

CASE No. 15

Trial of PETER BACK

UNITED STATES MILITARY COMMISSION, AHRWEILER, GERMANY. 16TH JUNE, 1945

A. OUTLINE OF THE PROCEEDINGS

It was charged that Peter Back, a German civilian, "did, at or near Preist, Germany, on or about 15th August, 1944, violate the laws and usages of war by wilfully, deliberately and feloniously killing an American airman, name and rank unknown, a member of the Allied Forces, who had parachuted to earth at said time and place in hostile territory and was then without any means of defence." He pleaded not guilty.

It was shown that the accused had shot an unarmed airman who had been forced to descend by parachute on to German territory. The Commission passed a sentence of death. The Army Judge Advocate recommended that the sentence be approved, but execution stayed pending further orders.

B. NOTES ON THE CASE

1. LEGAL BASIS OF THE COMMISSION

Like the last trial, the present proceedings were held by virtue of powers redelegated by the Commanding General, 12th Army Group, in this instance to the Commanding General, 15th United States Army.

2. THE NATURE OF THE OFFENCE

The accused was charged with "wilfully, deliberately and feloniously killing" an American airman; this phraseology is in part reminiscent of that used in the charge in the *Jaluit Atoll Case*,⁽¹⁾ and approximates to the definition of murder in United States Law as "the unlawful killing of a human being with malice aforethought."

The accused admitted the killing, but pleaded that he committed it on the "spur of the moment," and that he had no intention of killing. Nevertheless, the Commission found him guilty of a deliberate killing. In this connection, it must be remembered that in United States Law (as in English Law) it is not necessary that the intention to kill "should have been conceived for any particular period of time. It is as much premeditation if it entered into the mind of the guilty agent a moment before the act as if it entered ten years before."⁽²⁾ In the words of another authority, "a man who wantonly, intentionally and violently kills another shows by that act, not indeed the existence of hatred of long standing, but the existence of deadly hatred, instantly conceived and executed; which is at least as bad, if not worse. This, in the strict sense of the words, is malice aforethought," though "not long aforethought."⁽³⁾ In this case, the rapidity with which the execution followed the forming of the intent did not reduce the degree of the crime, which was treated as murder.

⁽¹⁾ See Volume I of this series, pp. 71-80.

⁽²⁾ Wharton, *Criminal Law*, 12th Edition, Volume I, Sec. 507.

⁽³⁾ Stephen, *Digest of Criminal Law*, 5th Edition, Art. 244 (a).

A subsequent assault by two others, hastening the death of the victim, did not relieve Back of guilt. "Liability for homicide does not depend upon the fact that death is the immediate consequence of the injury inflicted by the accused. One who inflicts an injury is deemed by the law to be guilty of homicide if the injury contributes to the death. If two persons inflict wounds at different times . . . (and) if at the moment of death it can be said that both injuries are contributing thereto, the responsibility rests on both actors. In such cases the law does not measure the effects of the several injuries in order to determine which contributed in greater degree to bring about the death."⁽¹⁾

The accused was a civilian, and his conviction is further proof that civilians as well as combatants are liable to be brought before war crimes tribunals accused of breach of the laws and usages of war.⁽²⁾

3. MADNESS AS A DEFENCE

There was some evidence that the accused was known at times to act without thinking, but the report of a neuro-psychiatrist, who examined him a few days before the trial, stated that he was sane. The entry of this latter evidence is an interesting indication that the defence that madness deprived the accused of the requisite *mens rea* might have been considered admissible in a war crime trial had it been put forward.

⁽¹⁾ *American Jurisprudence*, Homicide, Sec. 48.

⁽²⁾ See also Volume I of this series, pp. 53-4 and 103.