

RAMON RUFFY, ET AL., PETITIONERS, VS. THE CHIEF OF STAFF, PA, ET AL., RESPONDENTS*G. R. No. L-533. August 20, 1946*

Ponente: TUASON, J.

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This was a petition for prohibition, praying that the respondents, the Chief of Staff and the General Court-Martial of the Philippine Army, be commanded to desist from further proceedings in the trial of petitioners before that body. Preliminary injunction having been denied by us and the General Court-Martial having gone ahead with the trial, which eventually resulted in the acquittal of one of the defendants, Ramon Ruffy, the dismissal of the case as to another, Victoriano Dinglasan, and the conviction of Jose L. Garcia, Prudente M. Francisco, Dominador Adeva and Andres Fortus, the last-named four petitioners now seek in their memorandum to convert the petition into one for certiorari, with the prayer that the records of the proceedings before the General Court-Martial be ordered certified to this Court for review.

The ground of the petition was that the petitioners were not subject to military law at the time the offense for which they had been placed on trial was committed. In their memorandum they have raised an additional question of law—that the 93rd Article of War is unconstitutional.

An outline of the petitioners' previous connection with the Philippine Army, the Philippine Constabulary, and/or with guerilla organizations will presently be made. This outline is based on allegations in the petition and the answer, and on exhibits attached thereto and to the parties' memoranda, exhibits which were offered in the course of the oral argument and admitted without objection. The said exhibits are public documents certified by the officials who had them in custody in their official capacity. They are presumed to be authentic, as we have no doubt they are.

It appears that at the outbreak of war on December 8, 1941, Ramon Ruffy was the Provincial Commander, Prudente M. Francisco, a junior officer, and Andres Fortus, a corporal, all of the Philippine Constabulary garrison stationed in Mindoro. When, on February 27, 1942, the Japanese forces landed in Mindoro, Major Ruffy retreated to the mountains instead of surrendering to the enemy, disbanded his company, and organized and led a guerilla outfit known as Bolo Combat Team or Bolo Area. Lieutenant Francisco, Corporal Fortus and Jose L. Garcia, the last then a civilian, joined Major Ruffy's organization towards the latter part of 1942, while Dominador Adeva and Victoriano Dinglasan, then likewise civilians, became its members some time in 1943.

Meanwhile, Brigadier-General Macario Peralta, Jr., then a lieutenant-colonel of the Philippine Army, also took to the hills of Panay and led the operation of the 6th Military District, one of the districts into which the Philippine Army had been divided before the war. About November, 1942, Col. Peralta succeeded in contacting the General Headquarters of General MacArthur in Australia as the result of which on February 13, 1943, the 6th Military District was recognized by the Headquarters of the Southwest Pacific Area as a military unit and part of its command.

Even before General MacArthur's recognition of the 6th Military District Colonel Peralta had extended its sphere of operation to comprise Mindoro and Marinduque, and had, on January 2, 1943, named Major Ruffy as Acting Commander for those two provinces and Commanding Officer of the 3rd Battalion, 66th Infantry, 61st Division, Philippine Corps. After the recognition, 2nd Lieut. Prudente M. Francisco, by virtue of Special Orders No. 99, dated November 2, 1943, and signed by Enrique L. Jurado, Major, OSE, Commanding, was assigned as S-3 in the Bolo Area. Major, later Lieut. Col., Jurado, it should be noted, had been dispatched by the 6th Military District to Mindoro to assume operational control and supervision over the Bolo Area unit and to make and direct the necessary report to the Headquarters, 6th Military District, in Panay. On April 26, 1944, by General Orders No. 40 of the 6th Military District, 2nd Lieut. Francisco was promoted to the rank of 1st Lieutenant (Brevet), effective April 15, 1944, subject to approval by the President of the Philippines, and was re-assigned to the Bolo Area. As to Andres Fortus he was assigned to the same Bolo Area as probationary 3rd lieutenant for two-month probationary training, by the Headquarters of the 6th Military District, as per Special Orders No. 70, dated May 15, 1944.

