

EULALIA MARTIN, PETITIONER, VS. GEN. FABIAN VER, CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES AND GEN. HAMILTON DIMAYA, JUDGE ADVOCATE GENERAL, RESPONDENTS.

G.R. No. 62810. July 25, 1983

Ponente: PLANA, J.

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PLANA, J.:

This is a petition for habeas corpus filed by Eulalia Martin on behalf of her husband, Pvt. Francisco Martin.

Pvt. Martin was an enlisted man in the Philippine Army. On or about April 14, 1981, when he was still in the service, he allegedly sold two grenades to one Rogelio Cruz at P50.00 each, one of which exploded during a picnic in Laoag City on April 17, 1981 causing the death of three persons, including Rogelio Cruz, and injuries to three others.

According to respondents, Pvt. Martin has admitted to Cpl. Lucio Tuppal, Philippine Army, having sold the grenades to Rogelio Cruz in Laoag City, although this is denied by Pvt. Martin.

After an initial investigation conducted by the Laoag City PC and INP authorities, a report was submitted to the Ministry of National Defense which referred the matter to the Chief of Staff, AFP, who in turn directed the Inspector General to conduct another investigation.

On May 5, 1981, Pvt. Martin was arrested and confined (restricted to barracks) at Fort Bonifacio pursuant to Article 70 of the Articles of War, *infra*. The following year, he was discharged from the service effective as of May 5, 1982. On November 17, 1982 the instant petition was filed. The following month, i.e., December 3, 1982, Pvt. Martin was charged for violation of the 85th and 97th Articles of War, which read:

"ART. 85. Waste or Unlawful Disposition of Military Property Issued to Soldiers.— Any soldier who sells or wrongfully disposes of or willfully or through neglect injures or losses any horse, arms, ammunition, accouterments, equipment, clothing, or other property issued for use in the military service, shall be punished as a court-martial may direct.

"ART. 97. General Article.— Though not mention in these articles, all disorders and neglects to the prejudice of good order and military discipline and all conduct of a nature to bring discredit upon the military service shall be taken cognizance of by a general or special or summary court-martial according to the nature and degree of the offense, and punished at the discretion of such court."

The charge sheet stipulates the following charges:

"CHARGE I: Violation of the 85th Article of War.

Specification: In that Private Martin assigned with the Headquarters and Headquarters Service Battalion, First Infantry Division, Philippine Army on or about 14 April 1981 at Laoag City wrongly disposed of by sale to Rogelio Cruz two (2) grenades.

CHARGE II: Violation of the 97th Article of War.

Specification: In that Private Francisco Martin, . . . on or about the month of April 1981 at Laoag City, unlawfully and without authority had in his possession two (2) handgrenades thus committing an act prejudicial to good order and military discipline and of a nature that will bring discredit to the military establishment."

The petitioner contends that having been discharged from the military service, he is no longer subject to court-martial even if the offenses of which he is charged were committed while he was still subject to military law. He therefore concludes that his continued detention pursuant to Article 70 of the Articles of War (which authorizes the arrest/confinement of any person subject to military law who is charged with an offense under the Articles of War) is illegal and he, accordingly, should be released. This posture has no merit.

Generally, court-martial jurisdiction over persons in the military service of the Philippines ceases upon discharge or other separation from such service. This however is but a general rule. The Articles of War in terms prescribe some exceptions designed to enhance discipline and good order within the military organization. Thus, court-martial jurisdiction as to certain cases of fraud and misappropriation of military hardware and other government property is not extinguished by discharge or dismissal pursuant to the 95th Article of War.

"ART. 95. Frauds Against the Government.— Any person subject to military law . . .

"Who steals, embezzles, knowingly and willingly misappropriates, applies to his own use or benefit or wrongfully or knowingly sells or disposes of any ordnance, arms, equipment, ammunition, clothing, subsistence, stores, money, or other property of the Government furnished or intended for the military service thereof . . .

"Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid while in the service of the Armed Forces of the Philippines or of the Philippine Constabulary receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed." (Italics supplied.)

It was on the basis of the foregoing legal provision, among others, that this Court sustained the court-martial of the petitioner in *De la Cruz vs. Alcaraz, et al.* after his reversion to inactive status, for misappropriation of public funds committed while he was still in the active military service. The Court, thru Mr. Justice J.B.L. Reyes, said:

"There is no question that although appellant had been reverted to inactive (civilian) status in the reserve force of the Philippine Army, he is still amenable to investigation and court-martial under the Articles of War by the Philippine Navy for alleged acts of misappropriation of government funds committed while he was still in the active military service. As correctly held by the Court below, appellant's case falls within the provisions of Article 95 of the Articles of War (Commonwealth Act No. 408, as amended), which provides as follows: . . .

