

(1715)

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE
APO 707

UNITED STATES OF AMERICA)
)
 - vs -)
)
TOSIMITSU MIYAGI and)
SHIOCHI KOBAYASHI)

REVIEW

MANILA, P. I.

DATE 16 January 1946

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL
APO 707

16 January 1945

In the foregoing case of United States
vs. Tosimitsu Miyagi and Shiochi Kobayashi,
the sentence as to Kobayashi is approved. Pursuant to paragraph 2, Letter General Headquarters, United States Army Forces, Pacific, file AG 000.5 (24 Sep 45) DCS, subject: Trial of War Criminals, execution of the sentence as to accused Kobayashi is withheld pending the action of the Commander-in-Chief.

W. D. STYER

Lieutenant General, United States Army
Commanding

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE

AFD 707
18 January 1946

UNITED STATES	}	Place of Trial:	High Commissioner's Residence, Manila, P. I.
vs.		Arraigned	: 20 December 1945
TOSIMITSU MIYAGI and		Tried	: 5 January 1946
SHIOCHI KOBAYASHI		Sentenced	: 8 January 1946

CHARGE

That accused on 26 March 1945 at or near Cebu City, Philippine Islands, willfully and unlawfully killed twelve Filipinos, raped, burned and mutilated five Filipino civilians, and burned and destroyed property of said civilians and of the Philippine Commonwealth.

SPECIFICATIONS

Specification 1: Both accused and others willfully and unlawfully killed Leonardo J. Paliete, Luisa Castaneda Paliete, Roy Emanuel, Fe Paliete, Esperanza Paliete, Gerided Paliete, Jesus Paliete, Manuel Paliete, Benjamin Paliete, Isabelo Paliete, Adias Paliete and Geronimo B. Mortilloso, civilians, by bayonetting, striking with swords and burning.

Specification 2: Both accused and others raped Luisa Castaneda Paliete, Fe Paliete, Esperanza Paliete and Gerided Paliete.

Specification 3: Both accused and others mutilated and burned bodies of Leonardo J. Paliete, Luisa Castaneda Paliete, Roy Emanuel, Fe Paliete, Esperanza Paliete, Gerided Paliete, Jesus Paliete, Manuel Paliete, Benjamin Paliete, Isabelo Paliete, Adias Paliete and Geronimo B. Mortilloso, civilians.

Specification 4: Both accused and others destroyed by burning personal belongings of Leonardo J. Paliete, Luisa Castaneda Paliete, Roy Emanuel, Fe Paliete, Esperanza Paliete, Gerided Paliete, Jesus Paliete, Manuel Paliete, Benjamin Paliete, Isabelo

Pallote, Adias Pallote and Geronimo B. Hortillosa, civilians,
and a dwelling, property of the Philippine Commonwealth.

PLEAS, FINDINGS AND SENTENCE

<u>Accused</u>	<u>Plea</u>	<u>Finding</u>	<u>Sentence</u>
Miyagi	Not Guilty	Not Guilty	
Kobayashi	Not Guilty	Guilty	Death by hanging

MAXIMUM PUNISHMENT

No limitation.

1. FORMAL MATTERS:

a. Authority of the Commission to act.

Commission was appointed by Commanding General,
United States Army Forces, Western Pacific, and trial had under
authority of (1) Letter Orders, AG 000.5 (24 Sep 45) DCS,
General Headquarters, United States Army Forces, Pacific, "Trial
of War Criminals," (R 18), (2) Letter Orders, AG 000.5 (24 Sep 45),
JA, General Headquarters, United States Army Forces, Pacific,
"Regulations Governing the Trial of War Criminals," (R 5), (3)
Letter Orders, AG 000.5 (28 Nov 45) WCB, "Trial of Miyagi and
Kobayashi," (R 19), (4) Paragraph 12, Special Orders No. 165,
Headquarters, United States Army Forces, Western Pacific, 3
December 1945, (R 22), (5) Paragraph 32 and paragraph 33, Special
Orders No. 177, Headquarters, United States Army Forces, Western
Pacific, 17 December 1945, (R 23) and (6) Paragraph 6, Special
Orders No. 181, Headquarters, United States Army Forces, Western
Pacific, 21 December 1945, (R 34).

b. Reporters (R 24, 34 and 39), interpreters, members of
the commission and personnel for the prosecution were sworn
(R 24, 35).

c. Charges were served on each accused 14 December 1945
(R 24).

d. Rights of accused were read and explained to each
accused (R 25) who were present in Court with Defense Counsel
(R 26). Captain Frank R. Coder, duly appointed Defense Counsel,

was excused and each accused elected to be represented by Captain Mathew J. Walsh and Second Lieutenant Woodrow A. Yared (R 26).

e. Each accused was duly arraigned (R 30).