According to a memorandum of the Chief of Staff, 6th Military District, dated January 16, 1943, and signed by L. R. Relunia, Lieut. Col., CE, Chief of Staff, Jose L. Garcia and Dominador Adeva were appointed 3rd lieutenants, infantry, as of December 31, 1942. Garcia later was promoted to the rank of captain, effective March 15, 1943, as per Special Orders No. 82, issued in the field, 6th Military District, and dated August 28, 1943. On May 24, 1943, Jose L. Garcia took his oath before Captain Esteban P. Beloncio, then Acting Commanding Officer, 3rd Battalion, 66th Infantry Regiment, 61st Division, 6th Military District.

As has been said, the 6th Military District sent Lieut. Col. Enrique L. Jurado to be Commanding Officer of the Bolo Combat Team in Mindoro and to undertake other missions of military character. Pursuant to instructions, Col. Jurado on November 2, 1943, assigned Major Ruffy as Commanding Officer of the Area with 3rd. Lieut. Dominador Adeva and 2nd Lieut. Prudente M. Francisco as members of his staff and Victoriano Dinglasan as Finance Officer, as per Special Orders No. 99 dated November 2, 1943. In a memorandum of Col. Jurado for Major Ruffy bearing date 25 June, 1944, it was stated that Captain Garcia had been given P5,000 for palay and Lieut. Francisco P9,000, P5,000 for palay and P4,000 for salary of the personnel of B. Company.

A change in the command of the Bolo Area was effected by Colonel Jurado on June 8, 1944: Major Ruffy was relieved of his assignment as Commanding Officer, Bolo Battalion, and Captain Esteban P. Beloncio was put in Ruffy's place. On October 19, 1944, Lieut. Col. Jurado was slain allegedly by the petitioners. After the commission of this crime, the petitioners, it is alleged, seceded from the 6th Military District. It was this murder which gave rise to petitioners' trial, the legality of which is now being contested.

On July 26, 1941, the President of the United States issued a military order the pertinent paragraph of which stated: "* * * as Commander in Chief of the Army and Navy of the United States, I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and place under the command of the general officer, United States Army, to be designated by the Secretary of War, from time to time, all of the organized military forces of the government of the Commonwealth." Following the issuance of President Roosevelt's order General Douglas MacArthur was appointed Commanding General of the United States Armed Forces in the Far East.

It is contended, in behalf of Captain Francisco and Lieutenant Fortus, that "by the enemy occupation of the Philippines, the National Defense Act and all laws and regulations creating and governing the existence of the Philippine Army including the Articles of War, were suspended and in abeyance during such belligerent occupation."

The paragraph quoted in petitioners' memorandum from Winthrop's Military Law and Precedents and the subsequent paragraph which has been omitted furnish a complete answer to petitioners' contention. Paraphrasing the author, by the occupation of the Philippines by Japanese forces, the officers and men of the Philippine Army did not cease to be fully in the service, though, in a measure, only in a measure, they were not subject to the military jurisdiction, if they were not in active duty. In the latter case, like officers and soldiers on leave of absence or held as prisoners of war, they could not be held guilty of a breach of the discipline of the command or of a neglect of duty, or disobedience of orders, or mutiny, or subject to a military trial therefor; but for an act unbecoming an officer and a gentleman, or an act which constitutes an offense of the class specified in the 95th Article of War, they may in general be legally held subject to military jurisdiction and trial. "So a prisoner of war, though not subject, while held by the enemy, to the discipline of his own army, would, when exchanged or paroled, be not exempt from liability for such offenses as criminal acts or injurious conduct committed during his captivity against other officers or soldiers in the same status." (Winthrop's Military Law; and Precedents, 2nd Edition, pp. 91, 92.)

