

APPELLATE CRIMINAL.

Before U On Pe, U San Maung and U Bo Gyi, JJ.

U SAW AND NINE OTHERS (APPELLANTS)

v.

THE UNION OF BURMA (RESPONDENT).*

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Special Crimes (Tribunal) Act, 1947 (Burma Act LIII of 1947), whether ultra vires—Government of Burma (Temporary) Provisions Act, 1945, Notification No. 94—Proclamations of House of Commons and House of Lords—Opportunity of accused be defended by "pleader"—S. 340, Criminal Procedure Code—Confessions of accused—Admissibility of—S. 24, Evidence Act—Delay in recording confession—Recording of confessions not in open court or court hours—Effect of contravention of rules—Value of confessions as evidence—Corroboration and admissibility against co-accused—S. 114 (b), Evidence Act—Examination of accused under s. 342 (2), Criminal Procedure Code, as amended by Burma Act XIII of 1945—Whether can be taken into consideration under s. 30, Evidence Act—Burma Act XXXIII of 1947, crimes committed before the Act came into force.

The accused were tried by a Special Tribunal under Burma Act LIII of 1947 and convicted under s. 302 (1) (b) of the Penal Code as amended by Burma Act XXXIII of 1947 and sentenced to death in connection with the shooting in the Council Room of the Secretariat, of the Governor's Executive Council presided over by its Deputy Chairman resulting in the instantaneous death of five Ministers, a Deputy Secretary, the death of two other Councillors later and of the Personal Body-guard of one Minister.

Held: Under s. 1 of the Government of Burma (Temporary) Provisions Act, 1945, published in the Government of Burma Home Department Notification No. 94 dated 24th July 1945, any proclamation made after the passing of that Act varying the previous proclamation of the 16th of December 1942 under s. 139 (3) of the Government of Burma Act, 1935, shall continue in force, unless revoked, till 9th December 1948, if resolutions in that behalf are from time to time passed by both the Houses of Parliament. The House of Commons on the 2nd of April 1947 approved the proclamation of the Governor of Burma and the House of Lords also on the 15th of April 1947 approved the continuance of the same. Therefore the proclamation issued by the Governor must be deemed to be still in force and the Governor must be deemed to have all the powers vested in the Legislature of Burma.

Held: By the establishment of a new court the Governor did not assume to himself the powers vested in the High Court and he was entitled to appoint a Special Tribunal as the Legislative Assembly in Burma could establish a new or collateral court and the fact that the High Court was at that time holding its criminal sessions was irrelevant.

* Criminal Appeals Nos. 3, 4, 7, 11, 12, 13 and 14 of 1948 being appeal from the order of the Special Crimes Tribunal, Rangoon, dated the 30th December 1947.

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Chitambaram v. The King-Emperor, (1947) R.L.R. 66 (P.C.), applied and followed.

S. 340 of the Criminal Procedure Code provides that an accused before a criminal Court may of right be defended by a pleader. Where accused was defended by a pleader since the beginning of the Trial and later a King's Counsel appeared who was given the opportunity to recall prosecution witnesses and he recalled some of the witnesses for the prosecution for further cross-examination and did not recall others, the accused can have no grievance and the section has been complied with.

The words "appears to the Court" in s. 24 of Evidence Act is something less than positive proof that the confession is not voluntary.

The King v. Hla Maung, (1946) Ran. 102, and *The King v. San Myint*, (1939) Ran. 97, referred to.

The fact that to avoid publicity and ensure the safety of the life of the confessing accused, the Magistrate recorded the confession and had each accused brought before him at 6 a.m. in the Senate Hall of the Law Courts Building and not in open court after giving sufficient time for reflection does not amount to any infringement of the rules framed by the High Court in Notification No. 6-General, dated 19th September 1946. The rule refers that a confession should *ordinarily* be recorded in court and during court hours. In exceptional circumstances the rule may be relaxed and there was no deliberate infringement. A contravention of the rules though to be deprecated did not render the confession inadmissible.

Emperor v. Panchkouri Dutt, I.L.R. 52 Cal. 67, referred to and followed.

The confessions are sufficient evidence against the confessing accused if the court is satisfied of their truth; as against the other co-accused corroboration is required in material particulars acting or tending to connect each of the accused with the offence.

The King v. Nga Myo, (1938) Ran. 190 (F.B.), followed.

If by extraneous evidence or matters appearing on the record it is established that the confessing accused are not in collusion, the cumulative effect may be sufficient to remove the *prima facie* presumption of the individual unworthiness of credit. S. 114, Evidence Act, illustration (b), referred to.

Statements made by the accused on examination under s. 342 (2), Criminal Procedure Code, as amended by Burma Act XIII of 1945 after the accused had been called upon to enter the defence, cannot be taken into consideration even if it confesses partly or wholly his guilt, under s. 30 of the Evidence Act against the other accused persons.

Mt. Sumitra v. King-Emperor, A.I.R. (1940) Nag. 287, and the case mentioned therein, relied upon.

As regards evidence given on oath by an accused person under s. 342 (1), Criminal Procedure Code, as amended it may be used against the co-accused. The weight to be given to such evidence will depend on the circumstances of each case. The admissions under s. 342 (2), Criminal Procedure Code, as amended are however valuable as showing consistency.

As the act was committed before 1st August 1947 on which date the Burma Act XXXIII of 1947 came into force, the conviction should be under s. 302 and s. 34 or 109 of the Penal Code as the case may be.

Shwe Hla U v. The King, (1941) Ran. 58, referred to and compared.

There was no circumstance under which the accused could get a lesser sentence and in any case the question whether mercy should be extended to any one of the appellants is a matter with which this Court is not concerned.

Aung Hla v. King-Emperor, 9 Ran. 433, referred to.

F. J. Salisbury Havock for U Saw.

D. J. Daniel for Thu Kha, Khin Maung Yin and Maung Ni (a) Boni (a) Gani.

U Kya Gaing for Maung Soe, Thet Hnin, Yan Gyi Aung (a) Hla Tun and Hmone Gyi (a) Maung Hmone.

U Saw Hla Pru for Maung Sein (a) Sein Gyi (a) Hla Aung.

U Chan Htoon (Attorney-General of the Union of Burma) for the respondent.

