

A TRIAL IN BURMA

*By the same author*

BURMA'S CONSTITUTION

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BURMA IN THE FAMILY OF NATIONS

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LAW AND CUSTOM IN BURMA

I. Burmese Buddhist Law

*in preparation*

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AUNG SAN OF BURMA

*in preparation*

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# A TRIAL IN BURMA

THE ASSASSINATION  
*of*  
AUNG SAN



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*He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty, he establishes a precedent that will reach to himself.*

THOMAS PAINE

## PREFACE

Crime does not pay, and politics by assassination pays even less. That is perhaps the one sharp lesson which stands out from the trial of U Saw and his men for the murder of Bogyoke Aung San and his colleagues. The trial is a historic one, and the murders undoubtedly altered the course of Burma's modern history. I present the judgement of the Special Tribunal in full and the story of the assassinations for the record, in the hope that they will serve historians and our peoples in Burma in several ways.

Mr. Justice Mya Thein of the High Court gave me the records which he compiled of the trial while serving on the prosecution. That was a few years ago, and I have, since then, wanted to edit and publish a book of the trial. Dr. Myint Thein, Chief Justice of the Union, also gave his file of the records to the Defence Services Historical Research Institute, and I was able to check and compare the papers. To both I owe and sincerely acknowledge thanks. I am also grateful to Mr. Justice Aung Tha Gyaw of the Supreme Court who answered my questions with kindness and courtesy, and to U Kyaw Soe, Director of Information, and his staff, who dug up the pictures which are published in this book.

I found the time to work on the records of the trial at Yale on a grant from the Ford Foundation and a visiting lectureship extended to me by the University's Southeast Asia Studies Programme. At Yale I was able to use the ample library resources of the University, and read with some system the books and material on Burma and the law reports which my friend U Htin Leong, Director of the Government Press, was good enough to collect and send.

The Library of Congress, with its excellent and exciting holdings, has also been a good place to work in, and Cecil Hobbs, the head of the Oriental division, has been particularly helpful to me.

It was a good opportunity to read and write, free from temptations. I hope this kind of opportunity will become more widely available to my research-minded friends in Burma.

The Asia Foundation has kindly expressed willingness to distribute some copies of this book on its educational books programme, though responsibility for the views and opinions which I have expressed is, of course, entirely mine.

*Aung San of Burma*, a volume containing selected speeches and writings by Aung San, and on him by his contemporaries, is due to be published soon by the same publisher.

New Haven, Connecticut

MAUNG MAUNG

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## CHAPTER ONE

### AUNG SAN'S HOUR

<I>

Burma regained her freedom on the 4th. January, 1948, when she declared herself to be a sovereign independent republic in the family of nations. Sixty-two years ago, almost to the day, Lord Dufferin, the Viceroy of India, had proclaimed, by command of Queen Victoria, the Queen-Empress, that the reign of King Thibaw in Upper Burma had ended, and all Burma had come under British rule.<sup>1</sup>

Freedom was returned to Burma by friendly treaty. After World War II there were delegations from Rangoon to London, from London to Rangoon, talks round the table, and agreements signed, and when, at 4.20 in the grey dawn of the 4th. January, a time and a day chosen by the astrologers as propitious, Burma proclaimed her freedom, the severance of the tie with Britain was done almost in sadness.<sup>2</sup> Not a shot had been fired in anger against the British ruler in the negotiations for freedom. It was, said the leaders on both sides, a bloodless revolution, a voluntary abdication of power unprecedented in human history, friendly parting in farewell, but not good-bye. Those sayings were true. Yet, it would not be true to say Burma obtained her freedom without paying a price. She paid a heavy price in the long decades of struggle to rediscover her soul under alien rule, for a nation under alien rule has a body but not a soul.<sup>3</sup>

This book tells the story of a huge sacrifice which Burma made on the eve of freedom. The story is told through the records of a criminal trial. On the 19th. July, 1947, Bogyoke Aung San was presiding over a meeting of the Executive Council when gunmen burst into the chamber and sprayed it with bullets from automatic weapons.<sup>4</sup> Their main attention was directed at Aung San who rose from his seat at the head of the table and made a gesture of command before he was felled. Colleagues of Aung San died with him and few escaped the chamber of death.

U Saw, a former Prime Minister, and nine men were put on trial for the assassinations. Not only those men stood trial, however. Burma stood trial

1. Proclamation was dated the 1st. January, 1886.

2. The day first chosen was the 6th. January but it was changed after consultations with the astrologers and before the simultaneous announcements of the date were made in Rangoon and London.

3. Maung Maung, *Burma's Constitution*, Martinus Nijhoff, 2nd. ed. 1961, for more detailed study of the developments leading to independence.

4. Bogyoke means Supremo, a term of love and respect, and more than General.

too, for she was put to proof that she could keep calm and hold her house together in the face of the great crisis, that she understood what justice meant and had the strength to give it even to those who stood charged of having slain her best loved sons. Britain stood trial too for the rumours were that some circles in London had supported the plot, that with Aung San gone U Saw would be installed in office so that Burma might be kept in the British fold.<sup>1</sup> Rumours thrived in the situation and passions ran high. The year 1947 might well have ended, if leaders in Burma and in London had been lesser men, in civil war and disaster in Burma instead of freedom.

<2>

Burma after World War II presented a strange scene. The country was in ashes after being twice fought over; three years of military occupation had ruined the economy. The peoples were undernourished and in rags, but they were united and proud. The battlecry of 'Asia for the Asians' with which the Japanese had plunged into war had inspired them. The war had excited them and drawn them together. They had tasted independence which, with all its limitations, had been a thrilling experience. When Sir Reginald Dorman-Smith, the British Governor, returned from his war-time retreat in Simla waving, almost apologetically – for his unavoidable absence – a White Paper of long-term plans and conditional promises, the peoples found themselves unamused. They wanted their freedom immediately. They were united as never before and in General Aung San they had found a hero and a leader in whom they could put their trust and hopes.

Sir Reginald tried hard to run a government, and wooed the support of Aung San and the united front which was the Anti-Fascist People's Freedom League (AFPFL). It was, however, an impossible task from the start. The AFPFL took the stand that after having successfully led the resistance they had the right and duty to run a national government, if only provisionally before the general elections. Sir Reginald, empowered by London to take charge and exercise his personal rule over Burma, could not recognize the AFPFL as the national government even though he did see that the peoples and the political parties were solidly behind the League. Also, Sir Reginald had a few old faithfuls to think of and reward; Sir Paw Tun, who had gone

1. In the House of Commons on the 21st. July, Tom Driberg, M.P. (Labour), expressed 'the real, deep sorrow that members feel on this side of the House' who had learned to respect Aung San and his colleagues, but alleged that 'the moral guilt of the assassinations attaches less perhaps to the brutal elements in Rangoon than to the comfortable Conservative gentlemen here' (loud cries of 'Oh' and 'Withdraw') 'who incited to treachery and sabotage.' *London Times*, 22nd. July, 1947. The Government as well as the Conservative Opposition joined in expressing deep regret and disclaimed any complicity in the crimes.

to Simla with the government in retreat, was one. With his British sense of fair play and loyalty, he could not just pat Sir Paw Tun on the back and send the old boy home.

The lot of Sir Reginald was an unenviable one: for the first years of his appointment he was a Governor without a country to govern; when he returned there were not the conditions to permit him to govern. He invited the AFPFL to join the Executive Council which he proposed to form, and promised that even though the Councillors would be only advisers in strict law he would treat their advice with respect. The AFPFL was willing to try and asked for eleven seats in the Council including that for Home affairs, and suggested that while the Governor might continue his personal rule until a constituent assembly could be elected he should 'democratise' it by convention to the limits that the law allowed. The Governor could not offer the eleven seats that were asked; he offered seven, and reserved the Home portfolio for Sir Paw Tun. The talks broke down, and the rift between the Governor and the AFPFL widened. Political tensions increased, and the AFPFL, with the massive support of the People's Volunteer Organization whose core was made of veterans of the resistance, openly talked of armed rebellion as a last resort. The AFPFL dominated the political scene, and Aung San, the *Bogyoke*, was the leader. Other parties and other men were negligible.

### <3>

In January, 1946, when the first national convention of the AFPFL elected Aung San by acclaim as its president he was a few days short of 32.<sup>1</sup> At that young age he had built and commanded the national army, led the resistance, risen to be a hero and the leader and almost become a legend in the land. His meteoric rise was due in a large part to his own great qualities and his unwavering sense of mission; to an equally large part to the readiness of Burma's history to discover such a man at such a time and have him ride the high tides of the nationalist movement as they swept forward to the final goal. Aung San became prominent as a leader of the University students' strike in 1936, a strike that was destined to assume an importance which was out of proportion with its original limited purpose of bargaining with the authorities on certain student grievances, a strike which threw up leaders who were to figure large in public life for years to come.

From the University Aung San slipped naturally into politics. He became a leader of the young *thakin* ('Our Own Masters') movement, the secretary of the *Freedom Bloc*, and an advocate of direct action to oust British rule

1. The Anti-Fascist Organization first met in hiding under the Japanese occupation in August, 1944. Aung San was born on the 13th. February, 1915.

seizing the opportunity that the war presented. When the British began to take the young thakins seriously enough to round them up and put them away behind bars, Aung San slipped out with a colleague to Amoy in China where Japanese agents found him and arranged for him to cross over to Tokyo. More young Burmese slipped out of the country to join Aung San, and thus was born the legend of the 'Thirty Comrades' who received their military training in Formosa, and returned to Burma, building the Burma Independence Army as they marched from the southern ends of the country to Bhamo in the north. It was an epic which almost seemed to have come alive out of the story books, and with uplifted hearts the peoples found that they were not just seeing it but living it.

General Aung San marched with the men and when Burma was occupied in a few short months he told the thakin leaders who were jubilant and busy in the scramble for spoils that the fight for freedom had just begun.

The Japanese brought out Dr. Ba Maw, a former Prime Minister, from Mogok jail where the British had moved him, and made him the chief administrator. On the 1st. August, 1943, when Burma was declared to be an independent state, Dr. Ba Maw became the *Adipadi*, head of the state. Aung San became Minister of War while his deputy, Ne Win, took over the command of the re-formed Burma National Army.<sup>1</sup> The times were bad but challenging, and in the face of danger and difficulty the peoples drew together. Dr. Ba Maw was an able and colourful Adipadi, and he threw himself into the task of building the new nation with vigour and dedication. The group of young leaders whom he gathered around him were also able and devoted. Thakin Nu was Foreign Minister, reluctant to enter into office or stay, idealistic, sentimental, orthodox, and possessed of an immense fund of moral courage. Thakin Mya, the Socialist, was Deputy Prime Minister, the elder statesman among the young thakins, an elder brother, the calm, reasoning lawyer; but the flame of the revolutionary burned fierce in him too and he had been one of those who attempted to cross the borders in search of military assistance. Thakin Than Tun, the Communist, was Minister for Agriculture; a man of great ambition, he was coldly competent, infinitely patient, and watchful all the time for opportunities to advance his career and the cause. There were other men too around the Adipadi and together they formed the stout heart of the state in those impossible times.

In critical times men like to find someone in whom they can put their total trust, and the peoples of Burma, looking for such a man, found General Aung San. Perhaps it was because he was in uniform and the war gave glamour to the uniform; perhaps it was because he was leader of the army, idolized by the boys who, after all, came from homes all over the country.

1. General Ne Win, chief of staff, defence forces, led the caretaker government in Burma, October 1958–April 1960.

The army itself was a repository of the peoples' hope, and when the Japanese soldiers were overbearing in the market place, it was the boys from the army who stood up between them and the helpless peoples. All these no doubt helped to build the public image of Aung San, but his honesty and dedication to the country's freedom, his selflessness and courage also shone through in his public statements, in his home and public lives. He kept saying that the fight for freedom was not yet over, that the independence was mere glitter without substance; he kept up the call for unity, and worked to bring the minority peoples, such as the Karens, into the army, making it the rallying point of patriotism. When the Anti-Fascist Organization was formed, therefore, General Aung San was the natural leader, and when the AFO blossomed into the united front, the AFPFL, Aung San was the natural choice for president and national leader. 'I must now take leave of you,' he wrote to Admiral Lord Louis Mountbatten, supreme commander of the allies in Southeast Asia, 'before I go out from the Army to face the portentous perspective of a political career which, I hope, at all events, will not be as portentous in actual fact as it looks.'<sup>1</sup>

<4>

There were contenders for the national leadership, for the leadership carried power and power is coveted. Also, it was obvious that freedom could not be denied to the peoples for much longer, and the national leader who led them on their final march could be sure of an honoured place in history. But none of the contenders amounted to much against Aung San.

Dr. Ba Maw, the Adipadi, retreating with the Japanese army, finally found himself in Sugermo jail in Japan. Early in 1946 he was set free and returned to Rangoon; the plumage of the Adipadi was gone, but he sported, in grand defiance, a Hitlerite moustache. He announced that if the peoples called to him he would respond but he would not organize a party for he was above party politics now and belonged to the nation. The peoples did not call, and he waited alone.

Thakin Ba Sein and Thakin Tun Ok, the early thakins, scoffed at young Aung San's leadership. Sir Reginald, in an attempt to get together a respectably representative looking Executive Council, made Thakin Thun Ok a Councillor. Thakin Tun Ok, one of the 'Thirty Comrades,' promptly launched out on vehement attacks against Aung San for alleged cruelties committed on the march of the Burma Independence Army.<sup>2</sup> But their attacks amounted to nothing.

Thakin Than Tun, exploiting the situation that prevailed after the resist-

1. Letter dated 25th. September, 1945.

2. e.g. speech in the Burma Legislative Council, *proceedings* vol. I-15, p. 545.

ance, built the Communist Party and roped in the veterans and the young politicians who were adrift looking for something exciting to do, hungering for some ideology. As one of the principal organizers of the AFO and the AFPFL, Than Tun claimed a leading role in the league, and he was elected Secretary-General, coming in importance next only to Aung San. But a second position did not satisfy him, and he worked within the league and out, with skill and cunning, to seize the leadership or wreck the league. He was found out and expelled, with the Communist Party, from the league in October, 1946.<sup>1</sup>

Another contender for the national leadership and the place of honour in history was U Saw. Born in 1901 in Tharrawaddy district, the fabled home of rebels, U Saw had risen from modest circumstances to national prominence before he was out of his thirties. The rebellion of Saya San in Tharrawaddy district gave him his opportunity and he published a pamphlet containing an open letter to the Secretary of State in London in which he protested against the excesses committed by the government in suppressing the rebellion. The pamphlet was duly proscribed, but U Saw had made his mark, and from then on he called himself 'Galon' U Saw, to keep his link with 'Galon' Saya San.<sup>2</sup> He went into journalism and politics, early finding his way into the Legislative Assembly, and though he qualified as a pleader his ambition aimed far higher than the practice of law. In May, 1935, he went on a tour of Japan to report for the 'Sun,' Burmese newspaper, and also to enlarge his horizons. In November, 1936, he was elected to the new House of Representatives from North Henzada on the ticket of the *Ngabwintsaing* ('Five Flowers') party. Soon he tired of being a leader among many and began organizing the *Myochit* (The Patriots) party. It was the usual thing for an ambitious young politician to do: to avoid having to start from second or third ranks in a party he would start one of his own and appoint himself the leader.

The new House was a multi-party mess. There were days of manoeuvring to form a government, and at last Dr. Ba Maw, commanding 16 votes, was able to get together a coalition. U Saw was free to move and manoeuvre, activities in which he excelled. Dr. Ba Maw survived many no-confidence motions but early in 1939 his ministry fell. U Pu became Prime Minister and U Saw took his oath of office as Minister for Forests and Agriculture on the 30th. May. He had come a long way but, to his way of thinking, not far enough. He launched the Myochit party leaving the *Ngabwintsaing* for good, and as his party grew he bargained for more seats in the Cabinet and gained

1. Cf. speech by Aung San from the Rangoon radio on the 22nd. October, 1946, explaining the expulsion, in *Bogyoke Aung San* in Burmese, Information Department, Rangoon, 1955.

2. Galon is the mythical bird, conqueror of the dragon. See *Saya San*, in Burmese, Burma Translation Society, 1960.

his way until at last he felt ready to challenge the leader of his government, U Pu himself. During the budget session of the House, in August 1940, one of the usual no-confidence motions came up, and Minister U Saw resigned from the government half an hour before the debate, and thus relieved of responsibility and loyalty, he and his followers voted against the government and brought it down. On the 9th. September, U Saw took office as Prime Minister.

U Saw was able and forceful, and he learned constantly to fill the large gaps in his formal education. The European business community in Rangoon, which wielded a great influence in politics, got to like his certainty and the firmness with which he put down agitation. With his opponents U Saw was even firmer. Dr. Ba Maw already languished in jail serving sentences for sedition. U Saw soon invoked the Defence of Burma Rules, designed to cope with the war emergency, to lock up his former mentor, the veteran politician U Ba Pe, former ministers U Ba U and U Ba Thi of Mandalay, and rivals U Ba Win of Pyapon and U Ba Hlaing. All his rivals with a 'Ba' to their names thus safely behind the bars, U Saw reigned supreme.<sup>1</sup>

The Governor, Sir Reginald, was rather fascinated by the character of his Prime Minister, and the two got on quite well. When the time came for new elections the Governor postponed them on ground of the emergency, and U Saw was safe. All he wanted now was a promise from His Majesty's Government that Burma would be made a self-governing dominion after the war; he wanted his place in history as the bringer of Burma's freedom, and in return for the prize he promised to marshal the support of the peoples behind the British war effort. Sir Reginald, however, was unable to offer the prize though he would have liked to have the peoples' support in the war, and he arranged for U Saw to visit London and talk to Prime Minister Churchill.<sup>2</sup> U Saw went, taking with him U Tin Tut, a senior official, on a 'journey perilous,' to make his case for Burma with Mr. L. S. Amery, the Secretary of State, and Mr. Winston Churchill. The case was forcefully made and U Saw was able to hold his own against Churchill, but the results were negative.

U Saw remembered his meeting with Churchill in the serialized 'Journey Perilous,' *Burmese Review*, the 19th. August, 1946: "Churchill said, closely studying my face, 'Tell me, Mr. Prime Minister, are not the Burmese happier under British rule than under Thibaw?' I had not expected this and I had difficulty in controlling my rising anger. 'Let me, Sir,' said I, 'answer this with another question. Heaven forbid that Germany should ever conquer Great Britain. But suppose she did, what would your answer be if I asked you whether the British would be happier under Hitler than under your

1. Kyaw Min, *The Burma We Love*, Calcutta, 1945.

2. Maurice Collis, *Last and First in Burma*, Macmillan, New York, 1956, p. 32.

own King?' The reply stunned Mr. Churchill... he did not reply at once but got up in anger and paced the room for a few minutes without further speech. He then said in sorrow rather than in anger, 'I do not know what has come over you young people nowadays.'"

U Saw returned an angry and disappointed man, and the cool and formal reception which he received in Washington where he stopped by did not console him. He reached Honolulu on the day of the Pearl Harbour incident, and turned back to fly home through Lisbon where he paid a call on the Japanese ambassador. U Saw was an angry man, and he had earlier associations with Japan, and when the British Intelligence, after breaking Japanese ciphers in Lisbon, reported to London that U Saw had promised the ambassador his support for a Japanese invasion of Burma, Mr. Amery ordered his arrest. The homeward journey was thus interrupted again at Haifa, and U Saw was arrested, and later interned in Uganda. U Tin Tut was cleared in due course and he joined the Burma government in Simla after the retreat.

In Rangoon when news of U Saw's arrest was broken on the 19th. January, 1942, there was no great excitement. The war was approaching now, and the first bombs had fallen on Rangoon. Sir Paw Tun, an Arakanese barrister and one of the senior politicians, a survivor of many ministries, took over as Prime Minister and had just enough time to pack his bags and leave Burma for Simla.

In Uganda the war was remote, and U Saw spent his enforced leisure reading copiously. It was the first time in more than a decade of political activities and ambitious climbing in a remarkable career that he had the time for quiet contemplation. Full four years passed before he could go home, for he was released only in January, 1946, the British government having 'carefully considered the circumstances in consultation with the Governor of Burma' and decided 'as a special case to take no further action against him.'<sup>1</sup> Questions were asked in the House of Commons if U Saw would be free, when back in Burma, to enter politics, and if His Majesty's Government were building him up to 'counterbalance the overwhelming popular support enjoyed by the AFPFL,' and the Under-Secretary of State replied: 'Burma, like this country, being a free country, it will be difficult to prevent any citizen taking part in politics.' The answer to the second part of the question was, 'No.'<sup>2</sup>

It was a changed Burma to which U Saw returned. Much had happened in the four years of his absence. A new mood seemed to have gripped the peoples; they were united and serious, urgent and insistent. Politics was never like this before. It used to be debates in the House, bargaining in the lobby for votes, speeches and promises made in public, understandings

1. *London Times*, 26th. January, 1946.

2. *Hansard*, Commons, 1946, vol. 418, 1346.

reached in private, the strong anti-British speeches and gestures made in public, the chuckled conversation with His Excellency the Governor at the Government House. Elections meant bargainings on bigger scales in wider markets. It was not too difficult to win a seat in the House if one knew the ropes and pulled them well, and it was not necessary to win a majority for once inside one could manoeuvre and buy and sell one's way into the Cabinet or even the Premiership. But now, looking round him, U Saw found a changed scene. The people were clamorous, which he could understand for people clamoured for something or other all the time. They were united and purposeful, which was strange, and they marched as one behind the AFPFL and Aung San, which was bad. Aung San and Thakin Nu, Kyaw Nyein and Ba Swe, and the young thakins Than Tun, Tin, Thein Pe, and others. Why, they were mere boys! They were students when he was Prime Minister. True, they were talking politics and freedom and the usual things, but they were boys, boys! Did they not remember how he, Galon U Saw, leader of the Myochit, took on the suave and silken Dr. Ba Maw, the learned doctor of philosophy, in mighty debate at the University students' Union? Did not these boys listen, rapt and awed, to the great wordy war in which he had put up such great showing? He had gone much further than that. As Prime Minister he had travelled to London through a burning war to debate with Prime Minister Churchill and demand Burma's freedom. Where were these boys when he was paying a terrible price for his patriotism, a prisoner for four long years in the iron clutches of the British imperialists – true, Uganda was not uncomfortable, but that was beside the point. Where were these boys? Playing soldiers and generals, ministers and puppets. He could laugh. Or he would if he could, only he couldn't.

<5>

Bogyoke Aung San and U Saw met a few times after the latter's return, but they could not come together. They were after the same goal: Burma's freedom; after the same prize: the place of honour in history. Destiny had chosen Aung San for the role of national leader in that march to the final goal, and for winner of the coveted prize. Aung San knew it. U Saw could not see it, or seeing, accept it.

The Myochit party had joined the AFPFL in U Saw's absence. Later, when the AFPFL refused to join the Governor's Executive Council, three Myochit leaders left, lured by office, while an important leader, U Mya (Henzada), resigned from the party to remain with the league.<sup>1</sup> The reason

1. U Aye, U Ba Ohn and U Lun, of the Myochit party took office. U Mya's letter to the AFPFL on the subject is reproduced in *'The White Paper, a Play'* (*Setkubyu Pyazat*) by Zeyya Maung, in Burmese, Mandalay, 1945.

given by the three leaders for accepting office was that they wanted to more effectively work for U Saw's release from inside the government.

When, therefore, U Saw arrived, the party existed only in name, with its leadership split and scattered. To steal the initiative from the AFPFL and win the national leadership from Aung San he must fight the British government and Sir Reginald who represented it; yet, three of his colleagues were Sir Reginald's Councillors. It was a strange and difficult position but U Saw did not despair. He worked hard to reorganize the party, and he travelled up and down the country.

On the 19th. February, 1946, U Saw began the offensive by writing to the Secretary of State in London making certain demands. He demanded that the Governor's Executive Council be enlarged and invested with the powers which were enjoyed by the Cabinet before the Governor assumed his personal rule; that defence and external affairs be put under the charge of the Council and a Burmese Councillor; that the affairs of Burma be looked after by the Dominions Office in London rather than the Burma Office. He also objected strongly against the separation of the frontier areas under a separate administration, for, he pointed out, that would only 'widen the differences between the peoples.' He demanded that a definite time limit be set for the establishment of Burma as a self-governing dominion. If the Secretary of State did not reply satisfactorily by the end of May, U Saw wrote, he must, 'according to my party's mandate,' withdraw the three members of the party from the Governor's Executive Council. The reply did not come and on the 15th. May U Saw met the Rangoon press and handed out copies of his letter to the Secretary of State, and at the end of the month he called upon the three Councillors to resign, which they did.<sup>1</sup>

In March, 1946, U Saw travelled to Panglong in the Shan State to attend a conference of chiefs from thirty-four of the smaller states in the region. He called on the chiefs to unite with the Burmese and other peoples on their march to freedom. Thakin Nu, vice-president of the AFPFL, who was also invited by the chiefs, made a similar call in more blunt and forthright terms. U Lun of the Myochit party also attended as a Councillor to the Governor. It was an important conference where, while supposedly discussing the 'welfare, trade, and cultural aspirations of the states,' the Shan leaders anxiously sought some answers relating to their future relations with 'Burma proper' in the light of approaching freedom. The Burmese leaders spoke in the same vein and unanimously called for union.<sup>2</sup>

Political tensions in Burma mounted as the months passed and the rift grew between the Governor, with his formal Executive Council and Legislative Council, and the AFPFL, with its influence extending far beyond that

1. *London Times*, the 16th. May, 1946.

2. *London Times*, the 28th. March, 1946.

of a popular mass movement, reaching out into the civil services and the police force. There were strikes and demonstrations in which the police joined. The People's Volunteer Organization drilled in the cities and the country drifted to what looked like certain war.

The Labour Government in London, headed by Prime Minister Attlee, awoke to the situation in Burma at last. The ill-fated Governor, Sir Reginald Dorman-Smith, was recalled. Major-General Sir Hubert E. Rance, who had served with the Southeast Asia command, was appointed as the new Governor with definite assignment to work with Major-General Aung San and the AFPFL, to put the house in order in Burma, and supervise the withdrawal of British power.

Soldiers under clear orders from firm civilian chiefs discharge their duties well. Within days of his arrival in Rangoon, Sir Hubert was able to get Aung San and the AFPFL into a new Executive Council which also included U Saw as Councillor for Education, and Thakin Ba Sein as Councillor for Transport and Communications. Bogyoke Aung San was Deputy Chairman of the Council, with charge of defence and external affairs. Thakin Mya took charge of Home affairs; other AFPFL Councillors included U Tin Tut, who had resigned from the civil service to join the league, U Ba Pe, the veteran politician whom U Saw had jailed in 1940, Thakin Thein Pe, the Communist who had represented the AFPFL in India during the war.

'This Council is as representative as I have been able to make it,' Governor Rance reported to the peoples from the Rangoon radio on the 26th. September, 1946, the day the Council was sworn in. 'Another characteristic which I am most happy to see is the judicious blending of youth and experience. This Council will take office at a time of great crisis, but a time of great opportunity also. The formation of this Council inspires a vision of Burma as we all want to see her, a united country, tackling with imagination and vigour the burden of reconstruction; sympathetically but realistically seeking a solution of her economic problems; above all, a law-abiding and law-loving country in which there is full co-operation in the campaign against dacoity and dishonesty; and last of all, a country which realizes her vital place in Southeast Asia and her responsibility to help feed the hungry peoples who are looking to her for support.'<sup>1</sup>

<6>

On Saturday, the 21st. September, five days before he was appointed to the Executive Council, U Saw narrowly escaped assassination. He was driving back from one of the conferences and negotiations with his party members when four civilians dressed in khaki drove up alongside in a jeep  
1. *London Times*, the 27th. September, 1946.

and one of them fired at him from a revolver at close range. The bullets missed but splinters hit and severely injured him in one eye. U Saw flew to Calcutta for several weeks of treatment.

The attempt on U Saw's life was an ugly omen. Politics in Burma had been free and easy, and violence was disapproved, if not altogether unknown. General elections used to be festivals of fun, with politicians talking and promising the voters the moon, voters going to the polling stations in cars engaged by the candidates, eating at stalls provided by the thoughtful candidates, sometimes receiving a little something from the friends of candidates – not a bribe, for bribes would be illegal and immoral, but just a small inducement to stir and go to the stations and cast the vote. Political offices were few, and members of the legislature did not receive salaries. As representative government was introduced and increased, however, the prizes became more attractive, and above all the power that went with being a member of the legislature or a minister became highly desirable. Sore temptations and high passions worked together to change the climate. There were imitations of the political armies that were marching in Europe at the time. The young thakins started their *Thanmani* (Steel Corps); Dr. Ba Maw had his *Damma* (a Burmese wood-chopper emblem) 'army'; U Saw raised his 'Galon' army and styled himself the General. U Saw's Galon army did, in fact, bring violence into politics on a few occasions in his rise to power: the Galons would break up meetings of political opponents, brandishing or using bamboo staves (*wayindok*) and the Galon General earned the nickname of Wayindok U Saw. There were some racial riots also, caused to large extents by economic competition, and student demonstrations had drawn fire from police guns. Political assassination, however, was little known, and certainly offended the spirit of Burma's politics.

<7>

In December, 1946, Prime Minister Attlee invited Bogyoke Aung San and members of the Executive Council representing the AFPFL and the major parties, to talks in London to discuss Burma's future. The AFPFL had come out for independence within one year and outside the Commonwealth, and as the deadline approached with the end of the year the mission to London assumed urgency. 'We want complete independence,' Aung San said in New Delhi on his way to London on the 5th. January, 1947, 'there is no question of dominion status for Burma. When I go to London I must get a settlement before the 31st. January, otherwise there will be a deadlock. We must be back in Burma before the 31st. January.'<sup>1</sup>

U Saw went to London to join in the talks; so did Thakin Ba Sein. When  
1. *London Times*, the 6th. January, 1947.

the talks culminated in an agreement both refused to sign it. 'We had long conferences,' Mr. Attlee wrote of the talks with the delegation. 'Some of them had known Cripps before the war and this was a great help. They were, however, very suspicious at first and could not believe that we were prepared to abide by the choice of the Burmese people. They had, unfortunately, committed themselves to their followers in favour of complete independence and a Republic. They had also to face the Communist Party. As the talks proceeded, their distrust disappeared and I think that some of them – particularly their leader, Aung San, a strong character – began to realise the desirability of remaining in the Commonwealth, though it may be that, like India, they would have opted for a Republic. The members were very young; one of them said, 'We're just a lot of raw lads.' They were a very pleasant lot, except for one representative of a minority Party – U Saw. I had met him before the war and, indeed, during the war when he came to England. I regarded him as a man who would 'smile and smile and be a villain'.<sup>1</sup>

The 'Aung San-Attlee' agreement, as it came to be popularly known in Burma, was well received by the peoples. The danger of civil war receded and hopes rose as preparations moved towards freedom. On the 12th. February, 1947, the chiefs of the Shan states and leaders from the 'frontier areas' – the Kachins and the Chins – decided to throw in their lot with the 'Union of Burma,' after hearing Aung San urge for unity and a new era of cooperation. Together thus, the peoples proceeded to electing the Constituent Assembly, and Aung San toured the country asking the peoples to elect men who would work together and build the new state with honesty and devotion, not men who would make long speeches in fine words and then bend their energies to reaping profits for themselves. The peoples responded and filled the Assembly with men and women, mostly young, many from the People's Volunteer Organization, whom Aung San had recommended. The elections, held on the 9th. April, were boycotted by U Saw's Myochit party, and by Dr. Ba Maw's *Mahabama* (Greater Burma). Soon after the polling, and even as the results were pouring in from the districts, U Saw denounced the elections as 'absolutely unfair' alleging that young armed PVO had forced would-be candidates to withdraw from the campaign. Dr. Ba Maw, with a mixture of foresight and cynicism, prophesied that the 'worship of the gun had become a fetish. The Burmese learned two things from the Japanese: the technique of leadership based on mass organization; and the glamour and power of the armed men. It is not elections that are going to decide the future of Burma, but the gun. All you want in Burmese politics is to start on the winning side and to have plenty of guns.'<sup>2</sup>

1. Clement Attlee, *As It Happened*, Heinemann, London, 1954, p. 188.

2. *London Times*, the 12th. April, 1947.

The Communist Party of Burma, also a staunch believer in mass organization and the power of the gun, took part in the elections and won seven seats in the Assembly, thus to become associated, by an irony of history, with the winning of Burma's freedom by democratic and constitutional means.

<8>

In May, 1947, the supreme council of the AFPFL and AFPFL members of the Constituent Assembly met in Rangoon's Jubilee Hall to deliberate and decide on the general structure of the new state. In June the Assembly met and, after electing Thakin Nu as its Speaker, went straight to the task of debating the final drafts of the constitution whose basic principles were moved by Bogyoke Aung San on the 16th. June, debated and unanimously adopted on the 17th. Several committees worked night and day on the different chapters of the constitution, and Aung San would attend them all and resolve deadlocks with a few wise words, a smile or a joke. There were leaders from the Shan states, from the hill areas, and the minority groups such as the Karen, the Mon and the Arakanese, on the drafting committees, and they were sometimes sensitive and suspicious, but they trusted Aung San and things flowed smoothly and swiftly. By July the constitution was in good shape and most of the main problems had been solved. The ceremony of proclaiming freedom, the unfurling of the national flag, the singing of the national anthem, the joy-making, the speech-making, the congratulations, all these remained, but the task was nearly done, the long journey nearly ended. Aung San talked to friends about leaving politics after freedom was proclaimed; he wanted to write his memoirs, he said, and he must provide for his family and find more time to look after the children's education. His public speech in Rangoon on the 13th. July sounded like a farewell note. He spoke of the great need for Burma to work hard in discipline and self-denial - 'for maybe 20 years' - before the fruits of freedom could be enjoyed. 'Let me leave word with you,' he ended, 'that neither a Communist government nor a Socialist government can give you what you yourselves must earn by discipline, unity, and constant endeavour.'

