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SOURCE:

CASE DOCKETS OF FAR EAST WAR CRIMES TRIALS

RECORD GROUP 153

ENTRY 1021

BOX 0001

C O P Y

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

Yokohama, Japan
8 August 1946

Docket No. 40

UNITES STATES OF AMERICA VS TORANOSHIM AKAMATSU

Review of the Staff Judge Advocate

1. The attached record of trial of Toranoshim Akamatsu at Yokohama, Japan, from 29 May 1946 to 19 June 1946, by a Military Commission appointed by paragraph 21, Special Orders No. 137, Headquarters Eighth Army, United States Army, dated 28 May 1946, having been referred to the Staff Judge Advocate this review is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Teranoshin Akamatsu
AGE: Thirty-three (33)
RESIDENCE: Not shown
MARITAL STATUS: Married
RELATIVES: Wife and two children
EDUCATION: Not shown
VOCATION: Civilian guard attached to the Japanese Army.
MILITARY CAREER: Japanese Army 1938 to 1941. Highest Rank: Superior Private

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 1 January 1943 and 30 April 1945 at Yedogawa prisoner of war camp, the accused willfully and unlawfully committed cruel, inhuman and brutal acts, atrocities and other offenses against certain American PW's in violation of the Laws and Customs of War.	NG	G	Yes
Sp 1: Between 1 February and 31 December 1943 the accused and others willfully and unlawfully, did abuse, mistreat, torture and contribute to the death of Chief Petty Officer Virgil E. Byrd, an American PW, by striking him about the face and body with fists, shoes and belts, kicking him about the face and body and tying him and suspending him from the ceiling.	NG	G. Except the words "and contribute to the death of".	Yes
Sp 2: On or about 7 October 1943, the accused, willfully and unlawfully, killed Private Robert H. Hill, an American PW, by striking him in and about the head with a hammer.	NG	NG	

C O P Y

Sp 3: On or about the early part of 1943, the accused, willfully and unlawfully, struck and compelled Captain John A. Olsen, an American PW, to strike another American PW in and about the face. NG G Yes

(End of Page 1)

Sp 4: On or about 16 April 1943, the accused, willfully and unlawfully, beat and mistreated Corporal Robert J. Travers, an American PW, by striking him with fists, by kicking him and by throwing him to the ground. NG G Yes

Sp 5: Between 1 April 1943 and 30 November 1943, the accused with others, willfully and unlawfully, beat and mistreated Machinist Mate First Class Clifford W. Seifert, an American PW, by striking him in and about the face and body with fists and sledge hammer handles. NG G Yes

Sp 6: In or about May 1943, accused willfully and unlawfully, tortured and mistreated Sergeant Joseph Wallace Black, an American PW, by tying him to and suspending him from a ladder. NG G Yes

Sp 7: In or about June 1943, the accused, willfully and unlawfully, mistreated Sergeant Joseph Wallace Black, an American PW, by beating him in and about the head with a stick, causing him to lose the sight of one eye. NG G, but amended by inserting the word "temporarily" between the words "to lose" and the sight of one eye". Yes

Sp 8: Between 1 June 1943 and 30 June 1944, the accused, willfully and unlawfully, mistreated about fifteen American PW's by beating them and inducing them to vomit by inserting ropes in their throats. NG G Yes

Sp 9: In or about July 1943, the accused and others, willfully and unlawfully, beat and mistreated Storekeeper Second Class Richard Allen Beam, and five other American PW's, by striking them with fists and kicking them. NG G Yes

Sp 10: On or about 1 November 1943, the accused willfully and unlawfully, beat and mistreated Lieutenant Colonel John James Martin, an American PW, by striking him in and about the face with his hand. NG G Yes

Sp 11: In or about January 1944, the accused with others, willfully and unlawfully, beat and mistreated private Oscar M. Eldarl, an American PW, by striking him in and about the body and face with fists and sledge hammer handles. NG G Yes

APPENDIX

Sp 12: Between 16 April 1944 and 25 August 1944, the accused willfully and unlawfully beat private Francis M. Gabour, an American PW, by striking him about the body.

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Sp 13: Between 6 July 1944 and 30 September 1944, the accused and others, willfully and unlawfully, mistreated Signalman Second Class William Spissiro and Sergeant Herschel G. Heimann, American PW's by twisting their arms behind them and tying them to a ladder.

