

SATURNINO DOMINGO, PETITIONER, VS. MINISTER OF NATIONAL DEFENSE, ET AL., RESPONDENTS.

G.R. No. 55212. September 02, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

By this petition for a writ of habeas corpus, the petitioner seeks to secure his release from confinement on the ground that the same is illegal and in violation of his constitutional rights.

The petitioner is a member of the Armed Forces of the Philippines (AFP) with the rank of Lt. Colonel. At the time of his arrest, he was Deputy and Executive Officer of the Constabulary Anti-Narcotics Unit (CANU) and Assistant Chief of Staff for Intelligence, CRS.

On August 7, 1979, the petitioner was arrested by some army officers. Since then up to the present, he is confined in the Headquarters of the Constabulary Security Unit (CSU).

On August 11, 1979, respondent Minister of National Defense issued an Arrest Search and Seizure Order (ASSO) No. 4708 for the arrest and detention of 58 persons, including the herein petitioner, (Rollo, pp. 34-36). The issuance of the said ASSO was by virtue of a Presidential Clearance given pursuant to LOI No. 772 dated November 27, 1978.

On August 31, 1980, the Office of the Presidential Assistant on Military Affairs recommended the trial by Military Tribunals of the petitioner "FOR ILLEGAL POSSESSION OF FIREARMS; INFIDELITY IN THE CUSTODY OF DOCUMENTS; DESERTION; WRONGFUL DISPOSITION OF FIREARMS; AND, ILLEGAL POSSESSION OF FAKE DOLLARS." The said recommendation was approved by the President of the Philippines on September 9, 1980. (Rollo, p. 37).

On October 7, 1980, the instant petition for habeas corpus and prohibition with preliminary injunction was filed by the petitioner. Among the allegations contained therein pertinent to his claim to enjoy the privilege of the writ of habeas corpus is that, as of the date of the filing of the petition which was 1 year and 2 months from his arrest, no criminal charges have been filed against him, nor has a preliminary investigation of any kind been conducted. He accordingly contends that he had been denied his constitutional right to speedy trial and should thereby be released from his illegal detention and confinement.

In the Resolution dated October 9, 1980, the respondents were ordered to make a return of the writ on or before Tuesday, October 14, 1980 and the hearing of the case was set on Thursday, October 16, 1980, at 10:30 o'clock in the morning. The return was actually filed on October 15, 1980. A Reply and Traverse To The Writ was filed by the petitioner on November 14, 1980.

On December 12, 1980, the petitioner filed a "Motion For Preliminary Injunction And For Early Resolution Of Petition." Petitioner reiterated therein the prayer contained in his petition that the filing of charges against him be enjoined in as much as his right to speedy trial having been violated, the proper thing to do is to order his release.

He accordingly prayed therein that his petition be resolved soonest, in the expectancy that if such contention on his part would be sustained, there would be no need to try him for the crimes charged against him.

Due to the filing of subsequent pleadings by the parties, the hearing of the petition was held only on January 27, 1981. The result of said hearing is reflected in the Resolution issued on said date, reading as follows:

""(G.R. No. 55212 (In the Matter of the Petition for Habeas Corpus of Saturnino Domingo vs. The Minister of National Defense, et al.). - When this case was called for hearing this morning, former Senator Lorenzo M. Tañada appeared and argued for the petitioner while Solicitor General Estelito P. Mendoza, assisted by Assistant Solicitor General Reynato Puno and Roberto E. Soberano as well as Solicitor Roberto Abad appeared for the respondents. Before the conclusion of Senator Tañada's argument, the Court asked both counsel whether or not they have no objection to the suspension of the hearing with the end in view of abbreviating the proceedings until/after the petitioner shall have filed before the Minister of National Defense petitioner's motion for release with or without bail or for relaxation of the terms of his detention. Both counsel having interposed no objection to the suspension of the hearing, the Court Resolved to require both parties to SUBMIT within one (1) week from today a manifestation regarding petitioner's filing with the Minister of National Defense the aforesaid motion for release or for relaxation of the terms of his detention."" (Rollo, p.114.)

