CASE No. 34

TRIAL OF
HAUPTSTURMFÜHRER OSCAR HANS

EIDSIVATING LAGMANNSRETT, JANUARY, 1947, AND SUPREME COURT OF NORWAY, AUGUST, 1947

The extent of liability of an executioner for illegal executions, and the effect of superior orders in this connection

A. OUTLINE OF THE PROCEEDINGS

THE INDICTMENT

Defendant Hans was charged by the Director of Public Prosecutions with having committed war crimes which were in violation of Articles 1 and 3 of the Provisional Decree of 4th May, 1945, with which should be read the Law of 13th December, 1946, Article 233 of the Civil Criminal Code, and Article 62 of the Civil Criminal Code.(1)

The indictment claimed that the defendant, a member of the SS, had been employed, from 25th April, 1940 onwards, in Section (Abteilung) I of the Sipo in Oslo. From the beginning of 1941 he was also leader of the Sonderkommando, in which capacity he was in charge of the execution of the death sentences passed by the S.S. und Polizeigericht Nord, the German Standesgerichts and the Feldgerichts. As leader of the Sonderkommando he was responsible for the execution of at least 312 Norwegian patriots of whom 68 were executed without previous trial.

The allegations made against him were set out in five Counts, as follows :

Count 1 : that on 30th April, 1942, the Sonderkommando under the defendant's leadership executed 18 named Norwegian citizens. The executions took place on orders from the Reichskommissar as a reprisal for the killing of two German policemen by Norwegian saboteurs from England. All the victims were innocent as they were in prison at the time of the killing of the German policemen.

Count 2 : that on 6th October, 1942, 10 named Norwegian citizens were executed by the Sonderkommando under the defendant's leadership. The executions took place without previous trial. According to a statement to the Press by Der Höhere S.S. und Polizeiführer, the victims were shot as a reprisal for several attempts at sabotage which had led to the declaration of a state of emergency in the Trondheim area. The victims were not responsible for the acts of sabotage.

(1) For a general account of the Norwegian law concerning the trial of War Criminals, see Vol. III of this series, pp. 81-92.

Count 3 : that on 21st July, 1944, five named Norwegian citizens (among them two women) were executed without trial. The executions were decided on by leaders of the Sipo who, according to Hitler's orders of June-July, 1944, were given a free hand to decide upon any executions.

Count 4 : that on 5th September, 1944, the Sonderkommando under the defendant's leadership executed 17 named Norwegian and six named Russian citizens. The executions were carried out without trial and were based on a decision by the Sipo.

Count 5 : that on 30th or 31st October, 1944, 14 named Norwegian and eight named Russian citizens were executed by the Sonderkommando under the defendant's leadership. The executions were carried out without previous trial and were based on a decision by the Sipo.

The Public Prosecutor acting in this trial was Statsadvokat Harald Sund. Counsel for the Defence was Höyesterettsadvokat Adam Hjorth.

2. THE EVIDENCE

It was established that the defendant arrived in Oslo on 25th April, 1940, together with a detachment of the Sipo on orders from Berlin and was appointed to Section I of the Sipo. The whole of the Sipo in Norway comprised six sections and was under the command of Fehlis. The Chief of the defendant's section was Obersturmbannführer Keller.

The defendant achieved the rank of Hauptsturmführer and became head of a department whose work was of an administrative and organizational character, similar to that which he had held in Berlin. The defendant was at the same time appointed Hauskommandant of Victoria Terrasse, in which capacity he was in charge of the security of the various offices housed in the building. As Hauskommandant he was directly subordinate to Fehlis.

The defendant and his staff of 22 were in charge, among other things, of the entering of all the Sipo's incoming post into a register before they were distributed among the various offices. Communications which bore the stamp " Secret " were entered into a special book and post which was stamped " Secret " on the envelope was passed on without being opened in the defendant's office. On an average about 500 letters from Norway, 100 from Germany and about 50 teleprinted communications and a series of telegrams were entered every day. The communications were mostly opened by the chief registrar, but it often happened that the post was dealt with by the defendant himself. (The above details were regarded by the Lagmannsrett as relevant to the case in so far as they went to show that the defendant could not have been informed about *all* the secret orders which came from Berlin.)