Dark rumours of impending disaster drifted, meanwhile, in Rangoon. There were stories that a large number of guns had been stolen from the garrison armoury and some political parties were plotting a coup. People whispered that the life of the Bogyoke was in danger. The police put on special sentinels to watch over the anxious city. They wanted to put on special guards around Aung San but he only laughed and shook them off, saying nobody would murder him. He moved about freely and mixed with the crowds. Through the war, as a General, he had been in uniform and had two suits, worn threadbare. As leader of the AFPFL, the Bogyoke, he had

continued to wear a simple uniform; in London he was presented with a good suit of uniform and he liked to wear it, and on his return he had joked: 'I have brought freedom for Burma and a suit of uniform for me.' Now the fight for freedom was over and he liked to get out of uniform more often and wear Burmese dress. As the pressures of striving for an uncertain goal were now released, Aung San became more relaxed. A writer had described him in a profile as 'the raw,' a description which did not displease him.<sup>1</sup> But if he was raw, the rawness gradually left him as fulfillment came. He smiled more often, and could spend more time with his family. It was almost unbelievable: the place of honour in history was already his, and Burma was soon to be free. It was almost too good to be true, and he sometimes felt a little sad and unsure. But he was a man of destiny, and he must go the way he was destined.

On Saturday morning, the 19th. July, Boyoke Aung San dressed himself in Burmese dress, choosing to wear a *longyi* of the colour of gold. At about 10 a.m. he left his home in Rangoon's Tower Lane for his chamber in the Secretariat. On his arrival the Executive Councillors assembled and the business of the day was started as usual. Soon afterwards, around 10.30 a.m., U Saw's gunmen broke into the chamber and shot Bogyoke Aung San and his colleagues down.

1. Dagon Taya, *Yokponhlwa* (Profiles), Rangoon, 1947, in Burmese. Also Bo Tun Hla, *Bogyoke Aung San*, a brief biography in Burmese, Samameitta, Rangoon, 1955.

## CHAPTER TWO

### U SAW AND HIS MEN

<1>

That morning, the 19th. July, U Saw waited restlessly for the killers to come home. He had directed them to destroy the entire Executive Council, Bogyoke Aung San first, and Councillors all, and to include Thakin Nu, the Speaker of the Constituent Assembly, on the roll of death. After this one big clean sweep no sizeable rivals would remain on the political scene and he, U Saw, the mighty 'Galon' General, would stand supreme. Once more he would rule. In 1940 he had sent his rivals to jail. Now let them go to their graves. Times were different and drastic; action must measure up to the drastic times.

The Governor would certainly call on him to form a government, U Saw calculated, and he would respond, giving gracious consent. Power would return to where it belonged: his hands. Freedom would come, of course, for it was time, and he would bring it to Burma, and the place of honour in history would be his at last. Once the plot was conceived in his fertile brain, U Saw had gone about planning and preparing in his able, ruthless fashion. He thought of every small detail and prepared for it with elaborate care. Yet, master that he was in the removal of rivals and the seizure of power, he overlooked a few details.

First, he forgot that the British would not deal with blood-stained men. Even if the crime was undiscovered, the suspicion would have fallen heavily on U Saw and to invite him to take office – leave alone the place of honour occupied previously by Aung San – would have been outrageous. The Governor would, therefore, have only two clear alternatives: to invite the leaders of the AFPFL, commanding overwhelming majority in the Assembly and real popular support in the country, to take charge; or to do so himself suspending the Assembly and the Council till the emergency passed.

What U Saw next forgot, or did not know, was the quality of the AFPFL leadership. The young leaders who backed Aung San were not as young as they used to be, for they had not stopped growing while U Saw rested in Uganda during the war years. They had passed the ordeal by fire that was war; they had matured quickly, and were tough; they had learned to think calmly and act fast under fire. A piece of luck had also favoured them by sparing Thakin Nu. The gunman to whom U Saw had assigned the task of destroying Thakin Nu had gone to the chamber in the Constituent Assembly where the prospective victim sat at his usual desk, but at the last moment,

with finger on trigger, he had decided to leave with mission undone. Thakin Nu, the man of peace, the idealist, the writer whose great ambition in life had been to be the 'Bernard Shaw of Burma,' thus strangely spared, saw it as his duty to take over the job where Aung San left it. Within hours of the assassinations, Thakin Nu and the young leaders of the AFPFL met in council and resolved to carry on quietly, searching out the perpetrators of the crimes and bringing them to justice, but undiverted, unprovoked, in the march to freedom. This was a trial for them, for their leadership, a big trial among many trials, big and small, that they and the peoples had passed through, and they must not fail now.

Sir Hubert Rance, the Governor, moved, even as the AFPFL moved, in the main course forward to the completion of the task, namely the establishment of Burma's freedom, and on the evening of the 19th. July he broadcast to the peoples, reporting the morning's tragedy, and announcing that Thakin Nu had been invited to organize the Executive Council and carry on.<sup>1</sup>

<2>

U Saw's men had done a thorough job in the chamber of the Executive Council, for when the final counts were in the casualty lists turned out to be heavy.

Bogyoke Aung San, Deputy Chairman of the Executive Council and also Councillor for Defence and External Affairs, was the main target of the gunmen's attention. He received 13 wounds and died in the chamber where he fell.

Thakin Mya, Councillor for Finance, was shot through the lungs, and died on the spot. At 43, Thakin Mya was the elder statesman among the young leaders. His unruffled calm in the face of crisis, and his consistently sound judgement were much relied on by his younger friends.<sup>2</sup>

Mahn Ba Khaing, Councillor for Industry and Labour, took 15 wounds, and died instantly, his heart smashed. A Karen leader who took an active part in the resistance in Henzada district, he had the respect and trust of Aung San who used to say that if he should be Prime Minister in an independent Burma he would like to have Mahn Ba Khaing for Deputy.

Mr. Abdul Razak, Councillor for Education and National Planning, was

1. The new Executive Council consisted of: Thakin Nu, Deputy Chairman and External Affairs; Colonel Let Ya, Defence; U Mya (Pyawbwe), Finance; U Kyaw Nyein, Home Affairs; U Mya (Henzada), Commerce; U Win, Industry & Labour; Thakin Tin, Agriculture; Bo Po Kun, Education; U Aung Zan Wai, Social Services; Thakin Lun Baw, Information; U Ba Gyan, Public Works & Rehabilitation; Major San Po Thin, Transport & Communications; U Tin Tut and U Pe Kin, without portfolio.
2. Biographical sketches of the assassinated leaders appear in speeches of condolence by U Nu, U Kyaw Nyein and others in the Constituent Assembly, *vol. 2, number 1*.

the 'Sayagyi,' the teacher, to his younger colleagues. He was head of the 'National School' in Mandalay for many years, an ardent nationalist who would himself take leading part in strikes and demonstrations. He received 6 wounds and died on the spot.

U Ba Choe, Councillor for Information, was another Sayagyi. Writer, journalist, lover of music, and deeply steeped in the folklore of the land, 'Deedok' U Ba Choe, as he was better known by the journal that he published, was among the first in the movement for independence, for national education and the promotion of authentic Burmese cultures and traditions. He took office without enthusiasm, for he would have preferred to remain in the world of art which was his home, especially when the nationalist movement he had helped to push forward was approaching its successful end. Despite his age and the 5 shots he received, one in the brain, Sayagyi U Ba Choe clung to life in hospital until the afternoon.

Sao Sam Htun, the Sawbwa of Mong Pawn and Councillor for the Frontier Areas, received 2 wounds in the head, and lived, in snatches of consciousness, till noon of the 20th. July. A man who loved his home in the Shan state, and wanted most of all to be a farmer, Sao Sam Htun was well loved among the Shans and the other peoples alike.

U Ba Win, Councillor for Commerce and Supplies, and elder brother of Bogyoke Aung San, was a teacher, not a politician. An honest man and without fierce ambitions, he would have liked to remain in his school, but Thakin Nu, a college classmate, prevailed upon Aung San to get him into the Council to take charge of commerce, a department demanding high honesty. U Ba Win received 8 wounds and died in the chamber with his young brother whom he loved.

Seven Councillors, thus, fell under the assassins' bullets. Two others who were present, U Aung Zan Wai and U Mya (Pyawbwe), escaped unhurt, while U Ba Gyan, Councillor in charge of Public Works, was wounded in his right ring finger. U Shwe Baw, Secretary to the Executive Council, was also present at the meeting, and escaped unhurt. U Ohn Maung, Deputy Secretary in the department of Transport and Communications, came to the meeting to assist in the discussions over an item on the agenda, and he was shot and killed on the spot. Ko Htwe, a personal bodyguard of Mr. Razak, ran into the killers as they withdrew from the chamber and took the last parting bursts from the guns; he died in hospital of the 4 wounds he had received; he was 18.

U Kyaw Nyein, Councillor for Home Affairs, escaped death because he was away abroad. A close associate of Aung San and Thakin Nu since the days of the students' strike of 1936, he was destined to play a large role in holding the country together in the difficult days that lay ahead. Major Saw San Po Thin, a Karen leader and a lover of music, was another Councillor

who was spared. San Po Thin and another Karen officer, Brigadier Kya Doe, were won over by Gen. Aung San into the Burma National Army during the war, and the two did good work in restoring Karen-Burmese amity. San Po Thin also organized the first band that the Army had and conducted it with great enjoyment at parades. A great believer in doing things – he worked his way through college and a music degree in America – San Po Thin, Councillor for Transport and Communications, was out on the road, as he loved to be, when the assassins struck. U Tin Tut, one of the members of the first Executive Council which Aung San joined as Deputy Chairman, had handed over the Finance portfolio to Thakin Mya and gone to London as High Commissioner designate, and was also spared for the time being, though he too was assassinated in September, 1948.<sup>1</sup>

It was thus a terrible toll. Fortunately, the political parties and the peoples closed ranks and kept calm. Even the Communist party, which had been expelled from the AFPFL the previous October, came out with a strong plea for unity of the democratic forces, for its re-admission into the league, and vigilance against ‘the bureaucrats and the saboteurs.’

<3>

The police, rather than an invitation from the Governor, came to U Saw on the very day of the crimes. The trail had led straight to his home. The sentinels whom the police had put on to watch the dark doings in the rumour-filled city had seen the goings-on in and around U Saw’s house on the lake. They had seen jeeps arrive at the gate soon after the crimes had been committed in town, and men in strange apparel descend and cluster at the entrance to pass whispered messages with U Saw. The jeeps had driven in at desperate speed and nearly collided with one Captain Khan who was driving towards the city. Khan reported to the police, and the trail became clearer still.

Perhaps he was over-confident, or perhaps there was nothing that he could do, U Saw had left incriminating evidences strewn about his house, around in the garden, beyond in the lake. The jeeps went out on their mission

1. Recounting the many times he was strangely spared, even from his days as a district officer, U Tin Tut was reported to have said: ‘When the great earthquake of 1931 occurred in Burma I was in Simla, and during the Burmese rebellion of 1932 I was in Europe. When the Japanese invaded Burma in 1941, I was a State prisoner in Palestine, then the safest of countries, and with the best will in the world I could not get back to Burma till June, 1945, after her liberation. I was in London from October, 1944, to April, 1945, at a time when it was being bombarded with flying bombs and rockets and though I lived near Oxford Circus and worked in Whitehall, no missile fell within half a mile of me. The recent outrage on the Executive Council took place while I was in England. Perhaps it is all my good luck, but I have a queer feeling that the elixir tattooed on my back by the old Invulnerable has something to do with it.’ Barbara Whittingham-Jones, reporting an interview in an article on her tour of Burma, *Asiatic Review*, London, 1948, p. 217.

from his home and returned straight back. The men he had sent out had been staying in the house for days and weeks before they went out, and they returned straight back after the mission, to be rounded up, almost red-handed, by the police. Disguises were clumsy. Whatever was hidden was easily found; a little diving in the lake retrieved the tell-tale weapons and articles.

U Saw and his men were arrested on the afternoon of the 19th. July, and they were kept apart. They were safer in custody than out, for when the people heard of the arrests they got into a lynching mood. When, on the 21st. July, U Saw was taken to the Rangoon jail, people gathered at the gates angrily shouting, 'Tear him to pieces!'<sup>1</sup> Their anger also fell on those politicians who had either opposed Aung San and the AFPFL or kept aloof. In a wide sweep made through the country the police took those politicians in, for their own protection in some cases. Thus, Dr. Ba Maw, who had started to wear black in token of mourning, was arrested along with Bo Yan Naing, his son-in-law, and one of the 'Thirty Comrades.' Thakin Ba Sein was also arrested, and several others. By a rough count, some 800 people found themselves in jails in the few weeks that followed the assassinations but as passions cooled off most of them were released.<sup>2</sup> There were however, no cases of violence.

<4>

The men and the boys who were arrested with U Saw quickly repented in the deep solitude in which they were kept. A senior police official who had charge of the investigations told me several years later that no third degree methods needed to be used. The men knew, in the first place, that they had been caught practically red-handed, and that overwhelming evidence would be found and produced against them at the trial. Also, the magnitude of what they had done slowly sank home, and they broke down. Many of the boys appeared at first as if they had been mesmerized, and it took some of them a few days of isolation and kind treatment, during which time they were encouraged to read the newspapers which were reporting in emotional terms what was happening outside, before the awareness sank home. Then they awoke with a start and freely confessed and told their full stories.

U Saw had picked the men carefully and worked on them thoroughly, so that by the time he was ready to give the signal to strike, they were completely under his command. Some of the men had gone to him for gain. U Saw was a rich man, or was reputed to be so, and as a former Prime Minister, he had power and influence. Some of the men just wanted to borrow the

1. *London Times*, the 22nd. July, 1947.

2. *London Times*, the 31st. October, 1947.

glory of a former Prime Minister: they expected that their social status would be enhanced by the association. U Saw worked on such men with cunning, and made them feel like old friends. Thu Kha, one of the men, was thus drawn into the circle. He was introduced by a friend, and U Saw received him like a long lost brother; after one or two visits to the house, he was made to feel as one of the 'inner circle,' sharer of secrets, co-plotter of what at first appeared to be only wild and exciting adventures. U Saw casually told Thu Kha one day that he was organizing a bank robbery in Rangoon; foreign banks must be relieved of their treasures so that political activities could be financed, and that was a patriotic, not to mention profitable, thing to do. Thu Kha remembered some years later that he was a little alarmed by U Saw's remarks, and yet somewhat flattered by the confidence which they implied.<sup>1</sup> He was not altogether uninterested in a bank robbery for he needed money, and not for patriotic reasons either. Business was bad after the war, and he had his family to support. At first he had tried to find a foothold in Rangoon, but poverty pushed him out to the village, and he felt frustrated and unfulfilled. To rob a bank under U Saw's leadership did not look like a bad idea; in any case he would be in good company.

U Saw let Thu Kha into a few more secrets, and allowed him to see the preparations that were being made for the expedition. Thu Kha saw trucks arrive and unload boxes of bren guns and ammunition and he was suitably impressed. By the time the real purpose of the mission became known, Thu Kha, and other men like him, were too deeply involved to get out even if they had wanted to.

There were mere boys in the gang. One of them, Sein Gyi, was 22. He served in the Army under Bogyoke Aung San, and fought in the resistance. Afterwards he became a leader of the People's Volunteer Organization in his home town, Gyobingauk, Tharrawaddy district, from which U Saw also came. U Saw discovered him on one of his political tours, and went after him with his usual persistence. The boy's parents were known to U Saw, who worked on them, and in the end succeeded to get the boy down to Rangoon to live in his own house. Rangoon was more exciting than Gyobingauk and, besides, he was courting a girl at school in the city, and Sein Gyi quickly felt reconciled to his lot. When U Saw's net closed upon him, he did not even notice.

Yan Gyi Aung, another boy, was distantly related to U Saw. He came to U Saw's house for help and protection and he too fell under the spell. When

1. *Htaung-hnin-lutha* (Men in Jail), by 'Ludu' U Hla, Ludu Press, Mandalay, in Burmese containing profiles of men he came to know in jail, where he was detained under press laws, has an interesting story by Thu Kha about how he met U Saw and got involved in the plot.

he joined the assassins, he was 17 or 18 – his father produced at the trial a suspiciously new horoscope to prove that he was even younger – and had just come of age to hang.

<5>

On the 30th. August, 1947, the Governor enacted The Special Crimes (Tribunal) Act, and steps were taken at once to appoint the president and members of the Special Tribunal to try U Saw and his men. 'As the officiating Chief Justice of the High Court,' Dr. Ba U wrote later, 'it was my duty to choose the judges of the Tribunal. There was no problem as far as the chairmanship of the Tribunal was concerned. I asked U Kyaw Myint to take on the job, and he readily consented. But I had considerable difficulty in choosing the two members of the Tribunal. The judges so chosen had to be strong, honest, and efficient, and also acceptable to the Government and the people. There were very few Sessions Judges who had all these qualifications. There were several who were honest and efficient, but some of them were not strong enough for the job, while others were not acceptable to Government. Ultimately, I chose U Aung Tha Gyaw and the late U Si Bu.'<sup>1</sup>

The selections were wise. Mr. Justice Kyaw Myint had risen to the High Court bench after long years as a barrister, and he had made a name for independence. Coming from an old and well-known family, he had launched out on untraditional paths to enjoy a full life in his fitful upswings in career. He had clerked in his youth, fought his British boss, explored England, carefully avoiding the ancient cloisters of Oxford and Cambridge, and got himself called to the English bar, almost as a concession to conformity. In Rangoon he had practised law, published, and played his part in politics, serving terms as a member for Burma of the Central Legislative Assembly, and supporting student strikers and the young nationalists. When, in 1946, he took his seat on the High Court at the age of 49, it appeared to him almost like retirement from active life. Yet, much more lay ahead of him. When Burma became independent, he was appointed one of the judges of the Supreme Court, the highest tribunal for Burma as appeals to the Privy Council in London were abolished. A few years later, Mr. Justice Kyaw Myint resigned to return to the bar, to serve as dean of the law faculty at the University, and to resume once more his active public career. The Chief Justice and the Governor therefore chose well when, looking for a man of courage, independence and public stature, they decided on him.

U Aung Tha Gyaw and U Si Bu were senior Sessions Judges who were due for elevation to the High Court for their seniority as well as merits. They were able, and like many other people who come from Arakan, absolutely

1. Dr. Ba U, *My Burma*, Taplinger, New York, 1959, p. 195.

honest. When the British returned as liberators after the war, many of the civilians were in uniform as colonels and majors, and some of them tried to act as conquering heroes. Prime Minister Churchill was reported to have had his doubts about giving military rank, at least high rank, to Civil Affairs Staff, for he thought it contrary to the interests of the fighting Army to have 'hordes of sham Major-Generals preening themselves in all directions.'<sup>1</sup> After much debate, however, the decision was made to put the men in uniform, and thus the CAS (Burma) duly arrived, looking confusingly like soldiers, only some of them behaving more so. It was the lot of U Aung Tha Gyaw, U Si Bu, and other 'native' officials, to stand up to the pompous ones of the CAS (B).

An incident which took place in Rangoon at the time of the military administration was illustrative of the sour attitudes which some of the British civilians held on their return. Lord Mountbatten, the supreme commander, met the senior officials of the CAS (B), lieutenant-colonels and above, at the Government House, to re-emphasise the need for a liberal policy and friendliness towards the peoples and their political leaders. He had himself taken strong initiative in extending recognition to the resistance, the 'Patriot Burmese Forces' as he named the guerrillas, and to Major-General Aung San as an allied commander. U Aung Tha Gyaw was one of only two Burman officials who were invited to the meeting. A British official present was Sir Alexander Campbell, director of education, gallant in his uniform as brigadier or colonel. He had brought back from Simla his schemes for the rehabilitation of Burma's mind and intellect, and he spoke up for the need for caution in the pursuit of a liberal policy. An Anglo-Indian police officer, one George Chettle, who was standing next to U Aung Tha Gyaw, immediately joined the chorus. 'I have been in this country for 25 years,' Mr. Chettle said, 'and with apologies to my friend on my right, the Burman is the most conceited creature on earth. If he be given an inch he is bound to claim a yard.'

U Aung Tha Gyaw and U Si Bu, Sessions Judges, were among those who had to contend with such attitudes, and they did so stoutly, true and loyal to their country and their calling. In due course they rose to the High Court where U Si Bu died in service. Justice Aung Tha Gyaw early established a reputation as a great defender of civil rights and an independent dissenter, and he rose further to the Supreme Court.

The Governor appointed the Special Tribunal by order dated the 20th. September, 1947, and the Tribunal took up its task without delay. On the 24th. September, at its first meeting, the Tribunal received a formal complaint from U Tun Byu, the Advocate-General, and took cognizance of the offences. The beginning of the trial was set for the 8th. October, and the

1. F. S. V. Donnison, *British Military Administration in the Far East, 1943-46*, HMSO, London, 1956, p. 48.

central jail at Insein was chosen as the place of the public trial. The Tribunal also directed that the assistance of legal counsel be made available at government expense to those of the accused who could not afford it.

<6>

Looking for a lawyer of sufficient abilities and outstanding stature to take charge of the prosecution, the Government thought of U Myint Thein, now Chief Justice of the Union, and considered creating a new post of Director of Public Prosecutions for him in which he could handle the job. The Government, however, gave up the idea because U Myint Thein was to go to Nanking as Burma's first ambassador after independence and also because it would have looked a little improper if he led the prosecution in a trial over which his older brother, Mr. Justice Kyaw Myint, presided. U Myint Thein rendered service through the trial advising U Tun Byu who took on the task of leader of the prosecution. An able and thorough man, U Tun Byu had, after some years as a barrister, joined the Government Law Office where he handled, among other work, legislative drafting which called for patient and meticulous attention to detail. Assisting U Tun Byu were U Choon Fong, a Government Advocate, and U Mya Thein, a senior barrister who had ably led the prosecution of some 200 men in what came to be known as the Pegu or Wingadat rebellion cases. Both U Choon Fong and U Mya Thein became judges of the High Court after serving turns as Attorney-General.

The prosecution was supported by a strong police force and a good criminal investigation department. The Ministry of Judicial Affairs, organizing the trial with its many details and special needs, had to work overtime in doubled vigilance. Security, for example, was a problem. The accused had to be protected from the angry people. The president and members of the Tribunal had to be provided, much against their own wishes, with guards for 24 hours every day through the trial. The prosecution counsel had to be similarly protected, and defence counsel too asked for, and received, police guards.

Finding lawyers for the defence presented some problems at first. U Saw could afford his own, but many leaders of the Bar were unwilling to defend him. Public opinion was a factor to reckon with, and few lawyers felt inspired enough to rise in his defence. Either because he could not engage a lawyer in Rangoon in whom he could place full confidence or because he wanted to heighten the drama of the trial and lend some weight to the rumours that foreign agencies were coming to his aid, U Saw sent for Mr. B. R. Vertannes, a lawyer from Burma who had retired to London. The Tribunal permitted him time to get Mr. Vertannes out to Rangoon, and it was only on the 15th. October that the trial could begin.

News that U Saw was unable, or unwilling, to get the services of a Rangoon lawyer brought him an offer from an unexpected quarter. One Mr. A. L. J. Rao, an advocate of Cuttack, Orissa, India, wrote to 'Mr. U Saw, former Prime Minister of Burma,' care of the Advocate-General, volunteering to fly out to Rangoon to his defence. 'I am aware of the good political work you did in the pre-war time,' Mr. Rao wrote, 'and I feel like going to Rangoon and conducting your defence in this historic criminal trial.' Mr. Rao described himself as 'an Advocate of the High Court of Madras and later of the Patna High Court: I am now under the temporary employ of the Government of Orissa as a Magistrate of the First Class.' There was a small suggestion about fees, though Mr. Rao made haste to point out that money did not really matter, it was the spirit of the thing. 'If you choose to accept my services, send a reasonable fee – I assess it at 75,000 rupees in Indian money. This is not a matter of money – I am strongly feeling for your defence. Send anything you like.'<sup>1</sup> The letter was passed on to U Saw.

For the remaining accused, the Government engaged U San Win and U Thein Kyaw, pleaders belonging to the Myochit party, and arranged to pay them special fees. U Ba Tun, another pleader, also came forward to defend Thu Kha, but he refused the assistance. 'Why don't you have U Ba Tun,' asked Justice Kyaw Myint kindly, 'why don't you try him, Maung Thu Kha? He is a good lawyer.' But, recalled Thu Kha, he himself, and many of the men who stood in the dock with him, were angry with U Saw who would get himself an expensive lawyer from London but abandon them to their fate. Feeling this anger and resentment, U Saw tried to talk the boys out of it in court, but they would not listen.<sup>2</sup>

<7>

A criminal trial is many things in one. It is high drama, and the people who participate in it – the judges, the lawyers, the witnesses, the accused – are all actors in some ways. Even the public who watch the trial may get involved and become part of the drama. A trial can also be a lot of legal ritual: high priests of the law making their mysterious gestures and utterances at the shrine of justice. But the main purpose of a criminal trial must always be a calm and patient search for the truth, and when the truth is found, a calm and humane appraisal of it, to formulate decisions for the good of the society. Truth is elusive and man is not perfect. So, the absolute truth is not always found, and men who find it, or something near it, do not always judge wisely or kindly. But in a criminal trial where the accused stand in

1. From the personal copy of the records of the trial and proceedings of Mr. Justice Mya Thein.
2. Thu Kha's story in *Htaung-hnin-lutha*.

peril of punishment, light or heavy, and society, of which they too are members, is interested and to some extent in peril, the men who take part in the trial must strive to come nearest to the truth and closest to perfection. They owe society no less than this.

We have the big codes which establish the crimes and define the punishments for offenders, which create courts and lay down the procedures. Underlying the laws are some eternal values: commonsense, the common weal and fairness. We may change the ritual and the methods, we may move a trial from one court to another; yet, so long as the eternal values are preserved, society will be served and protected. Once the judges, the lawyers, and others who take part in the trial, visibly or otherwise, lose sight of these eternal values, and get caught in the legal technicalities or irrelevant considerations, then will the trial lose its meaning and fail in its purpose.

The trial of U Saw taught me much. I attended several sessions, partly because I was then a law student and wanted to see the laws I was reading in the books come to life, and also because the drama and the history of the trial were fascinating. A friend in the Ministry of Information provided me with tickets of admission to the trial, and encouraged me to invite my fellow law students, females being preferred, because, my friend explained rather unnecessarily, they were less likely to throw bombs.

In the years that have passed since that trial in Insein jail, I have been able to attend many more trials, and even take part in a few as a lawyer. Circumstances have given me a varied legal practice. I have defended people in criminal trials and taken their appeals to the higher tribunals; I have also served on the prosecution, and replied for the Government on appeal. Looking back on the historic trial in the light of the little experience I have gained, I do consider that the trial reached a high watermark in the administration of justice. The Tribunal, and all who had a hand in the conduct of the trial, succeeded in creating a climate of calm and friendly fairness in the courtroom. People who attended the trial could see that justice was being done. The faces of the accused showed that they felt they would get justice.

In Burma we have inherited some valuable legacies of British justice. The 'rule of law,' for example, is such a legacy.<sup>1</sup> U Saw and others received a fair trial and not a lynching by angry mobs. U Saw, a former Prime Minister, stood on equal terms with other men, before the same Tribunal, which gave them equal justice.

Another legacy is the fundamental concept of criminal justice that a man

1. Dr. Kyaw Myint, back in legal practice, defending an editor in a trial, referred to the heritage left by the British – even though they might, for political convenience, be called the 'foreign devils' – of the rule of law and the legal principle that a man must be presumed innocent until he is proved guilty. *The Nation*, Rangoon, the 20th January, 1961.

must be presumed innocent until and unless he is proved guilty. This concept, in practice, throws the duty to prove a charge on the prosecution. If someone, be he a private citizen, be it the State, accuses a person of a crime, then the accuser must fully prove the case. It is not for the accused to answer at all until the accuser has produced proof of certain quantum and quality. If, in the end, the accuser is unable to produce proof of guilt, beyond reasonable doubt, the accused must go free.

At the trial of U Saw, therefore, the prosecution produced a preponderance of evidence to prove its charges. It was the prosecution's moral and legal duty to do so. It might over-prove, but not under-prove, its case. It must not leave gaps in the chain of evidence. It must not leave any fact of any significance to imagination. The prosecution had several confessions. One man had confessed quite early in the investigations, and he had been made an 'approver.' Other confessions followed, and even though some of the men later complained that the confessions were extracted from them by torture by the police, the confessions were able to stand up to strict legal tests. Yet, the confessions were not enough by themselves. The prosecution had many witnesses who saw, who heard, who knew, and they were produced in court and asked to tell their stories. There were exhibits such as the weapons that killed, the disguises worn by the men on their mission, the number-plates borne by the jeeps they rode; these were produced by the people who found them. In all, the prosecution prepared a list of 131 witnesses and after examining 78 waived the rest, holding that its case was proved beyond reasonable doubt.

It is important in a criminal trial that the prosecution should discharge its 'burden of proof.' Whatever the difficulties encountered in finding the evidence may be, the essential burden must not shift. Our system puts faith in the concept that nine guilty men should go free rather than one innocent man suffer punishment, and though, in the years of stress that followed after independence, the Government was sometimes inclined to waver in this faith, a free society has survived in Burma, more or less intact, because the faith has survived.

Important rules of evidence require that 'hearsay' be excluded and the best evidence available be produced. Irrelevant matters must, similarly, be shut out. The hearsay rule and the rule as to relevancy often puzzle and confuse the student by their technicality. The meaning and purpose of the rules become clear enough in a trial. If these rules did not exist, the trial of U Saw could have crumbled in chaos. So many people felt involved in the trial, and there were hundreds of them who thought they knew something that might help, or heard something from someone else who heard it in the market. Rangoon was filled with rumours then, and one had it that a brigade of foreign troops would descend on the city to rescue U Saw or

install him as Governor. If even a few of these rumours had been allowed to enter the courtroom, the trial could have been thrown off balance. The prosecution, with its skill and fairness, therefore kept out hearsay and irrelevant matter, and if it lapsed now and then the Tribunal stepped in to check. Thus, for example, the prosecution was not permitted to prove that large quantities of arms and ammunition were stolen from army ordnance depots before the assassinations, even though the thefts could have been linked with the crimes. The Tribunal felt that it must 'in viewing the proved facts of this case and their effect on the issues of guilt or innocence raised in it, guard against the possible danger of prejudice against the interests of the persons involved in the present charges.'

In a criminal trial the accused persons must be permitted ample latitude in cross-examining the prosecution witnesses. The right of cross-examination is a valuable right to be used by the accused or their lawyers to break down, if they can, the stories told by the witnesses, or at least to point up, where they exist, the errors, the inconsistencies, and the unreliable features. As it is the duty of the prosecution to first make out the charges, supporting them with sufficient proof, the accused may remain silent when the prosecution witnesses are first examined. Later, if the charges are made out, the accused must be given the right to recall the witnesses and subject them to cross-examination. This right was given to U Saw at the trial, and fully used by him and his lawyers.

Lawyers are officers of the court, in a criminal even more than in a civil trial. It is their duty to marshal the evidence and present the facts in calm and orderly form, to find the laws which are applicable to the facts, and to present their case to the court in the consciousness that the essential purpose of the trial is to discover the truth. Lawyers for the prosecution are generally employed by the Government, but while they must perform their duty with vigilance and vigour, they must prosecute, not persecute, for they are officers of the court and public servants, lawyers not hangmen. The prosecution counsel in U Saw's trial maintained those high ethical standards, and it was an inspiration to watch them.

It is not easy, I have found from sojourns in Government service, to attain those high standards. One gets emotionally involved in the trial, and a conviction appears as a personal triumph. Drawing one's salary from the Government, one feels privileged and powerful. Whenever I slid into those illusions of privilege and power as a Government lawyer, I would try to remember the U Saw trial, and remind myself that the only difference between myself and the defence counsel was that I was paid a salary by the Government, not a handsome one at that, and the defence counsel was paid his fee by a private citizen, and while the sources of our fees were different, we served the same demanding mistress, justice.

Another important feature of our legal system, again a legacy, is that justice is administered under the public eye. Justice must not only be done, as the saying goes, but it must be seen to be done. Thus alone will public confidence in the rule of law be fully kept. The trial of U Saw was a public trial. True, it was held in Insein jail for security reasons, but it was possible to get admission tickets. Later, as public interest in the trial declined and passions also cooled off, tickets were not even strictly insisted upon. The press, the eyes and ears of the people, were given adequate facilities to cover the trial. The Information Ministry organized the facilities and handed out bulletins and photographs. Mr. Justice Kyaw Myint, the president of the Tribunal, took good care of the press, and when newspapers complained to him that the Information Department photographs were not good enough, he issued a memorandum granting permission to press photographers to take pictures in the courtroom if they did not disturb the proceedings and did not show bad taste.

