

Unofficial translation of the trial report

District Court of Eastern Rangoon

Original Criminal Trial Number 22: Year 2003

Complainant: Police Second Lieutenant Ye Nyunt
Accused: (1) Khin Win, alias Boe Daw
(2) Maung Maung Myint and others
Lawyer for complainant: Daw Khin May Day (Deputy District Legal Officer)
Lawyer for accused (1): U Zaw Win and U Khin Maung Shein
(Supreme Court Lawyers)
Lawyer for accused (2): Daw Sein Sein Htay (Higher Grade Pleader)

Accused charged under the 1950 Emergency Provisions Act, Section 3.

Judgment

This case is a complaint by police second lieutenant Ye Nyunt, of the Police Special Bureau, to take action upon the incident of May 20, 2003. Kin Win (alias Boe Daw), Maung Maung Myint and Sai Nyunt Lwin are charged for contacting opposition groups abroad - the exiled National League for Democracy, Liberation Area (NLD-LA), All Burma Students' Democratic Front (ABSDF), and the National Coalition Government of the Union of Burma (NCGUB). They are accused of getting financial aid and were arrested in possession of political leaflets (evidence), whilst trying to press and distribute the leaflets under the title of the "Global Political Declaration of the Monks and Students Unity Front (MSUF)"; their motive being to make people frightened and to create political unrest. According to their political declaration, what the accused did was obviously intended to harm or delay the state armed forces or criminal justice forces from performing their duties and maintaining the law and order of the state - the complainant urged the court to frame a charge upon the accused under the 1950 Emergency Provisions Act, Section 3.

When the case was examined, according to law 1/2003, officially appointing a government approver for the Eastern District Court of Justice, Sai Nyunt Lwin was discharged as the accused under the Penal Code 337 and he was appointed as a government approver for the police case before the court. Therefore, the approver Sai Nyunt Lwin was first of all cross-examined by the court.

Sai Nyunt Lwin, stated that Khin Win (alias Boe Daw) showed him a handwritten draft of the political declaration, under the title of the "Global Political Declaration of the Monks and Students Unity Front (MSUF)". Khin Win asked him to type it out on computer and so he created a copy of the declaration and gave it back to Khin Win. Sai Nyunt Lwin's confession was submitted as Evidence (A).

Police officer Ye Nyunt (Prosecution witness (PW 2) accused Khin Win (alias Boe Daw), Maung Maung Myint and Sai Nyunt Lwin, of contacting the opposition groups abroad; the exiled National League for Democracy, Liberation Area (NLD-LA), All Burma Students' Democratic Front (ABSDF), and the National Coalition Government of the Union of Burma (NCGUB). They are accused of receiving financial aid and were arrested with evidence - political leaflets - whilst they were trying to press and distribute these leaflets under the title of the "Global Political Declaration of the Monks and Students Unity Front (MSUF)". Their motive was to scaremonger and to create political unrest. Their political declaration states that "people should be protected by law and order under the power of arms, and that the best way to deal with the bloodthirsty, maniacal and reactionary regime is through armed struggle. In addition, the political declaration states that we, the Burmese people, closely sympathize with the Iraqi people - who have been under a succession of suppressive dictators - because we are still under despotism far worse than that of the Iraqi dictators". Therefore, what the accused did obviously intended to harm or delay the state armed forces or criminal justice forces from performing their duties in maintaining the law and order of the state. Thus the complainant urged the court to frame a charge upon the accused. The complainant also stated that he knew the declaration had been written by Maung Maung Myint. The PW-2 submitted the original case and the first prosecuting charge together with evidence (B) and (B-1).

U Myo Myint (PW-3), a member of the quarter authorities of (J) quarter, North Okkalapa Township, and the police second lieutenant Saw Mozat (PW-4) stated that when they searched Maung Maung Myint's house with a search warrant, they seized 50 copies of the Global Political Declaration (1) from a drawer of a desk, positioned in front of a high shelf containing a shrine. The search warrant was submitted as Evidence (C).

Police second lieutenant Zaw Oo (PW-5) stated that he had cooperated with military intelligence personnel from MI unit (12) in order to interrogate Khin Win, alias Boe Daw. On January 28, 2003, Maung Maung Myint met with Khin Win. Khin Win took the draft declaration and went to Sai Nyunt Lwin's and typed out the declaration on a computer. The next day, January 29, 2003, he gave the draft declaration back to Maung Maung Myint; Maung Maung Myint gave it to Maung Maung Than. Maung Maung Than wanted to make copies of the declaration, so they made 2000 copies at the copier in Kitchen Mart (2), Shwegondine. It was discovered that Khin Win planned to secretly distribute the leaflets, first to veteran politicians, and then to the NLD Central Executive Committee members and party members on the 11, 12 and 13 of February.

