

**FE V. RAPSING, TITA C. VILLANUEVA AND ANNIE F. APAREJADO,
REPRESENTED BY EDGAR APAREJADO, PETITIONERS, VS. HON.
JUDGE MAXIMINO R. ABLES, OF RTC-BRANCH 47, MASBATE CITY;
SSGT. ED...**

G.R. No. 171855. October 15, 2012

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a Petition for Certiorari and Prohibition under Rule 65 of the Rules of Court, filed by petitioners Fe Rapsing, Tita C. Villanueva and Annie Aparejado, as represented by Edgar Aparejado, seeking to set aside the Orders dated December 6, 2005[1] and January 11, 2006,[2] respectively, of the Regional Trial Court (RTC) of Masbate City, Branch 47, in Criminal Case No. 11846.

The antecedents are as follows:

Respondents SSgt. Edison Rural, CAA Jose Matu, CAA Morie Flores, CAA Guillien Topas, CAA Dandy Flores, CAA Leonardo Calimutan and CAA Rene Rom are members of the Alpha Company, 22[nd] Infantry Battalion, 9[th] Division of the Philippine Army based at Cabangcalan Detachment, Aroroy, Masbate.

Petitioners, on the other hand, are the widows of Teogenes Rapsing, Teofilo Villanueva and Edwin Aparejado, who were allegedly killed in cold blood by the respondents.

Respondents alleged that on May 3, 2004, around 1 o'clock in the afternoon, they received information about the presence of armed elements reputed to be New People's Army (NPA) partisans in Sitio Gaway-gaway, Barangay Lagta, Baleno, Masbate. Acting on the information, they coordinated with the Philippine National Police and proceeded to the place. Thereat, they encountered armed elements which resulted in an intense firefight. When the battle ceased, seven (7) persons, namely: Teogenes Rapsing y Manlapaz, Teofilo Villanueva y Prisado, Marianito Villanueva y Oliva, Edwin Aparejado y Valdemoro, Isidro Espino y Arevalo, Roque Tome y Morgado and Norberto Aranilla y Cordova were found sprawled on the ground lifeless. The post-incident report of the Philippine Army states that a legitimate military operation was conducted and in the course of which, the victims, armed with high-powered firearms, engaged in a shoot-out with the military.

On the other hand, petitioners complained that there was no encounter that ensued and that the victims were summarily executed in cold blood by respondents. Hence, they requested the National Bureau of Investigation (NBI) to investigate the case. After investigation, the NBI recommended to the Provincial Prosecutor of Masbate City that a preliminary investigation be conducted against respondents for the crime of multiple murder. In reaching its recommendation, the NBI relied on the statements of witnesses who claim that the military massacred helpless and unarmed civilians.

On February 9, 2005, the provincial prosecutor issued a Resolution[3] recommending the filing of an Information for Multiple Murder. Consequently, respondents were charged with multiple murder in an Information[4] dated

February 15, 2005, which reads:

The undersigned 2[nd] Assistant Provincial Prosecutor accuses SSGT Edison Rural, CAA Jose Matu. CAA Morie Flores, CAA Guillen Topas, CAA Dandy Flores, CAA Leonardo Calimutan and CAA Rene Rom, stationed at Alpha Company, 22[nd] Infantry Battalion, 9[th] Division, Philippine Army, Cabangcalan Detachment, Aroroy, Masbate, committed as follows:

That on May 9, 2004, at around 1:00 o'clock in the afternoon thereof, at Barangay Lagta, Municipality of Baleno, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with one another, taking advantage of their superior strength as elements of the Philippine Army, armed with their government issued firearms, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot Teogenes Rapsing y Manlapaz, Teofilo Villanueva y Prisado, Marianito Villanueva y Oliva, Edwin Aparejado y Valdemoro, Isidro Espino y Arevalo, Roque Tome y Morgado and Norberto Aranilla y Cordova, hitting them on different parts of their bodies, thereby inflicting upon them multiple gunshot wounds which caused their deaths.

CONTRARY TO LAW.

Masbate City, February 15, 2005.

