

RODOLFO ANIMAS ALIAS “TINGTONG”; ZACARIAS SEMINIO, JR. ALIAS “CAROL”; RODOLFO SEMINIO, CARLITO FERNANDEZ, GOLEM JACILDO, RICARDO JAVIER ALIAS “KAPID”; CARLOS JAVIER, GENEROSO DE ...

G.R. No. 51747. December 29, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition challenges the jurisdiction of a military tribunal to try twelve accused persons, only one of whom is in the military, for an offense devoid of any national security or political complexion and committed long before the proclamation of martial law.

Diosdado Yanson was a political leader of Ernesto Montilla, candidate for Mayor of Pulupandan, Negros Occidental in the November 11, 1971 local elections. The petitioners were charged with murder in connection with the alleged killing of Yanson on the eve of the November 11 elections.

The accused were arrested almost a year later, on September 21, 1972 after martial law was proclaimed. It was only in 1974 that a "summary preliminary investigation" was conducted by a PC captain belonging to the Judge Advocate General Service. The report of the Negros Occidental PC Command states that Zacarias Semino, Jr., a candidate for Vice-Mayor, gave fist blows and kicked Yanson, then ordered Carlos Javier to get a piece of water pipe to beat up the victim, while pointing his pistol and watching the latter being mauled. Yanson was allegedly brought in a car to Malicon Beach, shot, tied with rope attached to an engine block and dumped at sea. Originally, 18 men were to be charged with murder, qualified by superior strength, night time, use of motor vehicle, and treachery. The list of 18 accused was later trimmed to 14.

The petitioners were recommended for prosecution before the Military Tribunal, considering that one of them, petitioner Sgt. Rodolfo Animas is a military personnel. Thereafter, the Judge Advocate General filed the corresponding charge sheet, but he modified the crime charged from "Murder" to "Violation of Section 878 of the Revised Administrative Code" in Relation to Section 2692 of the same Code and Presidential Decree No. 9, "Illegal Possession of Firearms with Murder".

On February 16, 1978, the Minister of National Defense referred the case to the Military Tribunal's Branch of the Judge Advocate General's Office (JAGO) which in turn as-signed the same to respondent Military Commission No. 27. Sometime in 1977, the petitioners were released even as the Provincial Fiscal commenced to investigate the murder charge. However, a warrant of arrest was issued on June 8, 1978, resulting in the re-arrest of 14 accused including the petitioners.

On November 25, 1978, with two of the accused agreeing to become witnesses for the State, twelve accused including the petitioners were arraigned. They pleaded not guilty to the crime charged. However, when the case was called for trial on June 25, 1979, the title of the charge sheet was amended on motion of the prosecution by

the addition of the phrase "Violation of Article 248 of the Revised Penal Code". There was, however, no amendment of the body of the charge sheet.

Before trial could proceed, the respondent Minister of National Defense ordered on June 30, 1979, the transfer of the case to the civil courts. Before the order could be implemented, it was superseded by the respondent Minister's 1st Indorsement dated August 22, 1979, directing immediate implementation of the hand-written marginal instructions dated August 14, 1979 of the President en faced on the letter of Nelly Yanson, the wife of the deceased-victim, dated July 23, 1979 which reads:

"In order to calm the fears of injustice by the aggrieved party, I order the Military Commission to retain jurisdiction of the case and not to transfer it to the civil court."

This retention prompted the filing of the instant petition. The petitioners allege that respondent Military Commission No. 27 has no jurisdiction over the instant case. They ask that we declare as null and void the 1st Indorsement dated August 22, 1979 of respondent Minister of National Defense and the corresponding order of arrest dated June 8, 1978 of respondent military commission for having been issued without or in excess of jurisdiction.

According to the petitioners, Military Commission No. 27 is without jurisdiction over the criminal case filed against them because General Order No. 59 upon which the Commission's jurisdiction is anchored refers only to illegal possession of firearms and explosives in relation to crimes committed with a political complexion. They point out that, from the charge sheet, the only crime imputed against them is murder and that the essential elements of the crime of illegal possession of firearms were not alleged. They also stress that the alleged killing of the deceased Yanson was devoid of any political complexion.

