

APPELLATE CRIMINAL.

Before U Thein Maung, Chief Justice, and U San Maung, J.

MAUNG SHIN AND TWO OTHERS (APPELLANTS)

v.

THE UNION OF BURMA (RESPONDENT).*

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Confession—Evidence Act, s. 30—S. 32 (3), Admissibility of—Murder committed in effecting safe retreat if in the course of dacoity—Sentences.

Held : That the confession of an accused person who is dead implicating himself and an accomplice in a crime is admissible under s. 32 (3) of the Evidence Act and is not excluded by illustration (b) to s. 30. But where the alleged confession does not expose the confessor to a criminal prosecution though it may contain "admission of a gravity incriminating fact or even a conclusively incriminating fact", it is not a confession.

Nga Po Yin v. King-Emperor, (1904—06) 1 U.B.R. 3 (Ev.), referred to and *Pakala Narayana Swami v. Emperor*, A.I.R. (1939) P.C. 47 at p. 52, followed.

Held : That where murder is committed in the course of effecting a safe retreat it is committed in the course of the dacoity.

Tha Nge Gyi and Nga Mya v. The King, (1946) R.L.R. 229, referred to and followed.

Sentence of appellant Maung Pay who was only 17 years old at the time of the commission of the offence and played a very minor part by keeping watch, was reduced from death to ten years' rigorous imprisonment.

Hla San v. The King, (1941) R.L.R. 595, followed.

A. N. Basu for the appellants.

Tin Maung for the respondent.

U THEIN MAUNG, C.J.—The appellants Maung Shin (a) Shwe-thitsa-mandaing Mahamyaing Aung Maung, Maung Pay and Ohn Sein have been found guilty of an offence under section 396 of the Penal Code and all of them have been sentenced to death by the First Special Judge, Thayetmyo.

The case for the prosecution is as follows. A gang of 15 dacoits, each of whom was armed with a rifle and

* Criminal Appeal No. 358 of 1948; appeal from the order of First Special Judge of Thayetmyo, dated the 10th April 1947, in Criminal Regular Trial No. 84 of 1947.

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whose leader was armed with a revolver also, arrived at Ahtetkyi village a little after midnight on the 7th *lasan* of *Nayon* 1309 B.E. (25th May 1947) and asked the villagers to supply them with mats and blankets. So six of the villagers, namely, Maung Po Htin (P.W. 6), Maung Me (P.W. 7), Maung Ngwe Khe (P.W. 8), Maung Tha Htan, Maung Nyi Nge and Maung Kya Khet supplied them with 3 mats and 12 blankets at their camp outside the village. At about 8 a.m. on the following morning, the same villagers, with the exception of Maung Kya Khet, had to go to the dacoits' camp and supply them with morning meal as required by them. Thereafter the dacoits proceeded to Thazi which is a few miles to the west of Ahtetkyi. They arrived at Thazi before 10 o'clock in the same morning and their leader ordered the villagers thereof to bring Rs. 200 to him at Sanywa on the same day. The dacoits also wrote a letter to the villagers of Ywatha-hla and Zeebyukwin which are within a short distance from Thazi asking them to bring Rs. 200 to Sanywa on the same day. The dacoits left Thazi for Sanywa *via* Shangone which is only about a call away from Thazi shortly after they had ordered the villagers of Thazi and written to the villagers of Ywatha-hla and Zeebyukwin as stated above.

The dacoits arrived at Shangone at about 10 o'clock the same morning. There they called upon all the villagers to parade in the middle of the village, ransacked all the houses in the village and also took a gold ring from U Po Hla (P.W. 1). Thereafter their leader told U Po Hla that he must raise a sum of Rs. 200 from his villagers and pay it to him in the course of the day at Sanywa. They then left the village taking away Ma San Yi (since deceased), Ma Ngwe Sein (since deceased), Ma Ya Lay (since deceased), and Ma Than Kyi (P.W. 4) as hostages.

When they got to Sanywa, the dacoits put up in the house of the late Maung Tun Yan's widow Ma Pha. They kept three of the hostages, namely, Ma San Yi, Ma Ngwe Sein and Ma Ya Lay tied up together with a rope under a tamarind tree between Ma Pha's house and the next house thereto. However, Ma Than Kyi, the remaining hostage, who was only 12 years of age, was required by the leader of the dacoits to massage him in Ma Pha's house.

