

No. 65001 JAG
HQ Allied Land Forces,
South East Asia Command.
27th February, 1946.

Commander,
Singapore District.

Subject: War Crimes Courts.

Reference the proceedings of the trial by
Military Court of

(1) Capt	GOZAWA	Sadaichi
(2) Lieut	NAKAMURA	Kaniyuki
(3) Capt	OKUSAWA	Ken
(4) Lieut	KAJINO	Ryuichi
(5) Sjt Maj	TANNO	Shozo
(6) Sjt Maj	ONO	Tadasu
(7) Sjt	YABI	Jinichiro
(8) Cpl	OSAKI	Makoto
(9) Cpl	ASHIYA	Tamotsu
(10) L/Cpl	CHIBA	Masami

all of the Japanese Army.

1. The accused were tried by a Military Court on
21-31 Jan and 1 Feb 1946 on 3 charges for committing war
crimes as follows:

First: the 1st, 2nd, 3rd, 4th and 6th accused only:

While en route for and at BABELTHUAP between
20 April 43 and 10 Sep 45 failing to care and
provide food, clothing and medical attention
for and permitting, abetting and taking part
in the beating, overworking and general
maltreatment of certain Indian prisoners of
war in their charge, in consequence whereof
the said prisoners contracted disease, were
weakened in health and in some cases died.

Second: the 1st, 2nd, and 10th accused only:

On 25 April 45 conspiring to execute by
beheading and so executing Mohd Shafi, one
of the prisoners of war.

Third: the 1st, 2nd, 5th, 7th, 8th and 9th
accused only:

On or about 27 April 44 flogging and maltreating
the Indian prisoners of war as a result whereof
eight prisoners died.

The 4th and 6th accused were acquitted. The
others were convicted of the charges laid against them
respectively. They were sentenced as follows:

1st accused	:	12 years imprisonment
2nd "	:	Death by hanging
3rd "	:	2 years imprisonment
5th and 7th accused	:	3 years imprisonment
8th and 9th accused	:	5 " "
10th accused	:	7 " "

2. The facts relating to the several charges are briefly as follows:

First charge On the 5 May 43, 520 Indian prisoners of war drawn from 2/12 F.F.R. and 1 Hyderabad Infantry sailed from Singapore on the "Thames Maru". This party was under the command of the first accused. The ship called at SOURABAYA where, amongst others, the third accused joined the party. The ship reached its destination, BABELTHUAP in the PALAU ISLANDS, on 8 June 43 and the party remained there until released by the U.S. forces in Sep 45. All the accused were from time to time officers or NCO's in charge of this party, the third accused being the medical officer. The conditions on board the Thames Maru beggared description. There were 2000 Indian troops on board for whom 2 latrines were provided. There was barely room to sit down, much less to sleep, and hygiene was non-existent. As a result, dysentery spread all over the ship but no medical supplies were issued. The food supplied was plain rice in inadequate quantities supplemented by radishes infested with maggots. As a result a number of prisoners died during the first months on BABELTHUAP. On the island for 2 years 3 months the prisoners received treatment similar to that meted out to them on the ship, aggravated by beatings from the Japanese. These were almost a daily occurrence and varied in severity from blows with fists to savage attacks with sticks sometimes rendering the victim unconscious. Medical evidence shows that the food provided for the prisoners in the beginning was sufficient to sustain life if they did not do any work. The ration was reduced throughout the period of captivity until it ultimately reached starvation level. Throughout the period the prisoners were doing heavy manual work. Dysentery was rife throughout the camp. When the party left Singapore it was 520 strong. Further detachments arrived and increased its number to 550. Of these men 117 died; mostly of beri-beri and dysentery.

Second charge During Apl 45 a party of 15 prisoners went on a working detachment under the accused CHIBA. Some of them worked out a plan of escape. CHIBA learnt of this and took one of them, MOHD SHAFI, away from the others. SHAFI was next seen a week later tied to a tree and beaten by the accused NAKAMURA and CHIBA. The next day CHIBA took a party of 4 prisoners to dig a trench. MOHD SHAFI, blindfolded and bound, was made to sit in the trench by CHIBA, and NAKAMURA beheaded him with a sword.

Third charge During Apl 44 sugar had been stolen from the company's stores and the Japanese conducted a search in the course of which they discovered some sugar in the possession of the Indian prisoners of war. Some 30 or 40 Indians were thereupon savagely beaten by the second, fifth, seventh, eighth and ninth accused. A witness described the scene after the beating as resembling a battlefield.

