

TRIAL OF DAW AUNG SAN SUU KYI

By the National Coalition Government of the Union of Burma

Court: Special Court inside Insein Prison
Judges: U Thaung Nyunt (Northern District - Rangoon)
U Nyi Nyi Soe (Western District - Rangoon)

Plaintiff: Special Branch Police Lt Col Zaw Min Aung, two others

Defendants: 1. Daw Aung San Suu Kyi
2. Daw Khin Khin Win
3. Daw Win Ma Ma
4. John William Yettaw

Charges: *Under Article 22 (State Protection Law or Law to Safeguard the State against the Dangers of Those Desiring to Cause Subversive Acts): "Any person against whom action is taken, who opposes, resists or disobeys any order passed under this Law shall be liable to imprisonment..."*
-- Daw Aung San Suu Kyi

Under Article 109 (The Penal Code): "Whoever abets any offense shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code of the punishment of such abetment, be punished with the punishment provided for the offense. Explanation: An act or offense is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."
-- Defendants 2, 3 & 4

Under Article 13 (1) (Immigration Act -- Emergency Provisions) and under Article 28 (Yangon City Development Committee Law) "for breaching the restriction on swimming in Inya Lake"
-- Defendant 4

Defense Team: U Kyi Win (For Daw Aung San Suu Kyi)
Daw Khin Htay Kywe (For two companions of Daw Aung San Suu Kyi)
U Hla Myo Myint, and U Nyan Win (Assist both the lawyers above)

High Grade Pleader U Khin Maung Oo (For John William Yettaw)

District Court

When the trial against Daw Aung San Suu Kyi, her two companions, and John Yettaw, whose uninvited sneak visit to Daw Aung San Suu Kyi's residence gave the Burmese junta the opportunity to file criminal charges against the Nobel Laureate, resumed on 1 June, it was postponed by the court authorities to 5 June.

People earlier speculated that trial postponement may have been because Daw Aung San Suu Kyi was sick but Defense Lawyer U Nyan Win denied, saying he had met with the leader on 30 May and she was fine. A "medical specialist" was taking care of her health problems, he added.

An Appeal Over Witnesses

On 2 June, Defense Lawyers U Kyi Win, U Nyan Win, U Hla Myo Myint, and Daw Khin Htay Kywe requested the Rangoon Divisional Court to review and amend the decree of the Rangoon North District Court which refused to summon three defense witnesses to the stand. The defense team had submitted four witnesses but the North District Court allowed only one of them to testify as witness -- Lawyer U Kyi Win [unrelated to the defense lawyer] of Labutta Township who is also an elected representative of Daw Aung San Suu Kyi's party -- National League for Democracy (NLD).

The three witnesses rejected by the North District Court are NLD Vice Chairman U Tin Oo, NLD Central Executive Committee member U Win Tin, and Daw Khin Mo Mo, a Supreme Court lawyer from Taunggyi.

The District Court had cited Section 257 (1) of the Code of Criminal Procedure to reject the three witnesses.

Section 257 (1) says: "If the accused, after he has entered upon his defense, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice."

District Court Postponed; Divisional Court Hears Appeal

On 5 June, the Rangoon North District Court could not continue the hearing because the defense team had submitted an appeal to the divisional court to review the refusal to summon three defense witnesses. The district court hearing was postponed to 12 June.

Also on 5 June, the Divisional Court also heard arguments from the defense and the prosecution about the rejection of defense witnesses.

The defense side argued that the decision to not summon the three witnesses was "unjust and against the law". The rejection of these witnesses was not listed in the daily court records as required under the law. The district court did not give any reason why they were rejected nor did it issue separate decrees for each of the three rejected defense witnesses as required. The Divisional Court should, therefore, correct it, asked the defense team.

Of the three rejected witnesses, the defense team had nominated U Tin Oo and U Win Tin as character witnesses and Daw Khin Mo Mo as legal expert.

Yangon Division deputy law officer Daw Khin Mar Kyi in her final argument agreed that the "refusing other witnesses without any separate decrees was contrary to the code of criminal procedure Section 257 (1)" and that the matter "was not kept on daily record". However, she argued that no one was questioning the character of the accused, and, therefore, the district court decision "not to call and question U Win Tin and U Tin Oo, to testify about the characters of the applicants was not against the law".

She also said the court does not need to summon all the witnesses the accused has nominated. Since the witnesses nominated are not needed to present any evidences, summoning them would only delay the trial. "Therefore, the court's decision not to call and examine those witnesses complies with the law".

After the final arguments the Rangoon Division Court ruled that a judgment would be delivered on 9 June.

Divisional Court Allows One More Witness

On 9 June, the Rangoon Division Court ruled that the District Court must summon and examine legal expert Daw Khin Mo Mo as a defense witness "in order to hear the case more thoroughly".

It, however, confirmed the District Court's decision not to summon witnesses U Tin Oo and U Win Tin as character witnesses.

District Court Resumes Hearing on 12 June

When the District Court resumed hearing on 12 June, the magistrate ruled that the defense witness, Daw Khin Mo Mo, will testify on 26 June.

Defense Lawyer U Nyan Win believed the court wanted to give time to Daw Khin Mo Mo to travel from Taunggyi to Rangoon.

Observers who were earlier concerned with the district court rushing ahead with the hearings believed the authorities are now slowing the trial down because of international pressure over Daw Aung San Suu Kyi.

Defense Lawyer U Nyan Win, however, said "We have seen trials against many pro-democracy activists lasting months, so, this is not a new phenomenon".

Appeal to the Supreme Court

Defense lawyers who won an appeal in the Rangoon Division Court to let one more defense witness -- Supreme Court Lawyer Daw Khin Mo Mo of Taunggyi -- to testify said they were appealing to the Supreme Court to win the right for two other rejected witnesses to appear.

The reason for wanting the two witnesses to testify, they said, was because the District Court had allowed 14 of the 22 witnesses nominated by the prosecution to testify but had only allowed one defense witness to appear.

Whether the Supreme Court will accept the defense arguments for the two witnesses -- U Tin Oo, who is also under house arrest, and U Win Tin -- will only be known on the court appointed date of 17 June, the lawyer added.

U Nyan Win said on 11 June -- the date the appeal was submitted to the Supreme Court: "We submitted our case at 1100 today and were given a case number. We will know if the case is accepted by the Supreme Court only on 17 June".

News sources: freelancers inside the country, NLD, www.myanmar.com, www.dvb.no, www.mizzima.com, and various Burmese language blogs