

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF
REMEGIO ROMERO Y ROSANA, REMEGIO ROMERO Y ROSANA,
PETITIONER, VS. HON. JUAN PONCE ENRILE, IN HIS CAPACITY AS
SECRETARY OF NATI...**

G.R. No. L-44613. February 28, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this application for habeas corpus filed on September 20, 1976, it was categorically affirmed that on December 2, 1975, petitioner, who was suspected of having committed the crime of robbery, was taken from his residence by persons who identified themselves as belonging to the Metropolitan Police Force and has since then been restrained and deprived of his liberty in the Quezon City Jail.[1] Secretary Juan Ponce Enrile and other National Defense officials[2] were named respondents in view of the matter having been referred to the Philippine Constabulary[3] and that despite the lapse of nine months, he has not as yet been released.[4] Hence the petition. Thereafter, on September 22, 1976, the Court issued the following resolution: "The motion of counsel for petitioner to litigate as pauper for the reasons stated therein is [granted]. The Court [issued] the writ of habeas corpus returnable to this Court on Wednesday, September 29, 1976 at 3:00 p.m. and required the respondents to make a [return] of the writ not later than the aforesaid date and time." [5] The return was filed on September 29, 1976.

There was qualified admission of the facts as alleged. More specifically, there were special and affirmative defenses set forth thus: "1. On November 27, 1975, at about 8:00 o'clock p.m., two Chinese persons were held up in Del Monte Avenue, Quezon City by four men, one of whom has been identified as the petitioner herein. On the occasion of the said robbery, one of the Chinese victims was shot by the petitioner and thereby suffered serious physical injuries. * * * On December 2, 1975, members of the Metropolitan Police Force received confidential information regarding the identity of certain gangs victimizing taxi passengers, and acting on this, elements of the Metropolitan Police Force apprehended the petitioner Remegio Romero, along with three other suspects, who admitted upon interrogation that they robbed the two taxi passengers earlier mentioned on November 27, 1975 and that petitioner shot one of the passengers. * * * These facts are also reflected in the resolution or preliminary investigation report of Major Ernesto A. Punsalang, Judge Advocate General Services, Preliminary Investigation Officer, Headquarters, P.C. Metropolitan Command Officer, * * *. 2. Under General Order No. 2-A, par. 4, the Secretary of National Defense is specifically ordered to 'forthwith arrest or cause the arrest and take into custody' * * * persons as may have committed the crimes of kidnapping, robbery, carnapping, smuggling, gun running, trafficking, and prohibited drugs and hijacking.' The petitioner has been arrested and detained pursuant hereto, and properly investigated by the Judge Advocate General Services. A prima facie case for robbery in band, with serious physical injuries, and illegal possession of firearms have been found. Such crimes are specifically triable by the military tribunals as provided by General Order No. 12 (8) for 'violations of the law on Firearms and Explosives found in the Revised Administrative Code and other existing law' and General Order No. 54, * * *.

Consequently, petitioner's arrest and detention are lawful. Petitioner's contention that no formal information or complaint had been filed before any competent court or body is without any factual basis. A charge sheet against the accused, the petitioner herein, has already been filed by the PC Judge Advocate General Service Office and this is presently undergoing evaluation pursuant to Rule No. 4 of the Rules in Presidential Decree No. 39. Petitioner's detention by Jail Warden of Quezon City is pursuant to the Defense Department Order No. 720 authorizing provincial, city and municipal wardens to accept the custody and detention of persons which are arrested within their jurisdiction and in conformity with Presidential Decree No. 421 (21 March 1974) integrating the metropolitan police and jails under the PC Metrocom."^[6] The prayer was for the dismissal of the petition "for lack of merit."^[7]

The matter was forthwith heard on September 29, 1976. Counsel for petitioner, Attorney Aventino B. Claveria, was unable to dispute the facts alleged and to minimize the force of the applicable law invoked by respondents. He was however, in a resolution of this Court of said date, given a period of fifteen days within which to submit a reply to the return and, if he could do so, to submit additional arguments on behalf of petitioner. Up to now no such reply has been forthcoming. It is quite apparent then that the jurisdictional question posed could not be refuted by petitioner. Hence the plea for dismissal must be granted.

1. A recent decision, *Go v. General Olivas*,^[8] likewise a habeas corpus application, is controlling. The crime imputed to the person detained, Jovito M. Go, is that of kidnapping, likewise included among the offenses triable by military tribunals. After noting that in *Aquino v. Military Commission* No. 2^[9] it was held that there is no constitutional objection to civilians falling within the competence of such bodies for certain crimes set forth in the presidential decrees invoked by respondent national defense officials, it was pointed out that a release on habeas corpus could still be ordered by this Court if it could be shown that a military tribunal either lacked jurisdiction or had subsequently lost it. Reference was made to the leading case of *Payomo v. Floyd*,^[10] a 1922 decision. The opinion likewise cited Chief Justice Moran who, in *Cabiling v. Prison Officer*,^[11] the first decision from this Tribunal after Liberation in 1945, expressly affirmed the doctrine that the only question before the judiciary is whether or not the court martial was vested with jurisdiction to try the petitioner for the offense in question. In view of the above, there being no showing of loss of jurisdiction by the military authorities, this petition, to repeat, cannot succeed.

