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Synopsis of Case No. 235/941  
From the Trials of Japanese War Crimes in Singapore  
Conducted by the British Military

Kasai

Accused	<p>(1) Capt. KASAI Tsuguo  (2) W.O. MAEDA Kiyoshi  (3) S/M. SAHARA Takeshi  (4) S/M. CHIKAZAWA Masaka  (5) Cpl. HARADA Kichiji  (6) Sup. Pte. KOORI Takeo  (7) Sup. Pte. AKUTAGAWA Sunao  (8) Sup. Pte. MORISAKA Nobuo  (9) Civ. TOAKANO Ryunosuke  (10) Civ. MARUGAME Tsutomu  All of the Imperial Japanese Army, under the command of the Kempeitai.</p>
Place and Date of Trial	Singapore, 14-17 Oct 1946
Finding and Sentence	<p>Accused 1 - Guilty - Death by hanging  Accused 2 - Guilty - Death by hanging  Accused 3 - Guilty - 5 years imprisonment  Accused 4 - Guilty - 5 years imprisonment  Accused 5 - Guilty - 18 months imprisonment  Accused 6 - Guilty - 1 year imprisonment  Accused 7 - Guilty - 6 months imprisonment  Accused 8 - Guilty - 1 year imprisonment  Accused 9 - Guilty - 6 months imprisonment  Accused 10 - Guilty - 6 months imprisonment</p>
Note on Finding/Sentence	The finding and sentence was in the case file as announced during the court proceedings.
Charges	<p>Committing a war crime, in that they, at Miri, Sarawak, on or about the 13th June 1945, being members of or under the command of the Kempeitai stationed at Miri, Sarawak, were, in violation of the laws and usages of war, concerned in the killing of 28 civilian residents of Miri, including ABBOTT, BELL, JOHNSON, BODESTEIN, SOHAN SINGH, WARUDI, FUJA SINGH, LIM SIONG TEK, LAI KOK CHING, LEE MANG POOK, YO KI, CHONG EN FUI, CHIANG HO, KUNJI GOYA, SUBAR SINGH, ASAL, LING SHO TEHU, JOEL PAUL, TENG ANN, LIEW YU CHAI, YONG PIN CHEE.</p>
Facts Relating to The Charge	<p>Accused No. 1 was the officer commanding the Kempeitai section at Miri. At the end of April, 1945 he was ordered by Col. MACHIGUCHI, Chief of the Kempeitai in Borneo, to arrest all well-known anti-Japanese elements. In consequence of this order, he ordered the arrest on 8th May 1945 of 15 civilian residents of Miri, who were lodged in Kempeitai cells. Statements were taken from them and other investigations conducted, and a report submitted on 20th May 1945 to Col. Machiguchi at Jesselton. Subsequently, communications with Jesselton were</p>

cut, and on 21st May 1945 the Miri Kempeitai came under command of the Divisional Commander at Brunei.

On 8th June 1945 communications with Brunei were cut, and the Miri Kempeitai came under command of Col. AIKYO, the Garrison Commander at Miri. On 10th June 1945 accused No. 1 ordered the arrest of another 13 civilian residents of Miri, about whose activities information had been gleaned in the course of the previous investigations. On 12th June at 1100 hrs, he submitted a report on the second batch of arrests to Col. Aikyo.

At 1400 hrs he was summoned to Col. Aikyo, who ordered him to execute immediately all the 28 civilians in his custody. He returned to his Unit and informed accused No. 2 (W/O. Adjutant) of the order he had received. He hesitated to issue instructions for the implementation of the order that day, but the following morning he ordered accused No. 2 to assemble a firing squad and make the necessary arrangements to carry out the execution as ordered by Col. Aikyo.

Accused No. 2 accordingly assembled 18 persons, including himself and accused Nos. 3 to 10; and had the 28 civilians brought to the place of execution. Accused No. 1 was in command of the execution party and he issued the commands to fire the 3 volleys, which killed all the 28 civilians. Accused No. 2 was present in a supervisory capacity; accused No. 3 was present as a guard. There was no evidence that either of these accused fired a shot. All the 7 other accused fired as members of the firing squad.

**Accused Handling of the Charge** How the accused handled the charges against them was not covered in the D.J.A.G.'s review of the case. It is unknown as to whether they denied or admitted to the alleged charges.

