

Singapore Cases - Details of Trial Records

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Singapore Cases: No. 235/ 963
Ishida Case

Accused: (1) Lt/Gen. ISHIDA Eiguma
(2) Col. NAKAMURA Shigeo
(3) Col. ISHII Tamie
(4) Lt/Col. YANAGITA Shoichi
(5) Major. CHIDA Sotomatsu
of the Imperial Japanese Army

Place and Date of Trial: Singapore, 21-25, 28, 31 October; 1,
7-8, 12-15, 18-21, 25-27
November; and 2-3 December 1946

Finding and Sentence:

Accused Charge - Not guilty Charge - Guilty Sentence
1 1st, 4th charges 2nd, 3rd charges 10 years imprisonment
2 - 1st, 2nd, 3rd, 4th charges Death by Hanging
3 - 1st, 2nd, 3rd, 4th, 5th, 7th (w/ exception) charges Death by
Hanging
4 - 1st, 2nd, 3rd, 4th, 6th charges 20 years imprisonment
5 - 1st, 2nd, 3rd, 4th, 8th (w/ exception) charges 10 years
imprisonment remitted to 5 years imprisonment

Exceptions: 1) 7th charge: Accused 3 found Guilty with the
exception that the dates should be read 1st day of Dec 44 and
the 28th of Feb 45 and the words "resulting in the deaths of 20
Prisoners of War and physical injury to several others."
2) 8th charge: Accused 5 found Guilty with the exception of
the words "resulting in the deaths of approximately 104
Prisoners of War and physical injury to many others."
There is no printed sentence and finding that exists.

Charges: 1st charge: (Against all the accused)
Committing a War Crime in that they between 1st October
1942 and the 1st August 1944 while engaged in the
administration of the British, Australian and Dutch Prisoners
of War employed in the construction and maintenance of the
Burma-Siam Railway were, in violation of the laws and
usages of war, concerned in the inhumane treatment of the
said Prisoners of War resulting in the deaths of many of the
said Prisoners of War and physical suffering by many others
of the said Prisoners of War.

2nd charge: (Against all the accused)
Committing a War Crime in that they between the 1st October
1942 and the 1st August 1944 were, in violation of the laws
and usages of war, concerned in the employment of the labour
of British, Australian and Dutch Prisoners of War in work

having connection with the operation of the War that is to say the construction and maintenance of a railway from NONG PLADUK to THANBYUZAYAT (commonly known as the BURMA-SIAM Railway) for the purpose of transporting supplies and munitions to the Japanese Forces fighting in BURMA.

3rd charge: (Against all the accused)

Committing a War Crime in that they between the 1st October 1942 and the 1st August 1944 while engaged in the administration of British, Australian and Dutch Prisoners of War employed in the construction and maintenance of the Burma-Siam Railway were, in violation of the laws and usages of war, concerned in the employment of the labour of the said Prisoners of War in work which was excessive having regard to the rank and capacity of the said Prisoners of War.

4th charge: (Against all the accused)

Committing a War Crime in that they between the 1st October 1942 and the 1st August 1944 while engaged in the administration of British, Australian and Dutch Prisoners of War employed in the construction and maintenance of the BURMA-SIAM Railway were, in violation of the laws and usages of war, concerned in the internment of the said Prisoners of War in conditions which were unhealthy and unhygienic.

5th charge: (Against accused 3 only)

Committing a War Crime in that he at TARSAO Prisoner of War Camp in Siam on a date between 1st August 1943 and 1st December 1943, when engaged in the administration of Prisoners of War employed in the construction of the BURMA-SIAM Railway was, concerned in the killing of Pte. HILTON of the Sherwood Foresters, British Prisoner of War.

6th charge: (Against accused 4 only)

Committing a War Crime in that he at CHUNGKAI Prisoner of War Camp in SIAM on or about the 27th day of March 1943 when engaged in the administration of Prisoners of War employed in the construction of the BURMA-SIAM Railway, was, in violation of the laws and usages of war, concerned in the killing of Sgt. KELLY, of the R.A.M.C., Sgt REAY and Fusilier KENCALLY-TIMOTHY both of the Royal Northumberland Fusiliers, and Pte. FITZGERALD of the R.A.O.C., British Prisoners of War.

