

CASE No. 65

TRIAL OF TANAKA CHUICHI AND TWO OTHERS.

AUSTRALIAN MILITARY COURT AT RABAU,
12TH JULY, 1946

A. OUTLINE OF THE PROCEEDINGS

1. THE CHARGE

The three accused were charged with the ill-treatment of prisoners of war. They were convicted and sentenced to terms of imprisonment varying from 6 months to 2 years.

2. THE EVIDENCE

The evidence for the prosecution, which was entirely documentary, showed that the accused, who were non-commissioned officers of the Japanese forces guarding the prisoners, had on two occasions severely ill-treated them by tying them to a post and beating them with a stick until they lost consciousness. The beatings were administered for alleged infringements of camp discipline by the prisoners of war. In each case the ill-treatment was aggravated by the fact that the accused, after beating the prisoners, cut off their hair and beards and in one instance forced a prisoner to smoke a cigarette. The prisoners were Indians, of the Sikh religion, which forbids them to have their hair or beards removed or to handle tobacco.

B. NOTES ON THE CASE

The regulations which can be invoked to support the findings and sentences are the following Articles of the Geneva Convention :

- (1) Article 2 : Prisoners of war shall " at all times be humanely treated and protected, particularly against acts of violence, from insults and public curiosity."
- (2) Article 3 : " Prisoners of war are entitled to respect for their persons and honour . . ."
- (3) Article 46, para. 3 : " All forms of corporal punishment, confinement in premises not lighted by day light and in general all forms of cruelty whatsoever, are prohibited."
- (4) Article 54 : Imprisonment is the most severe disciplinary punishment which may be inflicted on prisoners of war.

The ill-treatment of prisoners of war has repeatedly been held to be a violation of the recognised laws and usages of war in general and of various Articles of the Geneva Convention (1929) in particular. This trial constitutes a novelty in so far as the court seems to have extended the protection usually given to prisoners of war in respect of attacks against life and limb to attacks on their religious feelings.

The following articles of the Hague and Geneva Conventions can be invoked as protecting the religious rights of prisoners of war :

(1) *Article 18 of the Hague Convention (1907) :*

Prisoners of war shall enjoy complete liberty in the exercise of their religion including attendance at the services of their own church, on the sole condition that they comply with the police regulations issued by the military authorities.

(2) *Article 16, para. 1 of the Geneva Convention (1929) :*

Prisoners of war shall be permitted complete freedom in the performance of their religious duties, including attendance at the services of their faith, on the sole condition that they comply with the routine and police regulations prescribed by the military authorities.