Full publicity was therefore given to the proceedings of the trial. The depositions of witnesses in court and all that was said or done at the trial were public property. There were no secrets or mysteries. A criminal trial is not a hole and corner affair, and the trial of U Saw certainly took place in the limelight. The depositions and proceedings which are reproduced in the following chapters were reported in the local and foreign press during the trial. I have studied the press reports and also the complete records to select and prepare the important portions for this book.

Just as there must be full publicity for a trial there must be fairness in reporting. The newspapers must not incite hatred or hysteria with their unfair comments or distorted reporting, or create prejudice in the minds of the judges, the jury, and those who take part in the trial. The jury system was under suspension in Burma following the war, but the Tribunal took care to warn the press against making unfair comments or reports. Two newspapers needed the warning at the start of the trial, but no more.

Justice delayed, it is said, is justice denied. This is even more true in criminal cases where the accused person may be in custody, without bail.

He must not be tortured and tormented by the long waiting. Also, delays seriously shake public confidence in justice, undermine their respect for it, and prompt them to resort to illegal or extra-legal methods in seeking satisfaction. Yet, justice must not be hasty or hurried, and time must be granted to the accused to prepare his answers to the charges, to get his witnesses to court, to avail himself of legal assistance. The trial of U Saw was a good model of justice efficiently and humanely administered. Needed time was given to U Saw to engage counsel from abroad, to find his witnesses and formulate his answers. But the trial proceeded along without undue

delays, and reached its end within two months after the examination of the first witnesses.

<8>

U Saw was calm when the police first swooped on his home on the 19th. July. He remained calm when he was moved to the Rangoon jail and people in the street and at the gates hooted and howled at him. He was kind and courteous to those officers of the police and the jails who had to look after him. The injury he suffered in his eye when an attempt was made on his life had healed and he was not losing the eye after all. He could dispense with the dark glasses which he had worn from the day of the attempt, and see surroundings, and life, more clearly. He was treated well in jail, and felt at home for he had been jailed before in his political career and had consigned his rivals to a similar fate. When he went to the hearings in Insein jail, he wore his own silk clothes and almost looked his former self, a Prime Minister going to office, with police escorts for bodyguards.

The Government's difficult duty was to protect U Saw on the one hand and prevent his escape on the other. U Kyaw Nyein, the Home Minister, shared the burden with U Tun Win, the Parliamentary Secretary. Trusted men were assigned security duties in the jails or on police beats. Thakin Pan Myaing, later to become a Minister, thus found himself keeping watch as a jail official at Insein, and there were others from the League who were given such unaccustomed tasks. U Thaung Sein, later Mr. Justice Thaung Sein of the High Court, was Secretary in the Ministry of Judicial Affairs, and he took on special duty as Inspector-General of Prisons. The keen and unrelenting watch was needed, for U Saw did try to escape.

Within a week of his arrival in jail, U Saw began his attempts. First he tried to bribe his way out, offering 100,000 rupees to the jail superintendent to secure his release, not failing to use his influence and prestige as a former Prime Minister whose political fortunes were not quite ended. To collect the money U Saw contacted one Captain V. Vivian, an assistant superintendent of armed police, through whose aid he had procured 200 Bren guns. Vivian had also landed in jail and was awaiting his own trial. The note from U Saw was in code and said: 'Midnight steps on the stairs; Green bananas; Lemonade is David's sweetheart.' The reply from Vivian simply said, 'I recognize.' Another note from Vivian suggested: 'Why don't you appeal to the tall person?' U Saw took the suggestion and sent the appeal. The 'tall person' soon left Rangoon, however, and U Saw waited for help in vain.<sup>1</sup>

1. Transition periods always seem to throw up adventurers and misty-eyed do-gooders. For examples, read Dr. Ba U's *My Burma*, p. 196. A British 'colonel,' one Mr. Tulloch, and a newspaper correspondent, Mr. Campbell, were exposed by the British

When he lost hope of escape, U Saw thought of suicide. He sent a note in code to a follower outside Rangoon: 'There are no fish in the Kokine lake.' The man who received the note and understood the message quietly asked the messenger: 'How and where can I get a revolver? I do not have one.' The revolver was not found and U Saw's attempt was foiled again.

No fish in the lake, no kiss from David's sweetheart, no tall tower of hope. U Saw did not lose his composure, though, as he drew deep from the wells of strength and courage within him and went forth to the trial.

ambassador in Rangoon to the Burma Government in their shady traffic with some minority groups. The incident illustrates the cooperation, which was extended by official Britain to Burma, and has also caused embarrassment to the many innocent Mr. Campbells who have visited Rangoon afterwards.

## CHAPTER THREE

### THE TRIAL

<1>

The case was Number 1 of 1947 on the list of the Special Tribunal. Its title was: 'The King *versus* U Saw; Maung Soe; Thet Hnin; Maung Sein *alias* Sein Gyi *alias* Hla Aung; Yan Gyi Aung *alias* Hla Tun; Thu Kha; Khin Maung Yin; Maung Ni *alias* Bo Ni *alias* Gani; and Hmon Gyi *alias* Maung Hmon.'

The formal complainant in the case was U Aung Chein, Commissioner of Police, Rangoon city. But not the police alone were concerned in the case, nor even the bereaved widows and families only. The entire society was interested. People who live in a society have some expectations, and the purpose of living together is to fulfill the expectations, at least to some minimum standards. Ministers of the Government expect to be able to meet in conference and deliberate in peace, unexposed to the peril of gunmen bursting in to shoot them down. Private citizens too expect to conduct their business and go about their daily activities without being shot at, or being molested. There are many other expectations such as these, and to fulfill them people form their society, frame their laws and live by the laws. When the minimum expectations of the society are denied or disappointed, it is not the primary sufferers alone who are affected, but society also. The wrong that is done, the offence that is committed, hits society whose concern it becomes to have the wrong repaired, the wrong-doer brought to justice. Society in Burma was personified by the King, George VI of England, the legal father of the family to which Burma belonged. The crime with which U Saw and his men were charged violated the King's Peace, and it was in the King's name that the prosecution made its case.

U Tun Byu, the Advocate-General, began leading the prosecution case on the 15th. October, 1947. The courtroom, improvised out of one of the smaller buildings in Insein jail, was crowded on that day. The press, the public, the lawyers for the prosecution, the lawyers for the defence, the accused, all were gathered, when Mr. Justice Kyaw Myint, U Aung Tha Gyaw and U Si Bu came in, and the Tribunal began its hearing of the witnesses.

U Saw sat in a chair by his lawyer, Mr. B. R. Vertannes. He was composed and alert, and during the trial he whispered many instructions to his lawyer. The other accused sat together in the dock. U San Win and U Thein Kyaw, pleaders, appeared for Maung Soe, Thet Hnin, Yan Gyi Aung and Hmon Gyi. Thu Kha and the remaining accused declined the legal assistance which the Government offered them.

U Aung Chein, the complainant, was prosecution witness number one. In his examination-in-chief by the Advocate-General, he said: I was present in the office of the Inspector-General of Police at the Secretariat on the morning of the 19th. July, 1947, when I heard sounds like falling bricks. I learned that shootings had taken place in the west wing of the Secretariat and so I went there. I got to the Bogyoke's office chamber and went in. I found Bogyoke Aung San and some other Councillors lying dead. I could still smell gunpowder in the room. The other Councillors who were lying dead were Mahn Ba Khaing, Thakin Mya, Mr. Razak, and U Ba Win. I found Sao Sam Htun sitting on the floor in one corner leaning against a pile of rugs. U Ba Choe was lying unconscious but alive. I found Bo Tun Hla and U Tin Ohn inside the room when I got there and asked them what had happened.

I learned that four men wearing XIIth. Army uniforms and badges and carrying automatic weapons had come and shot the Councillors and had gone away in a jeep. I immediately went out and looked for the jeep, but did not see it. I went back into the room again and inspected the scene of the crime, and instructed police officers U Po Sein and Mr. Bell to take charge and see that the room was kept intact, and also to collect the exhibits, namely empty shells and some bullets left behind by the assailants. I phoned police headquarters to arrange for the removal of the dead and injured to the General Hospital. The ambulance came a little after 11 a.m. Sao Sam Htun was wounded in the face; I am not sure whether he was taken away in an ambulance car.

U Than Pe, Superintendent of Police, and U Hla Pe, Police Station Inspector, arrived there from headquarters. Mr. Phipps, Deputy Inspector-General of Police, Southern Range, also came. I left the Secretariat that day at about 1 p.m. U Thein On, Deputy Superintendent of Police, was entrusted with the investigation of the case. He worked under my supervision.

I was not present that same afternoon when U Saw's house was raided by the police, but I was kept informed. I received a report the next day that certain automatic weapons were found and seized in the waters near U Saw's house. I gave instructions to have them sent to U Hla Baw, principal, Detective Training School, for expert examination. I also directed the sending of the empty shells and the cartridges found inside Bogyoke's chamber the previous day. I have not seen any written report made by U Hla Baw but have heard the facts from him verbally, and seen photographs and diagrams.

On the 23rd. or the 24th. July I met U Sein Maung of the 'Thamadi' Press

and talked with him. As a result I directed my Deputy Superintendent to seize from him a paying-in slip book issued by Grindlays Bank Ltd., Rangoon. This U Sein Maung was produced to me by informers. Actually, no informers accompanied him, when he was brought to me by my assistants. The paying-in slip book now produced before the Court was the one seized from U Sein Maung (admitted and marked as Exhibit 'A').

I had this book seized as it has on the back of it the number R. C. 1814. (The entry is admitted as Ex. A-1, subject to proof). I examined U Sein Maung as to the circumstances in which he recorded this number on the back of the book. I instructed the Deputy Commissioner of Police and U Thein Ohn to try and trace this car number. I found that the jeep R. C. 1814 was registered in the motor vehicles department in the name of U Ba E of Zalun Street, Sanchaung, Rangoon. That jeep was seized by the police.

During the investigation of this case I received a letter from U Tun Hla Aung, the Deputy Inspector-General of Police, C.I.D., enclosing a certain report. The four letters produced in court were those received from him (Ex. B, B-1, B-2, and B-3, subject to proof). I did see the number plates of motorcars reported to have been seized from near U Saw's house. The iron plates now in court were those received by me (Ex. 1, 1-A, 1-B, 1-C and 1-D). I also directed the seizure of an iron cot from U Saw's house (Ex. 2). The iron plates Ex 1 to 1-D fit on to the cot Ex. 2 as supports, breadth-wise. (Witness demonstrates).

I saw the accused in two different groups on or about the 23rd. or 24th. July when they were brought to the town lock-up. They did not include U Saw. I made it a point to ask them whether they had any complaints. They had none.

We do not have any instrument with which to conduct ballistic experiments and tests regarding bullets. We lost them during the war. I made attempts to get such instruments from abroad. We enquired from Lawrence and Mayo in India for a bullet comparison microscope with lighting arrangements and bullet-holders. They replied they had no stock. I also tried to get one from England, without success. We have not been able to get the experiments done in India, firstly because at the time we intended to send out the exhibits there were air accidents due to bad weather, and secondly, communal riots were raging in India. Also, owing to the great political significance attached to this case, we consider that sending out the exhibits would be too risky. We had to think of delays and substitution and tampering of exhibits.

It was under my direction that the accused who desired to give their confessions were taken before the Magistrates. I knew that certain of the accused volunteered to give confessions before the Magistrates.

Lawyers for the accused reserved their right to cross-examine U Aung Chein. They chose to wait and watch how the case developed. It was only on the 25th. November, after the charges had been framed, that the defence counsel recalled U Aung Chein and subjected him to cross-examination.

'I am a graduate of the Rangoon University,' U Aung Chein replied, and he joined the police department in 1928. He supervised the investigations, though U Thein Ohn was the investigating officer. The defence counsel tried to shake his testimony regarding the jeep, and its number. At the time he first went to the scene of the crime, the witness explained, he did not know the number of the jeep. He did consider that the number was one of the important factors in the case. A large reward was offered for information relating to the assassins and a notice was published in the press. Shown a copy of the 'Bamakhit' newspaper dated the 23rd. July, witness agreed that a reward of 10,000 rupees was offered by the police in respect of each of the assassins.

U Aung Chein could not remember whether he had met U Sein Maung before. When U Sein Maung mentioned the number of the jeep to him he had become interested, and he had directed his Deputy to trace the car and its owner. He received reports of the raid on U Saw's house on the day of the raid, the 19th. July. He did not know then that a car bearing the number R. C. 1814 had been seen leaving U Saw's compound and returning to it. When, later on, U Aung Chein received further reports about the movements of the motor car bearing the number R. C. 1814 and the connections of its owner, he became satisfied that the owner was not involved.

'The leaders of some political parties,' U Aung Chein replied to another question, 'are still under detention.'

The Tribunal had some questions of its own to ask of U Aung Chein about the jeep and the number plate. U Aung Chein reported that the plate bearing the number R. C. 1814, Exhibit I, was not among those seized at U Saw's house. It was found in the bed of the lake and the army search party made the search at the request of the Inspector-General of Police. No special search was made for this number plate, only a general search was made. U Aung Chein did not order the immediate seizure of the jeep which genuinely bore the number, R. C. 1814, because he wanted to complete enquiries and did not want the owner to know about them.

Further cross-examined by Mr. Vertannes, by permission of the Tribunal, the witness explained that he had kept an open mind about U Ba Aye, the owner of the genuine jeep, and had reports that the owner had no political connections. The witness held the view that the present case had political aspects.

U Aung Zan Wai, Minister for Social Services, appeared as a witness to tell his story of the unforgettable morning. Besides himself, Councillors U Ba Gyan, U Mya (Pyawbwe), Sao Sam Htun, Thakin Mya, Mr. Razak, Deedok U Ba Choe, U Ba Win and Mahn Ba Khaing were present at the fateful meeting. Bogyoke Aung San sat at the head of the table. The Secretary to the Council, U Shwe Baw was there, and Deputy Secretary, U Ohn Maung, had been brought in for consultation. 'After some time during our discussions, the door to the chamber was suddenly pushed open and a number of men in army uniform came in. Actually, I saw two of them and I thought I saw a third man behind them. The time then would be about 10.30 a.m.'

The men came in shouting, 'Don't run away' or 'Don't get up!' The next thing the witness heard was the firing. 'As far as I can remember, just as they started firing U Aung San stood up and faced the intruders. As he stood up I heard the shots being fired from the guns. I dropped to the floor and laid myself flat and saw nothing more. I remained in that position till the intruders left. After they left, I got up and looked about me and saw various people lying as if dead, except Sao Sam Htun who was wounded in his face and vomiting blood. U Ba Gyan was also lying down flat on the floor like me. He received an injury on a finger of his right hand. U Ba Gyan and I left the chamber and went to his office room. About 10 or 15 minutes later I went into the Bogyoke's chamber. When I got there Bogyoke had been removed, the others were still lying there. I met Bo Tun Hla in the room at the time, and others whom I do not remember now.'

A model of the chamber with the furniture in position and with detachable walls was put in as Exhibit 3 at this stage, and U Aung Zan Wai pointed out where the Councillors had sat, and which door the gunmen came through.

Recalled and cross-examined by Mr. Vertannes on the 25th. November, U Aung Zan Wai said: I have been in politics for about 30 years. In January, 1946, there was an Executive Council of the Governor, of which Sir Paw Tun was a Member. U Aye, U Lun and U Ba Ohn were also Members. Prior to the Japanese invasion the three last-named were members of the Myochit party. Sometime later, U Aye and U Ba Ohn resigned from the Executive Council. The late U Aung San was not a Member of the Executive Council at that time. In about August or September, 1946, there was a series of strikes including the police strike. Owing to the strikes, there was a certain dislocation of the machinery of the Government. In about September, 1946, all the Members of the Executive Council resigned.

In the elections of April, 1947, U Aung Zan Wai said, there were only two parties taking part, the AFPFL and the Communist Party. U Aung

San led the AFPFL and Thakin Than Tun the Communist Party. The witness did not know who the leader of the Myochit Party was before the elections. Prior to the war, U Saw was. Re-examined by the Advocate-General, U Aung Zan Wai stated that the late U Aung San and Thakin Than Tun married two sisters.

<5>

U Ba Gyan, Minister for Commerce and Supplies, came forward to tell his story, the facts of which agreed in substance with that told by his colleague and co-survivor U Aung Zan Wai. 'Altogether I noticed four or five men,' U Ba Gyan said, 'of whom I kept my eye on the two who advanced into the chamber. The two men I saw inside the chamber were wearing soft cloth hats usually worn by soldiers from the XIIth. Army.' There was no cross-examination of U Ba Gyan by the defence counsel.

The plans of the Executive Council chamber, and of U Saw's house, were drawn, produced and proved by U Myaing, aged 58, a retired keeper of land records. He was recalled and cross-examined by U San Win on the 24th. November, and his memory was tested. The testimony stood unshaken. U Po Sa, a photographer, formally acknowledged the pictures which he took of the chamber on the 23rd. July, showing bullet marks on the walls and the furniture in disarray.

Bo Tun Hla, the personal aide of Bogyoke Aung San, was in his room adjoining the chamber when the gunmen broke in. Lieutenant Than Win, A.D.C. to the General Officer Commanding, Burma Army, was with him when he heard 'the sound of an explosion very much like that of a hand-grenade. On hearing the explosion both of us laid ourselves on the floor for about a minute. Then, Than Win dashed into the passage, and I into the chamber. As I opened my door I met Sao Sam Htun, with blood on his face, and he showed by signs that he wanted to drink water. I made him sit down at the end of the table, showing him by signs that he would get his water.'

Bo Tun Hla then went towards Bogyoke and found him on the floor, dead, with his chair lying overturned. Another volley of shots sounded in the passageway when Bo Tun Hla knelt down beside his chief. 'Bogyoke on that morning was wearing a Bangkok *longyi* and a silk jacket. I saw them last lying in his coffin at his house.' The doors of the chamber were kept bolted from inside except the main door on the north through which the gunmen came.

'I expect to be leaving for India,' Bo Tun Hla stated, 'about the end of this month. I was with Bogyoke in London in January last when the Aung San-Attlee Agreement was signed. The leader of the Burmese delegation was U Aung San and the members were U Tin Tut, Thakin Ba Sein, the first

accused U Saw, Thakin Mya, U Ba Pe, and U Kyaw Nyein. U Shwe Baw accompanied the delegation as Secretary. I accompanied U Aung San as personal assistant.'

Cross-examined by Mr. Vertannes, Bo Tun Hla said that he was examined by the police investigating officer in English, and his statement was recorded in English. He did say to the police that there was smoke in the chamber when he entered, but the smoke was not thick enough to obscure his view.

<6>

U Ohn Khin, who was office superintendent in the Finance Department, was talking to a friend, U Maung Maung, office superintendent in the Public Works Department, in the corridor of the Secretariat, on the morning of the 19th. July, when they heard sounds of 'click, click,' coming up the stairs. 'I turned and looked,' said U Ohn Khin in his testimony as a witness, 'and saw four persons dressed like soldiers coming up the stairs. They were wearing jungle green uniforms with XIIth. Army badges on their shoulders. The first three were armed with Tommy-guns and the last was armed with a Sten-gun.' (Witness pointed out the Tommy-gun and Sten-gun lying on the table in the courtroom) 'The men were wearing bush hats like those now shown in court.' The men then proceeded towards Bogyoke's chamber, and shortly afterwards, U Ohn Khin and U Maung Maung heard gunfire. Both came to testify as to what they saw that morning. U Ohn Khin joined the diplomatic service, leaving the Secretariat with its grim memories; U Maung Maung joined the Burmese Embassy in London for some time, and returned to the civil service and the Secretariat.

U Tin Ohn, Assistant Secretary to the Executive Council, saw the gunmen pass his office that morning, and remarked on the strangeness to U Aung, stenographer in the office. When he heard the sound of guns, he waited for a while and rushed out to the chamber to find Bogyoke and U Ohn Maung lying on the floor, within a few feet of each other, already dead. 'I saw Thakin Mya in a crouching position underneath the table. He also appeared to be dead. I saw U Ba Choe, Mr. Razak, U Ba Win and Mahn Ba Khaing. I saw them all in their respective chairs but they all appeared to be lifeless. I saw the Sawbwa Sao Sam Htum seated in the corner trying to stop the bleeding from his mouth. I sent for a jug of water and gave it with my handkerchief to the Sawbwa. He was conscious but unable to speak.'

U Tin Ohn had accompanied the Burmese delegation to the London talks in January that year. 'The advisers were U Kyaw Nyein, Bo Set Kya, Thakin Chit and U Ba Yin. U Shwe Baw was Secretary and I was his Assistant. I have seen the agreement which came to be known as the Aung San-Attlee Agreement. Bogyoke Aung San, Thakin Mya, U Ba Pe and U

Tin Tut signed the Agreement on behalf of Burma. The first accused U Saw, and Thakin Ba Sein did not sign.'

U Aung, the stenographer, also told a similar story about the armed men who passed that morning along the corridor, and pushed their way into the Council chamber, brushing aside a young Burmese peon, Maung Thaung Sein. The peon remembered the morning vividly. 'That morning when I was guarding the door,' he stated in court, 'and some time between 10 a.m. and 11 a.m., four men came. They came along the verandah from the south. They were dressed in green khaki like that worn by soldiers. They were wearing the 'Chinthay' badges on their uniforms, like Exhibit 5 in court. They were armed with guns with short barrels. One of them came and opened the door which I was watching. I stepped forward and told them not to enter. One of them aimed his gun at me. Another pushed me back and I almost fell on my back. The four men entered the room together. I remembered the face of one of these four men. He is not now present in the dock.'

The man Thaung Sein remembered was Thet Hnin, one of the accused, who was absent from court that day because he had dysentery. Thet Hnin was sent for, and he was identified. 'He was the man who levelled his gun at me. Some 10 days after the occurrence I attended an identification parade in the town lock-up. I picked up this same man from among those lined up.'

Cross-examined by U San Win, counsel for Thet Hnin, Thaung Sein said that at the time he picked out Thet Hnin, he had a bandage round the top of his head. The Tribunal questioned the witness as to whether he had picked out Thet Hnin because of the bandage, but witness said, 'No, because I remembered him well.'

Yan Gyi Aung, another accused, was identified by U Than, a reporter for the 'Economic Daily,' who happened to be at the Secretariat, hunting for news, when the gunmen appeared on the scene. In the commotion following the shootings U Than ran out to the stairs and into 'three or four men in XIIth. Army uniforms' who shouted: 'Don't run!' He saw that the armed man in front was the smallest among them, and carried a Sten-gun, while the others carried what looked to him like 'stocks of guns.' He fell flat on his face, and just about that time Ko Htwe, the personal guard of Mr. Razak, came running out, the young man who held the Sten-gun fired and Ko Htwe fell backwards into the room. 'I looked closely at the man who shot Ko Htwe down in such a cruel manner,' U Than deposed, and he remembered the face well enough to identify Yan Gyi Aung at an identification parade. Cross-examined, U Than said he did not immediately inform his editors U Ohn Myint, and U San Myint that he would be able to identify one of the assassins, 'because the country was in turmoil and I was afraid

that I would be risking my life if I disclosed what I knew.' He had, however, made up his mind to give the information to any police officer who examined him. He had served in the Burma Defence Army for about seven months and had learnt to throw himself down in the face of sudden danger. That was how he threw himself down instinctively that morning.

Thu Kha, one of the accused, was identified by Maung Ohn, an office peon of the Defence Department, who saw a jeep come into the Secretariat, soon after the sound of shootings and cries of 'Victory.' The jeep drove in and stopped under a porch to wait for the armed men who came down the stairs. Thu Kha drove the jeep, as the witness saw clearly, and remembered vividly because Thu Kha was alone in the jeep. When the witness saw the gunmen come down the stairs, he ran away. Cross-examined, the witness stood firm by his story. He was recalled on the 26th. November, and Mr. Vertannes tried to make substance of a discrepancy in his statements about the direction from which the jeep had approached. The witness made it clear that he had always meant that the jeep came up from behind him, when he was waiting for his chief, Colonel Kyaw Win to arrive, and he noticed the jeep because it stopped not far from him and it was the only jeep that stopped under the porch that morning.

A police constable, on traffic control duty at the Secretariat on the 19th. July, also saw Thu Kha at the wheel of the jeep, waiting with engine alive, under the porch. The constable had signalled to Thu Kha to pass outside, and when Thu Kha had failed to obey, gone forward to reprimand. At that moment the gunmen came down the stairs, and Maung Htwe, the constable, dashed off to the police station at the other end of the Secretariat compound.

<7>

Brick upon brick, thus, the case for the prosecution was built. Not eye-witnesses of the Secretariat happenings only, but those who saw the goings-on at the U Saw home were available. 'I know U Saw's house on Ady Road,' stated U Tun Hla Aung, Deputy Inspector-General, C.I.D., as a witness. 'I had ordered a C.I.D. officer to watch the house from the 17th. July onwards. This officer, head constable Aung Kyaw Sein, submitted his reports to me each morning.'

U Tun Hla Aung spoke about the meeting of senior police officials at the Secretariat on the morning of the 19th. July. 'I was present at the office of U Ba Maung, the Inspector-General, from about 9 a.m. At about 10.30 a.m. we heard a rumbling noise from the western block of the Secretariat building. U Aung Chein was also with me and the I.G.P. at the time. I went into my car and went out of the south-west gate to find out what had happened. Nobody could tell me what the matter was, and so I came back into the

Secretariat by the north-west gate. The I.G.P. sent for me, and by then we had learnt of the shootings. He and I went to the scene of the crime.'

The I.G.P. and U Tun Hla Aung then went in to report to U Ka Si, the Chief Secretary, and while they were there, a phone call came through from Captain Khan who was then living on Ady Road, opposite to U Saw. On the evening of the 18th. July, U Tun Hla Aung had asked Khan to help watch U Saw's house, because there had been thefts of arms and ammunition from army depots. Captain Khan said on the phone that he had some information, and he was asked to come in at once, and he arrived at the Secretariat within half an hour and his information clinched matters. A raid was ordered on U Saw's house at once, and U Tun Hla Aung followed up a little after 5.30 p. m. that day to find U Saw and the other inmates who were arrested being put into trucks to be taken away. He checked some articles which had been found and seized, and inspected two jeeps under the portico parked back to back. One jeep had a hood on, and bore the number R. B. 9831, on the front as well as the back, and the paint was still wet on the numbers. The other jeep without a hood bore a general number, 167. In the garage there was a saloon car and a 15-cwt truck. (The Tribunal rose at this stage to go out into the Insein jail-yard where the cars, put up as exhibits, were parked.)

While he was still at U Saw's house, U Tun Hla Aung received the report of Aung Kyaw Sein, the watcher, for that day. Aung Kyaw Sein, Hla Tin, another watcher, and Captain Khan identified the jeep with the hood as the one they had seen bearing the number R.C 1814. 'At the time I saw the jeep,' U Tun Hla Aung stated, 'there were strips of red and white cotton cloth tied on the left side of the wind-screen. Such strips of cloth are used in connection with the propitiation of *nats*. I tried to start the engines of both the jeeps. I could start the engine of the hooded jeep easily. I found the battery in the other jeep run down and the engine would not start.'

Under cross-examination, U Tun Hla Aung said that he was appointed D.I.G., C.I.D., on the 4th. June, 1947. Before that, he was D.I.G., Southern Range, with headquarters in Rangoon. 'I was in Burma during the Japanese occupation. I know of the political parties in Burma which were in existence two months before the assassinations. They were (1) the Myochit party led by the first accused, U Saw, (2) the Dohbama Asiayone, led by Thakin Ba Sein, (3) the Mahabama party, led by Dr. Ba Maw, (4) the Alanni, or Red Flag Communist party, led by Thakin Soe, (5) the Burma Communist party, led by Thakin Than Tun. There was also an organization, not political in nature, called the Pyithu Yebaw Haung Aphwe.'

There was a police strike in September, 1946, U Tun Hla Aung stated. The head of the strikers was U Wan Maung, a sub-inspector of police. On the 5th. July, 1947, there was a procession of motor-buses through some of

the streets of Rangoon. U Wan Maung led the procession in a jeep, and later, he and his followers camped at the Mogaung Pagoda. U Tun Hla Aung could not remember, however, a meeting at the City Hall in Rangoon in which U Aung San mentioned U Wan Maung in his speech. 'I know that Thakin Ba Sein and Thakin Tun Ok left Burma during the Japanese occupation,' the witness said, 'but I do not know whether they were expelled from Burma.'

'Soon after the assassination, besides U Saw's house, the houses of other persons were also raided. Some of the houses so raided were the houses of political leaders like Dr. Ba Maw and Thakin Ba Sein. I am not in a position to disclose the reasons for such raids. I know that U Saw was shot at in or about September 1946, and that he received certain injuries as a consequence. I was in Rangoon then. After the assassination about 800 persons in all were arrested. More than half of the people have now been released. The delay in releasing them has been due to the fact that they have had to be interrogated.'

Asked by the Tribunal, U Tun Hla Aung explained about the pieces of cloth, red and white, on the wind-screen of the jeep. 'Nats are propitiated when people are about to undertake any dangerous enterprise, or when they are about to go on a journey, or to avert calamity that might befall them or their families.'

Recalled and further cross-examined on the 26th. November, U Tun Hla Aung explained that the assassination case was investigated by the C.I.D., the Insein police, and the Rangoon City police. Later, the case was handed over to the Rangoon City police. The I.G.P. offered a reward of 10,000 rupees for information leading to the arrest and conviction of each of the assassins, and the witness saw a draft of the notice before he handed over the case. At a conference held on the 16th. July, the witness had told members of a team of officers to keep a watch on the house of U Saw. This team was specially detailed for the cases relating to thefts of bren guns and ammunition. Watches were kept on the houses of other persons also as a matter of routine. U Saw's house was, however, specially watched. At the time U Saw was shot at, the witness was with the Rangoon City police on special duty in connection with the police strike. He did not know if anyone was tried for that offence. Mr. Raynes was the Commissioner of Police, Rangoon, then, and Mr. Carter the Deputy Commissioner.

<8>

Captain Khan and the watchers had interesting stories to tell the Tribunal. Khan related how, at the request of U Tun Hla Aung, he had put on two of his reliable men, Hla Tin and Soe Myint to keep watch on U Saw's house.

On the morning of the 19th. July, he noticed his two men watching, and also another man from the C.I.D. A little after 10 a.m. Hla Tin came to him to report that he had seen a jeep go out of U Saw's house with four or five men, wearing rain coats, in it. The jeep bore the number, R. C. 1814. A little after the jeep had left, U Saw came out to the gate and whispered something to the gatekeeper, and then turned back into the house.

At about 11 a.m. Khan left his house to go to the office. He drove his own car, and as he went out, he saw a jeep drive up at great speed along Ady Road from the opposite direction, then turn in at U Saw's gate. The gate was flung open quickly, and closed quickly after the jeep had entered. Captain Khan could not see the number of the jeep, but saw four men in it. On the left side of the wind-screen, blown about in the wind as the jeep drove past, were red and white tags.

When Khan heard the news of the Secretariat shootings between 12 noon and 12.30, and that the assassins had made off in a jeep, he became suspicious, and decided to report to U Tun Hla Aung. He went first to the Deputy Inspector-General's house, and not finding him there, he rang him at the office.

The defence counsel tried hard to discredit Khan's statement. They tried to make him out as an opportunist, a profiteering businessman, an adventurer. They questioned his army record, his motives in helping the C.I.D. 'I had no personal interest in the matter,' Khan replied, 'but any work on which the C.I.D. is engaged usually interests me greatly. I am fond of reading detective stories and solving mysteries. I was doing a favour to U Tun Hla Aung by following his instructions. I have never been connected with the police in any way.' Mr. Vertannes recalled Khan for a further cross-examination on the 27th. November, but the substance of the testimony survived unshaken.

The other watchers also went into the witness box to report what they had seen, and their stories agreed in essential detail and built a larger, clearer picture. Aung Kyaw Sein, the head constable of the C.I.D., and Hla Tin who was Captain Khan's clerk thus became important eye-witnesses.

Besides the watchers, there were the searchers and the finders. Police and Army officers and men who raided U Saw's house and rounded up U Saw and his men, who searched and seized incriminating articles, who dived in the lake and retrieved the guns and the false number-plate of the hooded jeep. U Thein Ohn, the Deputy Superintendent of Police, who bore the brunt of the investigation, with the help of Detective Inspector U Hla Pe, Superintendent of Police Mr. S. D. Jupp who was one of the leaders of the raid on U Saw's house, Deputy Superintendent U Soe Yin who took part in the search that followed, Inspector Mr. Sant Singh who prepared the search list, Lieutenant J. S. Coulson and his men of the 7th. Field Company

of the Royal Engineers who searched the lake – ‘we did the searching and prodding systematically from start to finish,’ said Coulson in court with a touch of professional pride – these, and many more of the police and army departments bore witness as to how they found the separate pieces of evidence which, collectively, became the solid, compact case for the prosecution.

Experts too came to the Tribunal to tell their tales. Dr. Ba Than, the surgeon, who examined the bodies on their arrival at the General Hospital, and later performed the post mortem, testified as to the causes of death, giving in detail for the benefit of legal certainty, the magnitude of each wound and its sufficiency, or otherwise, to cause death. The law demands certainty, the maximum certainty that can be achieved under human limitations. When a man stands accused of murder the law wants to be sure that the victim died from the blow he struck, and not of malaria or something else. It was the task of Dr. Ba Than, the police surgeon, to prove that Bogyoke Aung San and the other victims died of wounds inflicted upon them by the assassins, and with the cold, scientific skill of the experienced surgeon, Dr. Ba Than made his report. One gun shot wound on the right side of the chest between the fifth and sixth ribs, one inch lateral to the nipple; one lacerated wound, two-and-a quarter inches by three-quarters, on the head, causing extensive fracture of the vault of the skull; heart smashed; bullet in the brain; entrance wound; exit wound. Counsel for the defence did not question Dr. Ba Than when he finished his list.

