

CASE No. 76

TRIAL OF WASHIO AWOCHI

NETHERLANDS TEMPORARY COURT-MARTIAL AT BATAVIA
(JUDGMENT DELIVERED ON 25TH OCTOBER, 1946)

Enforced prostitution a war crime.

A. OUTLINE OF THE PROCEEDINGS

The accused, Washio Awochi, a Japanese hotel-keeper who ran a club-restaurant in Batavia from 1943 to 1945, was tried for having forced Dutch women to practice prostitution in the premises of the club.

1. THE CHARGE

The accused was charged with having "in time of war and as a subject of a hostile power, namely Japan," and "owner of the Sakura-Club, founded for the use of Japanese civilians," committed "war crimes by, in violation of the laws and customs of war, recruiting women and girls to serve the said civilians or causing them to be recruited for the purpose, and then under the direct or indirect threat of the Kempei (Japanese Military Police) should they wish to leave, forcing them to commit prostitution with the members of the said club," which the women and girls "were not able to leave freely."

The prosecution asked the court to find the accused guilty of "the war crime of enforced prostitution" and to convict him to 15 years' imprisonment.

2. THE EVIDENCE

The court heard as witnesses some 12 women or girls who were forced to prostitution by the accused. According to their testimony, given under oath and corroborated by other evidence, as well as statements made by the accused himself, the facts were as follows :

Awochi was established in Batavia from 1920 and returned to Japan prior to the aggression on Pearl Harbour, on 30th November, 1941. After the occupation of the Dutch East Indies by Japanese forces, he returned to Batavia in June, 1942. He first opened a restaurant called "Akiboro." Later on, in 1943, he rented a block of houses and opened a brothel to which a restaurant and a bar were attached. The place was known as the Sakura Club and was exclusively reserved for Japanese civilians. His assistant in the brothel business was a woman, Lies Beerhorst, with whom he had lived since 1943. With her help, girls were engaged to serve in the restaurant or in the bar as waitresses and then gradually forced to commit acts of prostitution with the customers. In most cases, when accepting to serve in the restaurant or bar, the girls were unaware of the existence of the brothel. In other cases they knew of it, but made specific arrangements

that they would have nothing to do with it. In only a few cases did the girls willingly and knowingly accept the prostitution. Threats with police measures were, in some instances, used at the stage of inducing the girls to become waitresses. In all cases the girls wished to leave the place either when put under pressure to become prostitutes or a certain time after having started this activity. They were not allowed to do so. All were threatened with the Japanese police, that is with imprisonment or deportation, and some were even severely beaten.

Some girls were required to earn a minimum of 450 guilders per evening, and thus to receive at least three visitors. No girl was allowed to receive less than two visitors every night.

In several instances girls who persisted in asking to leave were delivered to the police and deported to other districts.

Among those who were thus forced to prostitution were girls of 12 and 14 years of age.

3. DEFENCE OF THE ACCUSED

The accused admitted having run the brothel with the assistance of his mistress, Lies Beerhorst, but pleaded that he had done so under orders of the Japanese authorities. He also alleged that the whole business was conducted by Lies Beerhorst, and that, although he confirmed every engagement of girls, he personally never used threat, force or trick to recruit the girls or make them remain when they wanted to leave. He confessed to having beaten one of the girls, but contended that this was not in order to force her to prostitution, but for other reasons.

4. THE JUDGMENT

The accused was found guilty of the "war crime of enforced prostitution" and was sentenced to 10 years' imprisonment.

B. NOTES ON THE CASE

1. THE COURT

In the Netherlands East Indies war crimes trials are conducted by courts-martial, that is by military courts. In this case, as well as in some other trials reported in these volumes, the court was a Temporary Court-Martial.

The jurisdiction of courts-martial in the Netherlands East Indies over war crimes derives from the Statute Book Decree No. 46 of 1946 concerning the "Legal Competence in respect of War Crimes." By this Decree amendments were made to the Statute Book Decree No. 173 of 1934 concerning the "Competence of the Military Judge," whereby the latter's jurisdiction was extended so as to cover war crimes. According to Art. 10 of Decree No. 173 of 1934, as amended, punishable acts falling within the competence of the military judge are tried by courts-martial.