The villagers of Thazi who could raise only Rs. 100 deputed Maung Tun Yin (P.W. 5) and Maung Kan (P.W. 25) to go and pay the money on their behalf to the leader of the dacoits. Tun Yin and Maung Kan accordingly went and offered Rs. 100 to the leader of the dacoits in Ma Pha's house at Sanywa, but the latter said that he was astonished to have been offered such a small sum when he was such a notorious leader and that he would attack Thazi if the villagers failed to pay the full amount of Rs. 200. So Maung Tun Yin had to go back to Thazi to get another sum of Rs. 100 leaving Maung Kan "as security". Maung Tun Yin succeeded in raising another sum of Rs. 100; so he came and paid the money to the leader of the dacoits and the latter allowed him to take his companion Maung Kan away with him. On their way back to Thazi, Tun Yin and Maung Kan came across four or five dacoits who were on *kin* duty on a hillock in the north of Sanywa. The dacoits detained them there for a while and asked them whether they had paid the money to the leader.

The villagers of Ywatha-hla and Zeebyukwin also raised Rs. 50 each and deputed Tun Han, Po Han and Maung Khin (P.Ws. 10, 11 and 12) to go and pay the money to the leader of the dacoits at Sanywa. Tun Han, Po Han and Maung Khin accordingly went and offered the money to the leader of the dacoits at Ma Pha's house

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in Sanywa. However, the latter was dissatisfied as the amount was small and threatened "to show his ability". So Tun Kyi, one of the dacoits had to take them away from the leader saying that he would "show his own ability". Tun Kyi then detained them at a place about 20 cubits away from the three women captives. However, they managed to escape when the *Yebaws* arrived at the village.

The villagers of Shangone also raised a sum of Rs. 45 and deputed Maung Kyaw Hla (P.W. 2), Maung Kya Zwe (P.W. 3) and Maung San Aye (since deceased) to go and pay the money to the leader of the dacoits at Sanywa. When they got to Ma Pha's house in Sanywa village, Kyaw Hla alone went up and offered the money to the leader of the dacoits and his companions, Kya Zwe and San Aye, remained near the three captives, Ma Ya Lay, Ma San Yi and Ma Ngwe Sein; Ma San Yi being Kya Zwe's wife and Ma Ngwe Sein being San Aye's wife. The leader of the dacoits being dissatisfied, Maung Kyaw Hla had to explain to him that his villagers had become poor on account of several demands which had been made by other dacoits. Just as he was giving the said explanation, some dacoits outside the house shouted to their comrades that *Yebaws* had arrived and that they should take cover. Then there was a commotion. Kyaw Hla ran away from the house and Ma Than Kyi climbed up a shelf in the house. San Aye, however, went up to his wife Ma Ngwe Sein and tried to untie the rope around her hands. Just then the leader of the dacoits came down from the house and shot at San Aye and the three women captives with the result that they all died on the spot. Kya Zwe then ran away and there was a fight between the *Yebaws* and the dacoits in the course of which two *Yebaws*, namely, Saw Maung and Paik Tin were shot dead by one of the dacoits. The

rest of the *Yebaws*, i.e. Kya Thi, Po Thaw, Tin Myint (P.Ws. 18, 19 and 20) and others retreated after Saw Maung and Paik Tin had fallen, with the result that the rifles with which Saw Maung and Paik Tin were armed, fell into the possession of the dacoits. The rifle with which Saw Maung was armed was a U.S.A. rifle of '303 bore bearing the No. 95C1846. It was issued by U Thein Aung, Police Station Officer (P.W. 13) to Po Thaw (P.W. 19) and according to both Po Thaw and U Thein Aung it was in the joint charge of Po Thaw and Saw Maung.

After the incident, 9 of the dacoits including the same leader as before went from Sanywa to Shangone. They then had the two rifles which they had seized from Saw Maung and Paik Tin. So they were armed with 11 rifles and the leader was armed with a revolver also as before. When they arrived at Shangone, they collected villagers and ordered them to carry the looted properties to Ywatha-hla and among the villagers who had to carry the looted properties to Ywatha-hla, as required by them, were U Po Hla, Kyaw Hla and Kya Zwe (P.Ws. 1, 2 and 3). Maung Tun Yin (P.W. 5) who happened to be in Shangone village, then, also had to carry some of the looted properties from Shangone to Ywatha-hla.

