

**RIZAL ALIH, NASIM ALIH, AISAN ALIH, MIJAL ALIH, OMAR ALIH,
EDRIS MUKSAN, MULSIDI WARADIL, BILLY ASMAD, RAMSID ASALI,
BANDING USMAN, ANGGANG HADANI, WARMIKHAN HAPA, GABRAL
JIKIRI...**

G.R. No. 69401. June 23, 1987

Ponente: CRUZ, J.

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CRUZ, J.:

On November 25, 1984, a contingent of more than two hundred Philippine marines and elements of the home defense forces raided the compound occupied by the petitioners at Gov. Alvarez street, Zamboanga City, in search of loose firearms, ammunition and other explosives.[1]

The military operation was commonly known and dreaded as a "zona," which was not unlike the feared practice of the kempeitai during the Japanese Occupation of rounding up the people in a locality, arresting the persons fingered by a hooded informer, and executing them outright (although the last part is not included in the modern refinement).

The initial reaction of the people inside the compound was to resist the invasion with a burst of gunfire. No one was hurt as presumably the purpose was merely to warn the in-truders and deter them from entering. Unfortunately, as might be expected in incidents like this, the situation aggravated soon enough. The soldiers returned fire and a bloody shoot-out ensued, resulting in a number of casual-ties.[2]

The besieged compound surrendered the following morning, and sixteen male occupants were arrested, later to be finger-printed, paraffin-tested and photographed over their objec-tion. The military also inventoried and confiscated nine M16 rifles, one M14 rifle, nine rifle grenades, and several rounds of ammunition found in the premises.[3]

On December 21, 1984, the petitioners came to this Court in a petition for prohibition and mandamus with preliminary injunction and restraining order. Their purpose was to recover the articles seized from them, to prevent these from being used as evidence against them, and to challenge their fin-gerprinting, photographing and paraffin-testing as viola-tive of their right against self-incrimination.[4]

The Court, treating the petition as an injunction suit with a prayer for the return of the articles alleged to have been illegally seized, referred it for hearing to Judge Omar U. Amin of the regional trial court, Zamboanga City.[5] After receiving the testimonial and documentary evidence of the parties, he submitted the report and recommendations on which this opinion is based.[6]

The petitioners demand the return of the arms and ammu-nition on the ground that they were taken without a search warrant as required by the Bill of Rights. This is confirmed by the said report and in fact admitted by the respondents, "but with avoidance."[7]

Article IV, Section 3, of the 1973 Constitution, which was in force at the time of the incident in question, provided as follows:

"Sec. 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

It was also declared in Article IV, Section 4(2) that-

"Sec. 4(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

The respondents, while admitting the absence of the required search warrant, sought to justify their act on the ground that they were acting under superior orders.[8] There was also the suggestion that the measure was necessary because of the aggravation of the peace and order problem generated by the assassination of Mayor Cesar Climaco.[9]

"Superior orders" cannot, of course, countermand the Constitution. The fact that the petitioners were suspected of the Climaco killing did not excuse the constitutional short-cuts the respondents took. As eloquently affirmed by the U.S. Supreme Court in *Ex parte Milligan*: [10]

"The Constitution is a law for rulers and 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. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

The precarious state of lawlessness in Zamboanga City at the time in question certainly did not excuse the non-observance of the constitutional guaranty against unreasonable searches and seizures. There was no state of hostilities in the area to justify, assuming it could, the repressions committed therein against the petitioners.

It is so easy to say that the petitioners were outlaws and deserved the arbitrary treatment they received to take them into custody; but that is a cynical argument. It is also fallacious. Its obvious flaw lies in the conclusion that the petitioners were unquestionably guilty on the strength alone of unsubstantiated reports that they were stockpiling weapons.

The record does not disclose that the petitioners were wanted criminals or fugitives from justice. At the time of the "zona," they were merely suspected of the mayor's slaying and had not in fact even been investigated for it. As mere suspects, they were presumed innocent and not guilty as summarily pronounced by the military.