At the beginning of 1941, the Sipo in Oslo set up a so-called Sonderkommando, a detachment organized on military lines, entrusted with the safeguarding of the Sipo headquarters from enemy attacks. The defendant became leader of the Sonderkommando and had a staff of three officers

and 35 men, mostly members of his own department. In his capacity as leader of the Sonderkommando the defendant was directly responsible to Fehlis who in his turn was responsible to General Rediess, whose title was " Gerichtsherr " and who was in charge of all the police forces in Norway.

During the first state of emergency in Oslo in September, 1941, the defendant received orders for his Sonderkommando to undertake the execution of Norwegians sentenced to death by German courts in Norway. This being the first job of its kind, the defendant was given detailed instructions by Fehlis. According to the defendant these regulations concerning executions laid down among other things that an execution order (Vollstreckungsbefehl) had to be given in writing ; that the sentence had to be made known to the victims in German and Norwegian ; that the execution was to be carried out by shooting—three men to one victim ; that the victims were to be blindfolded but not bound ; that the corpses were to be buried in a communal grave and not to be delivered to the families ; that the presence of any outsiders, even a doctor or a clergyman, was forbidden, and that the whole execution had to be carried out in absolute secrecy.

According to the defendant's statement he also received an " Auslieferungsschein " (order for delivery) from Section IV of the Sipo against which the prisoners were handed over and a list containing the names and personal details of those sentenced to be executed. The defendant was told by Fehlis that those documents were sufficient. He had never received any communication direct from any of the courts.

Most of the death sentences executed by the defendant were passed by the S.S. und Polizeigericht Nord, by the Feldgericht (the S.S. und Polizeigericht Nord on circuit), some by courts-martial and on three occasions by civilian Standesgerichts—namely, during the two states of emergency in Oslo in September, 1941, in the winter of 1945, and during the state of emergency in Trondheim in October, 1942.(1)

The Lagmannsrett found it necessary to go into the details of the procedure followed after the sentence had been passed by the S.S. und Polizeigericht Nord. Copies of the sentence were sent to Rediess and Terboven for confirmation and, if this was given, three further copies were sent to the Untersuchungsführer, who in his turn dispatched them to Fehlis who made out the execution orders which contained whatever Fehlis found necessary to impart to the leader of the Sonderkommando. The execution order was always handed to the defendant by Fehlis himself and stated, besides the name of the convicted person, that sentence (Urteil) had been passed and that the person had been sentenced (verurteilt) for having committed a particular crime, which was described in a few words. The order was signed by Fehlis only. It always stated the name of the court when the sentence had been passed by the S.S. und Polizeigericht Nord ; in other cases there was no reference to a court.

(1) It appears, however, from the Indictment that the defendant was only charged with those executions which were carried out without any previous trial.

In June/July, 1944, a decree was issued on Hitler's orders from Berlin which abolished tribunals in occupied countries. The Sipo in each country was vested with discretionary powers to decide on executions in cases where offences of a political character had allegedly been committed. The reason for promulgating the decree was that it had been found that holding of tribunals did not have the desired deterrent effect on the population and that it would be far more efficacious if the German police were given free hand in deciding on executions whenever they deemed necessary. It was also considered that it might have a chastening effect on any subversive activities if people simply disappeared and were never heard of again. This decree was put into force in Norway.

According to a statement by the then President of the S.S. und Polizeigericht Nord, Dr. Latza, who was appalled by the abolition of all judicial safeguards, he had immediately asked for interviews with the Chief of the Gestapo, Reinhardt, and with Terboven, who had both told him that they found the Führer order very sensible and serviceable. Dr. Latza had gone to Germany in order to see if an exception could be made in the case of Norway but had to return having achieved nothing.

(The Regulation to abolish tribunals did not, however, come up to expectation and in January, 1945, the SS. und Polizeigericht Nord was reinstalled with the additional authority to pass prison sentences.)

After the decree of June/July, 1944, came into force, Fehlis personally gave orders for a series of executions. The defendant still received the execution orders from Fehlis in writing. The documents stated that the person to be executed had been " sentenced " but did not make reference to any court.

3. THE JUDGMENT OF THE LAGMANNSRETT, 17TH JANUARY, 1947

The defendant was found guilty and sentenced to death by shooting.

