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GHQ/SCAP Records (RG 331, National Archives and Records Service)

Description of contents

- (1) Box no. 1654
- (2) Folder title/number: (2)
Samuel T. Shinohara - Record of Proceedings
- (3) Date: May 1945 - Sept. 1948.

(4) Subject:

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- (5) Item description and comment:
 - i) Guam
 - ii) Includes Related Documents

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THE PACIFIC COMMAND
AND UNITED STATES PACIFIC FLEET
HEADQUARTERS OF THE COMMANDER IN CHIEF

417-10(1)
Serial: 3782

4 Sep 1948

FIRST ENDORSEMENT on
SecNav letter JAG:I:
THH;tbh MIL.Com.--SHIN-
OHARA, Samuel T./417-
10/OQ (6-4-48) 144704
of 24 August 1948.

From: Commander in Chief U. S. Pacific Fleet.
To: Commander Naval Forces, Marianas.

Subject: Military Commission case of Samuel T. Shinohara,
inhabitant of Guam, tried by order of the Island
Commander, Guam, on 28 July 1945.

1. Forwarded, for execution of the sentence as commuted,
namely imprisonment at hard labor for fifteen years with credit for
time served since 13 October 1945.

/s/ J. L. McCrea
JOHN L. McCREA,
Deputy Cincpacflt.

Copies to: (1st cmd. only)
SecNav
CNO

RECEIVED

AUG 19 0218 1948

NNNN BEPC

FM BMPB 13/GOVGHAN 190147Z
TO SECNAV /JAG/ GRNC

SUBJECT SHINOHARA SAMUEL T X SHINOHARA WAS TAKEN IN CUSTODY 1944 X
SINCE THEN HAS BEEN HELD IN CONFINEMENT OFR TRIAL AND AWAITING
ACTION THEREON X NOW CONFINED CIVIL JAIL AGAMA GUAM X PROBABLY DUE HIS
ADVANCED AGE HAS DURING PAST YEAR SHOWN MARKED SIGNS OF PHYSICAL
DETERIORATION AND SENILITY X WHEN CONFINED CIVIL JAIL 5 NOVEMBER
1946 WEIGHED ONE HUNDRED TWENTY-EIGHT POUNDS NOW WEIGHS ONE HUNDRED
EIGHT X CONSIDER EARLIEST POSSIBLE ACTION HIS CASE DESIRABLE X IF
SENTENCE COMMUTED RECOMMEND HE BE TRANSFERRED TO JAPAN X ADVISE ESTIMATE
TIME ACTION CAN BE EXPECTED

CFM 1944 5 1946
CCC 13TH LINE 8TH GROUP TAKEN X 2ND LINE 8TH GROUP X 8TH LINE LAST
GROUP ESTIMATED

19/0147Z AUG BMPB

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Date *Aug 14*

MEMORANDUM

From: Commander Marianas and Governor of Guam

To: *Rear Admiral Murphy*

*This man is starting to break up
and become a mental case.
How on earth can you sentence on
him?*

Powell

Rear Adm. Powell

*If SHINOHARA becomes
insane no sentence could be
executed.*

*I have prepared a despatch
which I think should be sent
at this time.*

*Prepared despatch is attached
do you think it should be classified?*

Respectfully

John D. Murphy

UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

Serial: 18692

From: The Commander Marianas Area. 5 November 1946.
To : The Provost Marshall, Guam.
Via : The Director of Public Security.
Subject: SHINOHARA, Samuel T. - Transfer of to Civil Jail, Agana, Guam.

1. On 28 July 1945, Samuel T. SHINOHARA, a civilian inhabitant of Guam was brought to trial before a United States Military Commission on Guam, convened by the Island Commander, Guam. He was tried on the charges of Treason (one specification), Theft (one specification), Assault and Battery (one specification) Taking a Female For the Purpose of Prostitution (two specifications) and upon the additional charges of Treason (one specification), Assault and Battery (Two specifications) and Desecration of the Flag (one specification), all in violation of the Penal Code of Guam. He was acquitted of the charge of Theft and of the additional charge of Desecration of the Flag and was found guilty on all other charges and the specifications thereunder.

2. On 13 October 1945, the Convening Authority, approved the proceeding findings, and sentence in the case of Samuel T. SHINOHARA. On 30 January 1946, the Reviewing Authority, the Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas and Military Governor, Pacific Ocean Areas, approved the proceedings, findings, and sentence in the case with the exception of specification 1 under charge IV which disapproved. The record was then referred to the Secretary of the Navy for final action.

