

FELIPE UNTAL, PETITIONER, VS. CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES AND MAJOR BLAS E. MIRANDA, PRESIDENT CAPT. GREGORIO G. CARZON, CAPT. ALEJANDRO CAPITULO, CAPT. RICA...

. September 23, 1949

Ponente: TORRES, J.

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TORRES, J.:

Felipe Untal, 1st Class Private of the 212th Military Police Company of the Armed Forces of the Philippines, stationed at Sub-Base No. 3, Manicani, Guiuan, Samar, with a rifle, killed Sergeant Francisco Estraza of the same organization and unit on November 4, 1947. The corresponding charge and specification were filed against him for having violated the 93rd Article of War (Commonwealth Act No. 408). Pursuant to military procedure, the case was referred by the Headquarters of the National Defense Forces to the Headquarters Trial Judge Advocate for trial. On May 27, 1949, after the taking of the evidence for the prosecution, before a General Court Martial, the defense moved that a finding of not guilty be entered in the records "on the ground that the evidence presented was not committed in time of war and consequently, the said General Court Martial has no jurisdiction to try the case."

On July 9, 1949, said motion was denied by the court, and the petitioner was ordered to present his evidence, but instead brought the matter before this Court by certiorari.

It appears that on November 4, 1947, the petitioner Felipe Untal was a member of the 212th MPC (AFP), stationed at Manicani, Guiuan, Samar. That place was not a military reservation, but the 212th MPC (AFP), was stationed thereafter the sole purpose of "guarding the surplus property piled in said place." It is contended by military counsel of the petitioner that from September 2, 1945, when Japan surrendered to the Allied Nations on board the battleship Missouri in Tokyo Bay, "there was an immediate cessation of hostilities" and that as a result thereof, "World War II was terminated. He further alleges that upon the termination of World War II, "the normal function of all the branches of the Philippine Government was resumed" and consequently, "the Judicial Branch was established throughout the Islands." Therefore, when the alleged murder was committed by this petitioner, the country being no longer at war, "he could not be tried under the 93rd Article of War."

In a minute resolution dated July 26, 1949, this Court dismissed the petition for lack of merit, but in his motion for reconsideration of August 29, 1944, military counsel for the accused insists that the General Court Martial, appointed by the Chief of Staff of the Armed Forces of the Philippines to try Felipe Untal for murder in violation of the 93rd Article of War, has no jurisdiction to try and pronounce sentence against him, because when petitioner allegedly committed said murder on November 4, 1947, this country was no longer at war. In other words, the act allegedly committed by Felipe Untal on November 4, 1947, was not executed "in time of war," and even assuming that Felipe Untal is guilty of the murder of Sgt. Francisco Estraza, his crime is punishable only under the provisions of the 94th Article of War.

In view of the above, military defense counsel for petitioner prays that the resolution of this Court of July 26, 1949, which denied the petition of Felipe Untal, be reconsidered and set aside, and another one be issued granting the prayer contained in his petition.

We agree with the counsel that the 94th Article of War, as amended by Republic Act No. 242, is not applicable to the case at bar. Said article as amended reads as follows:

"ART. 94. Various Crimes.—Any person subject to military law who commits any felony, crime, breach of law or violation of municipal ordinance which is recognized as an offense of a penal nature and is punishable under the penal laws of the Philippines or under municipal ordinances, (a) inside a reservation of the Armed Forces of the Philippines, or (b) outside any such reservation when the offended party (and each one of the offended parties if there be more than one) is a person subject to military law, shall be punished as a court martial may direct. Provided, That, in time of peace, officers and enlisted men of the Philippine Constabulary shall not be triable by courts martial for any felony, crime, breach of labor violation of municipal ordinances committed under this article. In imposing the penalties for offenses falling within this article, the penalties for offenses provided in the penal laws of the Philippines or in such municipal ordinances shall be taken into consideration."

And the reason behind the attitude of military counsel is obvious. Republic Act No. 242, which amends "certain provisions of Commonwealth Act No. 408, otherwise known as the Articles of War," became effective on June 12, 1948, whereas the crime against petitioner was allegedly committed on November 4, 1947.