The record does not show if the petitioner filed with the Minister of National Defense a motion for his release or for relaxation of the terms of his detention. Instead, the petitioner filed before this Court a Petition for Bail on February 2, 1981. He took said course of action allegedly because he "entertains a reasonable belief that it may take some time before his petition is decided on the merits." The respondents filed their opposition to the petition for bail on February 10, 1981. (Rollo, p. 138).

In said opposition to petition for bail, it was revealed that a preliminary investigation of the case against the petitioner had been conducted by the Prosecution Division of the Judge Advocate General's Office (JAGO) and that a prima facie case had been found against the petitioner for the crimes of desertion, illegal disposition or misappropriation of government property, and infidelity in the custody of official documents, which findings had been approved by the Judge Advocate General; that on January 20, 1981, a charge sheet for the crimes mentioned was forwarded by the Judge Advocate General's Office to the Chief of Staff of the Armed Forces of the Philippines with a recommendation for the convening of a general court-martial to try the case; and that on February 6, 1981 the Chief of Staff of the Armed Forces of the Philippines (APP) approved the recommendation and convened a general court-martial to hear and decide the case against the petitioner. (Rollo, pp. 149-152).

On February 25, 1981, petitioner filed a Reply to Opposition to Petition for Bail and a Reiteration of his Motion For Preliminary Injunction. (Rollo, p. 157).

On March 6, 1981, petitioner also filed a Reply to Comment on petitioner's Motion for Preliminary Injunction. (Rollo, p. 171). The respondents filed their rejoinder to the petitioner's Reply on April 30, 1981.

On August 3, 1981, petitioner filed a Motion to Resolve Petition and All Pending Incidents.

In the Resolution dated August 6, 1981, We gave due course to the Petition and considered the case submitted for decision.

On July 1, 1982, the petitioner filed a "Reiteration Of Motion To Resolve Petition And All Pending Incidents." Petitioner manifested therein that the trial of his case had been scheduled for hearing by the court-martial on July 14, 1982. He contends that said hearing should no longer be held inasmuch as the government has already lost its right to prosecute him as a consequence of the gross violation of his constitutional right to speedy trial.

The basic issue that requires resolution is whether the remedy of habeas corpus may be extended in favor of the petitioner in view of his having been supposedly denied his constitutional right of speedy trial, thereby resulting in the forfeiture of the right of the government to prosecute him for the crimes he is alleged to have committed prior to his arrest on August 7, 1979.

The other issues raised by the petitioner, to wit, whether the proceedings being taken against him in the court-martial should be enjoined, and his right to be released on bail are necessarily dependent on the resolution of the primary question aforementioned.

There is no disputing the proposition that the non-observance of the constitutional mandate that the accused in all criminal prosecutions shall enjoy the right to have a speedy trial can result in the loss of the right of the government to prosecute him for the crime of which he is charged, and the accused is entitled to be released on habeas corpus; and that the dismissal of the case based on that ground would amount to an acquittal. (Acebedo vs. Sarmiento, 36 SCRA 247.) The salutary objective of this rule, in the words of Chief Justice Fernando, is "to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatever legitimate defense he may interpose." It is likewise to be conceded that the right to a speedy trial is available to all accused persons, whether he be a civilian or a military personnel. "The Constitution is a law for rulers and for people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances." (Ex Parte Milligan, 4 Wall, 2, 132, 18 L ed 281, 295; cited in Cayaga vs. Tangonan, 66 SCRA 216, 219.)

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. The pertinent inquiry, therefore, is whether under the facts appearing with respect to the detention and criminal prosecution of the herein petitioner, he may rightfully complain that he has been denied his constitutional right to a speedy trial as would result in the proscription of the right of the State to prosecute him for the crimes he stands charged.