7th charge: (Against accused 3 only)

Committing a War Crime in that he in SIAM between the 1st day of August 1944 and the 28th day of February 1945, when in command of a group of Prisoners of War, was, in violation of the laws and usages of war, concerned in the employment of British, Australian and Dutch Prisoners of War at TAMAKAN Camp in work having connection with the operation of the way that is to say:-

- (i) The maintenance and working of the BURMA-SIAM Railway for the purpose of transporting munitions and supplies to the Japanese Fighting Forces
- (ii) The handling and loading of the munitions and supplies aforesaid.
- (iii) The preparation of A.A. Gun emplacements.

Thereby exposing them to aerial bombardment resulting in the deaths of 20 Prisoners of War and physical injury to several others.

8th charge: (Against Accused 5 only)

Committing a War Crime in that he in SIAM between the 1st day of August 1944 and the 4th day of December 1944, when in command of a group of Prisoners of War, was, in violation of the laws and usages of war, concerned in the deployment of British, Australian and Dutch Prisoners of War at NONG PLADUK No. 1 Camp in work having connection with the operation of the War that is to say:-

- (i) The maintenance and working of the BURMA-SIAM Railway for the purpose of transporting munitions and supplies to the Japanese Fighting Forces.
- (ii) The handling and loading of the munitions and supplies aforesaid.

Thereby exposing them to aerial bombardment resulting in the deaths of approximately 104 Prisoners of War and physical injury to many others.

Facts relating to the charge: The facts of the case in relation to the first four charges are as follows:-

Japanese Imperial Headquarters decided in early 1942 that a railway was to be built linking the existing railways from Bangkok to Singapore and Ye to Rangoon so that there would be a continuous line running through Burma, Siam and Malaya. The work was planned to begin in June 1942. Japanese Engineer officers advised that the work would take 5-6 years but Japanese HQ at Tokyo ordered the line to be completed within 18 months, which is by the end of 1943.

Owing to many difficulties, actual work on the railway was not begun until November 1942, when working parties began at both junctions of the proposed line at Burma and in Siam, working inwards. The total length of line was to be 415 kilometres.

By reason of deterioration in the military position in early 1943, the need for a supply line to the Japanese fighting forces in Burma became more urgent and in Feb an order came from Tokyo insisting that the railway be completed by August 1943. Between February and July (when the order was modified by the grant of an extension of 2 months) is the period known as 'Speedo'. Completion of the rail laying took

place on 17 October 1943 when the working parties met at KONQUITA. The railway had been built in 11 months.

A large coolie force had been recruited for the task but was thought to be unsatisfactory and Field Marshal Terauchi commanding the Southern Army, under whose command the railway project was to be carried out, suggested to Imperial General HQ that POW also be employed. This was approved and the use of POW sanctioned by I.G.H.

The number of prisoners employed is estimated at 50,000. They were divided into 6 groups or branches, a section of line being allotted to each group. Groups 3 and 5 worked on the Burma side and do not enter greatly into the present case. Groups 1, 2, 4 and 6, made up of British, Dutch and Australians, worked on the Siam sector. Group 6 existed independently only from January to November 1943 when it merged with Group 1.

The labour forces were divided into 3 parties, one to clear the jungle, one to construct embankments and bridges, and the third to lay sleepers and rails. After the completion of the railway, large forces of POW were retained in camps along the line for maintenance.

Responsibility in relation to the railway was divided as follows:-

Planning and direction at high level were the province of I.G.H. and Southern Army. Responsible to Southern Army for construction was the Southern Army Railway Unit, which commanded No. 2 Railway Brigade, actually responsible for construction. This Brigade comprised the 5th and 9th Railway Regiments, the 5th regiment being responsible for construction in Burma and the 9th for that in Siam.

The Siam POW Administration controlled the administration of POW and was responsible for A and Q matters. Groups 1, 2, 4 and 6 and the camps controlled by those groups were under the command of this Administration which in its turn was under the command of the Railway Unit, which was limited to direction of employment of POW. There was no power in the Railway Unit to administer the POW camps.

