

CASE No. 32.

TRIAL OF LIEUTENANT GENERAL HARUKEI ISAYAMA
AND SEVEN OTHERS

UNITED STATES MILITARY COMMISSION, SHANGHAI,
1ST-25TH JULY, 1946

A. OUTLINE OF THE PROCEEDINGS

I. THE CHARGES

It was charged that the accused, Lieutenant-General Harukei Isayama, Colonel Seiichi Furukawa, Lieutenant-Colonel Naritaka Sugiura, Captain Yoshio Nakano, Captain Tadao Ito, Captain Masaharu Matsui, First-Lieutenant Jitsuo Date and First-Lieutenant Ken Fujikawa did each " at Taihoku, Formosa, wilfully, unlawfully and wrongfully, commit cruel, inhuman and brutal atrocities and other offences against certain American Prisoners of War, by permitting and participating in an illegal and false trial and unlawful killing of said prisoners of war, in violation of the laws and customs of war." The charges asserted that the offences of the first two accused were committed " on or between 14th April, 1945 and 19th June, 1945," and those of the others " on or between 21st May, 1945 and 19th June, 1945 "; and that each of the accused except the first two mentioned above committed the offences charged " as a member of a Japanese Military Tribunal."

When taken together, the charge and accompanying Bill of Particulars, which specified the offences asserted that the accused Lieutenant-General Harukei Isayama did " permit, authorize and direct an illegal, unfair, unwarranted and false trial " before a Japanese Military Tribunal of certain American prisoners of war, did " unlawfully order and direct a Japanese Military Tribunal " to sentence to death these American prisoners of war, and did " unlawfully order, direct and authorize the illegal execution " of the American prisoners of war. The charge and accompanying Bill of Particulars against the accused, Colonel Seiichi Furukawa, were similar except as to those relating to the appointment and convening of the Japanese Military Tribunal. With respect to the accused Lieutenant-Colonel Naritaka Sugiura, Captain Yoshio Nakano, Captain Tadao Ito, Captain Masaharu Matsui, First-Lieutenant Jitsuo Date and First-Lieutenant Ken Fujikawa, the Charges and Bills of Particulars asserted that they as members of the Japanese Military Tribunals did " knowingly, wrongfully, unlawfully and falsely try, prosecute and adjudge certain charges " against the several American prisoners of war " upon false and fraudulent evidence and without affording said prisoners of war a fair hearing," did " knowingly, unlawfully and wilfully sentence " the several American prisoners of war to be put to death, resulting in their unlawful death. Several of the accused were further charged in their capacities as chief judge and prosecutors and those who acted as judges were further charged with the wrongful and wilful failure to perform their duties as such judges and with the failure and neglect to provide a fair and proper trial.

The accused pleaded not guilty.

2. THE EVIDENCE BEFORE THE COMMISSION

The evidence showed that fourteen United States airmen were captured by the Japanese Formosan Army and interrogated for alleged violations of the Formosa Military Law relating to the punishment of enemy airmen for acts of bombing and strafing in violation of International Law. These fourteen airmen were for the most part radiomen, photographers and gunners, and were captured between 12th October, 1944, on which the Military Law was issued, and 27th February, 1945. The senior members of the plane crews—the pilots and co-pilots—were sent to Tokyo for intelligence purposes and were not tried by the Japanese with their fellow crew-members.

The Law in question provided that its terms would apply to all enemy airmen within the jurisdiction of the 10th Area Army and that punishment would be meted out to all enemy airmen who carried out any of the following: bombing and strafing, with intent to kill, wound or intimidate civilians; bombing and strafing with intent to destroy or burn private objectives of non-military nature; bombing and strafing non-military objectives apart from unavoidable circumstances; disregarding human rights and carrying out inhuman acts; or entering into the jurisdiction with intentions of carrying out any of the foregoing. Death was provided as the punishment, but this, according to circumstances, could be changed to imprisonment for life or for not less than 10 years. The law stated that the punishment would be carried out by the appropriate commander; and provided for the establishment of a Military Tribunal at Taihoku composed of officers of the 10th Area Army and other units under its command, and for the applicability of the regulations of the special court-martial to the Military Tribunal. It was further provided that anyone violating this law would be tried by Military Tribunal; that the commander would be in charge of the Tribunal and that the Tribunal would be composed of three judges—two ordinary army officers and one judicial officer—to be appointed by the commander.