3. In their defence the accused raised questions of law and of fact.

(a) The offences with which the accused are charged were created by the Convention relative to the treatment of Prisoners of war signed at Geneva in 1929. Japan never subscribed to the Convention and cannot therefore be bound by it.

(b) Further, the Indians concerned in this trial were voluntary collaborators with the Japanese and had forfeited their rights as prisoners of war. They were governed not by the laws and usages of war but by the regulations of the Japanese for the discipline of the auxiliary force known as HEIHO.

(c) The accused and more particularly the NCOs were at all times acting under superior military orders.

(d) Everything that could be done for the Indians was done. Allied air raids and sea blockade resulted in shortage of food, clothes and medical supplies. Everyone on the island suffered equally and there was no discrimination against the Indians, in fact the Indians received more food than the Japanese. Japanese as well as Indians died of disease. Indians were not beaten but corrected verbally or by slapping with the open palm. It was particularly urged on behalf of Capt OKUSAWA, the M.O., that he is not mentioned anywhere in the affidavit evidence, that he was not in charge of the medical arrangements on the ship, that the Indian doctors were primarily responsible for the prisoners' health and he assisted them as far as he could and that he exceeded his duty, as understood in the Japanese Army, by reporting deficiencies of food and clothing and obtaining medical stores.

(e) Capt GOZAWA stated that he knew nothing of the beatings that occurred. He had many duties to perform and delegated responsibility to his officers and NCOs. He was not in a position of command on the ship and could not do anything to alleviate the conditions.

(f) On the second charge it is stated that SHAFI was a bad character and the attempt to escape was the culmination of a series of offences including theft from his own comrades. Owing to the Allied air raids and sea blockade, GOZAWA had been given full powers of life and death over the Indians by his superiors. Attempts to escape were becoming very common and he exercised his discretion at a time of military exigency to maintain discipline. NAKAMURA merely obeyed GOZAWA's orders. CHIBA obeyed NAKAMURA's orders and took no active part in the execution.

(g) On the third charge it is stated by the accused NCOs that they either took no part in the beatings at all or confined themselves to slapping on the express orders of 2/Lt SEKI, a platoon commander subsequently killed in action. Any beating which took place was done by 2/Lt SEKI alone. NAKAMURA also denied that he took part in this beating, and GOZAWA stated that he was in command of other units as well as this party at the time and was unable to supervise his officers and NCOs. It is pointed out further that the deaths which are alleged to have occurred as a result of this incident happened several months later and that the deceased died in fact from dysentery, which cannot be induced or worsened by beating.

4. All the convicted accused have petitioned against the findings and sentences. The petitions reiterate the points of the defence set out above and make the following additional submissions:

(a) It is stated that under Japanese Military Law there is no such thing as an order which is manifestly illegal and an inferior has therefore no option but to obey a superior's order.

(b) It is alleged that the Court should not have allowed the prosecution witnesses TOMIYAMA and IMAI to be treated by the prosecutor as hostile nor should an unsworn statement made by the latter in the absence of the accused have been admitted in evidence, since he subsequently swore that its contents were untrue. This is urged particularly on behalf of Capt OKUSAWA since it is alleged that the evidence of these two witnesses is the only evidence against him.

(c) On behalf of CHIBA it is urged that he cannot be said to have conspired with his officers and that he was prejudiced by the admission of certain evidence, showing that he had beaten prisoners of war although he was not charged with having done so.

5. (a) Although Japan did not sign the Geneva (Prisoners of War) Convention, 1929, she agreed to apply its provisions to British, Dominion and Indian Troops. In any event, Japan signed the Hague Convention 1907, which provides (Article 4 of the Regulations) that prisoners of war must be humanely treated. Further, it is clear from their insistence that the Indian prisoners in this case were not prisoners of war but HEIHO that the accused themselves knew that prisoners of war are entitled to better treatment than was in fact given to those Indians. The relevant portion of their petitions can only be described as impudent.

(b) There is no credible evidence that these Indians were in fact voluntary members of the HEIMO. Neither GOZAWA, who commanded the unit from its formation, nor any of the other accused could say when or how the Indians became HEIMO and the prosecution witnesses TOMIYAMA and IMAI both said (at times when they were not being treated as hostile) that the real HEIMO were the Indonesian members of the unit.

(c) It was not open to the accused on the first and second charges to plead that they acted in obedience to superior orders. The conduct with which they were charged, if proved, cannot be so justified. It is manifestly illegal and it is clear that the possibility of manifestly illegal orders must be recognised in any system of law.

