CASE NO. 68

TRIAL OF HANS RENOTH AND THREE OTHERS

BRITISH MILITARY COURT, ELTEN, GERMANY, 8TH- 10TH JANUARY, 1946

A. OUTLINE OF THE PROCEEDINGS

Hans Renoth, Hans Pelgrim, Friedrich Wilhelm Grabowski and Paul Herman Nieke, at the time of the alleged offence two policemen and two customs officials respectively, were accused of committing a war crime, "in that they at Elten, Germany on 16th September, 1944, in violation of the laws and usages of war, were concerned in the killing of an unknown Allied airman, a prisoner of war." All pleaded not guilty.

It was alleged that a British pilot crashed on German soil, and after emerging from his machine unhurt was arrested by Renoth, then attacked and beaten with fists and rifles by a number of people including the other three accused. Renoth stood aside for a while, then shot the pilot.

All the accused were found guilty. Renoth was sentenced to death by hanging, and Pelgrim, Grabowski and Nieke to imprisonment for 15, 10 and 10 years' respectively. The sentences were confirmed and put into effect.

B. NOTES ON THE CASE

1. THE NATURE OF THE OFFENCE ALLEGED

The case for the Prosecution was that there was a common design in which all four accused shared to commit a crime war, that all four accused were aware of this common design and that all four accused acted in furtherance of it. This was denied by the Defence. Here, as in the Essen Lynching Case, (Footnote 1: See Volume I, pp. 88-92) several persons who contributed to the death of a prisoner of war were all held responsible for his murder, though not punished alike.

The Prosecutor referred the Court to a passage in Archbold, 3 1 st edition, p. 863, which he regarded as relevant : " If a man is suffering from a disease, which in all likelihood would terminate his life in a short time, and another gives him a wound or hurt which hastens his death, this is such a killing as constitutes murder (according to Hale) or at the least manslaughter." If Renoth by his shot shortened the life of the pilot, even if only by a matter of seconds, then that constituted murder in English criminal law. Counsel submitted that it also constituted a war crime under the laws and usages of war.

Counsel for Pelgrim, Grabowski and Nieke claimed that these accused were present and witnessed the beating but took no active part to stop it or to help the pilot. That, he

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submitted, did not constitute a crime. To prove an offence against these men it was essential that the Prosecution

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should have proved that the accused acted in concert with the persons who committed the offence and aided and abetted them to commit that offence. Mere presence as such as [should be was-editor] not sufficient to find a man guilty as a principal in the second degree.

The Prosecutor, however, quoted from page 1429 of Archbold the following words : " It is not necessary, however, to prove that the party actually aided in the commission of the offence ; if he watched for his companions in order to prevent surprise, or remained at a convenient distance in order to favour their escape, if necessary, or was in such a situation as to be able readily to come to their assistance, the knowledge of which was calculated to give additional confidence to his companions, he was, in contemplation of law, present aiding and abetting ". The very presence of the accused, all of them officials, would constitute sufficient moral encouragement to make them liable, even accepting their story that their part was not an active one.

It is impossible to say conclusively whether the court found that the three accused took an active part in the beating or whether they were liable under the doctrine set out by the Prosecutor ; it is nevertheless interesting to compare that doctrine with the rule applied in the *Essen Lynching Case*, which made punishable as a war crime the inaction of a soldier who allowed prisoners under his care to be lynched. The *ratio decidendi* would not, of course, be the same in the two cases.

2. THE DEFENCE OF SUPERIOR ORDERS (Footnote 2: See also p. 24, note 2)

Renoth claimed to have received orders from a superior officer which caused him to shoot the prisoner. The Prosecutor quoted as relevant the following amendment to paragraph 443 of Chapter XIV of the *Manual of Military Law* : " The fact that a rule of warfare has been violated in pursuance of an order of the belligerent Government or of an individual belligerent commander does not deprive the act in question of its character as a war crime ; neither does it, in principle, confer upon the perpetrator immunity from punishment by the injured belligerent. 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 conditions of war discipline, be expected to weigh scrupulously the legal merits of the order received. The question, however, is governed by the major principle that members of the armed forces are bound to obey lawful orders only and that they cannot therefore escape liability if, in obedience to a command, they commit acts which both violate unchallenged rules of warfare and outrage the general sentiment of humanity."

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A footnote to the new text, he pointed out, read as follows : " See section 253, page 453, Vol. II, *Oppenheim's International Law*, 6th Edition, 1940, Ed. by Lauterpacht. The statement which appeared prior to this amendment was based on the 5th edition of Oppenheim's International Law, Vol. II, at page 454, which was, however, inconsistent with the view of most writers

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upon the subject, and also with the decision of the German Supreme Court in the case of *The Llandovery Castle* (Annual Digest of Public International Law Cases, 1923-1924, Case No. 235 : (1921) Cmd. 1422, page 45) ".

The Prosecutor claimed that there could be no doubt that shooting at a pilot in this case was an act which both violated the rules of warfare and outraged the general feelings of humanity. The Court rejected the defence.

3. FURTHER APPLICATION OF RULES OF PROCEDURE 40 (C) AND 41 (A)
(Footnote 1: Cf. Volume III, pp. 72-3)

During the examination of Pelgrim, Counsel for the Defence drew his attention to a rough sketch of the district of the alleged offences. The Defence did not ask for it to be put in as evidence, but the President pointed out that, if the Prosecution insisted, the sketch could be put in as an exhibit in which case the Defence would forfeit their right to the last word. The piece of evidence is not recorded as having been put in, but Counsel called several defence witnesses and in the event the Prosecutor delivered the last speech.

In the trial of Arno Heering,(See pp. 79-80) Defence Counsel, having called no evidence apart from that of the accused, delivered the last address.

4. ADMISSIBILITY OF UNAUTHENTICATED AFFIDAVITS

The Prosecutor proposed to tender pre-trial statements purported to be signed by three of the accused. He was unable to produce the officer who was present when they were taken but submitted that Regulation 8 (i) (Footnote 3) was sufficiently wide in scope to make this action permissible, that provision having the effect of abrogating the ordinary rule of evidence that it is on the Prosecution to prove that a statement made by an accused person was taken freely and voluntarily and not under duress. Once the evidence was admitted it would be for the court to decide on the weight to place on it. The decision of the court was to use the wide powers given to it and to accept the statements as evidence by the Prosecution. (Footnote 4: See also p. 83)

Later, all three accused stated under cross-examination that they had made the affidavits in question and had made them voluntarily.

(Footnote 3) Regulation 8(i) of the Royal Warrant opens with the words :

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“ At any hearing before a Military Court convened under these Regulations the Court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the Court to be of assistance in proving or disproving the charge,. notwithstanding that such statement or document would not be admissible as evidence in proceedings before a Field General Court-Martial, and without prejudice to the generality of the foregoing in particular . . . .”

Certain of the illustrative rules which follow this general provision have been quoted in Volume III, pp. 70-I.

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