All of the fourteen were interrogated by members of the 10th Area Army Judicial Department. There was some evidence that, during the investigation, the chief of the Judicial Department, the accused Furukawa, inquired in Tokyo as to the disposition of the captured airmen, and that he was told that the fourteen should be tried if they came within the scope of the Military Law. On his return to Formosa he instructed his subordinates to complete the investigations. The evidence before the United States Military Commission disclosed that the records of the interrogations of several of the American airmen were falsified before the trial by the Japanese Court or before the Japanese Court records were completed.

The interpreter who was present when the falsified statements were taken testified that none of the airmen concerned made any admissions of indiscriminate bombing or strafing. This evidence was supported by the testimony of certain of those who had the task of recording the interrogations.

The accused denied the falsification and claimed that admissions of guilt had been made by the airmen.

It was the contention of the accused in the present trial that, in accordance with Japanese War Department directives, the 10th Area Army asked instructions of the Central Government during the pre-trial investigations and forwarded statements of opinion prior to referring the cases for trial. A reply came back from Tokyo stating that if the opinions given were correct, severe judgment should be meted out. The accused Isayama, Chief of Staff, 10th Area Army, was advised of all proceedings. During the absence of Furukawa from headquarters on a trip around Formosa, his assistant, Major Matsuo⁽¹⁾ sent the final reports of investigation to General Ando⁽¹⁾ and Ando ordered the trials of the American airmen and appointed the Military Tribunal.

The accused Sugiura was the chief judge on all cases ; Nakano was associate judge on all cases ; Date was the judicial judge on the trial of three airmen ; Matsui was the prosecutor in the case against two airmen, and the judicial judge in the cases against five other airmen ; Fujikawa was the judicial judge in the case of two airmen ; and Ito was the prosecutor in the trial of one airman and the judicial judge in the trial of another airman.

The fourteen Americans were tried in units according to the planes of which they were crew members. There were six cases, all brought to trial on 21st May, 1945. The American airmen were not afforded the opportunity to obtain evidence or witnesses on their own behalf. The defence attempted to justify this, first on the ground that lack of personnel and facilities made it impossible to permit the airmen to go to the scenes of their alleged indiscriminate bombings and strafings, and secondly on the ground that the airmen were given full opportunity in court to make whatever statements they wished. Some testimony was adduced by the prosecution in the United States trial to show that, except for the charges, no other document or evidence was interpreted to the airmen, and that they were not defended by counsel.

There was some evidence indicating that, under the Japanese system of military justice, an accused was not allowed defence counsel in time of war ; the evidence before a tribunal was largely documentary, based on admissions and statements of the accused in pre-trial interrogations and reports of damage and investigations by the gendarmerie ; and the accused might testify before the tribunal and might introduce evidence on his behalf. It was the contention of the defence that this was the procedure followed in each of the trials of the fourteen American airmen, and this procedure, it was testified, was the normal one.

It was the contention of the defence that since an intention on the part of the Japanese Prosecution to demand the death penalty had been approved

(1) Matsuo and Ando committed suicide before the date of the trial before the United States Commission.

by Tokyo, and since the death penalty had been demanded at the trials, the military tribunal had to adjudge death and the commander had to order its execution unless Tokyo ordered otherwise when advised of the results of the trials. The commander, Ando, issued an order for the execution of all fourteen after final instructions were received from Tokyo. On the morning of 19th June, 1945, the American fliers were lined up in front of an open ditch, shot to death and then buried in that ditch.

The Japanese records of trial relating to these American airmen, and which were turned over to American authorities in September 1945, were not completed until after the Japanese surrender, and were written up as directed by Furukawa. The accused did not sign the records of the trials until after the war.

The following paragraphs set out further details relating to each accused.

Isayama, a Lieutenant-General, as Chief of Staff of the 10th Area Army, was in a position to advise Ando, the commander on all matters. His connection with the trials of the American airmen lay in his discussions with the commander and with Furukawa, Chief of the Judicial Department, at the time when the original request for instructions was sent to Tokyo on 14th April, 1945 ; in his consideration of the charges against the defendants on or about 16th May, 1945 ; in his discussion with the chief judge and members of the judicial department at the close of the trial on 21st May, 1945 ; in the preparation of a request to Tokyo for final instructions on 22nd May, 1945 ; in his receipt and passing on of the instructions received from Tokyo ; in his receiving and passing on to the commander the protocol of judgment and order for execution ; in his instruction to Furukawa that the records of trial be filed ; and in his instructions to all involved in the trial to state to the Americans as the purported records of trial show.

