

JOSE LUNETA, PETER MUTUC, ROBERT AZARCON, MANUEL CHIONGSON, FERNANDO TAYAG, HERMENIGILDO GARCIA IV, EDGAR PILAPIL, WINIFREDO HILAO, TEODORICO RAMIREZ, ROMEO ENRIQUEZ, ACHILLES S...

G.R. No. L-49473. January 16, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

Petition in G. R. No. L-49473, denominated and defined by petitioners themselves as for:

"Nature Of Petition And Issues

"2.01. Habeas Corpus. --Insofar as petitioners named in paragraph 1.01. above as being under detention at Camp Bagong Diwa (formerly Bicutan Rehabilitation Center), Taguig, Rizal, and at MSU, Fort Bonifacio, Rizal, are concerned, this is a petition for Habeas Corpus based upon two grounds:

(a) That their right to a speedy trial has been violated, since most of them were arrested in 1974, brought to trial only on July 7, 1977, before Military Commission No. 1 as Case No. MC-1-92, and the proceedings were thereafter abruptly suspended on or about November 17, 1977; then the case was refiled before Military Commission No. 24 as Case No. MC-24-9; but no hearings whatsoever were held before said Military Commission No. 24, all being postponed *motu proprio*; until on or about October 28, 1978, when the case was once more re-filed in respondent Special Military Commission No. 1 as Case No. SMC-1-1, and the first hearing was held on November 9, 1978--four (4) years after petitioners had been arrested, three years after the preliminary investigation had open, and more than one (1) year after the case against them had been filed with Military Commission No. 1.

(b) The President of the Philippines on January 7, 1977, ordered the release of persons against whom no charges had been filed; he reiterated the order on June 3, 1977; and, on October 22, 1977 amended the order to include persons who had not been tried.

"2.02. Prohibition--(a) Insofar as petitioners who have been granted temporary release are concerned, this is a petition for prohibition on the ground of violation of their right to a speedy trial.

(b) Insofar as all petitioners are concerned, this is also a petition for prohibition on the following grounds:

--that respondent Special Military Commission No. 1 has no jurisdiction to try this case, since it exercises judicial functions and judicial power without possessing the qualifications or the tenure prescribed by the Constitution for courts of justice.

--that Letter of Instruction No. 772, the continued cognizance by respondent Commission of the case against petitioners denies them the equal protection of the laws.

"2.03. Mandamus. -- In the alternative, this is a petition for mandamus for all petitioners to require the respondent Commission:

“(a) To strike out, or in the alternative to quash, on the ground of duplicity, the allegations in the charge sheet that petitioners are 'officers and/or leaders of the Communist Party of the Philippines (CPP) and/or its military arm, the New People's Army (NPA)' and that they committed the acts charged in furtherance of the aims of said party, and army, since these allegations are not material to the offense of rebellion and their presence may render petitioners liable to conviction of either rebellion or subversion or both.

“(b) To grant petitioners' Motion for a Bill of Particular, specially the demand for particulars on the specific acts attributed to each petitioners, since they are purportedly charged with rebellion and in rebellion, by virtue of Article 135 of the Revised Penal Code, the acts of one are not the acts of all.

“(c) To order the prosecution to make discovery, as required by petitioners, in particular, to produce all statements or confessions attributed to petitioners and all the fruits thereof.

“(d) Most important of all, to allow petitioners to present evidence in support of their Motion to Quash on the ground of violation of their right to due process, because the case against them has been built on confessions obtained by torture, or in the graphic language of Amnesty International, 'the so called evidence has literally been tortured into existence', which evidence was used in the preliminary investigation against petitioners and was the basis of charge filed against them; and thereafter, depending on the evidence presented, either to dismiss the charge against them, or in the alternative, to declare that neither the confessions nor any of the fruits thereof may be received in evidence against them. In short, petitioners seek mandamus to compel the respondent Special Military Commission No. 1 to hold a preliminary hearing on the voluntariness of their confessions and to rule appropriately thereafter.

