

RODOLFO DELA CRUZ, PETITIONER, VS. HON. FELIX L. MOYA, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH II OF THE COURT OF FIRST INSTANCE OF DAVAO, AND PEOPLE OF THE PHILIPPINES, RE...

G.R. No. 65192. April 27, 1988

Ponente: CORTES, J.

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CORTES, J.:

Involving as it does a purely legal question, the present petition for certiorari and mandamus was certified to this Court by the then Intermediate Appellate Court in its resolution dated August 30, 1983.

On February 23, 1979, Rodolfo Dela Cruz, a member of the Armed Forces of the Philippines assigned to the Intelligence and Operations Section of the 432nd PC Company, together with other PC men, received a mission order to proceed to Barangay Pangi, Maco, Sto. Tomas, Davao for the purpose of verifying and apprehending persons who were allegedly engaged in illegal cockfighting. In compliance with said mission order, Dela Cruz and company proceeded to Maco, Davao del Norte and caught in flagrante the operators of said illegal cockfighting, but said operators resisted arrest. The soldiers left the place but they brought with them to the PC Headquarters the evidence of the crime, such as gaffs and fighting cocks. The operators of the illegal cockfights, including the deceased Eusebio Cabilto, followed the soldiers on their way back to the PC Headquarters, catching up with them on the Tagum-Mati National Highway. Fighting ensued and in the scuffle, Dela Cruz shot Cabilto.

On August 2, 1979, Dela Cruz was charged with homicide in the Court of First Instance of Davao, in an information filed by the Provincial Fiscal. The case was docketed as Criminal Case No. 40080.

While the case was pending trial, Presidential Decrees Nos. 1822 and 1822-A were promulgated by the President of the Philippines on January 16, 1981, vesting in courts-martial jurisdiction over crimes committed by members of the Armed Forces or of the Philippine Constabulary in performance of their duties.

Claiming that the crime for which he was charged was committed in relation to the performance of his duties, Dela Cruz filed with the Court of First Instance of Davao a motion to transfer the case to the military authorities so he could be tried by court martial. The motion was denied. Hence, the present petition.

At issue is whether the civil courts have jurisdiction over the subject matter of Criminal Case No. 40080.

One of the essential requisites of a valid court proceeding is that the court hearing the case must have jurisdiction over the subject matter of the case. If the court is acting without jurisdiction, then the entire proceedings are null and void.

Jurisdiction over the subject matter is determined by the statute in force at the time of the commencement of the action. [Silvestre v. Military Commission, L-48366, March 8, 1978, 82 SCRA 10; People v. Romualdo, 90 Phil. 739 (1952); Rilloraza v. Arciaga, 128 Phil. 799 (1967), 21 SCRA 717.] And once jurisdiction is vested in the court, it is retained up to the end of the litigation. [Pamintuan v. Tiglao, 53 Phil. 1, (1929); Phil. Land-Air-Sea Labor Union (PLASLU), Inc. v. CIR, 93 Phil. 747 (1953); Tuvera v. De Guzman, 121 Phil. 706 (1965), 13 SCRA

729; Rilloraza v. Arciaga, supra; Rizal Surety and Insurance Co. v. Manila Railroad Co., et al. 123 Phil. 766 (1966), 16 SCRA 908].

In the instant case, the information was filed on August 2, 1979. On such date, by virtue of General Order No. 59, dated June 24, 1977, published in 73 Official Gazette (Supplement) #28, pages 6373-1 to 6373-3, (July 11, 1977), military tribunals created under General Order No. 8 exercised exclusive jurisdiction over "(a)ll offenses committed by military personnel of the Armed Forces of the Philippines while in the performance of their official duty or which arose out of any act or omission done in the performance of their official duty: Provided, that for the purpose of determining whether an offense was committed while in the performance of official duty or whether it arose out of an act or omission done in the performance of official duty, a certificate issued by the Secretary of National Defense to that effect shall be conclusive unless modified or revoked by the President . . ." (Section 1.) As no amendatory law was ever published in the Official Gazette between the time G.O. No. 59 was published until the information in Criminal Case No. 40080 was filed on August 2, 1979, then said General Order No. 59 remained in force on said date.

In the case at bar, it is not disputed that at the time of the commission of the alleged offense, petitioner dela Cruz was a member of the Philippine Constabulary, and that the shooting of the deceased Cabilto was committed while petitioner was executing the Mission Order.

But what is the significance of the proviso regarding the certificate to be issued by the Secretary of National Defense?

The proviso merely states that the certificate issued by the Secretary of National Defense is conclusive for the purpose of determining whether an offense was committed while in the performance of official duty, or arose out of an act or omission done in the performance of official duty. It does not in any way preclude the courts from making any finding as to whether an offense is duty-connected. Nor does it make the certificate a condition precedent for the exercise by either civilian courts or military tribunals of their jurisdiction over offenses committed by members of the AFP.

In the instant case, even as no certificate issued by the Secretary of National Defense was presented in court, the record contains a copy of Mission Order No. 7, signed by a certain Lieutenant Huerta, directing Dela Cruz, among others, to proceed to Barangay Pangi, Maco, Sto. Tomas, Davao to verify and apprehend persons reportedly engaged in illegal cockfighting. The evidence of the prosecution presented in court likewise shows that Cabilto was shot while petitioner was executing the mission order. These undisputed facts compel this Court to declare that respondent court was without jurisdiction to try the case against petitioner Dela Cruz.

The Solicitor General points out that at the time the information was filed, Presidential Decrees Nos. 1822 and 1822-A which vest in the courts-martial jurisdiction over offenses committed by members of the AFP in the performance of their duties were not yet in effect, the same having been promulgated only in 1981.

Truly, PD 1822 and 1822-A are inapplicable to the case at bar. However, General Order No. 59 cited above applies.

WHEREFORE, the petition is GRANTED. The proceedings in Criminal Case No. 4008 are declared null and void but without prejudice to the filing of another action in the proper forum. Let a copy of this decision be furnished the Judge Advocate of the Philippine Constabulary, Camp Crame, Quezon City, for appropriate action.

Fernan (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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