U Hla Baw, Principal, Detective Training School at Insein, gave his expert opinion on the guns, the bullets, the empty shells, the bullet-holes on the walls. He had applied his tests, studied photographs, analysed characteristics, and found that some of the shells which were found in the Council chamber had been fired from some of the guns put on exhibit. There was severe cross-examination, but U Hla Baw stood his grounds.

The opinion of an expert, in any case, is not conclusive. It is for the court to weigh it and consider it along with other proven facts. A judge is not interested in what a witness thinks. Thinking and decision-making are the function and prerogative of the judge and he does not suffer usurpers gladly. Witnesses may only feed the judge with solid and wholesome food for thought. ‘Experts’ with their special skills are, however, permitted to assist the judge to think better by giving him the benefit of their own expert thoughts.

## CHAPTER FOUR

### THE APPROVER'S STORY

#### <1>

Ba Nyunt, aged 29, son of U Ta, of Othegon village, Tharrawaddy district, was one of the nine men who were first accused with U Saw. He had had more school than U Saw himself, having passed his 'Anglo-Vernacular High School Final' examinations. He had worked as a clerk in the office of the Township Judge, Minhla, Tharrawaddy, and had early political associations and ambitions. When he was arrested, he volunteered to make a clean breast of it all, and was granted a conditional pardon and made 'approver' or the King's witness.

There were other men also who confessed. Maung Ni, Khin Maung Yin, Maung Sein, Yan Gyi Aung, and Thu Kha told their stories freely, and their statements were properly recorded by Magistrates who produced and proved the statements in court.

#### <2>

Ba Nyunt told this story as a prosecution witness: 'I was arrested by the police in connection with this case on the 19th. July last in U Saw's house along with the other accused. I gave my confession before a Magistrate. I was produced before the Magistrate at my own desire which I expressed to the Police. I have since been granted a conditional pardon on my undertaking to state in court the true facts of the case. I am now prepared to keep that undertaking.'

'I made my first acquaintance with the first accused U Saw in February last when he came and delivered a political speech in Okpo. I acted as Secretary at that meeting. After the meeting I talked with U Saw. He told me that if young men of education and good social standing like myself would join the Myochit party, it would benefit us, and he invited me to visit him at Rangoon should I happen to be there. I think I came down to Rangoon some time during the third week of June last. I brought my wife for medical treatment in the Dufferin Hospital and stayed with a friend in Sanchaung quarter. A day after my arrival, I went and visited U Saw at his house. After an exchange of greetings, he told me to come and stop at his house for a few nights. Two days later, at about 5 p.m. I went over to stay for a few nights.'

At U Saw's house, Ba Nyunt met all the accused, except Maung Ni

and Hmon Gyi. 'U Saw and I discussed politics, and I suggested that the Myochit party did not have mass support and was declining, and that a young man should take U Saw's place as leader of the party. U Saw denied that the party was declining, instead it was coming up, and there was no necessity for a change in the leadership. I suggested that all members of the Galon Army should be members of the Myochit party and they should have larger representation on the central council of the party. I told U Saw that if this was done, the appellation of 'Wayindok' that had been given him would disappear. I asked him if he would allow members of the party to adopt certain parts of the Socialist and the Communist policies. He agreed. He told me that in the end the best armed party would rule Burma. I said that once political parties began to arm themselves, two things could happen, namely, either there would be civil war, or a war waged to achieve Burma's independence. I asked him which of these two paths he would follow, and he said he would wage war for independence. His answers were so much to my liking that I agreed to join the Myochit party and work heart and soul for it. I stopped with U Saw for about eight days on that occasion.'

'After I had given my promise to U Saw to join his party, I travelled to and fro between Rangoon and Othegon. I took on myself three tasks as requested by U Saw: to collect arms; to collect ammunition; to raise funds by every possible means. When I joined U Saw's party at his house I had to take a solemn vow before the holy image in his shrine to the following effect: that I shall be faithful to the head of the Galon Army, namely U Saw, and to fellow-members of the Army, and that I shall sacrifice my life in the country's cause. Five of us took the oath at the same time that day. After taking the vow, each of us had to write and sign on a slip of paper the following: As I have betrayed my country, I die by my own hand. No date appeared on the slip of paper. These slips were taken away and kept by U Saw himself.'

On the 18th. July, 1947, Ba Nyunt arrived back from Othegon at U Saw's house. 'I came in the company of the accused Maung Sein and U Shein of Okpo. We left Rangoon the 16th. July and as U Saw told us to come back positively by the 18th. we got back that day. Before we left on the 16th. July, U Saw told me that if politics were to continue in Burma, all the other leaders would have to be killed. The accused Maung Soe was present on the occasion. I then answered that that would be too much in the direction of destruction. I said: Aim at the imperialists. Bogyoke may be standing in front of the imperialists, and his followers will be standing in front of him. This must be shown to the country. U Saw said my idea was very good.'

'On the 18th. July, I met U Saw as soon as I arrived by jeep. That jeep was U Saw's property. At about 9 p.m. that evening, while I was asleep, a

man came to wake me. I usually stayed, while with U Saw, in the small building marked 'U' on the plan Exhibit E. There were six occupants in that building, namely, myself, Maung Soe, Thet Hnin, Thu Kha, Maung Sein, and Ko Tun Yin of Okpo. After I was woken up I proceeded to the main house where I met U Saw. There were then present Maung Soe, Thet Hnin, Maung Sein, and Thu Kha. U Saw asked me if I was feeling well. He then said that the next day was a Saturday, and he had definite information, that there would be a meeting of the Executive Council in the Secretariat. He then pointed out the four persons whom I have named, and who were then seated in front of him, and said: I have given them the responsibility of going up and shooting. He then asked me whether I knew Thakin Nu. I said Yes. He asked me whether I knew where the office of Thakin Nu was, and I said I did. He asked me to tell him where it was, and I described its position. He then said: Tomorrow, you will proceed in Khin Maung Yin's car, go to Thakin Nu's office and find out whether Thakin Nu is there. If you find him there, loiter in the vicinity. While you are there, Maung Sein and the others will arrive in a jeep. You will then stay near the jeep. When you hear the sound of guns from upstairs, you will take the spare gun from the jeep and shoot Thakin Nu. After shooting, you will enter the jeep with the gun and come away with the others.' Ba Nyunt understood the instructions, agreed to obey them, and came away that night with the others to their small building and went to sleep.

<3>

At about 8.30 a.m. the next morning, Ba Nyunt continued, in his testimony, he dressed and went to the main house, and found Khin Maung Yin standing by a Fordson truck. U Saw came down from the house, and said something to Khin Maung Yin which he did not hear. Maung Ni arrived, and U Saw whispered some instructions. Hmon Gyi came, and more whispered instructions. U Saw then turned to Ba Nyunt and said: 'Your instructions are as I told you last night.'

'At about 9 a.m. we left in the truck and stopped at the corner of Dalhousie Street and 41st. Street, with the truck facing the Secretariat. Khin Maung Yin and Hmon Gyi alighted first, crossed Dalhousie Street and turned into Sparks Street. I followed after them, leaving Maung Ni in charge of the truck. We entered the Secretariat by the 'Out' gate on Sparks Street, and after the other two had reached the portico of the Secretariat building, I lost sight of them. I went to the Constituent Assembly building. Thakin Nu's office was in the west wing, being the first room in that wing. I looked at the office from outside. The window on the west was open, and I saw the upper portion of a man's face. He looked to me like Thakin Nu. I walked past

until I reached the portico of the eastern wing of the Secretariat, where I turned back. I looked again through the same window and saw the man again. He wore a black jacket. I then realized he was not Thakin Nu. I then returned to where the truck was parked. On the way I stopped at a teashop and had a cup of tea.'

<4>

Then came the rumble of gunfire. A jeep sped out from the Secretariat driving 'at least 30 miles an hour.' Maung Ni returned to the truck, and Ba Nyunt asked Khin Maung Yin to wait for Hmon Gyi. Then, at about 11 a.m. they left. It must be about 11 a.m., Ba Nyunt thought, 'but I cannot be sure because the sky was cloudy and the sun was not visible.'

'When we arrived at U Saw's house, we saw the jeep there already, parked under the porch. When Khin Maung Yin, Maung Ni, and I alighted from the truck, I heard the following persons shouting, namely, U Saw, Maung Soe, Thet Hnin, Thu Kha, Maung Sein, and Yan Gyi Aung. They were shouting: *Aung-byi! Aung-byi* (Victory!) I also shouted in English: Calendar! I meant that a New Era had begun. U Saw then asked me in English, What about Thakin Nu? I answered in Burmese, I could not find him.'

'At that time I noticed a man fishing on Prome Road bank of the Victoria lakes, about 100 yards from U Saw's house. The fisherman was seated. Two men were standing besides him in waterproof coats and hats, watching us intently. I then saw the fisherman lighting what looked to me like a cigarette taken out of a case. I took those men to be detectives. I told the others of the presence of the watchers and persuaded them to go inside the house. We sat down and had drinks from the liquor cabinet. The men talked about what they had done, but I cannot remember exactly what they said. At about 2 p.m. a police party surrounded the compound of the house. I was one of those arrested on the occasion.'

Ba Nyunt was sure that the jeep which drove out of the Secretariat was the one he found back at U Saw's house. The jeep was hooded, and he had seen Khin Maung Yin paint on its back the number, R. B. 9831, in white paint. That was the genuine number, and it had to be painted afresh because a false number-plate was carried on the mission. He himself had put on the false number-plate on another mission, previous to the one of the 19th. July.

Examined by the Tribunal, Ba Nyunt said that he passed high school in March, 1937, when he was about 19 years old. He could not continue his college education because his parents were poor. In May, 1938 he joined the office of the Township Judge, Minhla, as a copyist, and a few months before the advent of war he received promotion in the office as bench clerk. During



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# A TRIAL IN BURMA

THE ASSASSINATION

*of*

AUNG SAN

THE HAGUE

MARTINUS NIJHOFF

The 19th of July is the Day of the Martyrs in Burma, the day Bogyoke Aung San and his colleagues were mown down by assassins while they sat at their Executive Council meeting in 1947. The magnitude of the crime shocked the world and shook the young nation of Burma, then in the tenderness of rebirth.

This book gives, for the first time, the full story of the crime, with its background of politics and personalities, and of the trial of U Saw, himself a former Prime Minister, and the men he directed. Glimpses of Burma's history in those crucial times come through in the pages of this book, and snapshots of the people who have had a hand in the writing of that history.

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**The author** served in the Army which Aung San led in the war and the resistance, and therefore writes with deep feeling. He was reading for his law degree when the trial took place, and later went to London to be called to the Bar by Lincoln's Inn. He also studied at The Hague, and Utrecht University where he earned his doctor's degree in international law. He has practised and taught law for several years now, and he served the Caretaker Government led by General Ne Win during the sensitive years in Burma, 1958-60, as Assistant Attorney-General. This book was prepared by the author at Yale University on a visiting lectureship in the Southeast Asia Studies Programme.

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*In preparation :*

AUNG SAN  
OF  
BURMA

*Compiled and edited*  
*by*  
MAUNG MAUNG

*The prices quoted in US \$ are based on the  
rate of exchange: 1 guilder = \$0.278 (February 1962)  
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1. "We had the whole party down to Chequers for lunch," Earl Attlee has written of the Burmese delegation to the London talks of January 1947 in his book, *As It Happened*, "and my wife little thought that she was entertaining a prospective murderer and his victims." Picture shows some of the delegation, with Prime Minister Attlee at No. 10 Downing Street: *left to right* U Ba Pe, Thakin Mya talking to Sir Stafford Cripps, Mr. Clement Attlee, Gen. Aung San, U Tin Tut, Lord Pethick Lawrence. In the background, on the steps: U Saw, Mr. Alexander, Bo Set Kya, U Ba Yin, Thakin Chit, and U Kyaw Nyein. (Photo by courtesy of Central office of Information, London)



2. U Saw in Japanese attire, from the book  
on his visit to Japan



3. Mr. Justice Kyaw Myint, U Aung Tha Gyaw and U Si Bu



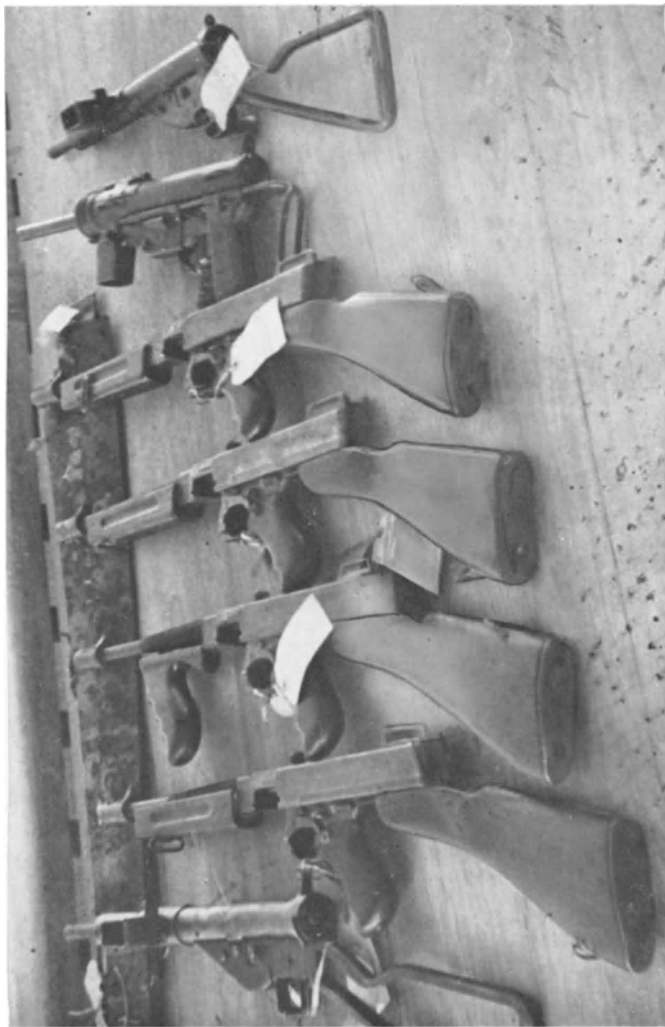
4. The Tribunal in session



5. The accused in the dock



6. U Saw in the witness-box



7. Exhibit weapons

the Japanese occupation, he became head clerk. He left the service in October 1945, intending to 'follow commercial pursuits.' It was when he was trading that he first met U Saw. He had 'leanings towards politics' since about 1936 when he was at school. He did not join any party but kept up his interest. 'When I joined the Myochit party, I took the vow and sincerely believed I was serving my country. I believed that the policy and work of the party was progressive in the sense that the party would serve the country best. I believed that the people of Burma were in the process of building a Socialist State. I believed also that the spirit of nationalism should never be completely destroyed. My intention in joining the Myochit party was to gather around it the strength of the country's youth. Once U Saw had conceded that the Myochit party should adopt the Socialist and Communist policies, there would be very little difference between U Saw himself and the other parties. U Saw told me there should be classes in society but no struggle of class against class. He said that even among the *nats* there were classes. I said there were class struggles already going on and all we had to do was to stand by and encourage the struggles, and if we followed such a policy, we would not incur the hatred of the masses. It would then be easy for us to draw the masses to us.'

Of the three tasks given to him by U Saw, Ba Nyunt said, he performed two, namely the collection of arms, and the collection of ammunition. On those missions he had used motor cars carrying false number-plates. 'On the 24th June, 1947, I personally obtained from the Base Ordnance Depot at Botataung, 200 bren guns and conveyed them in one lot in a 3-ton lorry to U Saw's house. From there the arms were dispersed to various places. Similarly, from an ammunition depot on the 16th. or 17th. mile on Prome Road I conveyed 100,000 rounds of .303 rifle ammunition. Until then U Saw had not disclosed to me his real intention. He only asked me to obtain arms and ammunition, and I followed his orders. It was only after my return from Othegon in the jeep that U Saw mentioned to me the particular task that he wanted me and the others to perform on the 19th. July. When he first disclosed the plan to assassinate U Aung San and his colleagues, I was surprised. Although I agreed to follow the instructions the next day, I was still undecided in my mind. I was still undecided in the Fordson truck the next morning when we were on our way. It was only when I saw the Secretariat building that my mind leaned towards the execution of U Saw's orders.'

Ba Nyunt had full intention to shoot down Thakin Nu as he was ordered, he said. 'I could not give any consideration to Thakin Nu because I was moved by my loyalty to U Saw. I also believed that by following U Saw's orders I would be serving the best interests of my country. If, for similar reasons, U Saw had ordered me to kill myself, I would have done so.' Ba Nyunt had stated in his earlier confession: 'As for Thakin Nu, in the year

1936, during the students' strike, Thakin Nu, Mr. Raschid, Ko Thein Pe and I had been engaged together in political activities. Thakin Nu was also the man who first fostered patriotism in my mind. I had therefore not the heart to kill him.' Confronted with this discrepancy in his statements before the Magistrate and in court, Ba Nyunt explained that he had stated earlier 'only one portion of what passed through my mind,' and in actual fact he had made up his mind, on the 19th. July, to kill Thakin Nu.

Mr. Vertannes cross-examined Ba Nyunt at great length, trying to shake his credibility and make the witness out as a trader of false tales for his own pardon. Ba Nyunt replied that he made his confession to the Magistrate freely, and the police did not ill-treat him. U San Win cross-examined him too, and several of the accused, mute and pathetic all along, came in to establish that they had been under U Saw's complete domination. Yes, said Ba Nyunt, so they were. 'U Saw once told me that all the inmates of his household had to take a vow similar to the one I took. He also told me how any person who betrayed the Galon Commander-in-Chief, meaning himself, would be punished. He said the punishment would only take a revolver. Maung Ni also took the vow with me at the same time. Thu Kha recited the words and we had to repeat after him.'

Recalled on the 27th. November and cross-examined further by Mr. Vertannes, Ba Nyunt described U Saw's house and its compound in detail. Questioned by the Tribunal, he replied that he was taken on foot to the Law Courts from the lock-up nearby, on the 25th. July, and saw police officers and others wearing black bands on their arms in mourning, and doleful expressions on their faces. 'I had believed that after the assassination of U Aung San and the other Ministers, the masses would veer to our side. On the 25th. July I could see from what I had observed that our calculations had been wrong. We had expected that the followers of U Aung San would be dissipated after his death, and what was left of them would not be able to form a new Government. We would then obtain the opportunity to form a Government and the people would veer round to us. I was allowed to read some papers, and I sometimes received news of the outside world from the armed guards. On the day after our arrest I read in the newspapers of the formation of a new Government by Thakin Nu.'

In Insein jail Ba Nyunt had been kept for a while with the other accused, after the arrest, but U Saw was taken elsewhere on the 20th. July. 'On the day that we were taken from the jail to the lock-up, I saw a stout officer from a distance, and Khin Maung Yin said he was U Tun Hla Aung. I saw U Aung Chein when he came to the lock-up on the 24th. July. He came occasionally and asked us whether we had any complaints. Our complaints were usually about the food. He never questioned me about the case before the recording of my confession. I do not know whether the lock-up rules permit it, but I was able to obtain such food as I wanted through the armed guards by paying for it myself.'

## CHAPTER FIVE

### U SAW'S STORY

<1>

Charges were framed against U Saw and the eight men after the prosecution had examined several of the principal witnesses. By that time it was obvious that *prima facie* cases had been made, and the accused must make their answers to them. The charges were for conspiracy to murder, for abetment to murder, and the commission of murder in furtherance of a common intention.

'We, U Kyaw Myint, President, U Aung Tha Gyaw and U Si Bu, Members of the Special Crimes Tribunal, Rangoon,' read the charge in its quaint and careful legal language, 'charge you, U Saw, son of U Po Kyu, as follows:

That you, together with the other accused and approver Ba Nyunt, on or about the 18th. or 19th. July, 1947, at number 4 Ady Road, Rangoon, agreed to do, or caused to be done, an illegal act, to wit, the murder of U Aung San and other Members of the Executive Council of His Excellency the Governor of Burma, and Thakin Nu, in pursuance of which agreement, the murder of U Aung San and others was committed; and you thereby committed an offence punishable under section 120-B of the Penal Code read with section 302 of the said Code and within the cognizance of this Special Tribunal.

And we hereby direct that you be tried by this Special Tribunal on the said charge.'

Human ingenuity digs loopholes in the law, and one constant battle in life has always been lawyers digging loopholes and lawyers trying to seal the loopholes.

The charge against U Saw, therefore, went on: 'In the alternative, we charge you as follows: Firstly, that you, on the 19th. July, 1947, at No. 4 Ady Road, Rangoon, abetted the commission of the offence of murder at Rangoon of U Aung San, Member of the Executive Council of His Excellency the Governor of Burma, by the accused Maung Soe, Thet Hnin, Yan Gyi Aung and Maung Sein, which offence was committed in furtherance of their common intention and in consequence of your abetment; and you thereby committed an offence punishable under section 302 read with section 109 of the Penal Code, and within the cognizance of this Special Tribunal. And we hereby direct that you be tried by this Special Tribunal.'

'Secondly, that you, on the 19th. day of July, 1947, at No. 4 Ady Road, Rangoon, abetted the commission of the offence of murder at Rangoon

of Mahn Ba Khaing, Member of the Executive Council of His Excellency the Governor of Burma, by the accused Maung Soe, Thet Hnin, Yan Gyi Aung and Maung Sein, which offence was committed in furtherance of their common intention and in consequence of your abetment; and you thereby committed an offence punishable under section 302 read with section 109 of the Penal Code, and within the cognizance of this Special Tribunal. And we hereby direct that you be tried by this Special Tribunal on the said charge.'

Charges against the other accused were similarly couched, Maung Soe, Thet Hnin, Yan Gyi Aung and Maung Sein, the men who actually pulled the triggers, being charged also with the direct commission of murder.

<2>

U Saw, and the other accused, pleaded 'Not Guilty.' Mr. Vertannes, acting for U Saw, wanted time to enable his client to decide whether he should go into the witness box and give evidence on oath. If he did, he would throw himself open to cross-examination by the prosecution, while, on the other hand, his story would have the weight of one told under the solemnity of oath. The law leaves it to the discretion of an accused person to decide whether he would give evidence on oath, or make a simple explanatory statement without the oath, or remain mute in the hope that the prosecution case would fall by itself for lack of legal supports. U Saw did not take long to make his choice, however. On the 3rd. December, the morning that his lawyer requested a few days' time, he made his decision to enter the witness box and take the oath, and Mr. Vertannes reported the decision to the Tribunal the same day.

By the middle of November, the prosecution case was practically completed. The charges were clear and complete, and the evidence on which the prosecution intended to rely to prove the charges was also out in the open. It was a formidable array of evidence and U Saw decided to recruit another lawyer from London to reinforce his legal strength. Through his brother, U Maung Maung Gyi, who had settled in London, he looked for a good criminal lawyer with a big name, and settled on no less a person than Mr. Frederick Henry (Derek) Curtis-Bennett, K. C. Coming from a famous family of lawyers, Cambridge, and Middle Temple, Mr. Curtis-Bennett, later to be knighted, was admitted as one of His Majesty's Counsel in 1943, by which time he had already established himself as one of the leading criminal lawyers in England.

There were some delays in the remittance of fees and expenses to Mr. Curtis-Bennett who, in consequence, lost one or two priorities for air passage to Rangoon. The Tribunal gave time to U Saw to get Mr. Curtis-Bennett out, but, after a few adjournments, decided to keep going as the lawyer's

arrival was uncertain and U Saw was adequately represented by Mr. Ver-tannes and himself. Mr. Curtis-Bennett finally appeared in court on the 8th. December, and after receiving prompt permission to act for U Saw, proceeded to recall some of the important prosecution witnesses for further cross-examination.

<3>

Ba Nyunt, the approver, was recalled and again cross-examined by Mr. Curtis-Bennett on the 9th. December. The aim, it became apparent, was to make Ba Nyunt out as the ambitious schemer and prime mover of the whole plot, who used U Saw as the innocent and unknowing front.

'I knew U Saw by sight since I was about 20,' Ba Nyunt replied to Mr. Curtis-Bennett, 'but he came to know me for the first time in or about February last. It is true that my father was one of his supporters and acted as his election agent. I take a keen interest in politics. When I suggested to U Saw that he should give way to a young man as leader of the Myochit Party, I did not have myself in mind. I did not have any particular person in mind either. I suggested that to U Saw soon after I had become a member of his Party. I am a man of definite ideas.'

'U Saw did not tell me,' Ba Nyunt continued in his replies under cross-examination, 'what his final decision was about the arms which he had asked me to collect. I cannot say one way or another whether the purpose of the collection of arms was show. U Saw kept open house for the supporters of his party.'

'Open house' was the theme which Mr. Curtis-Bennett decided to play up fully. Politicians keep open house, and their very calling demands them to be social and friendly, and they cannot be expected to know about the people who come and go.

'It is not true,' Ba Nyunt denied, 'that I suggested to U Saw in about February last that U Aung San should be murdered. It is not true that on my making the suggestion U Saw disagreed and said such an act would lead to the destruction of the party. U Saw did say that his party was flourishing. It is not true that in June I approached U Saw with the same suggestion again, that is that U Aung San should be murdered. It is not true that he turned my suggestion down and warned me that I would get into trouble. It is not true that I then said to him that I would avoid trouble by throwing the blame on someone else. It is not true that the plan was my own and U Saw knew nothing about it. It is not true that when I returned from Othegon on the 18th. July U Saw was in bed and did not see me. It is not true that on the morning of the 19th July, U Saw was ill and did not come outside his bedroom. The plan of the assassination was laid down by U Saw and

not by me. It is not true that every statement I have made implicating U Saw is a lie.'

<4>

To support the 'open house' argument, Mr. Curtis-Bennett called Dr. Ba Maw and Thakin Ba Sein as defence witnesses.

'I was the leader of the Sinyetha Wunthanu Party,' Dr. Ba Maw said, 'and I was arrested on the 1st. August at my house in Rangoon. I do not know why I was arrested. I have been in custody ever since. I have known U Saw for many years. I have been in politics since 1932. As a political leader I used to keep open house for my supporters and I understand other leaders have done the same. I always understood that U Saw has similarly kept open house, but I had no personal knowledge. During the last war there was an amalgamation of all political parties. I have never known anything which would lead me to believe that U Saw's party would use violence against political opponents.'

Cross-examined by the Advocate-General, Dr. Ba Maw replied: 'I have said that I have never known anything which would lead me to believe that U Saw's party would use violence. I have said this from the statements issued by the party and from the record of the overt acts of the party. I know that the Myochit party had an organization known as the Galon Army. Other parties also had armies. I have never seen members of the Galon Army armed with bamboo staves (Wayindok) but I had gathered from newspaper accounts that when the occasion arose for defending themselves they used such staves. When my supporters came to my house I would usually know who they were and the purpose of their visits.'

Thakin Ba Sein also gave snap-shots of Burma's political history in his statement. 'I have been in politics since 1929,' he said, 'and I have been the leader of the Dobama Asiyone. As such, I have always kept open house for my followers. I have known U Saw for many years since my student days. I know he has been the leader of the Myochit party. The Myochit party is a parliamentary party and is considered to be a constitutional and moderate party. It is not a mass organization. I have no reason to believe that the Myochit party stands for the murder of its political opponents. As a political leader U Saw kept open house for his followers. After the attempt on him in September last year, a man was kept at the gate of his compound. After that date, I found many people still living in his compound. Apart from keeping a guard at the gate U Saw still kept open house. I was a member of the delegation to London led by U Aung San in January last. There is a note on exhibit stating that U Saw and I were unable to associate ourselves with the conclusions signed by Mr. Attlee and U Aung San.'

Cross-examined by the Advocate-General, Thakin Ba Sein said: 'I have never been a member of the Myochit party and have been opposed to it many times. When U Saw was a Member of the Executive Council I visited his house three or four times. He and I resigned from the Council about the same time, I resigned a little earlier I think. After this I visited his house three or four times. I last visited his house about a week before the murder of U Aung San and others. I saw many men in his house on that occasion but none that I knew. In our party there were meetings which decided policy. Important matters, though not relating to policy, are placed before such meetings. Visitors came to my house and stayed there sometimes for party business, and at other times because they wished to stay. Sometimes they stayed because I wished them to stay.'

'The Myochit party organized the Galon Army. I have not seen members of the Army armed with bamboo staves. In 1938 the Dobama Asiayone split into two, one faction being led by Thakin Kodaw Hmaing and the other by me. After my resignation from the Executive Council there was an alliance of various parties which was known as the Independence First Alliance. This alliance comprised the Dobama Asiayone, the Myochit party, the Mahabama party, the Thetpan GCBA, the Karen association and many other organizations. I endeavoured to form such an alliance and I issued a statement with that object. But I have not, in fact, succeeded in forming the alliance. My visits to U Saw's house were in connection with this object. The alliance was in opposition to the AFPFL which was in power.'

'I would not know,' Thakin Ba Sein replied on re-examination by Mr. Curtis-Bennett, 'who were in U Saw's house and compound at any time. On the occasion that I went there I got the impression that the compound was somewhat full.'

<5>

U Saw gave evidence on oath on the 11th. December. Mr. Curtis-Bennett examined him in chief. 'I have been in politics for 30 years,' he said. 'I am the leader of the Myochit party. In January I went to London as a member of the Burmese delegation to negotiate an agreement with His Majesty's Government. The leader of the delegation was U Aung San.'

'In January, 1946, I returned from abroad to Burma, and I took steps then to reorganize my party. I do not believe in violence in politics. On the 21st. September, 1946, I was shot at while travelling in a motor car. I had no idea at all that an attack was to be made on the Executive Councillors at the Secretariat on the 19th. July, 1947, or on any other date. If I had known I would not have been party to such a thing. I did not knowingly allow my motor car or any of my possessions to be used for

such a purpose. I would not have allowed my supporters to use violence.'

'I had been in bed at home since the afternoon of the 18th. July. On the morning of the 19th. July I was still in bed. I did not get up at all that morning. I did not come out of the bedroom at all, except on one occasion when I went into the sitting room next to my bedroom for a few minutes to see some visitors. I was ill. I had pain in my stomach off and on since the afternoon of the 18th. July.'

'I keep open house for my political followers,' U Saw explained, and he had two jeeps, a Fordson truck and other motor vehicles. The vehicles were usually kept in the garage and he allowed his political followers and workers who were living in the compound to use the two jeeps, the truck and a motor cycle whenever they wanted to do so. 'They could go out in them whenever they liked on any business, whether it was mine or theirs. If the jeeps were kept in the garage near the gate, I could not see them from my house, coming or going. Nor could I hear them. Sometimes I would learn that a few of the boys had gone out in a jeep only after they had been away for three or four days. I would learn this only when they returned. Sometimes I did not see these boys for days even when they were in the compound.'

'I did not hear any motor vehicle leaving my house on the morning of the 19th. July. It is not true that on the return of certain men in a jeep to my house I took part in a celebration where 'Victory!' was shouted and murder discussed. None of the other accused in this case returned to my house and spoke to me that morning; nor did Ba Nyunt come to my house and speak to me. The first news I received of the assassination was by telephone at about 12 noon that day.'

'I know that four Tommy guns and one Sten gun were found in the waters near my house. To my knowledge these guns were never in my house and never in my possession. There were arms in my house which I kept for my protection under license. The population in my compound is not permanent, but a flowing one. People came, stayed for some time, then went away. I did not always know who they were. When a visitor came to my house, I would naturally learn who he was, but as regards political workers, I did not always know who came at what time, who left at what time.'

'Ba Nyunt left the compound on the 16th. or 17th. July saying he was going to do some party work in Tharrawaddy district. He told me he would be accompanied by the accused Maung Sein and a few others, and they were likely to be back by Sunday or Monday, i.e. the 20th. or the 21st. July. I did not order him to return by any specific date. I did not see Ba Nyunt or any of the others on the evening of the 18th. July.'

'Some of my supporters had to take an oath of allegiance. Some of the senior members of the Party suggested such an oath so as to prevent spies from other parties infiltrating into my organization. As far as I know, they

did not have to sign any document. The oath was an oath of loyalty to the principles of the party.'

U Saw said he had not heard any discussion among his followers of violent overthrow of the Government. One afternoon, in February or March, 1947, Ba Nyunt did raise the subject. Ba Nyunt and another man had said to him: 'If you want to remain in politics you will have to be up to the mark in 1947 politics.' They suggested that the leaders of the AFPFL would have to be got rid of. 'In Burmese they used the word *Thok-thin* which means remove by killing. I told them that I had been in politics for nearly 30 years and had never believed in killing political opponents. I said I believed in free politics and although I had always had opponents I had never dreamt of killing them. I said also that in the past there had been some Burmese politicians who attempted to kill their opponents but that they had only destroyed themselves. I told them that even the slightest suspicion of violence on the part of the public would be sufficient to finish a politician. I thought the expression of disapproval would be sufficient to stop them. I never thought they would pursue this plan.'

