

RUFINO MENDLVEL, ARMANDO MENDIVEL, ROMEO RELLAMA, RODRIGO RELLAMA, DOMINGO CARLOY, GUMERCINDO CABRERA, EULOGIO SETRA, PASCUAL REMBAO, ROMULO RETUERMA AND ROMEO RETUERMA, PETITIO...

G.R. No. L-47917. February 21, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari, prohibition and mandamus filed by counsel of ten (10) "indigent farmers of the mountain barrio of Cadawag, Municipality of Oas, Albay", (Rollo, p. 4) praying:

"(1) Pending hearing: (a) the Military respondents be commanded to immediately desist from initiating or causing the trial of your petitioners by the military tribunals; (b) the military respondents be commanded to effect the immediate temporary release of your petitioners; and

"(2) After due hearing: (a) the military respondents be commanded to return the cases against your petitioners to the civil courts; (b) the respondent Court of First Instance of Albay, Branch V, be commanded to hear and try Criminal Cases Numbered 670 and 696 against your petitioners with due dispatch consistent with your petitioners' constitutional right to a speedy trial." (Petition, Rollo, pp. 9-10).

As gathered from the records, the facts of this case are as follows:

Petitioners Rufino Mendivel, Armando Mendivel, Romeo Rellama, Rodrigo Rellama, Domingo Carloy, Gumercindo Cabrera, Eulogio Setra, Pascual Rembao, Romulo Retuerma and Romeo Retuerma were arrested, the first eight (8) in June or July, 1975 and the last two (2) on July 4, 1975, in the belief that they were members of the New People's Army liquidation squad which had ambushed and killed two volunteers of a Civilian Home Defense Force Unit on April 12, 1975 in Oas, Albay. Thus, a complaint dated July 7, 1975 for multiple murder was filed against petitioners with the Municipal Court of Oas, docketed as Criminal Case No. 2555 with the New People's Army (NPA) personalities alias Ka Fred and alias Ka Seto, then at large, as their co-accused.

On July 28, 1975, after preliminary investigation, the municipal court forwarded the record of the case to the Court of first Instance of Albay in Ligao, Albay for further proceedings. The Provincial Fiscal of Albay conducted his own preliminary investigation of the case, and on August 6, 1975 he filed an information against petitioners for the murder of one Angel Nipal with the Court of First Instance of Albay, Branch V where the case was docketed as Criminal Case No. 670. Petitioners were arraigned and following their plea of not guilty, the case was set for trial on January 13, 1976. Meanwhile, on November 24, 1975, another information was filed against petitioners with the same court for the murder of one Ernesto Relonia, docketed as Criminal Case No. 696.

At the joint hearing of the two cases on January 13, 1976, the State moved for the transfer of the cases to the Military Tribunals on the ground that the crimes charged are within the jurisdiction of the latter. The motion was opposed by petitioners but the trial court in an Order dated January 15, 1976 directed the transmittal of the record

of Criminal Cases Nos. 670 and 696 to the Military Tribunals through the Philippine Constabulary (P.C.) Provincial Commander of Albay.

On January 26, 1976, the P.C. Provincial Commander of Albay indorsed the record of said cases to the P.C. Zone Commander in Camp Vicente Lim, Laguna, who in turn ordered the cases reviewed by the Zone's Security and Investigation Staff. The cases were then forwarded to the Judge Advocate General, AFP in Quezon on October 22, 1976 with the recommendation that corresponding charges be filed with the Military Tribunals. They were evaluated and a preliminary investigation was conducted by the Prosecution Staff of the Military Tribunals. On November 17, 1977, the Judge Advocate General, AFP, recommended to the Secretary of National Defense, the prosecution of petitioners for illegal possession of firearms with double murder. Said recommendation was approved by the Secretary on February 16, 1978. Accordingly, the corresponding Charge Sheet was filed against petitioners with Military Commission No. 26 and docketed as Criminal Case No. MC-26-21.

On February 28, 1978, the instant petition for certiorari, prohibition and mandamus was filed with this Court (Rollo, pp. 37-40).

The sole issue in this case is whether or not the Military Commission has Jurisdiction over subject crimes to the exclusion of the civil courts.

Considering the manifestation of respondents thru the Solicitor General that the records of aforesaid cases were already referred back to the Provincial Fiscal of Albay (because of the dissolution then of Military Commissions) the latter was directed in the resolution of December 5, 1985 to immediately inform the Court of the status thereof (Rollo, p. 109).

The Provincial Fiscal in his letter dated December 17, 1985 informed this Court that the records of the said case have not been returned to him nor has his Office received any directive or waiver by the military to prosecute the accused before the civil courts (Rollo, p. 110).

On January 10, 1986, this Court considering the aforesaid letter of the Provincial Fiscal of Albay resolved to direct Col. Leon O. Ridao of the Judge Advocate General's Office to return immediately the records of Criminal Cases Nos. 670 and 696 to said Provincial Fiscal of Albay and to present to this Court, the receipt thereof (Rollo, p. 112).

For failure of Col. Leon O. Ridao of the Judge Advocate General's Office to immediately transfer the records of Criminal Cases Nos. 670 and 696 to the Provincial Fiscal of Albay, the Court resolved in its resolution dated July 10, 1986 to require Col. Leon O. Ridao to (a) show cause why no disciplinary action should be taken against him for such failure and (b) to comply with the aforesaid resolution, both within ten (10) days from notice (Rollo, p. 115).

The Solicitor General filed a manifestation and motion for respondent Leon O. Ridao dated July 28, 1986, explaining: (a) that the failure of Col. Ridao to transmit the records of Criminal Cases Nos. 670 and 696 to the Provincial Fiscal of Albay is due to accident and excusable negligence and (b) that the records have already been sent by personal delivery to the Provincial Fiscal of Albay and prayed for an extension of ten (10) days from July 28, 1986 within which to show proof that the records have been received by the Provincial Fiscal of Albay (Rollo, p.121-A).

The aforesaid compliance with the resolution dated July 10, 1986 together with the official receipt as proof that the Provincial Fiscal of Albay had already received the records of Criminal Cases Nos. 670 and 696 (Rollo, p. 127) and the information that the records had been referred to Assistant Provincial Fiscals Felix Crisostomo, assigned at Ligao, Albay, was noted by this court in the resolution of August 14, 1986, (Rollo, p. 128).

In a similar case, this Court ruled that the subsequent return of the case to the respondent court has rendered the issues raised moot and academic (*Ygay v. Escareal*, 135 SCRA 83 [1985]). In the case at bar, the records of subject criminal cases have not only been returned to the trial court but the Military Commission No. 26 itself, whose jurisdiction is being assailed, has already been dissolved.

Under the circumstances, there appears to be no question that the petition has become moot, but the prolonged detention of the petitioners without trial is indeed regrettable. With the return of these cases to the civil courts, all the rights of the accused under the law, are now available to them, more importantly the right to due process and to a speedy trial.

PREMISES CONSIDERED, the petition is DISMISSED for having become moot and academic and that the Regional Trial Court of Albay is directed to proceed with the trial of these cases with dispatch.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

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