Having thus discarded the possibility of applying Article of War 94 as amended by Act No. 242, to the case under consideration, We shall now look into the merit of the contention of counsel that his client be tried for violation of the original 94th Article of War. Said article reads as follows:

"ART. 94. Various Crimes.—Any person subject to military law who commits any crime, breach of law or violation of municipal ordinance, which is recognized as an offense of a penal nature and is punishable under the penal laws of the Philippines or under municipal ordinances, on a Philippine Army reservation, shall be punished as a court martial may direct; Provided, That officers and enlisted men of the Philippine Constabulary shall not be triable by courts martial for any crime, breach of law or violation of municipal ordinance committed under this article. In imposing the penalties for offenses falling within this article, the penalties for such offenses provided in the penal laws of the Philippines or in such municipal ordinances shall be taken into consideration."

Upon a careful reading of the provisions of the above-quoted 94th Article of War, it appears that granting that petitioner (a) is subject to military law, (b) has committed any crime, breach of law, or violation of municipal ordinance, (c) which is recognized as an offense of penal nature punishable under the penal laws of the Philippines or under municipal ordinances, such breach of law or violation or offense of a penal nature was not committed "on a Philippine Army reservation," which would make it punishable "as a court-martial may direct." In paragraph 7 of the petition, counsel states that the place where the crime was committed "was not a military reservation."

Regarding the proviso embodied in the second part of the above-quoted 94th Article of War, it is not necessary for us to state that, at the time of the commission of the offense under consideration, this petitioner, as per his own statement found in paragraph 6 of his petition, "was a member of the 212th HP Company (AFP), stationed at Manicani, Guiuan, Samar." Such being the case, the matter under consideration is not covered by the 94th Article of War, either in its original (Com. Act No. 408) or amended form (Republic Act No. 242, Sec. 30).

In view of the above, there now remains for us to treat this matter in the light of the provisions of the 93rd Article of War. It is contended by petitioner that from the date of surrender of Japan on September 2, 1945, when the

armistice papers were signed on board the Battleship Missouri in Tokyo Bay, hostilities between the nations which participated in the Pacific War, had ceased and, therefore, World War II had terminated. Under those circumstances, counsel for petitioner says that the alleged murder committed by the accused was perpetrated in time of peace, not in time of war, and, therefore, he could not be tried under said 93rd Article of War.

The 93rd Article of War reads:

"ART. 93. Murder.—Any person subject to military law who commits murder in time of war shall suffer death or imprisonment for life, as a court-martial may direct."

The above-quoted Article of War finds its counter-part in the 92nd Article of War of the United States Army (10 U. S. Code Annotated, p. 315). In fact, save for minor changes required by local conditions, the Articles of War embodied in Commonwealth Act No. 408 have been copied from the Articles of War of the United States Army.

It is, therefore, logical for us to look for the interpretation given by the United States Supreme Court to the provisions of the United States Articles of War. In *Kahn vs. Anderson* (65 Law ed., 469) and in *Givens vs. Zerbst* (65 Law ed., 475), the United States Supreme Court interpreted the phrase "in time of peace", used in the United States 92nd Article of War, to mean after the signing of the Treaty of Peace. We gather from the statements contained in those decisions that the crime with which the respective petitioners for habeas corpus were charged and tried under the United States 92nd Article of War, was committed after the Armistice of the First World War, and before the Treaty of Peace was signed. The syllabus in the case of *Givens vs. Zerbst* (supra) says:

"Peace in the complete legal sense, officially proclaimed, is what is meant by the phrase 'in time or peace' in the provision of the 92d Article of War that no person shall be tried by court-martial for murder or rape committed within the geographical limits of the states of the Union and the District of Columbia in time of peace."

"In another decision, the United States Supreme Court (*Caldwell vs. Parker*, 64 Law ed., 621), held the same opinion that pending the existence of a state of war with Germany, it is to be inferred that the trial and conviction as well as the commission of the crime took place after the signing of the Armistice on November 11, 1918, which is a date previous to 1920. The decision further says that the phrase "except in time of war" used in Article A of the Articles of War, covered not only "actual war" or "actual hostilities," but pending the existence of a state of war with Germany, "which means the period after the signing of the Armistice but before the signing of the treaty of peace."