(d) The question whether or not a witness may be treated as hostile is one for the discretion of the Court and can be raised on appeal only in very exceptional circumstances. I do not consider that the circumstances of the present case are exceptional, since the evidence of TOMIYAMA and IMAI is not such that its exclusion would destroy the case against any of the accused. I further advise that there was evidence upon which the Court could reasonably regard both these witnesses as hostile to the prosecution and that in the case of IMAI, section 3 of the Criminal Procedure Act 1865 was properly complied with. I would point out that the effect on IMAI's evidence of having made an unsworn statement, the contents of which he denied on oath at the trial, is to render negligible that portion of his evidence which refers to matters covered by the statement and generally to discredit him as a witness.

(e) When considering the findings of the Court, it must be borne in mind that the Court had the advantage of observing the demeanour of the accused. Taking this into consideration I advise on the individual findings and sentences as follows:-

- (1) Lt KAJINO and Sit Mai ONG. (4th and 6th accused). Although the court might well have convicted these men they found that there was no evidence of maltreatment of Indian troops directly attributable to them.
- (11) Capt GOZAWA and Lt NAKAMURA. (1st and 2nd accused). The court found that Capt GOZAWA as commandant of the prisoners of war camp was responsible for the maltreatment of Indian troops under his command and were justified in so finding. The objective evidence shows that the Indians were not in fact treated on a par with their guards; on the contrary they were starved, overworked ill-treated and neglected and GOZAWA must have been aware of this. There is clear evidence that Lt NAKAMURA took an active part in the beatings and both these accused were properly convicted of the first and third charges. On the second charge it is admitted that GOZAWA knew of the intended

execution of SHAFI and acquiesced in it and the evidence shows that NAKAMURA instigated it and carried it out. The execution of a prisoner of war without trial or even investigation on a charge of attempting to escape (or upon any of the other charges mentioned by the accused but of which no other evidence exists) is quite illegal and the consent of the Indian officers, assuming it to have been given, was irrelevant. The Court would have been justified in sentencing GOZAWA to death, but rightly or wrongly they regarded him as the tool of NAKAMURA. I advise that the petitions of both these accused be dismissed and the findings and sentences confirmed.

(iii) L/Cpl CHIBA (No.10). Evidence was given for the prosecution that

- (a) CHIBA reported SHAFI (who was subsequently executed) to NAKAMURA.
- (b) CHIBA assisted NAKAMURA to beat SHAFI.
- (c) CHIBA dug a grave for SHAFI before his execution.
- (d) CHIBA accompanied NAKAMURA at the execution.
- (e) CHIBA held the rope binding SHAFI's hands while he was executed.

CHIBA denies (a), (b), (c) and (e) but admits (d). Plainly, the court disbelieved his denials and concluded that, having prior knowledge of the execution, he took an active part in it. He was not charged with mere conspiracy and since it was shown that before and during the execution he so conducted himself as to manifest a common purpose, the gravamen of the charge against him was established. The fact that he was acting in obedience to orders, if such was the case, was no defence and since he was awarded a comparatively light sentence, it is clear that the court took a merciful view of his conduct. The evidence as to other beatings committed by him was not relied on by the prosecution against him, but was submitted on the 1st charge. Had that evidence against him been excluded, the court, in my opinion, must inevitably have arrived at the same finding. I advise that his petition be dismissed and the finding and sentence confirmed.

(iv) Capt OKUSAWA KEN (3rd accused). It may be that the medical stores and facilities were in short supply on the ship and in the camp, but Col O'DWYER, D.D. Hygiene HQ ALFSEA, made it quite clear in evidence that a great deal more could have been done, even without adequate modern medical supplies, to preserve health and to combat dysentery in particular. The U.S. officer who saw the camp in Sept 45 said that medical care for all practical purposes was non-existent and the statistical evidence supports this. Moreover, this accused under cross-examination revealed an attitude towards the prisoners consonant with the allegations made against him. I advise that the petition be dismissed and the finding and sentence confirmed.

(v) Sjt Mai TANNO, Sjt YABI, Cpl OSAKI and Cpl ASHIYA. (5th, 7th, 8th and 9th accused)
The court accepted the evidence of the prisoners of war who identified these accused as having brutally beaten several prisoners, there is no conclusive evidence that any death occurred as a direct result thereof, but I advise that the petitions be dismissed and the findings and sentences confirmed.

F. G. Davis

Brigadier,
D.J.A.G. Allied Land Forces, S.E.A.

FGTD/RAP