

**SPO1 PORFERIO SUMBANG, JR., PETITIONER, VS. GEN. COURT
MARTIAL PRO-REGION 6, ILOILO CITY, POLICE NATIONAL
COMMISSION, PEOPLE OF THE PHILIPPINES AND EUSTAQUIO BEDIA,
RESPONDENTS.**

G.R. No. 140188. August 03, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

In this petition for certiorari, prohibition, injunction with prayer for issuance of a temporary restraining order/writ of preliminary injunction, petitioner assails the resolution of the respondent general court-martial denying petitioner's motion to dismiss dictated in open session on September 29, 1999.[1]

Petitioner, then a constable 2nd class (C2C) in the Philippine Constabulary (PC), and his brother Vicente Sumbang, a civilian, were accused with the killing of Joemarie Bedia and Joey Panes committed on May 29, 1988 in Bo. Obrero, Lapuz, La Paz, Iloilo City. The case against petitioner, being a member of the Philippine Constabulary, was referred to the PC Constabulary Judge Advocate (CJA) while the case against Vicente was tried in the Regional Trial Court of Iloilo City.

On March 15, 1989, Captain Domingo J. Laurea, Jr., who was tasked to conduct the pre-trial investigation of the petitioner's double murder case, submitted its report to the Chief of Constabulary thru the CJA with the recommendation that the charge for violation of Articles of War 94 (double murder) against petitioner be dismissed for lack of sufficient evidence.[2] However, Captain Laurea's recommendation was not approved and petitioner was subsequently charged with double murder under Article 94 of the Articles of War before the general court-martial of the PC Regional Command (RECOM) 6.

Upon his arraignment on November 20, 1989, petitioner entered a plea of "not guilty". The prosecution started presenting its witnesses on January 21, 22, and 23, 1991. Petitioner filed a Motion to Dismiss or Demurrer to Evidence on February 27, 1991. On the other hand, Vicente Sumbang was convicted of Homicide by the Regional Trial Court of Iloilo City on March 27, 1991.

On January 14, 1992, Republic Act No. 6975 otherwise known as the "Philippine National Police (PNP) Law" took effect. The PNP law provides among others for the integration of the Philippine Constabulary-Integrated National Police (PC-INP) into the PNP including its functions, officers and other enlisted personnel[3] and also provides for the continuation of court-martial proceedings against PC-INP criminal offenders already arraigned prior to its effectivity.[4] The composition of the general court-martial RECOM 6 was also subjected to changes and petitioner's criminal case remained pending and unresolved.

On February 17, 1999 and August 4, 1999, respectively, Letter Order Nos. 80 and 436 of the National Headquarters, Philippine National Police (NHQ-PNP) were issued by the PNP Director General constituting general court-martial PRO 6, Iloilo City which took over petitioner's criminal case. The respondent general

court-martial then scheduled the dates for the continuation of the hearing of petitioner's case.

On September 29, 1999 hearing, petitioner moved for the dismissal of the case alleging among others that there was inordinate delay in the trial of his case which is in violation of his constitutional right to a speedy trial and disposition of his case and that petitioner's case should be dismissed as it was already barred under Article 38 of the Articles of War. The respondent general court-martial in open session of the same date denied the motion.

On October 15, 1999, petitioner filed the instant petition for certiorari, prohibition with prayer for the issuance of temporary restraining order invoking the following grounds in support of his petition:

I. That there is inordinate delay in the trial of the case in violation of the Constitution of the Philippines on speedy disposition of the case.

II. The General Court-Martial loses its jurisdiction when it failed to terminate the case within a period of three (3) years after it assumed jurisdiction.

III. On the motion to dismiss or demurrer to evidence.

IV. The petitioner is entitled to the issuance of a restraining order and later on by injunction and the dismissal of the case.

On November 8, 1999, this Court issued a Temporary Restraining Order (TRO) enjoining respondent general court-martial from proceeding with the trial of petitioner's criminal case until further orders from this Court.[5]

Petitioner invokes his constitutional right to a speedy trial and contends that the delay of almost eight to nine years in the trial of his case was not attributable to him; thus he is entitled to the dismissal of his murder case.