"2.04. Restraining Order And Preliminary Injunction. --Respondents Trial Counsel and Special Military Commission No. 1 have announced that, unless a restraining order is issued by this Honorable Court, they will proceed to receive the prosecution's evidence on December 15 and 16, 1978. Such acts would work injustice to petitioners, and would violate the rights invoked in this petition and tend to render the judgment of this Honorable Court ineffectual, thus justifying the issuance of a preliminary injunction under Rule 58, Sec. 3, Rules of Court; and pending the issuance of such injunction, a restraining order should issue against respondents Special Military Commission No. 1 and Trial Counsel to cease and desist from proceeding with the case below until further order of this Honorable Court." (Pp. 3-7, Record, L-49473.)

together with two supplemental petitions subsequently filed on December 29, 1978, the first complaining against failure to afford petitioner Romeo Enriquez, (not detained) any preliminary investigation and the second charging that said petitioner had not been furnished copy of the transcript of the stenographic notes of the proceedings of December 1, 1978; and petition in G.R. No. L-49571 for certiorari and prohibition on the basic grounds of duplicity and double jeopardy, petitioners theorizing principally that being charged in one case with rebellion, they may no longer be prosecuted for subversion under Republic Act 1700.

The Court promptly issued the corresponding writs and summons, and after the return and answer of respondents was filed, set the cases jointly for hearing on January 23, 1979. The minutes of the proceedings of that day shows that:

"L-49473 (Jose Luneta, et al. vs. Special Military Commission No. 1, et al.) and L-49571 (Jose Luneta, et al. vs. Special Military Commission No. 1, et al.). - When these cases were called for joint hearing this morning, the respective counsel for petitioners and respondents appeared. Attys. Jose W. Diokno, Joker Arroyo and Mariano Marcos, assisted by Attys. Rodolfo U. Jimenez, Mariano Sarmiento and Evener Villasanta, argued for the petitioners for two and a half (2-1/2) hours and answered the questions propounded by the Court. The Court thereafter Resolved to RECESS at noon and to resume the hearing at 3:30 o'clock in the afternoon.

"When the hearing resumed in the afternoon the Solicitor General, assisted by Assistant Solicitor General Vicente Mendoza and Solicitor Roberto Abad, argued for the respondents for two and a half (2-1/2) hours and answered the questions propounded by the Court, after which counsel for petitioners argued in rebuttal and in summation for one and a half (1-1/2) hours.

"After the arguments and summation which ended at 7:20 p.m., the Court Resolved to grant the prayers of counsel for both petitioners and respondents to be allowed to submit simultaneously their respective/memoranda within thirty (30) days; to amplify their arguments; discuss the salient points brought up by the questions propounded by the Court and to submit the Presidential Decrees, Letters of Instructions and other relevant papers in support of their respective stands; and to submit their corresponding replies thereto within fifteen (15) days from receipt of the memorandum of the opposing party, after which the Court shall consider the case submitted for decision.

"The Court Resolved further to NOTE: (a) the return to the writ and answer to the petition for habeas corpus and prohibition or mandamus with preliminary injunction or restraining order and to the supplemental petitions and (b) the answer to the petition for certiorari/prohibition, both filed by the Solicitor General in compliance with the resolutions of December 15, 1978 and January 9, 1979." (Page 92, Record, L-49571.)

As promised, after an extension of three (3) days of the original given period, the respondents filed their memorandum of 86 pages, for both cases, on March 7, 1979. Petitioners asked for not less than eighteen extensions of time to file their own memorandum, all of which were granted, the last two notwithstanding that in the resolution of November 13, 1979, they were warned that no further extension would be granted; still, up to the present, the Court has not been favored with any. The last resolution on such extensions was on January 17, 1980, more than ten (10) months after respondents had submitted their own memorandum and almost a year ago.

