

LT. GENERAL LISANDRO ABADIA IN HIS CAPACITY AS CHIEF OF STAFF OF THE AFP, MAJ. GENERAL ARTURO ENRILE, IN HIS CAPACITY AS COMMANDING GENERAL OF THE PHILIPPINE ARMY, AND COL. DION...*G.R. No. 105597. September 23, 1994*

Ponente: KAPUNAN, J.

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Private respondent Lt. Col. Marcelino Malajacan was arrested on April 27, 1990 in connection with the December 1989 coup attempt. He was brought to the ISG Detention Center in Fort Bonifacio, Makati where he was detained for nine months without charges. On January 30, 1991, a charge sheet was filed against private respondent by the office of the Judge Advocate General alleging violations of the 67th, 94th and 97th Articles of War for Mutiny, Murder and Conduct Unbecoming an Officer and a Gentleman, respectively. A petition for habeas corpus was filed by the private respondent with the Court of Appeals on March 7, 1991 which was, however, dismissed by the said court's Fourth Division in a decision promulgated on June 28, 1991 on the ground that pre-trial investigation for the charges against the respondent was already ongoing before a Pre-Trial and Investigative (PTI) Panel of the Judge Advocate General's Office (JAGO). The pertinent portions of the Court of Appeals' decision state:

As in the Elepante case also, we cannot at this time order the release of petitioner on a writ of habeas corpus without giving the military from here on a reasonable time within which to finish the investigation of his case and determine whether he should be formally charged before the court martial or released for insufficiency of evidence, especially since, as manifested by respondents, petitioner has already filed his counter-affidavits to those supporting the charge sheet against him and that the matter is now ready for resolution.

WHEREFORE, the instant petition is hereby DISMISSED, but the incumbent Chief of Staff of the Armed Forces of the Philippines is directed to take appropriate action in petitioner's case with all deliberate speed, consistent with his constitutional right to a speedy disposition of his case.[1]

Three months after these charges were filed, the Pre-Trial Investigative Panel came out with a Resolution dated 27 May 1991 finding no evidence of direct participation by the private respondent in the December 1989 coup. Said panel nonetheless recommended that respondent be charged with violation of Article 136 of the Revised Penal Code (Conspiracy and Proposal to Commit Rebellion or Insurrection) and the 96th Article of War in relation to the 94th Article of War.[2] Consequently, all existing charges against respondent were dismissed and a new charge for violation of Article of War No. 96 for Conduct Unbecoming an Officer and a Gentleman for having allegedly been involved in a series of conferences with other military officers for the purpose of overthrowing the government, carrying with it the penalty of dismissal from service was filed with the General Court Martial (GCM) No. 8.

Additionally, the Judge Advocate General's Office endorsed the filing of charges for violation of Article 136 of the Revised Penal Code to the Quezon City Prosecutor's Office on October 29, 1991.[3] The City Prosecutor

eventually came out with a resolution dated February 4, 1992, dismissing the charges.[4]

Upon private respondent's arraignment (and before entering his plea) in General Court Martial No. 8 for violation of the 96th Article of War, private respondent entered a special motion to dismiss the case on grounds of prescription under AW 38. The said article states:

"Art. 38. As to time. - Except for desertion, murder or rape committed in time of war, or for mutiny or for war offenses, no person subject to military law shall be liable to be tried or punished by a court martial for any crime of offense committed more than two years before the arraignment of such person. x x x." (Underlining supplied)

The private respondent contended that the offense was supposed to have been committed between August to November, 1989, more than two years before his arraignment on April 22, 1992. Favorably resolving the motion to dismiss for being "substantial...meritorious and legally tenable," the General Court Martial dropped the last remaining charge against private respondent.[5] On April 23, 1992, the Assistant Trial Judge Advocate submitted a report to the Chief of Staff quoting the Resolution of GCM No. 8 for "info/notation".

