

IN THE MATTER OF THE PETITION FOR THE ISSUANCE OF WRIT OF HABEAS CORPUS OF JOVITO M. GO, AMELIA S. GO, PETITIONER, VS. GENERAL PROSPERO C. OLIVAS AND MAJOR LEONARDO B. TRINIDAD,...

G.R. No. L-44989. November 29, 1976

Ponente: FERNANDO, J.

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FERNANDO, J.:

On the face of an application for habeas corpus, filed on November 8, 1976, it would appear that there was an un-warranted deprivation of liberty calling for prompt and adequate judicial response. Petitioner sought the aid of the Citizens Legal Assistance Office of the Department of Justice on behalf of her husband Jovito M. Go, who, according to her, has been detained from the time of his apprehension on the evening of October 27, 1975, first at Camp Crame, Quezon City, and then at the HPC stockade of the said Camp, and thereafter beginning May 1, 1976, at the Sampaguita Rehabilitation Center, GAO, Muntinlupa, Rizal, "without the benefit of a warrant of arrest for cause, order or judgment issued by a competent court for his arrest and confinement." [1] Petitioner was not aware of the cause of such confinement, and while she did make representations with the respondents General Prospero C. Olivas and Major Leonardo B. Trinidad at their offices at Camp Crame, Quezon City and Muntinlupa, Rizal, respectively, for the release of her husband inasmuch as there was no criminal case filed or pending in court, they were of no avail. [2] The prayer then is for his immediate release.

Two days after the filing of such application, the Court issued the writ of habeas corpus returnable to it not later than Friday, November 19, 1976 and set the return of the writ for hearing on Monday, November 22, 1976 at 3:00 p.m. The motion of petitioner to be allowed to litigate as pauper in this case was likewise granted.

The return on behalf of respondents, prepared by Acting Solicitor General Hugo E. Gutierrez, Jr. and Guillermo C. Nakar, Jr., Assistant Solicitor General, [3] was duly filed on the date specified. It explained why Jovito M. Go was not entitled to be released, the submission being that there is a valid cause for his detention. It was alleged that along with one Alexander Nicolas, he was responsible for the kidnapping of Aileen Lim, a minor child, for the purpose of extorting ransom from the child's parents, with a certified copy of a ransom note included as annex to the return. That was on October 27, 1975. The child's mother, Monique Lim, lodged the corresponding complaint with the police authorities, executing together with her witnesses sworn statements in support thereof. By virtue of such complaint, Go and Nicolas were apprehended by a force composed of personnel from the Northern Police District of the Metropolitan Police Force and the PC Metrocom. It was then set forth that they "voluntarily executed sworn statements admitting their culpability to the kidnapping, " upon which the case was referred by the Metropolitan Police Force (Northern Police District) to the PC Metrocom Staff Judge Advocate, Camp Crame, Quezon City. Then came the stage of a summary preliminary investigation by Major Ernesto A. Punsalang, duly authorized to conduct such proceeding by order of Brigadier General Guillermo S. Santos, Judge Advocate General. It was only after a finding of a legal ground for the detention of Jovito M. Go and Alexander Nicolas that respondent General Prospero Olivas, Commanding Officer of the Philippine Constabulary

Metropolitan Command, issued Commitment Order No. 1645 dated October 30, 1975 ordering the detention of such persons pursuant to General Order No. 2-A dated September 26, 1972. The procedure prescribed by Presidential Decree No. 39, dated November 7, 1972, and its implementing rules and regulations, was complied with before the matter was referred to the Judge Advocate General's Office on November 16, 1976.[4] It was then stated in such return that there was a finding of the existence of a prima facie case against both Go and Nicolas for kidnapping for ransom under Article 267, paragraph 4 of the Revised Penal Code. Their prosecution for such offense before the Military Tribunals was recommended.[5]

The petition was duly heard on November 22, 1976. Jovito Go was brought to this Court by the military authorities. Petitioner, his wife, was also present. They were assisted by Senior Citizens Attorney Julio B. Pequet of the Citizens Legal Assistance Office. The factual allegations set forth in the return could not be denied, but counsel pleaded in explanation that he prepared the application based on the information supplied by petitioner. Assistant Solicitor General Nakar, who appeared for respondents, briefly spoke on matters that shed further light on the jurisdiction of the military tribunals and the consequent legality of the detention. He was reminded by some members of the Court as to the need for prompt and expeditious action by the military in case of offenses within their competence not only to assure compliance with the requirements of the law but also to minimize the occasions for what appear to be plausible complaints against the validity of the steps taken by the Armed Forces. Counsel for petitioner sought and was granted permission to reply. That was done by him in a pleading where he traversed various allegations of fact in the return. There was the implicit admission though that "Jovito M. Go does not appear to have committed such serious accusation (sic) of kidnapping *." That was all.

