

MODESTO GAMARA, PETITIONER, VS. HON. GABRIEL VALERO, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF LAGUNA, BRANCH II, HON. DELFIN F. CRUZ, IN HIS CAPACITY AS ACTG. ...*G.R. No. L-36210. June 25, 1973*

Ponente: BARREDO, J.

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Petition for certiorari and prohibition impugning the order of respondent judge "dated January 5, 1973 (and January 16, 1973) ordering the Clerk of the Court of First Instance to forward immediately the records of the case (of Direct Assault with Double Murder filed against petitioner and others, originally instituted on May 12, 1972 in the Municipal Court of Siniloan, Laguna and later remanded to the court of respondent judge wherein on August 30, 1972, the corresponding information was lodged by Provincial Fiscal Delfin F. Cruz and which was then being reinvestigated by the fiscal) to the Military Tribunal on the ground that 'the case falls under paragraph 17 of General Order No. 12, as amended, up to 12-C.'" On February 2, 1973, the Court resolved to require respondents to answer and as prayed for by petitioner, a restraining order was issued enjoining implementation of the order complained of. Instead of filing an answer on behalf of respondents, the Solicitor General filed on March 14, 1973 the following:

"MANIFESTATION

COME NOW the undersigned counsel and to this Honorable Court respectfully show:

1. Brought for review, by way of certiorari and prohibition, before this Honorable Court, under the present petition, is the Order dated January 5, 1973 (Annex "F") promulgated by respondent Honorable Gabriel Valero, presiding Judge of Branch II, Court of First Instance of Laguna, sitting at, and holding sessions in, Sta. Cruz, Laguna. The questioned order, in effect, directs the transmittal of the records in Criminal Case No. SC-486, entitled People of the Philippines, Plaintiff, versus Rodolfo Gamara, Clodualdo Castro, Ignacio Flores, and Modesto Gamara, Accused, to the Military Tribunal where, in the opinion of the respondent presiding judge, it should be tried - the latter concluding that the crime charged under the said case was committed by a band. The respondent presiding judge based his action on the provisions of General Orders No. 12, as amended by 12-A, 12-B and 12-C, issued and ordained by the Chief Executive in his capacity as Commander-in-Chief of all the Armed Forces of the Philippines on September 30, 1972, October 2, 1972, November 7, 1972, and November 9, 1972, respectively, in pursuance of Proclamation No. 1081 dated September 21, 1971 placing the entire country under the operation of martial law. In the issuance of the order sought to be reviewed, the respondent judge relied basically on the provisions of paragraph No. 17, General Orders No. 12-B, which provides as follows:

"Those involving crimes against persons, and crimes against property, as defined and penalized in the Revised Penal Code, when committed by a syndicate or by a band. For this purpose, the offense shall be deemed committed by a syndicate if planned and carried out by a group of three (3) or more persons formed with the

intention of carrying out any unlawful or illegal transaction, enterprise or scheme. And whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band.'

2. Contending the action of the presiding judge to be an error, petitioner Modesto Gamara, who is one of the four accused in Criminal Case No. SC-486, argued as follows:

(a) His alleged participation in the commission of the crime involved in Criminal Case No. SC-486, as defined in the pertinent information (Annex "D"), is undoubtedly in the nature of a principal by inducement;

(b) As such he was not shown to have been armed at the time of the commission thereof;

(c) Besides, even if he were found to be armed and that his participation in the commission of the crime involved with three others would necessarily constitute a band, the fact that he were a civilian (not member of the armed forces) and the case having been taken cognizance by the Court of First Instance of Laguna even before the promulgation of the general orders involved, the instant case would necessarily fall under the exceptions provided for in the transitory provisions of General Orders No. 12-B, quoted as follows:

'In cases under Nos. 16, 17, 18 and 19 above the civil courts shall have concurrent jurisdiction with the military tribunals if the accused is a civilian. The court or tribunal that first assumes jurisdiction shall exercise jurisdiction to the exclusion of all others.'

3. Contentions of respective parties viewed in the light of the provisions of the general orders involved, we are prone to accept the validity of petitioner's side:

Firstly, 'Band', as defined both in paragraph 17, General Orders No. 12-B and paragraph 6, Art. 14, Revised Penal Code, requires the participation of more than three armed malefactors acting together in the commission of an offense.

While the information in Criminal Case No. SC-486 charges four persons, namely: Rodolfo Gamara, Ignacio Flores, Clodualdo Castro and Modesto Gamara (petitioner herein), it was not, however, shown that all of them were armed when they allegedly acted in concert in the commission of 'Direct Assault with Double Murder' against the persons of Lorenzo Reyes and Francisco Leopando. What is more, the supposed participation of petitioner herein, Modesto Gamara, as defined in the same information, was that of principal by inducement, which undoubtedly connotes that he has no direct participation in the perpetration thereof.