#### Issues Raised by Prosecution and Defense

##### Issue 1: Conditions

**Substance of Issue 1:** The defence argued that due to the conditions faced by the accused in the area that this charge took place, it was not possible to hold a trial for the civilians. The Miri area where the case happened was a battlefield at that time, and it was not possible to carry out the normal procedures of a trial in a battlefield. Also, the political situation because utterly aggravated around May and June 1945 because the inhabitant's trust towards the Japanese Forces was lost owing to the war situation that was disadvantageous to the Japanese Forces. The loss of trust was also because the living condition of inhabitants was in hardship, due to lack of resources. The war situation was also bad during this time. On 10th June the MIRI area was bombarded from the Allied ships, moreover, more than 30 warships appeared off the MIRI coast under which situation the landing operation plan of the Allied

Forces was very clear. The MIRI area became a battlefield where the Japanese Army was disposed to fighting positions in order to defend.

The prosecution did not bring up this issue in their closing address. They probably did not think this was a valid defence for why a trial was not held.

## Issue 2: Actions according to superior's orders

Substance of Issue 2: This was the main issue argued by the defence. They argued that the accused 1 was carrying out an order from his superior Col. Aikyo and therefore could not be held responsible at all. They discussed the legality of the order issued by Col. Aikyo. They argued that according to International Law the inhabitants in occupied territories were obliged to obey the Occupying Forces. If the inhabitants should rebel or carry on espionage activities against the Occupying Forces, the latter had the right to punish them with a trial. Unfortunately, as mentioned above, the situation at the time did not allow for a trial to be held. The defence argued that it was most proper to regard Col. Aikyo's order to shoot issued under such acute circumstances as a result of some summary trial, and to appreciate this order to be a legal order. If the detained were not shot, the Japanese Army would have been compelled to release them and it was most obvious that this action would incur grave disadvantages to their operation.

The accused 1 was ordered to carry out the execution and was told it was an operational order. Accused 1 also said in the witness stand that he believed this order to be a lawful order. The defence added that the victims in this case were war traitors who would have been sentenced to extreme punishment if they were tried by the usual procedure. Therefore, whether a trial was held or not was inconsequential.

The defence referred to the Manual of Military Law, which stated that "... Undoubtedly, a Court confronted with the plea of superior orders adduced in justification of a War Crime is bound to take into consideration the fact that obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces and that the latter cannot, in condition of war discipline, be expected to weigh scrupulously the legal merits of the order received. ..."

Furthermore, Accused 1 was in the position where he had to carry out the execution whether Col. Aikyo's order was legal or illegal, because it was his superior officer's order and must be obeyed. In the Japanese Army all orders of the superior officers are absolute and absolute obedience was enforced to the extreme. In this case this order was an operational order in the face of the enemy and therefore of the highest degree. It was also stated that if Accused 1 had defied this order he would be punished by death or life imprisonment, under the Japanese Military Code. It was submitted that all the other accused could not be held responsible as well, especially all the mere

members of the firing squad. They too were following superior's orders. Most of them did not know the reason or the circumstances of the execution and did not have the time or composure to find out. The members of the firing squad simply believed in the justness of the execution and did not have the scope to weigh the legal merits.

The prosecution argued that the defence "action according to superior's orders" was a viable only under Japanese law, and the case was not being tried under Japanese law, but International law. Under International Laws and Usages of War, according to Articles 54 and 61 of the Geneva Convention and Article 30 of the Hague Convention, it stated that POWs should not be sentenced without being given the opportunity to defend themselves. Imprisonment was the most severe form of disciplinary punishment, which may be inflicted on a POW, and any act shall not be punished without previous trial. These three articles were all violated in the orders that were carried out. There was no trial held nor were the prisoners given the opportunity to defence themselves and they were punished by death. An execution that took place would be a crime against International Law, and a crime by any person who took any part in that killing. If a trial was not held than a subsequent execution was unlawful and any argument whatsoever by the Defence attempting to mitigate the effects of not holding such a trial could form no defence in the law. They submitted that the defence that the accused were compelled to obey the superior illegal orders of their superior officers could not affect their present guilt for the crime of which they were charged.

### Issue 3: Extent of involvement of each accused

Substance of Issue 3: The defence discussed this point marginally, bringing to the court's attention what orders were followed by which accused.