It is Our opinion that no such deprivation of the aforementioned constitutional prerogative had taken place in respect of the herein petitioner. As hereinabove-mentioned, the petitioner was arrested on August 7, 1979. In his Motion For Preliminary Injunction And For Early Resolution of Petition dated December 11, 1980, the petitioner has revealed that the Prosecution Division of the Military Tribunals has set the preliminary investigation of the charges against him on December 5, 1980. The delay of a little over a year before the preliminary investigation as scheduled was explained by the respondents, as follows:

"If there was initially some delay in charging petitioner after his arrest, it was occasioned by the need to further investigate his links with the Communist Party of the Philippines or other subversive elements and the extent of the plot to assassinate the President. Petitioner could not immediately be charged, for a premature disclosure of evidence and information in the hands of the military could undermine the investigation and perhaps facilitate the escape of others involved in the subversion or the attempt on the life of the President." (Rollo, p. 40.)

We are not in a position to question the truth of this manifestation. It is to be remembered, however, that as of the time that the petitioner was arrested, the country was still under martial law and the conditions justifying its continued existence were presumed to prevail so much so that martial law was not lifted until January 17, 1981.

The preliminary investigation set on December 5, 1980 was reset to December 12, 1980 on motion of counsel for the petitioner. In a Manifestation dated December 4, 1980, he prayed for the cancellation of the said hearing and

its indefinite deferment until the Supreme Court shall have decided the instant Petition. (Rollo, pp. 83-86.)

The said motion of the petitioner was denied, and the preliminary investigation was conducted during which evidence on the charges against the petitioner was presented. Petitioner, however, failed to present any evidence in his behalf. The preliminary investigation resulted in the issuance of a Resolution recommending the filing and trial of the proper charges before a general court-martial. (Rollo, pp. 132-136.) In addition to the attempt of the petitioner to stop the proceedings being conducted by the military authorities, the petitioner filed a motion before this Court on December 12, 1980 reiterating the prayer in his petition that a writ of preliminary injunction be issued to enjoin the respondents and all government prosecutors to file any information against the petitioner for acts allegedly committed by him prior to said date. The same prayer was contained in the petitioner's Reply To Opposition, Etc. dated February 13, 1981 (Rollo, pp. 157-169); once again, in his Motion To Resolve Petition dated July 31, 1981; and finally, in his Reiteration of Motion to Resolve Petition and all Pending Incidents dated July 1, 1982.

What transpired thereafter is re-cited in the Comment of the respondents, as follows:

"Although he (the petitioner) was furnished copies of the affidavits of the witnesses of the complainants, petitioner did not present counter-affidavits and declined to take part in the proceeding. His co-accused in the case submitted counteraffidavits on January 9, 1981 after two postponements at their instances. Only then was the investigation concluded.

On January 23, 1981 the investigating officer issued a resolution in the case finding a prima facie case against petitioner for the crimes of desertion, illegal disposition or misappropriation of government property, and infidelity in the custody of official documents. After approval of this resolution by the Judge Advocate General, a charge sheet for the crimes mentioned was forwarded on January 30, 1981 to the Chief of Staff of the Armed Forces of the Philippines with recommendation for the convening of a general court-martial to try the case.

On February 6, 1981 the Chief of Staff, AFP, approved the recommendation and constituted a general court-martial composed of officers of the military to hear and decide the case against petitioner. Brigadier General Pacifico de Leon was designated president of the court.

On February 25, 1981 petitioner was arraigned before the general court-martial. The charges were read to him but, before he could enter his plea, his lawyers Attorneys Lorenzo Tañada and Joker Arroyo asked for continuance on the ground that they needed time to prepare petitioner's special pleas. The request was granted and the continuation of the hearing was set on March 3, 1981.

On March 3, 1981 petitioner, thru his lawyers, presented two special pleas, i.e., a motion to quash on the ground of alleged denial of his right to speedy trial and a motion for bill of particulars. The motion to quash was argued at length with the prosecution reserving the right to file a written opposition to the motion. The hearing was reset on March 6, 1981.