In a civil case, it was also held by the United States Supreme Court that a "state of war" does not cease until the ratification of the treaty of peace. Said the court:

"The seizure, which occurred while the war was flagrant, was an act of war, occurring within the limits of military operations x x x 'A truce or suspension of arms', says Kent, 'does not terminate the war, but it is one of the *commercium belli* which suspends its operations x x x At the expiration of the truce, hostilities may recommence without any fresh declaration of war.'" (*Ribas y Hijo v. United States*, 48 Law ed., 994, 996.)

In this jurisdiction, this Court had the opportunity to make a similar pronouncement in the case of *Raquiza vs. Bradford* (41 Off. Gaz., 626)[1]. In that case, a writ of habeas corpus was presented by Lily Raquiza and two others, on the ground that they were being illegally "confined, restrained and deprived" of their liberty by respondents. The record shows that they were arrested and kept in detention in the Correctional Institution for Women in compliance with the terms of the proclamation issued by the General of the Army Douglas MacArthur, Commander-in-Chief of the United States forces of liberation. According to the Counter Intelligence Corps of the United States Army, petitioner Lily Raquiza was charged with "espionage activity for Japanese"; petitioner Haydee TeeHan Kee, performed acts of "active collaboration with the enemy", and petitioner Emma Link Infante,

was charged with "active collaboration with the Japanese."

It appears that pursuant to the terms of said proclamation of the Commander-in-Chief, petitioners were held, restrained and apprehended "for the duration of the war where after I shall release them to the Philippine Government for its judgment upon their respective cases." Mr. Justice Hilado, speaking for the majority of this Court, in discussing the meaning and scope of the expression "for the duration of the war" used by General Douglas MacArthur in his proclamation of December 29, 1944, said that when respondents were held and restrained and apprehended, the war "had not terminated" within the meaning of that part of the proclamation. Citing the decision rendered in *U.S. vs. Tubig* (3 Phil., 244, 254), in dealing with the insurrection against the United States after the latter became the sovereign of this country, pursuant to the terms of the Treaty of Paris, this Court said that "fighting in these islands continued, and the insurrection did, not end officially until the President proclaimed it at an end, July 4, 1902." Further citing *Freeborn vs. The Protector* (79 U. S. 700), it said that "it is necessary to refer to a public act of the Executive Department to fix the date of the closing of the war." Moreover, *Corpus Juris* in Vol. 67, 429, Section 195, dealing with this subject, says:

"War, in the legal sense, continues until, and terminates at the time of, some formal proclamation of peace by an authority competent to proclaim it. It is the province of the political department, and not of the judicial department, of government to determine when war is at an end. x x x"

Although active hostilities terminated with the signing of the Armistice on September 2, 1945, officially the United States and, consequently, the Philippines, were still at war, when petitioner committed his offense, because no treaty of peace has been signed yet between the nations which participated in the armed conflict with Japan. It, therefore, follows that the crime committed by this prisoner was perpetrated in time of war and is triable under the provisions of the 93rd Article of War.

In view of the above premises, we reaffirm Our stand in our resolution of July 26, 1949. The petition for reconsideration is, therefore denied.

Moran, C.J., Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur. Paras, J., concurs in the result.

[1] 75 Phil., p.50.

CONCURRING

OZAETA, J.:

I concur in the result, on the ground that the petitioner is triable by the court martial under article 94 of the Articles of War, as amended by Republic Act No. 242, for the reasons stated in the concurring opinion of Mr. Justice Feria.

DISSENTING AND CONCURRING

FERIA, J.:

I concur in the result, but dissent from the ratio decidendi, of the decision of the majority.