Police second lieutenant Ye Tun Mya (PW-6) stated that he cooperated with military intelligence personnel from MI unit (12) to interrogate Maung Maung Myint. Maung Maung Myint wrote the draft of the declaration under the title of "Global Political Declaration (1) of the Monks and Students Unity Front (MSUF)" and on January 28, 2003, gave it to Khin Win. Maung Maung Than typed the draft, copied it and gave the package of copies to Maung Maung Myint. That same evening, as Maung Maung Myint was taking the copies to Maung Maung Than, he met Tin Aye. Maung Maung Myint urged Tin Aye to help distribute the copies and consequentially they made an appointment to meet at the café in front of Thingangyun Sanpya Hospital. At the appointed time, Maung Maung Myint was waiting for Tin Aye with four packages (100 copies per package) and one package containing 50 copies. Tin Aye arrived at the café and took the 50-copy package into his possession. Closely after this, Maung Maung Myint was arrested whilst sitting at the café with the remaining four 100-copy packages.

Investigating police lieutenant Kyaw Kyaw Hlaing (PW-7) stated how he proceeded to investigate the case. He submitted the permission letter to sue the accused as Evidence (D); a newspaper article containing details of the press conference of February 11, 2003 as Evidence (F); Maung Maung Myint's statement as Evidence (G); and Sai Nyunt Lwin's statement as Evidence (H). The Hlaing Township Confession Judge U Kyaw Lin (PW-8) stated how he legitimately obtained Sai Nyunt Lwin's confession.

After this, the accused Khin Win (alias Boe Daw) requested the court to cross-examine the police second lieutenant Zaw Oo, and also for the court to cross-examine the police second lieutenants, Ye Tun Mya and Sai Nyunt Lwin, for a second time. Both the accused requested to be cross-examined as witnesses, which the court agreed to.

The accused (1) Khin Win, alias Boe Daw, (Defense Witness-DW-1) stated that Maung Maung Myint and Maung Maung Than met with him at the end of January. Maung Maung Than carried a handwritten paper. Khin Win told Maung Maung Than that he wanted to type it and took it from him. He went to Sai Nyunt Lwin, typed it on computer and thus had a formal computer typed document. He gave the handwritten draft back to Maung Maung Than. Three days later, Maung Maung Than met with him once again and told him that the letter should be copied. They went out together and Khin Win showed him the copier at the Kitchen Mart (2). The letter copied is the "Global Political Declaration of the Monks and Students Unity Front (MSUF) 1". This declaration supports the United States of America and its attack on Iraq. Khin Win stated that he had read the declaration thoroughly.

The accused (2), Maung Maung Myint (DW-2), stated that he had had an appointment with Maung Maung Than at a café near Sanpya market, in order to buy a bus ticket. He met Maung Maung Than at the scheduled appointment time. Maung Maung Than asked him to give copies of the declaration to Tin Aye. Therefore, he went back to his home, took copies and went to see Tin Aye. When he arrived, Tin Aye told him to wait for a moment and went outside. Maung Maung Myint was arrested whilst he was waiting for Tin Aye.

In this case, according to the statements and evidences from both sides, the complainant urged the court to charge the accused according to their activities; that the accused tried to print and distribute the "Global Political Declaration of the Monks and Students Unity Front (MSUF) 1" and that their activities obviously intended to harm or prevent the state armed forces or criminal justice forces from performing their duties in maintaining the law and order of the state. In this case, according to the state witness Sai Nyunt Lwin's statement, Khin Win asked him to type the declaration and Sai Nyunt Lwin carried out his request. According to the statement of the police second lieutenant Ye Tun Mya (PW-6), Maung Maung Myint was arrested with four packages, each containing 100 copies. According to the statements of the searching witness U Myo Myint (PW-3), and the police second lieutenant Saw Mozat (PW-4) who led the search, 50 copies of the declaration were seized from Maung Maung Myint's house, under a search warrant, and put forward as Evidence (C). According to the above findings, it was clear that Khin Win and Maung Maung Myint planned to print and distribute the political leaflets.

The accused (1) Khin Win (alias Boe Daw) stated as follows: Maung Maung Myint and Maung Maung Than came to see him and showed him a political leaflet; this leaflet being the "Global Political Declaration of the Monks and Students Unity Front (MSUF) 1". He asked Sai Nyunt Lwin to type it out on computer. Maung Maung Than told him that he wanted to copy it and Ken Win took him to the copier at the Kitchen Mart (2). According to his plea, about how he obtained this letter from Maung Maung Than, Khin Win was unable to submit any substantial evidence and was also unable to put Maung Maung Than before the court as a witness. Therefore, according to witness code 114 (B), it is hard to accept that he obtained this letter from Maung Maung Than against his own wish.

Also, according to Maung Maung Myint's plea, he went to Maung Maung Than because Maung Maung Than wanted to meet him. Maung Maung Than asked him to take the political leaflets to Tin Aye, and therefore he took them to Tin Aye and consequentially was arrested whilst waiting for him. Maung Maung Myint was unable to submit Maung Maung Than and Tin Aye as witnesses and therefore, according to the witness code 114 (G), the court was unable to accept his plea that he carried out these actions against his wishes.

