

DIRECTOR EPIMACO A. VELASCO, AS DIRECTOR OF THE NATIONAL BUREAU OF INVESTIGATION (NBI), NATIONAL BUREAU OF INVESTIGATION SPECIAL OPERATIONS GROUP (SOG), SPECIAL INVESTIGATORS I...

G.R. No. 118644. July 07, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The high prerogative writ of habeas corpus, whose origin is lost in antiquity,[1] was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint and as the best and only sufficient defense of personal freedom.[2] More specifically, its vital purposes are to obtain immediate relief from illegal confinement, to liberate those who may be imprisoned without sufficient cause, and to deliver them from unlawful custody. It is then essentially a writ of inquiry and is granted to test the right under which a person is detained.[3]

Under our Constitution, the privilege of the writ of habeas corpus cannot be suspended except in cases of invasion or rebellion when the public safety requires it.[4] Pursuant to Section 1, Rule 102 of the Rules of Court, it extends, except as otherwise provided by law, to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. It is not available, however, under the instances enumerated in Section 4 of the said Rule which reads:

SEC. 4. When writ not allowed or discharge authorized. — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

In this petition for review, the petitioners want us to set aside and reverse the decision of 1 February 1995 of the Court of Appeals in CA-G.R. SP No. 36273,[5] a petition for habeas corpus and certiorari with a prayer for a temporary restraining order, ordering the herein petitioners to immediately release Lawrence A. Larkins from their custody and declaring moot the alternative relief of certiorari.

The antecedent facts of the case as culled from the challenged decision and the pleadings of the parties are neither complicated nor disputed.

On 16 September 1993, a warrant of arrest was issued by Judge Manuel Padolina of Branch 162 of the Regional Trial Court (RTC) of Pasig, Metro Manila, against accused Lawrence Larkins in Criminal Cases Nos. 101189-92 for violations of B.P. Blg. 22.

On 20 November 1994, a certain Desiree Alinea executed and filed before the National Bureau of Investigation

(NBI) a complaint-affidavit accusing Larkins of the crime of rape allegedly committed against her on 19 November 1994 at 2:00 a.m. in Victoria Valley Subdivision, Valley Golf, Antipolo, Rizal.[6]

Acting on the basis of the complaint of Alinea, petitioners Special Investigators Flor L. Resurreccion and Antonio M. Erum, Jr. proceeded to the office of Larkins in Makati, Metro Manila, on 21 November 1994 and arrested the latter, who was thereupon positively identified by Alinea as her rapist.[7] Larkins was then detained at the Detention Cell of the NBI, Taft Avenue, Manila.

On 22 November 1994, Larkins posted his bail of P4,000.00 in Criminal Cases Nos. 101189-92. Judge Padolina forthwith issued an order recalling and setting aside the warrant of arrest issued on 16 September 1993 and directing the Jail Warden of the NBI Detention Cell to release Larkins from confinement "unless otherwise detained for some other cause."

Special Investigators Resurreccion and Erum refused to release Larkins because he was still detained for another cause, specifically for the crime of rape for which he would be held for inquest.

On 23 November 1994, a complaint against Larkins for rape was executed by Alinea.[8] It contains a certification by Assistant Provincial Prosecutor Ma. Paz Reyes Yson that it is "filed pursuant to Section 7, Rule 112 of the 1985 Rules on Criminal Procedure, as amended, the accused not having opted to avail of his right to preliminary investigation and not having executed a waiver pursuant to Article 125 of the RPC...." The complaint was filed with the RTC of Antipolo on 2 December 1994, docketed therein as Criminal Case No. 94-11794, and assigned to Branch 71 of the court, presided by Judge Felix S. Caballes.

On 2 December 1994, Larkins, through his counsel Mauricio C. Ulep, filed an Urgent Motion for Bail[9] wherein he alleged, inter alia, that the evidence of guilt against him for rape is not strong, as he had no carnal knowledge of the complainant and the medical report indicates that her hymen was neither lacerated nor ruptured; that he is entitled as a matter of right to bail; and that he has no intention of going out of the country or hiding away from the law.

On 6 December 1994, Larkins, through his new counsel, Atty. Theodore O. Te, filed in Criminal Case No. 94-11794 an Urgent Omnibus Motion for the Dismissal of the Complaint and for Immediate Release,[10] principally based on the alleged illegality of his warrantless arrest. This motion met vigorous opposition from the private complainant.[11]

In the order of 5 January 1995,[12] the trial court denied the aforesaid motions, thus:

After a careful appreciation of the arguments of the prosecution and the defense, the Court finds no legal or valid grounds to dismiss the complaint or release the accused, or to grant him bail. The filing of this case against the accused, which is [a] very serious offense, justifies the grant of the motion of the prosecution for the issuance of a hold departure order.