The Lagmannsrett considered it an indisputable and basic rule of international law that an occupation power had no right to undertake the execution of citizens of the occupied country or enemy citizens in occupied territory without a trial by an appropriate tribunal. (See Article 30 of the Hague Convention No. IV of 1907, regarding the laws and customs of land warfare, which lays down that a spy caught *in flagrante* cannot be punished without previous trial and sentence.) Hitler's decree of June/July, 1944, on the abolition of German tribunals in occupied countries constituted without doubt a breach of the basic rules of international law, and he who had acted on that decree must be prepared to face criminal responsibility.

It had been stated in the Indictment that the defendant had executed at least 312 named Norwegian patriots ; that figure, on the recommendation of the Public Prosecutor, was reduced to at least 268, of whom 68 were executed without trial. The defendant himself insisted that he had been

in charge of the execution of only 215 persons, mainly Norwegians. The Lagmannsrett did not find it necessary to insist on a definite figure for the total number of executions, as the defendant had been charged only with responsibility for those executions which had been carried out without the decision of a court, as the Prosecution had realized that according to international law an occupation power had the right to pass death sentences on citizens of the occupied country through their established courts.

The Lagmannsrett acquitted the defendant on Count 1 of the Indictment as it was held that at that time the defendant may have been in justifiable ignorance of the fact that the executions were decided upon without previous trial. The Court stressed the fact that on that occasion the Untersuchungsführer had attended the execution and had read out the contents of the documents to the victims, a circumstance which might have given the defendant the impression that sentence had been passed by a court.

As to Count 2, the prosecution had already before the trial decided to withdraw the charge involved.

The Court acquitted the defendant of the execution of the *Russian* citizens mentioned in Counts 4 and 5, as it might be considered that the defendant might have assumed that those sentences had been passed by the Wehrmacht's courts-martial.

As regards the executions of Norwegian victims referred to in Counts 3, 4 and 5 of the Indictment, the Lagmannsrett held that the terms of Articles 1 and 3 of the Provisional Decree of 4th May, 1945, in so far as they defined the *actus reus* had been fulfilled and that the acts therefore could be regarded as being at variance with the laws and customs of war. The Court thereupon proceeded to examine whether the mental element of the crimes had also been present, as laid down in the same provisions.

It had been stated by the defendant that during his office he had always been aware of the fact that no execution could legally be carried out without a trial. After having heard the evidence submitted to the Court, he could not but realize that some of the executions had in fact been carried out without previous trial. He had, however, pleaded that he could not see how he could be held responsible for having acted *bona fide* on Fehlis's orders. He had received the execution orders from Fehlis personally and they had all stated that the condemned had been " sentenced " to death. He had been confident that Fehlis would not give him orders which were in any way contrary to law. He had considered that he owed the same obedience to his superior as a soldier of the Wehrmacht owed to those above him in rank.

When considering the question of how far defendant had acted *bona fide* the Lagmannsrett found :

> that in the cases referred to in Counts 3, 4 and 5 (those executed after the decree of June/July, 1944) the defendant had already gained enough experience to be able to judge whether the execution orders were fully

lawful, i.e., whether they were preceded by a trial. In his first statement to the Court, the defendant had confessed to the knowledge of Decree No. 7 of 31st July, 1941, which normally presupposed the declaration of a state of emergency before any civilian court-martial authorized to pass the death sentence on civilians could be set up. Later the defendant had withdrawn his admission and professed ignorance on that point. The Court, however, felt bound by the defendant's original statement ;

that defendant must have had sufficient reason to doubt the legality of the execution orders as no state of emergency had been in force at that time ;

that the Reichskommissar's declaration to the Press on the executions referred to in Count 1 ought to have made defendant apprehensive of any possible illegality, which declaration was made the day after the executions had been carried out ;

that since, according to the defendant, some execution orders had stated that the sentence had been passed by the S.S. und Polizeigericht Nord, he should have surmised that in cases where the name of a court had not been given, the order might be unlawful ;

that after having read the regulations concerning the duties of the Sonderkommando, the defendant must have realized that Fehlis himself did not keep to those regulations. For instance, the defendant had stated that only in a few instances had he received a copy of the sentence itself which, according to the regulations, should have been made known to those sentenced. Moreover, the substance of the sentence had only been referred to in a few words, not sufficient to show to those sentenced the reasons for the sentence ; neither had any representative from the courts attended the executions, except in one or two instances. In those circumstances the defendant's suspicions as to the legality of the executions ought to have been roused.

