

**YANGON REGION HIGH COURT
CRIMINAL CASE, APPEAL NO. 2018**

1.	Thet Oo Maung aka Wa Lone	Appellants
2.	Kyaw Soe Oo aka Moe Aung	
		and
	The Republic of the Union of Myanmar	Appellee

Submission of Appeal pursuant to Article 54 of the Union Judiciary Law

This appeal is submitted in response to the unsatisfactory verdict issued by the Yangon Northern District Court on 3 September 2018. The appeal is submitted within the limitation period and together with payment of the 200 Kyat court fee.

Defense Attorneys for the above-named Appellants
have the honor of submitting the following:

Case Summary

In the fall of 2017 and as journalists for Reuters news agency, Ko Thet Oo Maung aka Wa Lone and Ko Kyaw Soe Oo aka Moe Aung were investigating villagers' reports of extrajudicial killing by security forces in Maungdaw Township. To verify the accuracy of the information, Wa Lone interviewed police about the alleged misconduct. On 12 December, Officer Naing Lin met with Wa Lone, together with Kyaw Soe Oo, and moments after that meeting the two were arrested.

The First Information Report in this case stated the following: Around 8:15 p.m. on 12 December 2017 at the corner of No. 3 Main Road and Nilar Road in Shwe-Nan-Thar village tract, Mingalardon Township, Yangon Northern District, police stopped and searched two "suspicious-looking" individuals – Thet Oo Maung aka Wa Lone and Kyaw Soe Oo aka Moe Aung, both Reuters reporters – and found papers concerning security measures taken by members of Myanmar Police Force in Maungdaw Region, Rakhine State, including the number of personnel, arms, ammunition, rough maps showing the positions of security forces and camps. Police Lt. Col. Yu Naing, Chief of the Yangon Northern District Police, obtained an authorization letter from the Office of the President of the Republic of the Union of Myanmar and filed a request with Htauk Kyant Police Station, Mingalardon Township, to take legal action against Thet Oo Maung aka Wa Lone and Kyaw Soe Oo aka Moe Aung for possessing, obtaining and collecting information with the intention of harming national security.

During the trial, Thet Oo Maung aka Wa Lone and Kyaw Soe Oo aka Moe Aung, together with prosecution witness Officer Moe Yan Naing testified that Officer Naing Lin planted the papers on the reporters so they could be falsely arrested.

Within an hour, Complainant Police Lt. Col. Yu Naing sought permission to prosecute the two journalists as spies, under Section 3(1)(c) of the Official Secrets Act.

The appellants were tried before the Yangon Northern District Court in Penal Case no. 4/2018. After hearing the testimony of 22 prosecution witnesses, the appellants were charged with violating Section 3(1)(c) of the Official Secrets Act.

The appellants pleaded not guilty. Thet Oo Maung aka Wa Lone stated that he had no intention of harming national security or working against the interests of the state, that he is not guilty of obtaining, collecting or distributing secret government documents to aid any enemy of the State, and that he acted in accordance with journalistic ethics. Kyaw Soe Oo aka Moe Aung stated that he has not collected or obtained documents that could be, directly or indirectly, useful to an enemy and that he was following the media code of ethics. The defendants testified as witnesses, in accordance with Criminal Code Article 432(1).

The court heard the testimony of 3 additional defense witnesses.

Despite incontrovertible evidence of a police set-up and the prosecution's failure to prove its case beyond a reasonable doubt, on 3 September, the appellants were convicted and sentenced to seven years' imprisonment. We respectfully submit that, in reaching this verdict, the Court erred as a matter of law and fact on multiple grounds, necessitating this appeal on the grounds that follow.

1. The Court erred as a matter of law and fact because the Court placed the burden of proof on Wa Lone and Kyaw Soe Oo, convicting them on the basis that they failed to prove their innocence. a
2. The Court erred as a matter of law and fact in convicting Wa Lone and Kyaw Soe Oo because the prosecution did not satisfy its burden of proof and failed to provide evidence establishing each and every element of Section 3(1)(c) of the Official Secrets Act. To the contrary, the evidence showed that:
 - a. Wa Lone or Kyaw Soe Oo did not collect the documents at issue, but were the victims of a set-up,
 - b. The documents and information were not secret but were made public by government officials,
 - c. The documents or information – all public and outdated – could not be useful to or intended to aid any enemy, because they were already available publicly, and
 - d. Wa Lone and Kyaw Soe Oo did not act for a purpose prejudicial to the State, had no contact with any enemy, and are not spies – they are responsible and ethical journalists who were simply doing their jobs.
3. The Court erred as a matter of law and fact because the Court disregarded evidence that police planted documents on Wa Lone and Kyaw Soe Oo in order to arrest them. This evidence includes the testimony of Officer Moe Yan Naing, the unexplained disappearance of Officer Khin Maung Lin who was expected to provide corroborating testimony, and contradictions in the prosecution's evidence. The Court further erred in ignoring evidence that police knew Wa Lone and Kyaw Soe Oo were investigating a massacre and arrested them to interfere with this newsgathering, which was the focus of the post-arrest interrogation.
4. The Court erred as a matter of law and fact because the Court failed to address documented due process violations, including the denial of legal counsel, withholding exculpatory evidence, falsifying evidence, mistreatment at Aung Tha Byay interrogation center, and more.

5. The Court erred as a matter of law and fact because the Court improperly accepted the testimony and evidence submitted by Officer Aung Kyaw Saw. Among other errors, the prosecution failed to establish him as an expert in accordance with the law and failed to submit original and complete digital PDFs of the extraction reports as required.
6. The Court erred as a matter of law and fact because the Court failed to exercise its duty to search for the truth and failed to collect relevant evidence, including key witnesses testimony, withheld or destroyed police records, thousands of pages from the extraction reports, and more.
7. The Court erred as a matter of law and fact because the Court failed to consider relevant mitigating factors – including that Wa Lone and Kyaw Soe Oo are men of good moral character, dedicated to the betterment of their communities – warranting extreme leniency.

We therefore request that the Court:

1. Accept this appeal;
2. Call up Yangon Northern District Court Penal Case no. 4/2018;
3. Convene a plenary hearing; and
4. Reverse the verdict handed down by the Yangon Northern Region Court on 3 September 2018 in Penal Case no. 4/2018 and acquit the appellants.

Respectfully yours,

Yangon
2 November 2018

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Appellate Attorneys