

DEMOCRITO SILVESTRE, PETITIONER, VS. MILITARY COMMISSION NO. 21, AND THE COURT OF FIRST INSTANCE OF QUEZON CITY, BRANCH XVIII, RESPONDENTS.

G.R. No. L-46366. March 08, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari and prohibition instituted by Democrito Silvestre against Military Commission No. 21 and the Court of First Instance of Quezon City, Branch XVIII, seeking the following relief:

"WHEREFORE, it is most respectfully prayed that upon filing of the foregoing petition, a writ of preliminary injunction or similar order be issued restraining the respondent Military Commission from further proceeding with the case of Murder Committed by a Band (MC No. 21-23) pending before it until and after the issues raised herein be fully ventilated and decided under such terms and conditions which this Honorable Court may deem proper and equitable under the circumstances with accompanying order to elevate to this Honorable Court the records of the cases from both the respondent courts.

After hearing, judgment be rendered in favor of the petitioner as follows:

- ordering the respondent Military Commission to dismiss the charge, MC No. 21-23 (Annex 'R') as against the petitioner; or
- prohibiting the respondent Military Commission from further entertaining or proceeding with the said criminal charge in so far as the petitioner is concerned;
- annulling any and all prior, present, and subsequent proceedings undertaken in said MC Case No. 21-23 (Annex 'R') in so far as it involves the petitioner;
- declaring the preliminary injunction issued perpetual and permanent.

Petitioner further prays for such other and further relief which this Court may deem just and equitable under the premises.

Pasay City for Manila, June 14, 1977."[1]

On June 21, 1977, this Court resolved to issue a temporary restraining order enjoining the respondent Military Commission No. 21 from continuing with the trial of Criminal Case No. MC-21-23 entitled "People versus Democrito Silvestre, et al.".[2]

The record discloses that on November 6, 1976, a Saturday, at about 3:00 o'clock in the afternoon, Jose Balatbat was hacked to death at Capitol Site, Quezon City, allegedly by the petitioner, Democrito Silvestre; that after the

killing, the petitioner surrendered to the Quezon City police; that in the evening, petitioner's statement was taken in the presence of his lawyer; that on November 7, 1976, a Sunday, the witnesses were questioned by the police, after which they were brought to the Assistant Fiscal on inquest duty to subscribe and swear to their statements; that the widow, father and mother of Jose Balatbat were not among those questioned; that on November 8, 1976, Assistant City Fiscal David M. Reyes filed an information for homicide with the Court of First Instance of Rizal at Quezon City against Democrito Silvestre; that the information was docketed as Criminal Case No. Q-7027; that the case was assigned to Branch XVIII of the Court of First Instance of Rizal at Quezon City; that on December 2, 1976 the petitioner was arraigned and he pleaded not guilty; that on December 13, 1976 the petitioner filed a motion to set Criminal Case No. Q-7027 for trial; that on December 22, 1976 Marcelo Balatbat, the father of the deceased, Jose Balatbat, wrote the Commanding General of the Philippine Constabulary requesting investigation of the killing of his son; that pursuant to the request, the Criminal Investigation Service (CIS) conducted an investigation; that the CIS found that the attack on Jose Balatbat was treacherous and that the petitioner, Democrito Silvestre, was aided in the killing by his wife, Remedios Pamintuan Silvestre, and one Eduardo Dizon; that on the basis of the CIS findings, the Judge Advocate General's Office (JAGO) conducted a preliminary investigation of the charge of murder committed by a band instituted against the petitioner, his wife and Eduardo Dizon; that meanwhile, the Court of First Instance at Quezon City set the trial of the homicide case on January 26, 1977; that on said date, however, the scheduled trial was not held because Judge Ernani Cruz Paño, the presiding judge, had gone on vacation; that the trial was again set on March 21, 1977; that on motion for postponement by the private prosecutor, the Court of First Instance cancelled the scheduled hearing in view of the preliminary investigation being conducted by the JAGO of the charge of murder committed by a band filed against the petitioner, his wife and Eduardo Dizon; that the Court of First Instance at Quezon City set the trial of the homicide case for the third time on April 12, 1977; that again said trial was not held because the court wanted to know from the parties the legal consequence of the pendency before the JAGO of the murder charge; that on April 14, 1977, the JAGO filed with the respondent Military Commission No. 21 a charge for murder committed by a band against the petitioner, his wife Remedios Pamintuan Silvestre and Eduardo Dizon; that on April 25, 1977, the private prosecutor filed a motion with the Court of First Instance praying for the remand of Criminal Case No. Q-7027 to the military commission; that on May 9, 1977, the City Fiscal of Quezon City forwarded his records of the case to the JAGO pursuant to a request of the latter; that on May 11, 1977, the Court of First Instance required the Fiscal to confer with the prosecution panel of the JAGO and after the conference to inform the court of his position; that on May 18, 1977, the petitioner was remanded to the custody of the military authorities; that on May 23, 1977, the petitioner was arraigned before Military Commission No. 21 and he pleaded not guilty; that on June 7, 1977, the Court of First Instance denied the private prosecution's motion to remand the case to the military commission and set the homicide case for trial on July 7, 1977; and that meanwhile, the respondent Military Commission No. 21 commenced the trial of the murder case committed by a band with the taking of the testimony of one witness.[3]

