

JESUS MIQUIABAS, PETITIONER, VS. COMMANDING GENERAL, PHILIPPINES-RYUKYUS COMMAND, UNITED STATES ARMY, RESPONDENT.

G.R. No. L-1988. February 24, 1948

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a petition for a writ of habeas corpus filed by Jesus Miquiabas against the Commanding General, Philippines-Ryukyus Command, United States Army, who is alleged to have petitioner under custody and to have appointed a General Court-Martial to try petitioner in connection with an offense over which the said court has no jurisdiction.

Petitioner is a Filipino citizen and a civilian employee of the United States Army in the Philippines, who has been charged with disposing in the Port, of Manila Area of things belonging to the United States Army, in violation of the 94th Article of War of the United States. He has been arrested for that reason and a General Court-Martial appointed by respondent tried and found him guilty and sentenced him to 15 years' imprisonment. This sentence, however, is not yet final for it is still subject to review.

It may be stated as a rule that the Philippines, being a sovereign nation, has jurisdiction over all offenses committed within its territory, but it may, by treaty or by agreement, consent that the United States or any other foreign nation, shall exercise jurisdiction over certain offenses committed within certain portions of said territory. On March 14, 1947, the Republic of the Philippines and the Government of the United States of America, entered into an agreement concerning military bases, and Article XIII thereof is as follows:

"JURISDICTION

"1. The Philippines consents that the United States shall have the right to exercise jurisdiction over the following offenses:

(a) Any offense committed by any person within any base except where the offender and offended parties are both Philippine citizens (not members of the armed forces of the United States on active duty) or the offense is against the security of the Philippines;

(b) Any offense committed outside the bases by any member of the armed forces of the United States in which the offended party is also a member of the armed forces of the United States; and

(c) Any offense committed outside the bases by any member of the armed forces of the United States against the security of the United States.

2. The Philippines shall have the right to exercise jurisdiction over all other offenses committed outside the bases by any member of the armed forces of the United States.

3. Whenever for special reasons the United States may desire not to exercise the jurisdiction reserved to it in

paragraphs 1 and 6 of this Article, the officer holding the offender in custody shall so notify the fiscal (prosecuting attorney) of the city or province in which the offense has been committed within ten days after his arrest, and in such a case the Philippines shall exercise jurisdiction.

4. Whenever for special reasons the Philippines may desire not to exercise the jurisdiction reserved to it in paragraph 2 of this Article, the fiscal (prosecuting attorney) of the city or province where the offense has been committed shall so notify the officer holding the offender in custody within ten days after his arrest, and in such a case the United States shall be free to exercise jurisdiction. If any offense falling under paragraph 2 of this article is committed by any member of the armed forces of the United States.

(a) While engaged in the actual performance of a specific military duty, or

(b) during a period of national emergency declared by either Government and the fiscal (prosecuting attorney) so finds from the evidence, he shall immediately notify the officer holding the offender in custody that the United States is free to exercise jurisdiction. In the event the fiscal (prosecuting attorney) finds that the offense was not committed in the actual performance of a specific military duty, the offender's commanding officer shall have the right to appeal from such finding to the Secretary of Justice within ten days from the receipt of the decision of the fiscal and the decision of the Secretary of Justice shall be final.

5. In all cases over which the Philippines exercises jurisdiction the custody of the accused, pending trial and final judgment, shall be entrusted without delay to the commanding officer of the nearest base, who shall acknowledge in writing that such accused has been delivered to him for custody pending trial in a competent court of the Philippines and that he will be held ready to appear and will be produced before said court when required by it. The commanding officer shall be furnished by the fiscal (prosecuting attorney) with a copy of the information against the accused upon the filing of the original in the competent court.

6. Notwithstanding the foregoing provisions, it is mutually agreed that in time of war the United States shall have the right to exercise exclusive jurisdiction over any offenses which may be committed by members of the armed forces of the United States in the Philippines.

"7. The United States agrees that it will not grant asylum in any of the bases to any person fleeing from the lawful jurisdiction of the Philippines. Should any such person be found in any base, he will be surrendered on demand to the competent authorities of the Philippines.

"8. In every case in which jurisdiction over an offense is exercised by the United States, the offended party may institute a separate civil action against the offender in the proper court of the Philippines to enforce the civil liability which under the laws of the Philippines may arise from the offense."

Under, paragraph 1 (a), the General Court-Martial would have jurisdiction over the criminal case against petitioner if the offense had been committed within a base. Under paragraph 1 (b), if the offense had been committed outside a base, still the General Court-Martial would have jurisdiction if the offense had been committed by a "member of the armed forces of the United States" there being no question that the offended party in this case is the United States. It is not necessary, therefore, to consider whether the offense is against "the security of the United States" under paragraph 1 (c), or whether petitioner committed it in "the actual performance of a specific military duty" or in time of a declared "national emergency" under paragraph 4, or whether we are still in a state of war under paragraph 6, for in all these instances the military jurisdiction depends also upon whether the offender is a member of the armed forces of the United States. We shall then determine in this case (1) whether the offense has been committed within or without a base, and, in the second instance, (2) whether the offender is or is not a member of the armed forces of the United States.