WHEREFORE, the motions of the accused are hereby denied for lack of merit, and as prayed for by the prosecution the Bureau of Immigration and Deportation is hereby directed to include the name of the accused, Lawrence A. Larkins, in its hold order departure list until further order from this Court.

Unable to accept the ruling, Larkins' common-law wife, Felicitas S. Cuyag, filed before the Court of Appeals a petition for habeas corpus with certiorari. Impleaded as respondents were the herein petitioners and Judge Felix S. Caballes.

Subsequently, the Court of Appeals issued a resolution[13] ordering the respondents therein to appear and produce Lawrence A. Larkins before the court on 31 January 1995 at 10:30 a.m. and to show cause why Larkins'

liberty is being restrained.

On the said date, Special Investigators Resurreccion and Erum appeared and produced Larkins at the hearing. Atty. Orlando Dizon of the NBI acted as their counsel.[14] The Office of the Solicitor General representing the People of the Philippines made no appearance.[15] Neither did Judge Caballes, for he had not received a copy of the resolution. On the other hand, the petitioner therein, Felicitas S. Cuyag, appeared with her counsel, who manifested that should the court order the release of Larkins the alternative prayer for certiorari would be deemed abandoned.[16]

After hearing the arguments of the parties, the Court of Appeals rendered the challenged decision, holding that:

From the arguments presented by the parties, we resolve to order the immediate release of Larkins from his present confinement on the ground that the complaint presented to the NBI by complainant Desiree Alinea on the basis of which Larkins was detained without a warrant of arrest for rape did not meet the legal requirements provided for in Rule 113 of the Rules of Court.

Furthermore, on the day the detention of Larkins commenced, i.e., immediately after the NBI was served with the Order of the Pasig RTC for his release on bail in connection with the BP 22 cases, no other criminal complaint or information had been filed or pending in any court. It was only sometime between November 25, 1994 (when filing of the complaint was approved by the Rizal Provincial Prosecutor) and November 29, 1994 (the date appearing on the Urgent Motion for Bail filed by Larkins's former counsel, said Atty. Ulep) that the complaint for rape was filed with the Antipolo RTC.

The petitioners insist that the respondent court erred in granting the petition for habeas corpus because Larkins had already been charged with the crime of rape and the trial court had denied his application for bail. They further claim that the warrantless arrest in this case is valid for it was made under Section 5(b), Rule 113 of the Rules of Court.

On the other hand, the private respondent contends that habeas corpus is rendered unavailing not by the mere filing of an information, but by the issuance of a warrant of arrest or warrant of commitment, which are the only two processes recognized by law to justify deprivation of liberty, and the order of Judge Caballes of 5 January 1995 denying the petition for bail does not qualify as such. She asserts that the petitioners have miscomprehended *Paredes vs. Sandiganbayan*[17] because that case did not rule that the writ is no longer available after an information (or criminal complaint for rape as in this case) is filed against the person detained; what it stated is that the writ of habeas corpus will not issue when the person alleged to be restrained of his liberty is in the custody of an officer under a process issued by the court which has jurisdiction to do so. She submits that the controlling doctrine is that enunciated in *Ilagan vs. Ponce Enrile*,[18] adverted to in *Sanchez vs. Demetriou*,[19] that "[t]he filing of charges, and the issuance of the corresponding warrant of arrest, against a person invalidly detained will cure the defect of that detention or at least deny him the right to be released because of such defect."

We find for the petitioners.

But, before we take up the substantive merits of this petition, we shall first delve into the propriety of the petition for habeas corpus and certiorari filed by private respondent Cuyag with the Court of Appeals.

Concededly, the private respondent has the personality to institute on behalf of her common-law spouse, Lawrence Larkins, the habeas corpus aspect of the petition, as she falls within the purview of the term "some person" under Section 3, Rule 102 of the Rules of Court, which means any person who has a legally justified interest in the freedom of the person whose liberty is restrained or who shows some authorization to make the application.[20] She is not, however, the real party in interest in the certiorari aspect of the petition. Only Larkins

could institute a petition for certiorari to set aside the order denying his motions for bail and for the dismissal of the complaint against him.