Sp 14: On or about 25 January 1945, the accused, with others, willfully and unlawfully, beat and mistreated Corporal Harry H. Smith, an American PW, by striking him in and about the body and face with fists and by kicking him.

Sp 15: In or about February 1945, the accused willfully and unlawfully, beat private Lewis R. Williams and Corporal Clarence E. Crance, American PW's, by striking them in and about their heads with fists.

Sp 16: In or about January or February 1945, accused willfully and unlawfully, beat and mistreated Private Albert P. Haynick, an American PW, by striking him about the body and face with fists and by kicking him.

Sp 17: On or about 13 February 1945, accused with others willfully and unlawfully, beat and mistreated Sergeant Melving H. Hamlin, an American PW, by striking him in and about the face with fists.

Sp 18: In or about April 1945, accused willfully and unlawfully, beat and mistreated Private First Class Oran J. Childs, an American PW, by striking him in and about the head with a sledge hammer handle.

Sp 19: Between 1 January 1943 and 30 April 1945, the accused willfully and unlawfully, mistreated certain American PW's by striking, beating, clapping, kicking and starving them and by exposing them without clothing during cold weather.

Sentence Imposed: Confinement at hard labor for the term of his natural life.

Maximum Legal punishment: Death.

3. Summary of Evidence:

a. For the Prosecution: The accused was a civilian guard at Yodogawa Prisoner of War Camp, Osaka, Honshu, Japan, between 1 January 1943 and 30 April 1945 (Exs. 9,10,14,15,17,18,27,29,32,34,35,39,48).

(End of Page 3)

As to Specification 1: During the period between 1 February 1943 and December 1943 the guards at the Yodogawa Camp discovered that some prisoners had been selling their shoes in order to obtain food. Accused and others forced all of the prisoners to remove their clothing and kneel for a number of hours in the camp courtyard during cold weather. This means of punishment was employed to force the guilty ones to confess. Chief Petty Officer Virgil E. Byrd, an American prisoner of war, made a confession that he had traded his shoes. However, there is evidence that Byrd was not guilty of the infraction of the rules, but confessed to end the mass punishment that was being administered to all of the prisoners. Accused and other guards beat Byrd about the face, head and shoulders with heavy slippers with leather heels, flats and belts. When he was knocked to the ground they kicked him in the stomach and on other parts of the body. When he became unconscious water was thrown over him to revive him and the beating was continued. This was repeated a number of times. After this beating he was tied by a rope which bound his hands behind him and passed up over a roof beam. The rope was then gradually tightened so that he was forced to stand on his tiptoes in order to ease the pain in his arms and shoulders caused by this stretching. He was kept in this position throughout the night (Exs. 1-12, 14-22, 33-55, 58).

As to Specification 3: In the early part of 1943, one of the prisoners came late to roll call. When accused demanded an explanation the prisoner informed him that he was forced to break ranks because he had diarrhea. Captain Olsen, the American duty officer, was ordered by accused to strike the prisoner. Captain Olsen explained that American Army Officers do not strike enlisted men, whereupon accused informed him that unless he complied he, the accused, would punish the prisoner. Accused then struck the enlisted man several times and knocked him over a table. He asked the captain if he still refused to punish him or desired to have him continue. The enlisted men who were present advised the Captain to comply and, after giving it much thought, he struck the man very lightly. Accused then struck the prisoner a "terrific blow" in the face and told Captain Olsen that that was the manner in which he desired him to strike him. The man who was receiving the beating implored the Captain to hit him hard, "to get it over with", and Captain Olsen reluctantly complied with his request (Exs. 24, 25).

As to Specification 4: On 16 April 1943 the guards at the camp were conducting a search for foodstuff that had been stolen. Corporal Robert J. Travers, an American prisoner, had a handful of salt in his belongings which had been given to him by a Japanese civilian on a work detail. Accused charged Travers with having stolen salt and sugar from the kitchen and would not listen to his explanation of how he received the salt. He then struck Travers in the face with his hands, using his

palms and fists and knocked him down at least twelve times. When he was on the ground accused kicked him in the stomach and when he arose he struck him in the face again. Finally he threw Travers to the ground about five times by means of judo. The above mentioned treatment lasted for about forty-five minutes (Ex. 26).

