

S/SGT. JOSE SANTIAGO, PETITIONER-APPELLANT, VS. LT. COL. CELSO ALIKPALA, ET. AL., RESPONDENTS-APPELLEES.*G.R. No. L-25133. September 28, 1968*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/66bedcdd22e1/>**FERNANDO, J.:**

The validity of a court-martial proceeding was challenged in the lower court on due process grounds to show lack of jurisdiction. Petitioner, a sergeant in the Philippine Army and the accused in court-martial proceeding, through a writ of certiorari and prohibition, filed on April 17, 1963, with the lower court, sought to restrain respondents, the officers, constituting the court-martial, that was then in the process of trying petitioner for alleged violation of two provisions of the Articles of War, from continuing with the proceedings on the ground of its being without jurisdiction. There was likewise a plea for a restraining order, during the pendency of his petition, but it was unsuccessful.

No response, either way, was deemed necessary by the then Presiding Judge of the lower court, now Justice Nicasio Yatco of the Court of Appeals, as petitioner had, in the meanwhile, been convicted by the court-martial. The lower court verdict, render on September 16, 1963, was one of dismissal, as in its opinion, "this case had already become moot and academic * * *."

An appeal was taken to us, the same due process objections raised. We think that the question before us is of such import significance that an easy avoidance through the technicality of the "moot and academic" approach hardly recommendation itself. For reasons to be more fully set forth, we find such court-martial was not lawfully convened, and, consequently devoid of jurisdiction. Accordingly, we reverse the lower court.

There was a stipulation of facts submitted to the lower court on July 10, 1963, to the following effect: "That the arraignment petitioner on December 17, 1962 was for the purpose of avoiding prescription pursuant to Article of War 38 of one of the offenses with which the accused is charged since, as charged, same was allegedly committed on or about December 18, 1960; That prior to the said arraignment, no written summons or subpoena was issued addressed to the petitioner or his counsel, informing them of said arraignment; that instead of said written summons or subpoena Col. Eladio Samson, Constabulary Staff Judge Advocate called up First Sergeant Manuel Soriano at the Headquarters II Philippine Constabulary Zone, Camp Vicente Lim, Canlubang, Laguna on December 16, 1962 by telephone with instructions to send the petitioner to HPC, Camp Crame, Quezon City, under escort, for arraignment and only for arraignment; That upon arrival in HPC, the petitioner was directed to proceed to the PC Officer's Clubhouse, where a General Court-Martial composed of the respondents, created to try the case of 'People vs. Capt. Egmidio Jose, for violation of Articles of War 96 and 97', pursuant to paragraph 10, Special Order No. 14, Headquarters Philippine Constabulary, dated 18 July 1962, * * *, was to resume, as scheduled, the trial of People vs. Pfc. Numeriano Ohagan, for violation of Articles of War 64, 85, and 97'; That it was only at the time (December 17, 1962) that petitioner learned that he will be arraigned for alleged violation of Articles of War 85 and 97, after being informed by one of the respondents, Capt. Cuadrato Palma as Trial Judge Advocate why he was there; That prior to that arraignment on December 17, 1962 there was no special order

published by the Headquarters Philippine Constabulary creating or directing the General Court-Martial composed of the respondents to arraign and try the case against the petitioner, there however was already an existing court trying another case; That the respondents relied on the first indorsement of the Acting Adjutant General, HPC, Camp Crame, Quezon City, dated December 14, 1962 and addressed to the Trial Judge Advocate, of the General Court-Martial * * * directing the said Trial Judge Advocate to refer the case against petitioner to the above-mentioned court, * * *; That the above paragraph 10, Special Order No. 14 dated 18 July 1962, does not contain the phrase 'and such other cases which may be referred to it', but however said orders were amended only on 8 January 1963, to include such phrase. * * *"[1]