On June 15, 1977, the petitioner instituted this special civil action.

Judge Ernani Cruz Paño filed a manifestation on June 27, 1977 that he had set Criminal Case No. Q-7027 for trial on July 7, 1977 because he believes that the court over which he presides has jurisdiction to try the case of the petitioner "but subject to whatever orders this Tribunal may issue in this case." [4]

On July 7, 1977, the Court of First Instance at Quezon City suspended proceedings in Criminal Case No. Q-7027 upon motion of the private prosecutor because of the pendency of this special civil action.

The main issue in this case is whether Military Commission No. 21 has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion in refusing to dismiss Criminal Case No. MC-21-23.

It is contended by the petitioner that Criminal Case No. MC-21-23 places him in double jeopardy for being punished twice for the same act. This contention has no merit.

In *Bulaong versus People*,^[5] Agaton Bulaong and others were charged on May 31, 1956 before the Court of First Instance of Laguna with the crime of rebellion. Trial did not proceed with respect to Agaton Bulaong until 1958 because he was then at large. Meanwhile, Congress enacted the Anti-Subversion Act (Republic Act 1700) which took effect on June 20, 1957. On September 12, 1958, Agaton Bulaong was arrested. On October 1, 1958, the information for rebellion filed with the Court of First Instance of Laguna was amended. On the same date, another information was filed before the Court of First Instance of Manila charging Agaton Bulaong of the crime of subversion defined in Section 4 of the Anti-Subversion Act. The case for subversion was still pending in the Court of First Instance of Manila when the case for rebellion was decided by the Court of First Instance of Laguna adversely against the accused, Agaton Bulaong, who appealed to the Court of Appeals. The decision of the Court of First Instance of Laguna was affirmed by the Court of Appeals. Agaton Bulaong appealed from the judgment of the Court of Appeals to the Supreme Court.

The issue involved was whether or not the accused, Agaton Bulaong, could interpose the defense of double jeopardy in the rebellion case in view of the filing against him of the information for subversion in the Court of First Instance of Manila which allegedly involved the same facts obtaining in the rebellion case.

This Court resolved the issue in the negative because:

"Accused contends that rebellion as defined in Article 134 of the Revised Penal Code is a lesser cognate offense to that defined in Section 4 of Republic Act 1700. And he further contends that since the facts alleged in the informations for rebellion and subversion are the same he can not be legally prosecuted for both offenses without being placed twice in jeopardy of being punished for the same acts.

Accused's contention has no merit. Under Section 9, Rule 113 of the Rules of Court, the defense of double jeopardy is available to the accused only where he was either convicted or acquitted or the case against him was dismissed or otherwise terminated without his consent. Such is not the situation in this case. For accused has not been convicted or acquitted in the case filed in the Court of First Instance against him for subversion. Neither was the said case dismissed or terminated without his consent, for as stated, it is still pending in said court. Needless to say, it is the conviction, acquittal of the accused or dismissal or termination of the case that bars further prosecution for the same offense or any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."^[6]

Under the doctrine in the *Bulaong* case, the petitioner, Democrito Silvestre, in the instant case cannot legally claim that the filing of Criminal Case No. MC-21-23 with Military Commission No. 21 has placed him in double jeopardy. Neither the homicide case pending in the Court of First Instance at Quezon City nor the murder case committed in band before the military commission has been terminated.