As to the first question, Article XXVI of the Agreement provides that "bases are those areas named in Annex A and Annex B and such additional areas as may be acquired for military purposes pursuant to the terms of this

Agreement." Among the areas specified in Annexes A and B, there is none that has reference to the Port of Manila Area where the offense has allegedly been committed. On the contrary, it appears in Annex A that "army communications system" is included, but with "the deletion of all stations in the Port of Manila Area."

Paragraph 2 of Article XXI is invoked by respondent. The whole article is as follows:

TEMPORARY INSTALLATIONS

1. It is mutually agreed that the United States shall retain the right to occupy temporary quarters and installations now existing outside the bases mentioned in Annex A and Annex B, for such reasonable time, not exceeding two years, as may be necessary to develop adequate facilities within the bases for the United States armed forces. If circumstances require an extension of time, such a period will be fixed by mutual agreement of the two Governments; but such extension shall not apply to the existing temporary quarters and installations within the limits of the City of Manila and shall in no case exceed a period of three years.
2. Notwithstanding the provisions of the preceding paragraph, the Port of Manila reservation with boundaries as of 1941 will be available for use to the United States armed forces until such time as other arrangements can be made for supply of the bases by mutual agreement of the two Governments.
3. The terms of this Agreement pertaining to bases shall be applicable to temporary quarters and installations referred to in paragraph 1 of this article while they are so occupied by the armed forces of the United States; provided, that offenses committed within the temporary quarters and installations located within the present limits of the City of Manila shall not be considered as offenses within the bases but shall be governed by the provisions of Article XIII, paragraphs 2 and 4, except that the election not to exercise the jurisdiction reserved to the Philippines shall be made by the Secretary of Justice. It is agreed that the United States shall have full use and full control of all these quarters and installations while they are occupied by the armed forces of the United States, including the exercise of such measures as may be necessary to police said quarters for the security of the personnel and property therein.

The subject-matter of this article, as indicated by its heading, is "Temporary Installations." Paragraph 1 refers to temporary quarters and installations existing outside the bases specified in Annex A and Annex B, which may be retained by the United States armed forces for such reasonable time as may be necessary not exceeding two years in duration, extendible for not more than three years, the extension not being applicable to existing temporary quarters and installations within the limits of the City of Manila.

Paragraph 2, of Article XXI, refers to the Port of Manila Reservation, which will be available for use to the United States armed forces, also as temporary quarters and installation, its temporariness not being for a definite period of time, but "until such time as other arrangements can be made for supply of the bases by mutual agreement of the two Governments." There is in paragraph 2 absolutely nothing that may be construed as placing the Port of Manila Reservation in the category of a permanent base.

Paragraph 3, of Article XXI, provides "that offenses committed within the temporary quarters and installations located within the present limits of the City of Manila shall not be considered as offenses within the bases but shall be governed by the provisions of Article XIII, paragraphs 2 and 4." Therefore, the offense at bar cannot be considered as committed within, but without, a base, since it has been committed in the Port of Manila Area, which is not one of the bases mentioned in Annexes A and B to the Agreement, and is merely temporary quarters located within the present limits of the City of Manila.

The next inquiry is whether or not the offender may be considered as a member of the armed forces of the United States under Article XIII, paragraph 1 (b). As above stated, petitioner is a Filipino citizen and a civilian employee of the United States Army in the Philippines. Under the terms of the Agreement, a civilian employee cannot be

considered as a member of the armed forces of the United States. Articles XI, XVI and XVIII of the Agreement make mention of civilian employees separately from members of the armed forces of the United States, which is a conclusive indication that under said Agreement armed forces do not include civilian employees.

Respondent invokes Article II of Articles of War of the United States, which enumerates, among the persons subject to military law, persons accompanying or serving with the armies of the United States. But this case should be decided not under the Articles of War, but under the terms of the Base Agreement between the United States and the Philippines. And not because a person is subject to military law under the Articles of War does he become, for that reason alone, a member of the armed forces under the Base Agreement. And even under the Articles of War, the mere fact that a civilian employee is in the service of the United States Army does not make him a member of the armed forces of the United States. Otherwise, it would not have been necessary for said Article to enumerate civilian employees separately from members of the armed forces of the United States.

