

PHILIPPINE JURISDICTION OVER THE GEORGE E. ROE CASE

Against a backdrop of public indignation and open rioting in Japan and Formosa on the jurisdiction of local authorities over American servicemen, which has shaken in no little measure the relations of the United States with those countries, the Philippines has had its own experience recently with similar incidents involving American servicemen who have been charged before Philippine courts with offenses ranging from physical injuries to homicide.

Five cases have, so far, been reported,¹ typical of which is that involving U. S. Sailor George E. Roe to which this inquiry is confined.

Factual Background of the Roe Case.²

George E. Roe, American serviceman, is charged with serious physical injuries through reckless imprudence after a car he was driving struck one Rosario Ortiz, a 46-year-old laundry woman, along P. Burgos Street, Cavite City, at about 12:55 a.m. on January 1, 1956. Records showed that Roe and a co-accused, Chester Hoff, a civilian (Roe bumped Ortiz and the impact threw Ortiz on the path of Hoff's car which was coming from the opposite direction) were detained. Roe was subsequently turned over to the naval authorities by Chief of Police Ilustre Reyes.

A complaint was filed on the case with the city fiscal's office on January 12, 1956. After several postponements, the preliminary investigations were conducted on February 28, March 27, and on May 22, 1956. Upon the filing of the information, an order for the arrest of Roe was immediately issued through Police Chief Reyes. On December 6, 1956, Reyes sent a letter to the clerk of court and said: "I have the honor to inform you that the order of arrest issued in Criminal Case No. 1470 against George E. Roe was referred to the commanding officer, United States Naval Station, Sangley Point, last November 26, 1956, and the same has been received by the pass control office, through Mr. Lee Birge, Sangley Point, as per true copy of our indorsement hereto attached."

¹ Roy Cook and George E. Roe, while facing separate criminal charges, were shipped abroad; the former is charged in connection with a car accident in Pasay City, while the latter is accused of serious physical injuries in Cavite City. The Manila Times, July 27, 1957, p. 1, col. 4.

H. R. Osborn of the U.S. Navy, according to court records, figured in a traffic accident in which a 60-year-old farmer, Nicolas Bautista, of Dasmarinas, Cavite, was seriously injured. He is charged with serious physical injuries, but he was sent to the United States and there discharged before the case could be properly proceeded with. The Manila Times, Aug. 1, 1957, p. 20, col. 3.

Gordon O. Carnes, chief warrant officer at the American naval base at Olongapo, ran over and killed a boy, Sisinio C. Corpus, with a weapons carrier at San Marcelino, Zambales, last June 28, 1957. A formal charge of homicide through reckless imprudence is filed against him, but his surrender is refused by American authorities on the ground that he was in the actual performance of a military duty when the accident occurred. The Manila Times, Aug. 3, 1957, p. 11, col. 1.

James E. O'Connel, a 24-year-old U.S. sailor stationed at Sangley Point in Cavite, is facing charges of damage to property with multiple physical injuries through reckless imprudence before the court of first instance of Rizal. The Manila Times, July 25, 1957, p. 1, col. 5.

² The Manila Chronicle, July 6, 1957, p. 8, cols 1-3.

Roe appeared only once before the investigators and that was during the preliminary hearings. The rest of the time he was represented by his counsel, Atty. Bonifacio Gutierrez, a member of the navy legal staff. Fiscal Deogracias Solis served the necessary summonses and subpoenas to Roe through, and with the permission of, the commanding officer, U. S. Naval Base, Sangley Point.³

At the time of the supposed commission of the crime, Roe was stationed at Sangley Point. However, before the case could be properly adjudicated, the sailor was shipped back to the United States and subsequently demobilized, thus placing him beyond the reach of the United States Navy and Philippine courts. Sangley Point authorities have informed Philippine authorities that the demobilization of Roe was a mistake but they could not possibly do anything right now to correct it.