The dacoits arrived at Ywatha-hla at about 4-30 p.m. on the same day and the leader called upon the villagers to provide them with food and water. Po Han and Maung Khin (P.Ws. 11 and 12) were among the villagers who had to give them food and water in compliance with their order. The dacoits left Ywatha-hla after having their meals and went towards Monda.

In the meanwhile some villagers of Shangone went and saw the dead bodies of San Aye, Ma San Yi, Ma Ngwe Sein, Ma Ya Lay, Maung Saw Maung and Paik Tin. Ma Than Kyi came down from the shelf

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where she had been hiding when she saw the villagers of Shangone and accompanied them back to Shangone.

Then, some villagers of Sanywa sent the dead bodies of those 6 victims to the Civil Hospital at Mindon, and Dr. Singh (P.W. 15) has testified that they all died of gunshot wounds.

About the time of the incident, dacoities were so rampant that there was a reign of terror in the locality and U Po Nwe (P.W. 26), the headman of Thazi village-tract, was living at Kama as he dared not live at Thazi. However, Maung Kan, Tun Yin, Tun Han, Maung Khin and Po Hla reported to him of the incident; and he made notes of their reports and sent them to the police station (*see* Exhibits Q, R, S and T).

Po Kunt, the 1st accused in the case was arrested on the 13th June 1947 and he gave a confession before the Township Magistrate, Thayetmyo, on the 16th June 1947 (*see* Exhibit U). However, he died on the 25th October 1947 before the trial commenced. Ohn Sein, the 3rd appellant, was arrested on the 12th June 1947 and he confessed before the same Magistrate on the 20th August 1947 (*see* Exhibit V).

The first two appellants Maung Shin and Maung Pay were arrested at Mokka village, Ingabu Township, by Saw Khun Doe and Maung Tun Aye (P.Ws. 21 and 22). The circumstances, under which Maung Shin and Maung Pay were arrested, have been described by Maung Shin, who has given evidence on oath in his own defence, as follows. His party consisting of 12 men and 3 women left Thayetmyo District for Henzada District. When they arrived at Theingon village in Kyangin Township, they had an encounter with a party of P.Y.T. headed by Bo Sun Nyo in the course of which the P.Y.T. seized three members of his party, namely, San Kyi, Kyaw Shein and Tun Ngwe

and five firearms. He and the other members of his party managed to escape and went to Mokkha village. On the way to that village they left their firearms, namely, seven rifles and his own revolver hidden on a hill. The member of his party who actually hid them was Tun Tin. All the members of his party were arrested at Mokkha and all the hidden firearms and ammunition were seized by U Hla Bu, Subdivisional Police Officer, Myanaung (P.W. 24), as they were pointed out by Tun Tin himself. Among the rifles so seized was the American rifle bearing No. 95C1846, *i.e.* one of the rifles which fell into the possession of the dacoits on the death of *Yebaw Saw Maung* and *Yebaw Paik Tin*.

The evidence on which the learned First Special Judge has convicted Maung Shin consists of (1) the evidence of the villagers of Ahtetkyi, Thazi, Shangone, Ywatha-hla and Zeebyukwin, including Ma Than Kyi, who have identified him as the leader of the dacoit gang; (2) the confession of Po Kunt; and (3) the discovery of the said American rifle.

Po Htin, Maung Me, Maung Ngwe Khe and three other villagers of Ahtetkyi, namely Maung Tha Htan, Maung Lu Ngo and Maung Kya Khet, identified Maung Shin as the leader of the dacoits at an identification parade which was held on the 26th August 1947 under the supervision of U Maung Gyi (P.W. 16). Maung Shin then told U Maung Gyi that they could identify him as he had once lived in their village Ahtetkyi. However, neither Po Htin, nor Maung Me, nor Maung Ngwe Khe, has been asked in cross-examination if it was not a fact that Maung Shin had lived in their village, and if he had really lived there at all these witnesses would have had all the more reason to be able to recognize him. Moreover, they had ample opportunity to see who the leader of the dacoits was when the

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gang came and commandeered for mats, blankets and breakfast.