On May 27, 1992 respondent filed a second petition for habeas corpus before the Court of Appeals where he assailed his continued detention at the ISG Detention Center in spite of the dismissal of all the charges against him. He contended that his continued confinement under the circumstances amounted to an "illegal restraint of liberty" correctable only by the court's "issuance of the high prerogative writ of habeas corpus." [6]

In a Resolution dated May 29, 1992, the 12th Division of the Court of Appeals ordered petitioners Lt. General Lisandro Abadia, Chief of Staff of the Armed Forces of the Philippines and Maj. General Arturo Enrile, Commanding General of the Philippine Army "(t)o produce the person of Lt. Col. Marcelino Q. Malajacan" and to show lawful cause for the latter's continued detention.[7] On June 3, 1992, respondent court promulgated the questioned decision issuing a writ of habeas corpus and commanding herein petitioners to release the private respondent. In its decision, respondent court held:

While we recognize the fact that under military law, a decision of a military tribunal, be it of acquittal or conviction, or dismissal is merely recommendatory and subject to review by the convening authority and the reviewing authority, We find a glaring hiatus in the rules and procedure being followed by the military in general and the respondents in this particular case, that inevitably leads to unbridled injustice, which if not corrected by the proper authorities concerned including this court, will subject any member of the military to indefinite confinement. The lack of time limit within which the Chief of Staff and/or reviewing authority may approve or disapprove the order of dismissal on the ground of prescription may be subject to abuse.[8]

Consequently, on June 11, 1992, petitioner filed a petition for review on certiorari under Rule 45 of the Rules of Court to annul and set aside respondent court's decision alleging that:

1. The respondent court may not impose a time frame for the Chief of Staff to act on the respondent's case where the law itself provides none; and,
2. The Resolution of June 3, 1992 contravenes a previous decision by a co-equal body, the Special Fourth Division of the Court of Appeals which on September 27, 1991 dismissed respondent's petition for habeas corpus.

We disagree.

In the context of the constitutional protection guaranteeing fair trial rights to accused individuals particularly the Right to a Speedy Trial, we cannot accept petitioners' submission that the absence of any specific provision limiting the time within which records of general courts martial should be forwarded to the appropriate reviewing

authority and for the reviewing authority to decide on the case would deny private respondent - or any military personnel facing charges before the General Courts Martial, for that matter - a judicial recourse to protect his constitutional right to speedy trial. What petitioners suggest is untenable. In the case at bench, the records of the case may indefinitely remain with the General Court Martial, and our courts, because of a procedural gap in the rules, cannot be called upon to ascertain whether certain substantive rights have been or are being denied in the meantime. That is not the spirit ordained by inclusion of the second paragraph of Article VIII, Section 1 of the Constitution which mandates the "duty of the Courts of Justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to a lack or excess of jurisdiction on the part of any branch or instrumentality of the government." [9] Moreover, the absence of rules and regulations mandating a reasonable period within which the appropriate appellate military authority should act in a case subject to mandatory review is no excuse for denial of a substantive right. The Bill of Rights provisions of the 1987 Constitution were precisely crafted to expand substantive fair trial rights and to protect citizens from procedural machinations which tend to nullify those rights. Moreover, Section 16, Article III of the Constitution extends the right to a speedy disposition of cases to cases "before all judicial, quasi-judicial and administrative bodies." This protection extends to all citizens, including those in the military and covers the periods before, during and after the trial, affording broader protection than Section 14(2) which guarantees merely the right to a speedy trial.

The 1987 Constitution reflects both the recognition by the Constitutional Commission of the necessity of a military force and the widespread concern, after two decades of authoritarian rule, over its role in a democratic society. Thus, while the Constitution recognizes the need for a military force to protect its citizens, it emphatically ordains the supremacy, at all times of civilian authority over the military. Through numerous provisions scattered all over the fundamental law, the constitutional injunction mandating the principle of civilian supremacy over the military has been given substantive detail. [10] This detail has been further elaborated by the Rules of Court and our jurisprudence. [11] Petitioners' thesis, however, would deny the intent and spirit of these provisions. [12]

A consideration of the history of Philippine military law, moreover, exposes the fallacy of the petitioner's averments. The first military law enacted by the National Assembly of the Philippines (Commonwealth Act No. 408 which remains the backbone of existing military law in our country) is essentially American in origin. [13] With a few minor amendments, Commonwealth Act No. 408, similar to the American military code of 1928, continues to be the organic law of the Armed Forces of the Philippines. [14] Our system of court martial proceedings therefore on the surface remains essentially identical to the system in force in the United States. [15]

