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HEADQUARTERS EIGHTH ARMY  
United States Army  
Office of the Staff Judge Advocate  
APO 343

Yokohama, Japan  
12 June 1946  
case no. 17

UNITED STATES OF AMERICA VS SHIGEO AKAMATSU

REVIEW OF THE STAFF JUDGE ADVOCATE

1. The attached record of the trial by Military Commission appointed by paragraph 1, Special Orders No. 82, Headquarters Eighth Army, dated 28 March 1946 having been referred to the Staff Judge Advocate for review as provided by paragraph 4, General Orders No. 56, this headquarters, dated 4 June 1945, this review of the record with an opinion and recommendation relating thereto is submitted.

PERSONAL DATA CONCERNING ACCUSED

NAME:	Shigeo Akamatsu
AGE:	38
RESIDENCE:	No. 5, Yonchama, San-o-Cho, Nishinari-Eu Osaka, Japan.
MARITAL STATUS:	Widower, three children
OTHER RELATIONS:	Not shown
EDUCATION:	Isue Industrial school, two years
VOCATION:	Operating house of prostitution
SERVICE:	Imperial Japanese Army, Sergeant (exact length of service not shown).

2. Synopsis of the Charge, Specification, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charge and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Between 28 November 1944 and 15 August 1945 at Chayama Branch Prisoner of War Camp No. 3, accused, a sergeant in the armed forces of Japan, committed cruel, inhuman and brutal atrocities and other offenses against Allied prisoners of war in violation of the laws and Customs of War.	N.G.	G	Yes
Spec. 1: Mistreating and abusing four American prisoners of war, about 4 August 1945, by violently and brutally beating and striking them and knocking them into a pool of water.	N.G.	Guilty, except the words "and knocking them into a pool of water", of the excepted words. Not Guilty.	yes
Spec. 2: Abusing, mistreating and torturing Woodrow Trygve Sheffer, an American prisoner of war, in July 1945	N.G.	G	Yes
Spec. 3: Abusing, mistreating and torturing Private First Class J. C. Grant, an American prisoner of war, in June 1945.	N.G.	G	Yes

<u>Charge and Specifications (cont'd)</u>	<u>Fless</u>	<u>Findings</u>	<u>Legally Sustained</u>
Spec. 4: Abusing and mistreating Private Archie York, a Private Goff and other Allied prisoners of war, between 28 November 1944 and 15 August 1945.	N.G.	G	Yes
Spec. 5: Abusing and mistreating Private First Class Elmer A. Latyala, an American prisoner of war, and contributing to his death, about 1 January 1945, by requiring him to work on a labor detail while he was undernourished and suffering from beri-beri heart.	N.G.	Guilty, except the word "abuse", and the words "requiting him", substituting for the latter words "permitting him to be required," of the excepted words, Not Guilty of the substituted words, Guilty.	No
Spec. 6: Abusing and mistreating Allied prisoners of war, about 30 July 1945, by requiring them to work on docks during an air raid, as a result of which Privates First Class Stephen S. Haynes and Gaston C. King, American prisoners of war, were killed.	N.G.	N.G.	-

**Sentences:** To be confined at hard labor, at such place as the reviewing or higher authority may direct, for twenty-five (25) years.

3. The record of trial in this case comes to this headquarters for an automatic appellate review, the primary function of which is to assure that the accused had not been denied the rights and protection afforded to him before a Military Commission trying an accused war criminal.

4. Summary of the Evidence: The evidence with respect to the five specifications of which the accused was found guilty includes a total of 24 ex parte affidavits, sworn statements and certificates introduced by the prosecution, and the sworn testimony of the accused and three Japanese witnesses called by the defense.

Generally it was established that the accused, a Sergeant in the Imperial Japanese Army, was stationed at the Chiyama Branch Prisoner of War Camp No. 3, Osaka Area, Honshu, Japan during the period 28 November 1944 to 15 August 1945 (R 11, 39, 41, 71, Pros. Ex. 1). The branch camp commander, a commissioned officer, was responsible for issuing orders (R 39). Under him were three non-commissioned officers of equal rank, one in charge of supply, another supervising medical and sanitary matters and the third, the accused, in charge of general camp affairs and responsible for discipline among the prisoners (R 41, 49, 72, 89). These three exercised in rotation the daily function of charge of quarters, and as such each was periodically responsible for administration of the camp during absences of the camp commander (R 41, 72, 74). The charge of quarters determined where work details were to be sent (R 42, 43).

Interned medical officers provided medical attention and treatment for the prisoners within the limitations of Japanese facilities and supplies. examined them at sick call and made recommendations for their relief from work details when sick or physically unfit for duty (R 24, 57, 58, 60, Procl Ex. 29). Such recommendations were subject to the will of the Japanese medical corps-men who continually disregarded them in efforts to increase the percentage of working personnel (R 24, Pros. Ex. 29). Under the super-

vision of the branch camp commander, who appointed prisoner of war section leaders and had authority to remove them, a self government organization existed during the period covered by the specifications (R 44, 74).