Ba Nyunt spoke again to him, U Saw, said, in June, 1947, in the same vein, advocating violence 'for the benefit of the party. He said that he had not joined the party merely to come and sleep. I told him that I had not thought he was serious about it. Now it seemed he was serious and I would either have to denounce him or expel him from the party. He then laughed and said, 'Don't take it seriously.' He gave me the impression that he was giving up the plan.'

U Saw's evidence also aimed at discrediting two important prosecution witnesses, U Ba Gale, and U Sein Maung, who had testified about the jeep bearing the number R. C. 1814 which had driven out of the Secretariat soon after the shootings. U Ba Gale worked at the 'Sun Press,' of which U Saw was a director, and on his return from Uganda, U Saw said, he had suspected U Ba Gale's honesty and had had him dismissed. 'After U Ba Gale left, Sein Maung continued to work at the press for some months. During that time he used to give trade information about the press to U Ba Gale. I suggested to him to resign and he did so.'

<6>

The Advocate-General cross-examined U Saw at some length. 'I passed the 5th. standard at school,' U Saw said, 'and in 1927 I passed the lower grade pleadership examination. That was the last year the examination was held. When I first entered politics I was a member of the General Council of Burmese Associations. When that organization split, I joined the faction called the 'Twenty-One GCBA' after its 21 leaders. That was in 1922. Just

before the general elections in 1936 the 'Twenty-One GCBA' amalgamated with other political organizations and the combined organization was known as the 'Nga-bwint-saing' party. The Myochit party came into being in 1938. I was elected as the first leader of the party. It was a distinct party without any connection with the Nga-bwint-saing, which had, by then, disintegrated.

'I became an elected member of the Legislature for the first time in 1927. My constituency was Tharrawaddy South. At the general election held to decide the question of Burma's separation from India I sought election from Tharrawaddy South but was defeated. Ten months later I was elected in a bye-election from Henzada North. My success was not due to the support of U Ba Pe. At the time of my election, U Ba Pe was one of the leaders of the party to which I belonged. During my political career I received assistance from U Ba Pe, amongst others. In the early stages of my political career U Ba Pe was my 'Saya.' While I was in England on a goodwill mission in 1941, during my Premiership, I received news that U Ba Pe had been detained under the Defence of Burma Act. I was not consulted when U Ba Pe was about to be detained.'

'During the last war I was detained in Uganda. I was never informed officially why I was detained. After my return to Burma, I took steps in May, 1946, to reorganize my party. An executive committee was formed at a meeting held that month. I do not remember whether any member of this committee, numbering about nineteen, resigned from it between May and September, 1946, when I became a Member of the Governor's Executive Council. Between September, 1946 and July, 1947, U Aye and U Kyaw Khine resigned. We had two headquarters, namely, the general headquarters in Fraser Street, opposite the Sun Press, and the party organization at my house on Ady Road.'

'I think it was in 1936 that I first styled myself as Galon Sitthugyi, i.e. Commander-in-Chief of the Galon Volunteer Corps. After my return from Uganda I did not start to reorganise the Galon Corps because I was concentrating on the party to begin with. As far as I remember I did not, before the 19th. July, discuss with any other member of the Executive Committee the reorganization of the Corps.'

Hmon Gyi, one of the accused, was shot in the arm resisting arrest at U Saw's house on the 19th. July. U Saw said he came to know Hmon Gyi in or about May, 1947. 'He stayed on in the compound as a guest, but was not employed by me. I did not invite him to stay. I learned, just before I was brought to jail on the 19th. July that Hmon Gyi had been shot and wounded. At that time I was not kept with the other inmates of the house. They had not even been brought to the house.'

He did not ask Hmon Gyi to do anything for him, U Saw denied, nor did he ask any of the other accused, most of whom came to his house in May or

June, and stayed, or drifted about, came and went without his bidding. Yes, U Saw said, he knew about a document titled, '*Pyi-thein-si-man-gein*,' or 'A Scheme for seizing the Country,' but that was shown to him by Ba Nyunt, and he disapproved strongly. 'I objected,' U Saw explained, because 'the mere murder of U Aung San and his colleagues would not place power in the hands of the murderers. There was a Constituent Assembly which had been elected in pursuance of the Aung San-Attlee Agreement. If the existing leaders were murdered, the others would take their places.'

<7>

A few witnesses were called for U Saw to support his story and his *alibi*. He had said he was ill at home and did not stir from the 18th. July on. 'I did not call in any doctor,' he said under cross-examination, 'for I do not usually call in doctors. I contracted intestine trouble in Uganda and have had to take pills every night. I have had two or three similar attacks since my arrest. This trouble is due primarily to indigestion. I have been suffering from this since an operation in Palestine in 1942. I was still ill on the 19th. July and I told the jail superintendent that I could not eat anything.' Did he not consume two plates of *chop-suey* on the evening of the 19th. July, asked the Advocate-General who had done his thorough research. No, that was not true, U Saw replied.

Maung Ni, who had confessed before a Magistrate, also came forward to give evidence on oath. He described how they had gone out from U Saw's house on the morning of the 19th. July, and how, on their return, mission done, they had shouted 'Victory!' Maung Ni said he had not known any of the victims, but he was greatly disturbed that Thakin Mya was killed. 'Thakin Mya's widow, Daw Nyunt, was from my home town. Her sister, Daw Yi, had practically brought me up. I began thinking how I would be able to face the people of our town when I returned.' He had also wanted to save U Saw, he said, for 'I have known U Saw since I was a child. Over a month before my arrest I went to U Saw's house with the intention of finding work. He was a man from our town and had formerly been Prime Minister. When I went to the house on Ady Road, I met him, and when I told him what I had come for, he asked me to stay with him.'

The other accused, on being called upon to answer the charges, responded only feebly. None volunteered to enter the witness box and take the oath. Maung Soe denied the charges; so did Thet Hnin, Yan Gyi Aung, and Hmon Gyi. Maung Sein, Thu Kha, and Khin Maung Yin did not deny, but pleaded that they were only acting under U Saw's orders.

## CHAPTER SIX

### SPEECHES AND DECISIONS

<1>

The trial drew to a close with December. It had gone smoothly and swiftly, by common standards, but it had been hard work, and even oppressive, for all those who had to take part in it. The atmosphere of Insein jail was not a cheerful one, and the constant guards added to the strain on all participants. Even the prosecution counsel found the unaccustomed police guards something of a burden. U Mya Thein discovered that the police guards who had come to make their camp in his compound did not know how to use their firearms, and spent some of their time every day practising; U Mya Thein took care to keep himself and his family out of the way of the nice and friendly but not too certain protectors. U Choon Fong, living in Bahan quarters of Rangoon, had a different problem with his guards. The boys were lonely sometimes in their long vigil, and they would slip out to woo neighbouring girls or go to the *pwe*; being well-mannered, they did not want U Choon Fong to see them go out, so they cut holes in the fencing.

Much had happened too by December. Thakin Nu had gone to London and signed the final treaty to provide for the transfer of power, and the preparations were nearly done to establish independence. The bodies of the Bogyoke and his colleagues still lay in state in the Jubilee Hall, and Ministers and people went there often to lay wreaths or 'report' on the situation in the country and progress made in the march to freedom which Bogyoke had led. Ministers, officials, and people, still wore black bands in token of mourning, and the band had become a habit, partly, and partly a badge of patriotism. The focus of public attention had shifted from the trial to more immediate events.

<2>

On the 19th. December, Mr. Curtis-Bennett addressed the Tribunal in the defence of U Saw. It was a brief, skillful and dignified address. He said he was glad that the long and strenuous trial had come to an end, and that it was the eve of independence for the country for whose peoples he only had sincere congratulations.

'I am gratified, My Lords,' he said, 'that it is this Special Tribunal that is trying my client. There is something more important in life than politics, and that is justice. I have perfect faith in the impartiality of the Tribunal

and am certain they would decide the case with detached minds free from politics.'

The crime of which U Saw stood accused had shocked the world, Mr. Curtis-Bennett said, 'but the question to be decided is, was this terrible crime done by those who lived in U Saw's house and with vehicles belonging to U Saw? Or was this a case where somebody must be tried and somebody convicted to please somebody?'

Resorting to history and imagery, Mr. Curtis-Bennett cited the murder of Thomas a Becket, and suggested that there could well have been a parallel. 'This might well have been a case,' he argued, where U Saw's underlings killed the Ministers to please U Saw without his actual knowledge.'

A man of U Saw's intelligence and ability, a man who rose to be the country's Prime Minister, must be mad, it was argued, if after engineering the crime, he had stayed on in the house with the assailants.<sup>1</sup>

'The entire world is watching,' Mr. Curtis-Bennett concluded, 'and waiting to see the outcome of this case which will give a preview of justice in independent Burma.'

Mr. Curtis-Bennett was questioned by press reporters after he had made his speech, and he said it had been a fair trial and he expected justice would be done. He then embarked, the next day, on one of those sea-planes which came in on the Rangoon river on their international flights, and flew away.

Curtis-Bennett was a great lawyer, and an inspired defender of strange men such as William Joyce or 'Lord Haw Haw,' tried for treason in 1945, and Christie, tried a few years later for sensational murders. 'It is a great profession,' Curtis-Bennett used to say of the law, 'but don't join it if you do not love it.' Tragedy came down on the doughty defender in 1956. His wife died in May that year, and he did not quite recover from the loss. On July 23 he was found dead in his London flat, and doctors thought he had been dead for 4 or 5 days, which would put the approximate day of his death at July 19, the day that U Saw, whom he defended in Rangoon, cried 'Victory!' after the assassinations.<sup>2</sup>

U Tun Byu, the Advocate-General, made a thorough reply from a prepared text 35 pages long. He could not understand, he said, why the world should be watching the outcome of the case with any interest. It was a domestic affair, he said, and 'the accused murderers and the murdered were all Burmans, at least in the sense that they have adopted Burma as their home and country. The analogy of Thomas a Becket also did not apply, U Tun Byu argued, for U Saw was not a King. 'He was not even an Executive Council Member at that time. We know, and it is a fact that U Saw was after all nothing more than a lower grade pleader in profession.' U Saw had

1. *London Times*, the 21st. December, 1947.

2. *London Times*, the 24th. July, 1956

only passed the 5th. standard examinations, and ‘we found out that he had passed the examination of the lowest rank in the profession. That a gentleman of that education and professional qualification can or might have conceived or directed such an atrocious crime is believable...’

It was probably wrong of the learned Advocate-General to be scornful about U Saw’s modest education. Scorn is not much of a weapon to wield in a legal argument before a high tribunal; it does not lend dignity to the user or weight to the arguments. Being scornful about U Saw’s education was probably one of the few minor lapses into which U Tun Byu fell in his otherwise well-reasoned and forceful address. Education is not, after all, measured by the university degrees that one has, or does not have. There are always men – like U Saw – who, though they are denied the opportunity to prove themselves in university examinations, more than prove themselves in the harder school of life. I remember being mildly scolded once by Mr. Justice Thaung Sein in a parliamentary elections petition before him, in which I appeared for the respondent. The petitioner, a colourful political leader, had only had four or five years of formal school, but he had been successful in all the fields he roamed, and they were many. I asked him what school examinations he had passed, and Mr. Justice Thaung Sein promptly stopped me, saying that was bad taste, if not irrelevant. I was cross-examining the petitioner and could claim quite extensive privileges regarding relevancy, but no doubt it was true that the question was in bad taste. My only excuse was that I was not being scornful, but was fumbling for questions to ask and had to keep going in the meantime.

The Advocate-General then wove the prosecution case into a coherent pattern, putting the pieces of evidence together and suggesting the value of each piece. After the pieces were put together, he pointed out the laws that applied, and the precedents that were available as guides for decision.

<3>

The Tribunal took a few days, after hearing arguments from the defence counsel and the prosecution, to sift and study the evidence, to check the laws, and make the decisions. The records had, by the end of the trial, grown into volumes. There were scores of exhibits, and the Tribunal had also made several field trips of inspection. Mr. Justice Kyaw Myint, U Aung Tha Gyaw and U Si Bu had long sessions together and their decisions were unanimous. U Aung Tha Gyaw took on the task of drafting the judgement and orders, and when the draft had been done Mr. Justice Kyaw Myint read it and approved it without any changes. On the 30th. December, 1947, the president of the Tribunal, Mr. Justice Kyaw Myint read out the judgement in open court at Insein jail.

The judgement ran over an hour of reading time. The courtroom was crowded again, as it was on the first day of the trial. The accused were present, eight men in the dock, U Saw seated in a chair beside his counsel. Reporters showed some restlessness and impatience as the delivery of the judgement rolled on, seemingly unending. Listening, I felt fascinated by the summing up of the case, and the tone of the delivery, soft, impeccable, impersonal, near yet so far away. The accused just sat and listened, emotionless; many of them did not understand what was being said in English, and all of them probably felt relieved that it was over at last.

The sentences of death that were pronounced were not unexpected; yet, they caused an uneasy stir when they fell. The accused who sat in the dock shuffled in their seats, for even if they could not understand the words of the sentences they could feel the meaning. U Saw sat for a while as if he needed to soak it in before he could decide how to react. Slowly a deep flush spread over his face, and he rose to address the Tribunal in an unsteady voice. He tried to say either that some evidence he had produced should have been believed when it was not, or that some evidence produced by the prosecution against him should have been rejected when it was not. But it was too late now to go over the case all over again. The Tribunal had been asked to try the case and render its decisions. The case had been tried, the decisions rendered. The task of the Tribunal was done.

<4>

U Saw and the convicted men went up on appeal to the High Court, and a Bench composed of Justices On Pe, San Maung, and Bo Gyi – as strong a Bench as any that could have been formed – heard them. The appellants were represented by counsel: U Saw by Mr. F. J. Salisbury Havock; Maung Soe, Thet Hnin, Yan Gyi Aung and Hmon Gyi by U Kya Gaing, and Maung Sein by U Saw Hla Pru.

By the time the appeals were filed, Burma had become independent, and it was not His Majesty the King who was the respondent, but the State, the Union of Burma. Nor was it the Advocate-General who replied for the State, it was the Attorney-General, U Chan Htoon. U Tun Byu, the former Advocate-General, had gone up as a judge of the High Court then; he was later to become, and die serving as, Chief Justice.

The appeals were vigorously presented and argued, and many points of law as well as fact were raised to challenge the Special Tribunal's decisions. The very status of the Tribunal was questioned, and it was argued that the Governor had acted beyond his powers in establishing the Tribunal when the High Court and the ordinary hierarchy of courts existed. The point was well taken, but not successfully, for the Governor had full legislative and

executive powers in the transition that followed the war, and if the Legislature could establish the High Court there was no reason why he could not establish a new or collateral court.

It was argued that the accused were not adequately defended by counsel before the Tribunal, but the facts did not support this argument. U Saw, for example, had Mr. Vertannes all along, and could even get a King's Counsel from London to come to his aid at the vital moment.

The admissibility of some of the prosecution evidence was challenged, which was a question of law. The credibility of some of the prosecution evidence was also challenged, which was a question of fact largely, and partly of law too.

The High Court gave full and fair hearing to the appeals, but finally dismissed them. 'As regards the sentences, the Court said, '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... It is difficult for us to find any judicial reason for interference and the question whether mercy should be extended is a matter with which this Court is not concerned, the prerogative of mercy resting in other hands.'<sup>1</sup>

<5>

In London, U Maung Maung Gyi, the brother of U Saw, wrote to *The Times* reiterating the arguments which had been advanced before the High Court without success. 'Two important questions regarding the administration of justice in Burma have emerged from the trial,' he wrote. 'One is whether the trial and the death sentence are legally valid. The other is whether or not U Saw has been rightly deprived of the appeal to the Privy Council in England to which he would have been entitled had it not been for the constitutional changes which took place before termination of the case. U Saw himself states that he was jailed first and charges were brought against him several months afterwards; that he was tried by a special Tribunal, the appointment of which as a parallel Court, while the High Court was functioning was unjust, for it was the High Court only that had the powers to try a case of this nature; and that he has been deprived of his right to appeal to the Privy Council.'<sup>2</sup>

The letter, reported the *Times* correspondent from Rangoon, 'has occasioned surprise here, as U Saw and his co-accused are generally regarded in Burma as having had a fair trial. Though their appeals were rejected by the High Court further appeal to the Supreme Court can be made if special leave of the Court is obtained. It is presumed here that U Saw will apply

1 1948 Burma Law Reports, p. 217.

2. *London Times*, the 19th. March, 1948

for special leave to appeal to the Supreme Court which, since the 4th. January, has assumed the final appellate jurisdiction over the Burma courts formerly exercised by the Privy Council in London.<sup>1</sup>

U Saw did ask for leave to appeal to the Supreme Court and his application was considered by Sir Ba U, Chief Justice of the Union, U E Maung, Justice of the Supreme Court, and U Thein Maung, Chief Justice of the High Court. Justice Kyaw Myint, who had then gone to the Supreme Court, disqualified himself in the matter.

The judgement of the Court, rejecting the application, was delivered by Justice E Maung, one of the foremost of Burma's scholars in the common laws of the country and of England, and a drafter of the new constitution. While pointing out that under the new constitution appeals could no longer lie to the Privy Council in England from the courts in Burma, the Supreme Court held that 'many of the rules laid down by the Privy Council in the various cases coming before it on application for special leave to appeal in criminal matters are rules of wisdom and should receive from this Court a respectful attention.' Seeking guidance from the practice of the Privy Council, the Court then went on to rule that it should interfere in criminal matters only if an application raised 'questions of great and general importance which are likely to occur often and which questions, if not rightly answered, would interrupt due and orderly administration of justice or divert the administration of justice into a new and erroneous course, creating a wrong precedent for the future.' The trial of U Saw had not thrown up any such questions, and the Supreme Court felt itself unable to interfere with the decisions of the lower Courts.<sup>2</sup>

<6>

Mercy, a prerogative of the Crown, now lies with the President. Whether the President can, or should, exercise the right at his own personal discretion is a question that has occasionally assumed importance in recent constitutional developments in Burma.

Appeals were made to the President to show mercy to U Saw and the condemned men. Some Buddhist monks put in their weighty words and even popular opinion showed leanings to sympathy. The peoples are quick to forget and forgive. For example, those very peoples whom Japanese soldiers had brutally slapped in the face during the war would offer food and water to the soldiers after their defeat and fall to the status of prisoner of war.

The Government and the President showed mercy at the last hour and

1. *London Times*, the 22nd. March, 1948
2. 1948 Burma Law Reports, p. 249

reduced the sentences passed on Thu Kha, Khin Maung Yin, and Maung Ni from death to transportation for life, which meant twenty years in jail. No mercy could, however, be shown towards U Saw, the master-mind of the conspiracy, and the others who had unhesitatingly taken direct part in the commission of the crimes. To spare U Saw would have been to keep alive the dark rumours of his return, and also to promote politics by assassination. The Communist party rose in arms against the Government 83 days after the proclamation of independence, and mutinies and risings flared up all round. The Government had to fight, its back to the wall, against these and general lawlessness, and in that bitter stand it had of needs to harden its heart.

## CHAPTER SEVEN

### THE LONG JOURNEY

<I>

May is the month the Monsoon breaks over Burma. Saturday, the 8th. May, 1948, dawned under cloudy skies in Rangoon, and in that grey dawn U Saw went to the gallows at Insein jail. He wore his usual jacket and silk *longyi*, and as he emerged from his cell he smiled to those officers who had to supervise his execution. He even shook hands with some and said good-bye.

U Saw was a brave man who had often said: 'He who dares to do things, must dare to bear the consequences.' More crudely put, his motto ran: 'He who dares to kill, must dare to die.' Indeed U Saw had dared much in his remarkable life, and had never flinched at the consequences. He ascended the gallows as he did the political ladder to the Premiership.

U Saw was intensely proud that he had risen from modest origins by his abilities, courage, and unflagging efforts. At the height of his power, he liked to recall his modest beginnings and his ancestry. 'It was his boast in later life,' it has been said, 'that each of his nine maternal uncles had been tried and convicted for murder and each had been acquitted on appeal to the High Court. He used to say that the records of his paternal uncles were even worse.'<sup>1</sup>

Nobody would ever know what thoughts passed through U Saw's mind that morning as he stood, waiting for the end. Perhaps he prayed; he had, in his last days, turned for solace to religion, and Buddhist priests had visited his cell to help him in the search for solace. Or perhaps, he had a quick review of his life and career, and saw himself again, resplendent in his uniform of Galon General, leading the Galon Army, or the ploughing ceremony as the early Burmese Kings used to do. He had excelled, and made himself unique. While others climb the steps of the mighty Shwedagon to pay their homage in humility, U Saw, the Prime Minister, the Galon Commander-in-Chief, had flown up into the skies in a private air-plane to pay homage from high above. Even in paying his homage he had been proud, erect and unbending; why now, after all these victories, all these glories, should he make a whimpering exit. Thus it was perhaps that those who saw him go that morning saw U Saw go unafraid.

Maung Soe, Thet Hnin and Hmon Gyi were executed at Insein jail along with U Saw. Sein Gyi and Yan Gyi Aung were hanged about the same time at Rangoon central jail. Thu Kha, who was spared at the last hour, remember-

1. U Kyaw Min, *The Burma We Love*.

ed how, at the Rangoon jail, the two condemned men had calmly joked with their last day visitors about 'the long journey' they were going on. Sein Gyi *alias* Maung Sein, left with his friends an envelope containing all his worldly wealth, some 500 or 600 rupees in value, to be given to the girl he loved, for use in making a fresh start in some more fortunate love after he was gone.

<2>

May is the month the Monsoon breaks over Burma. That is the month when one can feel the paddy fields sizzle with thirst and expectation if the life-giving rains are late. And one can feel the fields purr with joy when the rains come.

On the 8th. May, or the day after, of 1948, reported the correspondent of *London Times* in the despatch in which he described the executions, a big rally was held in Rangoon's Bandoola square by the peasants' organization. Prime Minister U Nu presided, and in his address he urged the farmers to grow more and help build the nation that was newly reborn.<sup>1</sup>

Thus life goes on, without beginning, without end, life and death – rise and fall – merging together so intimately it is hard to tell the one from the other.

1. *London Times*, the 10th. May, 1948.

APPENDIX

JUDGEMENT OF THE SPECIAL TRIBUNAL

IN THE COURT OF THE SPECIAL TRIBUNAL, RANGOON,  
SITTING AT INSEIN

TRIAL NUMBER 1 of 1947

THE KING      *versus*

1. U Saw
2. Maung Soe
3. Thet Hnin
4. Maung Sein (a) Sein Gyi,  
    (a) Hla Aung
5. Yan Gyi Aung (a) Hla Tun
6. Thu Kha
7. Khin Maung Yin
8. Maung Ni (a) Bo Ni (a) Gani
9. Hmon Gyi (a) Maung Hmon.

Dated, the 30th. December, 1947

JUDGEMENT

U Saw, a former Prime Minister of Burma, and nine of his followers living with him, namely, Maung Soe, Thet Hnin, Maung Sein, Yan Gyi Aung, Thu Kha, Khin Maung Yin, Maung Ni, Hmon Gyi, and Ba Nyunt have been prosecuted before this Tribunal as being jointly concerned in a criminal conspiracy which resulted in the Secretariat assassinations of July last. Of these persons, Maung Soe, Thet Hnin, Maung Sein and Yan Gyi Aung are alleged to be principal offenders and the others, including the first accused U Saw, to be abettors. Of the latter, Ba Nyunt has since been granted a conditional pardon and has been assigned the role of an approver.

On the morning of the 19th. July last, at about 10 a.m., a meeting of the Governor's Executive Council, presided over by the late U Aung San, was held in his office room in the western block of the Secretariat building. (See plan, Exhibit C). This meeting was attended by U Aung San, as Deputy

Chairman, and Executive Councillors Thakin Mya, U Ba Win, 'Deedok' U Ba Choe, Mr. Razak, Mahn Ba Khaing, U Mya (Pyawbwe), U Aung Zan Wai (prosecution witness, 2), U Ba Gyan (p.w. 3) and Sawbwagyi Sao Sam Htum. The Council table was set at the southern end of the room as shown in the photographs, Ex. F and G, and in the plan, Ex. C. Seated on the left of U Aung San with their backs against the wall were U Ba Gyan, U Aung Zan Wai, U Mya, and Sao Sam Htum. On the right of U Aung San sat Thakin Mya, Mr. Razak, U Ba Win, U Ba Choe and Mahn Ba Khaing. On the left of U Aung San, at the top of the table, sat U Shwe Baw (not called), the Secretary of the Executive Council. On U Aung San's right, at the top of the table, sat U Ohn Maung, a Deputy Secretary belonging to the Transport and Communications Department.

At about 10.30 a.m., while the Council meeting was in progress, four men wearing jungle-green uniforms with XIIth. Army badges on their shoulders and armed with automatic weapons, forced their entry into the Council room and without warning, discharged their loaded firearms at those present at the Council table. Having executed this horrible outrage, the four assassins left the room and made for the main staircase at the central porch. While making this hurried withdrawal, they met Maung Htwe the personal bodyguard of Mr. Razak, outside his room at the place marked 'E' in the plan, Ex. D, and presumably apprehending resistance, one of the armed men shot Maung Htwe down before they continued their flight down the stairs, at the bottom of which a waiting jeep driven by a man in green uniform received and carried them out of the Secretariat compound by the exit gate leading out to Sparks Street.

The shooting inside the Council room resulted in the instantaneous death of U Aung San, Thakin Mya, U Ba Win, Mr. Razak, Mahn Ba Khaing and U Ohn Maung. Both U Ba Choe and Sao Sam Htum received fatal injuries as a result of which they subsequently died in the Rangoon General Hospital. Maung Htwe similarly succumbed to the injuries he received after he was brought to the hospital. Two Councillors, U Aung Zan Wai and U Mya, and the Secretary of the Council, U Shwe Baw, escaped unscathed, while U Ba Gyan received a bullet wound on his right ring finger.

The first person who entered the Council room after the assassins left and who witnessed the ghastly scene was Bo Tun Hla (p.w. 6), then working as personal assistant to U Aung San, having his office in a small anteroom adjoining U Aung San's chamber on the north. U Aung Chein (p.w. 1), the Commissioner of Police, Rangoon, arrived next on the scene followed by U Po Sein (p.w. 18) and Mr. P. K. Bell (p.w. 59). Empty cartridge shells and spent bullets were lying strewn about the floor of the room, besides a Sten-gun magazine fully loaded with cartridges. These were all collected by the police officers and deposited with the guard-writer Maung Aye Pe

(p.w. 68) of the Botataung police station in the sealed tin, Ex. 6, through U Than Pe (p.w. 19).

That same day, after the dead and injured were removed to hospital, U Hla Pe (p.w. 72), inspector of police, acting under instructions, visited the scene of crime at about 12.30 p. m. and inspecting the place in the presence of U Tin Ohn (p.w. 9) he found and picked up seven more empty Tommy gun cartridge shells, three spent bullets, fourteen empty Sten-gun shells and one spent bullet. These he entered in the search list, Ex. H, and deposited with the guard-writer Maung Su (p.w. 69) in the sealed tin, Ex. 6 (a).

That same afternoon a police party led by Mr. Jupp (p.w. 53) surrounded the first accused U Saw's house and compound and took all those present at the place into custody. While this police party were about their duties, the accused Hmon Gyi was shot in his arm for offering armed resistance from his room in the barrack marked 'D' in the plan, Ex. E. Among the various articles seized in the first accused's house and set out in the search list, Ex. M., prepared by Mr. Sant Singh (p.w. 27), at the time of their seizure, were included one 9 mm. sub-machine gun and a Sten-gun, Ex. 9 and 10, both licensed firearms belonging to the first accused. The jeep car, Ex. 26, was also seized that same evening as per search list, Ex. 2-H. The arms and other articles seized in the house were sent to the town lock-up that night through Maung Thein (p.w. 28), sub-inspector of police, along with the list, Ex. Q, in which the receipt was acknowledged by U Maung Maung (p.w. 29), the officer in charge.

An armed guard was posted at the first accused's place that night and on the following day U Soe Yin's party continued their search in the house and compound. That same afternoon the search was extended into the waters near the house and the shrine to the east of it and at the places in the waters marked 'I' and 'J' in the plan, Ex. E, 8 cases of .303 rifle ammunition, 4 Tommy guns, Ex 11, 12, 13, and 14, and one Sten-gun, Ex. 15, were found by witnesses, Soe Thein (p.w. 24) and Tin Maung (p.w.25) of the Burma Armed Police Striking Force. These finds were duly noted in the search list, Ex. N, and the 5 guns together with the ammunition cases were conveyed by Mr. Jupp to the town lock-up and handed over to U Maung Maung who acknowledged their receipt in Ex. O.

On the following day, the 21st. July, Mr. Jupp took delivery of these firearms and also the two firearms deposited there on the previous night and sent them through inspector Sant Singh to U Hla Baw (p.w. 30), with the note, Ex. P, for his expert examination. On the same occasion Sant Singh handed over to U Hla Baw two empty shells, Ex. 6 (g), which he had received from U Soe Yin. On receipt of these firearms U Hla Baw visited the Botataung police station and took over from the guard-writer the two tins, Ex. 6 and 6 (a), which contained the empty cartridge shells, spent bullets and live

rounds of 9 mm. cartridges found and collected in the Council room on the 22nd. July and inspected the walls, floor and furniture and noted the presence of some 41 bullet marks shown in the photographs, Exs. P and G, taken under his instructions. On the 24th. July, U Hla Baw received from U Hla Pe, the inspector of police, the spent bullets, Ex. 6(c), 6(d), 6(e) and 6(f), recovered from the bodies of the murdered persons.

On the 22nd. July the investigation of the case which was being conducted by U Hla Pe was entrusted to U Thein Ohn (p.w. 49). About the 23rd. or 24th. July, the Bank paying-in slip book, Ex. A, with a note of the car No. R. C. 1814 on the back cover came into the hands of U Aung Chein. On the 24th. July he further received from U Tun Hla Aung, Deputy Inspector-General of Police, CID, (p.w. 38), the letter, Ex. B, with its enclosures, Ex. B (1), B(2) and B(3), representing reports of watchers said to have been employed to watch U Saw's house on the 19th. July. On the 29th. July, Maung Sein (a) Shein Gale (p.w. 20), Yan Gyi Naing and Tin Shwe (not called) accompanied a police party to the first accused's place and there Maung Shein pointed out a heap of ashes from which the unburnt piece of longyi, Ex. 8 (a), was recovered. From a place in the water near the shrine pointed out by Yan Gyi Naing, 5 soft green hats and a brick, Ex. 4, were salvaged. A motor car number plate bearing the number, R. A. 3123, Ex. 1(a), was found in the waters of the lake at a place pointed out by Maung Tin Shwe. On the next day, the 30th. July, Sein Maung (not called), a servant of the first accused, pointed out a heap of burnt cloth in the fire-place inside the first accused's kitchen and from there was picked up a half-burnt piece of a XIIth. Army shoulder badge, Ex. 24. On the 31st. July, the accused Khin Maung Yin, produced the 2 tins of white and yellow paint and brush, Ex 25, from an almirah in U Saw's bedroom. All these articles were found and seized in the immediate presence of U Ba Kyaing (p.w. 37) a magistrate of Insein, who duly witnessed the search lists, Ex. 2-A to 2-C.

These discoveries were followed the next day by the confession, Ex. J, of the approver Ba Nyunt made before U Hla Gyaw (p.w. 36), then the 5th. Additional Magistrate of Rangoon. Accused Yan Gyi Aung and Thu Kha made their confessions before the same magistrate on the 2nd. August as set out in Ex. Y and Y (1). A Sunday intervened and on Monday, the 4th. August, the accused Maung Sein gave his confession as recorded in Ex. Y (2). On the same day, Tun Shein (not called) one of the men found and arrested in the first accused's place, pointed out a place in the lake near the first accused's house and from there a motor-car number plate, Ex. 1 (d), with the number, R. B. 9831, in yellow paint was salvaged by diver Pasca (p.w. 46). The magistrate, U Ba Kyaing, was again present on the occasion and he attested the search list, Ex. 2-D.

On the 5th. August accused Maung Ni made his confession before U Hla Gyaw and on that same date accused Yan Gyi Aung pointed out a place in the lake from which the diver Pasca recovered the number plate, Ex. 1(c), bearing the number R.A. 3123. The search list attested by the magistrate is Ex. 2-E.

On the 6th. August the accused Khin Maung Yin's confession was recorded by the same magistrate as set out in Ex. Y (4). A further search in the bed of the lake in the immediate vicinity of the accused's house was conducted by Lieut. Coulson (p.w. 32) and his men including sapper Jit Singh (p.w. 33) and BhimRao Kajpe (p.w. 34). The operation which began on the 5th. August ended on the 12th. August with the find of the number plate, Ex. 1, bearing the number, R. C. 1814, in yellow paint on one side, and R. B. 4140, on the other. The relevant search list, Ex. 2-F, was attested by the same magistrate.

Meanwhile on the 8th. August an identification parade was held in the town lock-up, Rangoon, and there U Htin Baw (p.w. 12) identified the accused Maung Soe as one of the 4 gunmen whom he saw walking along the verandah of the west wing of the Secretariat on the morning of the occurrence and enter the Council room immediately before the shooting. Maung Thaug Sein, (p.w. 14), a *minsay*, who waited at the door of U Aung San's office room, identified Thet Hnin as another of these 4 gunmen. U Htin Baw and Maung Than (p.w. 15) picked out Yan Gyi Aung as still another of the 4 assassins. Maung Ohn (p.w. 16) and Maung Htwe (p.w. 17) identified the accused Thu Kha as the man whom they saw at the seat of the jeep which drove away the assassins. The memoranda of identification, Ex X to X (4), were duly prepared and signed by the superintending officer U Aung Cheint (p.w. 35). a Rangoon magistrate.