It was further stipulated that petitioner's counsel did object to his arraignment asserting that a general court-martial then convened was without jurisdiction, as there was no special order designating respondents to compose a general court-martial for the purpose of trying petitioner, as petitioner was not furnished a copy of the charge sheet prior to his arraignment as required in the Manual for Court-Martial, except on the very day thereof, and as there was no written summons or subpoena served on either the petitioner, as accused, or the counsel. Respondents, acting as the general court-martial, overruled the above objections, and the Trial Judge Advocate was then ordered to proceed to read the charges and specifications against petitioner over the vigorous objections of counsel, it was shown, likewise, in the stipulation of facts, that the case, having been postponed to February 21, 1963, petitioner's counsel had in the meanwhile complained to the Chief of Constabulary against the proceedings on the ground of its nullity, and sought to have respondents restrained from continuing with the trial of petitioner due to such lack of jurisdiction but the Chief of Constabulary ruled that he could not act on such complaint until the records of the trial were forwarded to him for review. With such a ruling, and with the denial of two other motions by petitioner upon the court-martial being convened anew on February 21, 1963, one to invalidate his arraignment on December 17, 1962, and the other to quash the complaint based on the denial of due process and lack of jurisdiction, the present petition for certiorari and prohibition was filed with the lower court.[2]

As above noted, the lower court dismissed the petition due to its belief that, petitioner having been convicted in the meanwhile, there being no restraining order, the matter had become moot and academic. As was set forth earlier, we differ, the alleged lack of jurisdiction being too serious a matter to be thus summarily ignored.

The firm insistence on the part of petitioner that the general court-martial lacks jurisdiction on due process grounds, cannot escape notice. The basic objection was the absence of a special order "designating respondents to compose a general court-martial to convene and try the case of petitioner; * * *". It was expressly stipulated that the respondents were convened to try the case of a certain Capt. Egmidio Jose and not that filed against petitioner. As a matter of fact, the opening paragraph of the stipulation of facts made clear that he was arraigned on December 17, 1962 by respondents as a general court-martial appointed precisely to try the above Capt. Jose solely "for the purpose of avoiding prescription pursuant to Article of War 38 of one of the offenses with which the accused is charged * * *".

Is such a departure from what the law and regulations[3] prescribe offensive to the due process clause? If it were, then petitioner should be sustained in his plea for a writ of certiorari and prohibition, as clearly the denial of the constitutional right would oust respondents of jurisdiction, even on the assumption that they were vested with it originally. Our decisions to that effect are impressive for their unanimity.

In *Harden v. The Director of Prisons*,[4] Justice Tuason, speaking for the Court, explicitly announced that "deprivation of any fundamental or constitutional rights" justify a proceeding for habeas corpus on the ground of lack of jurisdiction. *Abriol v. Homeres*[5] is even more categorical. In that case, the action of a lower court, denying the accused the opportunity to present proof for his defense, his motion for dismissal failing, was held by this Court as a deprivation of his right to due process. As was made clear by the opinion of Justice Ozaeta: "No

court of justice under our system of government has the power to deprive him of that right. If the accused does not waive his right to be heard but on the contrary – as in the instant case – invokes the right, and the court denies it to him, that court no longer has jurisdiction to proceed; it has no power to sentence the accused without hearing him in his defense; and the sentence thus pronounced is void and may be collaterally attacked in a habeas corpus proceeding.”[6]

A recent decision rendered barely a month ago, in *Chavez v. Court of Appeals*,^[7] is even more in point. Here, again, habeas corpus was relied upon by petitioner whose constitutional rights were not respected, but, in addition, the special civil actions of certiorari and mandamus were likewise availed of, in view of such consequent lack of jurisdiction. The stress though in the opinion of Justice Sanchez, was on habeas corpus. Thus: "The course which petitioner takes is correct. Habeas corpus is a high prerogative writ. It is traditionally considered as an exceptional remedy to release a person whose liberty is illegally restrained such as when the accused's constitutional rights are disregarded. Such defect results in the absence or loss of jurisdiction and therefore invalidates the trial and the consequent conviction of the accused whose fundamental right was violated. That void judgment of conviction may be challenged by collateral attack, which precisely is the function of habeas corpus. This writ may issue even if another remedy which is less effective may be availed of by the defendant."