The important issues raised by petitioners are succinctly stated in the memorandum of the respondents thus:

"QUESTIONS PRESENTED

"Petitioners' several actions raise the following questions:

In L-49473

"Habeas corpus (to obtain the release of some of the petitioners):

1. whether the petitioners concerned have been denied speedy trial and should thus be ordered released from detention via a writ of habeas corpus;
2. whether petitioners are entitled to be released on the basis of certain statements made by the President of the Philippines in speeches delivered by him;

"Prohibition (to enjoin further proceedings in SMC-1-1):

3. whether respondent special Military Commission No. 1 has jurisdiction to hear the case of rebellion against petitioners;
4. whether the petitioners who are not under detention have been denied the right to speedy trial;
5. whether petitioners have been denied the equal protection of the law by the non-application in their case of Letter of Instruction No. 772 dated November 27, 1978;

"Mandamus (to compel respondent Commission to grant their various motions):

6. whether the reference in the charge sheet to petitioners as being officers and leaders of the CPP/NPA at the time of the commission of the rebellion makes the charge sheet invalid for duplicity;

7. whether petitioners are entitled to a bill of particulars;

8. whether petitioners are entitled to make a discovery;

“9. whether petitioners are entitled to a pre-hearing on the voluntariness of their sworn statements;

“10. as an incidental issue raised during the oral argument, whether the right to counsel in a custodial investigation imposes a duty on the part of the state to provide counsel where the person under investigation could not obtain one.

"(Petitioners raise in their supplemental petitions the matters of their challenge against the Law Member of respondent Commission, Lt. Col. Igualdad Cunanan, as well as the alleged absence of a preliminary investigation in the case of petitioner Romeo Enriquez. But in view of respondents' manifestation that, in the interest of aiding the resolution of the cases at bar, Lt. Col. Cunanan was willing to withdraw from the respondent Commission, as in fact he has been relieved, at his request, of his duties in the Commission per respondents' manifestation dated February 14, 1979, and that respondents were willing to conduct another preliminary investigation of the case of petitioner Enriquez, the two issues in question may be deemed moot and academic.)

In L-49571

"Certiorari and Prohibition (to enjoin further proceedings against the petitioners)

11. whether the filing of Criminal Case SMC-1-1 for rebellion placed the petitioners concerned in jeopardy of conviction for the same offense a second time." (Pp. 20-23, Respondents' Memorandum.)

At this stage of our jurisprudence governing the issues thus presented by petitioners, a lengthy disquisition demonstrating the implausibility of their contentions seem superfluous. The matters discussed and vigorously insisted upon by counsel are already settled ones, not only in *Aquino vs. Enrile*, L-35546, September 17, 1974, 59 SCRA 183 but also in a number of subsequent cases of the same nature. Suffice it to say here that with the proclamation of martial law and the concomitant suspension of the privilege of the writ of habeas corpus, at least as a rule, claims of denial of speedy trial are unavailing, what with the recognized authority of the government or the administrator of the martial law to detain persons even only for preventive purposes. As to how long such preventive detention can last would necessarily depend on the circumstances and the sound discretion of the administrator, even if there are members of the Court who hold the view that the Supreme Court may in cases of demonstrated grave and palpable abuse of discretion intervene. The petitioners who are detained (some of them

are not) have been apprehended on suspicion, if not charges of rebellion and subversion by virtue of arrest, search and seizure orders issued by the Minister of National Defense under authority of the President, and it is, therefore, with more reason that they cannot invoke habeas corpus.

Whatever, We have carefully gone over the respective claims of the parties relative to the causes for the delay or protraction of the proceedings against petitioners, and We are satisfied that under existing rulings of this Court, the circumstances revealed in the recorded proceedings before and after their cases reached respondent Military Commission do not warrant their release on habeas corpus on the ground of denial of speedy trial, if only because in practically all instances of postponement or transfer deplored by petitioners, the reasons were either unavoidable or demanded by the nature of the proceedings, and in some instances done upon direct or indirect request of petitioners themselves.

