

SILVERIO VALDEZ, PETITIONER, VS. ANTONIO G. LUCERO, JUDGE OF FIRST INSTANCE OF ILOCOS SUR, AND CELESTINO JIMENEZ PROVINCIAL WARDEN OF ILOCOS SUR, RESPONDENTS.

G.R. No. L-246. March 27, 1946

Ponente: JARANILLA, J.

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JARANILLA, J.:

The above-entitled case came up to be regularly heard in this court by virtue of a petition filed by Silverio Valdez praying that judgment be rendered "(a) annulling the proceedings of the lower court, (b) declaring the respondent judge without jurisdiction of the case, (c) commanding the respondent judge to desist from further proceeding in the cause, (d) ordering the provincial warden, Celestino Jimenez, to discharge the defendant, Silverio Valdez, from jail, (e) granting preliminary injunction enjoining the respondent judge from hearing the case on the merits pending proceedings in the case, (f) assessing costs against the respondents, and (g) granting such other or further relief or reliefs as may be just or equitable."

The undisputed facts are:

That Silverio Valdez was prosecuted for murder under an information filed by the provincial fiscal in the justice of the peace court of Vigan, Ilocos Sur, which information, in part, reads as follows:

"That on or about the 17th day of January, 1945, in the barrio of San Julian, municipality of Bantay, province of Ilocos Sur, Philippines, and within the jurisdiction of this Hon. Court, the above-named defendant, Silverio Valdez, with intent to kill, and with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously with cruelty, by deliberately and inhumanly augmenting the suffering of one Juan Ponce, kill the latter with bolo, dagger and other weapons and died instantly."

That said Silverio Valdez moved for the dismissal of the foregoing information in the justice of the peace court, alleging that the fiscal had no authority to file it and that the court acquired no jurisdiction of the defendant, which motion was denied by the justice of the peace on September 5, 1945; and that since that date the accused has been detained as a provincial prisoner in the provincial jail in Vigan, Ilocos Sur;

That on September 13, 1945, the provincial fiscal reproduced the said information in the Court of First Instance of Ilocos Sur; and that the defendant filed a motion to quash it on December 18, 1945, which motion was denied by the court on December 20, 1945;

That on December 29, 1945, a petition for the reconsideration of the denial of the motion to quash was filed but was also denied on January 7, 1946.

The main issue here is whether the civil courts have jurisdiction to take cognizance of and try the case for murder filed against petitioner Silverio Valdez, as above stated, because, he alleges, he was not only a member of a recognized guerrilla and hence a member of the United States armed forces in the Philippines, in North Luzon, but was also later on absorbed into the Philippine Army and therefore, he claims, he should be tried by a general court

martial, which has jurisdiction over the crime charged and the person of the accused pursuant to article 93 of the Articles of War (Commonwealth Act No. 408).

Petitioner also contends that the whole of Ilocos Sur was at the time imputed in the information overrun by the enemy and that any place of hiding of the guerrillas in the province was a military reservation for the safety of the Philippine and American armed forces within the purview of the Articles of War.

Petitioner further contends that granting, without admitting, that he was the author of the crime charged, nevertheless if the supposed victim were a spy, committing espionage amidst Philippine and American armed forces and the enemy in actual combat, he may be exempt from liability or may justify the commission under section 2 of Article II of the Constitution of the Philippines, in military courts, provided the procedure prescribed for the administration of military justice has been obeyed and followed in making executions of spies.

During the oral argument of this case, we understood from counsel appearing for petitioner that neither the United States Army nor the Philippine Army was claiming precedence or priority in the trial of the herein petitioner, nor that either was demanding that he be tried by a court martial. In fact, no allegation to that effect may be found in his petition.

The petitioner relies mainly on the provision of article 93 of the Articles of War (Commonwealth Act No. 408) which reads:

"Art. 93. Murder.—Any person subject to military law who commits murder in time of war shall suffer death or imprisonment for life, as a court-martial may direct."

He argues that pursuant to said article 93 of the Articles of War only a court martial can have jurisdiction to try his case for murder, he being a person subject to military law and the crime having been committed in time of war.