The 1st accused commanded the Railway Unit from 14 August 1943 until March 1944. At this date, he took another command but retained responsibility for a general direction of the railway. The 2nd accused was Commander of the Siam POW Administration from 20 June 1943 until 24 July 1944.

The 3rd accused was commander of the following groups at the following dates:-

No. 1 group Oct 1942 - 20 Jan 1943

No. 4 group Mar 1943 - Nov 1943

No. 3 group Nov 1943 - Mar 1944

No. 2 group Dec 1944 - Aug 1945

The 4th accused was commander of the following groups at the following dates:-

No. 1 group Aug 1942 - Oct 1942

No. 4 group Oct 1942 - Mar 1943

No. 1 group Mar 1943 - Aug 1945

The Prosecution examined 7 witnesses as to the facts and produced over 70 affidavits, establishing that:-

(a) Munitions, petrol and similar supplies were carried on the railway and POWs were employed in loading them.

(b) Accommodation in the camps was generally insufficient. Huts were not weather proof and were made of attap with continuous bamboo sleeping platforms. In monsoon periods, camps were seas of mud.

(c) Food was generally inadequate, more particularly in the interior. What food there was lacked necessary vitamins, was unbalanced and could not maintain health in Europeans.

(d) Clothing was rarely issued. The majority of prisoners were forced to go about naked except for a loincloth. Absence of adequate footwear and trousers caused scratches which, developing into tropical ulcers, often necessitated amputation and sometimes caused death.

(e) POWs were grossly overworked and in some camps, officers were made to work like coolies. A weekly task was set which had to be completed irrespective of men falling sick or other circumstances. In some cases men were overworked into the night to finish the task.

(f) Diseases, particularly deficiency diseases, were rife. Malaria was endemic in most camps and cholera outbreaks occurred. Coolie camps were placed in close proximity to POW camps so that often the water supply, common to both camps, was fouled before it reached the POWs.

(g) The sick were neglected and, in some cases, brutally treated. Normally only a certain percentage of amp strength was excused work from sickness. If this number was exceeded on any one day, the surplus sick men nevertheless had to work, despite protests from POW Doctors. The issue of Medical supplies was short. Officially, the issue to POW was to be one third of the scale for Japanese forces, but issues were irregular and often fell short of the scale. Reasonable medical facilities would have avoided many deaths and amputations. It was sometimes possible to buy medical stores in nearby villages and this was occasionally permitted.

(h) Latrines were filthy, normally consisting of a shallow open trench with cross slats of bamboo. In heavy rain they overflowed and filth was washed through the camp.

(i) POWs were frequently beaten by Japanese officers, N.C.Os, Private Soldiers and Korean guards.

According to the Japanese Government Report on the Burma-Siam Railway, the number of POW who died, between Oct 42 and Aug 44, while engaged on the work, was 7,738. It appears from the evidence that the actual death rate between Oct 42 and Aug 44 was higher than the Japanese figure but since

there was no unequivocal Prosecution evidence as to the number of deaths within the stated period, the Japanese Report was not refuted.

The 1st accused did not take over his command until the end of the 'Speedo' period in August, when conditions of work and living were at their worst and the death rate was highest. The evidence, however, showed that there was no noticeable improvement in working conditions until after the completion of the railway in October 1943.

The evidence showed that the 2nd accused, as Commander Siam POW Administration was fully responsible for the well-being of the POW and that it was within his power and that of his group commanders to refuse to allow POWs to work for good reasons. Normally the number of prisoners who worked each day was decided by arrangements between the Commander POW Group or Camp and the Railway Regimental Commander or his officers, but it is clearly established that the power to withhold POWs for good reason was vested in the Siam POW Administration and the subordinate Camp Commanders.

The 3rd, 4th and 5th accused, were Group Commanders and they appeared to have known of the conditions under which POW were forced to live. The 3rd accused seems to have done nothing whatsoever. The 4th accused held conferences with POW Commanders apparently for the purpose of improving conditions, and there is evidence that the 5th accused whilst very much under the influence of his officers made real efforts to help the POWs. Identification of all the accused was satisfactorily established by witnesses and photographs.