As to Specification 5: Between April and November, 1943, Clifford W. Seifert, an American prisoner, was caught stealing vegetables from neighboring gardens. He was placed in confinement for about two months. During this time accused and another guard beat him on the face and body with their fists and sledge hammer handles. The beatings were administered about two times daily and each beating was from about twenty to thirty minutes duration (Exs. 27, 28).

As to Specification 6: Sergeant Joseph Wallace Black was an American internee at the camp. In May 1943 accused tied his hands behind his back, put a rope around his waist and tied him to a bamboo ladder in such a manner that his toes barely touched the ground. He was forced to remain in this position of suspension for thirteen hours. Black, in his affidavit, states that this punishment was administered for no reason of which he had any knowledge (Exs. 29, 30).

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As to Specification 7: In June 1943 it was alleged by accused that Sergeant Black was not working. Although Black was sitting down at the time it was during a rest period. Accused struck him over the temple with an oak sword stick, which rendered him unconscious for about ten minutes. As a result, Black lost the sight of his right eye, which condition remained until the end of the war, because no medical treatment was given to him (Ex. 29).

As to Specification 8: Someone stole a mess kit full of rice from one of the Japanese civilians who worked in a factory near the camp. Accused took fifteen suspected prisoners of war and inserted a dirty rope down their throats which caused them to vomit, in order to determine who the guilty person was. This incident occurred either in June 1943 or in the spring of 1944 (Exs. 31, 32).

As to Specification 9: In July 1943 Storekeeper Second Class Richard Allen Beam and five others were on the "sick list" and were playing poker, using cigarettes as chips. This was contrary to the camp rules. They were taken outside by accused and others, who beat them with their fists. When they were knocked to the ground they were kicked, after which some of them were pulled to their feet and knocked down repeatedly (Ex. 32).

As to Specification 10: Lieutenant Colonel John J. Martin, an American prisoner at the camp, was suffering from having had several toes of his left foot amputated. On 1 November 1943, although it was against the rules, he was lying down during the day. Accused entered the room, ordered the Lieutenant Colonel to stand up and struck him about six times in the face. These blows, delivered with the heel of the accused's hand, would have knocked him to the floor had he not been wedged between a table and the wall (Ex. 33).

As to Specification 11: During the month of January 1944, accused and others beat private Oscar M. Eldal, an American prisoner interned at the camp, over a period of fifteen days with their fists and with sledge hammer handles. The beatings were administered about two times daily and lasted for about twenty or thirty minutes each (Ex. 34).

As to Specification 12: One day between 16 April 1944 and 25 August 1944 the prisoners were taking exercise. Accused did not like the manner in which private Francis E. Gabour, an internee, was participating. He forced him to chin himself for about twenty minutes. He was beaten by accused with a four-foot bamboo pole during this exercise, and whenever he became exhausted and fell to the ground as well (Exs. 35, 36, 37, 58).

As to Specification 13: In September 1944 accused and another guard attempted to discover who had stolen some beans. They placed Sergeant Heimann, an American prisoner of war, with his back to a ladder and his hands tied behind the ladder. The ladder was moved closer towards the building, upon which it was leaning, and this progressively pulled his hands out of their sockets. During the two hours in which this treatment was administered Heimann became unconscious several times. Seaman Second Class William Spizziro was given the same treatment at the same time (Ex. 38).

As to Specification 14: On or about 25 January 1945, Corporal Harry Smith, an internee at the camp, failed to salute a guard by the name of Adachi. The guard beat Smith with his fists, knocked him down and kicked him while he was lying on the ground. This lasted for about fifteen minutes, during which time accused joined in the beating, "apparently just for the sports of it". Evidence shows that Smith could not be blamed for his failure to salute because accused was standing in the kitchen at the time and Smith's back was to the door (Ex. 38).

(End of Page 5)

As to Specification 15: In February 1945 private Lewis E. Williams took some coke into the kitchen and one of the Japanese gave his friend, Corporal Clarence E. Orance, a rice ball. As they came out of the kitchen accused charged them with having stolen it, and beat them with his fists for about five minutes. This beating bruised their faces and cut their lips (Ex. 39).

