

MINUTE PAPER

SUBJECT: TRIAL OF JAPANESE WAR CRIMINAL - LT. YUNOMURA, Fumiwo.

D.P.W. & I (for Confirming Authority).

I have read through the proceedings of this War Crimes Court held at Morotai on 20th December, 1945, when the accused was found guilty of a war crime, i.e. murder of prisoners of war at Sario on 19th June, 1945, and was sentenced to suffer death by shooting and also the petition of the accused dated 21st December, 1945, against the finding and sentence.

2. The accused at the relevant date was in command of the First Company of the 8 Garr. Unit and as such was in command of what corresponds to our military police at Sario.

3. A few days previous to 19th June, 1945, he was verbally instructed that 6 prisoners, (2 Australians, 2 Dutch and 2 Indonesians) were being forwarded to him for execution, they then being in prison at another place.

4. The accused in evidence stated that he asked why they were being sent to him for execution and was informed that there were no proper facilities for carrying out the execution at the place where the prisoners were.

5. The prisoners arrived at Sario and were taken to the place of execution.

6. The accused had never seen any of the prisoners until they arrived under escort at the place of execution and the accused was handed an order signed by either Baron Takasaki or Rear Admiral Hamanaka setting out the names of the prisoners and that they had been sentenced to death and were to be executed by the accused.

7. A Lt. Katagari was in attendance from H.Q. and either he or a Warrant Officer handed the order of execution to the accused. It was stated that they had been sent there officially to see that the execution was carried out and to report the same.

8. According to the evidence, after the order for execution had been handed to the accused he read it out to the prisoners and then under his orders the 6 prisoners, including the 2 Australians, were executed by the men under command of the accused.

9. No evidence was given that the prisoners had not been properly tried before being sentenced but evidence was given that either Takasaki or Hamanaka were persons who could properly sign orders for execution.

10. The accused was asked if he had on receipt of the order queried it or made any inquiries as to its legality and he stated that there was nothing in the order to make him believe that it was not in order and that he had to carry it out.

11. Although it has been laid down that the obedience of a legal order by a superior authority is no defence, I am of the opinion that before an accused can be found guilty of a war crime caused by obeying an order of a superior officer, there must be something, either from the nature of the order or the circumstances surrounding it, from which the accused should know, or at least be put on inquiry, as to know that such order was illegal.

12. From the evidence given, I am of the opinion that there was nothing to cause the accused to believe that the order

finding and

that he carried out was illegal. The document ordering the execution was signed by the proper authority and stated that the men had been sentenced to death. I would therefore advise that the sentence of death should not be confirmed.

13. The Court sat without the assistance of a Judge Advocate and I would suggest that this is undesirable in a case of this nature when the proper legal inference to be drawn from the facts is a difficult question and would recommend that Judge Advocates should be ~~present~~ to such Courts.

14. It is an advantage to a reviewing authority to have the summing up on the legal points so as to be able to appreciate that the Court was properly advised before arriving at its finding.

16.1.46.

Thomas L. Lister
JUDGE ADVOCATE GENERAL.