

RIZALITO VELUNTA, PETITIONER, VS. THE CHIEF, PHILIPPINE CONSTABULARY AND COLONEL SIMEON KEMPIS, JR., PRESIDENT GCM, RECOM. VIII, PALO, LEYTE, RESPONDENTS.

G.R. No. L-71855. January 20, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for prohibition to prevent the General Court Martial, RECOM VIII, from assuming jurisdiction over a criminal case for homicide wherein the petitioner is indicted for the death of one Romeo Lozano.

The petitioner is a regular member of the Integrated National Police of Tacloban City with the rank of Patrolman.

On April 16, 1982 at about 6:00 o'clock in the evening, while directing traffic at the intersection of Burgos-Tarcela-Lucente Streets, Tacloban City, the petitioner tried to apprehend Romeo Lozano, a motorized tricycle driver, for violations of traffic rules and regulations. An altercation occurred between them which resulted in the shooting and death of Romeo Lozano.

On October 30, 1982, Mrs. Anacorita Lozano, widow of Romeo Lozano, filed an administrative complaint against the petitioner with the National Police Commission (NAPOLCOM), Region VIII, Tacloban City for grave misconduct. After hearings on the merits, the Adjudication Board No. 8, NAPOLCOM, Manila rendered a decision dated August 9, 1984 finding the petitioner guilty of grave misconduct and meted the penalty of "Dismissal from the Service." On a motion for reconsideration, the Adjudication Board modified its decision by finding the petitioner guilty only of Less Grave Misconduct and modified the penalty from dismissal to suspension from service for six months without pay.

During the pendency of the administrative case, Mrs. Lozano also filed a complaint for homicide with the City Fiscal's Office of Tacloban.

On May 14, 1982, the First Assistant City Fiscal of Tacloban City issued a resolution in I.S. No. 82-203 finding the existence of prima facie evidence that the petitioner, then a member of the Integrated National Police stationed in Tacloban City "with deliberate intent and with intent to kill," shot with his service pistol one Romeo Lozano, a tricycle driver at the left cheek causing the latter's death. Finding that the offense was committed during the performance of official duties, the City Fiscal recommended that the case be referred to the Tanod bayan for further investigation.

With the approval of Tanodbayan Bernardo P. Fernandez, Second Assistant Fiscal Jose B. Sano of Tacloban City, as deputized Tanodbayan Prosecutor, endorsed the filing of an information for homicide against the petitioner. The case was referred to the military authorities pursuant to P.D. 1850 which authorizes the Chief of the Philippine Constabulary to convene court martials to try, hear, and decide cases for criminal acts committed by members of the Integrated National Police.

As stated at the outset, the petitioner challenges the assumption of jurisdiction by the General Court Martial over

the criminal case for homicide against him. According to the petitioner, the General Court Martial has no more jurisdiction to continue the hearing against him as a result of the provisions of Executive Order No. 1040, in relation to Executive Order No. 1012, which became effective last July 10, 1985 whereby supervision and control over all units and members of the Integrated National Police have been transferred to NAPOLCOM and placed directly under the Office of the President of the Philippines, thereby removing police officers from the supervision and control of the Chief of the Philippine Constabulary under the Department of National Defense.

It is further argued by the petitioner that P.D. 1850 which authorized the Chief of the Philippine Constabulary to convene courts martial to hear and try cases against members of the Integrated National Police for offenses committed while in the performance of their duties has been expressly repealed by Section 3 of Executive Order No. 1040 as of July 10, 1985.

We find the contention of the petitioner to be unmeritorious.

Jurisdiction is the power with which courts are invested for administering justice, that is, for hearing and deciding cases. (*Conchada v. Director of Prisons*, 31 Phil. 94). As early as 1914, it was declared that the courts of the Philippine Islands have no common law jurisdiction or power, but only those expressly conferred by the Constitution and statutes and those necessarily implied to make the express powers effective. (*West Coast Life Insurance Co. v. Hurd*, 27 Phil. 401.) We have to look for an express provision of law to resolve the issue raised by the petitioner.

In the instant case, P.D. No. 1850 which vests jurisdiction on courts-martial over criminal cases involving the members of the Integrated National Police, provides:

“SECTION 1. Court Martial Jurisdiction over Integrated National Police and Members of the Armed Forces. —Any provision of law to the contrary notwithstanding — (a) uniformed members of the Integrated National Police who commit any crime or offense cognizable by the civil courts shall henceforth be exclusively tried by courts-martial pursuant to and in accordance with Commonwealth Act No. 408, as amended, otherwise known as the Articles of War; (b) all persons subject to military law under Article 2 of the aforecited Articles of War who commit any crime or offense shall be exclusively tried by courts-martial or their case disposed of under the said Articles of War; Provided, that, in either of the aforementioned situations, the case shall be disposed of or tried by the proper civil or judicial authorities when court martial jurisdiction over the offense has prescribed under Article 38 of Commonwealth Act Numbered 408, as amended, or court martial jurisdiction over the person of the accused military or Integrated National Police personnel can no longer be exercised by virtue of their separation from the active service without jurisdiction having duly attached beforehand unless, otherwise provided by law.

