

BM/JAG/65143,
General Headquarters,
South East Asia Land Forces.
13th February, 1947.

Commander,
Singapore District.

Subject:- War Crimes Trial

Reference the attached proceedings of the trial of

- (1) Maj. IKEGAMI Tomoyuki.
- (2) Lt. TAKAHASHI Yoichi.
- (3) Lt. TAKAHASHI Tatsuo.
- (4) 2/Lt. MIYOSHI Ren.
- (5) 2/Lt. HISANO Jun.
- (6) Cpl. TAKAHASHI Takeshi.

all of the Imperial Japanese Army, and the attached petition.

1. The accused were tried by Military Court at Singapore on 19 Nov - 2 Dec '46 on the charges set out in the charge-sheet attached to the proceedings. The findings and sentences were as follows:-

<u>Accused</u>	<u>Charge</u>	<u>Finding</u>	<u>Sentence</u>
1. Maj. IKEGAMI {	1	Guilty) Death by Hanging.
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2. Lt. TAKAHASHI.	1	"	10 years Imprisonment.
3. Lt. TAKAHASHI.	1	"	" "
4. 2/Lt. MIYOSHI.	1	"	" "
5. 2/Lt. HISANO.	1	"	" "
6. Cpl. TAKAHASHI.	1	"	5 years Imprisonment.

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

In June 1945 there was at LUTONG, SARAWAK, a Unit known as ROMU TAI, or Special Labour Unit, composed of Indians, who were originally Prisoners of War, but who had sworn allegiance to the Japanese. They were subject to regulations placing them in the same position as Japanese troops in matters of discipline, and were not regarded as Prisoners of War. They were officered by their own Indian officers, but Japanese Liaison officers and Instructors were attached to them. At LUTONG they were employed on work in the oilfield and in guarding the oilfield. There was no P.W. camp in the vicinity of MIRI/LUTONG.

On 10 June, in consequence of Allied landings in other parts of Borneo and the imminent threat of a landing in the MIRI

area, all Japanese forces in the MIRI area were regrouped and deployed for operations. A conference was held that day by Col. AIKYO, (sometimes referred to in the transcript as Col. IKO), Commander, MIRI Area, who appointed the first accused, Maj. IKEGAMI Commander LUTONG Area, and placed under his command a group of small units, including the ROMU TAI; this group was constituted as a single Unit styled IKEGAMI Unit. The IKEGAMI Unit was ordered to act independently, and Maj. IKEGAMI, as independent commander, was specifically authorised to inflict "severe punishment on violators of military law.

The 2nd, 3rd, 4th and 5th accused were technical officers engaged in oil production at the LUTONG oilfield, and the 6th accused was a quartermaster employed there. On 10 June '45 they all came under command of the IKEGAMI Unit, pursuant to the order of Col. AIKYO.

On that day Allied warships appeared in LUTONG Bay and the IKEGAMI Unit commenced withdrawal from LUTONG in order to take up defensive positions in the jungle. From then onwards the Allies maintained naval and air bombardment of the area around LUTONG and landed parachutists, who led bands of local guerrillas in harassing the Japanese.

On 18 June, while the withdrawal of the IKEGAMI Unit was still in progress, Maj. IKEGAMI received a report that 5 suspicious Indians had been arrested near LUTONG bridge, which was a local outpost, while attempting egress from the Japanese lines. A Japanese officer who had conducted a preliminary investigation reported that the 5 Indians were members of the ROMU TAI and were in possession of "secret" gas masks and a lot of military clothing. A little later Maj. IKEGAMI personally visited the suspects and conducted an investigation. In addition to the articles mentioned in the report to him, he found in the possession of the Indians a secret map of the MIRI area, showing locations of Japanese units, with their strengths and main arms. He interrogated them in Japanese and English (by interpretation), but they refused to answer. Having satisfied himself that they were members of the ROMU TAI, under his command, who had in the face of the enemy conspired to desert to the enemy with secret information and equipment, and that they had been engaged in espionage activity, he issued an operational order for their execution. The execution was carried out at 1830 hrs that day.

Up to 21 June, 28 members of the ROMU TAI had deserted, and subsequent to their desertion it became apparent that the Allies had acquired information of Japanese dispositions. On 24 June the Allies carried out a direct air attack on the IKEGAMI Unit in the jungle. On 26 June 11 more members of the ROMU TAI deserted; but they were recaptured that evening. This was reported to Maj. IKEGAMI by the 2nd accused, Lt. TAKAHASHI Yoichi, who had been attached to the ROMU TAI from 15 June. The 2nd accused also reported that secret documents had been lost on 25 June and concealed rations and other military goods had been found; and that his investigations revealed that the 11 Indian deserters were responsible for the loss of the documents and the concealment of the stores. The following morning, at 0500 hrs, Maj. IKEGAMI personally investigated the case and interrogated the 11 deserters. As the result of this he was satisfied that they had, in the face of the enemy, planned together to desert to the enemy,

