

ATTY. DOMINGO V. FLORES, JR., PETITIONER, VS. HON. JUAN PONCE ENRILE, HON. MILITARY COMMISSION, NO. 13, AND MILITARY TRIAL COUNSEL CAPT. SOTERO SORIANO AND PROSECUTING FISCAL LI...*G.R. No. L-38440. July 20, 1982*

Ponente: CONCEPCION JR., J.

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Petition for certiorari, with a prayer for the issuance of a temporary restraining order, to annul and set aside the order of the respondent Military Commission No. 13 which denied the petitioner's motion to quash Criminal Case MC No. 13-2, entitled: "People of the Philippines, plaintiff, versus Capt. Rodolfo Magpantay, et al., accused", and to restrain the said respondents from further proceeding with the case.

The record shows that on October 19, 1973, Capt. Rodolfo Magpantay alias "Honorato D. Castro", alias "Rolando Moreno", alias "Norberto de Ramos"; Corazon R. Serrano, and the herein petitioner, Domingo V. Flores, Jr., and two other "John Does" were charged before the respondent Military Commission No. 13 with estafa through falsification of commercial documents, and falsification of commercial documents. The case was docketed therein as Criminal Case No. MC 13-2.[1]

The petitioner and his co-accused were arraigned on October 25, 1973 and all pleaded not guilty. The case was thereafter set for trial.

The presentation of evidence for the prosecution which started on October 25, 1973 was concluded on January 24, 1974, and the reception of the evidence for the defendants was set for March 26 and 27, 1974. On March 25, 1974, however, the respondent Secretary of National Defense, in a memorandum to the Judge Advocate General of the Armed Forces of the Philippines, directed the withdrawal of the charges against Capt. Rodolfo V. Magpantay, et al., from Military Commission No. 13, thusly -

"The withdrawal from military Commission No. 13 of the charges against accused Capt. Rodolfo V. Magpantay 0-97692, PAF (NAC), et al., in line with paragraph 4 (3) of Presidential Decree No. 39, dated 7 November 1972 is hereby directed for immediate implementation.

"Please submit to this Office your corresponding early report implementing action taken hereon."

It would appear that early in the day, Mrs. Milagros Magpantay, wife of one of the accused therein, saw the Secretary of National Defense about the petition for withdrawal of charges which her husband had earlier filed,[2] and to enable himself to go over the petition for withdrawal of charges and avoid the possibility of unjustly putting the accused on trial, the said Secretary of National Defense ordered the withdrawal of the case from the respondent Commission.[3] The order was implemented by the Judge Advocate General on that same day.[4]

The next day, March 26, 1974, the day scheduled for the reception of the evidence for the defendants, counsel for

the accused Magpantay handed to the respondent Commission the memorandum of the Secretary of National Defense and the letter of the Judge Advocate General, directing the withdrawal of the case from the Commission. The prosecution deplored the withdrawal of the case, claiming that they have proved the guilt of the accused beyond reasonable doubt, but the respondent Military Commission held itself to be without discretion on the matter. For her part, counsel for the herein petitioner manifested that -

"x x x this representation prepared her objections in writing to the written offer of evidence of the state prosecutor in this case. When the prosecution has submitted a formal written offer of evidence, we also prepared and submitted a written objection to the said formal written offer of evidence. Considering the fact that the memorandum of the Secretary of National Defense has quoted par. 3 of Presidential Decree 39 where at any stage the case can be withdrawn from the commission, it does not however show that there was already a promulgation of the findings and sentence by your Honors. In that light, if your Honors please, it will not prevent the filing a case before the civil courts in order to go back from the beginning of the hearing of this case. In this connection, if Your Honors please, this representation has already submitted my written objection to the formal offer of evidence of the prosecution for and in behalf of my client Domingo Flores, Jr. and we do not know at that time when this written objection to the formal offer of evidence of the Prosecution is supposed to be presented and the said memorandum was relayed only this morning and I think it is within the competency of this commission to resolve my motion for a finding of Not Guilty of my client Domingo Flores, Jr. based on the reasons and objections stated in our written objection to the formal offer of the evidence of the prosecution. So, in that light, we appeal to your sense of judgment and indulgence to at least consider our prayer, so if ever the case will have to be terminated, I want to get a ruling from your Honors that the case is ended and the case is closed in connection with the offer of evidence and also the written objection to the said formal offer of evidence."

The Law Member of the Commission replied: "This Commission under-stands the prayer in your motion, Atty. Policarpio. However, for the moment, all that this Commission will say is, 'We would if we could but we can't.'" Thereafter, the hearing was adjourned.[5]

On March 28, 1974, however, the Secretary of National Defense, after a full consideration of all the aspects of the case, with-drew his previous order and directed the respondent Commission forthwith to proceed with the trial of the accused.[6] Pursuant thereto, the respondent Military Commission scheduled the continua-tion of the trial and reception of the evidence for the defendants to April 1, 1974.

Pleading double jeopardy, in that the "Withdrawal Order of the Honorable Secretary of the Department of National Defense dated March 25, 1974 operates as an acquittal of the accused Flores and a revocation and reinstatement of the case against the accused Domingo V. Flores, Jr. constitutes 'DOUBLE JEOPARDY'", the herein petitioner moved to quash the case against him,[7] but the respondent Military Commission denied his petition to quash. Hence, the present re-course.

