

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF
LEONARDO PAQUINTO AND JESUS CABANGUNAY. CHAIRMAN
SEDFREY A. ORDOÑEZ, COMM. SAMUEL M. SORIANO, COMM.
HESQUIO R. MALLILLIN, COM...**

G.R. No. 115576. August 04, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

Why are Leonardo Paquinto and Jesus Cabangunay still in prison?

These persons are among the civilians who were tried by the military commissions during the period of martial law. Both were originally condemned to die by musketry, but their sentence was commuted by the new Constitution to reclusion perpetua.

Their convictions were subsequently nullified by this Court in the case of *Olague v. Military Commission No. 34*,^[1] where we held that the military tribunals had no jurisdiction to try civilians when the courts of justice were functioning.

Accordingly, in the case of *Cruz v. Ponce Enrile*,^[2] this Court directed the Department of Justice to file the corresponding informations in the civil courts against the petitioners within 180 days from notice of the decision.

No information has so far been filed against Paquinto and Cabangunay, but they have remained under detention.

On May 27, 1992, Ernesto Abaloc, together with Cabangunay and Paquinto, wrote to the United Nations Human Rights Committee (UNHRC) complaining that their continued detention violated their rights under Articles 6, 7, 9, 10, 14, and 26 of the International Covenant on Civil and Political Rights.^[3]

In its decision dated October 14, 1993, the UNHRC declared their communication as admissible and requested the Republic of the Philippines to submit a written explanation of their complaint within six months from the date of transmittal.^[4]

The Department of Foreign Affairs furnished the Commission on Human Rights with a copy of the decision. Thereupon, the Commission, through its Chairman Sedfrey A. Ordoñez, wrote the Secretary of Justice of its intention to sue for the release of the complainants unless criminal charges had already been filed against them.^[5]

On June 7, 1994, the Department of Justice informed the Commission that Abaloc had been released on September 29, 1992, and that Paquinto and Cabangunay were still detained at the National Penitentiary. There was the intimation that it would not object to a petition for habeas corpus that the Commission might choose to file for Paquinto and Cabangunay.^[6] This assurance was later confirmed in a letter from the Department dated May 31, 1994.^[7]

The present petition for habeas corpus was filed with this Court on June 13, 1994. The writ was immediately

issued, returnable on or before June 22, 1994, on which date a hearing was also scheduled.

At the hearing, Chairman Ordoñez argued for the prisoners and pleaded for their immediate release in view of the failure of the Department of Justice to file charges against them within the period specified in the Cruz case. He stressed that their continued detention despite the nullification of their convictions was a clear violation of their human rights.

For its part, the Office of the Solicitor General, as counsel for the respondent Director of Prisons, argued that under our ruling in *Tan v. Barrios*,^[8] the Olaguer decision could not be retroactively applied to decisions of the military tribunals that have already become final or to persons who were already serving their sentence. It suggested that, under the circumstances, the only recourse of the prisoners was to reiterate and pursue their applications for executive clemency.

It has been seven years since the Olaguer decision nullifying the convictions of Paquinto and Cabangunay by the military commissions was promulgated. It has been six years since our decision in the Cruz case directed the Secretary of Justice to file the appropriate informations against the civilians still detained under convictions rendered by the military tribunals. The prisoners have been confined since 1974. We can only guess at the validity of their convictions as the records of their cases have allegedly been burned.

The loss of these records is the main reason the Department gives for its failure to file the corresponding charges against the two detainees before the civil courts. It is unacceptable, of course. It is not the fault of the prisoners that the records cannot now be found. If anyone is to be blamed, it surely cannot be the prisoners, who were not the custodian of those records. It is illogical and even absurd to suggest that because the government cannot prosecute them, the prisoners' detention must continue.