It thus appears clear that while illegality was alleged, no jurisdictional question was raised. It is because of such failure that this petition cannot prosper.

1. This Court in *Aquino v. Military Commission* No. 2[6] ruled that there is no constitutional objection to military tribunals conducting trials of civilians for certain specified offenses, among which is kidnapping.[7] That does not preclude the judiciary, of course, from granting in appropriate cases applications for the return of habeas corpus. There is, however, this limitation. The jurisdictional question must be squarely raised. That is a doctrine implicit in the *In re Carr*[8] 1902 decision, the opinion being penned by Justice Willard. The leading case of *Payomo v. Floyd*,[9] a 1922 decision, made it explicit. As set forth by its ponente, Justice Street: "The next point to be observed upon is that, where the detained person is held in restraint by virtue of a judgment rendered by a military or naval court, tribunal, or officer, no court entertaining an application for the writ of habeas corpus has authority to review the proceedings of that tribunal, court, or officer in the sense of determining whether the judgment was erroneous. The only question to be considered is whether the court, tribunal, or officer rendering the judgment had jurisdiction to entertain the case and render judgment at all. As was said by the Supreme Court of the United States in a case where the writ of habeas corpus had been sued out to liberate a person detained by virtue of the sentence of a court-martial, the civil courts exercise no supervisory or correcting power by the writ of habeas corpus over the proceedings of a court-martial and no mere errors in their proceedings are open to consideration. 'The single inquiry, the test, is jurisdiction. That being established, the habeas corpus must be denied and the petitioner remanded. That wanting, it must be sustained and the petitioner discharged.' * * * As otherwise stated the rule is that the proceedings of a military or naval court cannot be reviewed upon habeas corpus when it appears that such tribunal had jurisdiction over the offense charged and that the offender was a person amenable to its authority." [10] The first Supreme Court decision after the Liberation in 1945, *Cabiling v. Prison*[11] reiterated such a doctrine. As set forth in the opinion of Chief Justice Moran: "It is alleged in the petition for habeas corpus filed in his behalf that he is illegally detained, the General Court-Martial having no jurisdiction to try and convict him for the crime charged. * * * [The only] question to be determined is whether or not the General Court-Martial was vested with jurisdiction to try and convict the petitioner for the crime of murder. There

seems to be no doubt that it had such jurisdiction. According to Article of War 12 'General Courts-Martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles, * The petitioner, being a staff sergeant of the Philippine Scouts, United States Army, is a person subject to military law, under Article of War 2, and in time of war, the crime of murder committed by a person subject to military law, comes within the juris-diction of a court-martial, in accordance with Article of War 92.'"[12]

2. What minimizes the difficulty facing a detained person, triable by a military tribunal, is this categorical pronouncement by Justice Antonio, speaking for the Court, in the aforesaid *Aquino v. Military Commission*[13] decision: "It is important to note here that an accused being tried before a military tribunal enjoys the specific constitutional safeguards pertaining to criminal trials. Thus, he is entitled to be heard by himself and counsel, to be informed of the nature and cause of the accusation, to meet the witnesses face to face, to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf, and to be exempt from being a witness against himself. As in trial before civil courts, the presumption of innocence can only be overcome by evidence beyond reasonable doubt of the guilt of the accused. These tribunals, in general, are 'bound to observe the fundamental rules of law and principles of justice observed and expounded by the civil judiciary.' There is, therefore, no justification for petitioner's contention that such military tribunals are concerned primarily with the conviction of an accused and that proceedings therein involve the complete destruction and abolition of petitioner's constitutional rights." [14] Such being the case, the well-settled doctrine announced as early as 1924 by Justice Malcolm in *Conde v. Rivera*[15] and subsequently reiterated, the latest case being *Gumabon v. Director of Prisons*[16] that came out in 1971, to the effect that a denial of a constitutional right may oust the Court of jurisdiction, finds pertinence. In this petition, however, counsel failed to invoke such a principle, relying instead on *Jovito Go* not falling within Proclamation No. 1081. There is plausibility to the argument that under the ruling in *Aquino v. Ponce Enrile*, [17] the offense for which *Go* was indicted is not included in the crime of insurrection or rebellion which supplied the basis for preventive detention under martial law proclamation. That is not decisive of the controversy before us in view of the fact, as mentioned above, that a military tribunal is vested with jurisdiction where the prosecution is one for kidnapping.