I am of the considered opinion that the motion for reconsideration must be denied, because under Art. 94th Articles of War, as amended by Republic Act No. 242, the General Court Martial has jurisdiction to try and

decide the case, for although the offense was committed outside of an army reservation, the offended party or victim, a sergeant of 212th Military Police Company of the Armed Forces of the Philippines, was a person subject to military law. The 94th Article of War as amended by Republic Act No. 242 reads as follows:

"ART. 94. Various Crimes.—Any person subject to military law who commits any felony, crime, breach of law or violation of municipal ordinance which is recognized as an offense of a penal nature and is punishable under the penal laws of the Philippines or under municipal ordinances, (A) inside a reservation of the Armed Forces of the Philippines, or (B) outside any such reservation when the offended party (and each one of the offended parties if there be more than one) is a person subject to military law, shall be punished as a court-martial may direct: Provided, That, in time of peace, officers and enlisted men of the Philippine Constabulary shall not be triable by courts-martial for any felony, crime, breach of law or violation of municipal ordinances committed under this article. In imposing the penalties for offenses falling within this article, the penalties for offenses provided in the penal laws of the Philippines or in such municipal ordinances shall be taken into consideration."

It is true that the crime was allegedly committed on November 4, 1947, and the Republic Act No. 242 amendatory of the 94th Articles of War became effective on June 12, 1948, but as the prosecution was instituted and trial held after that date and before the civil courts had acquired jurisdiction over the case, according to the record before us, the General Court Martial has jurisdiction to take cognizance of the offense; because it is a well established rule that, unless the law provides otherwise, if jurisdiction over certain offenses is transferred by law from one court to another, the latter and not the former has jurisdiction over a criminal action charging one of said offenses although committed before such transfer, provided the former court had not acquired jurisdiction over the case by the filing of the action with it. Otherwise, there would be no court having jurisdiction to take cognizance thereof.

The argument in support of the decision of the majority denying the motion for reconsideration is untenable. The 93rd Article of War that provides that "Any person subject to military law who commits murder in time of war shall suffer death or imprisonment for life as a Court Martial may direct," is not applicable to the present case, because at the time the offense at bar was committed we were no longer at war with the countries with which the United States was or is still legally at war.

During the time the Philippines was under the United States sovereignty, we had to follow the interpretation given by the United States Supreme Court to the phrase "in time of war," as we have done in the case of *Raquiza vs. Bradford*, G. R. No. L-44[1], because if a sovereign state is at war with another, any political entity, as the Commonwealth of the Philippines, within the domain of that State not endowed with the statehood in an international sense, must also be considered as at war with the enemy. But after the inauguration of our Republic as a sovereign State completely independent from the United States, we ceased to be, although the United States of America continued to be legally, at war with the enemy. Because the Commonwealth of the Philippines was not a party as a belligerent state in the war of the United States with Japan and other countries during the last world war, for the simple reason that, "for the purposes of international law that state only can be regarded as sovereign which retained its power to enter into all relations with foreign states," that is, to make war or treaty of peace. (Woolsey International Law, 6th ed., p. 37.) The United States had not yet endowed the Commonwealth of the Philippines a political entity within its domain with the privilege of statehood in an international sense before the complete withdrawal of the sovereignty of the United States over these Islands on July 4, 1946, for according to the Philippine Independence Act of March 24, 1934, the Constitution which the Filipino people were authorized to formulate and draft for the Government of the Commonwealth of the Philippines should, either as a part thereof or as an ordinance appended thereto, make provision to the effect that pending the final and complete withdrawal of the sovereignty of the United States over these Islands, "foreign affairs shall be under the direct supervision and control of the United States." (I Hyde International, chiefly as interpreted by the United States

Supreme Court, p. 23, 1945 edition).

The Philippines as a Commonwealth did not and could not make war with Japan and other Asiatic and European countries, with which the United States of America was at war, and was only dragged into it as a dependency of the United States, and therefore the Philippines ceased to be at war with those countries from the moment the Sovereignty of the United States was finally and completely withdrawn from these Islands when the Republic of the Philippines was inaugurated as a Sovereign State on July 4, 1946. As the Philippines was not one of the belligerent states in the war with Japan and other countries, it follows that the Republic of the Philippines as a sovereign state now cannot enter into any treaty of peace with them, and the treaty of peace which the United States may make with Japan and other countries will not and cannot affect the Philippine Republic. And if we hold that we are still at war until we make treaty of peace with those countries, we shall indefinitely continue to be in time of war and never in peace within the meaning of 93rd Article of War as construed by the majority.

Motion denied.

[1] 75 Phil., p. 50.

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