On the 11th. August, the Fordson truck, Ex. 28, was seized in U Saw's garage as per search list, Ex. 2-M. On the same day the jeep bearing the genuine number R. C. 1814, was seized from one Santosh Kumar to whom it had been sold by U Ba Aye (p.w. 48). A third jeep, Ex. 27, without a hood and bearing the GNL Number 167, standing near the portico of U Saw's house was seized on the 12th. August as per search list, Ex. 2K. On the 22nd. August, the iron cot, Ex. 2, was seized at the house by Maung Than Kyaw (p. w. 71), sub-inspector of police, as per search list, Ex. 2-V.

This Special Crimes Tribunal was constituted on the 30th August, 1947, under the Government of Burma, Judicial Department Notification of the same date. By a Notification of the same Department dated the 20th. September, 1947, the Tribunal was empowered to try the offences now alleged against the accused. On the 24th. September, the complaint against the ten accused including approver Ba Nyunt was laid in this Court.

The prosecution in this case has sought to show that a criminal conspiracy

was entered into by the accused to assassinate U Aung San and his colleagues of the Executive Council in the Council room, that the 4 accused Maung Soe, Thet Hnin, Maung Sein and Yan Gyi Aung, carried out the assassinations, that these 4 men used the jeep car belonging to U Saw and that it was driven by Thu Kha, that this jeep bore the false number, R. C. 1814, which rightly belonged to another vehicle then owned by U Ba Aye, that intelligence of the fact of the holding of a meeting that morning was obtained by Khin Maung Yin and conveyed to U Saw, the directing brain, that Hmon Gyi was posted outside the Council room to signal to the murderers the presence of their victims inside, that Maung Ni was posted at the 'Out' gate of the Secretariat to offer his armed intervention in the event of any attempt being made to prevent the escape of the murderers, that Khin Maung Yin, Maung Ni, Hmon Gyi and Ba Nyunt did make use of the Fordson truck, Ex. 28, belonging to U Saw, to carry out the respective tasks given to them by U Saw, and that this truck had then borne the false number R. A. 3123, which rightly belonged to a motorbus owned by one Daw Ahma Gyan of 89, 123rd. street, Rangoon.

At the outset it might be mentioned that the prosecution has not been permitted to lay before the Court any evidence, apart from the disclosures made in the confessions of the accused, relating to certain incidents that had taken place shortly before the assassinations were carried out, namely, the theft of considerable quantities of arms and ammunition from Government and Army Ordnance Depots. This has obviously deprived the prosecution of the opportunity of showing that the tragic events of the 19th. July were the culmination of a series of illegal activities in which the accused in this case had been engaged. This limitation placed on the prosecution in the matter of proof relating to the circumstantial background against which the present charges may be considered would appear to be necessary in order that this Tribunal should, in viewing the proved facts of this case and their effect on the issues of guilt or innocence raised in it, guard against the possible danger of prejudice against the interests of the persons involved in the present charges.

The principal piece of sworn testimony against all the accused in this case is contained in the evidence of the approver Ba Nyunt and before the same is taken into consideration in the assessment of the guilt of each of the accused in the case, it is necessary to examine his statement in some detail and apply the usual tests to it. Ba Nyunt had read up to the Anglo-Vernacular 9th. Standard and worked until September 1946 as a bench clerk in the township court of Minhla. He had taken a keen interest in the politics of the country and when, in about February last, U Saw came and held a political meeting at his place he acted as secretary of the meeting. He was not a member of the Myochit party of which U Saw was the leader. Some-

thing in the conduct and speech of Ba Nyunt appeared to have appealed to U Saw, for, at the end of the meeting, the latter invited Ba Nyunt to come and meet him at his house in Rangoon. This meeting did not take place until the third week of June, when Ba Nyunt had to bring his wife to Rangoon for medical treatment. Ba Nyunt took this opportunity of meeting U Saw at his house and there the political discussions he had and the views exchanged resulted in his joining the Myochit party as a zealous worker. By then U Saw had with him in his compound all the other accused except Maung Ni and Hmon Gyi. There were, besides Yan Gyi Naing, Tin Shwe, Hla Tun, Tun Shein, Maung Shein of Letpadan, Maung Shein of Okpo, one Tun Yin and Sein Maung, all stopping at U Saw's place, the last-named working as table-boy. Ba Nyunt, according to him, undertook to carry out three tasks at U Saw's request: the first was to collect arms, the second to collect ammunition, and the third to obtain the funds of the Rice Project by some means.

Some time after the first meeting with U Saw in the latter part of June, Ba Nyunt had to take his oath of fidelity before the Holy images in U Saw's shrine in the company of Maung Ni, Hmon Gyi and two others, named Win Tin of Gonnyindan, and Ba Maung of Letpadan. Immediately after the oath was administered, each of those taking the oath had to write out and sign their own 'death warrants' containing the words, 'As I have betrayed my country, I die by my own hand.'

On the 15th. July, the first conversation with U Saw relating to the assassinations took place. The garbled version in which this conversation is recalled in his evidence, is to the effect that U Saw told him in the presence of Maung Soe that if politics were to continue in Burma, all the other leaders would have to be killed. Then on the 16th. July, before he left for Othegon on a job connected with the redistribution of arms and ammunition stored there under his control, U Saw had told him to come back positively on the 18th. July. He had left with Maung Sein and one Tun Yin of Okpo, but when he came back, Maung Sein alone had driven back with him, Tun Yin having excused himself on a complaint of back-ache.

When Ba Nyunt was stopping in U Saw's place he was housed in the small white-painted corrugated iron building marked 'U' in the plan, Ex. E, along with Maung Soe, Thet Hnin, Thu Kha, Maung Sein and Tun Yin. On the night of the 18th. July, he was summoned to U Saw's house where in the room already seated with the latter he met Maung Soe, Thet Hnin, Maung Sein and Thu Kha. The plan for the assassination of the Executive Councillors at the meeting of the Council on the following morning was then divulged, but to him the special task of assassinating Thakin Nu in his office in the Constituent Assembly building was given with instructions to go ahead to Thakin Nu's office in the Fordson truck to be driven there by

Khin Maung Yin and to carry out the assassination with the gun that was to be brought in the jeep in which the other men then present in the room were to follow him to the place. He was, however, not to use the gun until he had heard the sound of shooting inside the Secretariat. After shooting Thakin Nu, Ba Nyunt was to board the jeep waiting at the place and come with the others.

The next morning at 8.30 a.m., witness found Khin Maung Yin standing by the Fordson truck receiving U Saw's whispered instructions. Instructions were also given by U Saw to Maung Ni who arrived a little later, and also to Hmon Gyi in the same manner. This truck went to the corner of Dalhousie Street and 41st. Street and there it was parked facing the Secretariat. Khin Maung Yin and Hmon Gyi alighted and went ahead of him into the Secretariat compound by the 'Out' gate, in Sparks Street, and were soon lost sight of. Witness went under the central porch and past it and looked through the window of Thakin Nu's office in the Constituent Assembly building. He thought he saw Thakin Nu there, seeing however, only the upper portion of his face. He walked past until he reached the eastern porch of the Secretariat, then turned back. Passing by Thakin Nu's office again, he looked into the room a second time and saw the same man from the back, but with his head, neck and top of his shoulders visible through the window. Witness then realized that the man was not Thakin Nu and consequently he retraced his steps to the truck which he had earlier left in charge of the accused Maung Ni. When he got to the truck, he found Khin Maung Yin waiting, but Maung Ni was not to be seen. He learnt from Khin Maung Yin that he had telephoned U Saw as directed by the latter, and that he was not certain whether the jeep from the house would come or not. As they sat waiting, Khin Maung Yin drew his attention to a jeep that had entered the Secretariat compound from the 'In' gate in Sparks Street and had already gone half way between the gate and the portico of the western block of the Secretariat. The jeep was seen to stop within about 25 or 30 feet of the portico for about a minute and then to enter into the portico and was lost to view. Two or three minutes later, witness heard sounds of gun reports from the Secretariat and shortly after, the same jeep came out slowly by the 'Out' gate in Sparks Street. Witness lost sight of it for a moment and saw it again as it passed the truck while it was being driven with speed along Dalhousie Street towards the east. There were 4, 5 or 6 men in the jeep, but witness could not make out any of them. A few minutes later, Maung Ni arrived, but there were no signs of Hmon Gyi.

The party in the truck then returned home and there underneath the porch witness saw the jeep already parked. Their arrival was greeted with shouts of 'Aung-byi, Aung-byi,' uttered by U Saw, Maung Soe, Thet Hnin, Thu Kha, Maung Sein and Yan Gyi Aung, who all stood on the verandah

outside the drawing room at the time. Witness shouted back in English, 'New Calendar' meaning that a new era had begun. U Saw then asked the witness in English, 'What about Thakin Nu?' and witness replied to him in Burmese that he did not find him. About that time witness noticed a man fishing on the Prome Road bank of the Victoria lakes about 100 yards away from the house. There were two men standing besides the fisherman wearing rain coats and hats. Witness thought that they were detectives and persuaded the others to go inside the drawing room. There they sat down and drank liquor from the liquor cabinet. After they had had their drinks they took their breakfast at the back of U Saw's house and returned to their respective quarters. When they arrived back in their Fordson truck, the others whom witness understood to have been in the jeep, were already in Burmese costumes. While witness was still in the drawing room after his return in the Fordson truck, he saw Khin Maung Yin paint on the back of the jeep the genuine number, R. B. 9831 in white paint as it had borne a false number previously, a trick which witness himself had adopted on previous occasions.

This story of the crime has previously been told by the witness once to the police and again on the 1st. August, 13 days after the commission of the crime to the Magistrate who recorded his confession in Ex. J. There is nothing in the cross-examination of the witness to suggest the presence of any serious discrepancies in the three statements which the witness has so far made relating to the manner in which he was concerned in the planning and execution of the crime. No suggestion has, moreover, been made that witness was subjected to ill-treatment by the police, or to the exercise of other forms of pressure upon him to compel the disclosures which he has thought fit to make in respect of the charges brought against him. The explanation which the witness has offered for making up his mind to make a full disclosure of the facts of the case is purely psychological in character and can be found in the facts which came to his knowledge subsequent to his arrest and detention in jail and in police custody. In the first place, not all the Executive Councillors present in the Council had been killed as a result of the shooting. Witness learned that the same political party against which he was working had formed a new Government under the leadership of Thakin Nu. Information brought to him by his armed guards and the public demonstrations he saw and heard on the streets on his way from the lock-up to the Court on the 25th. July and the shouts of news-vendors he heard, made him realize that the masses were more united behind the Government than before and that there was no visible chance of the Party for which he worked obtaining an opportunity of forming a new Government.

Between the 25th. July and the 1st. August, the date on which he made his confession, certain other persons, found and arrested in his company in U Saw's compound on the 19th. July, had made their statements to the

police and as a result of the disclosures made by them certain exhibits had been recovered both from U Saw's house and from its immediate vicinity. On the 29th. July witness Maung Sein pointed out a place behind the kitchen where some clothes had been burnt and from the ashes was obtained a piece of unburnt cloth, Ex. 8(a). That same day, Yan Gyi Naing and Tin Shwe, two other followers of U Saw living in his place, pointed out places in the waters near the shrine from which 5 soft green hats and a brick, Ex. 4, and a motor-car number plate bearing number R. A. 3123 were found. On the 30th. July, Sein Maung, U Saw's table-boy pointed out a heap of burnt cloth in one of the compartments of U Saw's fireplace in his kitchen and the half-burnt piece of XIIth. Army shoulder badge, Ex. 24, was recovered. On the 31st. July, Khin Maung Yin having made his statement to the police, took the latter to U Saw's house and produced the tins of white and yellow paint and the brush, Ex. 25. The conduct of these persons and the disclosures they had already made might also have influenced the decision of Ba Nyunt to make a clean breast of the matter respecting his complicity in the crime.

In many important details both relating to the manner in which he became associated with U Saw in the latter's previous ventures and the manner in which the present crime was executed, corroboration from different independent sources has been obtained. First of all, U Saw himself in his sworn statement referred to Ba Nyunt as the person to whom since about last June, the senior members residing in his compound looked upon as their leader. Ba Nyunt was one of those who suggested the taking of the fidelity oath referred to by him and he himself sometimes administered such oaths to members joining U Saw's organization. It was again Ba Nyunt who suggested the keeping of a hut on the promontory on Prome Road side for keeping a guard and it was he again who suggested a night patrol to watch U Saw's compound. Along with the other senior members like Maung Soe, Thet Hnin, Thu Kha and Maung Sein, Ba Nyunt occupied the white-painted corrugated iron guest house. The movement of Ba Nyunt on the 16th. July is also admitted by U Saw and with regard to Ba Nyunt's movements on the 19th. July, U Saw has guardedly admitted that Ba Nyunt and a few others had arrived back at his place between 12 noon and 1. p.m. on that day, not in a truck but in his jeep. The paint in which the number of the jeep appeared both on the front and the back of the jeep was found by witnesses U Tun Hla Aung and Mr. Khan and others to be fresh and wet on the evening of the 19th. July.

Corroboration of Ba Nyunt's account of the manner in which he left U Saw's place in the car in the company of Khin Maung Yin and others is found in the evidence of the two watchers, Aung Kyaw Sein (p.w. 31) and Hla Tin (p.w. 47) who were told to watch the movements of motor vehicles

to and from U Saw's house that very morning. Aung Kyaw Sein was given this duty by his service chief U Tun Hla Aung who then was engaged in criminal investigations arising out of theft of firearms and ammunition from Ordnance Depots. Aung Kyaw Sein wrote out his report, Ex. B-2, where he definitely mentioned that the Fordson truck belonging to U Saw bearing the false number R. A. 3123, did leave the latter's compound at about 8.30 a.m. that morning with at least two men seated in front. Hla Tin similarly mentioned this fact in the report, Ex. B-3, which he wrote and submitted on the evening of the 19th. July to U Tun Hla Aung at whose instance he had carried out this spying on the movements of motor vehicles in and out of U Saw's compound.

Ba Nyunt's further account of the movements of U Saw's jeep which he noticed from his seat in the Fordson truck parked at the corner of Dalhousie Street and 41st. Street has received independent corroboration from the evidence of Sein Maung (p. w. 21). Observing the jeep bearing the number R. C. 1814 leaving the Secretariat compound shortly after the sound of gun reports was heard from inside the building, Sein Maung made a note of the said number in Ex. A-1 on the back of his bank paying-in slip book, Ex. A, on suspicion that the departing jeep had some connection with the strange noises he had heard. This jeep, which Sein Maung saw near the Secretariat, was later seen by Ba Nyunt parked under the portico of U Saw's house, a fact corroborated by the two watchers, as well as by the testimony of Mr. Khan (p.w. 39). The witness was leaving his house that morning at about 11 a.m. for his office in his Fordson saloon car, when at his gate he had to stop his vehicle on seeing a jeep driving up the road furiously in his direction. As he stopped his car and watched, the jeep was seen to turn into U Saw's compound which then was about 15 or 20 yards from where he was. Having previously been told by U Tun Hla Aung to keep a watch on the movements of vehicles at U Saw's house, witness stopped again on Prome Road and looked out and noticed a group of 4 or 5 men round the jeep stopping in front of U Saw's house and among these men witness saw one wearing a pair of dark shorts and a white shirt, whom from the description already received from Hla Tin about an hour previously, he understood to be U Saw himself.

The value of the corroboration of Ba Nyunt's testimony received from these several witnesses has been questioned by the defence on the ground that there are discrepancies in their evidence affecting seriously their veracity and that one of them, namely, Sein Maung is a creature of U Ba Gale (p.w. 54), who was said to be ill-disposed towards U Saw. The presence of Aung Kyaw Sein in the immediate neighbourhood of U Saw's place on the afternoon of the 19th. July is attested by U Soe Yin (p.w. 53), who was in charge of the police raiding party. To this witness Aung Kyaw Sein presented

himself holding a slip of paper in his hand and muttering something about the movements of the jeep which he had earlier observed. Mr. Khan is also positive that an officer of the CID was sent to him by U Tun Hla Aung on the 18th. July with a letter of introduction and that he was aware of the presence of this man in his compound since that date. Aung Kyaw Sein's presence in the vicinity of U Saw's place has been deposed to by witnesses U Tun Hla Aung, U Soe Yin, Mr. Khan and the latter's employee Maung Hla Tin, and it is difficult in the face of their evidence to reject Aung Kyaw Sein's evidence as a piece of fabrication.

Investigations up to the 19th. July were being made in connection with arms and ammunition thefts and these investigations were in the charge of the Criminal Intelligence Department under U Tun Hla Aung.

When the investigations relating to the assassinations began, the watchers' reports, Ex B(2) and B(3) received by U Tun Hla Aung were sent to U Aung Chein (p.w. 1) and in this way these documents came to be produced in this case as documentary exhibits, supporting the sworn testimony of Aung Kyaw Sein and Hla Tin. These watchers stationed themselves near the well shown in the plan, Ex. E, with the letter 'A.' From this point of vantage they could, unobserved from outside the compound, obtain a clear and satisfactory view through the hedge of the motor vehicles passing in and out of U Saw's gate directly opposite to them and only 20 or 30 feet away from where they were. In his report, Ex. B (2), Aung Kyaw Sein has stated that he had seen U Saw giving a letter to the driver. He has since explained that he did see U Saw come up to the truck and hand something to somebody inside the truck. This movement of U Saw was not mentioned in the written report of Hla Tin in Ex. B (3). It has however the support of the accused Maung Ni, who in his sworn evidence has stated that U Saw did follow up the truck near the gate and give him a ten rupee note for pocket money. Since Hla Tin and Aung Kyaw Sein were not keeping watch from exactly the same spot, the omission of Hla Tin to make any mention of this incident is not of serious account and cannot affect the credibility of either of them.

The next objection taken to Aung Kyaw Sein's evidence relates to his account of the manner in which he saw a man going into U Saw's house from the front after the truck had gone into the house. If the fisherman was fishing near the brick steps in the compound, it was impossible for anybody near him to see what Aung Kyaw Sein had said he saw, because only the back portion of U Saw's house was visible from that place. Aung Kyaw Sein has, however, explained that when he was watching the movement of that unknown person in front of U Saw's house, he was facing away from the Prome Road which was behind him. If he had the Prome Road behind him when he watched U Saw's house from the bank of the lake where the

fisherman was fishing he could not be doing so from near the brick steps of the promontory where the watchers' hut was built by U Saw, and this agrees with Ba Nyunt's evidence that he saw the fisherman and two others with rain coats at about the time he and the other accused were standing in front of U Saw's house. Aung Kyaw Sein in his evidence and the note he submitted to U Tun Hla Aung made no mention of the presence of white and red tags tied on the left side of the windscreen of the jeep, which both Mr. Khan and U Tun Hla Aung saw on that day. Considering that the jeep was driving in with furious speed into the compound, it was not surprising that this object escaped the notice of the two watchers. Their whole attention was probably paid to the detection of the number of the car which they evidently saw for a passing moment. Attention has been drawn to the fact that when Hla Tin made his report, Ex. B (3), he made no mention of the letters 'R. C.' preceding the number 1814, and instead of the Fordson he had written the word Bedford truck. The omission and the mistake would clearly show that the report was a genuine one and not a mere fabrication.

In considering the credibility of Mr. Khan as a witness and the value of the corroboration received from his evidence, it must be mentioned that it was mainly on the information given by him through U Tun Hla Aung regarding the suspicious movements of U Saw's jeep and the activities of his men on the morning of the 19th. July that an immediate raid on U Saw's place was decided upon and carried out by the authorities.

Apart from these independent sources Ba Nyunt's testimony has received further corroboration from the confession and sworn testimony of Maung Ni and from the confessions of Khin Maung Yin, Maung Sein, Yan Gyi Aung, and Thu Kha who all stated that Ba Nyunt was implicated in the commission of the crime. Maung Ni and Khin Maung Yin agree that Ba Nyunt accompanied them in the truck to the corner of Dalhousie Street and 41st. Street and that he went into the Secretariat compound in the manner alleged by him. Thu Kha and Maung Sein both agree that Ba Nyunt was in their company when U Saw assigned to them their respective tasks on the night of the 18th. July the day preceding the assassinations.

One other crowning piece of corroborative evidence is found in the discovery from the waters in the immediate proximity of U Saw's shrine at the points marked 'I' and 'J' in the plan, Ex. E, 4 Tommy guns and 1 Sten gun, Ex. 10, 11, 12, 13, and 14, in the case. These guns along with the sub-machine gun and Sten gun found in the legal possession of U Saw were examined by U Hla Baw, principal of the Detective Training School. U Hla Baw fired test cartridges from these guns and compared the marks and impressions made on the metal base of the cartridge shell made by the striker pin and other parts of the guns with the marks and impressions found in the cartridge shells collected from the scene of the crime. The results of his

investigations are shown in the enlarged photographs, Ex. U, V and W. Witness went and examined the Council room where the assassinations took place and he found 41 bullet marks on the walls, floor and furniture of the room. Of this number, 22 bullets and 19 were caused by the use of 38 bore or 9 mm. bullets. In the photographs, Ex. F and G, are shown the places where these bullet marks had been caused. Witness received 2 sealed tins, Ex. 6 and 6 (a), containing the empty cartridges collected from the Council room on the day of the assassination from the custody of the guard-writer at Botataung police station on the 21st. July, 2 days after the occurrence. Besides these, witness also received spent bullets, Ex. 6(c) to 6(g), alleged to have been recovered from the bodies of the victims. As a result of the comparison made of the impressions found on the metal base of the test cartridge shells with those found on the cartridge shells picked up at the scene of crime and from the identity of their characteristics noticed under the magnifying glass and reproduced in the photographs contained in Ex., U, V and W, U Hla Baw is of the decided opinion that four of the five guns recovered from the waters near U Saw's shrine, namely, Ex. 11, 12, 14 and 15, were used by the assassins against their victims in the Secretariat on the 19th. July. The witness has had considerable experience in the subject on which he has come forward to give expert evidence and the views he has put forward have not been seriously contested by the defence. This discovery of the firearms used in the assassinations in the waters in the immediate proximity of U Saw's shrine unmistakably points to the fact that the crimes were carried out by men living in the same place.

Regarding Sein Maung's testimony and the corroboration it received from his employer U Ba Gale, considerable pains have been taken by the defence in an attempt to show that U Saw and U Ba Gale were at daggers drawn and that the enmity which existed between them is sufficient to vitiate their sworn testimony. U Ba Gale had long been the managing director of the 'Sun' Press in which U Saw had held a controlling interest. When U Saw returned from his exile in Uganda in about January, 1946, he had differences with U Ba Gale over certain matters relating to his management of the Press. Allegations were made by U Saw that U Ba Gale had misappropriated certain quantities of newsprint and that the stock book in respect of the same had not been honestly maintained. U Ba Gale made his explanations which failed to satisfy U Saw with the result that he severed his connection with the Press altogether and set up his own printing and publishing business. Thereafter, U Ba Gale had made an application for payment of a bonus to him for services rendered to the Sun Press. He has also applied for permission to sell his shares in the business. Both these applications have been kept pending in view of objections raised by U Saw that U Ba Gale's management of the business had been unsatisfactory and even dishonest and that

he, jointly with his nephew U Ba Tin, had a long outstanding debt exceeding some Rs. 4,000 to settle with the Sun Press. Sir U Thwin (defence witness 9) has been called on behalf of the defence to substantiate these allegations of the existence of alleged 'blood feud' between U Saw and U Ba Gale. Sir U Thwin's testimony does not confirm that U Ba Gale severed his connection with the Press as a result of his disagreement with U Saw, and nothing criminally dishonest or improper in U Ba Gale's conduct has been brought to the knowledge of the witness. The Court has before it the minute book of the meetings of the Directors, Ex. 11 with the minutes Ex. 11(a) and Ex. 11(b) and nothing in these minutes would justify the view put forward for the defence that there subsists between U Ba Gale and U Saw that degree of personal enmity which could furnish an adequate motive for helping the prosecution with a damning piece of fabricated evidence.

Sein Maung might have seen armed men in the jeep which he saw coming out of the Secretariat compound after the sounds of shooting were heard, and might as well entertain the suspicion that the people in the jeep had some connection with the occurrence, but news of the real tragedy was of such a shocking character that it was hardly possible for an ordinary man in the street like Sein Maung to think and act in as strictly a consistent manner as might ordinarily be expected of him in his normal life. During the period of public anxiety and excitement which prevailed immediately after the assassination became known, one could hardly expect either U Sein Maung or U Ba Gale to make use of the knowledge which they had in their possession regarding the suspected jeep in the manner in which they subsequently did after the excitement had subsided to some extent. U Aung Chein, the Commissioner of Police, has described the manner in which the documents, Ex. A and A-1, came into his possession through the disclosure made by witness Sein Maung. Sein Maung had been an employee of the Sun Press and had resigned his job evidently to go and work under U Ba Gale; but this relationship of employer and employee subsisting between him and U Ba Gale is no valid basis for the assumption urged by the defence that the witness has been used as U Ba Gale's tool for the satisfaction of his private grudge.

It is necessary at this stage to dwell upon the further fact that the jeep car genuinely bearing the number R. C. 1814 belonged to one U Ba Aye (p. w. 48) of Zalun Street, Kemmendine, who had bought the same from a firm dealing in the sale of derelict Army vehicles sometimes before. According to the mechanic Maung Hla Tin (p. w. 77) employed by U Ba Aye to bring his jeep into a roadworthy condition, this vehicle had not been actually fitted with its engine on the date of the assassinations and could not have been used by the assassins for their purpose. Moreover, U Ba Aye's jeep, Ex. 29, never possessed a hood like the one belonging to U Saw bearing the number R. B. 9831.

U Saw has described Ba Nyunt as a young man of intelligence and ambition and stated that as soon as he arrived in his compound he attained some degree of eminence and leadership among his immediate followers living with him, and twice during the short term of his apprenticeship under him, Ba Nyunt had been audacious enough to suggest to him that the assassinations should be carried out. These are further reasons for the view that a large measure of probability attaches to Ba Nyunt's claim made in his testimony that he and his fellow senior members of U Saw's party living in the same corrugated iron house with him were deeply implicated in the extremely hazardous venture which they carried out on the morning of the 19th. July.

It has been put forward by the defence that the whole story told by Ba Nyunt relating to the planning and execution of this crime was a fabrication told by him under instruction and pressure from the police. There is nothing, however, to indicate that he had recounted purely imaginary and unfounded facts. This is clear from the several facts and circumstances relating to the crime on which he has been amply corroborated by independent and incontestable evidence. The 9 persons whom Ba Nyunt has chosen to implicate were found living together in the same place with him and 4 of them, namely, Maung Soe, Thet Hnin, Thu Kha and Maung Sein were occupying the same corrugated iron hut with him. The truck in which he and his fellow conspirators proceeded to the vicinity of the scene of crime with a view to keep their respective assignments has been fully identified. His further account of the arrival of the jeep from the house and its departure from the Secretariat has also been similarly proved in evidence. Five of the 9 persons he has implicated chose to confess before the magistrates implicating themselves in the crime and the very weapons alleged to have been used by the assassins were found and recovered from the waters under the shrine where each of them had at one time or another taken their oath of fidelity.

There are therefore no cogent and substantial grounds for treating Ba Nyunt's evidence as either unreliable or untrustworthy.

The next body of evidence which the Court may consider against the accused are the confessions which 5 of them have made before a competent Magistrate. The first of these was made by Yan Gyi Aung on the 2nd. August, 1947, the day following Ba Nyunt's confession. His father Maung Tun (d.w. 19) is a cousin of U Saw and some 4 months before the date of the confession he was told by one Ma Tin Nyo, a cousin of U Saw, to go and visit the latter when he came to Okpo on a political visit. He was at once taken into the service and was brought to U Saw's house on Ady Road where he met the accused Maung Sein, Maung Soe, and Khin Maung Yin besides others named Sein Maung, Mya Ohn, Tin Shwe, Kyi Ngwe, Yin Pe and Yin Maung. He returned home after a month and brought back with

him one Yan Gyi Naing. Then about a month after they were joined by Thet Hnin and Thu Kha. Ba Nyunt also came at about this time. He was housed in an extension at the back of U Saw's house along with Yan Gyi Naing and Sein Maung. Some two months after his arrival he had to swear his oath of fidelity in the shrine with Thu Kha repeating the words of the oath. He speaks of the written note he had to give stating that he had died by his own hand for having been a traitor. During his stay, U Saw himself taught him how to use various types of firearms. He then speaks of the theft of Bren guns and ammunition and their disposal. Then on the 18th. July, U Saw gave him orders to accompany Maung Soe and Maung Sein on the following morning and do their bidding. The next morning U Saw told him to put on uniform.

The garments belonged to Yan Gyi Naing and were taken from a shelf. He was then told to take out a Sten-gun from a case near the bank of the lake. He then met Maung Soe, Thet Hnin, Maung Sein and Thu Kha similarly dressed in uniforms, and Maung Soe put on his shoulder a XIIth. Army badge and on his head a green hat. Under U Saw's instructions, he provided himself with two Sten-gun magazines which he took from U Saw's bedroom from under the hanging clothes. At about 10 a.m. they were told to proceed with Thu Kha driving the jeep car. Maung Soe sat beside Thu Kha, Maung Sein and Thet Hnin sat at the back with him. The two last-named had rain coats over them. Arrived at the Secretariat, Maung Soe led the way with Maung Sein following after him, Thet Hnin and he following them from behind.

Inside the Council room the others fired their guns at the Councillors, while he sat and shot those lying under the table. Outside the Council room as they made their retreat they met a man with a revolver and shot him. They left in the jeep driven by Thu Kha and at the gate met the accused Maung Ni. On the way the party took off their upper garments near the Royal Lakes. Maung Sein took the wheel saying Thu Kha was driving too slowly. Back at U Saw's place Tin Shwe opened the gate. The jeep was parked under the portico and the weapons were taken to the shrine by Sein Maung. Just as U Saw was being told how the shooting was done, Ba Nyunt Khin Maung Yin and Maung Ni arrived in their truck.

Yan Gyi Aung has retracted his confession alleging that it was given by him through police ill-treatment, a fact which has not been proved. The accused admittedly is not a senior member among the followers living at U Saw's place and evidently this fact explains why he was not called into the drawing room on the night of the 18th. July when Ba Nyunt, Maung Soe, Thet Hnin, Thu Kha and Maung Sein were given their instructions by U Saw. The accused did not himself possess any uniform, but Yan Gyi Naing, his companion, possessed one having taken part in previous operations. The

Sten-gun he used was taken out of a case lying near the bank and he obtained two Sten-gun magazines from U Saw's bedroom. In describing the actual shooting, this accused went to the length of stating how he had sat down on the floor and shot at those lying under the table. He also admits shooting Maung Htwe. He further describes how those in the jeep had taken off their upper garments on the way; how Maung Sein had changed place with Thu Kha at the wheel and how the arms had been removed to the shrine by Sein Maung after the party arrived back at U Saw's house. All these details would impress one as having been disclosed purely from a desire to speak the truth and not merely to make a simple admission of guilt under pressure of police ill-treatment.

The next confession, given on the same day, was that of Thu Kha. He has been Secretary of the Myochit party at Kyaiklat and about a month before the occurrence he was sent for by U Saw and together with Thet Hnin he went to him, and met Maung Soe, Maung Sein, Mya Ohn, Yan Gyi Aung, Yan Gyi Naing, Sein Maung, Tun Sein, Tun Shwe and Khin Maung Yin at U Saw's place. Together with Maung Soe, Thet Hnin, Yan Gyi Aung, Yan Gyi Naing, and Maung Sein he took the oath at the shrine, and thereafter assisted in the disposal of Bren guns. He next speaks of the meeting he had with U Saw on the night of the 18th. July, where Maung Soe, Maung Sein, Thet Hnin, and Ba Nyunt were present. Orders were given by U Saw for carrying out the assassination on the following morning. In the morning, Maung Soe, Thet Hnin, Maung Sein and Yan Gyi Aung put on their uniforms and armed themselves with Tommy guns and Sten-guns. An extra Tommy gun was carried for Ba Nyunt. He speaks of the journey to the Secretariat taking the route shown by Maung Sein, and of the manner in which he drove them back from the place after the shooting had been done. They took off their clothes before coming to the Royal Lakes and Maung Sein took the wheel from him saying that his driving was too slow. Back at U Saw's place the gate was opened by Maung Tin Shwe and the jeep driven into the portico. Before they had their meal, liquor was drunk in the sitting room with U Saw.