2. MOTIONS AND PLEAS:

a. Motion to the jurisdiction on the ground that (1) there being neither military government of occupied territory nor active hostilities in the Philippines, no authority existed to appoint a military commission; (2) No notice of trial having been given to the Protecting Power, no power exists to appoint a commission (R 30, 31). Motion overruled (R 31).

b. Motion of Prosecution to dismiss charges against accused Miyagi on the basis of mistaken identity, sustained (R 37).

c. Each accused pleaded "Not Guilty" (R 32).

3. EVIDENCE:

Leonardo Paliete was a surviving member of the family involved in the massacre out of which these incidents arose (R 40), and lived in a Bureau of Animal Husbandry (PA Comm) house (R 40) with the members of his family. Luz Buenaventura (presently wife of Leonardo Paliete) was a neighbor girl of the Palietes (R 66).

On the afternoon of 26 March 1945, Reynaldo Burdeos, 15 years of age, mixed oil and gasoline for the Akatsuki Butai group (R 59) of which accused Kobayashi was a member. Burdeos under instructions from Tanaka, leader of Butai told the Palietes to move as the house was to be burned that night (R 60). Kobayashi, with Kotoe, Miyagi and Tanaka was seen by Burdeos 200 yards away at his own home (R 63) pouring the gasoline on the Paliete house about 1700 hours (R 62). Women's screams were heard from the neighborhood of the house and the house was burned about 2230 hours (R 63). Around 2200 - 2300 hours 26 March 1945 Luz Buenaventura (Paliete) heard screams from the Paliete house from a distance of 100 yards and saw Miyagi and Tanaka and two others chasing the Paliete girls (R 68). Other houses were burning in the neighborhood. The Paliete house was burned 20 to 30 minutes

later (R 69). It grew dark at 1600 to 1800 hours (R 74). The day following two pieces of undergarments belonging to Esperanza Paliete were found by Luz Buenaventura under a bush near the house (R 73). The Paliete girls had previously stated that Miyagi, Tanaka and Kobayashi wanted to go out with them but they refused (R 70). Threats were made to get even for their refusal (R 51).

On 26 March between 2100 and 2200 hours in camp four kilometers from the Paliete house, Tanaka, Miyagi, Yasutake and accused Kobayashi related they had burned the Paliete house under orders of Kuroda (R 93) and that each of the four had raped each of the four Paliete girls in that house (R 94); that Miyagi had stood guard and had then raped each girl himself (R 95). They did not use the word "rape". Kobayashi said they "would not leave any evidence of what they have done" (R 100). (Affidavit of Seisichi Akita, member of Butai group). Kobayashi scolded me (Akita) one time over the issue of clothing (R 100). "I was accused of telling lies on several occasions but not many times" (R 102).

"I heard the story in a tent" (R 102). "I heard the story in a tin roof building" (R 103).

On 27 March the remains of the Palietes, Hortillosa and Roy Emanuel were found in the basement of the burned Paliete home bearing bayonet and saber wounds and badly burned (R 45).

Kobayashi stated on 23 December 1945 that Tanaka had thrown a hand grenade into the Paliete home where the Palietes were assembled (R 125) and he, Kobayashi, had set fire to the house about 2230 hours under orders from Sergeant Kato (R 125).

4. OPINIONS AND REASONS THEREFOR:

a. As to the Evidence.

Under the rules of evidence and procedure prescribed for the trial of these cases, the evidence sustains the finding and the sentence.

It has been shown by affidavit, hearsay and some very doubtful direct evidence that (1) accused had displayed a personal interest in four of the girls who were victims of the atrocities alleged, had been rebuffed and had threatened vengeance; (2) that he had poured gasoline on the Paliete home the day it was burned; (3) that he had bragged about joining with Tanaka, Miyagi and Yasutake in the rape of the Paliete girls and destroying the evidence; (4) had otherwise admitted setting fire to the Paliete house under orders from a superior when Tanaka killed the ten Palietes and two others with a hand grenade.