The other accused, Capt. Rodolfo Magpantay, upon the other hand, started presenting his evidence on April 2, 1974. But, the proceed-ings were suspended upon the filing of the instant petition for cer-tiorari with this Court.[8]

The petitioner maintains that the withdrawal of the charges against Capt. Rodolfo Magpantay and his co-accused, including peti-tioner, on March 26, 1974, after the prosecution had rested its case, amounted to a dismissal or termination of the case, and its referral anew to the respondent Military Commission No. 13 violates the constitutional right of the petitioner not to be twice placed in jeopardy of punishment for the same offense.

The rule on double jeopardy is contained in Article IV, Section 22 of the 1973 Constitution which provides that "no person shall be twice put in jeopardy of punishment for the same offense." It is restated in Article 39 of the

Articles of War (Commonwealth Act No. 408), as follows:

"ART. 39. As to number. - No person shall, without his consent, be tried a second time for the same offense; but no proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this article until the reviewing and, if there be one, the confirming authority shall have taken final action upon the case. x x x."

and in Section 70-C of the Manual on Courts Martial which reads, as follows:

"Section 70-C - One who in a competent court has been convicted, acquitted or put in jeopardy in re-spect to a real or supposed crime, cannot be further or again pursued for it, unless he waives his right to rely on this immunity."[9]

For double jeopardy to exist, it is essential that the first judgment of conviction or acquittal or dismissal is final; otherwise, there is no judgment of conviction or acquittal to speak of, and, therefore, the accused can not claim double jeopardy.

In the instant case, the petitioner cannot invoke double jeopardy because the order of the respondent Military Commission No. 13, terminating the hearing on March 26, 1974 pursuant to the Memorandum of the Secretary of National Defense to the Judge Advocate General and of the letter of the latter to the respondent Commission, is not a final order of acquittal or dismissal. Under military law, a decision of a military tribunal, be it of acquittal or conviction, or dismissal, is merely recommendatory and subject to, review by the convening authority, the review boards, and the re-viewing authority. Thus, Presidential Decree No. 39 and Implementing Rules, issued on November 7, 1972, provides:

"4. Procedure for Military Commission. -

a. Before trial. -

x x x x x x x x

b. During trial. -

x x x x x x x x

c. After trial. -

(1) Action by Convening Authority. -

x x x x x x x x

(2) Execution of Sentence. - Except as otherwise herein provided, no sentence of a military commission shall be executed unless the same is approved and ordered executed by the Chief of Staff, Armed Forces of the Philippines. Where the sentence imposed by a Military Commission is death or if the Chief of Staff recommends that a penalty of death should be imposed, in a case where the sentence imposed by a military commission is less than death, the record of trial shall be forwarded to the President through the Secretary of National Defense, for confirmation or approval. No sentence of death shall be executed unless ordered executed by the President. In any case, the President shall have the power to reverse, the penalty imposed or otherwise modify any decision of the military commission." (Underscoring supplied for emphasis)

It is apparent therefrom that in the administration of justice by the military, a military commission acts merely as a commissioner who takes the evidence and reports thereon to the convening and re-viewing authorities with his recommendation. As pointed out by the Solicitor General, this system of administration of justice is similar to the system of review under the Spanish regime where the cases have to be passed upon by the Audiencia and then by

the Supreme Court of Spain in Madrid before the sentence becomes final.

"Under that system the lower courts were regarded as examining courts, having preliminary jurisdiction, and the accused was not fully convicted or acquitted until the case has been passed upon by the Audiencia, or supreme court, whose judgment was subject to review in the supreme court in Madrid for errors of law, with power to order a new trial. The trial was regarded as one continuous proceeding, and the protection given was against a second conviction after this final trial had been concluded in due form of law. x x x." [10]

While the respondent Military Commission No. 13 may have ordered the termination of the hearing of Criminal Case No. MC 13-2, pursuant to the Memorandum of the Secretary of National Defense to the Judge Advocate General, and the letter of the latter to the respondent Military Commission No. 13, directing the withdrawal of the charges against Capt. Rodolfo Magpantay and his co-accused, the order has none of the attributes of a final judgment since it was not passed upon by the convening and reviewing authorities and confirmed by the President. Although jeopardy had attached, it has not yet terminated. Being so, the constitutional mandate against putting a person twice in jeopardy of punishment for the same offense was not violated when the Secretary of National Defense withdrew his previous memorandum and directed that further proceedings be had in the case, as the action of the Secretary of National Defense is but a continuation of the proceedings. The constitutional mandate against putting a person twice in jeopardy of punishment for the same offense is to protect the accused from going through a trial a second time. But, since the first proceedings has not yet been terminated, there is no second proceeding to speak of, and, therefore, no double jeopardy.

WHEREFORE, the instant petition should be, as it is hereby DISMISSED. With costs against the petitioner.

SO ORDERED.

Barredo, Aquino, Guerrero, Abad Santos, De Castro, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.
Fernando, C.J., and Makasiar, J., reserve their votes.
Melencio-Herrera and Plana, JJ., in the result.
Teehankee, J., took no part.

[1] Rollo, p. 19.

[2] Id., p. 111.

[3] Id., p. 842.

[4] Id., p. 31.

[5] Id., p. 106.

[6] Id., pp. 32 and 33.

[7] Id., p. 8.

[8] Id., p. 809.

[9] Id., p. 816; See also Claro, Handbook of Courts Martial Procedure, p. 53.

[10] People vs. Laguna, 17 Phil. 532, 542-543.

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