

CONFIDENTIAL.

No. 65025 JAG  
HQ Allied Land Forces,  
South East Asia Command.  
13th May, 1946.

Commander,  
32 Ind Inf Bde.  
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Subject: War Crimes Courts.

Reference the proceedings of the trial by  
Military Court of

(1) Sjt Major Hasegawa Sadao  
(2) Sup Pte Matsuda Osamu

of the Japanese Army.

1. The accused were tried by Military Court at Labuan on 12-15 April 46 on a charge for committing a war crime by being concerned in the unlawful killing of Ah Kim, a civilian resident of British Borneo. They were convicted. Accused 1 was sentenced to 15 years imprisonment and accused 2 to 3 years imprisonment.

2. The facts of the case are briefly as follows:-

In June 1945 Ah Kim a Chinese civilian was living in the village of Kinarut about 12 miles from Papar in North Borneo. Prior to the Japanese occupation he had been employed as a detective in the British police force. On 30 June 1945, on the orders of accused 1, accused 2 and another Japanese soldier went to Kinarut, arrested Ah Kim and took him to the Kempeitai HQ at Papar. The following day accused 1 gave orders that Ah Kim was to be executed and the two accused together with a third Japanese soldier, Cpl Nishida, went to a spot about a mile from Kempeitai HQ and there dug a grave. On the 2 July 45 owing to Ah Kim's illness a buffalo was obtained to transport him to the place of execution. The two accused and Nishida took him to the place where the grave had been dug and blindfolded him. Nishida thereupon executed him by bayonetting in the presence of the accused. Ah Kim was buried and the Japanese returned to the Kempeitai HQ.

3. In their defence both accused gave evidence and admitted the facts as alleged by the prosecution. Accused 1 said that the Kempeitai chief at Jesselton, Captain Harada, gave him clear and explicit orders to the effect that an Allied landing at Papar was expected and anyone discovered to be a danger to the security of the Japanese forces should be put to death. Captain Harada mentioned the name of Ah Kim, stating that he was an Allied fifth columnist and should be arrested and executed. Furthermore, the execution should be carried out quietly by bayonetting instead of by shooting. Accused 1 said he told Harada that Ah Kim was ill but Harada nevertheless ordered the execution to take place. Accordingly he, accused 1, carried out the orders of Harada without further question. Accused 2 admitted the arrest of Ah Kim and being present at the execution. He said he acted entirely under the orders of accused 1 and had no alternative but to obey.

4. A petition against the finding and sentence of the Court has been submitted on behalf of both accused. It repeats the substance of the defence and again affirms that the original order for the execution of Ah Kim came from Capt Harada and pleads the inability of the accused to question its legality or do otherwise than comply. It is suggested that the accused being in no position to exercise any discretion should be relieved of all responsibility for the crime.

Finally the petition suggests that at the preliminary investigation the accused were induced to make full confessions on the promise that they would be repatriated at an early date. It is submitted that these confessions were not voluntary and were therefore inadmissible in evidence. Ignorance of English law and procedure on the part of the defending officer is pleaded as an excuse for not raising this matter at the trial.

A further petition by Col Machiguchi, the Comd M.P. 37 Army, is attached in which he accepts responsibility for all acts of the MP in North Borneo and pleads that the accused should not be punished as criminals.

5. The evidence for the prosecution as to the arrest and execution of Ah Kim consisted entirely of the admissions of the accused themselves and there is no doubt that Ah Kim was put to death without trial. It is clear that both accused having received orders from their superiors obeyed them without question and whilst obedience to superior orders is not a defence, it may constitute a mitigating circumstance. This was undoubtedly taken into consideration by the Court when awarding sentence. The suggestion of the defending officer as to the inadmissibility of the accused's pre-trial confessions appears to be a last attempt to defeat the ends of justice. The liability of the accused was fully established at the trial and this suggestion, ~~is~~ far from assisting the accused, tends to destroy whatever favourable impression they may have created by their frankness in the witness box. I advise that the findings and sentences be confirmed and the petition dismissed.

6. It is not clear why Capt Harada was not charged. He gave evidence for the defence and made a plea in mitigation on behalf of the accused, in both of which he admitted giving the original orders for the execution of Ah Kim and in fact accepted full responsibility for the whole matter.

*D. J. A. G.*

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

FGTD/RAP