

AHMAD DOMOCAO ALONTO, PETITIONER, VS. JUAN PONCE ENRILE, MINISTER OF NATIONAL DEFENSE, CARMELO BARBERO, CHIEF, OFFICE OF DETAINEE AFFAIRS (ODA), AND CAMP COMMANDER, CAMP BAGONG ...*G.R. No. 54095. July 25, 1980*

Ponente: FERNANDO, C.J.

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It is a noteworthy feature of this application for a writ of habeas corpus that when, presumably, the attention of the President of the Philippines was invited to a possible unfairness being committed that may give rise to a question of denial of equal protection where all other individuals arrested on the same occasion had been freed, he acted expeditiously. The temporary release was ordered, hence imparting a moot and academic aspect to the matter.

It was alleged in the petition that Ahmad Alonto, Jr. was, on November 30, 1979, one of those along with 179 other Muslim youths assembled in front of the Quirino Grandstand in Luneta, Rizal Park, Manila, for the purpose of discussing matters of common interest to all followers of Islam, more specifically, as they may be affected by government policies.[1] It was then set forth that military personnel carrying out the instructions of respondent Minister of National Defense, placed them under arrest and brought them for confinement in the detention premises of Camp Bagong Diwa, Bicutan, Taguig, Rizal.[2] It was then mentioned that Alonto, Jr., a grantee of a fellowship to pursue post-graduate studies as a candidate for the degree of Doctor of Philosophy in the University of the Philippines, Los Baños, majoring in Community Development,[3] was not under investigation, much less indicted for any offense. The petition was not filed until after the lapse of 203 days, but still no charges of any nature whatsoever had been filed against him.[4] Moreover, on December 15, 1979, "respondent Minister of National Defense issued an order releasing from military custody one hundred fifty-five (155) of the original group of detainees" and subsequently twenty-four (24) more, thus leaving Alonto, Jr. as the sole individual arrested on that occasion remaining in detention.[5]

The version of respondents, as could be expected, was quite different. They justified his detention for having taken part in "an illegal assembly and demonstration at the Luneta on November 30, 1979, without the necessary permit," purportedly to voice their support to the stand of the Iranians against President Jimmy Carter of the United States.[6] It was the refusal to disperse, there being no permit, that led, accordingly, to their being arrested and thus confined at Camp Bagong Diwa, Taguig, Metro Manila, "pursuant to Commitment Orders dated December 1, 1979 issued by Lt. Col. Julian A. Alzaga, PC Metrocom Staff Judge Advocate, who found, after investigation, that they committed the crime of illegal assembly * * *." [7] Thereafter, an arrest, search and seizure order against Ahmad Alonto, Jr. and the other persons detained was issued by respondent Minister of National Defense.[8] It was then set forth that "for purely humanitarian considerations, it appearing that majority of the detainees are students of various universities/colleges in Metro Manila, all the others except the leader of the demonstration, Ahmad Engracia Alonto, Jr.," were released.[9] In their prayer for dismissal of the petition for the writ, reliance was ultimately placed on the issuance of an arrest, search and seizure order, which had the effect, so

it was contended, that the persons arrested would remain in detention until otherwise ordered released by the President or the Minister of National Defense.[10]

The petition was filed on June 23, 1980. The next day was a holiday for Metro Manila. The next session en banc did take place on June 26, 1980, on which occasion this Court issued the writ, respondents being ordered to make a return on or before July 1, 1980, with the hearing set for Thursday, July 3, 1980. Accordingly, the parties were heard and the matter argued. Thereafter, the petition was submitted for decision.

Then came on July 15, 1980, this Manifestation signed by Solicitor General Estelito P. Mendoza.[11] It reads as follows: "1. Upon orders of the President, petitioner Ahmad Alonto, Jr. was temporarily released from detention at 11:00 in the morning on July 11, 1980 and entrusted to the custody of his brother, Albert Alonto; 2. With this development, the petition for habeas corpus seeking the release of petitioner from the custody of respondent has become academic." [12]

The prayer was for the petition being dismissed for being academic. There is justification for such a plea.

This is not the first occasion that a petition of this character has been rendered moot and academic after the person detained was released. *Herrera v. Enrile*[13] is the first of such decisions. Certainly, it reflects credit on the Executive that a plea for freedom is accorded the most serious consideration and that the policy pursued in case of doubt is one of according it deference. It may be understandable if under the circumstances obtaining in this case, the exercise of the right of peaceable assembly could have been susceptible to an interpretation that removed such gathering from the mantle of constitutional protection. Zeal in the performance of their function could thus explain if it did not fully justify the arrest of persons whose acts could have been equivocal in character and thus possibly violative of the Revised Penal Code provision on illegal assemblies. Considering, however, that the prosecuting arm of the government has been quite alert in the discharge of its responsibility, it is desirable that the civil process be resorted to. At any rate, it would not be redundant to reiterate that the response of the President, once his attention was called, is indeed gratifying. Thus the writ of habeas corpus has once again proven its worth.[14]

WHEREFORE, the petition is dismissed for being moot and academic.

Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., files a separate opinion.

Guerrero, J., on official leave.

[1] Petition, par. 5.

[2] *Ibid.*, par. 6.

[3] *Ibid.*, par. 7.

[4] *Ibid.*, par. 10.

[5] *Ibid.*, pars. 11-13.

[6] Respondents Return, par. 1.

[7] *Ibid.*, par. 2.

[8] *Ibid.*, pars. 3 and 4.

[9] Ibid., par. 5.

[10] Ibid., par. 6. Section 4 of General Order No. 60 dated January 24, 1977, reads as follows: "Persons arrested by virtue of an ASSO issued under this General Order shall be kept in detention until other-wise ordered released by me or the Secretary of National Defense who may delegate his authority to release the persons so arrested under such rules and regulations as he may prescribe."

[11] The Manifestation was likewise signed by Assistant Solicitor General Romeo C. de la Cruz and Solicitor Cecilio O. Estoesta.

[12] Ibid.

[13] L-40181, February 25, 1975, 62 SCRA 547.

[14] Cf. *Cagaya v. Tangonan*, L-40970, Aug. 21, 1975, 66 SCRA 216; *Reyes v. Ramos*, L-40017, Jan. 29, 1976, 69 SCRA 153; *Kintanar v. Amor*, L-42975, March 15, 1976, 70 SCRA 61; *Malolos v. Ramos*, L-46520, Aug. 16, 1977, 78 SCRA 238; *Anas v. Enrile*, L-44800, April 13, 1978, 82 SCRA 333.

SEPARATE OPINION

TEEHANKEE, J.:

While the petition has for the nonce been rendered moot and academic with the "temporary release" of Ahmad Alonto, Jr. (who was entrusted to the custody of his brother, Albert Alonto) on July 11, 1980 "upon orders of the President" after he had been detained under military custody in Bicutan for seven months and 14 days since November 30, 1979, I believe that it would be far better if the Court had resolved the petition on the merits and ordered his unqualified release, for the guidance of all concerned.

In the habeas corpus petition of Francisco Vestil, Jr., et al.,^[1] where the Solicitor General likewise moved for the dismissal as academic of the habeas corpus petition due to petitioners' temporary release on May 25, 1979 upon orders of therein respondent Minister of National Defense "pending the investigation and filing, as warranted, of formal charges against them, of some seventy (70) persons who have been arrested for illegal gambling locally known as 'masiao'", which was objected to by petitioners on the ground that they were still "under house arrest under the custody of Mayor Florentino Solon," the Court did not dismiss the petition per its Resolution of December 12, 1979 until after the Solicitor General had submitted the corresponding amendment of the release order "by deleting the portion placing them under house arrest."

Here, Alonto, Jr., a fellowship grantee pursuing post graduate studies for his Doctorate of Philosophy, majoring in Community Development, was held under military detention all this time admittedly without being under investigation, much less indictment or charge, for any offense because he had led 179 other Muslim youths and students of various universities/colleges in Metro Manila in a peaceable assembly at the Quirino Grandstand in the Luneta, Rizal Park, Manila to discuss matters of common interest and voice their support of the stand of the Iranians against U.S. President Jimmy Carter. 155 of his fellow detainees were long released since December 15, 1979 and the 24 others, or all his 179 companions had likewise long been released subsequently, so Alonto could not possibly be charged for the offense of "illegal assembly" of one.

At the hearing of the petition, with reference to respondents' proffered justification of Alonto, Jr.'s detention that he had led or taken part in "an illegal assembly and demonstration at the Luneta on November 30, 1979 without the necessary permit," several members of the Court had pointed out that Alonto, Jr. and his companions could

not possibly be charged of "having committed the crime of illegal assembly" contrary to the summary commitment orders dated December 1, 1979 issued by the PC Metrocom Staff Judge Advocate, Lt. Col. Alzaga, since their voicing of their support of their fellow Muslims' (Iranians') stand against U.S. President Jimmy Carter (no matter how unpalatable such stand may be to a good number of the Filipino people) certainly does not constitute the crime of illegal assembly which may be committed only by (a) any meeting attended by armed persons for the purpose of committing any crime punishable under the Revised Penal Code; or (b) any meeting where the audience is incited to the commission of treason, rebellion, sedition or assault.[2] And admittedly there were no armed persons at the assembly nor inciting against the Philippine Government nor its duly constituted authorities.

Assuming that Alonto, Jr. and his companions held a lawful and peaceable assembly without the necessary permit, as contended by respondents, such lack would not warrant their indefinite detention. This was but a violation of the municipal ordinance requiring a mayor's permit for public assemblies in the exercise of a regulatory power so that the exercise of the fundamental rights of freedom of speech and of peaceable assembly may not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society.[3] Hence, they should simply have been booked for violation of the municipal ordinance and released on minimum bail or exempted therefrom under Republic Act No. 6036.