Philippine Jurisdiction over George E. Roe under
the Philippine-United States Military Bases
Agreement.

The view has been advanced that the United States has no legal obligation to surrender George E. Roe to Philippine authorities inasmuch as no extradition treaty has been concluded between the Philippines and the United States.⁴ While authorities on international law seem to support this view,⁵ its proponents have overlooked the highly material fact that the case of George E. Roe is governed by a special agreement, the Philippine-United States Military Bases Agreement.

The first question, therefore, which immediately comes up is whether under the provisions of the Bases Agreement Philippine courts have jurisdiction over the Roe case. The answer must necessarily be in the affirmative, as a cursory reference to the pertinent terms of the Agreement will reveal.

It is not disputed that the traffic accident in question occurred at P. Burgos Street, Cavite City, well beyond the outskirts of Sangley Point, nearest American base from the scene of the accident. The alleged offense was committed⁶ by an American serviceman against a Filipino citizen. The case is not, therefore, covered by any of the

³ See PHIL.-US. MILITARY BASES AGREEMENT Art. XIV, par. (1).

⁴ The Manila Chronicle, July 6, 1957, p. 1, col. 3. Acting Secretary of Foreign Affairs Raul Manglapus vehemently denies the need for an extradition treaty as far as the case of Roe is concerned. He says: "I am of the belief that there is no need for an extradition treaty with the United States at this time. The provision in the Military Bases Agreement for the prevention of evasion by American military personnel of answering to charges against them pending with Philippine courts is sufficient." Manila Bulletin, July 2, 1957, p. 15, col. 2.

In parallel vein was the statement of Undersecretary of Justice Jesus Barrera that under the Bases Agreement the United States has an obligation to present Roe for trial. He said further that in the case of Roe, the Bases Agreement was sufficient. The Manila Times, July 8, 1957, p. 8, col. 2.

⁵ CHARLES H. STOCKTON, OUTLINES OF INTERNATIONAL LAW 189 (1914): "By extradition is meant the delivery to accredited authorities, of criminal fugitives or persons accused of crime committed in one country, upon the request of the government of the country in which they have sought refuge. This is not considered to be an obligation under international law but one proceeding from treaty obligations, or one that is granted as a matter of comity and mutual convenience"; HANS and WHITING, DYNAMICS OF INTERNATIONAL RELATIONS 416 (1956); HANS KELSEN, PRINCIPLES OF INTERNATIONAL LAW 249 (1952); 2 STROUD'S JUDICIAL DICTIONARY 1046.

⁶ Roe admitted he figured in this traffic accident. Manila Daily Bulletin, July 8, 1957, p. 23, col. 3.

three instances over which the Philippines consents that the United States shall have the right to exercise jurisdiction.⁷

Neither does Art. XIII, par. 4⁸ of the Agreement apply because it has not been alleged that Roe was engaged in the *actual* performance of a *specific* military duty.⁹ (Underscoring supplied.) And obviously the accident did not happen during a period of national emergency.

On the other hand, the case falls clearly within the purview of Art. XIII, par. 2, which provides:

"Art. XIII, par. 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."

In the light of the above-quoted provision, has the United States the legal obligation to surrender George E. Roe to Philippine authorities?

It is an established rule in international law that agreements must be faithfully complied with to the end that the purposes for which they have been entered into may not be frustrated. The rule is expressed in the maxim: *pacta sunt servanda rebus sic stantibus*.