The due process concept rightfully referred to as "a vital and living force in our jurisprudence" calls for respect and deference, otherwise the governmental action taken suffers from a fatal infirmity. As was so aptly expressed by the then Justice, now Chief Justice, Concepcion: "* * * acts of Congress, as well as those of the Executive, can deny due process only under pain of nullity, and judicial proceedings suffering from the same flaw are subject to the same sanction, any statutory provision to the contrary notwithstanding.”^[8]

The crucial question, then, is whether such failure to comply with the dictates of the applicable law insofar as convening a valid court martial is concerned, amounts to a denial of due process. We hold that it does. There is such a denial not only under the broad standard which delimits the scope and reach of the due process requirement, but also under one of the specific elements of procedural due process.

It is to be admitted that there is no controlling and precise definition of due process which, at the most furnishes a standard to which governmental action should conform in order to impress with the stamp of validity any deprivation of life, liberty or property. A recent decision of this Court, in *Ermita-Malate Hotel v. Mayor of Manila*,^[9] treated the matter thus: "It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negative-ly put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardoso, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty 'to those strivings for justice and judges the act of officialdom of whatever branch 'in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought.'"

Nor is such a reliance on the broad reach of due process the sole ground on which the lack of jurisdiction of the court-martial convened in this case could be predicated. Recently, stress was laid anew by us on the first requirement of procedural due process, namely, the existence of the court or tribunal clothed with judicial, or quasi-judicial, power to hear and determine the matter before it.^[10] This is a requirement that goes back to *Banco Español-Filipino v. Palanca*; a decision rendered half a century ago.^[11]

There is the express admission in the statement of facts that respondents, as a court-martial, were not convened to try petitioner but someone else, the action taken against petitioner being induced solely by a desire to avoid the effects of prescription; it would follow then that the absence of a competent court or tribunal is most marked and

undeniable. Such a denial of due process is therefore fatal to its assumed authority to try petitioner. The writ of certiorari and prohibition should have been granted and the lower court, to repeat, ought not to have dismissed his petition summarily.

The significance of such an insistence on a faithful compliance with the regular procedure of convening court-martials in accordance with law cannot be over-emphasized. As was pointed out by Justice Tuason in *Ruffy v. The Chief of Staff, Philippine Army*:^[12] "Courts-martial are agencies of executive character, and one of the authorities 'for the ordering of courts-martial has been held, to be attached to the constitutional functions of the President as Commander in Chief, in-dependently of legislation.' (Winthrop's Military Law and Precedents, 2d Edition, p. 49.) Unlike courts of law, they are not a portion of the judiciary." Further on, his opinion continues: "Not belonging to the judicial branch of the government, it follows that courts-martial must pertain to the executive department; and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander in Chief, to aid him in properly commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives."^[13]

It is even more indispensable, therefore, that such quasi-judicial agencies, clothed with the solemn responsibility of depriving members of the Armed Forces of their liberties, even of their lives, as a matter of fact, should be held all the more strictly bound to manifest fidelity to the fundamental concept of fairness and the avoidance of arbitrariness for which due process stands as a living vital principle. If it were otherwise, then, abuses, even if not intended, might creep in, and the safeguards so carefully thrown about the freedom of an individual, ignored or disregarded. Against such an eventuality, the vigilance of the judiciary furnishes a shield. That is one of its grave responsibilities. Such a trust must be lived up to; such a task cannot be left undone.

WHEREFORE, the order of respondent Court of September 16, 1963, dismissing the petition for certiorari and prohibition, is reversed, and the writ of certiorari and prohibition granted, annulling the proceedings as well as the decision rendered by respondents as a court-martial and perpetually restraining them from taking any further action on the matter. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Sanchez, Angeles, and Capistrano, JJ., concur.

Castro, J., concurs in a separate opinion.

Dizon and Zaldivar, JJ., on official leave.