The other excuse of the government must also be rejected. During the hearing, the Office of the Solicitor General contended that the prisoners had themselves opted to serve their sentences rather than undergo another trial. Their ultimate objective, so it was maintained, was to secure their release by applying for executive clemency. To prove this, counsel submitted a letter from one Atty. Anselmo B. Mabuti to the Secretary of Justice manifesting that Leonardo B. Paquinto "chooses to complete the service of his sentence so that the Board of Pardons and Parole has jurisdiction over his case."^[9] No mention was made of Jesus Cabangunay.

Upon direct questioning from the Court during the hearing, both Paquinto and Cabangunay disowned Atty. Mabuti as their counsel and said they had never seen nor talked to him before. Paquinto denied ever having authorized him to write the letter. Instead, the two prisoners reiterated their plea to be released on the strength of the Olaguer decision.

The petitioners further contend in their memorandum that a re-examination of the ruling in *Cruz v. Enrile*^[10] in relation to the case of *Tan v. Barrios*,^[11] is necessary in view of certain supervening events. These are the failure of the Department of Justice to file the informations against the prisoners; the decision of the UNHRC declaring admissible the communication No. 503/1992 of Abaloc, Paquinto and Cabangunay and thus suggesting the violation of their liberty as guaranteed under the International Covenant on Civil and Political Rights; and the assurance of the Department of Justice that it would have no objection to the filing of a petition for habeas corpus by the Commission on behalf of Paquinto and Cabangunay.

The Court stresses that in its en banc resolution dated February 26, 1991, it declared, citing the Tan case, that "those civilians who were convicted by military courts and who have been serving (but not yet completed) their sentences of imprisonment for the past many years " . . . "may be given the option either to complete the service of their sentence, or be tried anew by the civil courts. Upon conviction, they should be credited in the service of

their sentence for the full period of their previous imprisonment. Upon acquittal, they should be set free."

Accordingly, it directed "the Department of Justice to forthwith comply with the directive in the 'Cruz Cases' for the filing of the necessary informations against them in the courts having jurisdiction over the offenses involved, without prejudice to said petitioners' exercise of the option granted to them by this Court's ruling in G.R. Nos. 85481-82, *William Tan, et al. v. Hernani T. Barrios, etc., et al., supra.*"

The Office of the Solicitor General submitted its memorandum after its second motion for extension was denied, in view of the necessity to decide this petition without further delay.[12] The memorandum was admitted just the same, but we find it adds nothing to the respondent's original arguments.

There is absolutely no question that the prisoners' plea should be heeded. The government has failed to show that their continued detention is supported by a valid conviction or by the pendency of charges against them or by any legitimate cause whatsoever. If no information can be filed against them because the records have been lost, it is not the prisoners who should be made to suffer. In the eyes of the law, Paquinto and Cabangunay are not guilty or appear to be guilty of any crime for which they may be validly held. Hence, they are entitled to be set free.

Liberty is not a gift of the government but the right of the governed. Every person is free, save only for the fetters of the law that limit but do not bind him unless he affronts the rights of others or offends the public welfare. Liberty is not derived from the sufferance of the government or its magnanimity or even from the Constitution itself, which merely affirms but does not grant it. Liberty is a right that inheres in every one of us as a member of the human family. When a person is deprived of this right, all of us are diminished and debased for liberty is total and indivisible.

WHEREFORE, the petition is GRANTED. Jesus Cabangunay and Leonardo Paquinto should not be detained in prison a minute longer. They are ordered released IMMEDIATELY.

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

[1] 150 SCRA 144.

[2] 160 SCRA 700.

[3] Rollo, p. 17.

[4] Rollo, p. 18.

[5] Annex "B" to the Petition; rollo, p. 11.

[6] Annex "C" to the Petition; rollo, p. 12.

[7] Annex "A" to the Memorandum of Petitioners; rollo, p. 86.

[8] 190 SCRA 686.

[9] Rollo, p. 70.

[10] *Supra.*

[11] *Supra.*

[12] Supreme Court, First Division, Resolution, July 20, 1994.

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