Respondent maintains that petitioner has no cause of action because the Secretary of Justice had not notified the officer holding the petitioner in custody whether or not the Philippines desired to retain jurisdiction under Article XXI, paragraph 3, of the Military Base Agreement. It is sufficient to state in this connection that in cases like the present where the offender is a civilian employee and not a member of the United States armed forces, no waiver can be made either by the prosecuting attorney or by the Secretary of Justice, under paragraphs 2 and 4 of Article XIII in connection with paragraph 3 of Article XXI, of the Agreement.

We are, therefore, of the opinion and so hold, that the General Court-Martial appointed by respondent has no jurisdiction to try petitioner for the offense allegedly committed by him and, consequently, the judgment rendered by said court sentencing the petitioner to 15 years' imprisonment is null and void for lack of jurisdiction.

It is ordered that petitioner be released immediately by respondent without prejudice to any criminal action which may be instituted in the proper court of the Philippines.

Let a copy of this decision be sent immediately to the Honorable, the Secretary of Justice.

Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

PERFECTO, J., concurring:

One of the attributes of national sovereignty is the power to try and punish offenses, criminal or otherwise. The exercise of that power is, by virtue of express provision of our Constitution, vested in the Supreme Court and in inferior courts established by law. (Sec. 1, Art. VIII.) The fundamental law refers to inferior courts created by an enactment of a national legislature, Assembly or Congress, not to foreign courts martial, created by foreign countries.

All this is in accordance with elemental principles' of political law.

If petitioner is liable for a criminal offense, according to our laws, the jurisdiction to try him belongs to a justice of the peace or municipal court or to a court of first instance.

The jurisdiction can be transferred to other courts by virtue of a law that may be enacted to said effect. The law, to be effective, must not violate the constitutional Bill of Rights, among them the guarantee of fair trial in favor of an accused, the equal protection of the law, the due process of law, the guarantees against illegal detentions and searches, and others.

Petitioner is a Filipino citizen and a civilian employee of the U. S. Army, rendering services in the Philippines. He

attacks the power of the Commanding General, Philippine Ryukus Command, U. S. Army, to have him under military custody and tried by a general court-martial of said army. Respondent invokes, in opposing the petition, the provisions of the agreement on military Bases entered into by the Republic of the Philippines and the government of the United States of America on March 14, 1947.

The agreement appears to be a concession to two weaknesses: the American distrust in Philippine tribunals and Filipino yielding to much distrust; on one hand, undisguised prejudice, —national, racial or otherwise,—on the other, meek submission to the natural consequences of an unreasonable prejudice; on one side, the haughtiness of a powerful nation, proud in the consciousness of its power, on the other, the moral surrender of a new nation, not yet so sure in the exercise to their fullness of sovereign prerogatives. Extra-territoriality is wrong per se.

It is, therefore, assailable on two opposing fronts. On constitutional ground, it is hardly defensible.

The Bill of Rights has been embodied in the Constitution for the protection of all human beings within the territorial jurisdiction of the Philippines. All persons covered by the waivers made in the agreement, whether Americans or Filipinos, whether citizens or aliens, are denied the constitutional guarantee of the equal protection of the law. Their fundamental rights are safeguarded by the Constitution, and the agreement places them outside the Constitution.

Our conclusion is, therefore, that the agreement in question, so far as it stipulates waiver of the jurisdiction of our courts of justice on the class of persons mentioned therein, is null and void, being in open conflict with clear provisions of our fundamental law.

Upon this ground, petitioner is entitled to be released by respondent and by the court martial which tried him.

Even in the erroneous hypothesis that the waiver clauses of the agreement are valid, we concur in the reasonings of the Chief Justice in support of the position that petitioner is not comprehended in said waiver clauses. With more reason, respondent has no power nor jurisdiction to hold petitioner in confinement, nor to have him tried by a U. S. army court-martial.

Notice must be served to the whole world that, in rendering the decision in this case, the Supreme Court, in the fullness of judicial maturity, acted not as a mere agency of a national sovereignty, but in the consciousness that the administration of justice, more than national, is a human function, untethered by the narrow provincialism of the points of view of a country, but founded on the universal and permanent interests of mankind, as expressed in principles with equal value regardless of the hemisphere or the latitude where a person may be placed.

There is a suggestion that, because it has not found articulate expression in this case, it should be ignored, when it is boiling in many minds, and it is that respondent, shielded by his military power and the overwhelming national power of his country, may ignore our decision, and we will be powerless to enforce it. The fact that respondent appeared before us, through counsel, without any reservation, answers the suggestion, and gives full justice to the sense of moral values of the respondent.

Besides, in the present state of international affairs, when America is engaged in the noble task of making a reality the ideal of one world, it can not compromise its moral leadership by any showing of reckless disregard to the decision of a court of justice. The cry that there must be one world or none can receive but one satisfactory answer; the reality of world justice. Only in justice hinges the salvation of humanity. Only justice can give real peace and provide the basis for contentment and happiness.

We concur in the decision, ordering the immediate release of petitioner.

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