While perhaps there might be ground to hold that official and formal pronouncements of the President on public occasions of importance, such as those referred to in the petition, might come within the contemplation of the word "acts" in Section 3 (2), Article XVII of the Philippine Constitution of 1973, albeit it must be noted that the same provision refers to those "promulgated" and not merely delivered orally, the point is that, as contended and explained by the Solicitor General, (Pp. 33-43, Respondents' Memo) the statements of the President before the U.P. Law Alumni Association on January 7, 1977, the Foreign Correspondence Association of the Philippines on June 3, 1977 and the 8th World Law Conference on August 21, 1977 do not include the situation in which the petitioners find themselves. It is to think too much bad faith on the part of the President to maintain that were his intention in those statements invoked by petitioners was to have them released actually he had in mind not to do so. Those statements of the President must not be taken out of context to give them a meaning farthest from the truth. They were uttered to reassure all and sundry of the deep regard and respect the President has for individual rights and liberties, and to accuse him practically of duplicity and of offering false hopes for political purposes is certainly incompatible with intelligent and conventional knowledge.

The jurisdiction of military commissions to hear and determine the cases of rebellion and subversion of petitioners is now indubitable, in the light of the existing rulings of this Court. The mere fact that civil courts are open and are functioning normally is of no consequence in this respect, as We shall explain later.

For in addition to the foregoing, the Court reserves the preparation of a more extended opinion. Time constraint related to the steps needed for the earliest lifting of martial law require that this decision be released soonest. There are indeed other considerations related to the points above-discussed that render the plea of petitioners for the granting of the relief they pray for unavailing, and We propose to dwell on them soon enough in such more extended opinion, which would necessarily include the disposition of the remaining points in the petitions, namely, (1) duplicity in the charges, (2) need for a bill of particulars, (3) entitlement of petitioners to discovery and most important of all, (4) their claim to a right to a preliminary hearing on the voluntariness of their supposed confessions as well as their other right to counsel during custodial investigation. All of these issues are worthy of further elaborate disquisition. We shall do so in due time, but Our conclusion in regard to them is that petitioners have not successfully shown any substantial breach of the fundamental law of the land nor of their inherent right and liberties, when measured alongside the imperatives of national security and survival.

Incidentally, it is a matter of common knowledge that after the martial law cases pending before this Court shall have been disposed of, martial law in our beloved country will be lifted. In my first opinion written after it was imposed, I exhorted "God bless the Philippines!" As January 17, 1981 the date commonly known as set for its lifting approaches, with a heart full of joy and gratefulness to the Lord, the President and the First Lady, who have jointly worked so hard to improve the quality of life of the Filipinos, to revive our valued native virtues and traditions and to enhance the dignity of the Philippines as worthy member of the society of respected nations the

world over, and all others concerned, I should shout as I do — ALLELUIA!

WHEREFORE, the herein petitions are DISMISSED.

No costs.

Makasiar, Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.

Fernando, C.J., concurring submits a brief opinion.

Teehankee, J., filed a brief dissent.

Aquino, J., and Melencio-Herrera, J., in the result.

Concepcion Jr., J., on leave.

CONCURRING OPINION

FERNANDO, C.J.:

The consistent course of decisions of this Court as to the jurisdiction of military tribunals to try civilians in accordance with the Transitory Provisions of the Constitution, starting from *Aquino, Jr. v. Military Commission*[1] to *Buscayno v. Ponce Enrile*[2] and *Sison v. Ponce Enrile*[3] call for concurrence in the result. The petitions must be dismissed. With the reservation of Justice Barredo that the other legal questions raised will be dealt with in a "more extensive opinion," I refrain from any further statement of my views except to accord full recognition, as the opinion does, to the impressive performance of the President and the First Lady in improving the quality of life of the Filipinos, reviving our valued virtues and traditions, and enhancing the dignity of the nation. There is also no question, in my mind, as to the joy that should fill the hearts of our people with the lifting of martial law.

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

[2] L-47185, January 15, 1981.

[3] L-49579, January 15, 1981.

CONCURRING OPINION

AQUINO, J.:

I concur in the result in the dismissal of the petition. The petitioners and others, 114 in all were charged with rebellion and conspiracy and proposal to commit rebellion in connection with the smuggling of firearms by means of the Karagatan Fishing Corporation.

DISSENTING OPINION

TEEHANKEE, J.:

I dissent on the grounds stated in my separate opinions in *Aquino vs. Military Commission No. 2* (63 SCRA 546) and *Buscayno vs. Enrile* (L-47185, January 15, 1981), and reserve the filing of an extended opinion the other issues.

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