The rule invoked by counsel, namely, that laws of political nature or affecting political relations are considered superseded or in abeyance during the military occupation, is intended for the governing of the civil inhabitants of the occupied territory. It is not intended for and does not bind the enemies in arms. This is Self-evident from the very nature of things. The paradox of a contrary ruling should readily manifest itself. Under the petitioners' theory the forces of resistance operating in an occupied territory would have to abide by the outlawing of their own existence. They would be stripped of the very life-blood of an army, the right and the ability to maintain order and discipline within the organization and to try the men guilty of breach thereof.

The surrender by General Wainwright of the Fil-American Forces does not profit the petitioners who were former members of the Philippine Constabulary any more than does the rule of war or international law they cite. The fall of Bataan and Corregidor did not end the war. It did not, legally or otherwise, keep the United States and the Commonwealth of the Philippines from organizing a new army, regular or irregular, out of new men and men in the old service who had refused to surrender or who, having surrendered, had decided to carry on the fight through other diverse means and methods. The fall of Corregidor and Bataan just marked the beginning of the gigantic preparation for the gigantic drive that was to fight its way to and beyond the Philippines in fulfillment of General MacArthur's classic promise, "I shall return." The heroic role which the guerillas played in that preparation and in the subsequent liberation of the Philippines is now history.

Independently of their previous connection with the Philippine Army and the Philippine Constabulary, Captain Francisco and Lieutenant Fortus as well as Major Garcia and Lieutenant Adeva were subject to military jurisdiction.

The 2nd Article of War defines and enumerates the persons subject to military law as follows:

"ART. 2. Persons Subject to Military Law.— The following persons are subject to these articles and shall be understood as included in the term 'any person subject to military law' or 'persons subject to military law', whenever used in these articles:

“(a) All officers, members of the Nurse Corps and soldiers belonging to the Regular Force of the Philippine Army; all reservists, from the dates of their call to active duty and while on such active duty; all trainees undergoing military instructions; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same;

“(b) Cadets, flying cadets, and probationary third lieutenants;

“(c) All retainers to the camp and all persons accompanying or serving with the Army of the Philippines in the field in time of war or when martial law is declared though not otherwise subject to these articles;

“(d) All persons under sentence adjudged by courts-martial.”

It is our opinion that the petitioners come within the general application of the clause in sub-paragraph (a) "and all other persons lawfully called, grafted, or ordered into, or to duty or for training the said service, from the dates they are required by, the terms of the -call, draft, or order to obey the same." By their acceptance of appointments as officers in the Bolo Area from the General Headquarters of the 6th Military District, they became members of the Philippine Army amenable to the Articles of War. The Bolo Area, as has been seen, was a contingent of the 6th Military District which, as has also been pointed out, had been recognized by and placed under the operational control of the United States Army in the Southwest Pacific. The Bolo Area received supplies and funds for the salaries of its officers and men from the Southwest Pacific Command. As officers in the Bolo Area and the 6th Military District, the petitioners operated under the orders of duly established and duly appointed commanders of the United States Army.

The attitude of the enemy toward underground movements did not affect the military status of guerrillas who had been called into the service of the Philippine Army. If the invaders refused to look upon guerrillas, without distinctions, as legitimate troops, that did not stop the guerrillas who had been inducted into the service of the Philippine Army from being component parts thereof, bound to obey military orders and subject to military discipline. The official and military status of guerrillas was to be judged not by the concept of the enemy but by their relations to the government and the army of the country for which they fought.

The constitutionality of the 93rd Article of War is assailed. This article ordains "that any person subject to military law who commits murder in time of war shall suffer death or imprisonment for life, as the court-martial may direct." It is argued that since "no review is provided by that law to be made by the Supreme Court, irrespective of whether the punishment is for life imprisonment or death," it violates Article VIII, section 2, paragraph 4, of the Constitution of the Philippines which provides that "the National Assembly may not deprive the Supreme Court of its original jurisdiction over all criminal cases in which the penalty imposed is death or life imprisonment."

We think the petitioners are in error. This error arose from failure to perceive the nature of courts martial and the sources of the authority for their creation.