Tun Yin and Maung Kan of Thazi have also testified that Maung Shin was the leader of the dacoits and Maung Kan has added that Maung Shin had been known to him about two months before the occurrence as he had to supply him on a previous occasion with some rice and a fowl.

U Po Hla, Kyaw Hla and Kya Zwe of Shangone village have also identified Maung Shin as the leader of the dacoits.

It will be seen from what has been stated above that the villagers of Thazi and Shangone had ample opportunity to see who the leader of the dacoits was.

Ma Than Kyi, who was one of the hostages taken away by the dacoits from Shangone to Sanywa and who had to massage their leader at Sanywa, has also identified Maung Shin as the man whom she had to massage. She has also added that she actually saw Maung Shin fire at San Aye, Ma San Yi, Ma Ngwe Sein and Ma Ya Lay, when an alarm was raised about the arrival of *Yebaws* and when San Aye tried to untie the hands of his wife, Ma Ngwe Sein. There can be no doubt whatsoever of Ma Than Kyi having had a good opportunity to observe who the leader of the dacoits was.

In this connection it may also be noted that Ma Than Kyi's statement that it was Maung Shin who fired at San Aye and others is corroborated by Kya Zwe although this part of their evidence must be received with caution as neither of them has stated to the police that it was the leader who shot at San Aye and three others.

Tun Han of Zeebyukwin and Po Han and Maung Khin of Ywatha-hla have also identified Maung Shin as the leader of the dacoits to whom they

had to go and pay the money. Maung Shwe Saing (P.W. 27) has also identified Maung Shin as the leader of the dacoits, who came to Ywatha-hla village in the afternoon of the 27th May 1947, and explained that he had also seen Maung Shin definitely when Maung Shin and his gang visited his village on a previous occasion about five or six months before the occurrence.

The learned advocate for the appellants has laid stress on the fact that a parade for identification of Maung Shin was held in the Jail of Thayetmyo under the supervision of U San Dun (P.W. 13) on the 25th August 1947, that Kyaw Hla (P.W. 2) alone identified him in that parade and that Po Hla, Ma Than Kyi, Tun Yin, Po Han and Maung Khin did not identify him then. However, the said witnesses have explained that they dared not identify Maung Shin then as prisoners, who ushered them to the parade had intimidated and asked them not to identify him. In this connection, U San Dun has deposed, "The jail atmosphere is rather exciting. I myself felt excitement and some uneasiness. I felt rather timid over seeing the jail population." Mr. Mahmood (P.W. 17) who took the witnesses to the jail, has also deposed that the witnesses told him after the parade, "they did find Maung Shin in the parade but that they purposely refrained from identifying him as some of the convicts inside the jail had threatened them with death if they ventured to point out Maung Shin." The learned Special Judge has accepted the explanation of the witnesses and we do not see any reason to differ from him. The witnesses had ample opportunity to observe who the leader of the gang was and they are all definite in their evidence that Maung Shin was the leader. We cannot believe that as many as 13 witnesses have given their false evidence against Maung Shin or that they had made a mistake about the identity of the leader.

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Yebaw Kya Thee (P.W. 18) has indirectly corroborated their evidence. He has stated that two men who were watching at the western gate of Sanywa fired at the *Yebaws* calling out "Shwe-thit-sa-mandaing Mahamyaing Aung Maung's gang." His statement may be taken together with the statement of Tun Yin (P.W. 5) that when he offered Rs. 100 only, the leader who got offended by the smallness of the amount said that he was Maung Shin otherwise known as Shwe-thitsa-mandaing Mahamyaing Aung Maung and that he was astonished to have such a small sum offered to him when he was such a notorious leader. In this connection, it must also be noted that Maung Shin admits having given his name as Maung Shin (*alias*) Shwe-thitsa-mandaing Mahamyaing Aung Maung to the Magistrate at Ingabu.