On July 28, 2005, a warrant[5] for the arrest of respondents was issued by the RTC of Masbate City, Branch 47, but before respondents could be arrested, the Judge Advocate General's Office (JAGO) of the Armed Forces of the Philippines (AFP) filed an Omnibus Motion[6] dated July 20, 2005, with the trial court seeking the cases against respondents be transferred to the jurisdiction of the military tribunal.[7] Initially, the trial court denied the motion filed by the JAGO on the ground that respondents have not been arrested. The JAGO filed a Motion for Reconsideration,[8] and in an Order[9] dated December 6, 2005, the trial court granted the Omnibus Motion and the entire records of the case were turned over to the Commanding General of the 9th Infantry Division, Philippine Army, for appropriate action.

Petitioners sought reconsideration[10] of the Order, but was denied by the trial court in an Order[11] dated January 11, 2006.

Hence, the present petition with the following arguments:

I

HON. JUDGE MAXIMINO ABLES GRAVELY ABUSED HIS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION IN GRANTING THE MOTION TO TRANSFER THE INSTANT CRIMINAL CASE OF MULTIPLE MURDER TO THE JURISDICTION OF THE MILITARY COURT MARTIAL, AS THE SAID TRIBUNAL, BASED ON FACTS AND IN LAW, HAS NO JURISDICTION OVER THE INSTANT MURDER CASE.

II

IT IS GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS IN JURISDICTION IF NOT GROSS IGNORANCE OF THE LAW ON THE PART OF HONORABLE JUDGE MAXIMINO ABLES TO HOLD THAT HIS ORDER DATED DECEMBER 6, 2005 COULD ONLY BE REVIEWED THROUGH AN APPEAL, AS THERE IS NO TRIAL ON THE MERIT YET ON THE INSTANT CRIMINAL CASE.[12]

Petitioners alleged that the trial court gravely abused its discretion amounting to excess of jurisdiction when it transferred the criminal case filed against the respondents to the jurisdiction of the military tribunal, as jurisdiction over the same is conferred upon the civil courts by Republic Act No. 7055 (RA 7055).[13] On the other hand, the respondents and the Office of the Solicitor General (OSG) alleged that the acts complained of are service

connected and falls within the jurisdiction of the military court.

The petition is meritorious. The trial court gravely abused its discretion in not taking cognizance of the case, which actually falls within its jurisdiction.

It is an elementary rule of procedural law that jurisdiction over the subject matter of the case is conferred by law and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to recover upon all or some of the claims asserted therein.[14] As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for otherwise, the question of jurisdiction would almost entirely depend upon the defendant. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments in the complaint and the character of the relief sought are the matters to be consulted.[15]

In the case at bar, the information states that respondents, “conspiring together and mutually helping with one another, taking advantage of their superior strength, as elements of the Philippine Army, armed with their government-issued firearms with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot the [victims], hitting them on different parts of their bodies, thereby inflicting upon them multiple gunshot wounds which caused their deaths.”[16] Murder is a crime punishable under Article 248 of the Revised Penal Code (RPC), as amended, and is within the jurisdiction of the RTC.[17] Hence, irrespective of whether the killing was actually justified or not, jurisdiction to try the crime charged against the respondents has been vested upon the RTC by law.

Respondents, however, contend that the military tribunal has jurisdiction over the case at bar because the crime charged was a service-connected offense allegedly committed by members of the AFP. To support their position, respondents cite the senate deliberations on R.A. 7055. Respondents stress in particular the proposal made by Senator Leticia Ramos Shahani to define a service-connected offense as those committed by military personnel pursuant to the lawful order of their superior officer or within the context of a valid military exercise or mission.[18] Respondents maintain that the foregoing definition is deemed part of the statute.

However, a careful reading of R.A. 7055 indicate that the proposed definition was not included as part of the statute. The proposed definition made by Senator Shahani was not adopted due to the amendment made by Senator Wigberto E. Tañada, to wit:

Senator Tañada. Yes, Mr. President. I would just want to propose to the Sponsor of this amendment to consider, perhaps, defining what this service-related offenses would be under the Articles of War. And so, I would submit for her consideration the following amendment to her amendment which would read as follows: AS USED IN THIS SECTION, SERVICE-CONNECTED CRIMES OR OFFENSES SHALL BE LIMITED TO THOSE DEFINED IN ARTICLES 54 TO 70, ARTICLES 72 TO 75, ARTICLES 76 TO 83 AND ARTICLES 84 TO 92, AND ARTICLES 95 TO 97, COMMONWEALTH ACT NO. 408 AS AMENDED.