3. The failure of the petition notwithstanding, the Citizens Legal Assistance Office of the Department of Justice, more specifically Attorney Julio B. Pequet, is to be commended for its vigorous effort on behalf of the detainee. As was pointed out by Justice Antonio in two recent opinions, the availability of the writ of liberty under martial law is a manifestation of deference to constitutionalism.[18] That is to reflect fidelity to this fundamental principle enshrined in the Constitution: "Civilian authority is at all times supreme over the military." [19] Moreover, the fact that the offense for which *Go* was apprehended is serious should not deter members of the bar from pursuing all legal remedies to assure that the rule of law is upheld. As was pointed out in *Reyes v. Ramos*, [20] citing Justice Frankfurter: " 'It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people.' " [21] It likewise bears repeating that to avoid criticism against the military, the norm set forth in *Cayaga v. Tangonan* [22] be followed: "Martial law has precisely been provided in both the 1935 Charter and the present Constitution to assure that the State is not powerless to cope with invasion, insurrection or rebellion or any imminent danger of its occurrence. When resort to it is therefore justified, it is precisely in accordance with and not in defiance of the fundamental law. There is all the more reason then for the rule of law to be followed. For as was so eloquently proclaimed in *Ex parte Milligan*: 'The Constitution is a law for rulers and for the people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances.' It is true, of course, as admitted by Willoughby, who would limit the scope of martial law power, that the military personnel are called upon to assist in the maintenance of peace and order and the enforcement of legal norms. They can therefore act like ordinary peace officers. In effecting arrests, however, they are not free to ignore, but are precisely bound by, the applicable Rules of Court and

doctrinal pronouncements."^[23]

WHEREFORE , the petition for habeas corpus is dismissed. No costs.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Petition, pars. 1-3.

[2] Ibid, par. 4.

[3] They were assisted by Solicitor Franklin S. Farolan.

[4] Return to Writ of Habeas Corpus, par. 5.

[5] Ibid.

[6] L-37364, May 9, 1975, 63 SCRA 546.

[7] Cf. Gen. Orders Nos. 8 (1972), 12 (1972) and 49 (1974).

[8] 1 Phil. 513. Cf. Mekin v. Wolfe, 2 Phil. 74 (1903); Cabantag v. Wolfe, 6 Phil. 273 (1906); In re H. G. Smith, 14 Phil. 112 (1909).

[9] 42 Phil. 788.

[10] Ibid, 792-793.

[11] 75 Phil. 1.

[12] Ibid, 2-3. Cf. Yamashita v. Styer, 75 Phil. 563 (1945); Miquiabas v. Philippines-Ryukus Command, 80 Phil. 262 (1948); Dizon v. Phil. Ryukus Command, 81 Phil. 286 (1948).

[13] 63 SCRA 546 (1975).

[14] Ibid, 593-594.

[15] 45 Phil. 650.

[16] L-30026, January 30, 1971, 37 SCRA 420. Cf. Camasura v. Provost Marshal, 78 Phil. 131 (1947); Harden v. Director of Prisons, 81 Phil. 741 (1948); Abriol v. Homeres, 84 Phil. 525 (1949); Chavez v. Court of Appeals, L-29169, August 19, 1968, 24 SCRA 663; Celeste v. People v. L-31435, January 30, 1970, 31 SCRA 391.

[17] L-35546, September 17, 1974, 59 SCRA 183.

[18] Cf. Vda. de Castro v. Ver, L-42399, Jan. 30, 1976, 69 SCRA 295 and Kintanar v. Amor, L-42975, March 15, 1976, 70 SCRA 61.

[19] Article II, Section 8 of the Constitution.

[20] L-40027, January 29, 1976, 69 SCRA 153.

[21] Ibid, 159. Frankfurter's statement comes from United States v. Rabinowitz, 339 US 56 (1950).

[22] L-40970, August 21, 1976, 66 SCRA 216.

[23] Ibid, 219-220.

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