The facts in relation to the remaining 4 charges are as follows:-

- (a) On or about 15 November 1943 at Tarao Camp, a POW Pte. Hilton while on a working party was involved in a fight with a guard. He was confined in the guard room, regularly beaten and so tied that he had to be led about like a dog. On 30 Nov, a form of trial was held, in Hilton's absence, at which a POW officer was asked a number of questions. The matter was referred to the 3rd accused, who ordered Hilton to be shot. The execution was duly carried out.
- (b) In or about February 1943, four British POWs escaped from Takalin Camp. They were recaptured in March and taken to Chungkai where, after a personal investigation, the 4th accused ordered them to be shot without trial. They were executed on 27 March 1943.
- (c) The 7th charge, against the 3rd accused only, deals with the period 1 Aug until 28 Feb 45. In fact the evidence showed that this accused did not take command of No. 2 Group until 1 Dec. The HQ camp of this group at Tamakan was situated close to the railway, near bridges and two AA batteries. The

few slit trenches in existence were dilapidated and inadequate. There was some evidence that POWs were engaged in the improper work set out in the charge between 1 Dec and 28 Feb but insufficient to prove the deaths and injuries averred. (d) In the 8th charge against the 5th accused only, the charge averred that the accused was in command of Nong Pladuk No. 1 Camp from 1 August 1944 until 4 December 1944, that the camp was situated very close to the railway line and that POWs were employed in the working of the line. Prosecution evidence was insufficient to establish beyond reasonable doubt that the accused took over this command before 1 Sept, at which date it was not possible for him to have taken steps to build adequate air raid protection before the Allied air raid on 6 September. Representations were made by this accused to his superior officer to remove the camp, but this was not permitted. The evidence was insufficient to prove that the deaths and injuries resulting from the raid were the responsibility of this accused.

Accused handling of the charges: The accused denied responsibility for the welfare of the POWs, and claimed that they did all in their power to improve the conditions of the POWs.

Main issues of the case raised by prosecution and defence:

Due to the length and complexity of this case, I will be handling the arguments and issues of the prosecution and defence separately.

Defence:

1) Rank of accused

The defence argued that the accused, in spite of their ranks, were only the "small cogs of a huge wheel", the Imperial Japanese military hierarchy. They were nobodies to stop the working of this huge wheel. They said that they were poor, puny delinquents if at all, who were misled by those who should have taught them by their huge power and the rigidity of their military machine. They were the innocent agents of parties who may well be guilty.

The defence warned that in a case such as this one there was a chance of losing the sense of proportion. For example, Accused 1, at the relevant period, was responsible for the construction of a railway employing about 60,000 POWs as well as many more coolies and Japanese. The other accused were at various time responsible for the administration of groups, each having about 10,000 POWs spread over a length of 60 miles, and it would be unfair to cross-examine them as if they were company orderly sergeants. The defence requested that the court judge them not as work foremen, or company orderly sergeants, but as officers having most extensive and difficult commands, with the entire multifarious duties incident on such command.

2) Evidence

The defence argued that all witnesses must give their evidence in open Court and that such evidence be tested by cross-examination. They stressed the importance of the presence of the accused, the cross-examination and the demeanour of the witness to help weigh evidence. The defence argued that when evidence was produced by affidavit, then all these things were missing. They argued that they gave the prosecution the chance to elicit the whole truth by cross-examination, but such opportunity was denied to the defence though they needed it more than the prosecution. The defence submitted that though the law made such documents of affidavit admissible, the court could still refuse to attach any importance to them.

The defence cited the affidavit of Capt. Evans as an example, and argued that there was ambiguity in this piece of evidence. The defence said that it could take the court one by one through all the affidavits, and prove that it was not one or two but in almost all that witnesses had abrogated to themselves the functions of the court. There were many of them who had fixed responsibilities on one or the other of the accused. Such opinions on questions, which the court had to decide, were not only irrelevant but more reprehensible. The defence requested that the court bear this in mind when they were weighing the affidavits.

