

AUSTRALIAN MILITARY FORCES
MINUTE PAPER

Subject: TRIAL OF JAPANESE LT. KAWAHARA, K., SUB. LT. UEDA, K.,
WAR CRIMINALS : SUB LT. KAKINUMA, M., W/O. YOSHIZAKI, K.,
P/O. SHONO, S., P/O. HARA, Y.

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

I have read through the proceedings of the Court convened under the War Crimes Act of 1945 for the trial of the above officers and other ranks on a charge of murder in that they at Ambon on 26th April, 1945, murdered Ptes. Wadham, Morrison and Simpson and Cpl. Solomon, Australian prisoners of war held by the Japanese, when all were found guilty and the three officers sentenced to death by shooting and two of the other ranks to imprisonment for 15 years and the other to 12 years.

2. I have also read the petitions of the accused against the findings and sentences.

3. The story revealed by the evidence of the execution of the above prisoners of war is as follows :-

4. Early in 1945, through the successful bombing of the supply dump at Ambon and the successful blockade of the Islands by the Allies, the food position had become very precarious and an order was issued from the highest Japanese command that persons found guilty of stealing food were to be sentenced to death.

5. Just prior to 26th April, 1945, the above prisoners of war had been caught stealing food from the Japanese store and were arrested and a report made by Lt. Miyazaki to his H.Q. stating the facts. There is no dispute that the prisoners of war had stolen food. The Japanese H.Q. replied ordering the execution of the prisoners of war.

6. The part played by the various accused was alleged to be as follows :-

7. On receiving the order for the execution of the prisoners of war, Lt. Miyazaki detailed the three officers to attend at the place of execution and to each execute a prisoner of war. It was sworn in evidence that Lt. Miyazaki notified each of the officers that the accused had been sentenced by a court-martial to the death penalty but I think it is more probable that there was no mention of a court-martial and that all that Lt. Miyazaki informed the officers was that H.Q. had ordered the execution. The three officers each attended the place of execution and each beheaded one prisoner. They each gave evidence that they considered they had no option and that they had to obey the order. They were in no other way connected with the prisoners of war.

8. Warrant Officer Yoshizaki and the two sailors attended the place of execution and the Warrant Officer gave the actual orders to the sailors to kill by bayoneting the other prisoner of war. They knew nothing about the procedure but had been detailed to attend and receive the orders which they carried out.

9. In a recent Court, on almost identical evidence three other ranks who had similarly taken part in the execution of prisoner of war Boyce were in my opinion rightly found not guilty by the Court, apparently on the grounds that there was nothing to suggest to these men that it was an illegal order when they obeyed it. In my opinion there is no evidence that these men have committed a war crime and the findings and sentences in their case should not be confirmed.

10. With regard to the three officers, I am also of the opinion that the findings and sentences should not be confirmed. If as sworn to by each of the officers they were informed that the execution was the sentence of a court-martial for an offence which they knew the prisoners of war had committed, being punishable by death according to the Japanese code, I am then of the opinion that they had not committed any war crime as they were justified in believing that it was their duty to carry out the sentence of the court-martial.

11. I have some doubt whether they were actually told that there had been a court-martial but I believe that they were told when called upon to carry out the punishment that it was a sentence lawfully imposed by higher authority and I do not think it possible to credit these junior officers with a sufficient knowledge of either International Law or Japanese Naval Law to make them doubt the truth of such statement and in my opinion if they truthfully believed that they were carrying out a lawful sentence, they have committed no war crime.

Thomas L. Loring

JUDGE ADVOCATE GENERAL.

14.3.46.