The contention of the petitioner that the homicide case has been terminated by abandonment has no factual basis. The Court of First Instance at Quezon City has taken steps to try the homicide case. The record of Criminal Case No. Q-7027 shows that since the filing of the homicide case on November 8, 1976, the court had set the case for trial at different times. The homicide case was last set for trial on July 7, 1977. The proceedings were suspended because of the pendency of the instant special civil action.

Only the record of the City Fiscal of Quezon City was forwarded to the JAGO. The record of the Court of First

Instance at Quezon City was not remanded to the military commission. The record of Criminal Case No. Q-7027 for homicide is still with the Court of First Instance of Quezon City. Indeed, Judge Ernani Cruz Paño has manifested that he set the trial of the homicide case on July 7, 1977 because he believes that his court has jurisdiction over the case.

It is too late for the petitioner to ask for the dismissal of Criminal Case No. MC-21-23 on the ground of double jeopardy. The defense of double jeopardy must be pleaded at the time of arraignment.[7] Double jeopardy is one of the grounds to quash an information.[8] A motion to quash an information may be filed only before the defendant enters his plea.[9] When the petitioner was arraigned, he knew that there was a pending homicide case against him in the Court of First Instance at Quezon City. Instead of filing a motion to quash, he entered a plea of not guilty before the respondent military commission. After having pleaded not guilty, the petitioner entered into trial in the murder case committed by a band. It was only after one witness for the prosecution had testified before the respondent military commission that the accused filed the instant petition for certiorari and prohibition. The petitioner is deemed to have waived the defense of double jeopardy for failure to raise it on time.[10] On this ground alone, the instant petition for certiorari and prohibition may be dismissed.

The Court notes that there was undue haste on the part of the police and the Office of the Fiscal of Quezon City in filing the homicide charge against the petitioner. The killing took place at about 3:00 o'clock in the afternoon of November 6, 1976. In the evening of the same day, the police took the statement of the petitioner in the presence of his lawyer. On the following day, a Sunday, the police investigated the witnesses and brought them to the Fiscal. It is odd that the widow, the father and mother of the deceased were not notified of the investigation being conducted. On the third day, November 8, 1976, the information for homicide was filed. In view of the undue haste of the police and Fiscal of Quezon City, the People of the Philippines was deprived of the right to prosecute the petitioner for murder which, according to the investigation of the CIS, was the crime committed. It also appears from the said investigation that the petitioner's wife, Remedios Pamintuan Silvestre, and Eduardo Dizon had complicity in the killing. The police and the Fiscal of Quezon City had deprived the State of its right to due process. This Court has held that:

"The State is entitled to due process in criminal cases, that is, it must be given the opportunity to present its evidence in support of the charge. The Court has always accorded this right to the prosecution, and where the right had been denied, had promptly annulled the offending court action. We have heretofore held that a purely capricious dismissal of an information deprives the State of fair opportunity to prosecute and convict; it denies the prosecution its day in court. For this reason, it is a dismissal (in reality an acquittal) without due process, and, therefore, null and void. Such dismissal is invalid for lack of a fundamental prerequisite, that is, due process, and, consequently, will not constitute a proper basis for the claim of double jeopardy. We have likewise held that a trial court may not arbitrarily deny a timely and well-founded motion of the prosecution for reconsideration of an order of dismissal or acquittal and that such arbitrary refusal to reopen the case will be set aside to give the State its day in court and an opportunity to prove the offense charged against the accused and to prevent miscarriage of justice, especially when no substantial right of the accused would be prejudiced thereby." [11]

As manifested by the Solicitor General in the answer of Military Commission No. 21, "The filing of the charge of murder before the military commission is designed to correct an error, to say the least, of the police and the Fiscal. It is nothing more. It is not designed to make petitioner suffer twice for the same act." [12]

This Court takes judicial notice that under General Order No. 59 promulgated on June 24, 1977, jurisdiction over the offense of murder committed by band or by a syndicate, among others, has been returned to civilian courts.

Despite the promulgation of said General Order No. 59, Military Commission No. 21 may continue trying Criminal Case No. MC-21-23. Jurisdiction of a court is determined by the statute in force at the time of the commencement of the action.[13] When Criminal Case No. MC-21-23 was filed with Military Commission No. 21, the law in force was General Order No. 54 which vested in military tribunals exclusive jurisdiction over cases of murder committed by a band or syndicate. The jurisdiction of the court once acquired cannot be ousted by the subsequent happening of events, although of a character which would have prevented jurisdiction from attaching in the first instance.[14] Moreover, under Sec. 3 of General Order No. 59, only cases not falling under Section 1 thereof in which the accused has not been arraigned as of the date of the effectivity of said order shall immediately be transferred to the appropriate civil courts. In the instant case, the petitioner had been arraigned prior to June 24, 1977.