The Court realized that the decree of June/July, 1944, and its putting into effect, had been a matter of the utmost secrecy, and it could therefore be assumed that the defendant's superiors had not acquainted him with it. The Court also understood that the defendant could not, without serious consequences to himself, have approached Fehlis direct and asked for an explanation in order to ascertain the legality of the execution orders. What was considered decisive in the opinion of the Court was that defendant had at no time done anything to ascertain that the execution orders were legal ; neither had he at any time taken any steps to be transferred to some other work or to active service. The Court held that information regarding the legality of the orders might have been obtained by the defendant had he approached members of the S.S. und Polizeigericht Nord or the registrar of the Court. On the basis of such information it may be assumed that defendant could have taken measures to obtain a transfer to the front line or to other work without incurring the possibility of disciplinary action.

In view of these circumstances, the Court found that they could not accept the defendant's plea of having been ignorant of the change in the

situation after the decree of June/July, 1944. Even if he had not been directly informed of the decree or its contents, he must have known that prisoners were no longer tried by the Polizeigericht and Standesgerichts. The Court considered that defendant must have been aware of the situation when he received the execution orders mentioned in Counts 3, 4 and 5 of the Indictment. In that connection the Court recalled that the defendant, besides being leader of the Sonderkommando, had continued to be head of the department and of his staff of 22, and it could, therefore, be assumed that among other secret documents which he registered there must have been some which might have given him a hint as to the change in the position after tribunals were abolished.

The Court, therefore, assumed that defendant must have known that the persons referred to in Counts 3, 4 and 5 of the Indictment had been executed without trial. The Court could not accept the plea that defendant had assumed that everything was in order because he received the execution orders from Fehlis himself and that they contained the word " sentenced". He must have realized that he was running a risk in accepting the legality of the documents *bona fide* and must, therefore, be assumed to have acted knowingly in the sense signified by that term in Criminal Law. According to Article 5 of the Provisional Decree of 4th May, 1945, superior orders could not as a matter of course be regarded as exculpatory.

It had been pointed out by the defence that the real criminals in the case in hand were Fehlis and Terboven. Had they not committed suicide, the defendant would hardly have been charged with those crimes. The Court could not accept that argument. The German occupation powers had employed violence and used their power contrary to international law, and as a result punishment must be meted out not only to those who had issued the orders but also to their subordinates if blind obedience had made it possible to put into effect such a criminal system.

Two of the judges dissented from the opinion held by the majority of the Court and voted for defendant's acquittal on all counts. In their opinion no sufficient proof had been brought in support of the charge that defendant had known or understood that the executions he had carried out were decided on without trial, and they referred to what had been said above in connection with Count 1 of the Indictment. The decree of June/July, 1944, was " top secret," and it may be assumed that as its intention was to terrorize people by leaving them in ignorance of what was happening, it was in the interest of the occupation powers to keep it *sub rosa*. It had not been proved that the defendant was among those to whom the secret was imparted. Neither did any other of the prevailing circumstances justify the conclusion that the defendant had been aware of the situation. It was true that he held a comparatively high position within the Sipo but he was not a member of its executive organ—the Gestapo—and was not concerned with investigations and with prisoners. Neither was there sufficient proof to refute the defendant's statement that the execution orders invoked in Counts 3, 4 and 5 of the Indictment were in all other respects similar to those he had received in previous cases, except for the mention of the name of a court. It must be remembered that the name of the court had also been

omitted when the sentence had been passed by a Standesgericht. The minority pointed out that it had been stated in the execution orders issued and signed by Fehlis that those to be executed had been sentenced to death (zum Tode verurteilt) and that it had been stated in each individual case when they had been sentenced, for what crime and according to which provisions of the German Criminal Law.

The minority further pointed out that the fact that the executions referred to in Courts 3-5 of the Indictment were carried out when no state of emergency had been declared was no real proof that defendant must have surmised that everything was not in order. It was common knowledge that very few Germans knew that as a rule a state of emergency had to exist before a Standesgericht could be set up. It must be remembered in that connection that, in 1945, the Standesgericht did pass sentences without a state of emergency having been declared.