On the face of the above outline, the guilt of accused is clear on all points.

From the evidence of record, I do not believe accused was guilty of rape. The testimony of Luz Paliete wife of the surviving member of the family who testified to finding a pair of panties belonging to Esperanza Paliete under a bush away from the house fails to tally with the affidavit of Akita that the alleged rape was committed in the house. There is no evidence of rape that rises above the grade of suspicion. From the testimony of Luz and the affidavit of Akita each of the four Paliete girls running across the fields were caught and raped by each of four assailants within a period of not to exceed 30 minutes. The conclusion fails to make sense.

However, by the admissions of accused Kobayashi, he was present when Tanaka threw the hand grenade into the Paliete house where the ten Palietes and two others were assembled, and he (Kobayashi) set fire to the Paliete house where the bodies of the ten Palietes, Hortilloza and Emanuel, wounded or killed by Tanaka's hand grenade, were consumed. The evidence of record discloses his complicity in their death. There are neither errors nor irregularities in the record of trial that require a reversal.

b. As to Jurisdiction.

The authority of the Commanding General, United States Army Forces, Western Pacific, to appoint a commission for the trial of accused was properly delegated, insofar as these proceedings are concerned, by Letter, General Headquarters, United States Army Forces, Pacific, AG 000.5 (24 Sep 45) DCS, subject: Trial of War Criminals and by Letter Orders, AG 000.5 (28 Nov 45) WCB, "Trial of Miyagi and Kobayashi."

In the matter of jurisdiction, attention is invited to the case of Yamashita, now pending before the Supreme Court of the United States. Decision therein will establish a course of procedure for further action herein since the elements of jurisdiction are identical.

But insofar as these proceedings are concerned, the appointing authority is vested with jurisdiction by virtue of Letter, General Headquarters, United States Army Forces, Pacific, supra. Execution of sentence may be directed by Commander-in-Chief, United States Army Forces, Pacific, only.

c. As to Procedure.

(1) Selection of the Commission, prosecution and defense personnel has followed the prescribed procedure.

(2) The accused has been advised of and accorded all rights prescribed.

(3) Findings and sentence were returned upon concurrence of two-thirds or more of the members of commission.

5. CLEMENCY:

From the evidence of record there appears to be no basis for clemency. Death is an appropriate punishment for murder.

6. RECOMMENDATIONS:

It is recommended the sentence herein be approved as the legal maximum, and record of trial and action forwarded to Commander-in-Chief for execution under paragraph 2, Letter, General Headquarters, United States Army Forces, Pacific, AG 000.5 (24 Sep 45) DCS, subject: Trial of War Criminals.

Form of action designed to effectuate the foregoing re-

commendation is attached.

It is further recommended execution of sentence be stayed pending action by the Supreme Court in the Yamashita case.

BERNARD A. BROWN
Lt Colonel, JAGC
Chief, War Crimes Sub-section

I CONCUR:

ASHTON M. HAYNES
Colonel, JAGC
Staff Judge Advocate

WAR CRIMES TRIAL STATUS REPORT

GHQ, SCAP, LEGAL SECTION, MANILA BRANCH
(Reporting Office)

File Number **P-20.**

Date of Report **8 November 1946**

Title of Case **U. S. A. vs. Tosimitsu MIYAGI and
Shoichi KOBAYASHI**

PART A

1. Names and Nationalities of Accused:

Tosimitsu MIYAGI - Japanese
Shoichi KOBAYASHI - Japanese

2. Nature, Place and Date of Offense:

Murder, torture, cruelty, other assaults and mistreatments against Philippine civilians at or near Cebu City, Cebu Province, Philippine Islands, on or about 26 March 1945.