On March 6, 1981 petitioner reiterated his motion for a bill of particulars. After some arguments, the motion was granted by the court with respect to one item in Specification No. 2 of the Charge Sheet but denied with respect to the other items mentioned in the motion, on the ground that these referred to evidentiary matters.

The next hearing was scheduled on April 10, 1981 but on April 9, 1981 the President of the court, Brig. Gen. de Leon, retired from the service and could not yet be replaced in time to preside over the scheduled hearing. Before this, the prosecution filed on March 24, 1981 their written opposition to petitioner's motion to quash.

In the meantime, on April 21, 1981 petitioner made an attempt to plea-bargain on the charges pending against him. He wrote the Chief of Staff, AFP, thru the Trial Judge Advocate, offering to withdraw his plea of not guilty (this was a wrong assumption since actually he had yet made a plea) and enter a plea of guilty in

consideration of his being allowed to resign his commission in the military and to join his family in the United States. A copy of petitioner's letter is attached herewith as Annex 1. Petitioner's lawyers were informed of this action of petitioner and it was agreed to hold in abeyance the proceedings before the general court-martial pending the result of petitioner's plea-bargaining efforts.*

Although petitioner's offer of plea was not accepted, he manifested that he was approaching the problem thru other lines of communications and requested additional time to await the result of his efforts. However, when it became apparent that petitioner was merely delaying the case, the general court-martial reconvened on August 24, 1982 to proceed with the hearing. Brigadier General Rodolfo Ecama was designated new president of the court in place of Brig. Gen. Vicente Piccio who was appointed on May 26, 1981 but had no opportunity to sit in the case.

At the hearing on August 24, 1982 petitioner, thru counsel, reiterated is pending motion to quash. Petitioner offered additional arguments and was required by the court to put these in writing together with supporting documents. On August 30, 1982 petitioner did so with the submission of his "compliance."

At the hearing on September 7, 1982 the court handed down its ruling denying petitioner's motion to quash. Petitioner orally moved for reconsideration of the order of denial of his motion. In addition, he raised the question of prescription of the crimes of which he was charged. At his request petitioner put his motion for reconsideration and for immediate release in writing and submitted them at the hearing on September 14, 1982. The court adjourned to consider the matters pending before it and the hearing was reset on September 28, 1982. The latter hearing was, however, postponed due to unavailability of the transcript of the previous proceedings requested by petitioner.

On October 12, 1982 the reconvened court issued a resolution denying petitioner's motions for reconsideration and for immediate release. And, because petitioner refused to enter a plea, a plea of not guilty was entered on his behalf on orders of the president of the court.

On October 19, 1982 the prosecution presented its first witness in the case. Cross-examination by petitioner's counsel was scheduled for the next hearing set on October 26, 1982 but this as well as the hearings scheduled on November 2 and 23, 1982 were postponed on the ground of illness of Atty. Tañada who was reported to be suffering from gout.

Petitioner should not be heard to complain about the alleged delay in the trial of his case. As can be seen from the above recitals, the prosecution never once asked for a postponement of the hearing. It was ready from the first day of the proceeding to present its evidence against the petitioner. Indeed, as soon as petitioner had pleaded to the charges, the prosecution began the presentation of such evidence.

Except on account of the retirement of Brig. Gen. Pacifico de Leon, most of the resittings of the hearing were by agreement of the parties. The rest were due to postponements requested by petitioner on account of illness of counsel although he had more than one lawyer representing him. The longest adjournment in the case was prompted by petitioner's own request to plea-bargain with the authorities. This delay cannot, as it has not been, imputed to the prosecution."

An accused may lawfully complain of having been denied speedy trial if there had been "vexatious, capricious and oppressive delays" in the trial of this case. (*Conde vs. Rivera*, 45 Phil. 650.) If the delay is caused by his own fault or by his own acts to prevent the trial from being held, the accused may not utilize the delay resulting therefrom as a ground to claim that the government had thereby lost its right to prosecute him for having been supposedly denied the right to speedy trial. (*Kalaw vs. Apostol*, 64 Phil. 852; *People vs. Jabajab*, 100 Phil. 307).