Paradoxically, developments in our military law have failed to keep up with developments in law both here and in the United States. While the Constitution and the Rules of Court have together expanded the fair trial rights of the accused, military law on the matter has remained static, if not anachronistic. While admittedly, military law is a jurisprudence which exists separate and apart from the law which governs most of us, [16] because "it is the primary business of armies and navies to fight or to be ready to fight wars should the occasion arise," [17] it is distinct only in so far as it addresses the general recognition of the unique concerns of the military establishment in safeguarding the government and citizens it has been sworn to protect, but it cannot exist as an entity wholly separate from our laws, particularly our Constitution. In the United States, this recognition has led to the evolution of two basic sources of specialized jurisprudence: the Uniform Code of Military Justice (UCMJ), enacted in 1950 by the US Congress and revised in 1968 and the Manual for Court Martial (MCM), most recently revised in 1975. These statutory enactments and the revisions which followed essentially reflected the growth of jurisprudence in the sphere of civil rights to the extent that, in some aspects involving the fair trial rights of the accused, the military statutory requirements have become more stringent. This is at least true as far as the right to a speedy disposition of cases is concerned. A few examples are in order.

Article 33 of the UCMJ requires the forwarding to the convening authority of all documents related to the case within eight (8) days of the accused's arrest and confinement. Causing unnecessary delay in the disposition of criminal cases constitutes an actionable offense under Article 98. In general, the Uniform Code of Military Justice mandates that immediate steps be taken to try or dismiss cases against an accused member of the armed forces imposing an unusually heavy burden on government in establishing diligence in the disposition of cases. In the arena of military jurisprudence, decisions interpreting speedy trial requirements adhere to standards more rigorous than those involving normal Sixth Amendment Rights. These decisions have required stringent "Sixth Amendment balancing of 1) length of delay, 2) reasons for delay, 3) timely assertion of speedy trial right and 4) prejudice to the accused." [18]

Thus, ironically, while U.S. military law has dynamically reflected changes and trends in fair trial jurisprudence in enacting provisions giving life to the changes in the law, our military law has been stunted by legislative inaction. Obviously, current military law and jurisprudence in the Philippines have failed to respond to actual changes in the fundamental law guaranteeing and expanding the fair trial rights to the accused thereby leaving gaps in military law which enables our system of military justice to ignore on a wholesale basis substantive rights available to all citizens. The absence of a provision mandating a period within which appeals may be taken to the corresponding appellate authority underscores this deficiency.

Yet our Constitution is clear, Section 14 Article III thereof states:

Sec 14. (2) 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 the 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 unjustifiable.

These rights are clearly available to all citizens even in the absence of statutory enactment. They cannot be denied to certain individuals because of gaps in the law for which they are not responsible. They cannot be taken away from certain individuals because of the nature of their vocation. Members of the military establishment do not waive individual rights on taking up military uniform. That they become subject to uniquely military rules and procedures does not imply that they agree to exclusively fall under the jurisdiction of only those rules and regulations, and opt to stand apart from those rules which govern all of the country's citizens. As the respondent Court correctly held:

As admitted by counsel for respondents, there is no time frame within which to transmit the records of the case to the reviewing authority as well as time limitation within which the Chief of Staff must act on the recommendation of dismissal. However, it must be stressed that the absence of a rule does not give to the Chief of Staff indefinite time within which to act at the expense of the constitutional right of a citizen to enjoy liberty and to be protected from illegal or arbitrary detention.

Respondent court, therefore, did not commit an abuse of discretion in ordering the petitioners to act with dispatch in dealing with the private respondent's case. Over three years have elapsed since the respondent's arrest. To this day, there is no indication - and it has not been alleged - that records of the case have been forwarded to the appropriate military appellate authority.

This case does not even involve complex issues of fact and law. The central issue which the appropriate military appellate authority will have to review is whether or not the General Court Martial was correct in dismissing the case on grounds of prescription under Article 38 of the Articles of War. We cannot see why the military appellate review authority should take an interminable length of time in coming up with a decision on the case. The

unjustified delay in dealing with the respondent's case is a deliberate injustice which should not be perpetrated on the private respondent a day longer.

II

Petitioner next contends that the Decision of the respondent court dated June 3, 1992, issuing a writ of habeas corpus in favor of the private respondent contravenes a previous decision of a co-equal body, the Court of Appeal's Fourth Division which earlier denied the same. This is untenable. The factual circumstances surrounding both decisions are different.

First, at the time of the first petition, the private respondent was being held in the detention center for eleven months without charges being filed against him. The pre-trial investigative panel had not yet been constituted. Because of his confinement without charges, a petition for the issuance of the writ of habeas corpus was filed in his behalf on the basis of respondent's averment that his arrest and continued detention without charges violated his constitutional rights.[19] The Fourth Division found adequate support upholding military jurisdiction over the case of the private respondent under the Articles of War. It also noted that the case against the private respondent was ongoing and that it would be difficult to order respondent's release on a writ of habeas corpus without giving military authorities reasonable time within which to investigate and try the case. The Court nonetheless urged the Chief of Staff to act on the petitioner's case "with all deliberate speed, consistent with his constitutional right to a speedy disposition of his case."