The judgment of the Court was delivered by

U OHN PE, J.—These are appeals under section 410 of the Criminal Procedure Code, read with section 8 of the Special Crimes (Tribunal) Act, 1947 (Burma Act LIII of 1947), which enacts that—

“Save as otherwise provided in this Act, the provisions of the Code and of any other law for the time being in force shall, to such extent as may be applicable, apply to trials before the Tribunal constituted under this Act, and to appeals from and confirmations of sentences of such Tribunal”

The Tribunal, consisting of the Hon'ble Mr. Justice Kyaw Myint, U Aung Tha Gyaw and U Si Bu, convicted the appellants, Maung Soe, Thet Hnin, Maung Sein *alias* Sein Gyi *alias* Hla Aung, and Yan Gyi Aung *alias* Hla Tun, of offences punishable under section 302 (1) (b) of the Penal Code as amended by the Penal Code (Amendment) Act, 1947 (Burma Act No. XXXIII of

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1947), and sentenced each of them to death. The Tribunal also convicted the appellants, U Saw, Thu Kha, Khin Maung Yin, Maung Ni *alias* Boni *alias* Gani and Hmone Gyi *alias* Maung Hmone, of the offence punishable under section 302 (1) (b) of the Penal Code, read with section 109, and sentenced them to death.

The facts, in brief, are as follows : On the morning of the 19th July, 1947, at about 10-30 a.m, while a meeting of the Governor's Executive Council, presided over by its Deputy Chairman (The Hon'ble U Aung San), was being held, four assassins dressed in jungle-green uniforms, with 12th Army badges on their shoulders and armed with automatic weapons, forced their entry into the Council Room, and after uttering shouts such as "Don't get up" or "Don't run away" or words to that effect, fired at those seated in conference. Having committed these murders, the four assassins left the Council Room and made for the Main Staircase at the central porch of the western wing of the Secretariat Building. While making their withdrawal, they met one Maung Htwe, the Personal Body-guard of the Hon'ble Mr. Razak, and one of them shot him down. The assassins then entered the jeep which was waiting for them at the foot of the stairs and left the Secretariat compound in that jeep by the Exit Gate leading out to Sparks Street. The shooting in the Council Room resulted in the instantaneous death of the Hon'ble U Aung San, the Hon'ble Thakin Mya, the Hon'ble U Ba Win, the Hon'ble Mr. Razak, the Hon'ble Mahn Ba Khaing, all of whom were Members of the Governor's Executive Council. It also resulted in the instantaneous death of U Ohn Maung, Deputy Secretary, who had just arrived inside the Council Room when the shooting began. The Hon'ble U Ba Choe and the Hon'ble Saw San Htun, two other Councillors who

attended the conference, received fatal injuries which resulted in their death after their removal to the Rangoon General Hospital. Maung Htwe similarly succumbed to his injuries after his arrival in hospital. Two other Councillors, the Hon'ble U Aung Zan Wai and the Hon'ble Pyawbwe U Mya, escaped without any injury; while the Hon'ble U Ba Gyan received a bullet-wound on his right ring-finger while he lay flat on the floor of the Council Room. U Shwe Baw, the Secretary of the Council, was also unhurt.

Among the first arrivals at the Council Room after the incident were Bo Tun Hla (P.W. 6), the then Personal Assistant to the Hon'ble U Aung San, and U Aung Chein (P.W. 1), Commissioner of Police, Rangoon. When they entered the room, they could still get the smell of gun-powder inside. They saw empty cartridges, spent bullets and live cartridges strewn all over the floor, and they also saw a Sten-gun magazine fully charged with cartridges. U Po Sein (P.W. 18,) who arrived soon after the arrival of Bo Tun Hla and U Aung Chein, picked up from the floor 23 empty Tommy-gun cartridges and 8 empty Sten-gun cartridges exhibited in the case. The Police Station Inspector, Mr. Bell (P.W. 59), also assisted U Po Sein in picking them up. This officer also picked up the Sten-gun magazine full of cartridges and handed them over to U Po Sein. Later, U Po Sein handed over the empty cartridges, live cartridges and the Sten-gun magazine to U Than Pe (P.W. 19), the then Superintendent of Police, Central, who took them to Botataung Police Station and handed them over to the Guard-Writer Maung Aye Pe (P.W. 68), who entered them in Register No. VI in the presence of U Than Pe. U Hla Pe (P.W. 72) picked up 7 empty Tommy-gun cartridges, 14 empty Sten-gun cartridges and 3 spent bullets, which he later handed over to Maung Su

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(P.W. 69), the Guard-Writer who relieved Maung Aye Pe. All these empty cartridges were kept at Botataung Police Station in sealed cigarette tins (Exhibits 6 & 6A), and they were later taken over by U Hla Baw (P.W. 30) on the 21st of July, 1947. Two empty Sten-gun cartridges were picked up by U Soe Yin (P.W. 53) from near Maung Htwe's body at the Secretariat, and these were handed over by him to Mr. Sant Singh (P.W. 27) on the 21st July to be taken to U Hla Baw for examination.

In the meantime, at about 10 a.m, one Hla Tin (P.W. 47), Clerk of Mr. Khan (P.W. 39), who was keeping a watch that morning of the house and compound of the appellant U Saw in 7 Ady Road, Rangoon, reported to Mr. Khan that he had seen a jeep go out of U Saw's house, bearing the number RC 1814 and carrying four or five men wearing grey-coats. He also reported that a little after the jeep had left, he saw U Saw go up to the gate and whisper something to the gate-keeper before going back to his house. At about 11 a.m. Mr. Khan left his house to go to his office in Rangoon. As he came out of his gate, which was diagonally opposite to that of U Saw, he saw a jeep coming down Ady Road from the direction of Prome Road at a great speed. Mr. Khan stopped his car in order to avoid a collision, as he did not then know whether the jeep was or was not going into U Saw's compound, U Saw's gate being nearer to Prome Road than was his. He then saw the jeep turn hurriedly into U Saw's gate and saw the gate quickly thrown open and closed again after the jeep had entered the compound. Being suspicious, Mr. Khan drove up to a spot on the Prome Road from where he could see the front of U Saw's house, and from that spot saw a group of men clustered around the jeep somewhere in front of U Saw's house. He then proceeded to his office in Barr Street,