Maung Sein's confession speaks of the visits made to Okpo and Othegon in the company of Ba Nyunt and Tun Yin for the transport and distribution of arms and ammunition. They returned on the 18th. July under U Saw's orders and that night at about 8 p. m. U Saw gave orders for the next morning's work. He, Thet Hnin, Maung Soe and Yan Gyi Aung were to shoot the Executive Councillors and Ba Nyunt was to shoot Thakin Nu. Khin Maung Yin was to take Ba Nyunt, Hmon Gyi and Maung Ni in the Fordson truck and the Tommy gun for Ba Nyunt was to be taken along in the jeep. On the 19th. July they put on their uniforms and Maung Soe produced shoulder badges and hats. While they were making their prepara-

tions the Fordson truck left, and at about 10 a.m. orders were given to them to leave in the jeep. They covered their uniforms with their rain coats. He describes the route taken by them to get to the Secretariat. Outside the Council room they saw Hmon Gyi nodding his head by way of giving them the signal they understood. Maung Soe forced open the door of the room and inside the Council room, Maung Soe gave orders to shoot. Yan Gyi Aung sat down and shot with his Sten gun while the others fired their guns from their standing position. Yan Gyi Aung next shot a man whom he met outside armed with a revolver. The party then left in the jeep waiting under the stairs, driven by Thu Kha. They met Maung Ni near the gate as they were leaving. When they approached the Royal Lakes, Maung Sein took the wheel from Thu Kha, as the latter was driving very slowly. Clothes and hats were taken off and the party arrived back at U Saw's gate which was opened by Tin Shwe and the result was reported to U Saw. There were shouts of 'Aung-bi, Aung-bi' and U Saw himself embraced and kissed them. After they had gone and changed their clothes, they came back and talked to U Saw and about this time Ba Nyunt, Khin Maung Yin and Maung Ni returned in their Fordson truck.

Maung Ni in his confession describes how in the morning of the 19th. July he was called by Khin Maung Yin to the Fordson truck where he met Ba Nyunt and Hmon Gyi. He changed his clothes bringing his rain coat with him in case of need. He was then given a revolver by Maung Soe with instructions to use it when necessary. He, with Khin Maung Yin, Ba Nyunt and Hmon Gyi, went to the south of the Secretariat, where Khin Maung Yin, Hmon Gyi and Ba Nyunt left him. He later received instructions from Khin Maung Yin to keep the exit gate of the Secretariat open to let the jeep pass. He saw the jeep come to the Secretariat with Thu Kha at the wheel and immediately heard the sound of shooting. He then saw Hmon Gyi running out. The jeep then came out with Maung Sein and others in it. He made an attempt to get into it, but was told not to do so. Inside the jeep he saw Maung Soe armed with a Tommy gun. He then went back to the truck where he met Khin Maung Yin, and Ba Nyunt and returned home with them to find U Saw talking to the others. He then joined in the drinking.

Khin Maung Yin in his confession which he gave on the 6th. August has given an account of the manner in which U Saw was shot and injured in his eye in September, 1946, of the formation of the AFPFL Government with U Saw as Minister of Education, of the employment of Maung Yin Pe as U Saw's bodyguard, of the contact made with one Major Young, of the purchase of a sub-machine gun, 3 American carbines, 1 Sten gun, 2 Tommy guns, 1 Luger pistol, 2 revolvers and ammunition from this officer, of the instructions given by U Saw to go and shoot U Aung San on the night of the cocktail party at the house of the General Officer Commanding at Promé Road, how

having seen U Aung San arrive in his car he went back and told a lie to U Saw saying U Aung San did not attend the function. He next describes how Yin Pe and others left U Saw's place and speaks of the arrival of Maung Soe, Sein Maung, Mya Ohn, Tin Shwe, and Tun Shein. He then describes U Saw's visit to Okpo and his return with Maung Sein and Yan Gyi Aung, who later went back and brought Yan Gyi Naing with him. They were then joined later by Hla Tun, Thet Hnin, Thu Kha and Maung Shein of Letpadan. Approver Ba Nyunt, accused Maung Ni, Hmon Gyi and two others Tun Yin and Ko Shein came later. All these persons took their oaths of fidelity in the shrine and were made to sign their own 'death warrants.' Khin Maung Yin next speaks of U Saw's plan to rob a bank, but the venture was not attempted as the expected rains did not fall. Then a Major Lance is next mentioned from whom U Saw is said to have obtained a Springfield rifle, 2 Tommy guns and 1 carbine.

Khin Maung Yin next describes U Saw's contact with Major Moore and Captain Vivian and of the theft of Bren guns and ammunition from Ordnance Depots and of their distribution in the district and their concealment in the waters by the side of the house. He further describes how at one time, U Saw made an attempt through him to go and steal a station-wagon from the Fytch Flats. Next he describes how on the 16th. July, Maung Sein and Ba Nyunt went to Gyobingauk and returned on the 18th. July at about 4 p.m., of the painting of the false number plates R. C. 1814 and R. A. 3123, and of the instructions given by U Saw on the 17th. July to go and make enquiries about the meeting of the Executive Councillors taking place on the 19th. July. He was told on the occasion that Maung Soe, Thet Hnin, Thu Kha and Tun Yin were going to shoot the Executive Councillors. On the 18th. July, U Saw reminded him about the cars that were to be kept ready for the purpose, and at the time he saw Maung Soe, Thet Hnin and Thu Kha talking with him. On the 19th. July he placed false number plates on the truck and the jeep and took the Fordson truck to the junction of Dalhousie Street and 41st. Street taking Hmon Gyi, Maung Ni and Ba Nyunt with him. He went and verified the fact that the meeting of the Executive Council was being held in U Aung San's chamber and went and telephoned U Saw from the Sun Press, using the code words that piston rings had been received. He went back to the truck and there he was joined by Ba Nyunt who reported that Thakin Nu was not present in his office. He next saw the jeep from the house enter the Secretariat compound and stop for a while when it came near the porch entrance behind a truck. After the shooting was done, the jeep came out with Maung Soe, Thet Hnin, Maung Sein and Yan Gyi Aung in it, all wearing XIIth. Army uniforms and with Thu Kha at the wheel. When they got back home without Hmon Gyi, they found that the others had already changed their clothes. He heard U Saw shouting

'Aung-bi, Hey.' Later he gave the false number plates to Tin Shwe and wrote out fresh numbers on the jeep. When the police party arrived, Maung Sein and Mya Ohn went to the shrine and threw down the guns into the water. The presence of many details in the account given by Khin Maung Yin in his confession relating to what happened before the occurrence and also relating to what happened on the day the assassinations took place gives one the impression that he has told the whole truth regarding the matters pertaining to the present crime.

The three accused, Maung Sein, Thu Kha and Khin Maung Yin have not throughout this long trial made any attempt to deny the facts which they have set out in their confessions and which the prosecution has sought to prove in this case against them. The confessions they have made can be considered in evidence as the sole basis of their conviction, if the Court is satisfied of their truth. On the same condition their confessions may likewise be treated as evidence against the co-accused and used for the purpose of corroborating the statements of the approver. See the case of *Maung Mya and another vs. King-Emperor*.<sup>1</sup> On the question of the proper appreciation of the evidence of the approver, the Full Bench ruling in the case of *King-Emperor vs. Nga Myo*<sup>2</sup> is referred to for guidance. When the Court is satisfied on the matters appearing on the record 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 condition is satisfied, a conviction may legitimately be recorded upon their statements alone, if the Court is convinced of their truth. The same rule applies to the cumulative effect of the evidence of the accomplices and the confessions of the co-accused where the presumption of unreliability has, in the special circumstances, been rebutted. It was further pointed out in this ruling that corroboration of an approver's evidence must proceed from a source extraneous to the person whose testimony it is sought to corroborate. The several extraneous matters from which such corroboration of the approver's testimony has been obtained in this case have already been noticed.

Having thus appraised the evidentiary value of the approver's testimony and the confessions given by the 5 accused persons, it is now necessary to enquire into the guilt or innocence of each particular accused beginning with those against whom responsibility has been sought to be fixed for the actual murders committed in the Secretariat on the 19th. July.

Against the accused MAUNG SOE, there is firstly the evidence of the approver Ba Nyunt, who has implicated him as one of the principal followers

1. 1938 Rangoon Law Reports, p. 30.  
2. 1938 RLR p. 190

of U Saw who were to proceed to the Secretariat and carry out the assassinations. Maung Soe was said to be present in U Saw's drawing-room on the night of the 18th. July, when Ba Nyunt and others including Thet Hnin, Thu Kha and Maung Sein were given their instructions by U Saw. Previous to this meeting on the night of the 18th. July, Maung Soe had been present in the company of U Saw, when on the 15th. July, U Saw had first expressed the idea that for politics to continue in the country the leaders of the opposite party must be killed. Maung Soe had expressed no dissent to this opinion uttered by his leader. When Ba Nyunt returned in the Fordson truck from the Secretariat, he found Maung Soe in the company of the other senior followers of U Saw shouting expressions of gratification over the success of the mission which they had performed. Maung Soe was present in the drawing-room with U Saw, when witness Maung Shein was invited over from his hut to have his meal in U Saw's place. At the morning meal to which Maung Shein was invited, he met not only Maung Soe, but Ba Nyunt, and the accused Maung Sein, besides 2 other men whom witness professes not to know. Liquor was drunk on the occasion, for witness himself took the drink as he sat at his breakfast table. This witness has chosen not to speak out the whole truth relating to what took place in U Saw's house that morning, but it is fairly clear from the admissions he has so far made that Maung Soe was present in U Saw's house on the morning of the 19th. July, sometime after 10 a.m. or 11 a.m. in the company of Maung Sein and Ba Nyunt. Both these men have stated, one under oath, and the other before a magistrate in his confession, that the liquor they drank and the meal they took in U Saw's house were in celebration of their successful visit paid to the Secretariat. The confessions given by Yan Gyi Aung, Maung Sein, Khin Maung Yin and Thu Kha also implicate this accused as one of the 4 assassins who were responsible for the shooting in the Secretariat. This accused Maung Soe has also been identified by U Htin Baw (p.w. 12) as one of the 4 gunmen whom he saw in uniform and who forced their way into U Aung San's office room immediately before the shooting. U Htin Baw had accompanied his friend U Tin Maung (p.w. 13) to the Secretariat, where the latter wanted to meet an Indian working in the Defence Department for the purpose of negotiating the sale of some landed property which he wanted to buy. After the men had passed U Aung San's office room they noticed 4 men in uniform carrying firearms come walking along the verandah in their direction. U Tin Maung was looking for the office room he wanted to enter, but U Htin Baw, who had no particular work to do, paid more attention to the presence and appearance of the 4 armed men whom he saw face to face.

Witness has given the further reason for his being able to remember the faces of at least 2 of the 4 armed men he met that morning on the verandah of the Secretariat. At the sight of the 4 armed men which was described to

him by his friend Tin Maung as most unusual, he felt a shudder running down the spine as if some unseen powers had warned him of the evil design upon which the men were bent and this experience made him look intently at their faces. On the 8th. August when an identification parade was held in the town lock-up, this witness U Htin Baw picked out Maung Soe as one of the 4 gunmen in uniform whom he met at the Secretariat shortly before the assassinations took place. That U Htin Baw visited the Secretariat on the morning of the 19th. July has received support of his friend U Tin Maung who had gone there to look for the Indian clerk working in the Defence Department. As a trader he had been familiar with that portion of the Secretariat where the Commerce Department offices were located. It was this fact which made him choose the spiral staircase at the north-west corner of the building by which to go up to the first floor. The presence of these 2 men walking along the verandah shortly before the offence took place was noticed by Maung Thaug Sein (p.w. 14), a *Minsay*, who waited at the door of U Aung San's office room. The only question then is to consider whether U Htin Baw's ability to recognize the accused Maung Soe after an interval of 19 days can be relied upon. According to the confessions, Maung Soe led the assassins to the door of U Aung San's room and as he must have been seen from a fair distance, there was appreciable time for U Htin Baw to make a note of his features. It is true that Maung Soe has no scar on his face, or any other peculiarity, which would help a person to remember him again after seeing him once; but he is undoubtedly a tallish man with a longish face and evidently not a man of common type daily met with in the streets. That he could be identified because of his unshaven beard and moustache is a point which was not brought to the notice of U Aung Cheint (p.w. 35), the Magistrate who superintended the identification parade. An attempt has also been made in the cross-examination of the witnesses, U Htin Baw and U Tin Maung, to show that they could not have been present near the scene of the crime as they did not notice the assassins' jeep passing out of the Secretariat. They have stated in their evidence that on hearing a second burst of gunfire they ran away from the Secretariat using the very staircase by which the assassins had come and crossing the lawn on the south, they had jumped over the iron railing and waited outside under a tree on the south of the Secretariat. From there they took stock of the situation and after a while retraced their steps into the Secretariat to enquire as to what had happened at the place. In judging the time that must have elapsed from the moment they heard the second burst of gunfire to the time they found themselves outside the Secretariat, the expression they used in their statements to the police that they had run away from the scene cannot obviously indicate the speed at which they had transported themselves out of the said compound. The danger to them was not immediate

and if they said that they had run away from the scene they could only mean that they had walked at a fast pace and from near the scene of the shooting to the tree on the south of the Secretariat building is a good distance which, if they had walked at a uniformly brisk pace, it would have taken them some appreciable time to traverse. It is not thus surprising that they did not get out of the Secretariat compound in time to see the assassins' jeep passing out of the compound by the 'Out' gate.

When examined on the 4th. December, the accused Maung Soe explained that the 5 co-accused had given their confessions as a result of police ill-treatment and that the story told by Ba Nyunt relating to the crime was described to him by Ba Nyunt himself as a mere police fabrication made with a view to implicate U Saw. Ba Nyunt, as well as the police officers, had made the assurance to him that if he admitted the offence and laid the blame on U Saw, he would secure his acquittal. In spite of ill-treatment he had not yielded to the inducements offered by them. Examined a second time on the 10th. December, the accused gave further particulars of this alleged ill-treatment in greater detail. He was the last man to be examined by the police and when he denied any knowledge of the crime he was shown the injuries already inflicted on the other accused Yan Gyi Aung, Khin Maung Yin, Thet Hnin, Thu Kha and Maung Ni and these men had asked him to make the statement which they themselves had already made under police instruction. As he did not agree, he was mercilessly beaten by the police officer U Ko Ko Gyi for about an hour and unable to bear further beating, he consented to make his statement. The statements already made by Ba Nyunt and Khin Maung Yin were read over to him and he was examined until midnight on that day. Later, on a subsequent date, he and the other accused Maung Ni, Maung Sein, Thet Hnin and Hmon Gyi made written reports to those detained in the same town lock-up under section 5 of the Public Order Preservation Act to the effect that they all had made untrue statements to the police through ill-treatment. He was later examined by the police officers regarding U Saw's conspiracy with U Wan Maung for raising a rebellion against the present Government. He was next asked to make his confession before a Magistrate and as he pleaded that he was unable to remember the contents of the several sheets of paper which they had given him, the matter was not pressed.

The allegation against Ba Nyunt regarding the inducement offered by him is most unlikely and would appear to have been made purely in defence of the first accused, U Saw. Khin Maung Yin, Thu Kha and Maung Ni did not make any complaint of ill-treatment. Yan Gyi Aung made his complaint only on the 5th. December when he was examined in this case. He has retracted his confession on this ground of alleged police ill-treatment. Having made some selfincriminating statement when examined by the police, the

accused now deems it necessary to make these allegations against them. Although reports of ill-treatment had been made to Thakin Tun Ok and Thakin Kha (d.w. 22 and 23), neither of them were shown any marks of injury sustained by the accused. There is no evidence whatsoever that the accused in this case had made any written complaint to anybody in authority regarding the alleged ill-treatment and the allegations now made in Court would appear to be merely designed to throw suspicion on the genuineness of the confessions of the 5 co-accused.

Neither in answer to the charges framed against him nor in his examination was the defence of alibi put forward by this accused. But an attempt has been made to show that the accused was not present in U Saw's place on the 18th. July, the date on which the alleged criminal conspiracy was hatched in U Saw's house and that he got back to the place from the district only on the 19th. July, sometime after the crime in the Secretariat had been committed. In support of this defence, U Saw stated that Maung Soe left his house even before Ba Nyunt left on the 16th. or 17th. July and that he did not know that Maung Soe had returned on the 19th. until the time of his arrest. This statement is contradicted by him when he states, later in his deposition, that he saw Maung Soe in his house at about 10 a.m. on the 19th. July. Maung Shein Gale saw Maung Soe that same morning in U Saw's house and took his meal in his company. This, according to Ba Nyunt, was after Maung Soe had returned from the Secretariat mission.

Thus, against Maung Soe, the charges of murder are proved on the evidence of Ba Nyunt which connects him with the crime and on the sworn testimony of the co-accused Maung Ni and by the statements made by the other co-accused Maung Sein, Thu Kha and Khin Maung Yin in their confessions. The further evidence of U Htin Baw who identified him, clearly renders this proof conclusive. Maung Soe is accordingly found guilty of the offences of murder with which he has been charged.

Against the third accused THET HNIN the charges of murder brought against him have similarly been supported by the evidence of the approver, Ba Nyunt, who has stated that this accused was one of those who met him in the drawing room of U Saw on the night of the 18th. July, when the latter assigned their respective duties to them in connection with the shooting that was carried out on the following morning in the Secretariat, and by the sworn testimony of the co-accused Maung Ni who has stated that when U Saw's jeep came out of the Secretariat immediately after the shooting was heard from the Secretariat, this accused was one of 5 passengers carried in it, and that he was then seen in XIIth. Army uniform. The co-accused Yan Gyi Aung, Maung Sein and Thu Kha have similarly in their confessions implicated him stating that he was one of the 4 men who, dressed in XIIth. Army uniform, went and carried out the assassinations

in the Secretariat. Khin Maung Yin likewise stated in his confession that Thet Hnin was seen on the night of the 18th July in the company of U Saw along with the accused Maung Soe and Thu Kha when he was called up in their presence and reminded about keeping the motor-cars ready for use the next morning, and that after the shooting in the Secretariat had taken place, he saw this accused in the company of Maung Sein and others coming out of the Secretariat compound in U Saw's jeep driven by Thu Kha. This body of evidence has received further corroboration from several other facts, namely that the 4 assassins concerned in the commission of the crime had used a jeep car belonging to U Saw in whose place they were all living at the time, that among those who were so living the accused was considered to be one of the senior members, that the 4 guns proved to have been used by the assassins were found concealed in the bed of the lake under the very shrine in U Saw's place where the accused and his fellow followers of U Saw had taken their oath of fidelity. Moreover this accused was seen and recognized as one of the 4 assassins by *Minsay* Thaug Sein (p.w. 14) who waited at the door of the room where the shooting took place and who admittedly saw him face to face when he forced his entry into the room in the company of his three confederates. This witness succeeded in identifying the accused at the identification parade held in the town lock-up on the 8th. August. He was picked out as the man who had pointed a gun at him when making his entry into the room.

In this regard attention has been drawn to the statement made by the accused Maung Sein in his confession where he stated that the accused Maung Soe who led the party pointed his gun at the Minsay who barred their way. Thet Hnin apparently was behind him and if Thet Hnin had to force his way in the same fashion, it was not possible for Maung Sein to have seen him do it. There is thus no real discrepancy between the statement of the witness and the statement of the accused Maung Sein. The next point urged for the rejection of Thaug Sein's evidence is that at the time when Thet Hnin took part in the identification parade, he had a head injury which was bandaged up and it is sought to be made out that Thaug Sein was able to identify the accused by reason of this fact. U Aung Cheint (p.w. 35), who supervised the identification parade, has explained that Thet Hnin did have a bandage round his head but that this was taken off at the time he was placed among the men paraded. He took care to see that the small injury at the back of the accused's head was not seen by the witnesses asked to identify the accused. It was only after the identification parade had been held that Thet Hnin was permitted to replace his bandage on his head and after that, both the suspects and the witnesses mingled together to get out of the place where the parade was held. Thaug Sein's evidence that he noticed the bandage on Thet Hnin's head might well refer

to what he saw after he had already identified him. For it was extremely unlikely for U Aung Cheint to permit Thet Hnin to take part in the parade with a bandage round his head – a sure means of recognition. U Aung Cheint's explanation agrees with probability and deserves to be accepted as the truth relating to the point in dispute.

It has further been pointed out that the value of this identification by Thaung Sein is negated by the fact that Thet Hnin's photograph appeared in at least one Rangoon newspaper, namely the 'Hanthawaddy,' in its edition of the 6th August, some 2 days before the parade was held. The photograph as shown in the newspaper (Ex. 2) does not appear to be a very clear representation of the accused's face and features and to a stranger looking at it, the resemblance could not have been striking. The witness, when shown Ex. 2, could only say that the photograph looked somewhat like the accused. He however denies that he had seen it before he went to identify the accused. Maung Thaung Sein in his evidence in Court is positive that the accused Thet Hnin was one of the 4 armed men who forced their entry into U Aung San's room on the morning of the 19th. July after pointing at him with the barrel of his short gun. Though pushed and intimidated this witness followed the 4 armed men into the room, and he agrees with U Aung Zan Wai (p.w. 2) that U Aung San stood up and faced the intruders. He also confirms the evidence of the 2 Councillors who survived that one of the armed men gave a shout before the guns were fired by all of them. At this shocking turn of events Thaung Sein turned back in his fright and slipped in doing so before he succeeded in running away from the place. The witness was wearing a pair of green trousers that morning and evidently his precipitate flight was noticed by U Htin Baw (p.w. 12) who had watched the 4 armed men enter U Aung San's room. There can therefore be no question that the witness Thaung Sein was present at the door of the office room when the assassins forced their entry into it and that he did follow behind them into the room before the actual shooting took place. The witness is a young man and had the opportunity to see and make a mental note of the face and features of those who had suddenly come upon him on the morning of the occurrence and had conducted themselves in an unusual and frightening manner. The witness was examined by the police two days after the occurrence and there is nothing in his cross-examination to suggest that he had ever expressed his inability to recognize one or more of the 4 armed men. He has now chosen to identify Thet Hnin in Court as one of those 4 men and although the appearance of Thet Hnin's photograph in one of the Rangoon newspapers 2 days previous to the holding of the identification parade does afford some ground for questioning the witness's ability to identify the accused on that occasion, the effect of his sworn evidence would seem to remain in full force.

The accused has faced the charges against him with a simple plea of denial and in his examination in Court he has alleged that the co-accused Yan Gyi Aung, Maung Sein, Thu Kha, Khin Maung Yin and Maung Ni had given their confessions through police ill-treatment and that what they had stated in their confessions was tutored to them by the police. Following the lead given by Maung Soe this accused has stated further that the approver, Ba Nyunt, had tried to persuade him to throw the entire blame on U Saw to escape further ill-treatment and that he and the other accused who had suffered ill-treatment had made complaints to a respectable elder in writing. When given a further opportunity to make his statement in this Court on the 10th. December the accused enlarged upon the subject of police ill-treatment in the same manner as Maung Soe and has described in what manner and on what subjects the police officers had examined him after he had been transferred to the town lock-up. The mention made by him of a man like Bo Tun Hla, the Sawbwa of Yawngshwe, and the Secretary U Shwe Baw would seem to import a sinister motive in making this further attempt to explain away the charges brought against him. The photograph of a dead person named Saw Yan Naung which appeared in the newspapers was alleged on a previous occasion by the accused Yan Gyi Aung as having been shown to him and Thet Hnin has thought fit to describe its use by the police officers during the course of his examination. He next describes how he made his statement to the police and how he had to induce Yan Gyi Aung and Maung Soe to follow his example and how he was brought before the Magistrate for the purpose of having his confession recorded and of the complaint he made to the Magistrate about the ill-treatment he received at the hands of the police. He was said to have been subjected to further ill-treatment after his statement was recorded by the Magistrate and was taken back to the lock-up where he had reported the matter to 4 or 5 respectable persons detained there under section 5 of the Public Order Preservation Act. Then towards the end of his statement, the accused would appear to relapse even more wildly into the realms of fancy by stating that the police had interrogated him regarding the sending of illicit firearms to a Judge of Kyaiklat for distribution.

The accused Yan Gyi Aung in his statement had given out that when Thet Hnin and Hmon Gyi were taken to the Magistrate they had no injuries on their bodies and neither in the Magistrate U Hla Gyaw's record of the accused's statement nor in his evidence has it appeared that any complaint of police ill-treatment was made by Thet Hnin; but subsequent to this date, when he next appeared before U Aung Cheint for taking part in the identification parade, he was seen wearing a bandage round his head and under the bandage on the back of his head was found a white spot which looked to him like a piece of cotton wool about 1 inch in diameter. No complaint of

ill-treatment was, however, made to U Aung Cheint and as far as he could make out this accused walked about perfectly well. The parade was held with the men seated at their places and although this was done at the request of Thet Hnin, the witness was not informed why Thet Hnin and his fellow suspects desired to remain in that position during the parade. Thakin Tun Ok (d.w. 22) stated that he saw Thet Hnin with a bandage on his head but the witness did not actually see the injury. According to Thakin Kha (d.w. 23) Thet Hnin is reported to have said that he was beaten by the police but, though a politician detained under s. 5 of the Public Order Preservation Act, the witness did not take the trouble of reporting the complaint he received either to the officer in charge or to the doctor who frequently visited the lock-up. Bo Moke Seik (d.w. 24) saw marks of injury on Thet Hnin's face and back for 4 or 5 days while he was in the same lock-up with the accused. The witness cannot, however, give any reason for the presence of these marks of injury on Thet Hnin's face. However, having regard to the conduct of the accused in the presence of the Magistrate and in the absence of other evidence relating to the nature and extent of the alleged injuries and to the manner in which they were caused, there is really no proper ground for believing that this accused had, in fact, been subjected to any severe or serious police ill-treatment. Accused persons who have made self-incriminating statements do usually put forward such allegations. In this case this allegation had been made with the added motive of throwing suspicion on the legality of the manner in which the confessions of the 5 co-accused were given and recorded. As in the case of the accused Maung Soe, neither in answer to the charges brought against him nor in his examination was any defence of alibi pleaded by him and the belated attempt which he has now put forward to show that he left his former place of residence at Kyaiklat on the very day of the occurrence must prove abortive. There is thus sufficient evidence on the record to convict the accused Thet Hnin on the two charges of murder framed against him.

The accused SEIN GYI alias Maung Sein alias Hla Aung has pleaded not guilty to the charges brought against him, but only on the ground that he was not a free agent having offered his personal services and his life as well to U Saw whom he regarded as his benefactor in the form of a written note, the actual wording of which has already been noticed. He has chosen to remain undefended throughout the trial and in his statement made in Court he has fully adhered to the self-incriminating admissions he has previously made in his confession (Ex. Y-2). In view of the provisions contained in s. 94 of the Penal Code the plea put forward that he had carried out the orders of a person who held his life in his power cannot exempt him from criminal liability for the offence which he admits to having committed.

In his confession are described his activities since the 16th. July, when he, together with Ba Nyunt, and one Tun Yin visited Okpo and Othegon in connection with the transport and concealment of arms and ammunition stolen from the Ordnance Depots in Rangoon. The accused, though young, is not immature, and he has had some experience of life as a member of the Burma Armed Forces. He has made his confession apparently with the full knowledge of the consequence of his act. Before this Court he has repeated his admissions as to his complicity in the crime to the extent alleged against him. He has admitted that he had gone to the Secretariat in the first accused's jeep bearing the false number plate, R. C. 1814, in the company of the accused Maung Soe, Thet Hnin, Yan Gyi Aung and Thu Kha, the last named acting as driver, and had taken part in the shooting in the Council room, that on return he reported their success to U Saw, that together with him they had shouted out 'Victory! Victory!', that they were then joined by Ba Nyunt, Hmon Gyi and Khin Maung Yin who arrived in the Fordson truck bearing the number, R. B. 3123, that U Saw inquired about the fate of Thakin Nu from Ba Nyunt and received the latter's reply, and that at the time of the police raid in the afternoon, the jeep they had used bore its genuine number, R. B. 9831, painted in fresh paint. The accused has further admitted that in shooting down the Executive Councillors he and his companions had used 3 Tommy guns and 1 Sten gun and that these were later thrown into the waters where they were subsequently found. He also admits wearing a hat similar to Ex. 4 at the time he went and committed the crime. He also admits wearing XIIth. Army uniform at the time he visited the Secretariat and the subsequent burning of the XIIth. Army badges in U Saw's fire-place. He states that the motor-car number plates (Ex. 1 to 1—d) were picked up from under a mango tree in U Saw's compound before they were put to use. Lastly, he admits that he had bought the XIIth. Army badges in the company of Ba Nyunt as related by the latter. In his final explanation he has related how he met U Saw in his place at Gyobingauk some 3 months before the occurrence. His deceased father was U Saw's friend and his mother had mentioned to him that U Saw was their benefactor. At U Saw's invitation he had come and lived in U Saw's house to render him such services as might be required of him in return for the kindness which U Saw had shown to his deceased father. After his arrival in U Saw's place he was first administered the oath of fidelity and made to write what he has chosen to describe as his '*thaydansa*,' literally will. From that moment he had decided to do whatever duty might be required of him by U Saw. He did not, however, think at the time that he would be told to commit murder. On the night of his return from Othegon with Ba Nyunt, U Saw sent for him and gave him the present commission. For fear of being put to death, he could offer no protest and had silently

accepted his task. On the next morning, after he had left U Saw's place with Thu Kha at the wheel, the latter unsuccessfully attempted to overturn the jeep. Arrived at the foot of the stairs in the Secretariat he wanted to return in the jeep but was prevented by Thet Hnin who insisted that the orders must be carried out. Considering that the conduct of the accused throughout the trial has been perfectly normal and unexceptionable, there is no alternative to the unqualified acceptance of his explanation. It appears that he had realized the enormity of the crime he has committed and has been indifferent to its legal consequences subject only to the plea of mitigation he has submitted for the consideration of the Court. On the strength of the admissions made by him he is found guilty of the offences of murder he is charged with.

The accused YAN GYI AUNG has retracted his confession but it is clear law that his confession can be used against him if the Court is satisfied that the same is true and has been voluntarily given by him. He is the youngest of the 9 followers of U Saw who figure in this case, and is said to be the son of U Saw's own cousin. He has been living in his house since U Saw's return from his visit to Okpo made in about February or March last. He, along with Yan Gyi Naing and Sein Maung, U Saw's table-boy, occupied an extension at the back of U Saw's house built between the kitchen and the main building. Some reasons have already been given when considering the legal effect of his confession for the view that this accused had related the true facts of the case relating to the manner in which he became associated with the other accused in the crime. The approver Ba Nyunt did not see him in U Saw's company on the night of the 18th. July when 'field orders' were given by U Saw for carrying out the next morning's operation but when he got back to U Saw's place in the Fordson truck after the shooting had taken place he found Yan Gyi Aung in the company of U Saw, Maung Soe, Thu Kha and Maung Sein on the verandah in front of U Saw's house shouting the words, '*Aung-bi, Aung-bi.*'

Maung Ni in his sworn evidence states that he saw this accused in the company of Maung Soe, Thet Hnin, Maung Sein and Thu Kha in the jeep which came out of the Secretariat after the sound of shooting was heard from there. The accused Maung Sein and Thu Kha likewise in their confessions denounced this accused as one of the men who actually took part in the shooting in U Aung San's room.

Apart from this body of evidence adduced from sources intimately connected with the accused there is further the sworn evidence of the witnesses U Htin Baw and Maung Than (p.w. 13 and 15) who both saw the accused among the assassins who had committed the crime in the Council room. The manner in which U Htin Baw met them on the verandah outside the Council room has already been described. The accused must

have struck him as the youngest of the 4, and, as in the case of Maung Soe, the witness has given what may be regarded as a sufficient reason for the careful manner in which he had looked at and remembered the faces of the armed men he met in the circumstances described by him. At the identification parade held on the 8th. August in the town lock-up, U Htin Baw successfully picked out the accused in the line of men paraded in front of him. From the evidence of U Aung Cheint it is learnt that the identification parade was held in a legal and fair manner.

Witness Maung Than, a newspaper reporter, on the morning of the occurrence visited the Secretariat where a separate room was provided for members of his profession. While he was seated in that room, witness heard the reports of automatic guns from the direction of U Aung San's room at about 10.30 a.m. One Ko Kyaw Myint (not called) who was in the witness's company, ran out as soon as the gun-reports ceased. As the witness came out of the room to follow after him, having picked up his rain-coat and hat, and just as he turned the corner to get to the stairs, some 3 or 4 men, wearing XIIth. Army uniforms shouted to him to stop. The man in the front, who was the youngest among them, was seen carrying a Sten gun. When thus challenged, the witness threw himself down on the floor and while in that position he saw the deceased Maung Htwe running out of his room. Just as he reached the door the armed man holding the Sten gun shot him down. The witness identified Yan Gyi Aung as the man who did the shooting. At the identification parade held on the 8th. August, witness went and identified Yan Gyi Aung in the town lock-up. Maung Than's evidence is questioned on the ground that at the time he made this identification, he had stated to the Magistrate that he noticed a second Sten gun in the hands of the armed men. Attention is also drawn to the evidence given in Court to the effect that Maung Htwe was shot down by Yan Gyi Aung while he was coming out of his room and that he fell back into his room. Neither of these discrepancies is serious enough adversely to affect his credibility. Both Sten and Tommy guns are automatic firearms and a misdescription of either of these is of little consequence. Maung Htwe did not die at once. He was merely wounded and it was possible for him to move out of his room before the other witnesses had come to his help. Yan Gyi Aung has further alleged in his statement in Court that both U Htin Baw and Maung Than had seen him outside the town lock-up on the day he went out with the police party to point out the place in the lake from which the number plate (Ex. 1) bearing the number R. A. 3213, in white paint, was found. Both the witnesses have denied on oath that they had seen him before the date of the identification parade. There are therefore no substantial grounds for treating the evidence of U Htin Baw and Maung Than with suspicion. The accused met the charges brought against him with his

defence of denial. Regarding the confession he has made before the Magistrate he has alleged that the same was given by him through pressure of police ill-treatment. He would have it believed that the Magistrate had written down what he was to say and all he did was to answer in the affirmative when the Magistrate questioned him on the same. The allegation that he was subjected to severe ill-treatment before he agreed to appear before the Magistrate to give his confession is clearly improbable. He admits that he pointed out the place where the number plate bearing the number R.A. 3213, was recovered from the waters of the lake but explains that he did this under police instruction. The explanation offered by him relating to the manner in which his confession was recorded is clearly unsatisfactory. His confession was recorded on the 2nd. August. It was preceded by the recording of Ba Nyunt's confession which lasted the whole day of the 1st. August. It is therefore unlikely that this accused would have been taken before the Magistrate on that date. The evidence of the recording Magistrate is sufficient to contradict the allegation made by this accused that his confession was a mere copy of the account written out by the police officer. No strong and sufficient reason has thus been found for rejecting the force and effect of the evidence adduced against the accused in this case. Some feeble attempt has in the last resort been made to show that this accused was not present at U Saw's house on the morning of the 19th. July having been taken away by his father U Tun (d.w. 19) who had come on the previous day to meet him, to visit the Shwedagon pagoda. In this connection U Saw has given his sworn evidence that on the morning of the 19th. July, Yan Gyi Aung had told him that he was going out with his father. This statement has been flatly contradicted later in his deposition where he states that he did not see Yan Gyi Aung at all on the 19th. July before the police raid took place. It is needless to comment further on the evidence on the point given by his father U Tun and his other witness Maung Hla Win (d.w. 20). Both on the strength of the admissions contained in his own confession and on the further corroborative evidence received from other witnesses in this case a clear and sufficient case would appear to be made out against this accused in respect of the charges of murder brought against him in this case and he is accordingly found guilty on the said charges.