3. The findings, and sentence in the case of Samuel T. SHINOHARA have not been published, and no place of confinement was designated by the Convening Authority in his action of 13 October 1945. SHINOHARA has been and is now confined in the War Criminal Stockade, Guam.

4. Pending the final action of the Secretary of the Navy in SHINOHARA's case the Civil Jail, Agana, Guam, is designated as the place of confinement.

5. You are accordingly directed to transfer Samuel T. SHINOHARA from the War Criminal Stockade, Guam to the Civil Jail, Agana, Guam.

Copy to:

Secretary of the Navy
(Office of the Judge Advocate General).
Bureau of Naval Personnel.

C. A. FOWELL
Rear Admiral, U.S. Navy.

AL7-10/FF12/
13-JDM-bl

17-16
19 January 1946

MEMORANDUM for Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas, Military Governor of Guam.

Subject: SAMUEL T. SHINOHARA, civilian - Trial of, by Military Commission, Guam.

References: (a) Cincpac/Cincpoa Memo of 24 Nov. 1945.
(b) JAG ltr JAG:III:RJD:ey of 24 April 1945.

Enclosures: (A) Record of subject case.
(B) Proposed action to be taken by Cincpac/Cincpoa on subject case.

1. The following comments and recommendations are submitted in accordance with reference (a).

2. SAMUEL T. SHINOHARA was tried before a Military Commission convened on Guam by the Island Commander, pursuant to authority vested in the Island Commander by Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas, Military Governor of Guam. The precept was dated July 21, 1945, and by reference incorporated therein authorized the Commission to try cases pending before a previous Commission. In charges and specifications dated May 12, 1945, and additional charges and specifications dated July 20, 1945, Shinohara was charged with TREASON (2 charges and 4 specifications), THEFT (1 specification), ASSAULT AND BATTERY (2 charges and 3 specifications), TAKING A FEMALE FOR THE PURPOSE OF PROSTITUTION (2 specifications), and DESECRATION OF FLAG (1 specification). He was convicted on all charges and specifications, except charge II (THEFT) and additional charge III (DESECRATION OF FLAG), and the specifications thereunder. He was sentenced to be hanged. The record of proceedings, findings, and sentences were approved by the convening authority on October 13, 1945.

3. STATEMENT OF FACTS: For many years prior to the occupation of Guam by Japanese forces, accused was an alien resident of Guam. On May 6, 1920, he registered with the Guam Department of Records and Accounts as Takakuma Shinohara, native of Japan. Upon the outbreak of the war, he was taken into protective custody by U. S. authorities, only to be released a few days later by the Japanese when they occupied the island of Guam.

During the Japanese occupation the accused engaged in numerous activities designed to promote the Japanese cause. He assisted Japanese authorities in taking over the funds and records of the Naval Government of

19 January 1946.

Subject: SAMUEL T. SHIMOMURA, civilian - Trial of, by Military
Commission, Guam. (cont'd).

Guam, and in appropriating an electric generator, the property of an inhabitant of Guam. He operated an establishment for the use of Japanese officers. He played an active part in the organization of the Dai Nisei, a group of half-caste Japanese devoted to the promotion of Japanese interests on Guam. On three occasions he slapped the American officer who was Naval Governor of Guam. He procured two local girls, contrary to their wishes, for the purpose of having them engage in illicit sexual relations with Japanese officers. Since taken into custody, after the reoccupation of Guam by the United States, the accused has been held in the Island stockade, Guam.

4. By specification 1 of charge IV, the accused was charged with taking a female, "for the purpose of prostitution, procuring her consent thereto by misrepresentation". There is no doubt that the pleader intended to and did by this specification allege a violation of section 266(a) of the Penal Code of Guam, which provides as follows:

"Taking female for purpose of prostitution.- Every person who, within this Island, takes any female person against her will and without her consent, or with her consent procured by fraudulent inducement or misrepresentation, for the purpose of prostitution, is punishable by imprisonment not less than one nor more than five years, and a fine not exceeding one thousand dollars."

This section of the code is worded in the alternative. Two distinct offenses are provided for, namely, (1) the taking of a female person against her will and without her consent for the purposes of prostitution, and (2) the taking of such person with her consent procured by fraudulent inducement or misrepresentation for the purpose of prostitution. The specification as worded alleged the second of these offenses in which misrepresentation is an essential element.