They also argued that clarity of thought necessary in all judicial proceedings was missing in most of the evidence produced. An example given was in the use of the word "Japanese" without saying who exactly they were referring to. They argued that such loose use of language had occurred both in the affidavits as well as the statements made in this court, and the defence requested that they bear this in mind while interpreting any particular piece of evidence.

3) Aims of Japanese

The defence brought up Japanese aims with regards to the Burma-Siam railway. They submitted that the railway was started for commercial and political purposes, and only became involved in military purposes later due to the change in the war situation, when the Japanese needed it for military transport. They submitted that therefore the court should presume that it was constructed for military purposes, and therefore charge 2 was not a violation of the laws and usages of war. Because it was initially constructed for commercial and political purposes, the use of Prisoners of War labour was sanctioned. There was nothing wrong with this as either Prisoners of War could and had always been used for commercial exploitation. The defence also mentioned the inadvisability of giving a finding with regards to charge 2 at this stage when a similar issue was pending before the international tribunal in Tokio.

4) Actions according to superior's orders

The defence argued that the trial was illegal. They argued that

the prosecution claimed that the accused were jointly and severally responsible for the various things on the doctrine of concerted action. However, the defence argued that there was no concerted action by the accused. The common task of constructing the Burma-Siam Railway was beyond the power of the accused and they were only acting on superior's orders. It was an order from Tokio passed down various channels. Therefore their cooperation in the construction of this railway was the result of orders, not that of coming to an agreement as a result of mutual communication of opinion. The defence's submission was that this cooperation was not in the construction of the railway. Even if the court considered that they did cooperate in the construction of the railway, the defence made the submission that this cooperation was the result not of concerted action, but that of superior orders. The final submission was that the court gives a finding that the whole trial had been illegally held.

5) Each of the respective charges

The defence argued according to each of the charges.

For Charges 1-4, the defence was:

- a) Articles 4, 6 and 7 of the Hague Convention and Article 1 of the Wounded and Sick Convention brought up by the prosecution were refuted. These articles said that the POWs were in the power of the hostile Government and not that of individuals, and such Government was charged with their maintenance, the provision of rations, quarters, and clothing. This meant that the care and maintenance of prisoners was such a stupendous responsibility that no individual, however big he may be, could properly discharge it. Hence they submitted that in view of these express provisions of law, the prosecution case, so far as it relates to non-maintenance, or improper maintenance of POWs, must fall. The prosecution had not proved that there was any duty on the accused to provide maintenance. There being no duty, there was no dereliction.
- b) The defence also argued that the accused made efforts to improve the lots of the POWs. These efforts may not have achieved much, but this definitely contradicts the theory that the accused could have ordered that the POWs be improperly maintained. The defence had been given evidence of the great effort made by the accused.
- c) The defence admitted that the conditions were bad, but this was more due to natural causes than anything else. There was no food and shelter locally available, and there was overcrowding. The circumstances under which the accused were sent to look after the health and welfare of these prisoners were extremely bad, and could not be helped.
- d) The defence argued that there was no evidence at all that the accused personally participated in any acts of brutality. There was also other ambiguous evidence which they submitted should not be trusted. There was also no evidence anywhere that the accused gave any orders about working conditions or actual brutalities.

e) The accused were not in a position to exercise control. With regards to superiors, the defence argued that a superior was liable for the wrongful acts of his inferior only if he either ordered such acts or knew such acts ratified them. There was no evidence that the accused ever ordered any of the undesirable working conditions, or they ever knew of them.

For charges 5-6, the defence was:

- a) For Charges 5-6, it was argued that this shooting of the prisoners-of-war was done under superior orders and was a perfectly legal punishment for the offence that these prisoners had committed.
- b) The defence argued that there were international laws that the prosecution brought up as violated by the accused, but these international laws were only applicable if it had been ratified by the state. If a state did not ratify any international law the subjects of that state should not be bound to follow it. The defence argued that the Japanese Government deliberately departed from these conventions by issuing penal laws, and their argument was that the Japanese Government by departing from these international regulations and laying this line of conduct for their subjects made this binding on them and absolved them from their duty to obey the earlier international conventions. And so far as these laws are concerned, the person who was concerned in those things - escaping or trying to escape - was liable for capital punishment.
- c) Actions according to superior's orders was also argued, with regards to General Sasa, and the defence argued that it was not an arbitrary order, and it was a legal order in accordance with Japanese laws.