For the Prosecution:

Specification 1: While investigating the theft of Red Cross food, cigarettes and other supplies from a camp warehouse, the accused, a number of Japanese guards and two prisoner of war section leaders, on 4 August 1945, beat and otherwise physically mistreated Seaman First Class Thomas J. O'Connor, Private First Class Marcus Rael, Private Archie York and Corporal Paul D. Floyd. O'Connor and Rael were knocked into a pool of water, O'Connor becoming hysterical as the beating increased and continued, and both requiring hospitalization as a result. Floyd was struck about the face, head and shoulders and in the abdomen with sticks, shoes and bamboo poles. The others were given similarly abusive treatment over a prolonged period. As a result, O'Connor was severely lacerated and bruised about the face and upper body, became temporarily demented and was convulsive and inarticulate (R 11-16, Pros. Ex. 2-8, 10). Although not a leader in these beatings the accused participated (R 13, Pros. Ex. 4).

Specification 2: A Marine corporal, Woodrow T. Shaffer, after admitting the theft of some vegetables in July 1945, was forced by the accused to squat with a bamboo pole fastened behind the bend of his knees while at the same time holding a log at arm's length above his head until he lost consciousness. Revived, he was required by the accused to maintain the squatting position, but without holding the log, for a further period of two hours (R 16-19, Pros. Ex. 11-14).

Specification 3: Private First Class J. C. Grant, in June 1945, was beaten by the accused, another non-commissioned officer and Japanese guards with fists, shoes and clubs and kicked about the face. After being ordered to remove his clothing, Grant was compelled to enter a water hole or sump, where he was forced to remain partially submerged for about an hour. When permitted to leave the water, he was made to kneel while held in position by a bamboo pole fixed behind his knees, and forced to hold another log overhead. He was then placed in solitary confinement for three days. As a result of this treatment he developed pleurisy (R 20, 69, Pros. Ex. 15-17, Def. Ex. A).

Specification 4: Private Archie York was beaten severely by the accused and a Japanese guard about 15 January 1945 when he admitted taking boards from a building to make a fire (R 22, Pros. Ex. 20). Private Goff and three Canadian prisoners of war in June 1945 were required to hold heavy buckets of water over their heads for two to three hours while exposed to the blazing sun (R 17, Pros. Ex. 11). Private Clements, United States Army, when caught stealing food from the galley, was beaten about the face and body with a rifle by the accused and other Japanese guards who took turns administering the beatings. He was then stripped of all clothing but his underwear, given a single blanket and placed in solitary confinement for three days in a flimsy wooden structure during a period of sub-freezing temperatures (R 19, Pros. Ex. 14). Private Leo W. Miller, when caught chewing gum received in a Red Cross parcel, was compelled by the accused to get buttons from the garment he had chewed on for buttons. ~~During the beating~~ repaired the damaged garment the accused slapped him for not having done so (R 22, Pros. Ex. 19).

and of it and was beaten by the accused for having it. During the beating buttons were torn from Miller's overcoat and later that day when he had not  
Specification 5: Private First Class Elmer A. Latvala, a Marine, was taken ill 30 December 1944 and died of cardiac beri-beri 1 January 1945 after being required to join a detail hauling firewood from a nearby mountain. Latvala, although sick and undernourished, was compelled to work against the American medical officer's advice and required to carry loads as heavy as those of the other prisoners. Halfway down the mountain he fell unconscious and had to be brought to the camp where he died within an hour.

(Review of the Staff Judge Advocate, cont'd)

The accused was in charge of the detail (R 24-27, Pros. Ex. 22-24).

For the Defense:

After being advised of his rights, the accused elected to be sworn and with reference to Specification 1 testified in substance that upon learning of the theft of Red Cross supplies he ordered two of the section leaders or supervisors (prisoners of war) to investigate. He admitted that while viewing the four prisoners at a line-up within the compound he struck one with his open hand, but denied further connection with the beatings and claimed that if the men were mistreated as alleged it was the action of their fellow prisoners, the section leaders (R 75-77).

With reference to Specification 2, the accused admitted in effect that he had warned Shaffer against further thefts of food and shoved him, but denied punishing him further or requiring him to squat with a bamboo pole clamped behind his knees or hold a leg aloft as alleged (R 77, 78). As to Specification 3, the accused categorically denied that such incident occurred but admitted substantially that at the request of supervising prisoners of war he had supplied a bamboo pole to be used in administering punishment to a prisoner sometime in July 1945 (R 78, 79). He acknowledged the incident of the missing coat button covered in Specification 4, testified that he slapped the prisoner only once as a warning to the others and admitted reprimanding him for chewing coal tar, but denied any knowledge of the other and more severe brutalities alleged.