This would identify, I mean, specifically, what these service-related or connected offenses or crimes would be. (Emphasis supplied.)

The President. What will happen to the definition of “service-connected offense” already put forward by Senator Shahani?

Senator Tañada. I believe that would be incorporated in the specification of the Article I have mentioned in the Articles of War.

SUSPENSION OF THE SESSION

The President. Will the Gentleman kindly try to work it out between the two of you? I will suspend the session for a minute, if there is no objection. [There was none.]

It was 5:02 p.m.

RESUMPTION OF THE SESSION

At 5:06 p.m., the session was resumed.

The President. The session is resumed.

Senator Tañada. Mr. President, Senator Shahani has graciously accepted my amendment to her amendment, subject to refinement and style.

The President. Is there any objection? [Silence] There being none, the amendment is approved.[19]

In the same session, Senator Tañada emphasized:

Senator Tañada. Section 1, already provides that crimes of offenses committed by persons subject to military law ... will be tried by the civil courts, except, those which are service-related or connected. And we specified which would be considered service-related or connected under the Articles of War, Commonwealth Act No. 408.[20] (Emphasis supplied.)

The said amendment was later on reflected in the final version of the statute as Paragraph 2 of Section 1. Section 1 of R.A. 7055 reads in full:

Section 1. Members of the Armed Forces of the Philippines and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances, regardless of whether or not civilians are co-accused, victims, or offended parties which may be natural or juridical persons, shall be tried by the proper civil court, except when the offense, as determined before arraignment by the civil court, is service-connected, in which case the offense shall be tried by court-martial: Provided, That the President of the Philippines may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.

As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended. (Emphasis supplied)

The second paragraph of Section 1 of R.A. 7055 explicitly specifies what are considered “service-connected crimes or offenses” under Commonwealth Act No. 408 (CA 408), as amended,[21] to wit:

Articles 54 to 70:

Art. 54. Fraudulent Enlistment.

Art. 55. Officer Making Unlawful Enlistment.

Art. 56. False Muster.

Art. 57. False Returns.

Art. 58. Certain Acts to Constitute Desertion.

Art. 59. Desertion.

Art. 60. Advising or Aiding Another to Desert.

Art. 61. Entertaining a Deserter.

Art. 62. Absence Without Leave.

Art. 63. Disrespect Toward the President, Vice-President, Congress of the Philippines, or Secretary of National Defense.

Art. 64. Disrespect Toward Superior Officer.

Art. 65. Assaulting or Willfully Disobeying Superior Officer.

Art. 66. Insubordinate Conduct Toward Non-Commissioned Officer.

Art. 67. Mutiny or Sedition.

Art. 68. Failure to Suppress Mutiny or Sedition.

Art. 69. Quarrels; Frays; Disorders.

Art. 70. Arrest or Confinement.

Articles 72 to 92

Art. 72. Refusal to Receive and Keep Prisoners.

Art. 73. Report of Prisoners Received.

Art. 74. Releasing Prisoner Without Authority.

Art. 75. Delivery of Offenders to Civil Authorities.

Art. 76. Misbehavior Before the Enemy.

Art. 77. Subordinates Compelling Commander to Surrender.

Art. 78. Improper Use of Countersign.

Art. 79. Forcing a Safeguard.

Art. 80. Captured Property to be Secured for Public Service.

Art. 81. Dealing in Captured or Abandoned Property.

Art. 82. Relieving, Corresponding With, or Aiding the Enemy.

Art. 83. Spies.

Art. 84. Military Property. – Willful or Negligent Loss, Damage or Wrongful Disposition.

Art. 85. Waste or Unlawful Disposition of Military Property Issued to Soldiers.

Art. 86. Drunk on Duty.

Art. 87. Misbehavior of Sentinel.

Art. 88. Personal Interest in Sale of Provisions.

Art. 88-A. Unlawfully Influencing Action of Court.

Art. 89. Intimidation of Persons Bringing Provisions.

Art. 90. Good Order to be Maintained and Wrongs Redressed.

Art. 91. Provoking Speeches or Gestures.