These 4 accused have further been charged with the offence of criminal conspiracy in that they had, along with the 5 remaining accused, agreed to do an illegal act, namely, to murder the late U Aung San and the fellow members of the Executive Council, and Thakin Nu. In view of the findings already arrived at against them on the principal charges of murder it does not appear to be necessary to enquire into these additional charges and record convictions on the same.

The charges against the 5 remaining accused who are alleged to have been

implicated in the conspiracy resulting in the murders must now be considered in their order of importance.

Against U SAW it has been sought to prove that he was the person in whose brain the conspiracy to murder U Aung San and his colleagues and Thakin Nu was hatched and that it was mainly under his guidance and direction that the criminal plan was prepared and executed. Ba Nyunt, the approver, has stated that U Saw mentioned the necessity he felt of putting away the political leaders then in power, for the first time on the 15th. July, in the presence of Maung Soe. Thereafter, on the 16th. July, before he set out on his journey to Okpo and Othegon with the accused Maung Sein and one Tun Yin, they were all told to come back positively on the 18th. July. This journey of Ba Nyunt and Maung Sein to Othegon before the assassinations on the 19th July is admitted by U Saw.

What took place on the following days is told by Khin Maung Yin in his confession, (Ex. Y-3). On the 17th. July, U Saw told Khin Maung Yin to go and make enquiries about the meeting of the Executive Councillors that was to take place on the 19th. July and to him he mentioned that Maung Soe, Thet Hnin, Thu Kha and Tun Yin were to go and shoot them. On the 18th. July, Ba Nyunt and Maung Sein returned without Tun Yin and when Khin Maung Yin was called up and reminded to keep the cars ready for use on the following morning, he noticed Maung Soe, Thet Hnin and Thu Kha in U Saw's company.

Ba Nyunt who was resting in his bed after a strenuous journey was called to the house and given instructions as to how, where and when he was to go and shoot Thakin Nu. When Ba Nyunt went to U Saw on that occasion Maung Sein was in the party. On the morning of the 19th. July, Khin Maung Yin placed the false numbers R. A. 3123 on the Fordson truck and R. C. 1814 on U Saw's jeep. When the cars were ready at about 8.30 a.m. in the morning Ba Nyunt got himself ready to go in Khin Maung Yin's company and saw U Saw giving his whispered instructions to Khin Maung Yin, Hmon Gyi and Maung Ni in turn. Maung Ni was given by Maung Soe a revolver with instructions to use it if necessary and just as the truck stopped near the gate U Saw came out and gave Maung Ni a ten-rupee note for pocket money. Ba Nyunt, however, is silent about this matter for he was seated in front. The Fordson truck was driven out and parked at the corner of Dalhousie and 41st. Streets and from there both Khin Maung Yin and Hmon Gyi went into the Secretariat. Ba Nyunt, for his part, went to the front of the Constituent Assembly building and looked into Thakin Nu's office room and having seen a man inside he returned and joined Khin Maung Yin in the truck. There he learnt from the latter that a message had been sent to U Saw by telephone and that he was not sure whether the jeep from the house would come or not. As they sat waiting in the truck Khin

Maung Yin drew his attention to a jeep in the distance approaching the central porch on the western wing of the Secretariat. A truck in front of it obstructed its progress into the porch and this gave them time to see that the jeep was the one which they were expecting. Shortly after the jeep passed into the porch the sound of shooting was heard. And shortly after this the jeep was seen to come out, turn into Dalhousie Street and proceed to the east. When Ba Nyunt and Khin Maung Yin returned to the house after Maung Ni had rejoined them he found U Saw in the company of those who had gone and carried out the shooting. The men had changed into civilian dress and they were shouting about the success of their mission. The party then regaled themselves with liquor provided by U Saw from his liquor cabinet after which they went and had the meal provided by him. To this meal witness Maung Shein was also invited. Ba Nyunt's account of this feasting in U Saw's house after the arrival of the murderers has the support of Maung Shein and since Maung Shein proved hostile to the prosecution, the corroboration received from him is significant.

In assessing the value of the other evidence in the case relating to the proof of U Saw's complicity, it may not be out of place to refer to the population living together in his compound, in view of the allegation that he had kept an open house and that his followers had free access to his place. At the time U Saw was taken into custody there were living in his compound his wife's nephew Khin Maung Yin, the 7th. accused and his wife Ma Khin Lay, Maung Ni, the 8th. accused and his wife Ma Khin Hla, the approver Ba Nyunt, accused Maung Soe, Thet Hnin, Thu Kha, Maung Sein, Yan Gyi Aung, Hmon Gyi, witness Maung Shein alias Sein Gale, Maung Shein Gyi of Okpo, Yan Gyi Naing, Sein Maung, Mya Ohn, Tin Shwe, Tun Shein, Hla Tun, San Tint and Thein Pe. U Saw's wife, Daw Than Khin, was then staying away in the house of U Ba (d.w. 21) a relation of her first husband, U Maung Gale, at Insein.

Khin Maung Yin, from the disclosures he made in his confession relating to the work he had to do for U Saw, would seem to be his confidential assistant besides being a close relation through his wife. Khin Maung Yin's wife, Ma Khin Lay, supervised U Saw's household affairs in the absence of his wife. Maung Ni belongs to Okpo, the native place of U Saw. He came and lived with his wife in the small brick building where Khin Maung Yin lived, in U Saw's compound. Ba Nyunt, Maung Soe, Thet Hnin, Thu Kha and Maung Sein have been described by U Saw as his senior followers among those living with him and they occupied the corrugated iron guest house. Sein Maung helped at the table and he, with Yan Gyi Aung and Yan Gyi Naing, occupied the small extension at the back of U Saw's house. Hmon Gyi, according to his statement to the Magistrate, carried on the work of a night watchman in the compound and occupied a room in the barrack, part

of which was used as a garage. Tin Shwe, Hla Tun and Tun Shein looked after the gate and on the morning of the occurrence it was Tin Shwe who was posted to this duty. Maung Shein Gale and Maung Shein Gyi both occupied the hut on the promontory on the Prome Road side across a small strip of water and apparently they too filled the role of guards and watchmen. Mya Ohn is a third cousin of U Saw and had no defined duties to perform at the place. In what manner San Tint and Thein Pe were employed does not appear on the record. Most, if not all, of these men arrested at the same time with U Saw in his house and compound had taken the oath of fidelity administered to them in the solemn presence of three holy images of the Lord Buddha in the shrine built over the waters of the lake. According to Ba Nyunt, Maung Ni and the other accused who made their confessions, all these persons who took the oath of fidelity had to sign a note stating in their own handwriting that they had died by their own hands as they had betrayed their country and the fellow members of the organization.

These were then the set of people who lived with U Saw and it is difficult to imagine that in view of the roles assigned to them U Saw had kept anything but an open house. His statement given to the police explains in what circumstances these men came and lived with him.

Now, the arrest of U Saw and the members of his very large household within a few hours of the commission of the crime was the result of the information which Mr. H. Khan (p.w. 39) brought in person to U Tun Hla Aung (p.w. 38) who then was in conference with the Chief Secretary in the latter's office. The relevant facts deposed to by Mr. Khan have already been noticed and without doubt they throw a large degree of suspicion on U Saw and his men. On the evening of the 19th. July, the reports made by the watchers, Aung Kyaw Sein and Hla Tin mentioned two registered car numbers, R. A. 3213 and R. C. 1814, which did not correspond to the genuine numbers of U Saw's jeep and truck. U Saw's jeep was seized that same afternoon and certain particulars relating to its condition and appearance and place of seizure were noted down in the search list Ex. 2-H. These entries confirm the testimony on these points given by U Tun Hla Aung, U Soe Yin and Mr. Khan. The numbers both in the front and at the back had been freshly painted with white paint. White and red cloth tags were tied to the top of the windscreen on the left. There was a tear on the left side of the hood. Any person having knowledge of common Burmese superstitions would think, on seeing the red and white cloth tags tied to the front of the jeep that it had been used in some hazardous venture.

A diligent and thorough search in U Saw's house and compound was undertaken by U Soe Yin and his police party and on the afternoon of the 20th.

July, the bed of the lake in the immediate vicinity of U Saw's house, the corrugated iron hut, and the shrine were probed and immediately under the shrine on either side of it were found and salvaged 4 Tommy guns and 1 Sten gun besides 8 cases of .303 ammunition. Khin Maung Yin's statement in his confession that two persons, Sein Maung and Mya Ohn, hurriedly went and threw down these firearms out of the shrine when warned of the arrival of the police raiding party would explain the find of these 5 firearms distributed on either side of the shrine. Four of these firearms were later examined by U Hla Baw and found to have been used by the assassins who committed the crime.

U Saw's jeep which left his place at about 10 a.m. on the 19th. July bearing the false number, R. C. 1814, and returned at about 11 a.m. was seen by witness Sein Maung when it came out of the Secretariat compound after the shooting had taken place at about 10.30 a.m. carrying 4 or 5 men in jungle-green uniforms, one at least of whom was seen armed with a short gun. These men also wore XIIth. Army badges on their shoulders. Sein Maung could not have seen a different car, as at that time, the genuine jeep bearing the same registered number was still lying in front of witness U Ba Aye's house in Zalun Street at Kemmendine awaiting repairs to its engine by the mechanic Maung Hla Tin (p.w. 77).

Although the false number plate bearing the number, R. C. 1814, was seen by the witnesses on U Saw's jeep, the searches conducted in the house and the waters in the close vicinity of it did not at once result in its discovery. The false number plate bearing the number, R. A. 3123, which the Fordson truck bore on the morning of the 19th. July was recovered from the waters of the lake on the 29th. July at a place pointed out by Maung Tin Shwe, the man who acted as the gate-keeper on that day. That same day, Lieut. Coulson (p.w. 22) received orders to assist in the search made in the bed of the lake and the operations he conducted with his assistants on the 6th. August ended on the 12th. August with the find of the iron plate, Ex. 1, at the place in the bed of the lake about 22 feet from U Saw's shrine. This number plate bore the number, R. C. 1814 on one side and R. B. 4140 on the other, both written in yellow paint. The search began from the waters near the house and this fact accounted for the delay in the making of this important discovery.

Khin Maung Yin has admitted that these false numbers were painted by him with paint from the tins, Ex. 25, which he produced from U Saw's almirah on the 5th. August. He has further explained the reason for using white paint for writing the new genuine numbers on the jeep after its return from the Secretariat on the 19th. July.

These discarded number plates, Ex. 1 to 1-d, found in the waters by the side of U Saw's house were of such length and width that they fitted well

to the front bumper of the jeep and as shown in the photograph Ex. 2-W, they also fitted the cot seized in U Saw's house as cross bars. These iron plates had apparently been removed from the cot on which at the time of its seizure were found two wooden boards instead. The fact that these plates had been used in the jeep with U Saw's knowledge is shown in the evidence of Sein Aye (p.w. 58) who has stated that he had under U Saw's instruction cut the length of two of them, ie. Ex. 1 and 1-d and bored or punched 2 holes at either end of each of them. U Saw does not deny that Sein Aye had visited him, for he recalls that some men from Ah Foy's workshop had come and fitted iron plates on his jeep for the protection of those who used it. The process of punching the holes as described by the witness does not seriously affect his credibility in view of his explanation that he had smoothed out the rough edges in the holes after they had been punched. On the same day, 29th. July, the soft green hats, Ex. 4, were found in the waters near U Saw's house at a place pointed out by Yan Gyi Aung.

On the 30th. July, U Saw's table-boy Sein Maung took the police party to U Saw's house and in the presence of the Magistrate, U Ba Kyaing (p.w. 37), pointed out a heap of ashes in one of the compartments of the fireplace in the kitchen and from this heap of ashes was recovered a half-burnt piece of XIIth. Army shoulder badge, Ex. 24. The co-accused, Maung Sein, has admitted that these badges were burnt in U Saw's kitchen after they had been used by him and fellow assassins. He has further admitted that these badges were bought by him in Ba Nyunt's company sometime before the crime was committed from an Indian shop in Sule Pagoda Road.

As to the ownership of the 5 firearms recovered from the bed of the lake and used in the commission of the crime, Khin Maung Yin's confession has given the necessary explanation. Sometime after the shooting incident in which U Saw suffered some injury to his eye, he came in contact with a Major Young who was in charge of a military transport camp situated in the land owned by him on Kokine Road side. With this military officer he soon developed a friendship which resulted in his acquisition of a number of firearms including a sub-machine gun, 3 American carbines, 1 Sten gun, 2 Tommy guns, 1 Luger pistol, 2 revolvers and quantities of ammunition. U Saw also became on visiting terms with a Major Lance-Dane who lived in a 2-storeyed bungalow by the side of the rubber factory at Kamayut and from him he acquired 1 Springfield rifle, 2 Tommy guns, 1 carbine and some ammunition. If this story told by Khin Maung Yin is true, then there is strong reason to believe that the firearms found in the waters under the shrine and proved to have been used in the commission of the present crime were those which U Saw had previously acquired from the above-named military officers.

On the morning of the 19th. July, U Saw was seen by Hla Tin, one of the

watchers, wearing a pair of Navy blue shorts and a white shirt and after the two motor-cars had left the compound, he was seen to come up to the man in charge of the gate and whisper something to the latter. Just as the truck was about to leave the compound, Aung Kyaw Sein saw U Saw come up to it and hand something to someone in the truck. Aung Kyaw Sein thought that U Saw had given a letter to the driver and mentioned it in his report. Maung Ni, the 8th. accused, has now given his sworn explanation that U Saw had given him a ten rupee note as his pocket money. Then later, after the jeep had gone into U Saw's compound at about 11 a.m., Mr. Khan watched it from a spot on Prome Road and he saw a group of men clustered round the jeep and among them was a man wearing a pair of drak shorts and a white shirt. Witness thought that this man was U Saw having previously heard from Hla Tin that he was so dressed an hour or so ago. This view of the scene in front of the house on the arrival of the jeep confirms Maung Sein's statement in his confession that U Saw embraced and kissed each of them as they stepped out of the jeep.

The evidence against U Saw is thus made up of the testimony of Ba Nyunt, the statements of the several co-accused in their confessions, and in the admissions made before this Court and the several proved facts which have afforded reliable and convincing corroboration of the approver's evidence on all points tending to show that U Saw was connected with the offence. In the first place, the 4 assassins who have been proved to have committed the murders were living with him in his compound and are men whom he has chosen to describe as the senior members among his followers residing in the place. It is also shown that these men had taken the oath of fidelity to him and had placed their lives at his disposal and in his power. Secondly, the assassins had used his jeep on the mission. Thirdly, there is reliable proof that the jeep with the 4 assassins and the driver returned to the portico of his house and there their reports of success of mission were received by U Saw with exclamations of deep satisfaction. There is next the evidence of the fact that these men were treated to strong drinks and a feast by U Saw. It has also been shown that U Saw's Fordson truck was used by Ba Nyunt and others for purposes connected with this conspiracy to commit the murders. The statements made by two of the murderers in their confessions and by the approver in his evidence clearly speak of the meeting in U Saw's drawing room on the night of the 18th. July at which he had issued his orders relating to the respective parts they were to play in enacting the Secretariat tragedy. Then, from under his own shrine, the 5 firearms carried by the assassins in the jeep when they went to commit the crime, were found and of these 5 firearms 4 have been definitely proved to have been used in the actual commission of the murders. It also appears from the statements of the co-accused Khin Maung Yin that these firearms

had been acquired by this accused from the 2 army officers, named Major Young and Major Lance-Dane. In the waters near the shrine were also found concealed the 5 soft hats (Ex. 4) which were presumably used by those who went and carried out the murders. Lastly, in the fireplace of U Saw's kitchen a piece of half-burnt XIIth. Army badge was recovered as pointed out by U Saw's table-boy, Sein Maung.

U Saw has denied the charges and in his defence it has been urged that either the charges brought against these men are not true or that if they were true, he was not in any way implicated in the same. It is only with the latter defence that this part of the judgement must now deal, the Court having already found his 4 henchmen, Maung Soe, Thet Hnin, Maung Sein and Yan Gyi Aung, guilty of the charges of murder brought against them. In support of his remaining and alternative line of defence it has been put forward on U Saw's behalf that he was the accepted leader of the party which had throughout its existence adopted strictly constitutional methods in the pursuit of its political objectives and that at no time in the history of the country had it been known to favour the use of violence in its political programme. Evidence to this effect has been given by two other political leaders then in detention under the Public Order Preservation Act. They have obviously spoken of the effect of published manifestoes issued by U Saw's party in the past. Contrary to what they have stated, Ba Nyunt, in his evidence applies the appellation of *Wayindok* to U Saw during the political conversation he had with him. However, the Myochit party's unblemished record is of little relevance in the light of other events that have taken place in the country, and one of these was the attack that was made on U Saw's life in about September, 1946.

It is next pointed out that the political motive behind the alleged conduct of U Saw was clearly inadequate by reason of the fact that the party in power had the Constituent Assembly, duly elected by the people, behind it, and that it would be the height of madness to attempt to wrest power from their hands by violence. From the approver's evidence it is shown that U Saw was of opinion that the political party having the largest number of armed followers would rule the country and that it was in that belief that the approver was asked to collect arms and ammunition for the party. This part of the approver's story has not been categorically denied by U Saw in his sworn evidence. It occurs also in the statement of Khin Maung Yin in his confession that as far back as February, 1947, U Saw had wanted to remove U Aung San from the Burmese political scene by resorting to the violent method of assassination. If Khin Maung Yin is to be believed, it is to his great credit that he went and made a false report to U Saw that U Aung San did not attend the cocktail party given at the residence of the General Officer Commanding, Burma Army. Ba Nyunt, when questioned

about the motive behind the assassinations, stated that with the death of U Aung San and his colleagues, the party in power would lose its hold on the people and that the Myochit party would then have an opportunity of forming a Government and bringing the masses to its side. U Saw has further urged in his defence, and has given sworn testimony in support, that the assassinations might have been done by Ba Nyunt and his associates without his knowledge and consent and that, if they had used his jeep, he, by reason of his illness on that morning, was not in a position to know its movements. Much has been said in his testimony about the manner in which the approver Ba Nyunt twice approached him with violent proposals of removing the members of the Government, and how, mindful of the prospects of his party and the interests of the people, such proposals had been turned down by him. Of the two documents alleged to have been brought to him by Ba Nyunt and his associate Saw Yan Naung on the latter of these two occasions, one was said to be a scheme for seizure of power in the country. However, this document which is said to have been left in his house at the time of his arrest was not included in the list of documents seized by the C.I.D. What have been produced are two documents, both bearing Saw Yan Naung's signature – one relating to his resignation from the AFPFL organization and the other a manifesto recounting the many patriotic acts and missions he had carried out in the past and calling for volunteers to follow his lead under the banner of the Galon Organization. These papers were apparently received in April 1947 and not at any time near the date of the present occurrence. Ba Nyunt was examined on three different dates as a witness in this case and on none of these occasions was any suggestion made to him that it was he who had organized and carried out the assassinations with his other associates. Neither was he questioned about the alleged illness from which U Saw suffered on the day of the crime. In any case, the illness alleged by him was not of such severity as to prevent him from moving about either in his house or in his compound on that day. The sworn testimony of the accused has been contradicted by the statement which he made to the police on the 20th. August. His denial of Hmon Gyi's employment in his compound as a night watchman, his explanation for the residence of Maung Soe and others in his place, his allegation about the arrival of Thet Hnin on the 19th. July, and his reference to the two documents—one of which contained a scheme for the seizure of power in the country—are some of the points on which his previous statements fail to support him. A few other self-contradictory statements he has made in the witness-box have already been noticed, namely, those relating to the presence of the accused Maung Soe and Yan Gyi Aung in his place on the morning of the 19th. July. A number of witnesses have been called to support the allegation that U Saw was ill in bed on that morning. The first of these is Maung Tin Ohn

(d.w. 3). This witness came to U Saw at about 8 a.m. that morning and remained there till about 1.30 p.m. His failure to mention the presence of Hla Myat Soe (d.w. 5), an important guest of U Saw, clearly renders his evidence unreliable. Hla Myat Soe went there after 9 a.m. and left shortly after 12 noon, after he had heard of the assassinations. The witness states that he had a conversation with U Saw for a short while only. His companion Ko Kyaw Than (d.w. 6) states that he was closeted with his chief for over an hour from the time he arrived to the time he left. None of these witnesses was asked about the presence of U Saw's jeep under the portico. In his statement to the Court the witness Maung Tin Ohn (d.w. 3) admits that he saw one or two jeeps parked there. It is therefore clear from the evidence given by these witnesses that the defence set up by U Saw that he was ill in bed, that the jeep was not parked under his portico, and that he had no knowledge of the movements of his followers living in his compound have not been established to any extent. Accordingly the force and effect of the large body of evidence adduced in proof of the complicity of U Saw in the assassinations remain unaffected.

The question then is to consider whether, on the facts so established, U Saw, along with the accused who had gone and committed the crime, should be convicted of criminal conspiracy or whether he should, on these facts, be convicted on the alternative charge of abetment only. Since under the terms of s. 120-B of the Penal Code, the punishment to which accused persons are liable on their conviction under that section is the same as for abetment of the offence, it does not appear to be strictly necessary in the interests of justice that in the present case the accused should be convicted under the said section. The offence which he had conspired with his followers to commit was, in fact, committed and the ends of justice could be served if a conviction was entered against him under the alternative charges of abetment. Accordingly U Saw is found guilty of abetment with which he stands charged, punishable under s. 302 (1) (b) read with s. 109 of the Penal Code.

The accused THU KHA, like the accused Maung Sein, has not chosen to dispute the truth of the charges. He made his confession, Ex. Y (1), before a Magistrate admitting the fact that he had driven U Saw's jeep when it carried the 4 assassins to the Secretariat on the morning of 19th. July and that he had driven them back up to a certain point on Stockade Road where the co-accused Maung Sein, complaining of the slowness of his driving, relieved him at the wheel. He has, however, qualified his plea of not guilty with the plea that he had not been strictly responsible for his criminal conduct in that having placed his life in the power of U Saw he found it impossible to disobey his orders. His plea of mitigation is clearly unworthy of serious consideration. The accused was a political party worker and sufficiently mature in his understanding to realize the consequences of his participa-

tion in the crime. He has, however, shown his repentance and has placed himself at the mercy of the Court. The matter, however, as pointed out in the case of *Aung Hla and Others vs. King-Emperor*<sup>1</sup> does not rest with this Court. The charges against the accused are proved clearly on the confession he has made before a Magistrate, on the admissions he has repeated in this Court and on the testimony of the approver, on the statements made by his co-accused in their confessions and on the other facts and circumstances proved in the case showing the manner in which he had abetted the commission of the offence. Moreover, two witnesses, Maung Ohn and Maung Htwe (p.w. 16 and 17) have identified him as the driver of the jeep which carried away the assassins as they made their escape from the Secretariat. The accused is accordingly found guilty of the alternative charges of abetment with which he has been charged punishable under s. 302 (1) (b) read with s. 109 of the Penal Code.

The accused KHIN MAUNG YIN is a nephew of U Saw's wife and in his confession he has described the circumstances in which he came to live in U Saw's compound. From the many disclosures of serious import made by him in his confession he would appear to have been in U Saw's confidence. He has, like Maung Sein and Thu Kha, modified his plea of guilty with the explanation that by reason of the position of subordination he occupied in the family, he could not think of disobeying U Saw when the latter ordered him to carry out the duties of scouting and reconnoitring on the morning of the 19th. July in the Secretariat in order to facilitate the commission of the crime. Again, like the other two accused Maung Sein and Thu Kha, he has explained that he was impelled by his fear of U Saw's hand of vengeance to obey him in everything. The enormity of the offence which he was asked to commit was such that his plea of mitigation can hardly merit consideration, especially when he had the opportunity to warn the victims and thwart the criminal designs of U Saw whose vengeance he feared. As has been remarked previously, the confession he made before the Magistrate is so full of convincing details as to compel one to believe the truth of what he had said. He has repeated the admissions during the trial. On these admissions, on the evidence of the approver, and on the statements made by the co-accused in their confessions, the accused Khin Maung Yin is clearly guilty of the alternative offences of abetment with which he has been charged, punishable under s. 302 (1) (b) read with s. 109 of the Penal Code.

The next accused MAUNG NI has pleaded not guilty and has naively sought to explain that when brought to the neighbourhood of the Secretariat in the Fordson truck by the co-accused Khin Maung Yin, he was entirely ignorant of the criminal conspiracy to murder the late U Aung San and his colleagues and Thakin Nu. He has also sought to explain that he was not in

1. Indian Law Reports, Rangoon series, vol. IX, p. 404.

the least interested in politics and that when he was brought along in the truck he was under the impression that his duty was only to look after the vehicle. In fact this was the instruction which he said U Saw had given him after he had dressed to go out in it. U Saw then spoke to Maung Soe and the latter came and gave this accused a revolver and he was told that he should carry it in case he might need it. When the truck was parked near the Secretariat, Ba Nyunt, Khin Maung Yin and Hmon Gyi alighted from it, and when Khin Maung Yin returned 10 minutes later, he went out to look for Ba Nyunt and Hmon Gyi. He said he went and visited the tea-shop in Sparks Street from where he heard the sound of shooting in the Secretariat. Wondering as to what had happened he retraced his steps in the direction of the truck and saw the jeep from the house coming out of the Secretariat, with the 4 assassins, Maung Soe, Thet Hnin, Maung Sein and Yan Gyi Aung in it dressed in XIIth. Army uniforms and wearing badges. He tried to halt the jeep but was not allowed to get in, and when it had gone on without him, he went back to the truck and returned with Khin Maung Yin and Ba Nyunt to U Saw's house. Back at the house the other accused Maung Soe and Thet Hnin were heard complaining to U Saw against him for having tried to interfere with their escape in the jeep but the matter was dropped with U Saw saying, 'Let bygones be bygones; after all, he did not know!' The accused admits that he made his confession to a Magistrate on the 5th. August and denies that he was ill-treated by the police. Thus the confession he gave was voluntary. His sworn evidence in Court, given in support of his plea of ignorance and absence of criminal knowledge of the conspiracy in which the others were involved, has been contradicted by the admissions he made in his confession. He has stated in his confession that Khin Maung Yin pointed out the 'Out' gate of the Secretariat to him and asked him to go and wait there and to see that the gate was kept open for the jeep from the house to pass into the street. The accused admits that like others<sup>7</sup> he had to take an oath of fidelity and had to sign a written note saying that he had killed himself for betraying his country. According to him he had been helping U Saw and his wife by running errands to town. His wife also made herself useful in the house and kitchen. Since their arrival they had been paid the sum of Rs. 60 by way of wages in several instalments. The statements he made in his confession contained the admissions of his having participated in other dangerous operations which were undertaken by U Saw and it is extremely unlikely that on the morning of the 19th. July, the accused should accompany Khin Maung Yin, Ba Nyunt and Hmon Gyi in entire ignorance of the planned attack to be made in the Secretariat. The extremely bold and hazardous character of the undertaking in which U Saw and his followers were engaged that morning cannot be too adequately described. This undertaking required for its success a definite plan and

that was why it was found necessary for Khin Maung Yin and Ba Nyunt to proceed to the scene of crime before the actual assassins arrived. If Maung Ni was given his revolver, it is natural that he should be told what he was to do with it and why he would find it necessary to use it. There is no question that the accused was found by those in the jeep at the appointed place where it was arranged that he should be ready with his revolver to keep the 'Out' gate open for the jeep to pass. In his guilty excitement he had attempted to join the others in the jeep in their flight from the scene of crime. Then back in the house when he rejoined the others he had taken part in the drinking and feasting. Thus his presence at his post of duty, armed with a revolver, is a sufficient corroboration of the co-accused testimony given by Khin Maung Yin that U Saw had given his instructions and that he had accepted his duties with the full knowledge of the criminal plan in which he was asked to participate. Ba Nyunt also agrees with Khin Maung Yin that U Saw gave this accused certain instructions before the party left in the Fordson truck. The plea of ignorance of the criminal nature of the duty to which he was assigned is clearly untenable on the facts proved against the accused and he must accordingly be found guilty of the alternative offences of abetment charged against him, punishable under s. 302 (1) (b) read with s. 109 of the Penal Code.

The case of the last accused, HMON GYI, remains. He was produced before the Magistrate to have his confession recorded, but he did not choose to make any admissions beyond saying that he had arrived at U Saw's place in the company of Ba Nyunt and was employed as a night watchman. At the time of the arrest he offered armed resistance and a member of the Striking Force shot him in the hand. The charge against him is based on the evidence of the approver, Ba Nyunt, who states that Hmon Gyi had accompanied him, Khin Maung Yin and Maung Ni to the neighbourhood of the Secretariat and had gone in there to carry out his appointed task as instructed by U Saw. Khin Maung Yin and Maung Ni in their respective confessions have also implicated this accused saying that he did accompany them in the Fordson truck to the corner of Dalhousie and 41st. Streets and that he had gone into the Secretariat. Khin Maung Yin has stated that it was Hmon Gyi's duty to remain in the proximity of the Council chamber to signal to the assassins who were to come up the Secretariat about the presence of the Executive Councillors at the meeting in the room. It occurs in the confession of Maung Sein that when the assassins went up to the Secretariat they saw Hmon Gyi standing near the Council room and that he intimated by nodding that the meeting was in progress. It was this signal which decided the fate of the late U Aung San and his six colleagues who were then present inside. Maung Ni saw this accused running out of the Secretariat compound by the 'Out' gate immediately after the shooting. This state-

ment was previously made by him in his confession before the Magistrate. No reason has been found or suggested by the accused in his defence to explain why he alone, of all the persons arrested together at the same time with him, was chosen to be implicated in this particular manner. It is true that as against him there is no extraneous evidence to corroborate the testimony of the accomplices and the confessional statements of his co-accused but in a case like the present, where a number of accused persons engaged in a conspiracy have given their confessions before the Magistrate and have without any accountable reason implicated the accused as one of their accomplices and where such statements have been found to be substantially true, it is permissible in law to consider such evidence against him. Besides this reason there is the further fact that Hmon Gyi was living at the time in the employ and under the protection of U Saw. He had once belonged to the Galon Organization and was so trusted a follower that at the time of this occurrence he was employed as a night watchman who had to patrol U Saw's compound. The very fact that he offered armed resistance to the police raiding party is some evidence of his loyalty and devotion to his employer in whose favour he had also taken the solemn oath. Thus the charges against him are proved on the testimony of the approver Ba Nyunt, and on the corroborative statements contained in the confession of Khin Maung Yin, Maung Ni and Maung Sein, added to the surrounding facts and circumstances noticed above. The accused Hmon Gyi is accordingly found guilty of the alternative offences of abetment with which he stands charged, punishable under s. 302 (1) (b) read with s. 109 of the Penal Code.

*Si Bu,*  
Member

*Aung Tha Gyaw,*  
Member

*Kyaw Myint*  
President

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The Tribunal then recorded its findings that Maung Soe, Thet Hnin, Maung Sein, and Yan Gyi Aung were guilty of murder in pursuance of a common intention, punishable under s. 302 (1) (b) read with s. 34 of the Penal Code. They were sentenced to be hanged by the neck till they were dead.

Yan Gyi Aung's father had produced a horoscope in Court in an attempt to prove that his son was only 16 years old. But the Tribunal found the horoscope to have been recently prepared for the purpose, while the medical witness had given his opinion that Yan Gyi Aung must be between 17 and 19 years of age, most probably 18. The Tribunal therefore accepted him as 18 years old, fixing his birth-day as the 1st. of January 1930.

U Saw, Thu Kha, Khin Maung Yin, Maung Ni, and Hmon Gyi were

found guilty of abetment of the offences, under s. 302 (1) (b) read with s. 109 of the Penal Code. They were sentenced to death.

After pronouncing the sentences the Tribunal warned the convicted persons that if they wished to prefer appeals they must do so within seven days of the date of delivery of the sentences, the 30th. day of December, 1947.