Granting all the facts alleged by the petitioner and that he was a regular member of the guerrilla duly recognized by the United States Army and granting further that his unit was incorporated into the United States Army, thus giving him the standing of a regular member of the United States armed forces, and that he was subsequently incorporated into the Philippine Army, we are of the opinion, nevertheless, that the civil courts of the Commonwealth of the Philippines are not deprived of their jurisdiction over the petitioner herein, but have concurrent jurisdiction with the military courts or general courts martial to try and take cognizance of the case of murder against the petitioner herein, for the reason that said article 93 of the Articles of War is almost identical with the 92d Article of War of the United States Army, and the latter has been interpreted by the courts to mean that even in time of war the civil courts are not deprived of their jurisdiction over murder cases committed by persons subject to military law. Such was the holding in *Cadwell vs. Parker* (Ala., 1920; 40 Sup. Ct., 388; 252 U. S., 376; 64 Law. ed., 621):

"That section 1564 of this Article (Art. 92), providing for punishment of murder or rape as the court-martial may direct, but prohibiting trial by courts-martial in time of peace, section 1565 of this Article (Art. 93), providing for the punishment of various other offenses as a court-martial may direct, and this section (Art. 74), requiring military authorities to deliver accused persons to the civil authorities, except in time of war, do not give military courts exclusive jurisdiction in time of war over offenses committed in violation of state laws by persons in the military service, and a state court has jurisdiction over such offenses." (Emphasis added.)

Identical doctrines holding that the civil courts have concurrent jurisdiction over cases of murder committed by persons subject to military law were laid down in the following cases:

"Articles of War enacted August 29, 1916, do not deprive the civil courts, either in time of peace or war, of the concurrent jurisdiction previously vested in them over crimes against either federal or state law, committed within the United States, by persons subject to military law." (United States vs. Hirsch [P. C, N. Y., 1918], 254 F., 109; emphasis added.)

"Prisoners of war are amenable for offenses *malum in se* and may be tried by the ordinary tribunals in the country in which the crime is committed; and this though they may also be triable by courts- martial." (Govt. vs. McGregory [1780], 14 Mass., 499.)

"A court of oyer and terminer had jurisdiction to try all cases of murder committed within the country, and that a murder committed by a soldier in the military service of the United States, in time of war, insurrection, or rebellion, forms no exception." (People vs. Gardiner [N. Y., 18G5], 6 Parker Cr. R., 143; emphasis added.)

"Any changes in Articles of War in years 1913 and 1916 did not alter rule that courts-martial do not have exclusive jurisdiction for trial of a soldier for murder committed in time of war, but that the state courts have jurisdiction until it is assumed by military author-ities." (People vs. Denman [1918], 177 P., 401; 179 Cal., 497.)

In the instant case it also appears that when the in- formation for murder was filed the Philippines had already been liberated and the actual hostilities had already ceased. It is claimed, however, that up to the present time a status of war still exists for the reason that the treaty of peace has not as yet been signed. But this contention cannot be upheld because, although the formal termination of war by means of the signing of the treaty has not yet been effected, at the time when the petitioner was prosecuted for murder in the civil courts the actual fighting or hos-tilities were no longer going on; in other words, the actual fighting had already ceased and the Philippines had al-ready been liberated. Thus it was held in the following decision:

"Notwithstanding this section (Art. 74), requiring a soldier to be delivered to civil authorities for trial for an alleged crime except in time of war, the jurisdiction of the military courts over a soldier is not exclusive of the civil court even during time of war, if the soldier was stationed within one of the states where the civil courts were functioning and where no actual hostilities were in progress." (Ex parte Koester [1922], 206 P., 116; 56 Cal. App., 621; emphasis added.)

It clearly appears also in the present case as aforesaid that the military authorities are not claiming priority to try the petitioner herein as provided in the Articles of War. Such being the case, we are of the opinion that the petitioner cannot raise and invoke the right to be tried by a court martial without the military authorities' claiming to try him in accordance with the military law or the Articles of War. To this effect was the ruling in People vs. Denman (*supra*) :

"Conceding paramount right of military authorities in time of war to custody of soldier notwithstanding criminal charges against him in the courts of a state, the right inures solely to military authori-ties and cannot be raised by the offender." (Emphasis added.)

In Funk vs. State ([1919], 208 S. W., 509; 84 Tex. Cr. R., 402), the following doctrines were also laid down:

"A soldier of the United States who murders a citizen of the state offends against both the military and the state laws and may be tried in the state courts.

"Although under this section (Art. 92), military authorities have the prior right to try a soldier who has murdered a citizen, the soldier who has committed the crime cannot object to being tried by a state court, where the military authorities have not asserted any right." (Emphasis added.)

In view of all the foregoing, we are of the opinion and so hold that the Court of First Instance of Ilocos Sur has

jurisdiction over the murder case against the petitioner and cannot be deprived of such jurisdiction. This being our conclusion, it is unnecessary to pass upon the other questions of law raised by the petition.

Being without any merit whatsoever, the petition is hereby dismissed, with costs against the petitioner.

Moran, C. J., Ozaeta, Paras, Feria, De Joya, Pablo, Perfecto, Hilado, Bengzon, and Briones, JJ., concur.
Petition dismissed.

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