3. Names and Nationalities of Victims:

Leonardo J. Paliote	- Filipino	Jesus Paliote	- Filipino
Luiza Castaneda Paliote	- Filipino	Mamuel Paliote	- Filipino
Roy Emmanuel	- Filipino	Benjamin Paliote	- Filipino
Po Paliote	- Filipino	Isabelo Paliote	- Filipino
Esperanza Paliote	- Filipino	Adias Paliote	- Filipino
Caridad Paliote	- Filipino	Geromino B. Mor-tillosa	- Filipino

4. Probable Place and Date of Trial:

**High Commissioner's Residence, Manila, Philippine Islands,
5 January 1946.**

PART B

5. Place and Date of Trial:

WD AGO Form R-5392-
21 June 1946

**High Commissioner's Residence,
Manila, Philippine Islands.**

Arraignment - 20 December 1945.

Trial - 5 January 1946.

(Over)

6. Judgment and Sentence (Relate to Specific Accused)

Tosimitsu NIYAGI - 5 January 1946, charge dismissed on motion of Prosecutor.
Shoichi KUBAYASHI - 8 January 1946, Guilty, death by hanging.

PART C

7. Action of Reviewing Authority (Specify authority and date and relate to specific accused)

Shoichi KUBAYASHI - 16 January 1946, sentence approved, execution withheld by Lieutenant General, W. D. Styer, C. G., AFWESPAC, pending action of Confirming Authority.

8. Action of Confirming Authority (Specify authority and date and relate to specific accused)

Shoichi KUBAYASHI - 26 February 1946, sentence confirmed and ordered executed by General of the Army, Douglas MacArthur, SCAP, under the supervision of, and at the time and place to be designated by the C. G., AFWESPAC.

9. Date and Place of Execution of Sentence:

22 March 1946, Laguna Province, Philippine Islands.

INSTRUCTIONS:

Prepare Trial Status Reports for every case in trial status promptly after reference for trial (Part A), at the conclusion of the trial (Part B) and at the completion of final action in the case (Part C) and transmit by fastest means in triplicate at each stage of the proceedings to the Director, Civil Affairs Division, WDSS, The Pentagon, Washington 25, D. D.

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE STAFF JUDGE ADVOCATE

APG 707

GSJA 000.5

SUBJECT: Execution of War Criminals Yamashita, Higashi,
Ohta and Kobayashi.

TO : Commander-in-Chief, United States Army Forces,
Pacific.
Attention: Theater Judge Advocate.

1. Tomoyuki Yamashita, Takuma Higashi and Seichi Ohta were each executed upon 23 February 1946 pursuant to Military Commission Orders Number 2, dated 11 February 1946, Number 3, dated 12 February 1946 and Number 4, dated 14 February 1946, respectively.

✓ 2. Shoichi Kobayashi was executed upon 22 March 1946 pursuant to Military Commission Orders Number 5, dated 6 March 1946.

3. Masaharu Homma and Hikotaro Tajima were each executed upon 3 April 1946 pursuant to Military Commission Orders Number 6, dated 21 March 1946 and Number 7, dated 21 March 1946, respectively.

FOR THE COMMANDING GENERAL:

RESTRICTED

HEADQUARTERS
UNITED STATES ARMY FORCES WESTERN PACIFIC
OFFICE OF THE COMMANDING GENERAL

GSJA 000.5

APO 707
15 March 1946

SUBJECT: Execution of Sentence.

TO : Commanding Officer, Philippine Detention and
Rehabilitation Center, APO 75.

1. Your attention is directed to Military Commission Orders No. 5, dated 6 March 1946, issued from General Headquarters, United States Army Forces, Pacific, confirming the sentence of death by hanging adjudged in the case of Shoichi Kobayashi.

2. In accordance with memorandum from Commanding General, AFWESPAC, directed to Provost Marshal, AFWESPAC, and Adjutant General, AFWESPAC, dated 15 March 1946, subject: "Instructions Governing the Execution of Japanese War Criminals, the Provost Marshal will transfer custody of said war criminal Shoichi Kobayashi to you at such time as you may designate and you are hereby directed to execute the sentence as to this condemned war criminal, stripped of uniform, decorations and other appurtenances signifying membership in the military profession, as follows:

Place of Execution: Philippine Detention and Rehabilitation Center.

Time of Execution: 22 March 1946, at an hour to be fixed by you.

3. The classification of this directive shall remain "SECRET" until 23 March 1946, at which time it shall become "RESTRICTED".

W. D. STYER
Lieutenant General, United States Army
Commanding

Incl:
Mil. Com. Orders

RESTRICTED