There are compelling reasons why the petition should be granted and the criminal case transferred from the military tribunal to an appropriate civil court.

On January 17, 1981, the then President issued Proclamation No. 2045 which ostensibly lifted martial law in the Philippines. Unfortunately, the more important and necessary step of dismantling the apparatus and structures of martial rule was not taken.

Thus, Proclamation No. 2045 while revoking General Order No. 8 and dissolving the military tribunals earlier established under the Order, created a lacunae or penumbral area insofar as pending military tribunal cases were concerned. The policy announced in the Proclamation was to transfer cases pending with the military tribunals to civilian courts except those which may not be transferred, because of "irreparable prejudice" to the state in view of the rules on double jeopardy or other circumstances which would render further prosecution of cases difficult if not impossible. While dissolving military tribunals, the Proclamation also mandated that their dissolution would be effective only when they finally decide pending cases which should not be transferred to civil courts.

The gray area as to which cases should be transferred and which should not was further compounded by the problem of what to do in cases where both civilians and military personnel were involved in the same offense.

P.D. No. 1822 provided that members of the armed forces charged with offenses related to the performance of their duties shall continue to be exclusively tried and punished by court martial. This decree is dated January 16, 1981 or one day before the issuance of Proclamation No. 2045. Hardly was the ink on P.D. No. 1822 dry, when an amendatory decree, P.D. No. 1822-A, also dated January 16, 1981 was issued.

The amendment added to the original decree reads:

"x x x Provided, however that in all cases or crimes wherein the respondents or accused are the members of the

Armed Forces of the Philippines in the active service together with civilians and other non-members of the Armed Forces, or in any other case in which the interest of justice requires, the President of the Philippines may waive the provisions of this Decree for the purpose of having all the respondents or defendants investigated by the Tanodbayan and tried by the Sandiganbayan."

P. D. No. 1850 enacted on October 4, 1982 made criminal trials more complicated when it provided:

SEC. 2. Segregation of Criminal Cases of Armed Forces and Integrated National Police from Civilian Co-Accused. - In cases where there are two or more accused one or some of whom is or are civilian(s), the case against the latter shall be segregated from accused Armed Forces or Integrated National Police member, and filed with the appropriate civil court for trial in accordance with existing laws; Provided, however, that should such civilian accused waive in writing civil court jurisdiction and submit himself to court-martial jurisdiction, then the whole case involving members of the Armed Forces or the Integrated National Police as well as the civilian(s) shall be referred for trial to a court-martial."

When civilian and military accused are segregated and tried for the same offense in two separate tribunals, the witnesses would be presented twice and would testify two times on exactly the same incident, with all the concomitant mischief such a procedure entails. This is not to mention the ever present possibility of the military tribunal and the civil court coming up with diametrically opposing decisions on the same facts and issues. The P. D. also mandates that any waiver is for the civilian to submit himself to the military tribunal and not for the armed forces member to opt for a civilian trial.

In spite or because of the ambiguous nature of the decrees insofar as civilian takeover of jurisdiction was concerned and notwithstanding the shilly-shallying and vacillation characteristic of its implementation, this Court relied on the enunciated policy of normalization in upholding the primacy of civil courts. This policy meant that as many cases as possible involving civilians being tried by military tribunals as could be transferred to civil courts should be turned over immediately. In case of doubt, the presumption was in favor of civil courts always trying civilian accused.