We are not persuaded.

The determination of whether an accused has been denied the right to a speedy trial must have to depend on the surrounding circumstances of each case. There can be no hard and fast rule measured mathematically in terms of years, months or days.[6] As held in a case:[7]

"It must be here emphasized that the right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of delay, reason for the delay, defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered."

Although it is unfortunate that it took about eight years from 1991 before the trial of this case was resumed, in 1999, we do not find such delay as amounting to a violation of petitioner's right to speedy trial considering that such delay could not be attributable to the prosecution. The cases cited by petitioner upholding the right of the accused to a speedy trial are not in point since the delay therein complained of was due to the vacillation and procrastination of the prosecuting officers and their lack of conscientiousness in the discharge of their duties, which circumstances do not obtain in the case at bar. The prosecution in the instant case had already presented its four witnesses, all of whom, except for the fourth witness, were cross-examined by petitioner's counsel on January 21, 22, and 23, 1991, respectively.

Petitioner in his reply explicitly stated that the delay in the termination of the case was due to the changes in the composition of the respondent general court-martial, thus:[8]

“Under the present circumstances the delay for almost eight (8) to nine (9) years was due to several changes of the membership of the General Court-Martial. Some if them did not even hear the evidence, testimonial or physical, specially the present membership of the General Court Martial.”

It appears that from 1991 up to the present, the membership of the general court-martial had undergone changes four times and none of the original members of the court-martial which heard the prosecution witnesses were re-appointed in the succeeding courts-martial, thus delay was inevitable and was not the fault of the prosecution. Notably, from the time petitioner's motion to dismiss or demurrer to evidence was filed in 1991, he did not take action to assert his right to a speedy trial or manifest his objection to the delay in the trial of his criminal case. Petitioner appears to have been insensitive to the implications and contingencies thereof by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection hence impliedly with his acquiescence.[9] In fact it was only after the respondent court-martial resumed the hearing of his case in 1999 that petitioner filed his motion to dismiss dated September 23, 1999 and invoked his constitutional right to speedy trial. We agree with the Solicitor General's observation in this wise:[10]

“It bears stressing that petitioner raised the violation of his speedy trial right only when respondent General Court-Martial heard the case anew. It is thus fair to assume that he would have just continued to sleep on his right had respondents not taken the initiative to proceed with his case. It would have been different if petitioner asserted his right to have his motion to dismiss resolved prior to the enactment of RA 6975 from 1991 to 1992 and thereafter from 1992 to 1999. As it is, his silence should be interpreted as a waiver of such right. (Guerrero vs. Court of Appeals, 257 SCRA 703, 716 [1996]).”

The right to a speedy trial as any other right conferred by the Constitution or statute, except when otherwise expressly so provided by law, may be waived.[11] It must therefore be asserted.[12] Thus, if there was a delay in the trial of the case, petitioner is not entirely without blame.

The right of an accused to a speedy trial is guaranteed to him by the Constitution but the same shall not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals.[13] While accused persons do have rights, many of them choose to forget that the aggrieved also have the same rights. It secures rights to a defendant but it does not preclude the rights of public justice.[14] As held in the case of Guerrero vs. CA:[15]

“While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice. In the instant case, three people died as result of the crash of the airplane that the accused was flying. It appears to us that the delay in the disposition of the case prejudiced not just the accused but the people as well. Since the accused has completely failed to assert his right seasonably and inasmuch as the respondent judge was not in a position to dispose of the case on the merits due to the absence of factual basis, we hold it proper and equitable to give the parties fair opportunity to obtain (and the court to dispense) substantial justice in the premises.”

In the instant case, two teenagers, namely Joemarie Bedia and Joey Panes, were killed allegedly by petitioner. We find that petitioner failed to seasonably assert his right and since the membership of the court-martial had undergone changes which could not be attributable to the machination and control of the respondent, we hold that substantial justice will be best served if the trial of this case will be allowed to continue until its resolution.