“As used herein, the term uniformed members of the Integrated National Police shall refer to police officers, policemen, firemen and jail guards.”

Executive Order Nos. 1012 and 1040, on the other hand, are invoked by the petitioner.

Section 1 of Executive Order No. 1012 states:

“The provision of special or general laws to the contrary notwithstanding, the operational supervision and direction exercised by the Philippine Constabulary over all units of the Integrated National Police (INP) force stationed or assigned in the different cities and municipalities all over the country, is hereby transferred to the city or municipal government concerned until further orders from the President of the Philippines. The term ‘operational control and direction’ shall be as defined in Section 1 (e) of Presidential Decree No. 1162.

“Whenever the power of operational supervision and direction is abused, such that the effectiveness of the overall peace and order campaign is negated, the President of the Philippines *motu proprio*, or upon

recommendation of the provincial-commander, provincial superintendent with the concurrence of the Regional Unified Commander, may terminate the authority of the local executive(s) to exercise operational supervision and direction over units of the Integrated National Police, however the judgment of the President the exigencies as require, (sic)”

Section 1 of Executive Order No. 1040 provides:

“The National Police Commission shall henceforth be under the Office of the President of the Philippines as may be directed by and under the control of the President of the Philippines, it shall exercise administrative control and supervision over all units of the Integrated National Police (INP) force throughout the country.”

It is specifically stated under Executive Order No. 1012 that it is only the “operational supervision and direction” over all units of the Integrated National Police force stationed or assigned in the different cities and municipalities that was transferred from the Philippine Constabulary to the city or municipal government concerned. Likewise, under Executive Order No. 1040 it is the exercise of “administrative control and supervision” over all units of the Integrated National Police forces throughout the country that was transferred to the President of the Philippines. The latter executive order also defines operational supervision and direction in P.D. No. 1160, 1 (e) as follows:

“(e). Operational Supervision and Direction. — It is the power to see to it that the units or elements of the Integrated National Police perform their duties properly according to existing laws and the rules, regulations and policies promulgated by competent authority, and the power to employ or deploy such units or elements, in coordination with the Provincial or District Police Superintendent, Station Commander or Officer-in-Charge to insure public safety and the effective maintenance of peace and order within the locality.”

The distinction between operational supervision and direction over the Integrated National Police and jurisdiction or authority of a court-martial to hear, try and decide a criminal proceeding against a police officer so that the appropriate penalty for the commission of a crime or offense may be imposed is easily discernible. One refers to how the police will perform their functions and who shall direct such performance while the other refers to the tribunals vested with power to try criminal cases against them.

The allegation of the petitioner that P.D. 1850 has been expressly repealed by the clear and precise provision of Section 3 of Executive Order No. 1040 is inaccurate, Section 3 of the executive order provides:

“All laws, decrees, executive orders, rules and regulations and other enactments, or parts thereof, inconsistent with the provisions of this Executive Order are hereby repealed, amended and modified accordingly.”

The aforecited provision does not repeal in express terms, P.D. No. 1850. Neither is there any inconsistency between P.D. No. 1850, which confers upon courts-martial, jurisdiction over crimes and offenses involving members of the Integrated National Police, and Executive Order No. 1040 which gives the city and municipal governments, (as the case may be), operational supervision and direction over members of the Integrated National Police. Repeals by implication are not favored and will not be so declared unless the intent of the legislators is manifest. (PAFLU v. Bureau of Labor Relations, 72 SCRA 396; Jalandoni v. Endaya, 55 SCRA 261; Villegas v. Enrile, 50 SCRA 10; and The Philippine American Management Co., Inc. v. The Philippine American Management Employees Asso. (49 SCRA 149).

When the case was filed in 1982, there can be no question that the respondent General Court Martial had jurisdiction. Since jurisdiction had properly been exercised from the start, it remains with the military court martial unless a law expressly divests it of that jurisdiction. It is an established rule that jurisdiction once acquired remains until validly transferred by the proper authority according to law.

The provision of the Constitution, Article XVI, Section 6, on the State maintaining a police force national and civilian in character is still in the process of being implemented. Police forces continue to remain part of the PC-INP until the civilian police force is finally set-up as contemplated by the fundamental law. (Barcellano v. Major General Renato de Villa, et al., G.R. No. 75952, October 20, 1987).

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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