When the United States consented to the exercise of jurisdiction by the Philippines over a case as that of Roe, the necessary inference — assuming that the Agreement does not expressly provide for the offender's surrender — is that it shall provide the necessary facilities to effect Roe's presentation to Philippine authorities. To admit the contrary would render the Agreement ineffective. For who can best effect the surrender of Roe to Philippine authorities other than the United States authorities themselves? The rule of legal hermeneutics, *verba intentioni, non e contra, debent inservire*, squarely applies. Besides, it is assumed that when parties enter into an agreement, they must have respectively taken upon themselves the duty of putting their intention into effect.¹⁰

7 PHIL.-U.S. MILITARY BASES AGREEMENT Art. XIII — 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.

8 Art. XIII, par. (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....

9 That George E. Roe was not engaged in the actual performance of a specific military duty may be inferred from his own statement, to wit: "I was driving back to the base when it happened.... I stayed there until the police came and took her away. . . . Manila Daily Bulletin, July 8, 1957, p. 23, col. 8.

10 BLACK, INTERPRETATION OF LAWS 84, 89-94, 322-325.

Yet, the Bases Agreement does not only warrant the implication just drawn but also provides expressly for the procedure of effecting the offender's surrender to Philippine authorities. Thus, it provides:

"Art. XIII, par. 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."

Furthermore, the Agreement declares:

"Art. XIV, par. 1. No arrest shall be made and no process, civil or criminal, shall be served within any base except with the permission of the commanding officer of such base; but should the commanding officer refuse to grant such permission he shall...forthwith take the necessary steps to arrest the person charged and surrender him to the appropriate authorities of the Philippines or to serve such process, as the case may be, and to provide the attendance of the server of such process before the appropriate court in the Philippines or procure such server to make the necessary affidavit or declarations to prove such service as the case may require."

Was There Compliance with the Procedure for Arrest and Service of Process Outlined in Art. XIV of the Military Bases Agreement?

It is contended, however, that the procedure above set forth was not satisfied in the case of Roe in view of the failure of the Court to bring home to George E. Roe and to the Sangley Point commanding officer the charge against Roe.¹¹

This contention is not borne by the facts, and circumstantial evidence strongly negatives this pretention of lack of *scienter*. Roe was represented at every court trial.¹² It would, indeed, be most absurd to suppose that Atty. Bonifacio Gutierrez appeared for Roe in Court without having been requested to represent him, knowing, as Atty. Gutierrez is conclusively presumed to know, that this is a cause for disciplinary action.¹³ Furthermore, there is the admitted fact that the necessary summonses and subpoenas were served to Roe, through, and "with the permission of, the commanding officer, United States Naval Base, Sangley Point."¹⁴ Finally, evidence is not wanting that the order of arrest against Roe was referred to the commanding officer concerned on November 26, 1956, and the same was received by the pass control office, through Mr. Lee Birge, as per true copy of the indorsement attached thereto.¹⁵

11 The Manila Chronicle, July 5, 1957, p. 22, col. 2; cf. *id.*, July 6, 1957; p. 8; cols. 1-3.

12 The Manila Chronicle, July 5, 1957, p. 22, col. 2; *id.*, July 6, 1957, p. 8, cols. 1-3.

13 RULES OF COURT, Rule 127, sec. 20.

14 *Ibid.*; note 2 *supra*.

15 *Ibid.*; note 2 *supra*.

In spite of these proofs of notice, George E. Roe was sent to the United States and demobilized. Sangley Point authorities have not given any satisfactory reason why this was done when all the while an information was already filed against Roe and an order of arrest issued, except the frail excuse — if at all this is worth calling a reason — that a mistake was committed in good faith,¹⁶ admitting at the same time that they could not do anything right now to correct it.¹⁷

Is the Demobilization of George E. Roe a Bar to His Prosecution in Philippine Courts?

As the mistake has been admitted, the duty to correct that mistake rests squarely upon the American authorities. The mere allegation that the mistake was done in good faith does not relieve them of the obligation to make amends, not only because of the well-known principle that one should not benefit by one's own mistake but also because under the Bases Agreement, itself, they are obliged to do so. That duty to perform the act required of them may cease only when it is no longer capable of performance.

From this, it has been argued on the part of George E. Roe that, having been demobilized, he is no longer under the control of the United States Navy, such that it is now impossible to surrender him to Philippine authorities.

