

**MANUEL GARCIA, GENY GARCIA, and RODOLFO CRISMUNDO,
petitioners, vs. HONORABLE TOMAS R. LEONIDAS, PRESIDING JUDGE
OF THE COURT OF FIRST INSTANCE OF CAPIZ, BRANCH III,
respondent.**

G.R. No. L-39863. May 29, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

Special Civil Action for Certiorari to set aside the Orders of respondent Judge dated September 6, October 7, and November 11, 1974 (Annexes "C", "G" and "I"), respectively, on the ground that the same were issued by him with grave abuse of his discretion or in excess of jurisdiction.

It appears that on October 10, 1973, the Assistant Provincial Fiscal of Capiz filed an Information for Murder against the three (3) accused (herein three petitioners) which reads, among others, as follows:

"That on or about the 28th day of April, 1973, in the municipality of Sapián, province of Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with stones and wooden club called 'chako', conspiring, confederating, and mutually helping one another, with evident premeditation and taking advantage of their superior strength, did then and there, with intent to kill, wilfully, unlawfully and feloniously, attack and assault simultaneously, one Mansueto Abayon, inflicting upon him injuries which caused his instantaneous death." (Italics supplied.)

To this Information petitioners pleaded not guilty. After prosecution witness Alfredo Barried had testified, respondent Judge issued the Order dated September 6, 1974 (Annex "C"), which states:

"It appearing that this case falls within the original exclusive jurisdiction of the Military Tribunal as per Presidential Decree No. 9, the court hereby desists from continuing with the trial of the same, and the Clerk of Court is hereby ordered to remit the record of this case to the Military Tribunal for disposition." (Italics supplied).

On October 2, 1974, petitioners filed their motion for reconsideration but the same was denied by respondent Judge on October 7, 1974 (Annex "G"). Their second motion for reconsideration, dated October 31, 1974 (Annex "H"), was also denied by respondent Judge in his Order of November 11, 1974 (Annex "I"), which reads:

"It appearing that the record of this case is already with the Military Tribunal and the court not having jurisdiction over the same, the second motion for reconsideration is hereby denied." (Italics supplied).

In order not to delay the trial of Criminal Case No. 209 which gave rise to this petition for Certiorari, this Court considered, the Comment of respondent as his answer, and the case submitted for decision, inasmuch as the question of law involved has been sufficiently discussed in the pleadings of the parties.

We grant certiorari.

The issue raised by the parties involves a question of law, as the only matter to be resolved is whether under the facts of the case, which are not disputed, the respondent court has jurisdiction to try and decide Criminal Case No. 209 for Murder, entitled "The People of the Philippines, Plaintiff, versus Manuel Garcia, Geny Garcia and Rodolfo Crismundo, alias 'APA', Accused." Under the Information filed by the Fiscal in the aforesaid criminal case, petitioners are charged with the crime of Murder, defined and penalized in Article 248 of the Revised Penal Code. Original jurisdiction to hear and decide such offenses are lodged with the Courts of First Instance.[1]

It is true that under General Order No. 12, dated September 30, 1972, the authority to try and decide cases involving violations of presidential decrees has been vested upon military tribunals, but petitioners are not specifically charged with the violation of a presidential decree but an offense defined and penalized in the Revised Penal Code.

Certainly, We cannot conclude on the basis of the allegations contained in the Information that said petitioners have been specifically and clearly charged with violating Section 3 of Presidential Decree No. 9.

The constitutional right of an accused to be informed of the nature and cause of the accusation requires that "the information should state the facts and the circumstances constituting the crime charged in such a way that a person of common understanding may easily comprehend and be informed of what it is about." [2] The facts constituting the criminal charge must be alleged in positive terms and not by way of recital. Every material fact and essential element of the offense charged must be stated with precision and certainty in the Information, in simple and understandable language, in sufficient detail to enable the accused to prepare his defense. Respondent's construction of the Information filed by the Fiscal in the case at bar does violence to these settled rules.

Having acquired and exercised jurisdiction over the case, respondent Judge cannot, on the basis of such purported reasons, *motu proprio* divest his court of its jurisdiction thereon, considering the clear provisions and intent of General Order No. 49, dated October 4, 1974, of transferring as much as possible to the civil courts the trial of offenses formerly lodged exclusively with the military tribunals, excepting those specifically enumerated in Section 1 thereof. Thus, insofar as violations of Presidential Decree No. 9 is concerned, Section 1 of General Order No. 49 appears to confine the exclusive jurisdiction of the military tribunals to "violations of the laws on firearms and explosives" including "crimes committed with the use of illegally possessed firearms and explosives." [3]

WHEREFORE, the Orders of the Court *a quo* in Criminal Case No. 209, dated September 6, 1974, October 7, 1974 and November 11, 1974 are set aside, and respondent is hereby directed to proceed with the trial of said case.

Fernando, (Chairman), Barredo, Aquino, and Concepcion Jr., JJ., concur.

[1] Sec. 44, Rep. Act No. 296, as amended.

[2] *People vs. Capinlac*, 44 Phil. 422.

[3] Sec. 1, par. 6, General Order No. 49.

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