Respondents however put up the standard defense that an ASSO (arrest, search and seizure order) having been issued after their arrest and detention, their continued detention until otherwise ordered by the President or the Minister of National Defense could not be questioned. Cited in support of respondents' stand are Cruz vs. Gatan[4] and Dañaganan vs. Enrile[5] wherein the Court through its Second Division, in dismissing the petitions for habeas corpus because of the ASSO's, stated, respectively, that "the declaration of martial law and the consequent suspension of the privilege of the writ of habeas corpus with respect to persons reasonably believed or charged to be engaged in the disorder or in fomenting it having been settled in the case of Aquino, Jr. vs. Ponce Enrile, etc., et al., any inquiry by this Court into the continued detention of the petitioner would be purposeless," and "(A) person like Dañaganan, who is detained by virtue of an ASSO, may be kept in detention until released by the President of the Philippines or by the Secretary of Defense. (See sec. 4, General Order No. 60) Consequently, the detention of Dañaganan is legal. He cannot be released by means of the writ of habeas corpus. (Go vs. Olivas, L-44989, November 29, 1976, 74 SCRA 230; Romero vs. Ponce Enrile, L-44613, February 28, 1977, 75 SCRA 429)."

These statements in my view are too sweeping and I concur with the observation made by the now Chief Justice (then Chairman of the Second Division) in Dañaganan that "Go vs. Olivas [wherein he penned the opinion for the Court]. . . likewise stands for the proposition that a case triable by a military tribunal may be terminated and the accused released by a habeas corpus petition if it could be shown that such tribunal acted without or in excess of jurisdiction,"[6] as well as with his dissent therein from the statement that a person detained by virtue of an ASSO cannot be released by means of the writ of habeas corpus, "his view being that under appropriate circumstances a person detained by virtue of an ASSO may be released through a habeas corpus proceeding."

It should be finally noted that the latest of the cited cases, Dañaganan, was decided on March 21, 1978 before the issuance later in that year of Letter of Instruction No. 772, phasing out the military commissions and referring all cases to be filed by the JAGO or the military establishment to the civil courts and providing for strict observance of constitutional processes and the rights of the accused in all cases, as follows:

"LETTER OF INSTRUCTION NO. 772

SUBJECT: Investigation, Filing of Criminal Cases and Issuance of Arrest, Search and Seizure Order

TO: The Ministry of National Defense
The Ministry of Justice
And All Others Concerned

In line with the announced policy towards normalization, henceforth:

- All criminal cases to be filed by the Judge Advocate General or by any personnel of the Ministry of National Defense and/or the military establishment shall be referred in the first instance to the Civil Courts and no longer to the Military Commission.

- No arrest, search and seizure order (ASSO) shall be issued under the emergency powers without prior clearance of the President/Prime Minister.

- All investigations shall be conducted in strict observance of constitutional processes, recognizing the rights of the accused, respondents and witnesses. These investigations shall be done quietly, without fanfare and undue publicity.

Done in the City of Manila, this 27th day of November, in the year of Our Lord, nineteen hundred and seventy-eight.

(SGD.) FERDINAND E. MARCOS
President of the Philippines"

The Chief Justice's expression of concern in the Court's opinion that the basic rights of peaceable assembly and free speech "be accorded the most serious consideration" and that "it is desirable that the civil process be resorted to" should be articulated in the light of LOI 772 which does order that the Ministry of National Defense and/or the military establishment refer all criminal cases "in the first instance to the Civil Courts and no longer to the Military Commission." The accused or detainee should thus be accorded the full rights granted by the Constitution and the statutes, among them the right not to be detained for longer than the statutory period without being turned over to the proper judicial authorities, and the right not to be arbitrarily and indefinitely detained without any charges.

[1] G.R. No. 50163, Francisco Vestil, Jr., et al. vs. Hon. Juan Ponce Enrile, et al. (First Division).

[2] Art. 146 of the Revised Penal Code, as amended by R.A. No. 12, provides:

"ART. 146. Illegal assemblies. - The penalty of prision correccional in its maximum period to prision mayor in its medium period shall be imposed upon the organizers or leaders of any meeting attended by armed persons for the purpose of committing any of the crimes punishable under this Code, or of any meeting in which the audience is incited to the commission of the crime of treason, rebellion or insurrection, sedition or assault upon a person in authority or his agents. Persons merely present at such meeting shall suffer the penalty of arresto mayor, unless they are armed, in which case the penalty shall be prision correccional.

"If any person present at the meeting carries an unlicensed firearm, it shall be presumed that the purpose of said meeting, insofar as he is concerned, is to commit acts punishable under this Code, and he shall be considered a leader or organizer of the meeting within the purview of the preceding paragraph.

"As used in this article, the word 'meeting' shall be understood to include a gathering or group, whether in a fixed place or moving." (Revised Penal Code)

[3] Primicias vs. Fugoso, 80 Phil. 71.

[4] 74 SCRA 226, 229 (Nov. 29, 1976), per Concepcion Jr., J.; emphasis supplied.

[5] 82 SCRA 185 (March 21, 1978), per Aquino, J.; emphasis supplied.

[6] Note in brackets supplied.

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