The influence of Maung Shin and his gang can be gathered from the evidence of headman U Po Nwe, who dared not live in his own village-tract. He says, "Maung Shin's gang of dacoits was operating recklessly at that time. We dared not mention his name to the authorities at that time." Maung Shin himself has stated that he went to Thayetmyo District in consultation with Tun Shwe, a dacoit leader of Taungsagaing, that he organized a party of his own and collected firearms and ammunitions to revolt against the British, that he remained in the jungles with the followers, about 60 men, for about a year, that 40 to 60 of his followers had surrendered to the police as directed by him and that some more of his men surrendered to the police on the eve of his departure from Thayetmyo District for Henzada District. Under these circumstances, it may well be that there were prisoners in Thayetmyo jail who did not want any witness to identify him.

The learned advocate for the appellants has contended that the alleged confession of Po Kunt is

not admissible in evidence under section 30 of the Evidence Act as Po Kunt was not being tried together with the present appellants and that the learned Special Judge erred in admitting it in evidence under section 32 (3) of the Evidence Act inasmuch as Po Kunt had been arrested before he made the confessional statement. It has been held in *Nga Po Yin v. King-Emperor* (1) that the confession of an accused person, who is dead, implicating himself and an accomplice in a crime is admissible under section 32 (3), Evidence Act, and is not excluded by illustration (b) to section 30 thereof.

According to sub-section (3) of section 32 of the Evidence Act, statements of relevant facts made by a person, who is dead, are themselves relevant facts when the statements, if true, would have exposed him to a criminal prosecution. So for a statement to be admissible under the sub-section, it must be a statement of relevant facts and it must be of such a nature as to expose the person who made the statement to a criminal prosecution. The alleged confession of Po Kunt does not comply with these requirements. His statement relates (1) to his having gone round with some members of Bala's gang and "collected" money from some villagers for Bala, (2) to his having accompanied Maung Shin, Maung Pay, Ohn Sein, and others to Monda, Ahtetkyi and Thazi (3), to his having pleaded with Maung Shin at Sanywa to release the captive women and (4) to his having run away from Sanywa when the *Yebaws* came there. Even if his "collection" of money from other villagers for Bala may be inferred to amount to an offence of dacoity or robbery, he has not expressly stated that he committed any such offence and the question as to whether he committed any such

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offence at the instance of Bala, is not relevant to this case at all. Their Lordships of the Privy Council have observed in *Pakala Narayana Swami v. Emperor* (1) :

“ . . . in their Lordships' view no statement that contains self-exculpatory matter can amount to a confession if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession, e.g. an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession.”

With reference to his statement that he accompanied Maung Shin and others up to Thazi village, he has not stated what was the object of their visit to Thazi village, nor has he stated whether any offence was committed at Thazi village at all. It is quite clear from his statement that he stayed behind at Thazi village and did not know what happened at Shangone village. It is true that he has stated that he went on subsequently to Sanywa and pleaded with Maung Shin when he found that Ma Ngwe Sein and others had been brought as hostages; but this statement like the previous statement about his having accompanied Maung Shin to Thazi cannot expose him to a criminal prosecution. So we are of the opinion that the alleged confession of Po Kunt is not a confession at all so far as this case is concerned and that it is not admissible in evidence against the appellant under section 32 (3) of the Evidence Act.

With reference to the discovery of the American rifle Maung Shin himself admitted in his evidence on oath, “It is true that on our way to Mokka,

(1) A.I.R. (1939) P.C. 47 at p. 52.

we left our firearms, 7 rifles and my own revolver, hidden on a hill. It was Tun Tin who actually concealed them It is true that all the hidden firearms and ammunition were traced as pointed out by Tun Tin subsequent to our statements made before U Hla Bu, the S.D.P.O., of Myanaung." So the discovery of this rifle is of considerable corroborative value.

With reference to the question of sentence, the learned advocate for the appellants has submitted that Maung Shin should not have been sentenced to death inasmuch as Maung Kya Zwe and Ma Than Kyi had admitted that they did not tell the police that it was Maung Shin who shot San Aye, Ma San Yi, Ma Ya Lay, and Ma Ngwe Sein, dead. However, section 396 of the Penal Code provides that if anyone of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Besides it has been held in *Tha Nge Gyi and Nga Mya v. The King* (1) that where murder is committed in the course of effecting a safe retreat, it is committed "In the course of" the dacoity, as the safe retreat is an essential part of the common criminal purpose of the dacoits. Moreover, the dacoity committed by Maung Shin's gang was a continuing one which was still in progress when the villagers of Thazi, Ywatha-hla, Zeebyukwin, and Shangone, came and paid moneys to Maung Shin in Ma Pha's house at Sanywa. It was still in progress when the *Yebaws* arrived at Sanywa and the dacoits had to fight the *Yebaws* for the purpose of effecting a safe retreat. Under these circumstances, Maung Shin

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is liable to be punished under section 396 of the Penal Code, even if it was some other dacoits who shot San Aye and others dead.

