

OTHONIEL V. JIMENEZ, PETITIONER, VS. MILITARY COMMISSION NO. 34 AND THE COMMANDING OFFICER OF CAMP BAGONG DIWA, BICUTAN, TAGUIG, METRO MANILA, RESPONDENTS.

G.R. No. 54577. January 15, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for habeas corpus praying that after return and hearing the petitioner be released.

It is contended that petitioner is illegally detained because "since petitioner in effect has been acquitted of the crime of subversion, he may no longer be prosecuted under the amended information filed against him with respondent Military Commission and his continued detention and deprivation of liberty by virtue of the filing of such amended information is unconstitutional and without basis in law and equity." [1]

It appears that on May 30, 1980 the Judge Advocate General Service filed against the petitioner and nine-teen (19) other persons a charge sheet for violation of P.D. No. 885 as amended by BP Blg. 31 (subversion); that on June 20, 1980 he was arraigned before the respondent Military Commission; that the reading of the charges and specifications on the charge sheet was waived; that petitioner's counsel then orally moved to quash the charges and asked for a bill of particulars; that the respondent Military Commission then adjourned without ruling on the motion to quash and other motion and reset the hearing of the case to June 26, 1980; that on June 26, 1980 the Commission convened but again failed to rule on the pending incidents; that the hearing was reset to July 7, 1980 but the hearing on said date was again postponed because the law member of the Commission was sick; that petitioner then filed on July 8, 1980 with the respondent Military Commission a pleading entitled "Manifestation, Plea of 'Not Guilty' and Motion for Speedy Trial"; that the petitioner did not receive any word or order from the respondent Military Commission until about August 5, 1980 when he was served a copy of "Amended Charge Sheet" dated July 30, 1980 wherein the original charge of subversion was dropped but instead he was charged in the amended information with the crime of unlawful possession of explosives, conspiring to assassinate the President and First Lady, conspiring to assassinate members of the cabinet, arson, attempted murder and conspiring and proposal to commit and incite to rebellion; and that when the amended information was read in open court on August 13, 1980 he invited the attention of the respondent Military Commission to his "Manifestation, Plea of 'Not Guilty' and Motion for Speedy Trial" and "Manifestation"; and that the petitioner contended that in view of the ruling of the respondent Military Commission that the subversion case in the original information had been dropped and terminated by order of the Ministry of National Defense with the approval of the President of the Philippines and that the case was terminated without his consent after arraignment and plea, the amended information placed him in double jeopardy of conviction for offenses which are necessarily included or which necessarily include or are absorbed by or specified in the original information.

Under the facts appearing of record the petitioner cannot claim double jeopardy. There was no valid plea to the original information. The petitioner could not have entered a valid plea of not guilty by simply filing a written

manifestation and plea when the respondent Military Commission was not in session. Hence the case alleged in the original information cannot be deemed to have been terminated after the petitioner had entered a plea.

In *Silvestre vs. Military Commission No. 21*^[2] this Court said:

"Under the doctrine in the *Bulaong* case, the petitioner, Democrito Silvestre, in the instant case cannot legally claim that the filing of Criminal Case No. MC-21-23 with Military Commission No. 21 has placed him in double jeopardy. Neither the homicide case pending in the Court of First Instance at Quezon City nor the murder case committed in band before the military commission has been terminated."

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Aquino, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., no part.

Concepcion, J., on leave.

[1] Rollo, p. 9.

[2] 82 SCRA 10, 17.

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