The evidence adduced in support of the specification does not establish beyond reasonable doubt that there was any misrepresentation on the part of the accused, but shows that the accused, by threats of bodily harm to her and her family, forced the female in question to leave her home and live with a certain Japanese officer, one Sakai, the aide to the Japanese Governor of Guam. It also shows that the female had illicit relations with that officer only, and not indiscriminately or for gain. There is no evidence to show that she was used for prostitution other than what might be inferred from her illicit sexual relations with the one Sakai. There is nothing to show that any gain accrued to anyone as a result of the

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Commission, Guam. (cont'd).

relationship. It is therefore highly questionable whether such conduct comes within the definition of prostitution. In my opinion it does not, because prostitution, as such, is distinguished from living in an "illicit relation", as recognized by sections 266(a) and 266(b) of the Penal Code of Guam. Prostitution has a well known meaning. It means "the common lewdness of a woman for gain. The act of permitting a common and indiscriminate sexual intercourse for gain". (Bouvier's Law Dictionary). It is the act of permitting illicit intercourse for hire, an indiscriminate intercourse. (U.S. vs Bitty, 208 U.S. 393). There is nothing to show that the female in this case was ever used indiscriminately for gain or that it was ever intended, by the accused, that she should be so used. On the other hand, it appears clear that she was to be used only by the Japanese officer Sakai, the Governor's aide. This is supported by the fact that she was required to live in his house until he left the island of Guam, at which time she was permitted to return to her mother and father at home. The status which she was forced to assume was not that of a prostitute, but rather that of one living in an illicit relation with the said Sakai.

Secondly, the evidence showed that the female in question was forced against her will into the above described relationship with Sakai, and that her consent thereto was not obtained by "misrepresentation" as alleged in the specification.

Based on the evidence, it is clear that the offense which the accused committed was not the offense provided for in section 266(a) of the Penal Code of Guam and alleged in the specification, but one which was not alleged, namely that provided for in section 266(b), which reads: "Taking female by force, duress, etc., to live in an illicit relation.- Every person who takes any female person unlawfully, and against her will, and by force, menace, or duress, compels her to live with him in an illicit relation, against her consent, or to so live with any other person, is punishable by imprisonment not less than two nor more than four years."

In endeavoring to reconcile the variance between the proof and the offense specified, the Commission, in its finding, substituted the word "duress" for "misrepresentation", and found the accused guilty of the offense as thus described. By so changing the wording of the specification the Commission removed the gravamen of the offense charged, and

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its finding is contradictory and irregular (Nav. Sig. 1916, Paf. 40, p. 241). The commission's substitution in the specification of the word "duress" for "misrepresentation" was tantamount to changing the specification to allege the first offense provided for in section 266(a) of the Penal Code of Guam, namely, taking a female person against her will and without her consent for the purpose of prostitution, whereas the accused was actually tried for violation of the second offense described in the statute, namely, taking a female person with her consent procured by misrepresentation. What the commission's intention was in making the substitution is not so clear. However, from the wording of the specification as found proved by the commission, it would appear that it thought that it could combine essential elements of the offenses provided for in both section 266(a) and 266(b) into one offense. If this was the case, it was obvious error. (Secs. 27 & 29, N.C.A.B. 1937).

As a result of the alteration which the commission, in its finding, made in the wording of the specification, the accused was found guilty of an offense entirely separate and distinct in its nature from that charged or specified, (Sec. 429, N.C.A.B. 1937) and was found guilty of violating a part of a statute without being so charged (CMO 1, 1942, 87). In such circumstances the accused was deprived of an opportunity to prepare a proper defense against the offense of which he was convicted because he had no way of knowing and did not know what it was until after his conviction. It is doubtful if, even then, as indicated above, he could tell what it was. Such a finding was materially prejudicial to his rights (CMO 10, 1930, 14).

A variance such as in the instant case, between the allegations in the specification and the commission's finding is, in my opinion, fatal. Further, it is my opinion that the evidence does not support the commission's finding. It is therefore recommended that the finding on the first specification of charge IV be disapproved.

5. The accused objected to specification 2 under the additional charge I, (Treason), on the grounds that it did not show whether the alleged overt act of treason occurred prior or subsequent to the Japanese occupation of Guam. In this specification the time was alleged as "In or about the month of December 1941." The commission's action in overruling the objection was correct. The evidence clearly indicated that the alleged acts occurred after the forces of Japan had occupied Guam.

A17-10/FF12/
12-JUN-bl

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Commission, Guam. (cont'd)

6. The accused made a plea to the jurisdiction of the commission to try him for treason, on the ground that the accused was a citizen of Japan throughout his residence on Guam, and that each of the alleged acts of treason occurred during the Japanese occupation of the island, at a time when the accused no longer owed allegiance to the United States of America. This plea was properly overruled. The accused was, and had long been, an alien resident and inhabitant of Guam, and, as such, owed temporary allegiance to the Naval Government of Guam and to the United States so long as he remained on Guam. (p33, encl.(A), to reference (b)).