It does not, however, follow that if certiorari is available to Larkins, an application for a writ of habeas corpus will absolutely be barred. While ordinarily, the writ of habeas corpus will not be granted when there is an adequate remedy by writ of error or appeal or by writ of certiorari, it may, nevertheless, be available in exceptional cases, for the writ should not be considered subservient to procedural limitations which glorify form over substance.[21] It must be kept in mind that although the question most often considered in both habeas corpus and certiorari proceedings is whether an inferior court has exceeded its jurisdiction, the former involves a collateral attack on the judgment and "reaches the body but not the record," while the latter assails directly the judgment and "reaches the record but not the body." [22]

And now on the merits of the petition.

The Court of Appeals granted the writ of habeas corpus because it found that the warrantless arrest of Larkins for the crime of rape "did not meet the legal requirements provided for in Rule 113 of the Rules of Court." It could have in mind Section 5 thereof on lawful warrantless arrest.

Even if the arrest of a person is illegal, supervening events may bar his release or discharge from custody. What is to be inquired into is the legality of his detention as of, at the earliest, the filing of the application for a writ of habeas corpus, for even if the detention is at its inception illegal, it may, by reason of some supervening events, such as the instances mentioned in Section 4 of Rule 102, be no longer illegal at the time of the filing of the application. Among such supervening events is the issuance of a judicial process preventing the discharge of the detained person. Thus, in *Sayo vs. Chief of Police of Manila*, [23] this Court held:

[W]e hold that petitioners are being illegally restrained of their liberty, and their release is hereby ordered unless they are now detained by virtue of a process issued by a competent court of justice. (emphasis supplied)

Another is the filing of a complaint or information for the offense for which the accused is detained, as in the instant case. By then, the restraint of liberty is already by virtue of the complaint or information and, therefore, the writ of habeas corpus is no longer available. Section 4 of Rule 102 reads in part as follows: "Nor shall anything in this rule be held to authorize the discharge of a person charged with ... an offense in the Philippines."

Thus, in *Matsura vs. Director of Prisons*, [24] where petitioners Macario Herce and Celso Almadovar claimed to have been illegally detained for more than one year without any complaint or information filed against them, this Court denied the petition for a writ of habeas corpus, for at the time they filed the petition they had already been charged with the crime of treason and confined by reason thereof. *Harvey vs. Defensor Santiago* [25] reiterates *Matsura*.

In *Cruz vs. Montoya*, [26] this Court dismissed the petition for habeas corpus for having become academic because the information for estafa against the party whose liberty was allegedly illegally restrained had already been filed and a warrant for his arrest had been issued, and whatever illegality might have originally infected his detention had been cured.

In *Umil vs. Ramos* [27] this Court, applying the last sentence of Section 4 of Rule 102, held that the writ of habeas corpus should not be allowed after the party sought to be released had been charged before any court. Thus:

It is to be noted that, in all the petitions here considered, criminal charges have been filed in the proper courts against the petitioners. The rule is, that if a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge, and that the court or judge had jurisdiction to issue the process or

make the order, or if such person is charged before any court, the writ of habeas corpus will not be allowed. Section 4, Rule 102, Rules of Court, as amended is quite explicit in providing that:

Sec. 4. ... Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines or of a person suffering from imprisonment under lawful judgment.[28] (emphasis supplied)

It may also be said that by filing his motion for bail, Larkins admitted that he was under the custody of the court and voluntarily submitted his person to its jurisdiction. In *De Asis vs. Romero*,[29] this Court stated:

De Asis could have, right after his arrest, objected to the regularity of the issuance of the warrant of arrest in question. Instead he not only filed a petition for bail with the lower court, thereby accepting the court's jurisdiction over his person, but he also pleaded, on arraignment, to the information filed against him. (Italics supplied)

The filing of a petition or motion for bail in cases where no bail is recommended has the same legal import and effect as the posting of bail in cases where bail is recommended. It is settled that the giving or posting of bail by the accused is tantamount to submission of his person to the jurisdiction of the court. In the case of *Carrington vs. Peterson*,[30] this Court declared:

When a defendant in a criminal case is brought before a competent court by virtue of a warrant of arrest or otherwise, in order to avoid the submission of his body to the jurisdiction of the court he must raise the question of the court's jurisdiction over his person at the very earliest opportunity. If he gives bail, demurs to the complaint or files any dilatory plea or pleads to the merits, he thereby gives the court jurisdiction over his person. (State ex rel. *John Brown vs. Fitzgerald*, 51 Minn., 534)

In *United States vs. Grant*,[31] this Court held:

Conceding again that the warrant issued in this case was void for the reason that no probable cause was found by the court before issuing it, the defendant waived all his rights to object to the same by appearing and giving bond.