As to Specification 16: In January or February 1945 the prisoners were being given physical exercise when accused grabbed private Albert P. Naywick out of the formation and began to beat him. He pushed him to the ground, kicked him, picked him up and repeated this process a number of times, having no regard as to where the blow would land on him--on his body or face. This abuse lasted for about twenty-five minutes during which time his nose was broken. Naywick was without fault and was participating in the exercise as well as the other prisoners (Ex. 40).

As to Specification 17: On the night of 13 February 1943, at a roll call of prisoners accused and another guard called Sergeant Melvin H. Hamlin out of the ranks. They accused him of having reported them to the camp commander for actions contrary to camp regulations. They forced him to stand at attention and took turns beating him about the face with their fists, each striking him at least fifteen times. This resulted in Hamlin's face becoming black and blue and bearing numerous cuts which did not heal for about a week (Ex. 41, 57).

As to Specification 18: In April 1945, Corporal Earl Deal cornered Lieutenant Lancaster and tried to kill him with his bare hands. Corporal Deal was beaten for this by a Japanese guard. Whenever Lancaster caught the men playing cards, or thought ill of any of them he had a guard beat the prisoners involved. Practically all of the officers and enlisted men had received beatings because of Lancaster. Private First Class Oran J. Childs told Lieutenant Lancaster "what he thought of him" for the beating of Deal and the next day, without any provocation, he was taken by accused and beaten over the head and shoulders with a sledge hammer handle. He was knocked down fifteen times and each time accused poured water on him, forced him to stand again and continued the beatings. His head was cut in several places (Ex. 5).

As to Specification 19: Between 1 January 1943 and 30 April 1945 the accused individually mistreated American prisoners, and participated in the abuses dealt them by the guards in general. Such things as forcing the prisoners to kneel in the cold, naked, with bamboo poles behind their knees, beating them into unconsciousness are copiously alleged in the statements of the former prisoners. In one instance accused beat prisoners until they

were unconscious, revived them by throwing water on them, forcing them to stand at attention for twenty four hours and beat them when they deviated from this position. There are evidences of failure to feed a prisoner adequately while in the guard house and beating men when, because of malnutrition, they could hardly stand. Accused beat one prisoner, whom he disliked, on many occasions with his hand, a club, a pole, a rifle, or whatever was handy at the time (Exs. 5, 6, 9, 11, 13, 20, 22, 28, 34, 42).

b. For the Defense: The defense called, as its first witness, Eiji Ito who, upon being sworn, testified that he was the paymaster at the camp from November 1942 until May 1945. In May 1943 he was told that prisoners had been selling shoes to the company employees. For this the prisoners were made to remove their clothing and sit in front of the bath house for about thirty minutes. It was about 1600 and the weather was warm. A prisoner named Ennis was suspected. The witness and the accused each struck Ennis with their hands the next day. The witness struck him three times but did not recall how many times the accused struck him (R 28-41).

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Fukusaburo Adachi took the stand and testified that he was employed as a civilian at the camp and was in charge of prisoners between April 1943 and May 1945. He did not remember Seefert or Edal. As to Smith, one day he called to Smith for wearing his hat turned upwards and a scuffle between the two ensued in which the witness' watch was broken. Accused came up after this was over but did not strike Smith. The witness was the only one who struck Hamlin. He heard about the selling of shoes but did not hear of anyone being punished for this. He did not remember Childs being beaten. Accused did not strike Hamlin, however, he struck a prisoner, Number 144, for urinating on some fire sand because he was too lazy to go to the latrine. The times accused struck prisoners he used his clenched fist and open hand. He helped accused tie two prisoners to a ladder so they would not escape. They were left in this position only for five or ten minutes and were not tied tightly (R 42-52).

Accused elected to testify in his own behalf and, having been sworn, stated that he was employed as a civilian at the camp from December 1942 to April 1945. He admitted striking Ennis on the cheek with his open hand. He did not remember the incident concerning Captain Olsen, in Specification 3. Nor did he remember anything concerning the allegations in Specification 5 and 6. He admitted tying a prisoner called "Negro" to a ladder until he confessed where he had hidden some stolen rice. He was tied in such a position as not to hurt him. He denied the allegations in Specifications 7 to 12. As to Specification 13, the only one he tied to a ladder was "Negro" as stated above. He denied striking Smith as alleged in Specification 14 and denied the allegations in Specification 15 and 16. He merely cautioned Hamlin and did not beat him as charged in Specification 17. He did not remember Childs and did not recall the incident as set forth in Specification 18. Accused remembered striking Ennis with his open hand but could not recall striking Byrd. He did not know of an incident where a prisoner was tied up all night with a rope over the rafters (R 52-81).