Petitioner next claims that the alleged crime he committed has already prescribed. He contends that since his arraignment in 1989, his case has not yet been disposed within the three (3) year period provided in Article 38 [16] of the Articles of War in relation to Art. 94[17], thus the general court-martial had already lost jurisdiction to

hear his case.

We find the argument untenable. The periods provided in Article 38 of the Articles of War do not refer to the time within which the court-martial is expected to resolve the case but rather to the time from the commission of the offense to the arraignment of the accused. The case of *Domingo vs. Minister of National Defense*,^[18] is instructive on this point:

“He points out the fact that he was arrested on August 7, 1979 and has been detained since then. He maintains that from August 7, 1979 up to August 30, 1982, the date of his Compliance filed in the General Court-Martial in connection with his Motion To Quash, more than three years have already elapsed. He argues that under the above-quoted provision of the Articles of War, the "trial and punishment" of the crimes imputed to him, which are for desertion in time of peace and violations of Articles 94 and 95 of the Articles of War, must be completed within the three years from the commission of the offense; and That said period of three years had already been surpassed in all the three charges against him. xxx xxx xxx.

The respondents disagree with the petitioner's interpretation of Article 38 of the Articles of War. They contend that the period of prescription of a military offense commences from the commission of the offense and is interrupted upon the receipt of the sworn charges by the accused. xxx xxx xxx.

Neither the interpretation advocated by the petitioner nor that upheld by the respondents meets with our acquiescence. Article 38 of the Articles of War is quite explicit in prescribing the period of limitation for the prosecution of military offenses. There is no question that the period of prescription of the three charges against the petitioner is three years, all of the said charges being covered by the proviso in Article 38, they being for desertion in time of peace or for violation of Articles 94 and 95 of the Articles of War. This period of three years is to be reckoned from the date that the crime or offense had been committed up to the arraignment of the accused. Stated differently, the offenses filed against the petitioner may no longer be tried by the General Court-Martial if a period of three years had lapsed from the time the offenses had been committed up to the time he was arraigned on the same.

The view expressed by the respondents that the three-year period should be counted from the time of receipt of the sworn charges is apparently induced by a belief that the rule applied in the United States should be followed inasmuch as our Articles of War is of American origin. The adherence to the American rule is erroneous inasmuch as the provision in the U.S. Articles of War expressly prescribes that the three-year, prescriptive period should be counted from receipt of sworn charges and specifications.

“Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under sections 919-932 of this title (articles 119-132) is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary martial jurisdiction over the command.” (Art. 43, Code of Military Justice, 10 USCA, Sec. 843 (b)).

As may be noted, Article 38 of our Articles of War provides differently. The period of prescription therein decreed is the time that supervenes from the commission of the offense up to the time of arraignment. Contrary to the petitioner's submittal, the period is not interrupted by the commencement of trial, but by the arraignment of the accused.”

The killing of Joey Panes and Joemarie Bedia happened on May 29, 1988 and petitioner was arraigned on November 20, 1989, thus, petitioner was arraigned within the three (3) year prescriptive period provided in Article 38 of the Articles of War.

Petitioner next contends that there was no iota of evidence presented by the prosecution that would establish his guilt in the killing of Joey Panes considering that there was no allegation in the criminal complaint filed against

his brother Vicente Sumbang who was subsequently convicted that petitioner conspired with Vicente in killing Joey Panes.

Such argument deserves scant consideration. The sole office of the writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction[19] which does not include the review of facts and evidence.[20] Moreover, the proceeding before the respondent court-martial is independent of, and not controlled by, that in the homicide case decided by the Regional Trial Court.

WHEREFORE, the petition is DENIED. The temporary restraining order is LIFTED and the respondent General Court-Martial is hereby ordered to proceed with judicious dispatch in the hearing of the case up to its conclusion.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Rollo, p. 35-43.

[2] Rollo, pp. 21-31.