While it may be true that on 6 December 1994, or four days after the filing of the Urgent Motion for Bail, Larkins, thru a new counsel, filed an Urgent Omnibus Motion for Dismissal of the Complaint and for Immediate Release based on the alleged illegality of his warrantless arrest, the said motion was a mere afterthought which came too late in the day. By then, the trial court had firmly acquired jurisdiction over his person.

Moreover, the trial court's order of 5 January 1995 denying the urgent motion for bail was an unequivocal assertion of its authority to keep in custody the person of Larkins. This order comes under the purview of the word order under the first sentence of Section 4 of Rule 102 reading: "If it appears that the person alleged to be restrained of his liberty is in the custody of an officer ... by virtue of [an] order of a court of record, and that the court or judge had jurisdiction to ... make the order, the writ shall not be allowed...."

The foregoing renders untenable the private respondent's claim that it is the rule in *Ilagan vs. Enrile*[32] which must govern, that the writ may not be allowed only where the person alleged to be restrained of his liberty is in the custody of an officer under process issued by the court or judge, and that there are only two recognized processes which justify deprivation of liberty, viz., (1) commitment order and (2) warrant of arrest. The contention is not only a deliberate misreading of Section 4 of Rule 102 limiting its application to the first part of the first sentence and disregarding the rest, but is also an undue and unwarranted restriction of the term process. A commitment order and a warrant of arrest are but species of judicial process.

In *Malaloan vs. Court of Appeals*,[33] this Court stated:

Invariably a judicial process is defined as a writ, warrant, subpoena, or other formal writing issued by authority of law; also, the means of accomplishing an end, including judicial proceedings, or all writs, warrants, summonses and orders of courts of justice or judicial officers. It is likewise held to include a writ, summons or order issued in a judicial proceeding to acquire jurisdiction of a person or his property, to expedite the cause or enforce the judgment, or a writ, warrant, mandate or other process issuing from a court of justice.

In *Macondray & Co., Inc. vs. Bernabe*,^[34] this Court quoted *Corpus Juris'* definition of the term "process," to wit:

As a legal term, process is a generic word of very comprehensive signification and many meanings. In its broadest sense, it is equivalent to, or synonymous with 'proceedings' or procedure and embraces all the steps and proceedings in a cause from its commencement to its conclusion. Sometimes the term is also broadly defined as the means whereby a court compels a compliance with its demands. (50 C.J. 441)

We thus rule that the order of 5 January 1995 of the trial court also qualifies as a process within the meaning of Section 4 of Rule 102.

Hence, even granting that Larkins was illegally arrested, still the petition for a writ of habeas corpus will not prosper because his detention has become legal by virtue of the filing before the trial court of the complaint against him and by the issuance of the 5 January 1995 order.

Even as we thus decide in favor of the petitioners, we are, nevertheless, disturbed by certain incidents relative to the warrantless arrest of Larkins. Firstly, assuming that it was lawful, the facts before us disclose that the arresting officers failed to strictly comply with (1) the last paragraph of Section 5, Rule 113 of the Rules of Court requiring that the person lawfully arrested without a warrant shall forthwith be delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7, Rule 112; and (2) Article 125 of the Revised Penal Code, as amended, providing that he be delivered to the proper judicial authorities within thirty-six hours, the crime with which Larkins was charged being punishable by an afflictive penalty. Although the arrest was made in Makati where there is a police station and a municipal (now city) jail, Larkins was brought to the NBI Detention Cell at Taft Avenue, Manila, and though the complaint of the offended party was executed on 23 November 1994, it was not until 2 December 1994 that the said complaint was actually filed in court.

Unless satisfactorily explained, the non-compliance by the arresting officers with the said provisions merits nothing but disapproval from the Court. In the performance of their duty and in their commendable pursuit to stamp out crimes and bring criminals to the bar of justice, law enforcement authorities should make no shortcuts, but must comply with all procedures to safeguard the constitutional and statutory rights of accused persons. The rule of law must always be upheld. What this Court said in *Beltran vs. Garcia*^[35] needs to be repeated:

It certainly does not speak well of officialdom, whether civilian or military, if a person deprived of his liberty had to go to court before his rights are respected. The good name of the administration is jeopardized, without any fault on its part, by such inefficiency or inattention to duty. Every precaution should be taken against its repetition. Otherwise, the parties responsible for this state of affairs would justly lay themselves open to the accusation that the greatest danger to constitutional rights comes from public officials, men of zeal, concededly well-meaning, but without sufficient understanding of the implication of the rule of law.