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, independently of legislation." (Winthrop's Military Law and Precedents, 2d Edition, p. 49.) Unlike courts of law, they are not a portion of the judiciary. "The Supreme Court of the United States referring to the provisions of the Constitution authorizing Congress to provide for the government of the army, excepting military offences from the civil jurisdiction, and making the President commander in chief, observes as follows: These provisions show that Congress has the power to provide for the trial and punishment of military and naval offences in the manner then and now practised by civilized nations, and that the power to do so is given without any connection between it and the 3d article of the Constitution defining the judicial power of the United States; indeed that the two powers are entirely independent of each other.'

"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." (Winthrop's

Military Law and Precedents, 2d Edition, p. 49.) Of equal interest Clode, 2 M. F., 361, says of these courts in the British law: "It must never be lost sight of that the only legitimate object of military tribunals is to aid the Crown to maintain the discipline and government of the Army." (Footnote No. 24, p. 49, Winthrop's Military Law and Precedents, 2d Edition)

Our conclusion, therefore, is that the petition has no merit and that it should be dismissed with costs. It is so ordered.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, Briones, and Padilla JJ., concur.

PREFECTO, J., dissenting:

We agree with the rule that laws of political nature or affecting political relations are considered in abeyance during enemy military occupation, although we maintain that the rule must be restricted to laws which are exclusively political in nature. We agree with the theory that the rule is not intended for and does not bind the enemies in arms, but we do not agree with the theory that the rule is intended for the civil inhabitants of the occupied territory without exception. We are of opinion that the rule does not apply to civil inhabitants who occupy official positions in the legitimate civil government of the occupied territory. Enemy occupation does not relieve them from their sworn official duties. Government officers wield powers and enjoy privileges denied to private citizens. The wielding of powers and enjoyment of privileges impose corresponding responsibilities, and even dangers that must be faced during emergency.

The petitioners assailed the constitutionality of the 93rd Article of war, providing that "any person subject to military law who commits murder in time of war shall suffer death or imprisonment for life, as the court-martial may direct," because no review is provided by said law to be made by the Supreme Court, irrespective of whether the punishment is for life imprisonment or death, such omission "being a violation of section 2(4), Article VIII, of the Constitution of the Philippines."

Petitioners are mistaken. The silence of the law as to the power of the Supreme Court to review the decisions and proceedings of courts-martial, especially when the penalty imposed is death or life imprisonment, should not be understood as negating such power, much more when it is recognized and guaranteed by specific provisions of the fundamental law. At any rate, any doubt in interpreting the silence of the law must be resolved in favor of a construction that will make the law constitutional.

Furthermore, it may not be amiss to recall the fact that the national Assembly, in approving the Articles of War (Commonwealth Act No. 408), had never intended to deny or diminish the power of the Supreme Court to review, revise, reverse, or modify final judgments and decrees of courts-martial created and organized under the articles of War. On the contrary, it was clearly understood that the decrees and decisions of said courts-martial are subject to review by the Supreme Court. The last committee report on the articles of War was rendered to the national Assembly by its Committee on Third "Reading, commonly known as the "Little Senate," which submitted the bill printed in final form. As chairman of the committee, and in behalf of the same, we submitted the report, recommending the approval of the bill on third reading with the express statement and understanding that it would not deprive the Supreme Court of its constitutional revisionary power on final judgments and decrees of courts-martial proposed to be created, which were and are to be considered as part of the judicial system, being included in the denomination of inferior courts mentioned in section 1, Article VIII, of the Constitution. With the said statement and understanding, the National Assembly, without any dissenting vote, approved the articles of War as recommended by the Committee on Third heading.

Consequently, petitioners' contention is untenable, the premise upon which they assailed the constitutionality of the 93rd Article of War being groundless in view of the actuation of the National Assembly.

The majority appear to concur in petitioners' premise that, by the silence of the Articles of War, the Supreme Court is deprived of its constitutional power to review final decisions of courts-martial. The majority even go as far as to justify the constitutionality of such deprivation on the theory that courts-martial belong, not to the judicial branch of the government, but to the executive department, citing as authority therefor Winthrop's Military law and Precedents. The majority are in error.