which took him approximately about 25 minutes by car. On receiving news of the assassination of the Councillors, sometime between 12 a.m. and 12-30 p.m., he immediately became suspicious of the jeep which he had seen entering U Saw's house about an hour earlier. He immediately went to the house of U Tun Hla Oung (P.W. 38), the then Deputy Inspector-General, Criminal Investigation Department, and not finding U Tun Hla Oung at home, went back to his office with a view to send a telephone message to U Tun Hla Oung at his office. U Tun Hla Oung received the message while he was in conference with U Ba Maung, the then Inspector-General of Police, and U Ka Si, the then Chief Secretary to the Government of Burma. He asked Mr. Khan to come over to the Secretariat, and Mr. Khan arrived there at about 1-45 p.m. After hearing what Mr. Khan had to tell him, U Tun Hla Oung reported the matter to the Inspector-General of Police and the Chief Secretary, and, as a result, an immediate raid was ordered to be made on U Saw's house and compound. This raid actually took place at about 3 p.m., the raiding party being led by U Soe Yin (P.W. 53), Deputy Superintendent of Police. All the guns and ammunitions which were seized from U Saw's house on that day as shown in the Search List (Exhibit M) were licensed. At about 5-30 p.m., when U Tun Hla Oung himself visited U Saw's house, he saw U Saw and the other inmates of the house, who were under arrest, being put into trucks to be taken away. Under the portico of the house, parked back to back, were two jeeps. The one immediately under the portico had a hood on, while the other had none. The one with the hood bore the numbers RB 9831 both in its front and its rear. The front number plate was a piece of iron about 3 feet long, tied to the front bumper with pieces of electric wire. The back number was

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painted on the body and the paint was still wet when U Tun Hla Oung saw the numbers both at the front and in the rear ; the numbers were in white paint. In the garage there was a saloon car and a 15-cwt. Fordson Truck bearing the number "MTLA 183." While U Tun Hla Oung was still at U Saw's house, he received the report (Exhibit B) of U Aung Kyaw Sein (P.W. 31), a C.I.D. officer in plain clothes who had been deputed to keep a watch over U Saw's house and compound since the 16th of July. He also received the report (Exhibit B3) of Maung Hla Tin (P.W. 47), Clerk of Mr. Khan, who was also deputed to watch U Saw's house and compound. The search inside the house and the compound lasted till about 6-30 p.m., so that no search could be conducted in the waters which surrounded the compound. That night, two officers of the Criminal Investigation Department, Mr. Boon Khine, and another, stayed the whole night with the members of the Striking Force and the members of the Insein Armed Police who guarded the house and compound. U Soe Yin (P.W. 53) himself remained there till midnight and came back again to the place at about 7 a.m. the next morning. He found the place guarded and watched as arranged on the previous night. In the morning a search inside the compound was made, and after tea-time, with the assistance of the Striking Force, a search was made in the waters near and about the shrine. At about 2-30 or 3 p.m., a box of .303 ammunition was found in the waters near the shrine, and when this find was made, U Soe Yin asked the man diving and searching near the brick steps and the white corrugated iron hut in the compound to go over and join the search near the shrine. Maung Soe Thein (P.W. 24), a member of the Striking Force, found two Tommy guns and four cases of .303 ammunition at a spot on the east of the shrine indicated by the letter "J" in

the map (Exhibit E). Maung Tin Maung (P.W. 25), another member of the Striking Force, found four cases of .303 ammunition, two Tommy guns and one Sten gun at a spot near the shrine indicated by the letter "I" in the map (Exhibit E). The search by these members of the Striking Force was supervised by Bo Saw Thaug (P.W. 26) as well as by U Soe Yin. Soon after the finding of these arms and ammunition in the waters near the shrine, Mr. Jupp (P.W. 52), the then Superintendent of Police, Criminal Investigation Department, arrived and U Soe Yin reported to him about the finding of these arms and ammunition. Mr. Jupp saw them on the bank of the lake near the shrine. He was so pleased that he gave rewards to the persons who found them. The particulars of these arms and ammunition were entered in the Search List (Exhibit N), which was prepared by Mr. Sant Singh and attested by the search witnesses, Mr. Khan, U Po Han (P.W. 62) and one U Thein Gywe. The weapons were as follows:

- One Tommy gun No. S266236.
- One Tommy gun No. S138164.
- One Tommy gun No. S91401.
- One Tommy gun No. S161373.
- One Sten gun No. 22847.

These weapons were taken by Mr. Jupp himself to the Town Lock-up, where they were deposited for the night with U Maung Maung (P.W. 29), Police Station Inspector in-charge of that Lock-up. They were taken back the next day by Mr. Jupp and handed over to Mr. Sant Singh with instructions to take them to U Hla Baw (P.W. 30), the Principal of the Detective Training School, Insein, together with the note (Exhibit P). Mr. Sant Singh accordingly proceeded to U Hla Baw's office and handed over to U Hla Baw the firearms, along with the exhibit note. He also

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handed over to U Hla Baw two empty Sten gun cartridges as directed by U Soe Yin, as well as the Sten gun No. R41157 and the 9 mm. sub-machine gun No. B301456, which were the licensed weapons seized from U Saw's house on the 19th of July.

On the 20th July, as well as on subsequent days, the house and compound of U Saw were closely guarded by the police, as well as by the members of the Striking Force. On the 29th July, Maung Shein *alias* Yan Gyi Naing and Tin Shwe (cited by the prosecution but waived) accompanied a police party to U Saw's place, and there Maung Shein pointed out a heap of ashes, from which the unburnt piece of *longyi* (Exhibit 8A) was retrieved. From a place in the water near the shrine pointed out by Yan Gyi Naing, five soft green hats and a brick (Exhibit 4) were salvaged. A motor-car number plate bearing the number RA 3123 (Exhibit 1A) was found in the waters of the lake at a place pointed out by Maung Tin Shwe (point "M" in the map, Exhibit E). On the next day, Sein Maung (cited by the prosecution but waived) pointed out a heap of burnt cloth in the fireplace inside U Saw's kitchen, from which was picked up a half burnt piece of the 12th Army shoulder-badge (Exhibit 24)—point "N" in the map (Exhibit E). On the 31st July, the appellant Khin Maung Yin produced the two tins of white and yellow paint and the brush (Exhibit 25) from an almirah in the 1st appellant U Saw's bedroom. All these articles were found and seized in the presence of U Ba Kyine (P.W. 37), a Magistrate from Insein, who was specially deputed by the District Magistrate, Insein, to witness the searches. They were duly entered in the Search List (Exhibits 2A to 2C).