[1] Stipulation of Facts, paragraphs 1 to 7.

[2] *Ibid*, paragraphs 8 to 13.

[3] Cf. Arts. 8 and 12, Com. Act No. 408 (1938)

[4] 81 Phil. 741 (1948).

[5] 84 Phil. 525 (1949).

[6] *Ibid*, p. 534.

[7] L-29169, August 19, 1968.

[8] *Cuaycong v. Sengbengco*, L-11837, November 29, 1960.

[9] L-24693, July 31, 1967.

[10] *Macabingkil v. Yatco*, L-23174, September 18, 1967.

[11] 37 Phil. 921 (1918). Cf. *Roxas v. Papa*, L-13459, April 29, 1960.

[12] 75 Phil. 875, 884 (1946).

[13] *Ibid*, p. 884.

6 pt 6 pt 0 3

CONCURRING OPINION

CASTRO, J.:

My concurrence in the decision of this Court in the able pen of Mr. Justice Fernando is unqualified.

Nonetheless, I feel compelled to express my views on certain disturbing facets of this case which to my mind not merely indicate a censurable denial of due process, but as well pointedly exposes, from the perspective of military law, tradition and usage, the intrinsic nullity of the proceedings had by the general court-martial in question.

The history and development of courts-martial as tribunals for the enforcement of discipline in bodies of military character[1] underscore several time-honored tenets: a court-martial is an instrumentality of the executive power, to aid the President as commander-in-chief in properly commanding and controlling the armed forces and enforcing discipline therein; it has only such powers as are expressly vested in it by statute, or as may be derived from military usage; it is a creature of orders; as a purely executive agency designed for military uses, it is brought into being by a military order; it is transient in its duration; it has no fixed place of session, nor permanent office or clerk, no inherent power to issue a judicial mandate; its judgment is in quintessence simply a recommendation until approved by the proper revisory commander; its competency cannot be expanded by implication; and no intendment in favor of its acts can be made where their legality does not indubitably appear.[2]

The original concept of a court-martial in British law, even with American and Philippine statutory accretions, remains fundamentally the same today, with few modifications of consequence.

Why a court-martial is essentially transient in nature, and is as a rule appointed to try a single case, is not difficult to comprehend.

Firstly, in a military organization, every officer thereof belongs to a particular branch of service and is for that reason assigned to a position which calls for the discharge, in a continuing manner and for a period which is denominated tour of duty, of duties pertaining to his specialization or branch of service. Thus an ordnance officer is assigned to ordnance work, a field artillery officer to field artillery duties, a finance officer to duties involving money and finances, a quartermaster officer to duties involving supplies and other aspects of logistics, and so forth. Although generic military duty perforce embraces occasional membership in courts-martial, it does not envision such membership as a continuing assignment of long duration.

Secondly, the court-martial, as its history and development demonstrate, is a blend of the jury system and the one-judge (non-jury) judicial system. In common law jurisdictions, an accused is tried by his peers. In one-judge (non-jury) jurisdictions, the accused is tried by a lone judicial arbiter. In a court-martial trial, the entire panel of officers who constitute the court-martial is judge and jury.

Thirdly, by virtue of military law, tradition and usage, a court-martial is constituted to try a particular case (or

several cases involving the same accused). After completion of the trial and resolution of necessary post-trial incidents, the court is dissolved, and the members thereof return to and resume their respective normal assignments. Even the law member of a court-martial (who rules on questions of law and admissibility of evidence and advises the other members on court procedure and the legal intricacies of trial), rejoins his regular office or unit (although he may thereafter again be appointed law member of a subsequent general court-martial, or an ordinary member of another general court-martial, or even president of still another general court-martial).

In sum, a court-martial is not a continuing permanent tribunal.