We are satisfied on the evidence that he was the leader of the gang, all the members of which were armed with rifles; and since the gang is responsible for having murdered four villagers and two *Yebaws* in the course of dacoity, we are of the opinion, there can be only one sentence and that the sentence of death for the leader.

To come, now, to the case against the 2nd appellant Maung Pay, he has been convicted as Tun Yin (P.W. 5) has identified him at an identification parade held under the supervision of U Sint (P.W. 14) on the 28th of August 1947 as one of the dacoits who detained him and his companion Maung Kan on their way back from Sanywa where they had gone to give money to Maung Shin. U Sint has testified that Maung Pay was identified by Tun Yin in a fair and proper manner. As a matter of fact, Maung Pay himself does not allege that the identification parade was not held in a fair and proper manner. He merely told U Sint that Tun Yin could identify him as Tun Yin had known him since the time he lived at Ahtetkyi village. Tun Yin was not asked in cross-examination as to whether Maung Pay had not been known to him since Maung Pay lived at Ahtetkyi village. However, if it be a fact that Tun Yin had known him as alleged, there would have been all the more reason for Tun Yin to be able to identify him. Besides, the circumstances under which Maung Pay was arrested together with Maung Shin, an account of which is given by Maung Shin himself as set out above as well as the discovery of the American rifle as stated above, corroborate the evidence of Tun Yin to a certain extent. Maung Pay himself has stated in his evidence

on oath, "I was at large for over one year. . . . During the time of our remaining at large, we had been living on the money we collected from different villages." It appears from the evidence that "collection" of money from different villages is only a euphemism for extortion, robbery or dacoity. Maung Pay's conviction must be confirmed. However, he was only 18 years of age on the 25th of March 1948. So he must have been only 17 years of age at the time of the commission of the offence. Besides he appears to have played a very minor part by keeping watch at a hillock near Sanywa. He did not do any harm to Tun Yin and his companion. He let them go after retaining them for a while to ask them if they had paid the money to his leader. Under these circumstances, we are of the opinion that the sentence of death is uncalled for and that the sentence of ten years' rigorous imprisonment will meet the ends of justice in his case. [Cf. *Hla San v. The King* (1).]

With reference to the case against the 3rd appellant Ohn Sein, no prosecution witness has identified him as one of the dacoits. He has been convicted entirely on his own retracted confession and the so-called confession of Po Kunt. However, he was arrested on the 12th June 1947, and he "confessed" only on the 20th August 1947. Apart from being somewhat belated, his "confession" is no confession at all. He has merely stated that his companions asked for some money at Ywatha-hla and the neighbouring villages. He does not know the names of the villages nor does he know how much money was obtained. He does not say that his companions committed any offence nor does he incriminate himself in any way. He cannot be convicted on such a statement even if it has not been retracted and we have already held that

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the so-called confession of Po Kunt is not admissible in evidence. In fairness to the learned Government Advocate, we must add that he has fairly and frankly admitted that he cannot support Ohn Sein's conviction and sentence at all.

We accordingly : (1) confirm the conviction of the 1st appellant Maung Shin and the 2nd appellant Maung Pay under section 396 of the Penal Code ; (2) confirm the sentence of death that has been passed on Maung Shin, the 1st appellant ; (3) set aside the sentence of death on the 2nd appellant Maung Pay and sentence him instead to ten years' rigorous imprisonment ; and (4) set aside the conviction and sentence passed on the 3rd appellant Ohn Sein and acquit him so far as this case is concerned.

It must however be remembered that according to Ohn Sein's statement on oath he is undergoing a sentence of seven years' rigorous imprisonment as he has been found guilty of having committed dacoity at Damathaw.

U SAN MAUNG, J.—I agree.