The discoveries mentioned above were followed on the 1st of August, 1947, by the confession (Exhibit J) of the approver Ba Nyunt, made before U Hla Gyaw

(P.W. 36), the then 5th Additional Magistrate, Rangoon. Appellant Yan Gyi Aung and Thu Kha gave their confessions (Exhibits Y and Y1) before the same Magistrate on the 2nd August. The next day being Sunday, the confession of Maung Sein (Exhibit Y2) was recorded by the same Magistrate on the 4th August. On the same day, Tun Shein (cited but waived) pointed out the spot in the lake near the 1st appellant's house, from where a motor-car number plate (Exhibit 1D) with the number RB 9831 in yellow paint was salvaged by the diver Pascoe (P.W. 46)—point "P" in the map (Exhibit E). On the 5th August, the appellant Maung Ni gave his confession before U Hla Gyaw, and on the same date, appellant Yan Gyi Aung pointed out a place in the lake, from which the diver Pascoe recovered the number plate (Exhibit 1C) bearing the number RA 3123—point "Q" in the map (Exhibit E). On the 6th August, the appellant Khin Maung Yin's confession (Exhibit Y4) was recorded by U Hla Gyaw. A further search in the bed of the lake in the immediate vicinity of the 1st appellant's house was conducted by Lieutenant Coulson (P.W. 32) and his men, including Sapper Jit Singh (P.W. 33) and Bim Row (P.W. 34). The search was systematic and it began on the 6th August. It was continued day to day until the 14th August. The search party started working from the steps from the point marked "W" in the map (Exhibit E) and worked towards the north and north-west. When that area was finished, they went over to the side of the shrine, working eastwards. On the 12th August, they started from the shrine, working towards the steps. It was in this third area that the number plate bearing the number RC 1814 in yellow paint on one side and RB 4140 on the other was found at a spot about 22 feet to the east of the shrine—point "R" in the map (Exhibit E).

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Meanwhile, on the 8th August, 1947, an identification parade was held in the Town Lock-up, Rangoon, under the supervision of U Aung Chein (P.W. 35), a Stipendiary Magistrate of Rangoon. U Htin Baw (P.W. 12) identified the appellant Maung Soe as one of the four men in Army uniform whom he saw walking along the verandah of the west wing of the Secretariat Building on the morning of the occurrence and entering the Council Room immediately before the shooting took place. Maung Thaung Sein (P.W. 14), the *minsay* whose duty was to wait at the door of the Hon'ble U Aung San's room, identified the appellant Thet Hnin as another of these four men. U Htin Baw and Maung Than (P.W. 15) identified the appellant Yan Gyi Aung as the third of the four men. Maung Ohn (P.W. 16) and Maung Htwe (P.W. 17) identified the appellant Thu Kha as the driver of the jeep in which the assassins escaped after the murders were committed.

Out of the six appellants who gave confessions, appellant Ba Nyunt was granted a conditional pardon by the District Magistrate, Rangoon, and he was made an approver in the case. The prosecution sought to establish by the evidence of the approver, the confessions of the other five accused in the case, the evidence of the watchers Maung Hla Tin (P.W. 47) and Aung Kyaw Sein (P.W. 31), the evidence of the witnesses who identified appellants Maung Soe, Thet Hnin, Yan Gyi Aung and Thu Kha, and the circumstantial evidence in the case, that the assassinations of the Hon'ble U Aung San and the Councillors of the Governor's Executive Council took place as a result of the conspiracy which was hatched by the appellant U Saw as the chief conspirator, and the other appellants, who were his followers.

Before the Special Tribunal the approver adhered to the story told by him in his confession; so did the

appellants Maung Sein, Thu Kha and Khin Maung Yin. The appellant Maung Ni tried to vary the statements contained in the confessions by making statements more advantageous to him when examined as a witness on behalf of his own defence. The appellant Yan Gyi Aung resiled completely from the story told by him in his confession, and alleged that it was a false confession which had been extorted from him by the police by threat and torture. The appellants U Saw, Maung Soe, Thet Hnin and Hmone Gyi denied their complicity in the conspiracy or in the murders committed in pursuance thereof and disclaimed all knowledge about them. U Saw's defence was that he was ill in bed on the morning of the 19th July, 1947. Maung Soe, Thet Hnin, Yan Gyi Aung and Hmone Gyi pleaded *alibis*.

The learned Members of the Tribunal, after a careful examination of the evidence adduced for the prosecution and for the defence, came to the conclusion that the appellants should be convicted and sentenced as already mentioned above : hence this appeal.

The decision of the Tribunal has been attacked on the ground that it is wrong both on facts and in law. At the very outset it has been urged that the Special Tribunal had no jurisdiction whatsoever to try the case against the appellant U Saw and the other appellants in this case, as the Special Tribunal Act was *ultra vires*. In our opinion, this contention cannot prevail. Now, section 1 of the Government of Burma (Temporary) Provisions Act, 1945, which was published in the Government of Burma, Home Department, Notification No. 94, dated Simla, the 24th July, 1945, is in the following terms :

"Notwithstanding anything in the proviso to sub-section (3) of section 139 of the Government of Burma Act, 1935, the Proclamation under that section, made on the tenth day of December, 1942, and any proclamation made after the passing of

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this Act varying that proclamation, shall not cease to be in force by reason only that it has been in force for three years, and any such proclamation which would, but for this sub-section, cease to be in force for that reason, shall, if the resolutions in that behalf required by the said proviso are from time to time passed by both Houses of Parliament, continue in force, unless revoked, until the ninth day of December, 1948."

The requisite proclamation, which was passed by the House of Commons on the 2nd of April, 1947, was in the following terms :

"RESOLVED that this House approves the continuance in force of the proclamation issued under section 139 of the Government of Burma Act, 1935, by the Governor of Burma on the 17th October, 1945, a copy of which proclamation was presented on the 22nd February, 1946."

(*vide* Hansards Parliamentary Debates, House of Commons, Volume 435, No. 81, page 2144).

The Resolution in the House of Lords, which was passed on the 15th April, 1947, was also in the following terms :

"That this House approves the continuance in force of the Proclamation issued under section 139 of the Government of Burma Act, 1935, by the Governor of Burma on the 8th October, 1945, a copy of which was presented to this House on February 26th, 1946."

(*vide* Hansards Parliamentary Debates, House of Lords, Volume 146, No. 56).