For charges 7-8, the defence was:

- a) The defence argued that if the use of prisoners of war was not illegal, then whatever the results that followed from this, the accused were not responsible for. If in using the prisoners in a perfectly legal way the prisoners were subject to certain things, this was damage without an injury. Therefore the responsibility for the illegal use of these prisoners rested with persons who were not before the Court now, and they must be held responsible for the consequences also. The people before the court therefore, were not responsible.
- b) They also argued that the consequences that the Prosecution alleged followed from this illegal work did not actually follow from this, but followed from the situation of the camps. The situation of the camps was beyond the control of all the accused involved.

Prosecution:

1) Tokio Trial

The prosecution argued against the defence's claim that the employment of POWs in the construction of the Railway was in itself a War Crime, was before the International Tribunal sitting at Tokio, and therefore the finding should be deferred

until the decision of this International Tribunal had been published. The prosecution argued that the Court had no knowledge that this particular question was before the Tribunal in Tokyo, but even if it had, there would be no reason to shirk their responsibility.

2) Form of Charge Sheet

The prosecution argued against the submission that the first charge overlapped the third and fourth charge, and for this reason the Charge Sheet may be invalid. In the prosecution's view, the Charges did not overlap and even if they did, it would not render the charge sheet unsound in Law. The prosecution cited an example of another similar case to prove his point that counts or charges which may on the face of them appeared to overlap could frequently be justified by an explanation of facts.

3) Extent of involvement

The prosecution submitted that their meaning of "concerned" was simply that the accused had some part in the commission of the crime. He cited a simple example to illustrate the principles governing joint criminal responsibility. The conclusion to the example showed that all of them were together concerned in the commission of an unlawful act and were all jointly guilty. Therefore the prosecution were making the point that all the accused involved in the various alleged charges were guilty as prosecuted.

4) Power of Hostile Government

The defence made a point that Prisoners of War were in the power of the Hostile Government, but not of the individuals or corps who captured them. The prosecution argued that this submission was against the defence in respect of certain charges in as much as the intention is that Prisoners of War should not be subject to the arbitrary powers of commanders in the field. The laws and usages of war were clearly defined and were to be observed by all members of belligerent forces. One of these laws was that POWs must be humanely treated and the onus to do so was thrown upon every member of the belligerent force. The prosecution argued that if a belligerent omitted to do something which humane treatment required him to do, and it was within his power to do that something, he undoubtedly committed a war crime.

The prosecution's case against these accused was founded both on positive acts of inhumane treatment and on failure to do things which humanity demanded and which it was within their power to do so. The prosecution agreed that the accused could not be held responsible for conditions and shortcomings which were beyond their power to remedy, but they had had ample evidence that there was much which they could have done, should have done, but failed to do. They cited food as an example to prove this point.

5) Criminal Responsibility

The prosecution argued that there was a high degree of negligence involved in this case. They submitted that the defence's definition of responsibility for the acts of subordinates was too narrow, and according to the prosecution's definition, the accused were much more responsible than the defence argued.

D.J.A.G.'s review: In the D.J.A.G.'s review, he found that the findings on all the charges were legal and with the exception of the 5th accused, the sentences were reasonable. The evidence showed that Accused 5 had sincerely done all in his power, and, according to his lights, all that was possible. He was culpable in that he permitted himself to be deceived by his junior officers who ill-used the POWs by virtue of their too great authority. He suggested that five years of his sentence be remitted, which it was.

With regard to Accused 2, the D.J.A.G. submitted that the court sentenced him to death but recommended him to mercy for taking disciplinary action against one of his officers who had shot a POW. A number of representations had been made by friends and dependents of this accused, eulogizing his exemplary character. The evidence showed, however, that he paid little regard to the promptings of his exemplary self, if it existed, and there was no reason why, since the Court had power to award any suitable sentence, the death sentence should not stand.

[back to top](#)

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