Thus it is that, in the Armed Forces of the Philippines, the general rule has commanded undiminished respect that a court-martial is appointed to try only a single case, or several cases pertaining to a single individual. There is of course no legal impediment to empowering a court-martial, in the same order creating it, to try more than one case, but such creations are the exception and quite infrequent. And even if "roving" or "semi-permanent" courts-martial were the rule in our Armed Forces, which I do not concede, the general court-martial in the case at bar was not one such.

It is undisputed - as in fact it is stipulated by the parties - that the general court-martial in question was constituted to try Captain Egmidio Jose. Nothing in the phraseology of the order that created it authorized it to try the petitioner staff-sergeant Santiago. It could not therefore proceed in any manner, which we can view as properly coming within the periphery of its limited powers, with respect to the charge against Santiago. When it arraigned Santiago on December 17, 1962, it was absolutely without legal power to do so, and the arraignment was a futile ceremony, as meaningless as it was inefficacious.

Undeniably the record shows that the order creating the court-martial to try Captain Egmidio Jose was belatedly amended on January 8, 1963 by the addition of the phrase, "and such other cases that may be referred to it. But this afterthought could not, in law, serve to invest with validity an act that was ab initio a nullity. And it is of no moment that the petitioner was thereafter arraigned anew, assuming arguendo that he was. The proceedings would have been palpably objectionable on the patent ground that the offense imputed to the petitioner which was committed on December 18, 1960 was already time-barred on December 18, 1962, pursuant to the provisions of Article of War 38 of Commonwealth Act 408, as amended.

As I see it, the arraignment of the petitioner by the general court-martial constituted to try Captain Egmidio Jose was a desperate measure resorted to to remedy a desperate situation - solely to interrupt the running of the prescriptive period provided by Article of War 38. This action was not only completely devoid of any semblance of legality; it likewise conclusively evinces gross negligence on the part of the military. Why nothing was done toward the creation of a court-martial to try Santiago within the two years following the commission of the crime is not explained by the record, and I venture the opinion that there can be no satisfactory explanation thereof. The military authorities allowed that long period to lapse without any assiduous effort at bringing the petitioner to the forum of a duly constituted general court-martial. This should never come to pass in the Armed Forces where disciplinary measures of whatever specie or character, by law and tradition and usage, should be swiftly administered. For, the officer of average military learning knows or should be cognizant of the proliferation in the Articles of War of provisions designed to insure speedy trial of accused persons.

Because an accused charged with a serious offense such as that in the case at bar - unlawful disposition of ten carbines belonging to the Government - is ordinarily placed in arrest and is not entitled to bail, time is of the essence as undue delay would obviously be prejudicial to the accused. The Articles of War (Commonwealth Act 408 as amended by Rep. Act 242) and implementing military manuals and regulations explicitly enjoin that

the report of investigation, if practicable, be completed within 48 hours, that the investigator forthwith make the proper recommendation as to the disposition of the case, and that the officer exercising general court-martial jurisdiction over the accused act on the report of the investigator with deliberate speed. As a matter of fact, Article of War 71 explicitly commands that when a person subject to military law is placed in arrest or confinement immediate steps be taken to try him or to dismiss the charge; that when a person is held for trial by general court-martial his commanding officer, within eight days after the accused is arrested or confined, forward the charges to the officer exercising general court-martial jurisdiction and furnish the accused a copy of such charges; and that if the same be not practicable, he report to superior authority the reasons for the delay. The same Article of War poises the threat of punishment (as a court-martial may direct) over any officer responsible for unnecessary delay "in investigating or carrying the case to a final conclusion."

The record propels me to the conclusion that everything that the military authorities did or neglected to do with respect to the case of the petitioner was contrary to all the imperatives of military law, tradition and usage.

In fine, it is my considered view that at the time the petitioner was arraigned, there was no court-martial validly in existence that could legally take cognizance of the charge against him. At best, the general court-martial in question, vis-a-vis the petitioner, was disembodied if not innominate, with neither shape nor substance.

[1] For a detailed exposition of the history of courts-martial, see *Military Law and Precedents*, 2nd ed. (1920), by William Winthrop.

[2] Winthrop, *id.*, pp. 49-50.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.