Therefore, at the time the Special Crimes (Tribunal) Act, 1947 (Burma Act LIII of 1947), was enacted on the 30th August, 1947, the Proclamation issued under section 139 of the Government of Burma Act, 1935, by the Governor must be deemed to be still in force, and the Governor must be deemed to have all the powers vested in and exercisable under the Act by the Legislature of Burma in either Chamber thereof.

In the case of *Chitambaram v. The King-Emperor* (1) where the main specific objection taken on behalf of the appellants was that the Governor had infringed the provisions of the proviso to section 131 of the Government of Burma Act, 1935, by enacting the Special Judges Act (Burma Act X of 1943), because he had, by that Act, assumed to himself the powers vested in, or exercisable by, the High Court, or had suspended the operation of the provisions of the Act in relation to the High Court, it was pointed out by their Lordships of the Privy Council that the Governor did not interfere with the High Court or its jurisdiction. Their Lordships observed that there was nothing to give exclusive jurisdiction to the High Court, and that it was a fallacy to say that, by establishing a new Court, the Governor was assuming to himself the powers vested in the High Court, that he was not making himself the Judge, and that he was entitled to vest the right to appoint the Judges of the new Court as he did in the Special Judges Act. It was also pointed out that there was no law to prohibit the Legislative Assembly in Burma from establishing a new or collateral Court. In our opinion, the observations of their Lordships in regard to the Special Judges Act (Burma Act X of 1943) apply with equal force to the Special Crimes (Tribunal) Act, 1947. The fact that at the time of the setting up of the Special Crimes Tribunal the High Court of Judicature at Rangoon was holding its Criminal Sessions is quite irrelevant.

The next contention which was raised by the learned counsel for U Saw was to the effect that the trial was unsatisfactory because U Saw did not have the opportunity of having himself defended by a lawyer of his choice. Now, section 340 of the Criminal Procedure Code provides that any person

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accused of an offence before a criminal Court, or against whom proceedings are instituted under the Code in any criminal Court, may of right be defended by a pleader. U Saw was in fact defended by a pleader, Mr. Vertannes, briefed by him right from the beginning of the trial, which began on the 15th October, 1947. We have no doubt that "the learned counsel from England" referred to in the Diary entry dated the 8th October, 1947, was not Mr. Vertannes but a King's Counsel from England whose services U Saw was trying to procure. However, it would appear that U Saw was satisfied with the services of Mr. Vertannes at the preliminary stages of the proceedings. The reference to "learned Counsel from England" again appears in the Diary entry dated the 4th November, when Mr. Vertannes asked for an adjournment for a fortnight to enable the learned counsel from England to appear for U Saw. The hearing was adjourned till the 17th of November, 1947. On the latter date, the Court was informed that, according to a cablegram from one "Gyi", Mr. Curtiss-Bennett, K.C., had lost his priority in respect of a seat on the seaplane which he had booked, owing to the delay in remitting his fees. Mr. Vertannes, on being asked to communicate by cablegram with Mr. Curtiss-Bennett, promised to do so, and the case was adjourned for mention on the 20th November, 1947. On that day, Mr. Vertannes produced a cablegram from Mr. Gyi stating that both the solicitor and Counsel would be cabling to him from London, and the case was again adjourned till the 21st November, 1947. On the next date Mr. Vertannes produced a cablegram from Mr. Curtiss-Bennett stating that he had been briefed for the defence of U Saw, that he was waiting for an Air passage and that he would cable the date of his arrival in Rangoon as soon as it could

be ascertained. The Court then refused to give any adjournment further than the 24th November, 1947, on the ground that the date of Mr. Curtiss-Bennett's arrival was uncertain. The case then proceeded from day to day from the 24th November, 1947. On the 25th as well as on the 26th, November, Mr. Vertannes applied for an adjournment on the ground that Mr. Curtiss-Bennett would arrive on the 5th or the 6th December, but the Tribunal refused to give the adjournment asked for. Mr. Curtiss-Bennett actually appeared for the first time on the 8th December, 1947. It has been strongly urged by the learned counsel for the appellant that after being definitely told of the date of Mr. Curtiss-Bennett's arrival, the Tribunal should have adjourned the case to a date subsequent to the 6th December, 1947. However, a perusal of the proceedings would show that many witnesses for the prosecution had already been summoned to be examined on the dates subsequent to the 24th November, 1947, and that to allow an adjournment asked for, would mean that all these witnesses would have to be resummoned. In these circumstances, and considering that U Saw was still represented by Mr. Vertannes who appeared for him from the very beginning, we do not see how the Special Tribunal could be blamed for refusing to give any further adjournments. Furthermore, after the arrival of Mr. Curtiss-Bennett, the defence was given every opportunity of recalling any of the prosecution witnesses who had already been examined for the purpose of further cross-examination. If the defence did not take full advantage of that concession, the blame could scarcely be attached to the Tribunal. The contention that U Saw did not have a fair trial because he was not given an opportunity of being defended by a pleader of his choice is not really borne

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out by the facts mentioned above ; in fact, the learned counsel from England seems to have taken full advantage of the privilege accorded to him of recalling such of the prosecution witnesses as he wished to have for further cross-examination.

The next important point of law which we should discuss at this stage is whether the confessions given by Maung Sein, Yan Gyi Aung, Thu Kha, Khin Maung Yin and Maung Ni should be ruled out as inadmissible under section 24 of the Evidence Act, which provides that " a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person proceeding from a person in authority and sufficient in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him." Now, it has been held in *The King v. Hla Maung* (1), following the decision in *The King v. San Myint* (2), that the phrase " appears to the Court " occurring in section 24 shows that something less than positive proof in the nature of a well-grounded conjecture or probability though not a mere possibility, that the confession is not voluntary, is sufficient.

[The learned Judges then discussed the evidence and added :]

We are firmly convinced that by the date the approver Ba Nyunt gave his confession there was such a mass of circumstantial evidence connecting the

(1) (1946) Ran. 102.

(2) (1939) Ran. 97.

appellants with the crime that the appellant who did give the confession realized that the game was up and that the only salvation, if any, lay in making a clean-breast of the whole affair.