As it is aptly stated by a leading authority in criminal law:

'The mere fact that there are more than three armed men at the scene of the crime does not prove the existence of a band, if only one of them committed the crime while the others were not aware of the commission of the crime. The definition of 'by a band' says that the armed men 'shall have acted together in the commission of the offense.'

'The band must be composed of more than three armed persons. Hence even if there are 20 persons, but only 3 are armed, this aggravating circumstance by a band cannot be considered (U.S. vs. Mendigoren, 1 Phil. 658; see also U.S. vs. Melegrito, 11 Phil. 229; Rev. Penal Code, Book One, 9th Ed. Revised 1971, pp. 320-321 by Luis B. Reyes).'

Secondly. Even if the offense at bar were committed by a band as postulated by the respondent judge, the fact that the same was —

(a) committed on May 11, 1972;

(b) the object of a valid criminal complaint filed before the Municipal Court of Siniloan which was docketed therein as Criminal Case No. 1727 entitled People of the Philippines vs. Rodolfo Gamara, Clodualdo Castro,

Ignacio Flores and Modesto Gamara, on May 12, 1972;

(c) object of the information in Criminal Case No. SC-486, entitled People of the Philippines vs. Rodolfo Gamara, Clodualdo Castro, Ignacio Flores and Modesto Gamara, filed with the Court of First Instance of Laguna under date of August 30, 1972 after properly having been proceeded upon before the Municipal Court of Siniloan;

all of which event and/or proceedings having taken place PRIOR to the declaration of Martial Law under Proclamation No. 1081, dated September 21, 1971 and the issuance of General Orders Nos. 12, 12-A, 12-B and 12-C in connection therewith and AFTER the Court of First Instance of Laguna had taken cognizance of Criminal Case No. SC-486 (supra), the transmittal of the pertinent records, by virtue of the questioned order (Annex "E") clearly contravenes the saving clause of General Orders No. 12-B which (to repeat for emphasis) reads as follows:

'In cases under Nos. 16, 17, 18, and 19 above, the Civil courts shall have concurrent jurisdiction with the military tribunals if the accused is a civilian. The court or tribunal that first assumes jurisdiction shall exercise jurisdiction to the exclusion of all others,'

The petitioner herein and his alleged companions, not being members of the Armed Forces of the Philippines, are certainly categorized as civilians. As such civilians and considering that the Court of First Instance of Laguna had already exercised jurisdiction over Criminal Case No. SC-486 FIRST, the said Court cannot simply abdicate such jurisdiction in favor of the Military Tribunal. It has to continue its proceedings thereof to its conclusion. This is also true even if the crime involved were said to have been committed by a 'syndicate' as this term is understood in the light of the provisions of General Orders No. 12-B.

4. As a matter of fact even if we were to consider the questioned order of the respondent presiding judge of the Court of First Instance of Laguna (Branch II) on the basis of the combined provisions of General Orders No. 12, 12-A, 12-B, and 12-C, which treat on specific crimes, the same would not still come within the mantle of these orders' coverage, especially considering the transitory provisions thereof which provide as follows:

'1. Cases now pending in civil courts, whether or not there has been arraignment, shall be tried and decided by said civil courts except criminal cases involving subversion, sedition, insurrection or rebellion and those committed in furtherance of, on the occasion of, incident to or in connection with the commission of said crimes which shall be transferred to military tribunals.

'2. Cases filed on or before September 22, 1972 (when General Order No. 3 was promulgated) with the offices of City or Provincial Fiscals or the courts for preliminary investigation except cases involving subversion, sedition, insurrection or rebellion, shall be investigated by the City or Provincial Fiscals or the Judges concerned, and the corresponding information shall be filed in the proper civil courts. Cases involving subversion, sedition, insurrection or rebellion shall immediately be forwarded to the military tribunals through the Office of the Judge Advocate General, Armed Forces of the Philippines.

'3. Cases involving crimes within the exclusive jurisdiction of military courts, which are filed after September 22, 1972 with the offices of City or Provincial Fiscals or the courts for preliminary investigation, shall be investigated by the City or Provincial Fiscals or the Judges concerned, but the corresponding information will be filed with military tribunals.' (italics supplied)

5. In view of the foregoing discussions, we humbly beg leave of the Honorable Court to allow us submit this manifestation in lieu of the requisite answer to the instant petition.

Manila, March 9, 1973."

Inasmuch as the facts stated in the above manifestation are borne by the record, and the views and observations of the Solicitor General therein being well taken, We see no reason for further action in this case and the same may

be considered as submitted for decision.

WHEREFORE, judgment is hereby rendered granting the petition. The aforementioned orders of respondent judge of January 5 and 16, 1973 are hereby declared null and void, the same being unjustified in law. Respondent judge is further ordered to continue taking cognizance of the case of petitioner above-referred to, Criminal Case No. SC-486 of the Court of First Instance of Laguna. The restraining order heretofore issued is hereby made permanent. No costs.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

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