Second, by the time the subsequent petition for habeas corpus was before the court's Twelfth Division (herein respondent court), the JAGO's Pre-trial Investigative Panel had dismissed all cases against the petitioner and endorsed the filing of charges (under Article 136 of the Revised Penal Code) with the Quezon City Prosecutor's Office. The latter subsequently dismissed the case. Moreover at the time the Twelfth Division rendered its assailed decision, respondent was already languishing in a military detention center for three years, half of those spent in the limbo between the GCM's decision dismissing the cases filed against him and the uncertainty of when the military appellate process would finally come around in either exonerating him or overturning the GCM's findings. This in spite of the fact that even during the first petition before the Fourth Division, the court had already urged speedy disposition of the case.

Finally, in dismissing the cases against the private respondent, the General Court Martial had made a determination that the charges against respondent had prescribed under Article 38 of the Articles of War. Conformably with this conclusion and with this Court's ruling in *Domingo vs Minister of National Defense*,[20] the lower court was correct in stating that the respondent could no longer be tried by the General Court Martial if a period of two years had elapsed prior to the arraignment of the accused. Clearly, the circumstances, noted above, had changed so radically in the intervening period that the appellate court's Twelfth Division had no choice, given the incredible delay in forwarding the documents to the military appellate authority, but to issue the writ.

These findings obviously militate against petitioners' contention that the appellate court's Twelfth Division abused its discretion in issuing an order allegedly in contravention to the Fourth Division's earlier orders. The factual circumstances are hardly similar. The respondent court, under these changed circumstances could be hardly faulted for issuing the writ of habeas corpus in favor of the private respondent.

The mantle of protection accorded by the issuance of a writ of habeas corpus "extends to all cases of illegal confinement or detention by which a person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." [21] As we emphasized hereinbefore, and we repeat it once more, petitioners cannot seek shelter in the absence of specific rules relating to review of cases dismissed by military tribunals in violating the right of the accused to a speedy trial and in justifying his continued

confinement. Were we to uphold the proposition that our courts should decline to exercise jurisdiction because the law itself provides no time frame for the proper military authorities to review the general court martial's dismissal of the respondent's case would mean that we would be sanctioning the suggestion implicit in petitioners' argument that the Constitution's guarantees are guarantees available not to all of the people but only to most of them.

Petition is hereby DENIED.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quason, Puno, Vitug, and Mendoza, JJ., concur.

Cruz, J., no part.

Bidin, J., on leave.

[1] C.A. Rollo, p. 95 (emphasis supplied).

[2] Id., p. 14; Annex "A".

[3] Id., p. 15; Annex "B".

[4] Id., p. 16; Annex "C".

[5] Id., p. 17; Annex "D".

[6] Id., p. 8.

[7] C.A. Resolution, May 29, 1992, pp. 1-2.

[8] Decision, June 3, 1992, p. 3.

[9] Const., art. VIII, sec. 1, par. 2.

[10] See, *Olaguer vs. Military Commission No. 34*. (1987)

[11] Id., See particularly, Chief Justice Teehankee's separate opinion.

[12] "Moreover military tribunals pertain to the Executive Department of the Government and are simply instrumentalities of Executive Power, provided by the legislature for the President as Commander-in-Chief to aid him in properly commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives." Id., citing *Ruffy v. Chief of Staff*, 75 Phil. 875 (1946). As an agency of the Executive Branch, acts of military tribunals are reviewable on grounds specified in Article VIII, sec. 1, in a proper case.

[13] GLORIA, PHILIPPINE MILITARY LAW, 9 (1956).

[14] Id.

[15] Id.

[16] *Parker vs Levy* 417 US 733 at 744 (1974).

[17] *United States ex rel. Toth v. Quarles*, 350 U.S. 11 (1955).

[18] C. SHANOR, *MILITARY CRIMINAL JUSTICE*, 107 (1980), citing, *Baker v. Wingo*, 407 US 514 (1972);

U.S. vs Marion 404 US 307 (1971).

[19] Rollo, pp. 22.

[20] 124 SCRA 529 (1993).

[21] Rule 102, Rules of Court, sec. 1.

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