Concerning Specification 5, the accused testified in effect that after the wood gathering detail had returned he learned of Private Latvala's death; that he had no prior knowledge of the prisoner's ill health; and that Latvala was placed on the detail by the branch camp commander. He denied accompanying or being in charge of the work party and added that as general affairs non-commissioned officer he had no authority to relieve men from duty for medical reasons (R 81).

5. OPINION.

Both International Law and the correspondence of the United States Government with foreign nations are subjects of judicial notice (20 A. Jur. 69). Therefore, although the record of trial does not contain copies of the communications through which Japan agreed to supply the provisions of the Geneva Convention of 1929 to American prisoners of war in its control, the commission could properly judge the accused's conduct by the standards of the Convention and the well recognized customs and usages of civilized nations in the treatment of prisoners.

The commission's findings with reference to the first four specifications are amply supported by the evidence which clearly establishes that the accused was responsible for discipline within the camp and, in exercising such authority, was guilty of self inspired brutalities in the treatment of prisoners of war. That such treatment was given as punishment for disciplinary infractions in no wise excuses his actions, for neither the Geneva Convention nor the universally recognized customs of nations at war authorizes or sanctions such inhumanities either as an administrative measure or punishment.

The evidence of record, however, does not support the substituted findings of guilty under Specification 5; which in legal effect acquitted the accused of abusing Private Latvala and requiring him to accompany the detail, and found only that he mistreated the prisoner and contributed to his death by "permitting him to be required to work on a labor detail while he was undernourished and suffering from beri-beri heart." By its action the commission found as a fact that Latvala was required to work by order of an authority superior to accused or by independent authority, the Japanese medical corpsmen, who alone are responsible for the prisoner's death unless it be shown that the accused had actual knowledge of the man's physical condition. While there is some evidence from which the commission

(Review of the Staff Judge Advocate, cont'd).

could have found that the accused was in charge of the detail while on the mountain (Pros. Ex. 22), although not responsible for selecting its personnel, nowhere in the record is it established that he had any discretion in the matter or was aware of Latvala's condition until after his death. It was not his responsibility to know, but the duty of the medical corporals to determine that question. The evidence fails to disclose that the accused, if present with the detail, then became aware of the prisoner's condition, that Latvala protested to the accused or sought relief from work, or that any of the other prisoners interceded to call his condition to the accused's attention. Nor does it logically follow from the fact that Latvala's fellow prisoners were acutely aware of his illness that the accused must likewise have been aware of it, for they, as comrades, were in a position to know from daily contacts with him, while from all that appears in the record the accused was not so situated. Therefore, the accused's presence with the detail is insufficient of itself to impute such knowledge to him. Lacking evidence that the accused knew of the prisoner's illness and failed to relieve him from duty, the state of the record is such that the commission's finding should not be supported.

It is therefore the opinion of this office that: (a) the Military Commission was legally constituted; (b) it had jurisdiction of the person and the offenses; (c) the evidence supports the findings of guilty of Specifications 1 to 4 and of the Charge, but fails to support the finding of guilty of Specification 5; (d) except as to the findings under Specification 5, the record discloses no errors injuriously affecting the substantial right of the accused; and (e) the sentence is legal.

#### 6. RECOMMENDATIONS:

Accordingly it is recommended that the finding of guilty of Specification 5 be disapproved. As the disapproved Specification covers the death of an American prisoner of war, the sentence, although legal, appears excessive and disproportionate for the remaining offenses which, although serious, do not involve fatalities. It is further recommended, therefore, that the sentence be reduced to confinement at hard labor for fifteen years, and as reduced ordered executed.

#### 7. ACTION:

An action designed to carry the foregoing recommendations into effect, should they meet with your approval, is submitted.

I concur as to the findings. Inasmuch as the sentence was modest in view of the facts in evidence, it is not believed that more than 5 years of the confinement imposed should be remitted.

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PHILIP M. ROBERTS,  
1st Lieutenant, J.A.G.D.,  
Act'g. Ass't Staff Judge Advocate.

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ALLAN R. BROWNE,  
Lt. Colonel, J.A.G.D.,  
Staff Judge Advocate.

HEADQUARTERS EIGHTH ARMY  
United States Army  
APO 943

Yokohama, Japan  
June 1946

In the foregoing case of Shigeo Akamatsu, the finding of guilty of specification 5 of the charge is disapproved. Only so much of the sentence as provides for confinement at hard labor for twenty (20) years is approved and will be duly executed. The Sugamo Prison, Tokyo, Honshu Japan, or elsewhere as the Supreme Commander for the Allied Powers or other proper authority may direct, is designated as the place of confinement.

R. L. FICHELBERGER  
Lieutenant General, U. S. Army  
Commanding