In *De Guzman v. Hon. Leopando, et al.* (G. R. No. 62798, December 22, 1983 and March 13, 1984), we cited the earlier cases of *Sardinia-Linco v. Pineda* (104 SCRA 757) and *Evangelista v. Judge Pena, et al.* (G. R. No. 62640, July 22, 1983) and went one step further:

"Major Rolando de Guzman (Inf., PA) was charged with twenty (20) other persons before the Court of First Instance of Maguindanao at Cotabato City for 'kidnapping For Ransom And Serious Illegal Detention' in an information dated October 15, 1982. On October 27, 1982 accused de Guzman filed a motion to transfer the case against him to the General Court Martial for trial pursuant to the provisions of PD 1822-A, PD 1850, and PD 1882. On November 17, 1982, the respondent court issued an order denying the motion to transfer the case to a military tribunal on the ground that PD 1850 is unconstitutional because it violates the due process and equal protection clause, the provision on social justice, the provision on speedy disposition of cases, the provision on a republican form of government, the integrity and independence of the judiciary, and civilian authority over the military. Acting on the petition for certiorari, prohibition, and mandamus filed by accused de Guzman, this Court first decided that a ruling on the constitutional points raised by the respondent court is not necessary for our decision of the petition. Considering that in *Sardinia-Linco v. Pineda* (104 SCRA 757) we did not implement the Executive's order to transfer the criminal case from the civil court to the Sandiganbayan; that in *Evangelista v. Judge Luis Peña, et al.* (G.R. No. 62640, July 22, 1983) we dismissed for lack of merit the petition of PC Metrocom Constable Gil Evangelista who prayed that his case be transferred to a military tribunal under the same PDs now invoked by accused de Guzman; that PD 1850 dated October 14, 1982 came to public notice only on March 7, 1983 when it was first published as a news item in the *Evening Post*; and that practical and procedural difficulties will result from the grant of the petitioner's motion, such as (1) If the military tribunal sits in Manila, it would be difficult for all witnesses to be transported from Cotabato City and

if the tribunal sits in Cotabato from Manila, unnecessary government expenses would be entailed; (2) The evidence in the trial of the twenty other accused may have to be retaken by the military tribunal, (3) Since conspiracy is alleged, the possibility of convicting the civilian accused and acquitting the military or vice versa in a crime where all accused confederated and conspired together is not conducive to the people's faith in justice, (4) The sensibilities of the people of Cotabato must be considered as they would view with misgivings one military accused being given special treatment different from that accorded his twenty (20) civilian co-accused, and (5) There are various other difficulties attendant to a splitting of trial courts for the sake of only one accused among many others and considering further that there is absolutely no allegation in the petition that the offense was committed during or in relation to the discharge of official duties by the petitioner, the Court Resolved to DISMISS the petition for lack of merit and to set aside the temporary restraining order issued on February 14, 1982."

In other words, it is the military accused who joins the civilian trial and not the other way around.

The situation calling for a civilian trial, especially for Sgt. Rodolfo Animas, is much clearer in the present petition.

The petitioners were investigated for "Murder". The crime was committed on November 10, 1971 long before there was any intimation that cases with absolutely no national security implications nor political complexion and, whoever the accused may be, would be taken away from the civil courts where they properly belong. The Summary Pre-evaluation Report prepared by Captain Federico G. Real, Inquest Officer, and approved by Lt. Col. Meliton D. Goyena, Provincial Commander of the Negros Occidental Constabulary Command refers to the crime of "murder" committed by the petitioners. The resolution of Captain Cesar T. Demetria of the Judge Advocate General Service on the preliminary investigation he conducted covers an investigation for "murder", and nothing else.