7. A further plea to the jurisdiction was made by the accused on the ground that the Military Commission did not have authority to try him for (1) offenses in violation of the Penal Code of Guam, (2) offenses committed prior to the reoccupation of Guam by the United States. This plea was also properly overruled. The Penal and Civil Codes of Guam were not suspended by the Japanese and they remained in effect as the law during the Japanese occupation. The commission was appointed under authority of the Governor of Guam. Section 33 of the Guam Code of Civil Procedure, in setting forth the courts for both civil and criminal matters, provides, in addition to the regular courts, for "such special courts as the Governor in his discretion may appoint." Thus the special military courts, such as the instant Commission, appointed under authority of the Governor, are authorized by the law which is now in effect and which was in effect at the time the accused is alleged to have committed the offenses charged against him.

8. A plea in bar of trial was made by the accused on the ground that the alleged offenses were outlawed by the Statute of Limitations. By sections 800 and 801 of the Penal Code of Guam, prosecutions for felonies must be commenced within three years, and for misdemeanors within one year, of the date of the commission of the alleged crime. TREASON, THEFT and TAKING FEMALE FOR PURPOSE OF PROSTITUTION are, by definition of the Guam Penal Code, felonies; ASSAULT AND BATTERY, and DESECRATION OF FLAG are misdemeanors. Objection of accused is grounded on the fact that, in the instant case, prosecution was not instituted within the appropriate one-year or three-year periods as applicable to the specific offenses alleged in the specifications. This objection was correctly overruled. The Statute of Limitations was necessarily

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suspended during the period when the United States Government was excluded from the island of Guam, by reason of its occupation by the Japanese. During the period of such occupation the United States was, by such manifest impediment, unable to impose its authority on the residents of Guam. This inability to prosecute those charged with the commission of crimes tolled the Statute of Limitations for so long as the occupation by enemy forces lasted. (p.13 ref.(b)). Certainly it cannot be said that the Statute began to run prior to the date on which the island of Guam was declared "secure", or the date on which the accused became amenable to justice. The prosecution in the instant case was ordered by charges and specifications dated May 12 and July 20, 1945, and the trial commenced on July 28, 1945, all within the requisite period for instituting prosecution.

9. In his argument at the end of the trial, the accused raised objection to the sufficiency of proof under Charge I and under Additional Charge I - both alleging treason. By Section 1103 of the Penal Code of Guam "no defendant can be convicted of treason unless upon the testimony of two witnesses to the same overt act, or upon confession in open court". There was no confession in the case under review. There was, however, testimony from at least two witnesses to the overt act alleged in each of the four specifications under the two charges. If this testimony was deemed credible by the commission, it was sufficient to support the findings of Guilty in each of the charges of treason.

10. The commission acquitted the accused of Charge II (THEFT) and the specification thereunder. By this charge, it was alleged that, upon the Japanese occupation of Guam, the accused stole an automobile belonging to an American naval officer, and thereafter used it for his own purposes. The testimony was conflicting as to the make and color of the car in question. There was, too, evidence tending to show that the Japanese military authorities had commandeered the car, and then allowed accused to use it. In view of the nature of the testimony it is felt that the acquittal of the accused on Charge II was justified, on the grounds of reasonable doubt (Sec. 159, N.C.&B. 1937).

The commission further acquitted accused of Additional Charge III (DESECRATION OF FLAG), and the specification thereunder. The date of the alleged offense was specified as "in or about the month of February or March, 1942." These prosecution witnesses all testified that

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Commission, Guam. (cont'd).

December, 1943 was the date of the alleged desecration. There was other evidence tending to disprove the fact that the accused committed the offense. It is believed that the wide variance in time between the allegation and the proof was in itself sufficient to create a reasonable doubt as to the accused' guilt. It is therefore my opinion that the commission's findings of "not guilty" as to additional charge III and the supporting specification were proper ones.

11. Subject to the foregoing remarks with respect to specification I of charge IV, there is, in my opinion, sufficient competent evidence to support the findings of the commission. The sentence is in accordance with the provisions of the Penal Code of Guam. It is, therefore, recommended that the proceedings, findings, except the finding under specification I of Charge IV, and sentence in the case of SAMUEL T. SHINOHARA, and the action of the Convening Authority, be approved. It is recommended that the finding on specification I of Charge IV be disapproved. A proposed action is submitted herewith as enclosure (B).

JOHN D. MURPHY,
Captain, USM
War Crimes Officer,
Pacific Ocean Area