The establishment and functions of temporary, as of other, courts-martial are regulated by the Statute Book Decree No. 74 of 1946 concerning the "War Crimes Penal Procedure." Under the terms of Art. 106 of this Decree, temporary courts-martial are appointed, whenever necessary, "in

any territory where a state of siege has been declared." The appointment is made by the commanding officer of the area concerned, and advice is sent to the Governor-General and the Supreme Military Court for the Netherlands East Indies.

In addition to temporary courts-martial, war crimes trials in the Netherlands East Indies may also be conducted by ordinary courts-martial and by field general courts-martial.⁽¹⁾

2. NATURE OF THE OFFENCE

The accused was found guilty of "enforced prostitution" under the terms of Art. 1, para. 7 of Statute Book Decree No. 44 of 1946 concerning the "Definition of War Crimes." The relevant passages read as follows:

"Under war crimes are understood acts which constitute a violation of the laws and usages of war committed in time of war by subjects of an enemy power or by foreigners in the service of the enemy, such as :

. . . .

7. Abduction of girls and women for the purpose of enforced prostitution."

The above paragraph 7 is a reproduction in Netherlands East Indies municipal law of the offence contained, under the same number, in the list of war crimes drawn up by the 1919 Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties. In its judgment the court of Batavia, in fact, and very rightly so, put the accent on "enforced prostitution" in itself, and not on abduction or deportation for that purpose. In the case tried there had been no abduction, and it would have been unjustified to consider that for this reason enforced prostitution was not a punishable act. This was obviously not meant by the drafters of the 1919 list and of those of the above quoted Art. 1.

The manifestations of what is deemed to constitute "enforced" prostitution were considered by the court and summarised in its findings on the offence. With regard to the facts of the case tried, they were described as follows :

Women and girls "intended for prostitution had to take up residence in a part of the club shut off for that purpose and from which they were not free to move."

When they wished to leave the brothel, women and girls "were threatened with the Kempei" (Japanese military police), which threats, in view of the nature of the Japanese police, "were rightly considered as being synonymous with ill-treatment, loss of liberty or worse."

The threats were "of such a serious character" that "the women and girls were forced through them to give themselves to the Japanese visitors of the Sakura Club against their will."

The above descriptions are illustrative of the main elements of "enforced prostitution," which amount to compulsion in all its possible forms.

⁽¹⁾ For more details on the jurisdiction of these courts, see the Annex to Vol. XI of these Reports.

3. PERSONAL GUILT OF THE ACCUSED

With regard to the defendant's plea that all business connected with the brothel was not conducted by him personally, but by Lies Beerhorst, the court was satisfied that "the threats were uttered chiefly by Lies Beerhorst and not by the accused personally," but established at the same time his guilt on the following grounds :

The accused was "leader and head" of the Sakura Club ; Lies Beerhorst "lived with him as his mistress and was a subordinate of his" ; the accused "had great financial interests in the takings of the club." Therefore the court concluded that "it can be established not only that the accused knew of Lies Beerhorst's attitude towards the prostitutes, but even that this attitude was the result of an order given to Lies Beerhorst by the accused." The court referred also to the fact that the girls used on prostitution were Dutch women and found that "in view of where the power lay in this country during the Japanese domination and of the ideas held by the Japanese with regard to the relationship between them and their subordinates, especially if the latter belonged to another race, it may be taken that the accused is directly responsible for the treatment to which the prostitutes were subjected at the Sakura Club."

In imposing punishment the court took into consideration the fact that the girls involved "were mostly in poverty-stricken and difficult circumstances" and that the "accused took advantage" of it for "his own purposes" ; that the accused "drew a very good income" from the club and that the girls "were forced to work very hard in order to make the takings as high as possible."