The minority held that the prosecution had not succeeded in proving that the defendant ought to have been aware that the executions referred to in Counts 3-5 of the Indictment were different in respect of legality from those carried out previously, which, the Court had decided, were not contrary to international law. The minority, therefore, considered that defendant's acts had not the requisite mental element as laid down in Article 233 of the Civil Criminal Code (having acted knowingly), and proceeded to examine whether his acts could be brought within the scope of Article 239 of the Civil Criminal Code, i.e., whether he could be regarded as having caused the victims' death inadvertently. In that connection the German regulations which were used at executions had to be considered. The defendant, who was not a lawyer but a police officer, was the leader of executions. According to the regulations it was not necessary for a representative of the court or the prosecution to be present at the executions. Thus, as had been implied by the Court's acquitting the defendant on Count 1 of the Indictment, it did not seem reasonable to expect him to have judged from the presence or absence of any such representative whether the execution orders were or were not legally in order. The procedure seemed to have been as follows: Fehlis, a lawyer by profession was, in his capacity as Chief of the Sipo, supposed to ascertain in each individual case that the legal basis for the execution order had been complied with, to confirm the sentence or recommend for a reprieve. He would then issue the execution order furnished with the necessary details. In these circumstances the defendant could not be imputed for having acted according to orders unless special circumstances should have given him cause to make further investigations. The minority found that such special circumstances had not been proved. Thus defendant could not, in their opinion, be found guilty of having committed the acts in violation of Article 239 of the Civil Criminal Code. Consequently, the minority voted for an acquittal on all Counts.

4. THE APPEAL TO THE SUPREME COURT

The defendant appealed against the sentence of the Lagmannsrett on the following grounds:

(i) that the reasons given by the Lagmannsrett were insufficient and inconsistent with the conclusions reached by the Court;

(ii) that the Lagmannsrett had wrongly interpreted Article 1 of the Provisional Decree of 4th May, 1945, in so far as the assumption of the Court had been that an occupying power could not legally execute citizens of the occupied state except according to a sentence passed by a tribunal. The defendant contended that international law demanded only an investigation and a decision by an authority—not necessarily a court—vested with corresponding powers, before an execution could take place ;

(iii) that, whatever the circumstances, the punishment decided on by the Lagmannsrett was too severe.

5. THE JUDGMENT OF THE SUPREME COURT, 23RD AUGUST, 1947

The Supreme Court quashed the verdict and sentence of the Lagmannsrett.

Judge Holmboe, who was the first judge to give his reasons for the decision of the Supreme Court, held that in his opinion point 1 of the defendant's appeal was justified. Apart from the question whether criminal law had been rightly applied, the issue at hand was whether the defendant had been aware that the persons referred to in Counts 3-5 of the Indictment had not been tried and sentenced according to law. The Lagmannsrett had dealt with that question elaborately and had pointed out a number of circumstances which were supposed to indicate that the defendant had been cognisant of the situation. In Judge Holmboe's opinion, however, the reasons given by the Lagmannsrett in that connection were rather obscure and contradictory on several points. Thus the Lagmannsrett had apparently based their conclusion as to the defendant's guilt solely on the fact that no state of emergency had been officially declared, in assuming that he had had reason to suspect that some of the victims had not been tried by a Standesgericht. At the same time the Lagmannsrett had not contested the legality of the executions carried out in the winter of 1945, though a state of emergency had not been expressly declared. Judge Holmboe declared that neither according to international law nor according to German law, was the official declaration of a state of emergency a condition for the setting up of a Standesgericht. The Lagmannsrett seemed to have held the same opinion when declaring that the German Decree of 31st July, 1941, presupposed that *normally* a state of emergency had to be declared before a *civilian* Standesgericht could be set up.

The Lagmannsrett had further pointed out that in some instances it had been stated in the execution orders that sentence had been passed by the S.S. und Polizeigericht Nord whereas in other instances the name of the court had been omitted, and had maintained that in cases where the name of the court had *not* been mentioned, the defendant ought to have had his doubts as to the legality of the executions. Judge Holmboe maintained that those arguments were hardly consistent with what the Lagmannsrett had established in another connection, namely when ascertaining that the execution orders only mentioned the name of the court when the sentence

had been passed by the SS und Polizeigericht Nord, never when it had been passed by the Standesgericht. It had, however, been established that in every instance the execution orders had mentioned that the person to be executed had been " sentenced " to death.

As another indication of the defendant's *mala fides*, the Lagmannsrett had stated that the general regulations issued to him in his capacity as chief of the Sonderkommando had not been adhered to by his immediate superior Fehlis. Judge Holmboe assumed that that allegation referred to the provision that the sentence should be made known to those sentenced. That, however, was inconsistent with what had been established by the Lagmannsrett, namely that the execution orders given to the defendant had stated among other things that the person had been " sentenced " for a certain crime. Thus the general instructions had not been violated by Fehlis in any such way as to have given rise to suspicion on the defendant's part.