It has been contended on appellant's behalf that the Magistrate U Hla Gyaw (P.W. 36) who recorded the confessions in this case contravened the rules framed by this Court in its Notification No. 6 (General), dated the 19th September, 1946, in that the confessions were, as admitted by the Magistrate, not recorded in open Court and during Court hours and the confessors were not remanded to a jail. U Hla Gyaw explains that to avoid publicity and to ensure the safety of the confessors themselves he had each confessor brought before him at 6 a.m. in the Senate Hall on the top floor of the Law Courts Building and after giving him two hours' time for reflection would begin recording his confession at about 8 a.m. He apparently adopted the same procedure as regards each and every one of the confessors and recorded the confessions of Ba Nyunt, Yan Gyi Aung, Thu Kha, Maung Sein, Maung Ni and Khin Maung Yin and the statements of Thet Hnin and Hmone Gyi from day to day from the 1st August, 1947. Considering the fact that feelings were running high at the time, we are of the opinion that the Magistrate in taking the precautions he did, exercised a wise discretion. After all, the rules in question are in the nature of counsels of prudence rather than rules of law to be rigidly observed in each and every case. This is clear from rule 1 of the rules, which prescribes that a confession should ordinarily be recorded in open Court and during Court hours but that in exceptional circumstances the rule may be relaxed. Regarding the contention that the confessors should have been remanded to a jail, the Magistrate says in effect that he had no choice in the matter since

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the confessors were then under detention under section 5 of the Public Order Preservation Act, and he allowed the police officers who had brought the confessors before him to take them away after the confessions had been recorded. In the circumstances mentioned by the Magistrate we do not think that there was any deliberate infringement of the rules framed by this Court. In *Emperor v. Panchkowi Dutt* (1) it was held that a contravention of the rules of the Calcutta High Court similar to the rules of this Court for recording the confessions of accused persons, though to be deprecated, did not render a confession inadmissible if the Court was satisfied that it was voluntary.

The next point urged before us is that although, according to U Thein Ohn (P.W. 49), it was on the 25th July, 1947, that Khin Maung Yin and Maung Sein expressed their willingness to confess, they were not produced before the Magistrate till the 1st August following. U Thein Ohn explains the delay by saying that he immediately reported the matter to his superior officers and that at the time the situation in the country was uncertain and there were several matters requiring attention. U Thein Ohn's explanation is not unreasonable, and in the circumstances of this case the utmost that can be said against the confessions is that they should be treated with caution; and if after due caution has been exercised we are satisfied that the confessions are free and voluntary we may proceed to consider whether they are true also.

Now, the Magistrate has complied with the provisions of law embodied in sections 164 and 364 of the Code of Criminal Procedure. He put questions to the confessors to ascertain whether they wished to

(1) I.L.R. 52 Cal. 67.

confess voluntarily, he gave them time for reflection, he examined their persons carefully for marks of violence, and they told him that they desired to confess having been seized with remorse. That the precautions taken by the Magistrate were effective in securing free and voluntary confessions is clearly borne out by the facts that out of the eight persons produced before him two men merely contented themselves with making statements without implicating themselves and that of the six persons who confessed five including the approver Ba Nyunt have adhered to their confessions throughout and the sixth person who has gone back on his confession, Yan Gyi Aung, is closely related to the principal appellant U Saw.

For these reasons we consider the confessions to be voluntary.

[The learned Judges then discussed the evidence of Ba Nyunt and held that his evidence was corroborated in material particulars.]

The confessions, both retracted and unretracted, are sufficient evidence as against the confessors if the Court is satisfied of their truth. However, before they can be considered as lending assurance to the testimony of the approver as against the other co-accused in the case, the ruling in the case of *The King v. Nga Myo* (1), we consider, is apposite. In regard to the co-accused in the case, the corroboration required is corroboration in material particulars connecting or tending to connect each of the accused with the offence. It is not enough that the corroboration shows the approver to have told the truth in matters unconnected with the guilt of the accused. However, provided that it has been established by extraneous evidence or *matters appearing on the record*

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that the accomplices are not acting in collusion with one another, the cumulative effect of the evidence of two or more of them may be sufficient to remove the *prima facie* presumption of the individual unworthiness of credit of their statements, and if this be the case, a conviction may legitimately be recorded upon their statements alone, if the Court is convinced of their truth. The same observation applies to the cumulative effect of the evidence of an accomplice and the confession of the co-accused where the presumption of their unreliability has, in the special circumstances, been rebutted.

Now, by illustration (b) to section 114 of the Evidence Act "the Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars." The Court should, however, have regard to the following facts in considering whether the above maxim does or does not apply to the particular case before it: A crime is committed by several persons: A, B and C, three of the accused are captured on the spot and kept apart from each other: each accused gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert *highly improbable*.

The example just quoted is an instance where three of the criminals gave confessions in such circumstances as to make previous concert among them highly improbable. However, one can easily envisage circumstances which render previous concert "highly improbable", even though the accomplices have not been kept apart from each other.

In the present case, the approver Ba Nyunt, the appellant Khin Maung Yin and the appellant Yan Gyi Aung were, no doubt, kept together for a few days in Insein Jail after their arrest and before they were brought to the Town Lock-up. Therefore, it

cannot be said that they had no opportunity of having a discussion before they gave confessions in this case. Nevertheless, in our opinion the circumstances are such as to make it highly improbable for Khin Maung Yin and Yan Gyi Aung to have colluded with Ba Nyunt in order to give a confession falsely implicating the appellant U Saw. U Saw's wife is the own aunt of the appellant Khin Maung Yin, while Yan Gyi Aung's father is U Saw's own cousin. If, as has been suggested on behalf of the defence, it was really Ba Nyunt, and not U Saw, who had been the chief conspirator in this case, we see no possible reason why these two appellants should have falsely stated that U Saw was the chief conspirator. Therefore, we consider that the confessions of Khin Maung Yin and Yan Gyi Aung should be taken as in corroboration of the testimony of the approver Ba Nyunt, even if the same cannot be said about the confessions of the other co-accused in the case.

[The learned Judges then discussed the corroborating evidence in detail and held that Ba Nyunt's evidence has been corroborated.]

The nine persons whom the approver Ba Nyunt had implicated were persons residing with him at that time, inside U Saw's compound. The appellants Maung Soe, Thet Hnin, Thu Kha and Maung Sein were occupying the same corrugated iron hut with Ba Nyunt. Khin Maung Yin and his wife occupied a room in the small brick building (shown by the letter "Z" in the map, Exhibit E), the other room being occupied by Maung Ni and his wife. Hmone Gyi used to sleep in the barrack near the gate as he had to act as a night watchman. Out of the nine appellants five gave confessions more or less corroborating the approver's story and only one Yan Gyi Aung resiled

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from it, he being a close relation by blood of the appellant U Saw. These and the other circumstances already mentioned above afford strong corroboration of the general truth of the approver's story.

