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CASE DOCKETS OF FAR EAST WAR CRIMES TRIALS

RECORD GROUP 153

ENTRY 1021

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

Yokohama, Japan
 3 July 1946
 Case No. 31

UNITED STATES OF AMERICA VS TATSUO ABE

Review of the Staff Judge Advocate

1. The attached record of trial of Tatsuo Abe at Yokohama, Japan from 2 May 1946 to 3 May 1946, by a Military Commission appointed by paragraph 29, Special Orders No. 112, Headquarters Eighth Army, United States Army, dated 30 April 1946, having been referred to the Staff Judge Advocate for review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME:	Tatsuo Abe
AGE:	Not shown
RESIDENCE:	City of Tobata, Nishi Nakaburu, Nishi Machi, 5 chome.
MARITAL STATUS:	Married, four children.
RELATIVES:	Not shown
EDUCATION:	Not shown
VOCATION:	Tailor
MILITARY CAREER:	Not shown

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charge and Specifications</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Between December 1943 and August 1945 at Fukuoka, Japan, accused committed cruel and brutal acts and other offenses against a certain Allied Prisoner of War in violation of the Laws and Customs of War.	G	G except the words "acts and other offenses against" substituting therefor the words "acts against of the excepted words Not Guilty.	Yes
Sp 1: In or about January 1945 accused punished a group of American and other Allied prisoners collectively for an alleged offense of one Private Clarence J. Cene, an American Prisoner of War, by forcing them to stand at attention for five or six hours outside in very cold weather without sufficient clothing.		Nolle prosequi	
Sp 2: Between December 1943 and August 1945 accused beat Jean Frederick, an American Prisoner of War, with a stick.		Nolle prosequi	
Sp 3: Between January 1945 and March 1945 accused mistreated, tortured and beat Corporal Joseph John Carbonaro, an American Prisoner of War, by striking him with his fists and a club and throwing cold water upon him for a long period of time while he was outside in very cold weather, naked.	G	G except the word "torture" and the word "long", of the excepted words Not Guilty.	

Sentence Imposed: Hard Labor for one (1) year

Maximum Legal Punishment: Death.

3. Summary of Evidence:

a. For the Prosecution: Prior to the time covered by the charge in the present case the Japanese Government agreed to supply mutatis mutandis the provisions of the Geneva Prisoner of War Convention of 27 July 1929 to American prisoners of war in its power (Ex. 1).

On or about 10 March 1945 Corporal John J. Carbonaro, an American prisoner interned at Camp Number 3, was given a watch by a Javanese prisoner to trade for food. While attempting such a trade with a Japanese civilian worker someone approached and Carbonaro threw the watch into a pile of bricks. The accused was a civilian guard at the camp at that time. That night he demanded the watch from Carbonaro, stating it was his property and that the Javanese prisoner had admitted giving it to Carbonaro. The accused then forced him to take off his clothing and to assume a position similar to that used in "push-ups", and whenever his body sagged or his knees touched the ground the accused beat him with a club. This treatment lasted for about a half hour, during which time the accused poured about ten buckets of cold water over his nude body. As a result Carbonaro's face and body became badly bruised and swollen (Exs. 2, 3, 4).

b. For the Defense: Major Rikitake, a witness for the defense, testified that he was Commander of Number 3 Camp. The character of the accused, in the opinion of the witness, was excellent and he was extremely kind to the prisoners of war. He stated that, on one occasion, when it was about to rain, the accused became concerned because many of the prisoners on a work detail did not have their raincoats with them. He rode six kilometers back to the camp on his bicycle and enlisted the aid of some factory workers who, together with the accused, carried the prisoners their raincoats on their bicycles. Another time, when there was an air raid, the accused forgot his sword, watch and bonds, which were in his room, and concerned himself solely with helping the prisoners (R. 13-22).

The accused elected to testify as a witness in his own behalf. He stated that he had received a watch from a friend to get it repaired for him. He gave the watch to a prisoner from Holland to repair it. Three days later the prisoner reported that he had dropped the watch and offered to reimburse him therefor. The offer was declined by the accused who considered the event as an accident. He paid his friend 150 yen because of the loss occasioned and two or three days later discovered that the watch had not been dropped but had been traded for food. Three prisoners, who were suspected, would not confess. The accused struck them with his hands and forced them to stand in front of the guard house. A person, whom the accused could not remember, suggested that they be stripped of their clothing and that cold water be thrown over them. This same unidentified person proceeded to carry out his suggestion and, after about five minutes of this treatment, the prisoners promised to bring in the watch the following day. The accused made them wipe their bodies with a towel, gave them each a cigarette and had them warm themselves by a stove. The next day he received his watch back from the commandant. He had never received instructions concerning the treatment of prisoners of war as set forth by the Geneva Convention of 1929, nor did he hear that Japan had entered an agreement to abide by those rules until after cessation of hostilities (R. 11-13, 22A-24).

4. Opinion:

The record is legally sufficient to sustain the findings of the commission. The commission was constituted by proper authority and had jurisdiction over the accused and of the offense.

The accused pleaded guilty and admitted slapping the prisoner. He testified that it was another who poured the water over him when naked. The commission, however, in weighing and evaluating the evidence, chose to find him guilty of that act.

The defense's objection to the admission of evidence of the official communication between the United States and Japan concerning the treatment of prisoners of war, was properly overruled. It was admitted into evidence to be considered insofar as the commission could determine its effect in relation to the laws of war, but not necessarily constituting a law of war in itself. This theory of admissibilities sound under paragraph 5d (1) and paragraph 5d (1) (d), SCAP Regulations Governing the Trials of Accused War Criminals, 5 December 1945.

The defense objection to the admission in evidence of ex parte affidavits was likewise properly overruled. Such evidence is expressly admissible under paragraph 5d (1) (e), SCAP Regulations Governing the Trials of Accused War Criminals, 5 December 1945. This SCAP rule is legal and in accordance with established practice in Military Commission trials. Application of Yamashita, 66 S CT. 340; Ex Parte Quirin 367 U. S. 1, 63 S CT. 2; Fairman, The Law of Martial Rule, P. 266, 267.

A careful scrutiny of the entire record fails to reveal any error which affected the substantial rights of the accused, or any failure to accord him a fair trial in every respect. The evidence supports the findings. There is no evidence that the accused was not sane at the time the alleged acts were committed and at the time of trial.

6. Recommendation: There were no letters of clemency from any member of the commission, or from others.

The commission sentenced the accused to confinement at hard labor for one year. The sentence is legal.

It is therefore, recommended that the sentence be approved. The Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place of confinement.

7. Action

A form of action designed to carry this recommendation into effect is attached hereto.

/s/ Paul E. Spurlock
 PAUL E. SPURLOCK
 Reviewer
 Judge Advocate Section

I CONCUR:

ALLAN R. BROWNE
 Lt. Col., JAGD
 Staff Judge Advocate

REF I

HEADQUARTERS EIGHTH ARMY
United States Army
APO 343

Yokohama, Japan
July 1946.

In the foregoing case of Tatsuo Abe, the sentence 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.

/s/ R. D. Eichelberger
R. D. EICHELBERGER
Lieutenant General, U. S. Army.
Commanding

CERTIFIED TRUE COPY:

/s/ Carlos U. Lowrance
CARLOS U. LOWRANCE
CAPT., CAV