[3] Section 23. Composition - Subject to the limitations provided for in this Act, the Philippine National Police, hereinafter referred to as the PNP, is hereby established, initially consisting of the members of the police forces who were integrated into the Integrated National Police (INP) pursuant to Presidential Decree No. 765, and the officers and enlisted personnel of the Philippine Constabulary (PC). For purposes of this Act, the officers and enlisted personnel of the PC shall include those assigned with the Narcotics Command (NARCOM) or the Criminal Investigation Service (CIS); and those of the technical services of the AFP assigned with the PC and the civilian operatives of the CIS. The regular operatives of the abolished NAPOLCOM Inspection, Investigation and Intelligence Branch may also be absorbed by the PNP. In addition, a PC officer or enlisted personnel may transfer to any of the branches or services of the Armed Forces of the Philippines in accordance with the provisions of Section 85 of this Act. xxx xxx xxx.

[4] SEC. 46. Jurisdiction in Criminal Cases. – Any provision of law to the contrary notwithstanding, criminal cases involving PNP members shall be within the exclusive jurisdiction of the regular courts: Provided, That the courts-martial appointed pursuant to Presidential Decree No. 1850 shall continue to try PC-INP members who have already been arraigned, to include appropriate actions thereon by the reviewing authorities pursuant to Commonwealth Act No. 408, otherwise known as the Manual for Courts-Martial: provided, further, That criminal cases against PC-INP members who may have not yet been arraigned upon the effectivity of this Act shall be transferred to the proper city or provincial prosecutor or municipal trial court judge.

[5] Rollo, pp. 58-59.

[6] Domingo vs. Minister of National Defense, 124 SCRA 529.

[7] Dela Rosa vs. CA, 253 SCRA 499, 504-505 citing Gonzales vs. Sandiganbayan 199 SCRA 298.

[8] Rollo, p. 110.

[9] Alvizo vs. Sandiganbayn, 220 SCRA 55, 64.

[10] Rollo, p. 99; OSG's Comment, p. 10.

[11] *Nepomuceno vs. Secretary of National Defense*, 108 SCRA 658.

[12] *Ibid.*

[13] *Bermisa vs. CA*, 92 SCRA 136 citing 14 Am. Jur. 859.

[14] *Bermisa vs. CA*, *supra*, citing *Mercado vs. CFI, et al.*, 66 Phil 215; *Gunabe, et. al. vs. Director of Prisons*, 77 Phil 993.

[15] 257 SCRA 703.

[16] 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 or offense committed more than two years before the arraignment of such person: Provided, that for desertion in time of peace or for any crime or offense punishable under articles ninety-four and ninety-five of these articles, the period of limitations upon trial and punishment by court-martial shall be three years from the time the offense was committed: Provided, further, That the period of any absence of the accused from the jurisdiction of the Philippines, and also any period during which by reason of some manifest impediment the accused shall not have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitations: And provided, also, That in any case of any offense the trial of which in time of war shall be certified by the Secretary of National Defense to be detrimental to the prosecution of the war or inimical to the nations' security, the periods of limitations herein provided for the trial of said offense shall be extended to the duration of the war and six months thereafter: Provided, finally, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law (As amended by Republic Acts 242 and 516).

[17] Art. 94. Various Crimes. – Any person subject to military law who commits any felony, crime, breach of law or violation of municipal ordinance which is recognized as an offense of a penal nature and is punishable under the penal laws of the Philippines or under municipal ordinances, (A) inside a reservation of the Armed Forces of the Philippines, or (B) outside any such reservation when the offended party (and each one of the offended parties if there be more than one) is a person subject to military law, shall be punished as a court-martial may direct; Provided, That, in time of peace, officers and enlisted men of the Philippine Constabulary shall not be triable by courts-martial for any felony, crime, breach of law or violation of municipal ordinances committed under this Article. In imposing the penalties for offenses falling within this article, the penalties for offenses provided in the penal laws of the Philippines or in such municipal ordinances shall be taken into consideration. (As amended by RA No. 242).

[18] 124 SCRA 529, 545 (1983).

[19] *Flores vs. NLRC*, 253 SCRA 494.

[20] *ComSavings Bank vs. NLRC*, 257 SCRA 307.

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