Thus, after being examined, it was found that the accused failed to provide firm evidence to support their plea and given the findings, the case was clear: (1) Khin Win (alias Boe Daw) computer typed and copied the "Global Political Declaration of the Monks and Students Unity Front (MSUF) 1" and Maung Maung Myint attempted to distribute copies of the political leaflet. For these reasons, it was decided that there needed to be further examination to determine whether the accused deliberately intended to prevent the state armed forces or criminal justice forces from performing their duties and maintaining law and order of the state, or not.

The accused (1) Khin Win's (alias Boe Daw's) lawyer argued in his statement that his client's actions did not, in any way, harm or spoil the government's duties – however, he did not urge the court to release his customer. He stated that his client's actions only attempted to degrade the government and, as a result, he should be punished solely under the 1950 Emergency Provisions Act, Section 5 (J).

The accused (2) Maung Maung Myint's lawyer argued that his clients actions did not harm or spoil the government's duties in any way and that his client should be released accordingly. The law officer for the district court stated that the accused intentionally attempted to spoil or delay the state armed forces or criminal justice forces from performing their duties and maintaining the law and order of the state. He pleaded the court to charge both the accused under the 1950 Emergency Provisions Act, Section (3).

According to the 1950 Emergency Provisions Act, Section 3, anybody who tries to harm or delay the state armed forces or criminal justice forces from performing their duties or maintaining the law and order of the state must be punished. Thus, on examination of the Global Political Declaration (1), which was created by Khin Win and Maung Maung Myint, it is found that the leaflet clearly states, "for the bloodthirsty, lunatic and reactionary dictators, the armed struggle is the only best and most fair way to force them to step down". Therefore, there is clear written evidence, within these political leaflets, encouraging a reactionary attitude against the government. In the second paragraph, the text states: "We, the Burmese people, closely sympathize with the Iraqi people who have been under a succession of suppressive dictators - because we are still under despotism far worse than that of the Iraqi dictators". In addition, the sentence "we are still under despotism far worse than Iraqi dictators" directly refers to our military government.

For the time being, our military government is the armed force which is responsible for the law, order and restoration of the state. The letter refers to our military government "as despotism worse than Iraqi dictators" and encourages people to rebel against it. The accused Khin Win (alias Boe Daw) and Maung Maung Myint planned to press and distribute the "Global Political Declaration (1)" in order to spoil or prevent the state armed forces or criminal justice forces from performing their duties and maintaining the law and order of the state; that much is clear and they should be found guilty under the 1950 Emergency Provisions Act, Section (3).

With regards to the government witness Sai Nyunt Lwin - according to the law 1/2003 of appointing a government approver of the Eastern District Court of Justice, Sai Nyunt Lwin was discharged under the Penal Code 337, even before he was charged with the offence. When Sai Nyunt Lwin was examined as government approver, he confessed the truth without any exception (evidence A). The law officer also stated that Sai Nyunt Lwin confessed the truth. Therefore, it was concluded that there was no legitimate reason to punish him.

According to the police second lieutenant Zaw Oo (PW-5), Khin Win (alias Boe Daw) was sentenced, in 1975, to 4 years in prison for participating in the student demonstration on the Shwedagon pagoda and he was later imprisoned again in 1989, to 20 years in prison because of his connections with underground members of the Communist Party (Burma). Moreover, in accordance with the police second lieutenant Ye Tun Mya's (PW-6) statement, Maung Maung Myint had been imprisoned once before under the 1950 Emergency Provisions Act, Section 5 (J). Thus, it was discovered that the accused had been imprisoned once before, for attempting to harm the existing law and order of the state, and that their case should not be considered lightly. Therefore, the court judges sentenced as follows:

"Order"

Khin Win, alias Boe Daw (55), son of U Aung Thein, residing at No. 76, Mya Thiri Street, Quarter (30) North Dagon Myo Thit, Rangoon, and Maung Maung Myint (34), son of U Aung Myint, residing at No. 1374, Yuu Nandar Street, Quarter (J), North Okkalapa, Rangoon, are found guilty according to the 1950 Emergency Provisions Act, Section (3) and shall be given life sentence accordingly. Additionally, Khin Win (alias Boe Daw) shall serve the punishment, charged by this court, in accordance with the Penal Code (23, 2003) and additionally Maung Maung Myint shall serve the punishments, charged by this court, in accordance with the Penal Code (23, 2003) and (26, 2003); their detention days since February 18, 2003 shall be included within their sentences.

One anti-government leaflet, out of the 50 seized - stated in the search form (evidence C) - should be filed for documentation and the remaining 49 copies shall be destroyed at the end of the appeal period.

U Htay Win (L.LB) (W/ 1691)
Deputy District Judge (5)

(Checked)

Translated by the AAPP