

AUSTRALIAN MILITARY FORCES
MINUTE PAPER

255/15/1453.

SUBJECT: TRIAL OF JAPANESE WAR CRIMINAL - CAPT. KATO, Kihachiro.

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

I have read through the proceedings of the Military Court convened under the War Crimes Act 1945 for the trial of Capt. Kato on a charge of having committed a war crime, that is to say, the murder of an Australian prisoner of war, when the Court found him guilty of the charge and sentenced him to death by shooting.

2. The confirmation of the sentence has been reserved for superior authority.

3. I have also read the petition dated 15th January, 1946 of the accused against the finding and sentence.

4. The story disclosed by the evidence is as follows :-

5. In November 44 Capt. Kato (then Lt. Kato) was in charge of an outpost consisting of 4 Japanese and 16 Indonesian soldiers situated on the estuary of one of the rivers in Dutch Borneo, and that an Australian patrol was ambushed and one Sig. Williams was captured and brought to the camp of the outpost.

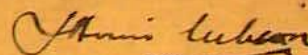
6. He was apparently well treated there but later Capt. Kato by signal asked instructions of what he was to do with the prisoner and some time in March 1945 he received a signal from his H.Q. signed by the Chief of Staff ordering him to execute the prisoner. A couple of days later, this order was carried out by shooting by a squad of 5 Indonesians under the command of Capt. Kato. After the execution, the deceased was properly buried.

7. Capt. Kato knew that the prisoner had committed no crime and had received no form of trial and his only justification for carrying out the execution was that it was in obedience to an order received to that effect from his H.Q.

8. Capt. Kato should have known that it is illegal at International Law to execute a prisoner without trial and the fact that he had received orders from superior authority to carry out the execution is not considered to be a defence, more particularly when the accused is the senior officer in charge of the party.

9. The trial was properly conducted and the evidence discloses what has been declared to be a war crime and the finding and sentence are valid and may be confirmed.

10. Maj-Gen. Milford, Comd. of Morotai Force in forwarding the proceedings recommends that the sentence should not be varied. In view of the fact that the order of a superior does not ipso facto amount to a defence, I cannot state that the sentence is excessive.



JUDGE ADVOCATE GENERAL.

7.2.46.