Judge Holmboe then drew the Court's attention to the paragraph in the Lagmannsrett's notes where the Court had stressed that the defendant had at no time done anything to obtain information in order to asertain whether the executions were legal or not. That statement taken in connection with what had been stated above, had given rise to doubts in Judge Holmboe's mind as to whether the Lagmannsrett had been aware of the fact that it was not sufficient for a conviction for wilful murder that the accused *ought to have known* the circumstances which made his act illegal. The Lagmannsrett had finished the statement of their reasons on that point by saying that the defendant must have been aware of the situation when he received the execution orders invoked in Counts 3-5 of the Indictment, an argument which, taken separately, would have been sufficiently lucid. As long as this seemed to have been the conclusions arrived at by the Lagmannsrett from the various arguments dealt with above, however, Judge Holmboe held that it could not explain away the prevailing ambiguity of the reasons as a whole, which ambiguity, in his opinion, was in itself sufficient to lead to the quashing of the sentence.

As to the defendant's plea of a wrong application of the criminal law, Judge Holmboe quoted a statement made by the Lagmannsrett referring to the indisputable and basic rules of international law which laid down that an occupation power had no right to undertake the execution of citizens of the occupied country except according to sentence by an appropriate court. In Judge Holmboe's opinion that was not an accurate interpretation of the provision of international law, which only seemed to demand that no execution should take place before proper and fair investigation of the case and a decision passed by an authority legally vested with appropriate powers. As Judge Holmboe had come to the conclusion that it was sufficient to quash the sentence of the Lagmannsrett on the grounds mentioned above, however, he did not find it necessary to go deeper into the second plea. In connection with the interpretation of the provision of international law referred to above and its applicability to the case in hand he restricted himself to pointing out that it would be necessary to take into consideration the

demands made by international law as to the procedure preceding a decision for execution, e.g., what authorities could be vested with the power to take the decision and what rules of procedure had to be adhered to.

Judge Bonnevie agreed with what had been said by Judge Holmboe, adding that the reasons given by the Lagmannsrett did not state sufficiently clearly whether the defendant had been aware of the illegality of his acts, a fact which the Court had taken for granted. Thus, for instance, it had not been mentioned whether or not the defendant had been aware that executing superior orders was not in itself unconditionally exculpatory. The reasons given by the Lagmannsrett did not clarify whether the defendant had acted under a misconception of law in performing his duties, a fact which in itself, according to Judge Bonnevie, must necessarily lead to the quashing of the sentence.

Judge Schjelderup added that the procedure put into force by Hitler's decree of June/July, 1944, and referred to by the Lagmannsrett, was not consistent with the minimum demands laid down by international law as a condition for executions. He made reference to what had been said in Holland's " The Laws of War on Land " (1908), p. 15 ff., and in Wheaton's " International Law II " (1944), p. 240.

Judges Alten, Bahr, Fougner, Berger, Skau and Stang concurred.

B. NOTES ON THE CASE

According to Norwegian law on criminal procedure, the effect of the Supreme Court's decision to quash the sentence of the Lagmannsrett is that the case is open for retrial by the Lagmannsrett if the Director of Public Prosecutions is of the opinion that sufficient or additional proof of the defendant's guilt can be provided. If the Director of Public Prosecutions decides that such additional proof cannot be submitted and drops the case, the effect of the decision taken by the Supreme Court and the Attorney-General is that the defendant be released.(1)

As to the case in hand, the Director of Public Prosecutions announced on 1st November, 1947, that it was considered impossible to provide such additional proof as could lead to a retrial. As a consequence the defendant Hans was released.

It will be noted that, in the opinion of the Supreme Court, the defendant could not be held guilty unless it had been shown that he was actually aware that the victims had not been tried and sentenced according to law ; constructive knowledge was not sufficient.(2)

(1) See Vol. III of this series, pp. 90-1.
(2) See pp. 81, 90 and 91.

The question of superior orders entered into the present trial, but it would appear that such orders were regarded as relevant only in so far as they created or helped to create a mistake of fact in the accused's mind ; the duress aspect of superior orders was not considered by the Supreme Court.