We also note that the trial court did not conduct a hearing of the urgent motion for bail, as required under Section 5, Rule 114 of the Rules of Court. The grant or denial of bail must be based upon the court's determination as to whether or not the evidence of guilt is strong. This discretion may only be exercised after evidence is submitted at the hearing conducted for that purpose.^[36] The court's order granting or refusing bail must contain a summary of the evidence for the prosecution followed by its conclusion whether or not the evidence of guilt is strong;

otherwise, the order would be defective and voidable.[37] In fact, even if the prosecutor refuses to adduce evidence in opposition to the application to grant and fix bail, the court may ask the prosecution such questions as would ascertain the strength of the State's evidence or judge the adequacy of the amount of bail.[38] It was thus incumbent upon the trial court to receive the evidence for the prosecution on the urgent motion for bail. For this procedural shortcoming, Larkins should also be partly blamed. He did not press for a hearing after the scheduled hearing on 5 December 1994 was cancelled because, as he claimed, the presiding Judge was out of the country.[39]

WHEREFORE, the instant petition is GRANTED, and the decision of the Court of Appeals of 1 February 1995 in CA-G.R. SP No. 36273 is hereby SET ASIDE and ANNULLED.

No pronouncement as to costs.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] 39 C.J.S. Habeas Corpus § 2, 460.

[2] Villavicencio vs. Lukban, 39 Phil. 778, 788 [1919].

[3] 39 Am Jur 2d, Habeas Corpus, § 1, 179.

[4] Section 15, Article III.

[5] Annex "A" of Petition; Rollo, 31-36. Per Elbinias, J., J., with the concurrence of Tayao-Jaguros, L. and De la Rama, J., JJ.

[6] Annex "B" of Petition; Rollo, 37-39.

[7] Joint Affidavit of Arresting Officers, Annex "D," Id.; Id., 41.

[8] Annex "E" of Petition; Rollo, 42-43.

[9] Annex "A" of Reply; Id., 173-175.

[10] Annex "4" of private respondent's Memorandum; Id., 257-261.

[11] Petition, 8; Id., 8.

[12] Annex "F" of Petition; Rollo, 43.

[13] Annex "G," Id.; Id., 44-47.

[14] Challenged decision of the Court of Appeals, 3-4; Id., 34-35.

[15] It appears that a copy of the resolution was transmitted to the Associate Solicitor, to whom the case was assigned only at about 10:00 a.m. of 31 January 1995 (paragraph 11, Petition).

[16] Challenged decision of the Court of Appeals, 4; Rollo, 35.

[17] 193 SCRA 464 [1991].

[18] 139 SCRA 349 [1985].

[19] 227 SCRA 627 [1993].

[20] 39 Am Jur 2d, Habeas Corpus, § 117, 263.

[21] 39 C.J.S. Habeas Corpus § 13, 486-488.

[22] 39 Am Jur 2d, Habeas Corpus, § 3, 181.

[23] 80 Phil. 859, 871 [1948].

[24] 77 Phil. 1050, 1051-1052 [1947].

[25] 162 SCRA 840, 847-848 [1988].

[26] 62 SCRA 543, 545-546 [1975].

[27] 187 SCRA 311 [1990].

[28] At 332.

[29] 41 SCRA 235, 240 [1971].

[30] 4 Phil. 134, 137-138 [1905].

[31] 18 Phil. 122, 147 [1910]. See also Doce vs. Court of First Instance of Quezon, 22 SCRA 1028, 1031 [1968]; Zacarias vs. Cruz, 30 SCRA 728, 730 [1969]; Bermejo vs. Barrios, 31 SCRA 764, 777 [1970]; Callanta vs. Villanueva, 77 SCRA 377, 379 [1977]; Bagcal vs. Villaraza, 120 SCRA 525, 527 [1983].

[32] Supra note 18.

[33] 232 SCRA 249 [1994].

[34] 67 Phil. 658, 661 [1939].

[35] 89 SCRA 717, 723 [1979].

[36] Payao vs. Lesaca, 63 Phil. 210 [1936]; Peralta vs. Ramos, 71 Phil. 271 [1941]; Tahil vs. Eisma, 64 SCRA 378 [1975].

[37] People vs. San Diego, 26 SCRA 522, 524 [1969]; Carpio vs. Maglalang, 196 SCRA 41, 50-51 [1991]; Borinaga vs. Tamin, 226 SCRA 206, 216-217 [1993].

[38] Borinaga vs. Tamin, supra note 37.

[39] Paragraph 3.08, Petition in CA-G.R. SP No. 36273; Rollo, 270.

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