Art. 92. Dueling.

Articles 95 to 97:

Art. 95. Frauds Against the Government.

Art. 96. Conduct Unbecoming an Officer and Gentleman.

Art. 97 General Article.

In view of the provisions of R.A. 7055, the military tribunals cannot exercise jurisdiction over respondents' case since the offense for which they were charged is not included in the enumeration of "service-connected offenses or crimes" as provided for under Section 1 thereof. The said law is very clear that the jurisdiction to try members of the AFP who commit crimes or offenses covered by the RPC, and which are not service-connected, lies with the civil courts. Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed. There is no room for interpretation, but only application.[22] Hence, the RTC cannot divest itself of its jurisdiction over the alleged crime of multiple murder.

WHEREFORE, the assailed Orders of the Regional Trial Court of Masbate City, Branch 47, dated December 6, 2005 and January 11, 2006, respectively, in Criminal Case No. 11846 are REVERSED and SET ASIDE. The Regional Trial Court, Branch 47, Masbate City, is DIRECTED to reinstate Criminal Case No. 11846 to its docket and conduct further proceedings thereon with utmost dispatch in light of the foregoing disquisition.

SO ORDERED.

Velasco, Jr., (Chairperson), Leonardo-De Castro,[*] Abad, and Mendoza, JJ., concur.

[*] Designated Acting Member, per Special Order No. 1343 dated October 9, 2012.

[1] Rollo, pp. 81-82.

[2] Id. at 91.

[3] Id. at 39-41.

[4] Id. at 42.

[5] Id. at 43.

[6] Id. at 45-56.

[7] Id.

[8] Id. at 64-70.

[9] Id. at 81-82.

[10] Id. at 83-87.

[11] Id. at 91.

[12] Id. at 12.

[13] An Act to Strengthen Civilian Supremacy Over the Military by Returning to the Civil Courts the Jurisdiction Over Certain Offense Involving Members of the Armed Forces of the Philippines, Other Persons Subject to Military Law, and the Members of the Philippine National Police, Repealing for the Purpose Certain Presidential Decrees.

[14] Reyes v. Regional Trial Court of Makati, Branch 142, G.R. No. 165744, August 11, 2008, 561 SCRA 593, 604.

[15] Cadimas v. Carrion, G.R. No. 180394, September 29, 2008, 567 SCRA 101, 116.

[16] Rollo, p. 42.

[17] Batas Pambansa Blg. 129, as amended. Section 20. Jurisdiction in criminal cases. – Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.

[18] Senator Shahani. I would like to propose an addition to Section 1, but this will have to be on page 2. This will be in line 5, which should be another paragraph, but still within Section 1. This is to propose a definition of what “service-connected” means, because this appears on line 8. My proposal is the following:

“SERVICE-CONNECTED OFFENSES SHALL MEAN THOSE COMMITTED BY MILITARY PERSONNEL PURSUANT TO THE LAWFUL ORDER OF THEIR SUPERIOR OFFICER OR WITHIN THE CONTEXT OF A VALID MILITARY EXERCISE OR MISSION.”

I believe this amendment seeks to avoid any confusion as to what “service-connected offense” means. Please note that “service-connected offense,” under this bill, remains within the jurisdiction of military tribunals.

So, I think that is an important distinction, Mr. President. (Record of the Senate, Vol. IV, No. 122, May 21, 1990, p. 837, cited in *Navales v. Abaya*, G.R. Nos. 162318 and 162341, October 25, 2004, 441 SCRA 393, 415; 484 Phil. 367, 389-390 (2004).

[19] Record of the Senate, Vol. IV, No. 122, May 21, 1990, p. 837, cited in *Navales v. Abaya*, G.R. Nos. 162318 and 162341, October 25, 2004, 441 SCRA 393, 415-416; 484 Phil. 367, 390 (2007).

[20] Record of the Senate, Vol. IV, No. 122, May 21, 1990, p. 839, cited in *Navales v. Abaya*, G.R. Nos. 162318 and 162341, October 25, 2004, 441 SCRA 393, 416; 484 Phil. 367, 391 (2004).

[21] Articles of War.

[22] *Manlangit v. Sandiganbayan*, G.R. No. 158014, August 28, 2007, 531 SCRA 420, 428.

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