The testimony of Doctor Shigeki Kobayashi had to do only with matter upon which accused was found not guilty and is not considered in this review.

4. Opinion:

The record is legally sufficient to sustain the findings and sentence of the commission. The commission was constituted by proper authority and had jurisdiction of the accused and of the offenses. The prosecution introduced evidence by sworn and unsworn statements of prisoners who had been interned in the camp and who were in a position to know the facts of

the matter in issue. From such testimony the guilt of the accused was well established.

The accused admitted slapping a prisoner, and this was substantiated by the defense's own witness. There was a vigorous denial of the other offenses alleged under the charge and specifications. However, the commission, in evaluating and weighing the evidence placed before it, found in favor of the prosecution on the charge and all but Specification 2.

The defense objected to the introductions in evidence of *ex parte* statements and affidavits and was properly overruled. It is natural for American counsel to object to this form of evidence. However, one must remember that in our war crimes commission we are not trying American citizens. Our citizens are tried in our courts by rules of evidence that are peculiar to the desires and demands of our own people. Our system is but one of many employed by other nations of the world. We Americans like the jury system. Some other nations, notably Japan, do not favor it. Certain rules of our evidence are in direct conflict with those of other countries. When one considers the many systems employed throughout the world which peoples have created to arrive at justice, it is not logical to conclude that, unless an accused is tried by the rules followed in our country, he will not receive a fair trial. Furthermore, our commissions have jurisdiction to try war criminals who have committed crimes, not only against American prisoners of war but also against prisoners of our Allied nations. Under the international scope of their jurisdiction and, in some instances, the varied nationalities of the members of the commissions, bind them by one rules of evidence would be unfair and illogical. Especially does a Japanese accused receive a fair trial when tried by the rules of our commission, when they are contracted with the rules of the Japanese judicial system. In Japan counsel can do very little for his client during trial. An accused is forced to stand facing the court to be interrogated by it. In practice, following this his counsel may only ask supplemental questions. The Japanese rules do not afford him the protection that our rules do, paragraph 5d (1) (c) SCAP Regulations Governing the Trials of Accused War Criminals, 5 December 1945, is legal and in accordance with established practice in Military Commissions trials. Application of Yamashita 66 S. Ct. 340; *Ex parte Quirin* 317 U.S. 1, 63 S. Ct. 2; Fairman, *The Law of Martial Rule*, p. 216, 217.

The defense objected to conclusions, opinions and hearsay evidence that appear in the written statements introduced as exhibits and was properly overruled. Paragraph 5d (1) Regulations Governing the Trials of Accused War Criminals states: "The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man". It appears from the findings of the commission that the medical opinions and hearsay to which the defense objected were not considered, because the commission did not find the accused guilty of the specification, and a part of another specification, which this evidence was intended to prove.

The defense objection to the admission in evidence of an unsigned statement was properly sustained. The SCAP rules are broad, but not broad enough to admit a statement not identified with the individual making it.

A careful scrutiny of the entire record fails to reveal any error which injuriously affected the substantial rights of the accused or any failure to accord him a fair trial in every respect. He was ably defended by counsel, produced evidence and witnesses in his own behalf and chose to testify himself. The evidence produced 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.

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5. Recommendations:

There are no letters of clemency from any member of the commission or from others.

The commission sentenced the accused to confinement at hard labor for the term of his natural life. The sentence is legal.

When one contemplates the brutal and sadistic crimes of which the accused has been found guilty, consideration of clemency is incompatible with the same thought. It is therefore recommended that the sentence be approved. The Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place of confinement.

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:

/s/ Allan R. Browne
ALLAN R. BROWNE
Lt. Col., JAGD
Army Judge Advocate

COPI

**HEADQUARTERS EIGHTH ARMY
United States Army
APO 348**

**Yokohama, Japan
August 1948**

In the foregoing case of Toranoshin Akamatsu, 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.

**R. L. NICHOLSON
Lieutenant General, U. S. Army
Commanding**

A CERTIFIED TRUE COPY

**CARLOS U. LOWRANCE
Capt., GAV**