2. It bears repeating, though, that a detained person before a military tribunal is specifically entitled to all the rights of an accused. So Justice Antonio, speaking for the Court in *Aquino v. Military Commission*, expressly stated: "It is important to note here that an accused being tried before a military tribunal enjoys the specific constitutional safeguards pertaining to criminal trials. Thus, he is entitled to be heard by himself and counsel, to be informed of the nature and cause of the accusation, to meet the witnesses face to face, to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf, and to be exempt from being a witness against himself. As in trial before civil courts, the presumption of innocence can only be overcome by evidence beyond reasonable doubt of the guilt of the accused. These tribunals, in general, are 'bound to observe the fundamental rules of law and principles of justice observed and expounded by the civil judicature.' * * * There is, therefore, no justification for petitioner's contention that such military tribunals are concerned primarily with the conviction of an accused and that proceedings therein involve the complete destruction and abolition of petitioner's constitutional rights."^[12] More specifically, the military authorities should see to it that he be granted as required by the fundamental law a speedy and public trial.^[13] That way, there would be less occasion for petitions of this character. What is more, it would make manifest that there is proper observance of what is ordained by the Constitution.

3. The failure of Attorney Claveria to submit the reply cannot go unnoticed. The resolution required him to do so. As a member of the bar, his duty is clear. That was to obey. Were it not for the fact that he did lend his service to the cause of liberty and thus in a way help to assure that constitutional mandates are not ignored, a much more severe penalty for this blatant disregard of a task imposed on a practitioner is indicated. Under the

circumstances, however, with the additional consideration that at the hearing of this petition his relative inexperience was quite manifest, it suffices that he be admonished.

WHEREFORE, the petition is dismissed. A copy of this decision should likewise be spread on the record of Attorney Aventino B. Claveria.

Antonio, Aquino, and Concepcion, Jr., JJ., concur.

Barredo, J., concurs in a separate opinion.

[1] Petition, par. 2.

[2] The other officials named respondents are Maj. Gen. Fidel Ramos, Chief, Philippine Constabulary; Brig. Gen. Prospero Olivas, Commanding Officer, Metropolitan Command, Philippine Constabulary; and Maj. Ernesto Punzalang, Investigator of PCM PI-No. 68.

[3] Petition, pars. 3-5.

[4] Ibid, par. 6.

[5] Resolution dated September 22, 1976.

[6] Special and Affirmative Defenses, Return to the Writ and Answer to Petition, 3-7.

[7] Ibid, 7.

[8] L-44989, November 29, 1976.

[9] L-37364, May 9, 1975, 63 SCRA 546.

[10] 42 Phil. 788.

[11] 75 Phil. 1.

[12] 63 SCRA 546, 593-594.

[13] Article IV, Section 19 of the Constitution, insofar as pertinent, reads: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."

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CONCURRING OPINION

BARREDO, J.:

I concur in the result, it being clear there is legal cause for petitioner's apprehension and detention, he being properly charged with robbery in band, with serious physical injuries, and illegal possession of firearms.

However, I consider it unnecessary in this case to enter into any disquisition of the supposed rights of a civilian accused before a Military Commission established under martial law, much less to make any categorical holding that "a detained person before a military tribunal is specifically entitled to all the rights of an accused." Actually, there are other more important cases pending in this Court in which such a delicate proposition of law may be properly and fully discussed and resolved. With all due respect to the able and distinguished writer of the main opinion, the reference made by him therein to the rights aforementioned is necessarily obiter dictum. In fact, even the portions of *Aquino vs. Military Commission* quoted may not be taken as necessarily based on any constitutional guarantee, since the rights enumerated by Mr. Justice Antonio in his opinion, are no more than those recognized by Presidential Decree No. 39, which are not necessarily comprehensive of nor identical with all the rights of an accused ordained by Sections 16 to 22 of the Bill of Rights nor those provided for in Section 1 of Rule 115 of the Rules of Court. I cannot venture to guess what Mr. Justice Antonio would have held, if nothing were mentioned about them in said decree. Besides, I am not aware that what would otherwise be the usual constitutional rights of Senator Aquino, other than those enumerated in the decree, have all been recognized and fully enforced, precisely, it may be assumed, on account of the constraints of martial law. How far such constraints can supersede constitutional rights of civilians charged with civilian offenses not indispensably related to the martial law objectives of the Government is the grave question the Court has yet to answer definitely in the other unresolved cases before it. I feel I have to caution all concerned that it would not be altogether judicious to consider the decision in this case as already doctrinally authoritative beyond where it is strictly borne by its factual milieu.

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