In the case of herein petitioner, the delay that he complains of was the failure of the military authorities to file formal charges against him and to conduct the corresponding preliminary investigation for a period of about a year and 2 months after his arrest. Considering the situation existing at that time, the petitioner being a member of

the Armed Forces of the Philippines, the seriousness and number of the charges against him, and the nature thereof being such that his possible involvement in activities that could jeopardize the security of the State is neither remote nor unlikely, the lapse of said period before the petitioner was actually charged may not be, to Our mind, considered as capricious, vexatious or oppressive. One year and two months is relatively short, compared to the period of delay involved in cases where the right to a speedy trial was considered infringed under circumstances where the failure to prosecute expeditiously was less justifiable. (*Acebedo vs. Sarmiento*, 36 SCRA 247, more than 6 years; *Mercado vs. Santos*, 66 Phil. 215, 20 months; *People vs. Cloribel*, 11 SCRA 805, 3 years and 11 months; *Luneta vs. Special Military Commission No. 1*, 102 SCRA 56, 3 years from arrest to date of trial).

Certainly, it requires a clearer showing of the alleged infringement of the fundamental right to speedy trial to justify a verdict that the State had thereby forfeited its right and authority to prosecute those who committed crimes against it.

This conclusion inevitably leads to a denial of the prayer of petitioner that the trial of his case before the court-martial be ordered stopped. Aside from his claim that the government had already lost its authority to prosecute him for the crimes of which he stands charged due to alleged violation of his constitutional right to speedy trial, the petitioner had not adduced any other reason why the proceedings against him should not be allowed to take its due course.

Neither had the petitioner shown why his continued detention is illegal on other grounds. He may not even complain that he was placed in custody without a formal warrant of arrest. The petitioner is a military man, and his arrest may be effected even orally.

"In order to effect the arrest (of a person subject to military law), the person to be arrested is notified that he is under arrest and informed of the limits of his arrest. The order of arrest may be oral or in writing there being no particular formality required." (*Gloria, Handbook of Court-Martial Procedure*, p. 2, citing *TM 27-255* par. 206, p. 17; *AW 70*.)

In the case of the petitioner, an Arrest Search and Seizure Order (ASSO) was issued with Presidential clearance two (2) days after he was detained. Assuming, therefore, that a warrant was necessary to place the petitioner in lawful custody, such requirement was complied with by the issuance of the ASSO two (2) days later, and whatever irregularity there might have been in arresting him without a warrant had been subsequently remedied thereby. His confinement since then may no longer be claimed as one without a valid process. The petitioner had been properly charged, was given the benefit of a preliminary examination, and is now facing trial of those charges before a general court-martial. It may not be said, therefore, that the petitioner is being detained or confined illegally so as to entitle him to be released on a writ of habeas corpus.

With respect to the petitioner's prayer that he be released on bail, We reiterate the directive contained in the Resolution of January 27, 1981 issued after the hearing held on said date during which it was agreed that the petitioner shall file with the Minister of National Defense a "motion for release with or without bail or for relaxation of the terms of his detention", and to submit within a week's time a manifestation of having done so. The record does not show that the petitioner complied with said agreement. The petitioner is a person subject to military law facing charges before a general court-martial, and his release from confinement pending the trial of the charges against him is a matter that lies largely in the discretion of the military authorities. They are undeniably in a better position to appreciate the gravity of said charges and the feasibility and advisability of releasing him or relaxing the terms of his confinement pending the trial and disposition of the case filed against him.

In a Supplemental Petition dated October 19, 1982 filed after this case was declared submitted for decision

pursuant to the resolution of August 6, 1981, the petitioner raised the question that the crimes imputed to him had already prescribed. In support of this contention, petitioner cites Article 38 of the Articles of War which reads as follows:

"Art. 38. As to Time. -- Except for desertion or murder committed in time of war, or for mutiny, 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 courts-martial shall be three years: 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 have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitation: And provided, further, That this articles shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law." (Underscoring supplied.)