"The lower Court did not, therefore, err in refusing to enjoin appellant's investigation by the naval authorities on charges that he had misappropriated public property while he was still in the service of the Philippine Navy, specially since petitioner admits that he is still a member of the Reserve Force." (99 Phil. 130 at 131-132.).

We conclude that despite his discharge from the military service, the petitioner is still subject to military law for the purpose of prosecuting him for illegal disposal of military property, and his preventive detention thereunder - pending trial and punishment for the said offense committed when he was in the military service - is lawful.

Alternatively, petitioner maintains that even assuming that the jurisdiction of the military authorities to try and punish him was not abated by his discharge from military service, the denial to him of his constitutional right to

speedy trial (he having been confined from the date of his arrest on May 5, 1981 up to December 3, 1982 when he was formally charged - a period of 1 year and 7 months) entitles him to be released on habeas corpus.

The fundamental rights guaranteed in the Constitution apply to all persons, including those subject to military law. (Aquino vs. Military Commission No. 2, 63 SCRA 546; Cayaga vs. Tangonan, 66 SCRA 216; Go vs. Olivas, 74 SCRA 230; Romero vs. Ponce Enrile, 75 SCRA 429.) To quote Ex Parte Milligan, 4 Wall. 2:

"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."

It would indeed be paradoxical if military men who are called upon in times of the gravest national crises to lay down their lives in defense of peace and freedom would be the very people to be singled out for denial of the fundamental rights for which they risk their lives.

For denial of a constitutional right to the accused, the hearing tribunal may lose its jurisdiction to conduct further proceedings. In such a case, habeas corpus would lie to obtain the release of the accused. (Gumabon vs. Director, 37 SCRA 420; Acevedo vs. Sarmiento, 36 SCRA 247; Aquino vs. Ponce Enrile, 59 SCRA 183, Flores vs. People, 61 SCRA 331; Dacuyan vs. Ramos, 85 SCRA 487; Ventura vs. People, 86 SCRA 188; Romero vs. Ponce Enrile, 75 SCRA 429; Aquino vs. Ponce Enrile, supra; Go vs. Olivas, supra.)

In the case at bar, the petitioner claims that he has been denied his constitutional right of speedy trial because the charges against him were filed only about 1 year and 7 months after his arrest.

There was no such denial. As stated by this Court in a per curiam decision: ". . . the test of violation of the right to speedy trial has always been to begin counting the delay from the time the information is filed, not before the filing. The delay in the filing of the information, which in the instant case has not been without reasonable cause, is therefore not to be reckoned with in determining whether there has been a denial of the right to speedy trial." (People vs. Orsal, 113 SCRA 226 at 236.)

At any rate, whether or not one has been denied speedy trial is not susceptible to precise quantification. At best, the constitutional right of speedy trial is relative, consistent with reasonable delays, taking into account the circumstances of each case. As expressed in *Barker vs. Wingo*, 33 L Ed 2d 101:

". . . the right to a speedy trial is a more vague and generically different concept than other constitutional rights guaranteed to accused persons and cannot be quantified into a specified number of days or months, and it is impossible to pinpoint a precise time in the judicial process when the right must be asserted or considered waived. . .

". . . a claim that a defendant has been denied his right to a speedy trial is subject to a balancing test, in which the conduct of both the prosecution and the defendant are weighed, and courts should consider such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, in determining whether defendant's right to a speedy trial has been denied. . ."

Returning to the case at hand, the criminal act imputed to the petitioner unfortunately resulted in the death of three persons (including Rogelio Cruz who allegedly bought the handgrenades from the petitioner) and very serious injuries to three others whose testimony is vital to the preferment of charges and prosecution of the petitioner. It is therefore not unreasonable to heed the claim of respondents that the delay complained of was occasioned by the unavailability of witnesses, a claim which has not at all been challenged or denied by the petitioner.

WHEREFORE, the petition for habeas corpus is dismissed, without prejudice to the petitioner seeking his provisional release on bail from the military authorities or the Ministry of National Defense. No costs.

SO ORDERED.

Fernando, C.J., Makasiar, Aquino, Concepcion Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Teehankee, J., in the result.

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