

FERDINAND E. MARCOS AND MANUEL CONCORDIA, PETITIONERS, VS. CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, ET AL., RESPONDENTS.

G. R. No. L-4663. May 30, 1951

Ponente: FERIA, J.

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FERIA, J.:

These are two special civil actions of mandamus instituted by the same petitioners against the respondents General Court-Martials composed each of different members or officers of the Philippine Army, in which it is alleged that the respondents Military Tribunals excluded unlawfully the petitioners from the enjoyment of their right to appear as counsel for the accused prosecuted before said tribunals, to which the petitioners are entitled because they are attorneys duly admitted to practice law in the Philippine Courts, on the ground that they are disqualified or inhibited by section 17, Article 17 of the Constitution to appear as counsel for said defendants. Said Section 17 reads as follows:

"SEC. 17. No. Senator or Member of the House of Representatives shall directly or indirectly be financially interested in any contract with the Government or any subdivision or instrumentality thereof, or in any franchise or special privilege granted to the Congress during his term of office. He shall not appear as counsel before the Electoral Tribunals or before any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office. * * *."

The only question for this Court to determine in these two cases is whether the prohibition contained in the above quoted section 17 of our Constitution is applicable to the petitioners.

We are of the opinion and therefore hold that it is applicable, because "the words "any court" includes the General Court-Martial, and a court-martial case is a criminal case within the meaning of the above quoted provisions of our Constitution.

It is obvious that the words "any court," used in prohibiting members of Congress to appear as counsel "in any criminal case in which an officer or employee of the Government is accused of an offense committed in relation to his office," refers, not only to a civil, but also to a military court or a Court-Martial. Because, in construing a Constitution, "it must be taken as established that where words are used which have both a restricted and a general meaning, the general must prevail over the restricted unless the nature of the subject matter of the context clearly indicates that the limited sense is intended." (11 American Jurisprudence, pp. 680-682).

In the case of Ramon Ruffy vs. Chief of Staff of the Philippine Army, [*]43 Off. Gaz., S55, we did not hold that the word "court" in general used in our Constitution does not include a Court-Martial; what we held is that the words "inferior courts" used in connection with the appellate jurisdiction of the Supreme Court to "review on appeal certiorari or writ of error, as the law or rules of Court may provide, final judgments of inferior courts in all criminal cases in which the penalty imposed is death or life imprisonment," as provided for in section 2, Article

VIII, of the Constitution, do not refer to Courts-Martial or Military Courts.

Winthrop's Military Law and Precedents, quoted by the petitioners and by this Court in the case of Ramon Ruffly et al vs. Chief of Staff of the Philippine Army, *supra*, has to say in this connection the following:

"Notwithstanding that the court-martial is only an instrumentality of the executive power having no relation or connection, in law, with the judicial establishments of the country, it is yet, so far as it is a court at all, and within its field of action, as fully a court of law and justice as is any civil tribunal. As a court of law, it is bound, like any court, by the fundamental principles of law, and, in the absence of special provision of the subject in the military code, it observes in general the rules of evidence as adopted in the common-law courts. As a court of justice, it is required by the terms of its statutory oath, (art 84.) to adjudicate between the U. S. and the accused "without partiality, favor, or affection," and according¹, not only to the laws and customs of the service, but to its "conscience," i.e. its sense of substantial right and justice unaffected by technicalities. In the words of the Attorney General, courts-martial are thus, "in the strictest sense courts of justice." (Winthrop's Military Law and Precedents, Vol. 1 and 2, 2nd Ed., p. 54.)

In *re Bogart*, 3 Fed. Cas., 796, 801, citing 6 Op. Attys. Gen. 425, with approval, the court said:

"In the language of Attorney General Cushing, a court-martial is a lawful tribunal existing by the same authority that any other exists by, and the law military is a branch of law as valid as any other, and it differs from the general law of the land in authority only in this: that it applies to officers and soldiers of the army but not to other members of the body politic, and that it is limited to breaches of military duty."

And in *re Davison*, 21 F. 618, 620, it was held:

"That court-martial are lawful tribunals existing by the same authority as civil courts of the United States, have the same plenary jurisdiction in offenses by the law military as the latter courts have in controversies within their cognizance, and in their special and more limited sphere are entitled to as untrammelled an exercise of their powers."