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 Articles of War, the "trial and punishment" of the crimes imputed to him, which are for desertion in time of peace and for violations of Articles 94 and 95 of the Articles of War, must be completed within 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. He asserts that with respect to the charge of desertion, the three-year period of limitation should be counted from February 17, 1979 which was the date when the petitioner left the service without permission to do so; in the case of the charge of a violation of Article 94 of the Articles of War, the three-year period should be counted from February 17, 1979 when the petitioner allegedly committed said offense, according to the charge sheet; and with respect to the charge of a violation of Article 95 of the Articles of War, the period of prescription should begin from July 9, 1978, the date when he allegedly committed said offense.

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. They point out that the petitioner having received the charges against him only on January 30, 1981, the prescriptive period of three years of the offenses for which he stands charged before the General Court-Martial has not yet expired in any of the three charges.

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 violations 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 court-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.

Petitioner admits that the charge sheet was filed on January 30, 1981 and verified on February 10, 1981. (p. 7, Supplemental Petition). The petitioner was arraigned before the General Court-Martial on February 25, 1981 during which the charges were read to him. It is true that the accused did not then enter his plea, but that was because his lawyers asked for continuance on the ground that they needed time to prepare for the entering of "special pleas." The absence of plea, however, does not mean that the arraignment had not taken place, the entering of the plea not being an essential part thereof.

"The court being organized and both parties ready to proceed, the trial judge advocate will read the charges and specifications, including the signature of the accuser, to the accused, and then ask the accused, how he pleads to each charge and specification. This proceeding constitutes the arraignment. Instead of entering a plea to the general issue, the accused may make a special plea or demur to any charge and/or specification. The special pleas are not part of the arraignment." (Gloria, A Handbook of Court-Martial Procedure, p. 50).

It is thus clear that the date to consider in determining whether the crimes or offenses charged against the petitioner had already prescribed would be February 25, 1981 when he was arraigned. All the three charges against the petitioner were allegedly committed within a period of three years before said date. Consequently, the statutory period of limitations had not yet set in.

The petitioner's insistence that his prosecution is already barred by prescription, as so strenuously argued by him in his Supplemental Petition as well as in his Reply to the respondent's Comment to the same, appears to be inconsistent with the previous contention contained in his Reply to Comment on Petitioner's Motion for Preliminary Injunction dated March 5, 1981 (Rollo, p. 171). On page 10 thereof, after arguing for the issuance of a writ of preliminary injunction to stop the court-martial proceeding against him, the petitioner admitted that the filing of the charges by itself suspended the period of prescription, as follows:

"IV

The claim of respondents that petitioner should stand trial now because the crimes imputed to him may prescribe, is no longer valid, in view of the fact that charges have already been filed against him, and the period of prescription has been suspended." (Rollo, p. 180).

The view that the period of prescription was suspended by the filing of charges which occurred on February 10, 1981 is a departure from the petitioner's stance in his Supplemental Petition that the period of prescription should be deemed interrupted only by his trial and punishment.

WHEREFORE, the petition is hereby dismissed. No costs.

SO ORDERED.

Makasiar, Concepcion, Jr., Guerrero, Melencio-Herrera, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.
Fernando, C.J., and Aquino, J., no part.

Teehankee, J., dissents on the ground that as contended by petitioner, his prosecution is barred by the statutory three-year period of prescription and reserves the right to file extended opinion.

Abad Santos and De Castro, JJ., on leave.

* Petitioner admits having signed the letter attached to Respondents' Comment as Annex 1, but claims that he was tricked into doing so by a certain Lt. Col. Virgilio G. Saldajeno who was the one who prepared the same, by assuring the petitioner that he would be released if he would plead guilty. Petitioner's lawyers deny knowledge of the said "scheme" until the supposed plea-bargaining attempt of petitioner was revealed in the Comment of the respondents.

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