This argument loses sight of the fact that, the jurisdiction of Philippine courts having been established, it is not now a question of whether the United States Navy has still control over Roe because said Agreement is precisely on the state level, not one entered into between the Philippines and the United States Navy, were that ever thinkable to conceive. Consequently, while we may admit that the United States Navy has lost control over Roe, the stubborn fact remains that the obligation to deliver Roe under the Bases Agreement is not extinguished by the United States Navy's inability to present him because that obligation attaches to the United States of America, and it is not here pretended that the United States Navy is the equivalent of the United States of America.

Finally, it is contended that the obligation to deliver Roe ceased by the fact of his demobilization, thus bringing his case outside of the coverage of the Bases Agreement. In other words, while it is admitted that originally Philippine courts had jurisdiction, Roe's subsequent demobilization extinguished that obligation under the Bases Agreement.

The fallacy of this contention is doubtless due to the erroneous idea that jurisdiction once acquired is lost by the subsequent change from military to civilian status of the accused. This is clearly without foundation in law or in fact.¹⁸

¹⁶ Note 11 *supra*.

¹⁷ *Id.* at p. 1, col. 3.

¹⁸ Accord, 6 C. J. S. 448: "In general, a court-martial has no jurisdiction over an officer after he has left the services; but where jurisdiction has attached, it cannot be defeated by the fact that the term of enlistment of the offender has expired before trial, or by the fact that his connection with the army had been severed before sentence could be executed. . . ."

Jurisdiction is here understood as the "power to decide, rightly or wrongly. It does not depend on the correctness of the decision made, and an erroneous decision is not necessarily void or in excess of jurisdiction." 23 WORDS AND PHRASES 358.

George E. Roe stands accused in a Philippine court of an offense committed while he was a member of the United States Armed Forces. To admit that his change in status worked to withdraw his case outside the range of the Bases Agreement would mean that his demobilization is, itself, the shield he can use to his advantage to defeat the purposes of the Agreement.¹⁹

It is an accepted rule in private international law that the applicable law in cases of offenses committed by foreigners in the territory of a State is the *lex loci delicti commissi* or the law of the place where the offense was committed.²⁰ As the offense here involved was committed by George E. Roe in Cavite City, it is, therefore, Philippine law that should be applied. In this connection, the Philippine Supreme Court has laid down the rule that when a serviceman commits an offense during his term of service as member of the armed forces, his reversion to civilian status does not bar his being recalled to stand trial for the offense even when at such time he is no longer a member of the armed forces.²¹ This ruling of the Philippine Court is part of Philippine law,²² and as such, it applies with full force and effect to George E. Roe, it being a part of the *lex loci delicti commissi*. The effect of the application of this ruling of the Court to Roe is to render immaterial his demobilization subsequent to the commission of the alleged offense.

To concede that by the simple expedient of demobilizing George E. Roe, he is thereby brought outside the terms of the Bases Agreement would strike a lamentable opening into the said Agreement, one which the parties to it could not have intended. Furthermore, even in the absence of an extradition treaty, the rule of comity²³ strongly suggests that the United States should surrender George E. Roe. It may be recalled that the Nationalist government of Formosa, even without an extradition treaty with the Philippines, but acting merely on the international comity among nations, surrendered to the Philippines for trial Ang Chio Kio, a Chinese, who hijacked a Philippine Air Lines plane while being deported to Nationalist China.²⁴ No reason can be found why the United States government should not do the same in the case of Roe, considering the special relations between the Philippines and the United States.

It is significant to note that the United States Supreme Court, in its recent decision in the *Girard case*,²⁵ ruled that the United States-Japanese Treaty which grants the United States qualified jurisdiction is perfectly constitutional and that the surrender by the United States of Girard to the Japanese authorities for trial in a Japanese court does not contravene the laws or the Federal Constitution. On this point, the Court laid down this far-reaching ruling:

"The issue for our decision is therefore narrowed to the question whether upon the record before us, the Constitution or legislation subse-

19 Cf. *Laurel v. Misa*, 44 O.G. 1176 (1947).

20 14 AM. JUR. Criminal Law, sec. 221; SALONGA, J., PRIVATE INTERNATIONAL LAW 834 (1952).