WHEREFORE, the petition for certiorari and prohibition is hereby denied. However, proceedings in Criminal Case No. Q-7027 pending before the respondent Court of First Instance of Quezon City, Branch XVIII, are hereby ordered held in abeyance pending the resolution of the charge for the offense of murder committed by a band by the respondent Military Commission No. 21.

The restraining order is hereby lifted. Military Commission No. 21 may proceed with the trial of Criminal Case No. MC-21-23. Without pronouncement as to costs.

SO ORDERED.

Castro, C.J., Fernando, Barredo, Makasiar, and Guerrero, JJ., concur.

Teehankee, J., concurs in a separate opinion and votes for transfer of the murder charge to the Court of First Instance at Quezon City.

Antonio, J., concurs in the result and in the suggestion of Justice Ramon Aquino.

Muñoz Palma, J., Inasmuch as the only issue raised by petitioner is on double jeopardy, he concurs in the result and in the remarks of Justice Ramon C. Aquino.

Aquino, J., concurs in the result. However to do the justice, the murder charge pending in the Military Commission should be transferred to the Court of First Instance at Quezon City where it should be raffled and prosecuted by a competent state prosecutor. The prosecution should be move for the dismissal of the homicide case on the ground that the proceedings therein are void because the offended parties were denied due process and that the homicide charge was rendered moot and was superseded by the murder charge. This is the case where rigoristic adherence to the technicalities of double jeopardy should be avoided.

Concepcion, Jr. and Santos, JJ., did not take part.

[1] Rollo, pp. 22-23.

[2] Rollo, pp. 61-63.

[3] Answer of Respondent Military Commission No. 21, pp. 2-5.

[4] Rollo, p. 74.

[5] 17 SCRA 746.

- [6] Bulaong vs. People, 17 SCRA 748-749.
- [7] Andres Culanag vs. Director of Prisons, L-25419, June 21, 1966, 17 SCRA 429.
- [8] Section 2(h), Rule 117, Revised Rules of Court.
- [9] People vs. Paderna, L-28518, January 29, 1968, 22 SCRA 273.
- [10] Bustamante vs. Maceren, L-35101, November 24, 1972, 48 SCRA 155.
- [11] People vs. Navarro, etc., et al., 63 SCRA 264, 272-273.
- [12] Answer, p. 7.
- [13] People vs. Mariano, No. L-40527, June 30, 1976, 71 SCRA 600.
- [14] Ramos vs. Central Bank, No. L-29352, October 4, 1971, 41 SCRA 565.

SEPARATE CONCURRING OPINION**TEEHANKEE, J.:**

I concur with the main opinion of Justice Fernandez insofar as it holds that the filing of the second charge of murder with respondent military commission after the precipitate filing by an assistant fiscal of the first charge of homicide with respondent court of first instance - with reference to the same act of hacking to death the victim Jose Balatbat - does not constitute double jeopardy. The main opinion correctly finds that there was undue haste (less than two days right after the killing and petitioner's surrender) on the part of the police and an assistant fiscal of Quezon City in having right away filed a mere charge of homicide against petitioner without giving the victim's family a chance to be heard (for the victim was yet lying in state) when there appears to be evidence justifying the subsequent filing of the more serious crime of murder in band. Such undue haste deprived the State of due process in its right to prosecute the petitioner and his co-accused for murder and in effect rendered void the first charge of homicide.

In consonance with my stand in *Aquino vs. Military Commission* No. 2[1] that civilians placed on trial for civil (as distinguished from military) offenses under general law are entitled to trial by judicial process and not by executive or military process and that "(S)ince we are not enemy-occupied territory nor are we under a military government and even on the premise that martial law continues in force, the military tribunals cannot try and exercise jurisdiction over civilians for civil offenses committed by them which are properly cognizable by the civil courts that have remained open and have been regularly functioning," I add my vote to that of Justice Ramon Aquino (concurring in by Justices Antonio and Muñoz Palma) that "to do justice, the murder charge pending in the military commission should be transferred to the Court of First Instance at Quezon City" where it should be duly tried and resolved by said court.

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- [1] 63 SCRA 546, 611, 618-619 (May 9, 1975).

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