As for the confessions given by the appellants it will be convenient for us to deal with them when the case against each of them is considered; otherwise there will be unnecessary repetitions. At this stage we would like to lay down the law as we understand it of the use to be put of the statements made by the appellants when they were examined under the provisions of sub-section (2) of section 342 of the Criminal Procedure Code as amended by the Code of Criminal Procedure (Amendment) Act (Burma Act XIII of 1945). As regards the law as it stood before section 342 of the Criminal Procedure Code was amended, the following observations of a Bench of Nagpur High Court in the case of *Mt. Sumitra v. King-Emperor* (1) seem apposite :

"The question of law which arises for consideration at this stage is whether these statements made under section 342, Criminal Procedure Code, can be taken into consideration under section 30, Evidence Act, as if they were confessions recorded under section 164, Criminal Procedure Code (read with section 364, Criminal Procedure Code). In 27 Nagpur Law Reports 163 it was held that they were admissible under section 30, Evidence Act. There is however a divergence of judicial opinion on this point as will be evident from 45 All. 323, 54 Bom. 531, 54 Mad. 788 and 16 Lah. 651.

In 45 All. 323 Walsh J. held that the expression 'proving a confession' is inapplicable to the procedure where a Judge asks questions and an accused person gives explanations under section 342, Criminal Procedure Code, and that even if that statement amounts to a clear confession of his own guilt it cannot be taken into consideration under section 30, Evidence Act, against the co-accused. The learned Judge interpreted the word 'proving' occurring in section 30, Evidence Act, as meaning

(1) A.I.R. (1940) Nag. 297.

tendering evidence at the trial that on some previous occasion the accused made a confession. He also pointed out that to permit any material to be used against an accused such as a confessional statement made by his co-accused in the dock would be tantamount to re-opening of the case for the prosecution to enable it to make additions to it and that such a procedure could not have been contemplated by section 30, Evidence Act, inasmuch as it would be repugnant to the first principles of criminal law. This view was accepted as sound by the Madras High Court in 54 Mad. 788 and A.I.R. (1929) Mad. 285 in preference to the opposite view taken in 38 Mad. 302.

In 54 Bom. 531, Mirza J. discussed the question at some length and concluded that the language of section 30 did not justify a distinction between a confession made by an accused person before the trial and one in the course of the trial. Broomfield J., who was a party to the Division Bench which heard the case conceded the cogency of the reasoning of Walsh J. in 45 All. 323 and was inclined to the view that the language of section 30 was clearly not very appropriate to the statement made or put in from the dock. The learned Judge was, however, not disposed to put a too restricted interpretation on the word 'confession' and the word 'proof' and regarded the nature of section 30, Evidence Act, as wide enough technically to cover a confessional statement made or put in from the dock. It is clear that it was with some hesitation that the learned Judge dissented from the view taken by Walsh J. in the Allahabad case. In 16 Lah. 651 the learned Judge who decided the case took the view that the word 'proof' occurring in section 30, Evidence Act, when understood in the light of the definition of that word given in section 3 of that Act, could be taken into consideration as a matter before the Court although not as evidence.

This reasoning is not very intelligible. The statement recorded by the Court under section 342, Criminal Procedure Code, is indeed 'a matter before the Court' and that matter, although it happens to be a confession, would require no proof whatever. There is obviously a difference between proof a confession and proof of a fact. A confession is proved like of any piece of documentary evidence if it is in writing or by the mouth of witnesses if it is oral. Confession, it is well known, are of two kinds, judicial and extra judicial. A judicial confession is recorded by the Magistrate and it proves itself by virtue of

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section 80, Evidence Act. Extra judicial confessions are those which are made by a party elsewhere than before a Magistrate. They are proved by witnesses who heard the speaker's words constituting the confession. When the fact of the confession is proved, that itself becomes evidence which serves as a means to the ascertainment of the fact in issue. The definition of the word 'proved' given in section 3, Evidence Act, relates to proof of a fact in issue and not a statement recorded by the Court in the presence of the persons under trial. Section 30 speaks of the proof of a confession and not proof of a fact in issue. When the confession is actually recorded by the Court in the presence of the accused persons it is such a patent fact that no evidence is required to prove that the statement was made. When the meaning of the words used in section 30 are so clear there can be no room for any interpretation. The word confession used there clearly means such a confession as is required to be proved at the trial as a part of the prosecution evidence. It cannot therefore signify any matter which comes on the record at the end of the prosecution evidence."

We have looked at all the cases referred to in the above observation and we entirely agree that the statement made by a co-accused confessing partially or wholly his guilt when examined under section 342, Criminal Procedure Code, cannot be taken into consideration under section 30, Evidence Act, against the other accused. All the more so, when as in this case the examination under sub-section (2) of section 342, as amended, was only made after the appellants have been called upon to enter upon the defence.

As regards the evidence given by an accused under sub-section (1) of section 342 of the Criminal Procedure Code, as amended, it is clear from proviso (b) to that section that such evidence may be used against the co-accused in the case. The weight to be given to such evidence will of course depend upon the circumstances of each case.

The admissions made by the appellants when they were examined under section 342 (2) of the Criminal

Procedure Code, as amended, are however valuable as showing that they have been telling a consistent story throughout.

The case against each of the appellants will now be discussed.

[The learned Judges then discussed the evidence against each of the accused separately and found them guilty and then proceeded to consider U Saw's case.]

Last but not least we come to U Saw who has been characterized by the prosecution as the chief conspirator or the brain directing the assassination which took place on the morning of the 19th of July 1947. The circumstances which appear to us to have been established against U Saw by the evidence on record will be stated below :

(1) All the assassins who entered the Council Chamber on the morning of the 19th of July to carry out the assassination resided in his compound.

(2) Three of these men Maung Soe, Thet Hnin and Maung Sein were senior members among those residing in his compound and Yan Gyi Aung is the son of his own cousin.

(3) Of the persons who went in the Fordson Truck Khin Maung Yin is his wife's nephew and Ba Nyunt has been described by himself as having obtained eminence among his followers.

(4) The jeep which carried the assassins to and from the Secretariat Building was his and it went out of his compound at about 10-5 a.m. on the 19th of July to return thereto at about 11 a.m.

(5) The Fordson Truck which took Ba Nyunt and others that morning was his. It left his compound at about 8-30 a.m. to return thereto about 5 minutes after the return of the jeep.