21 *De la Paz v. CDR*, 52 O.G. 6, 3037 (1956); note 16 *supra*.

22 CIVIL CODE OF THE PHILIPPINES Art. 8.

23 See note 4 *supra*; SALONGA, *op. cit.*, 46-50.

24 *The Manila Times*, July 27, 1957, p. 5, col. 4.

25 *Id.*, July 12, 1957, p. 1, col. 8.

quent to the security treaty prohibited the carrying out of this provision authorized by the treaty for waiver of the qualified jurisdiction granted by Japan. We find no constitutional or statutory barrier to the provision as applied here. In the absence of such encroachment, the wisdom of the arrangement is exclusively for the determination of the executive and legislative branches."

In the light of this decision, it is now closed to doubt or speculation that the United States can validly surrender George E. Roe to Philippine authorities, should it choose to abide by its commitments under the Bases Agreement or to respect the rule of comity among nations.

From the Standpoint of International Morals and Goodwill.

Shifting our inquiry from the purely legal aspect of the *Roe case* to the sphere of international morals and goodwill, the United States owes it to herself to surrender Roe to the Philippines and, thus, correct a mistake which the American authorities admitted. Besides, Roe, himself, declared that he struck a pedestrian whom he identified as a woman. We quote his statement:

"I was driving back to the base when it happened. I didn't see the woman but I had a sort of feeling and looked back and saw her lying in the road. Witnesses told me she stepped from a jitney and into the path of my car. They said I struck her and then another car ran over her. I stayed there until police came and took her away. She looked seriously injured."²⁶

Will the United States, for all her professions of altruism and good faith, fail to do justice to a humble Filipino citizen?

Recent events would seem to indicate that the United States government would rather cling desperately to the tender argument that George E. Roe cannot be surrendered to Philippine authorities because of the absence of an extradition treaty than care to listen to the insistent demand for justice. "This attitude," writes a local writer, "is what is making it difficult for the United States government to recognize the rights inherent in Philippine sovereignty. Are Philippine judges ignorant and corrupt — or more ignorant and corrupt than their counterparts in the United States? Are American servicemen not sure of getting justice from Philippine courts? All cases may be appealed to the Supreme Court. Are the justices of the Supreme Court not to be trusted to do justice to American servicemen?"²⁷

Conclusion.

For all the foregoing reasons, the conclusion which clearly stands out is that Philippine courts have jurisdiction over George E. Roe under the Philippine-United States Military Bases Agreement; that there was compliance with the procedure for arrest and

²⁶ Manila Daily Bulletin, July 3, 1957, p. 23, col. 3.

²⁷ Locsin, *How to Live Together — and Like It*, Philippines Free Press, June 15, 1957, p. 78 col. 1.

service of process outlined in Art. XIV of said Agreement; and, finally, that the demobilization of George E. Roe is not a bar to his prosecution in Philippine courts.

Ambassador Charles Bohlen declared he "was fully confident that differences between the Philippines and his country could be resolved under an atmosphere of goodwill and understanding which has been the source of strength of their relationship."²⁸

To this statement, the following is offered as an answer:

"If the small and the big, the strong and the weak are to get along together, there must be justice. Prolonged association is impossible without it. If there be justice, who can cry against it?"²⁹

May we not vainly expect, therefore, that U. S. Sailor George E. Roe shall be brought back to the Philippines to face the charge for which he stands indicted.

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²⁸ Manila Daily Bulletin, July 5, 1957, p. 1, col. 4; see note 4 *supra*.

²⁹ Note 27 *supra*.

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