that they had stolen confidential documents and had engaged in espionage activities, and that they had stolen and hidden military goods. He decided to execute them and informed them accordingly. At 0930 that morning a number of officers and other ranks reported to his HQ on liaison visits and to receive instructions. Among these were accused No. 2 to 6, all of whom, except accused No. 2, had no previous knowledge of the desertion of the Indians. Having dealt with routine matters, Maj. IKEGAMI assembled the 9 persons present and issued an operational order for the execution of the 11 members of the ROMU TAI, explaining the grounds for the order, and that the order was issued by virtue of the authority vested in him as independent commander and was the equivalent of a judgement of a Court Martial. Accordingly at 1030 hrs that morning, the execution was carried out, all the accused participating in it. The military situation at the time was that the Allies had already landed at LUTONG on 20 June and the IKEGAMI Unit was subjected to continual bombardment and surrounded in the jungle, without any possible means of communication with JESSELTON, which was the location of the Court Martial of 37 Army HQ.

A Japanese legal expert gave evidence of the Japanese Military penal code, which provides for the death penalty for desertion, conspiracy to desert or intention to desert; and which authorises a commander to take any unavoidable measures to maintain military discipline while in action against heavy odds.

3. The defence did not dispute the facts of the case, in fact the evidence before the Court was almost entirely derived from statements of the accused before trial and their evidence at the trial. The arguments in defence were as follows:-

(a) as regards the 1st accused, Maj. IKEGAMI -

- (i) that the Indians who were executed were not Prisoners of War, but had the status of Japanese soldiers and were subject to Japanese military law;
- (ii) that they had committed serious offences, for which they were liable to capital punishment under Japanese military law;
- (iii) that the method of investigating and disposing of the 2 cases and the imposition of the death penalty on all 16 of the Indians was justified according to Japanese military law, in view of the situation then existing and the authority specifically conferred on Maj. IKEGAMI by Col. AIKYO;
- (iv) that even if in fact the Indians had the status of Prisoners of War, he was unaware of this fact and acted in the bona fide belief that they had the status of Japanese soldiers and were subject to Japanese military law.

(b) as regards the other 5 accused -

- (i) that as Maj. IKEGAMI's action was not blameworthy, a fortiori the act of these 5 accused in carrying out his order did not involve them in criminal responsibility.

(ii) in the alternative, that they were carrying out an order that was apparently lawful, and cannot be held criminally responsible if, due to facts unknown to them, i.e. PW status of the Indians, it was in fact an unlawful command.

4. A petition was submitted to you on behalf of all the accused, inviting your attention to the arguments in the defence closing address; and asking clemency for Maj. IKEGAMI on account of his domestic circumstances.

5. During the course of the proceedings the Court indicated that it found the fact to be that the Indians who had been executed were members of the ROMU TAI who had sworn allegiance to the Japanese, though they were subjects of the British Crown who had originally been taken prisoners of war. After hearing arguments on both sides and taking advice, the Court ruled that as a British subject cannot renounce his allegiance to the Crown during a state of war, and as the suborning of a PW is an offence against international law, a British PW who swears allegiance to the enemy during a state of war is still entitled, vis-a-vis the enemy, to the protection accorded to PW by international law.

After careful consideration of this case, I think it should be held that although the domestic law of England does not recognise change of nationality of a British subject to enemy nationality while he is in enemy or enemy occupied territory during the existence of a war and holds him liable for any offence against the English law of treason despite such purported change of nationality, nevertheless where he voluntarily joins the forces of the enemy and subjects himself to the military law governing such forces, international law does not regard as a war crime disciplinary action taken against him by the enemy, which is in accordance with that military law. There was no evidence in this case that the deceased Indians had in fact been suborned by the Japanese. But even if such were the case, although those concerned in the subornation might be guilty of an offence against international law, that circumstance cannot affect the liability of a person not so concerned who took disciplinary action against the Indians in accordance with the military law to which the latter had subjected themselves. The accused in this case were acting in accordance with Japanese military law, which governed the deceased Indians at the time, and their action was, according to the evidence, justified by that law. I am of opinion that their action does not constitute a war crime. Even on the view that the deceased Indians still retained their status of POW, the question of their status at the time is one of fact, though dependent on considerations of law, and the accused acted on a bona fide mistake of that fact, believing that the Indians were persons properly subject to Japanese military law; such a mistake of fact negatives criminal liability.

7. I therefore advise you to withhold confirmation of the findings in this case. A suitable minute will be "Not confirmed".

F G T DAVIS.

FGTD/RRH

Brigadier,
DJAG, South East Asia Land Forces.