Furukawa, a Colonel, as chief of the Judicial Department, was shown to have been in a position to influence the actions, not only of his subordinates, but of the other judges on the military tribunal, the chief of staff and the commander, by means of his interpretations of the facts and the law relating to the American airmen. He was the chief prosecutor of the military tribunal.

He was absent from his command during the period in which the American airmen were charged and tried, but his instructions relative to the interpretation of the military law and the theory of accomplices as affecting the guilt of all crew members, including radiomen and photographers, were submitted to the tribunal and to the commander by his assistant Matsuo, as he directed. He gave directions to the prosecutors after the Japanese surrender to strengthen the reports of the interrogations.

Sugiura, a Lieutenant-Colonel, as a member of the Intelligence Department, 10th Area Army, had the means to know the facts involved in the cases of the American airmen. All captured enemy airmen were first interrogated by his Department before being turned over to the Judicial Department for investigation.

Nakano, a Captain, apart from being an associate judge in all the trials, was also a member of the Intelligence Department which questioned the airmen.

Ito, a Captain, was a member of the Judicial Department, 10th Area Army. He interrogated two of the victims. He prepared a protocol of judgment on one of the trials, admittedly knowing that the trial was not completed.

Matsui, a Captain, was a member of the Judicial Department, 10th Area Army and interrogated two of the victims.

Date, a First-Lieutenant, was a member of the Judicial Department assigned to the 7th Shipping and Transportation Command. He was not a member of the 10th Area Army Judicial Department, and had no other connection with the trial or execution of the American airmen than as sitting as judge in one of the trials on 21st May, 1945. It was not clear from the evidence that he knew the charges and evidence to be false.

Fujikawa, a First-Lieutenant, was a member of the Judicial Department assigned to the 8th Air Headquarters. The evidence did not disclose, however, that he had any other connection with the cases against the American airmen other than as sitting as judge in one trial on 21st May, 1945. The evidence against him did not prove conclusively that he knew the charges and evidence to be false.

3. THE FINDINGS AND SENTENCES

All of the accused were found guilty.

Seiichi Furukawa and Naritaka Sugiura were sentenced to death; Haukei Isayama and Yoshio Nakano were sentenced to life imprisonment; Masaharu Matsui, Jitsuo Date, Ken Fujikawa and Tadao Ito were awarded terms of imprisonment of 40, 30, 30 and 20 years respectively.

The findings of guilty were approved by the Reviewing Authority with the exception of those against Jitsuo Date and Ken Fujikawa. The sentences against Seiichi Furukawa and Naritaka Sugiura were commuted to life imprisonment. The sentences passed on the remaining four defendants were approved.

B. NOTES ON THE CASE

The charges brought against the accused in this trial were elaborated in some detail in a Bill of Particulars, but the Commission, while declaring the accused guilty of the charges, did not of course express any opinion as to the Bill of Particulars. In order to ascertain what acts the Commission regarded as war crimes it is necessary to examine the wording of the charges of which the accused were found guilty while bearing in mind that the nature of these offences is made clearer by a scrutiny of the evidence which the Commission chose to admit as relevant.

The charges stated that the accused committed offences against United States prisoners of war " by permitting and participating in an illegal and false trial and unlawful killing " of those prisoners. Some were stated in the charges to have been members of the Tribunal which held the trial, others not. Those found guilty, and against whom the findings were approved, included some accused of both categories. In fact, the trial like the first in this volume is an illustration of the various ways in which an accused can be held liable for war crimes involving the denial of the right to a fair trial. On this aspect of the trials in the present volume, a little more is said on another page.⁽¹⁾

The following facts arising from the evidence admitted by the Commission are worth recapitulating since they may have been regarded by the latter as proving, or helping to prove, that the accused permitted and participated in " an illegal and false trial and unlawful killing " of the victims :

- (i) the evidence brought against the airmen was falsified ;
- (ii) little or no evidence connecting the victims with the alleged illegal bombing was produced apart from the falsified statements ;
- (iii) the prisoners were denied Defence Counsel ;
- (iv) the prisoners were denied the opportunity to obtain evidence or witnesses on their own behalf ;
- (v) the greater part of the proceedings were not interpreted to them ;
- (vi) all the trials were completed in one day.

(1) See pp. 70-81.