ("the Code"), granted the police a period of 13 days to hold the respondent in remand under police custody.

5. The respondent's solicitor was unhappy with this result. He wrote to the judge in Shah Alam. A few days later, the learned judicial commissioner acting in revision, called for the record of the proceedings. Having examined it, she came to a conclusion that the remand of 13 days was defective and she reduced the remand period to 11 days.

6. The respondent now faces a charge of murder under section 302 of the Penal Code.

7. This appeal is, strictly speaking, quite academic so far as the merits are concerned but the prosecution is most concerned with certain observations made by the learned judicial commissioner in the course of her judgment on the provisions of section 117 of the Code. According to the learned judicial commissioner, section 117 does not permit a magistrate to grant the whole of the prescribed period of remand upon one application.

8. Our section 117 reads as follows:

> "117. Procedure where investigation cannot be completed within twenty-four hours.
>
> (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.

(2) The Magistrate before whom an accused person is produced under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a Magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmission for trial by the High Court.

(3) A Magistrate authorizing under this section detention in custody of the police shall record his reasons for so doing.

We think it is also important to produce section 119 of the Code.

"119. Diary of proceedings in investigation.

(1) Every police officer making a police investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary setting forth –

(a) the time at which the order, if any, for investigation reached him;

(b) the time at which he began and closed the investigation;

(c) the place or places visited by him; and

(d) a statement of the circumstances ascertained through his investigation.

(2) Notwithstanding anything contained in the Evidence Act 1950, an accused person shall not be entitled, either before or in the course of any inquiry or trial, to call for or inspect any such diary:

> Provided that if the police officer who has made the investigation refers to the diary for the purposes of section 159 or 160 of that Act, such entries only as the officer has referred to shall be shown to the accused, and the Court shall at the request of the officer cause any other entries to be concealed from view or obliterated.

9. It is the contention of the prosecution that the learned Judicial Commissioner fell into error in the way she construed section 117. According to the learned DPP, there is nothing in section 117 which as a matter of principle prohibits the grant of the whole period or a substantial part thereof prescribed in that section by way of remand.

10. Learned counsel for the respondent on the other hand said that the section when properly construed does not do that. In other words, it does not permit the Magistrate to grant the whole or substantial part of the period prescribed by the section.

11. He relied heavily on the phrase "from time to time" appearing in subsection (2) of section 117. He said that that phrase envisages more than one application to be made by the police. According to the learned counsel, it follows that the police is not entitled to ask for and the magistrate is not empowered to grant a single order of remand for the whole or substantial part of the period.

12. With respect, we are unable to agree with the learned judicial commissioner and the submission of the learned counsel for the respondent. The section by itself confers a discretion on the magistrate when if approach by the police for an order of remand. Accordingly, the section must not be construed as to destroy the discretion as intended by Parliament. This would be an impermissible act of encroachment by the judicial arm of the Federation.

13. In the course of the argument, we were referred to the decision of Syed Agil Barakbah J in the case of **Ramli Bin Salleh v Inspector Yahya Bin Hahim [1973] 1 MLJ 54** at p 56, where the learned judge whose views in such matter as the present is entitled to great respect:

"I must say something about section 117 of the Code having regard to clause (4) of article 5 of the Constitution. The section should be treated as an exception to section 28 which requires a police officer who has arrested a person without warrant to produce him without unnecessary delay and in any case within twenty-four hours after arrest before a magistrate. The discretionary power to order the remand of the prisoner should be exercised sparingly because it requires the magistrate to record his grounds for making the order. The section contemplates more than one application for the remand order and the maximum period for remand as a whole is fifteen days. The magistrate should not allow the full period as a matter of course but should weigh the seriousness of the offence and determine whether a shorter period would be sufficient to enable the police to complete investigation. If so, such shorter period should be given. That would in a way help to hasten investigation to ensure speedy trial and prevent the prisoner from being deprived of his

> fundamental liberty for a longer period than necessary. It comes as no surprise that the prisoner in this case has been released earlier." [Emphasis added]

14. We entirely agree with the foregoing statement of principle.

15. In our judgment, the magistrate who is called upon to exercise his/her power under section 117 must act cautiously and with circumspection. He/she must not accept *ipsi dixit* of the police officer requesting the remand. He/she must anxiously scrutinize the material that is produced and record his/her reasons for making the order. The necessity for reasons is obvious. For, the order for remand made by the magistrate is subject to revision by the High Court which is entitled to know why the order was made.

16. Looking at the grounds put forward in the present case, it would appear that the learned magistrate did not address her mind sufficiently to the facts presented. It does not appear that she has given any reasons whatsoever for granting the 13 days remand in the present case. That in itself is sufficient ground for the learned judicial commissioner's interference in the order of remand.

17. To sum up, we do not agree with the principle stated by the learned judicial commissioner on the application of section 117. However, we do agree with the way she acted. On the facts, she was entirely justified in interfering with the learned magistrate's order of remand.

Delivered in Open Court at the conclusion of arguments on 6 September 2005.

Counsel for the appellant: Wong Chiang Kiat, Deputy Public Prosecutor

Solicitors for the appellant: Peguam Negara Malaysia

Counsel for the respondent: Gobind Singh Deo (Suraj Singh with him)

Solicitors for the respondent: T/n Karpal Singh & Co.

Verified with Y.A. Dato' Gopal Sri Ram, J.C.A. and certified by me to be correct.