When the charge sheet was prepared, the offense charged was no longer murder but "Violation of Sec. 878 of the Revised Administrative Code in Relation to Sec. 2692 of the same Code and P. D. No. 9 (Illegal Possession of Firearm With Murder)". The change in the offense charged was obviously to bring it within the jurisdiction of a military court. The jurisdiction vested by Gen. Order No. 59 is over "x x x g. Violations of the Laws on firearms and explosives found in the Revised Administrative Code, as amended, and General Orders Nos. 6 and 7, as amended, in violation of Presidential Decree No. 9 including crimes committed with the use of illegally possessed firearms and explosives." However, the Charge Sheet, while alleging that the accused "did then and there wilfully, unlawfully, and feloniously keep, possess, and carry outside residence a firearm of unknown make and caliber x x x", failed to allege "the lack or absence of a license to possess the firearm." In *People v. Pajenado* (31 SCRA 812, 816), this Court ruled that "It cannot be denied that the lack or absence of a license is an essential ingredient of the offense of illegal possession of a firearm". In an exceptional situation where a criminal case ordinarily triable by civil courts is sought to be brought within the jurisdiction of a military tribunal, we have to apply the rule on sufficiency of allegations in an information or charge sheet strictly against the prosecution. Moreover, there is no allegation in the charge and the specifications of the Charge Sheet that the crime of illegal possession was committed in relation to P. D. 9. Even before the flight of former President Marcos on February 25, 1986, we were already of the opinion that there must be greater precision in the preparation of military charge sheets to enable a person deprived of the jurisdiction of civil courts and subjected to the more summary trial before a military court, only one of whose members must be a lawyer, to enjoy the protection of Section 19, Article III of the Bill of Rights, "to be informed of the nature and cause of the accusation against him."

Out of the twelve (12) accused only one, Sgt. Rodolfo Animas is a member of the armed forces. The respondents state that even if the allegations in the charge sheet are declared insufficient, the fact that one of the twelve accused is a military personnel, brings the case within the exclusive jurisdiction of the military courts We apply

the above-cited rule in *Rolando A. de Guzman v. Hon. Alejandro R. Leopando, et al.* (G.R. No. 62798, December 22, 1983 and March 13, 1984) where the lone military person-nel was ordered tried together with 19 civilians accused before a civil court. It is also clear from the records that the acts for which Sgt. Animas was charged had nothing to do with the performance of official duty.

The crime for which the petitioners were charged was committed on November 10, 1971 long before the proclamation of martial law. There was no question about the case being prosecuted by civilian fiscals and tried by civil courts at the time. Now that it is already late 1986, and martial law is a thing of the past, hopefully never more to return, there is no more reason why a murder committed in 1971 should still be retained, at this time, by a military tribunal. The reason given by the August 14, 1979 marginal notation on the letter of Mrs. Nelly M. Yanson for retention of jurisdiction by military courts, "In order to calm the fears of injustice by the aggrieved party", even assuming it to be true, can be overcome through a careful monitoring by all interested parties to insure that the trial court is indeed responsive to the demands of justice. At any rate, this Court does not doubt that in the 1970s when this case was supposed to go to trial, the judges of the Courts of First Instance would have been able to administer better justice than any military court or tribunal constituted under martial law. The expectations for independent courts fearlessly dispensing impartial and humane justice are at their highest now.

The jurisdiction given to military tribunals over common crimes and civilian accused at a time when all civil courts were fully operational and freely functioning constitutes one of the saddest chapters in the history of the Philippine judiciary.

The downgrading of judicial prestige caused by the glorification of military tribunals, the instability and insecurity felt by many members of the judiciary due to various causes both real and imagined, and the many judicial problems spawned by extended authoritarian rule which effectively eroded judicial independence and self-respect will require plenty of time and determined efforts to cure.

The immediate return to civil courts of all cases which properly belong to them is only a beginning.

WHEREFORE, the PETITION is hereby GRANTED. Criminal Case No. MC-27-68 is ordered transferred to the appropriate Regional Trial Court of Negros Occidental with the prosecution to be handled by the Provincial Fiscal. The temporary restraining order dated October 23, 1979 is made PERMANENT.

SO ORDERED.

Feria, Yap, Fernan, Narvasa, Alampay, Cruz, Paras, and Feliciano, JJ., concur.

Teehankee, C.J., with separate concurrence.

Melencio-Herrera, J., concurs in the result, the Criminal Case involved should be transferred from the Military Tribunal to a Civilian Court, with the prosecution to be handled by the Provincial Fiscal.