And lastly, American Jurisprudence says:

"SEC. 99. Representation by Counsel.—It is the general rule that one accused of crime has the right to be represented before the court by counsel, and this is expressly so declared by the statutes controlling: the procedure in courts-martial. It has been held that a constitutional provision extending that right to one accused in any trial in any court whatever applies to a court-martial and gives the accused the undeniable right to defend by counsel, and that a court-martial has no power to refuse an attorney the right to appear before it if he is properly licensed to practice in the courts of the state." (Citing the case of *State ex rel Huffaker vs. Crosby*, 24 Nev. 115, 50 Pac. 127; 36 American Jurisprudence 253)

The fact that a judgment of conviction, not of acquittal, rendered by a court-martial must be approved by the reviewing authority before it can be executed (Article of War 46), does not change or affect the character of a court-martial as a court. A judgment of the Court of First Instance imposing death penalty must also be approved by the Supreme Court before it can be executed.

That court-martial cases are criminal cases within the meaning of Section 17, Article VI, of the Constitution is also evident, because the crimes and misdemeanors forbidden or punished by the Articles of War are offenses against the Republic of the Philippines. According to section 1, Rule 106, of the Rules of Court, a criminal action or case is one which involves a wrong or injury done to the Republic, for the punishment of which the offender is prosecuted in the name of the People of the Philippines; and pursuant to Article of War 17, "the trial judge advocate of a general or special court-martial shall prosecute [the accused] in the name of the People of the Philippines."

Winthrop, in his well known work "Military Law and Precedents" says the following:

"In regard to the class of courts to which it belongs, it is lastly to be noted that the court-martial is strictly a criminal court. It has in fact no civil jurisdiction whatever; cannot enforce a contract, collect a debt, or award damages in favor of an individual. * * * Its judgment is a criminal sentence, not a civil verdict; its proper function is to award punishment upon the ascertainment of guilt." (Winthrop's Military Law and Precedents, Vols. 1 & 2, 2nd Ed., p. 55.)

"In N. Y. it was held that the term 'criminal case,' used in the clause, must be allowed some meaning, and none can be conceived, other than a prosecution for a criminal offense. Ex parte Carter. 66 S. W. 540, 544, 166 No. 604, 57 L.R.A. 654, quoting People vs. Kelly, 24 N. Y. 74; Counselman vs. Hitchcock, 12 S. Ct. 195; 142 U. S. 547, L. Ed. 1110." (Words and Phrases, Vol. 10, p. 485.)

Besides, that a court-martial is a court, and the prosecution of an accused before it is a criminal and not an administrative case, and therefore it would be, under certain conditions, a bar to another prosecution of the defendant for the same offense, because the latter would place the accused in double jeopardy, is shown by the decision of the Supreme Court of the United States in the case of Grafton vs. United States, 206 U. S. 333; 51 Law. Ed., 1088, 1092, in which the following was held:

"If a court-martial has jurisdiction to try an officer or soldier for a crime, its judgment will be accorded the finality and conclusiveness as to the issues involved which attend the judgments of a civil court in a case of which it may legally take cognizance; * * * and restricting our decision to the above question of double jeopardy, we adjudge that, consistently with the above act of 1902, and for the reasons stated, the plaintiff in error, a soldier in the Army, having been acquitted of the crime of homicide, alleged to have been committed by him in the Philippines, by a military court of competent jurisdiction, proceeding under the authority of the United States, could not be subsequently tried for the same offense in a civil court exercising authority in that territory."

Furthermore, taking into consideration the apparent intention or purpose of the framers of our Constitution in enacting section 17, Article VI of the Philippine Constitution, it is obvious that there exists the same if not more reason for prohibiting the appearance of members of the Senate and of the House of Representatives as counsel for the accused in courts-martial, as for inhibiting them to appear as such in civil courts, because the independence of civil courts' judges is guaranteed by our Constitution. Ubi eadem ratio ibi eadem lex.

Wherefore, as the petitioners are disqualified to appear as counsel for the accused in courts-martial, the respondents did not unlawfully exclude them from the enjoyment of any right, and hence the petitions for mandamus in those two cases are denied with costs against the petitioners.

Paras, C. J., Pablo, Bengzon, Reyes, Jugo and Bautista Angelo, JJ., concur.
MONTEMAYOR, J.:

I disqualify myself. Petition denied.

[1] 75 Phil., 875.

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