In our opinions in *Yamashits vs. Styer* (L-129 42 Off. Gaz., 664) and in *Homma vs. Styer* (L-244), we have shown that this Supreme Court enjoys the power to revise the actuations and decisions of military commissions, especially if they act without jurisdiction or violate the law, military commissions being included within the denomination of inferior courts under the provisions of our Constitution. Courts-martial are, like military commissions, inferior courts. The fact that they are military tribunals does not change their essence as veritable tribunals or courts of justice, as agencies of the government in the administration of justice. Their functions are essentially judicial. Except in cases where judicial functions are specifically entrusted by the Constitution to other agencies—such as impeachment to Congress, legislative electoral contests to the Electoral Tribunals—all judicial functions are vested in the Supreme Court and in such inferior courts as may be established by law. Courts-martial are inferior courts established by law.

The majority's theory is based on an authority which has no bearing or application under the Constitution of the Philippines. Winthrop's Military Law and Precedents has in mind the Constitution of the United States of America, the provisions of which regarding the judicial department are essentially different from those contained in our own Constitution.

Article III of the Constitution of the United States of America is as follows:

“SECTION 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and Inferior Courts, shall hold their Offices during good behaviour, and shall at stated times, receive for their services, a Compensation, which shall not be diminished during their Continuance in Office.

"SEC. 2. The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State;— between Citizens of different States;—between Citizens of the same State claiming lands under grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

"In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

“The Trial of all Crimes, except in cases of impeachment, shall be by Jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the Trial shall, be at such place or Places as the Congress may by Law have directed.

"SEC. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt act, or on Confession in open Court.

"The Congress shall have Power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or Forfeiture except during the life of the person attainted."

A comparison of the above provision with that of the Constitution of the Philippines will readily show that the former does not have the negative provision contained in the latter to the effect that our Supreme Court may not be deprived of certain specific judicial functions.

Section 2 of Articles VIII of our Constitution is as follows:

"SEC. 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its original jurisdiction over cases affecting ambassadors, other public ministers, and consuls, nor of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in —

"(1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulations is in question.

"(2) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

"(3) All cases in which the jurisdiction of any trial court is in issue.

"(4) All criminal cases in which the penalty imposed is death or life imprisonment.

"(5) All cases in which an error or Question of law is involved."

It is our considered opinion that the theory maintained in Winthrop's Military Law and Precedents and in the decisions of the Supreme Court of the United States cited therein to the effect that the trial and punishment of military and naval offenses by courts-martial are executive functions because the only legitimate object of military tribunals 'is to aid the Crown to maintain the discipline and government of the Army,' as applied in the Philippines, is basically wrong, being rooted in the English monarchical ideology.

Military tribunals are tribunals whose functions are judicial in character and nature. So amount of logodaedaly may change the nature of such functions. The trial and punishment of offenses, whether civil or military, naval or aerial, since time immemorial, have always been considered as judicial functions. The fact that such trial and punishment are entrusted to "tribunals or courts-martial" shows the nuclear idea of the nature of the function. Tribunals and courts are the agencies employed by government to administer justice.

The very fact that in this case the Supreme Court has given due course to the petition, required respondents to answer, set the case for hearing and, in fact, heard it, instead of ordering the outright dismissal of the petition as soon as it was filed, thus following the same procedure in *Reyes vs. Crisologo*, (L-54, 41 Off. Gaz., 1096) and in *Yamashita vs. Styer* (supra), is a conclusive evidence of the fact that this Supreme Court has the jurisdiction and power to review the proceedings and decisions of military tribunals, such as courts-martial, military commissions, and other similar bodies exercising judicial functions limited to military personnel.

It appearing that petitioners are impugning the jurisdiction of the court-martial which has tried and convicted them, we are of opinion that the petition must be granted in the sense that the records of the court-martial in question should be elevated to the Supreme Court for revision, so that we may decide the question on the court-martial's jurisdiction and give petitioners the justice they are claiming for.

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