CONCURRING OPINION

TEEHANKEE, C.J.:

I concur fully. I only wish to add that the great significance of our judgment in this case is that we reestablish and reinstate the fundamental principle based on civilian supremacy over the military as urged in vain in my dissent in the case of *Benigno S. Aquino, Jr. vs. Military Commission No. 2, et al.*[1] that "Civilians placed on trial for offenses under general law are entitled to trial by judicial process, not by executive or military process. Judicial

power is vested by the Constitution exclusively in the Supreme Court and in such inferior courts as are duly established by law. Military commissions, or tribunals, are not courts and do not form part of the judicial system. Since we are not enemy-occupied territory nor are we under a military government and even on the premise that martial law continues in force, the military tribunals cannot try and exercise jurisdiction over civilians for civil offenses committed by them which are properly cognizable by the civil courts that have remained open and have been regularly functioning."

As stressed by the U.S. Supreme Court in the leading case of *Toth vs. Quarles*[2], "the assertion of military authority over civilians cannot rest on the President's power as Commander-in-Chief or any theory of martial law." The late Justice Hugo Black, speaking for that Court, aptly pointed out in ruling that discharged army veterans (estimated to number more than 22.5 million) could not be rendered "helpless before some latter-day revival of old military charges" and subjected to military trials for offenses committed while they were in the military service prior to their discharge, that "the presiding officer at a court martial is not a judge whose objectivity and independence are protected by tenure and undiminished salary and nurtured by the judicial tradition, but is a military law officer. Substantially different rules of evidence and procedure apply in military trials. Apart from these differences, the suggestion of the possibility of influence on the actions of the court-martial by the officer who convenes it, selects its members and the counsel on both sides, and who usually has direct command authority over its members is a pervasive one in military law, despite strenuous efforts to eliminate the danger." He added that "(A) Court-Martial is not yet an independent instrument of justice but remains to a significant degree a specialized part of the over-all mechanism by which military discipline is preserved," and that ex-service-men should be given "the benefits of a civilian court trial when they are actually civilians x x x. Free countries of the world have tried to restrict military tribunals to the narrowest jurisdiction deemed absolutely essential to maintaining discipline among troops in active service."

The terrible consequences of subjecting civilians to trial by military process is best exemplified in the sham military trial of the martyred former Senator Benigno S. Aquino, Jr., whereby he was deprived (1) by the summary ex parte investigation by the chief prosecution staff of the JAGO, of his right to be informed of the charges against him and of his right to counsel as expressly recognized by Section 20 of the Bill of Rights of the 1973 Constitution; (2) of his vested statutory right to a preliminary investigation of the subversion charges against him before the proper court of first instance as required under Section 5 of the Anti-Subversion Act, R.A. 1700 and of the other charges against him before the proper civilian officials and to confront and cross-examine the witnesses against him under R.A. 5180; (3) of the right to be tried by judicial process, by the regular independent courts of justice, with all the specific constitutional, statutory and procedural safeguards embodied in the judicial process and presided over not by military officers; and (4) of the right to appeal to the regular appellate courts and to judicial review by this Court in the event of conviction and imposition of a sentence of death or life imprisonment which the charges carry and wherein a qualified majority of ten (10) votes for affirmance of the death penalty is required. In fine, he was denied due process of law as guaranteed under the Bill of Rights which further ordains that "No person shall be held to answer for a criminal offense without due process of law." Worse, his trial by a military tribunal created by the then President and composed of the said President's own military subordinates without tenure and of non-lawyers (except the law member) and of whose decision the President is the final reviewing authority as Commander-in-Chief of the Armed Forces deprived him of a basic constitutional right to be heard by a fair and impartial tribunal, considering that the said President had publicly declared the evidence against petitioner "not only strong (but) overwhelming" and thereby prejudged and predetermined his guilt, and none of his military subordinates could be expected to go against their Commander-in-Chief's declaration.

Hopefully, all these aberrations now belong to the dead and nightmarish past, when time-tested doctrines, to

borrow a phrase from the then Chief Justice, "shrivelled in the effulgence of the overpowering rays of martial rule."

[1] 63 SCRA 546, 611-649 (1975).

[2] 350 U.S. 5, 14.

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