The prosecution argued this point extensively. They argued that Accused 1 gave orders to his adjutant, Accused 2 to issue the administrative instruction and make the requisite preparations which were to culminate in the execution and that this officer determined the execution time. Accused 1 also personally took command of that firing squad on the morning of the 13th June 1945 and gave the order to fire. This was an order that resulted in and brought the lives of those 28 men facing the firing squad to an abrupt, untimely and terrible termination. He was the giver of the order that ended the lives forever.

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The second and third accused also had relative liability. Accused 2 was responsible for all the administrative arrangements for the execution: he gathered and assembled the members of the Kempeitai section who were to carry out the execution, ordered the removal of the prisoners from their cells, bound their hands and led them to the place of execution. This was all carried out and accomplished with the sure and certain knowledge that those civilians were going to be executed. Accused 3 took charge of one of those squads and became a guard during the execution. The prosecution submitted that any person who actively assisted in any acts previous to the commission of a crime who had the knowledge that what amounts in law was a crime, and was to be committed. If that crime was a felony, such a person was an accessory. Based on this, accused 2 was an accessory. The law also stated that a principal was any person who was present, but did not take part in the actual perpetration of a felony. If he had a common purpose with any person who committed the direct act, and intended to and did in fact aid and encourage the commission of that direct act, then he was guilty as a principal, although in the second degree. If it was agreed that the Accused 3 knew what was forthcoming and was prepared to assist and by his presence assisted in that killing, he was a principal. This argument displayed to the court the extent that each of these three accused were involved in the stated charge.

**Additional Observations** **Special Notes:** The D.J.A.G. provided an extensive analysis of the defence in his review of the case. He did not agree with the defence regarding the first main issue, that Col. Aikyo was justified in giving orders to execute the imprisoned suspects because of the desperate situation that the Japanese found themselves in. In his opinion this defence could not prevail as in International Law the principle governing such a situation was that persons who could not safely be retained in custody must be liberated instead of being killed. This was a point that was not brought up by the prosecution though it was extremely relevant and an interesting point to add. The D.J.A.G. acknowledged that there was an exception to this rule which permitted the killing of prisoners if it could reasonably be anticipated, that if liberated they would massacre or ill-treat their captors. However, he added that it was unthinkable that the Miri Kempeitai could have any such fear of being massacred by the 28 local civilians whom they had arrested. The matter did not seem to have been discussed at all and Col. Aikyo seemed to have given the order to massacre them, merely because he regarded them as being involved in

anti-Japanese activities. In these circumstances this order was in his opinion wholly and obviously illegal and those persons who assisted them in putting it into effect could undoubtedly be held responsible for committing a war crime.

**D.J.A.G.'s review of the case:**

As regards to the defence that the accused were under the impression that some form of trial had taken place, the D.J.A.G. submitted that it should be remembered that the Miri Kempeitai was a small detachment and if a trial of these men had taken place it must have been well known to all the Japanese present there. Although under cross-examination the accused 1 attempted to establish that he thought that there had been some form of trial, it was clear from his examination-in-chief that when he received the order from Aikyo, he told the latter that these people could not be executed without a trial and he stated that he made a quite lengthy protest. He knew that it was illegal to execute a person without trying him. With regard to Accused 2, he assisted in the arrests of the civilians and in the subsequent investigations. It was quite clear to the D.J.A.G. that accused 2 disclosed his knowledge that no trial of these prisoners had taken place, and indeed, in the position which he held it would have been impossible that he would have been ignorant of it, if such a proceeding had taken place. Nevertheless accused 2 issued the administrative instructions, personally took command of the firing squad, bound the hands of the victims and he gave the order to fire.

The D.J.A.G. argued that had accused 1 and 2 intervened to stop the execution the lives of the 28 civilians might have been saved, or the execution might have been postponed until such time as the Allied forces had landed. It seemed to the D.J.A.G. that if the accused 1 and 2 had not wished to obey the order of Col. Aikyo they might have connived of the escape of these civilians. His basic argument was that accused 1 and 2 had powers of intervention but were negligent and simply carried out the order. He did not take "actions under superior's orders" as a viable defence; otherwise he would not have suggested that they had power of intervention.

The D.J.A.G. therefore confirmed the findings and sentences.