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(6) All the weapons used by the assassins which were discovered in the water near his shrine on the 20th July have been satisfactorily identified, as those used in the assassination.

(7) All the assassins were arrested in his compound about four hours after the assassination.

(8) Two of the assassins gave confessions implicating him, so did four others implicated in the crime.

(9) Out of the confessors, one turned approver and four others adhered to their confessions. The one who resiled is his own nephew.

(10) One of the confessors (Khin Maung Yin) is the nephew of his wife while the other is his own.

(11) The confessions were found to be voluntary and true and in so far as the confessions of Khin Maung Yin and Yan Gyi Aung are concerned it was held that these confessions could not have been made in collusion with the approver.

(12) One of the watchers Aung Kyaw Sein saw him come up to the truck to give something before the truck left his compound that morning.

(13) All the conspirators were under oath of fidelity to him.

It has been strenuously urged on behalf of this appellant that the whole case has been fabricated by the police against him. It has also been suggested that if any one of the inmates of his compound took part in the conspiracy to murder the Executive Councillors it was entirely without his knowledge and consent and that he would have disapproved of such a conspiracy if he had known about it. It was also suggested that the chief conspirator was probably Ba Nyunt, who after having carried out his nefarious design attempted to throw the blame on him in collusion with the other persons who gave confessions. It was also

urged that if U Saw had been the brain of the enterprise he would not have made such elementary errors as to direct the jeep to come out of the Secretariat compound by the Sparks Street gate (which would have involved a circuitous route round the south of the Secretariat compound to get to Judah Ezekiel Street), or to allow the assassins to return to his compound after the crime was committed.

None of these contentions are, in our opinion, tenable. There seems no reason why the police should have fabricated the case against U Saw so as to exonerate the real leader of the enterprise. Furthermore, in view of the circumstances mentioned it is impossible for the assassins and the abettors to have left U Saw's compound and return thereto without his knowledge. Even if Ba Nyunt wished to foist a false case on U Saw it is most unlikely that Khin Maung Yin and Yan Gyi Aung would have been a party to it. As regards the jeep leaving the Secretariat compound by the Sparks Street gate it must be remembered that that gate was the closest to the western porch of the Secretariat Building and that to leave the compound by the Judah Ezekiel Street gate would have involved the crossing of the quadrangle between the western and the eastern wing of the Secretariat. Furthermore, there is in evidence that the offices of the Inspector-General of Police and the C.I.D. were at the south-eastern corner of the Secretariat Building and that in fact a meeting of high police officers was in progress in the Chamber of the Inspector-General of Police at the time of the assassination. As regards the reason why the jeep with the assassins was allowed to return to U Saw's compound after the assassination, this was the safest thing to do. There is in evidence the fact that by about 11 a.m. U Po Sein (P.W. 18) had sent out radio messages to all parts of the city to keep a

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look-out for a jeep and to search all moving jeeps. Such a contingency must have been envisaged by U Saw at the time he directed that the jeep should return to his house after committing the crime. Furthermore, it could hardly be envisaged by him that the police would have raided his house four hours after the assassination. In fact but for the foresight of U Tun Hla Oung (P.W. 38) in enlisting the help of Mr. Khan to keep a watch over the house and compound of U Saw in view of the recent cases of theft of the Bren guns and ammunition in which U Saw was suspected to be involved, the public spiritedness of Mr. Khan and the large measure of luck involved in Mr. Khan coming across the jeep carrying the assassins back to U Saw's compound, the probabilities are that U Saw's house would not have been raided at all and this crime remain undetected till to-day.

U Saw's defence was that he was more or less confined to his bed on the morning of the 19th of July. In this case he is supported by the evidence of U Tin Ohn (D.W. 3), Hla Myat Soe (D.W. 5), and Kyaw Than (D.W. 6). However, these witnesses are probably friends and adherents of U Saw and the evidence such as that given by them does not inspire confidence.

U Saw must be convicted of the offence of abetment of murder on the evidence of the approver, the confessions of the co-accused especially Khin Maung Yin and Yan Gyi Aung and the other circumstantial evidence on record.

It now remains to be considered under what sections of the Penal Code the appellants should have been convicted. As the crime was committed before the 1st of August 1947 on which date Burma Act XXXIII of 1947 came into force, the conviction should be under section 302 of the Penal Code read with

section 34 of the Penal Code or section 302 of the Penal Code read with section 109 of the Penal Code as the case may be. In this connection compare the case *Shwe Hla U v. The King* (1) where it was held that of the provisions of Burma Act IV of 1940 which amended section 397 of the Penal Code having come in force only on the 16th of March 1940, the provisions of section 397 of the Penal Code as they existed prior to the amendment were applicable to a case in which the robbery took place before the 16th of March 1940 although the accused was convicted after that date.

The convictions recorded against the appellants by the Special Tribunal will be amended by the substitution of section 302 of the Penal Code wherever section 302 (1) (b) occurs.

As regards sentences we do not see how under the circumstances obtaining in this case we can reduce the sentence on any of the appellants. Each had a vital part to play in the conspiracy which led to the assassination of the Hon'ble U Aung San and some of his colleagues besides U Ohn Maung and Maung Htwe. It is difficult for us to find any judicial reason for interference and as pointed out by Sir Arthur Page in *Aung Hla v. King-Emperor* (2) the question whether mercy should be extended to any one of the appellants is a matter with which this Court is not concerned, the prerogative of mercy resting in other hands.

Before we leave this case we must again reiterate our appreciation of the manner in which the appeal has been argued by the learned counsel for the appellant U Saw. If we did not mention in this judgment all the points both large and small raised by him in his argument and also set out in his written argument it is not because we have not carefully

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(1) (1941) Ran. 58.

(2) 9 Ran. 433.

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considered them. On a review of the whole case we are firmly of the opinion that the case against all the appellants have been so fully established by the prosecution that it is not necessary for us to cumber these proceedings by writing a lengthier judgment than this.

We would also like to mention that we have not made any local inspections because we found that it was not necessary for the purpose of appreciating the evidence on record. The Maps and the Memorandum of local inspection recorded by the learned Members of the Special Tribunal were quite sufficient for our purpose.

In the result the appeals fail. The convictions and sentences on the appellant U Saw and the other appellants will be confirmed except that section 302 of the Penal Code will be substituted for section 302 (1) (b) wherever it occurs. The appeals are otherwise dismissed.