Indeed, even if were assumed for the sake of argument that they were guilty, they would not have been any less entitled to the protection of the Constitution, which covers both the innocent and the guilty. This is not to say, of course, that the Constitution coddles criminals. What it does simply signify is that, lacking the shield of innocence, the guilty need the armor of the Constitution, to protect them, not from a deserved sentence, but from arbitrary punishment. Every person is entitled to due process. It is no exaggeration that the basest criminal, ranged against the rest of the people who would condemn him outright, is still, under the Bill of Rights, a majority of one.

If the respondents did not actually disdain the Constitution when they made their illegal raid, they certainly gave every appearance of doing so. This is truly regrettable for it was incumbent on them, especially during those tense

and tindery times, to encourage rather than undermine respect for the law, which it was their duty to uphold.

In acting as they did, they also defied the precept that "civilian authority is at all times supreme over the military" so clearly proclaimed in the 1973 Constitution.[11] In the instant case, the respondents simply by-passed the civil courts, which had the authority to determine whether or not there was probable cause to search the petitioner's premises. Instead, they proceeded to make the raid without a search warrant on their own unauthorized determination of the petitioner's guilt.

The respondents cannot even plead the urgency of the raid because it was in fact not urgent. They knew where the petitioners were. They had every opportunity to get a search warrant before making the raid. If they were worried that the weapons inside the compound would be spirited away, they could have surrounded the premises in the meantime, as a preventive measure. There was absolutely no reason at all why they should disregard the orderly processes required by the Constitution and instead insist on arbi-trarily forcing their way into the petitioner's premises with all the menace of a military invasion.

Conceding that the search was truly warrantless, might not the search and seizure be nonetheless considered valid because it was incidental to a legal arrest? Surely not. If all the law-enforcement authorities have to do is force their way into any house and then pick up anything they see there on the ground that the occupants are resisting arrest, then we might as well delete the Bill of Rights as a fussy redundancy.

When the respondents could have easily obtained a search warrant from any of the TEN civil courts then open and functioning in Zamboanga City,[12] they instead simply barged into the beleaguered premises on the verbal order of their superior officers. One cannot just force his way into any man's house on the illegal orders of a superior, how-ever lofty his rank. Indeed, even the humblest hovel is pro-ected from official intrusion because of the ancient rule, revered in all free regimes, that a man's house is his castle.

"It may be frail; its roof may shake; the wind may enter; the rain may enter. But the King of England may not enter. All the forces of the Crown dare not cross the threshold of the ruined tenement." [13]

If the arrest was made under Rule 113, Section 5, of the Rules of Court in connection with a crime about to be committed, being committed, or just committed, what was that crime? There is no allegation in the record of such a justification. Parenthetically, it may be observed that under the revised Rule 113, Section 5(b), the officer making the arrest must have personal knowledge of the ground there-for as stressed in the recent case of *People v. Burgos*. [14]

If follows that as the search of the petitioners' premises was violative of the Constitution, all the fire-arms and ammunition taken from the raided compound are in-admissible in evidence in any of the proceedings against the petitioners. These articles are "fruits of the poison-ous tree." [15] As Judge Learned Hand observed, "Only in case the prosecution which itself controls the seizing of-ficials, knows that it cannot profit by their wrong, will the wrong be repressed." [16] Pending determination of the legality of such articles, however, they shall remain in custodia legis, subject to such appropriate disposition as the corresponding courts may decide. [17]

The objection to the photographing, fingerprinting and paraffin-testing of the petitioners deserves slight comment. The prohibition against self-incrimination applies to testimonial compulsion only. As Justice Holmes put it in *Holt v. United States*, [18] "The prohibition of compel-ling a man in a criminal court to be a witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclu-sion of his body as evidence when it may be material."

The fearful days of hamleting, salvaging, "zona" and other dreaded operations should remain in the past, banished with the secret marshals and their covert license to kill without trial. We must be done with lawlessness in the

name of law enforcement. Those who are supposed to uphold the law must not be the first to violate it. As Chief Justice Claudio Teehankee stressed in his concurring opinion in *Lacanilao v. De Leon*,^[19] "It is time that the martial law regime's legacy of the law of force be discarded and that there be a return to the force and rule of law."

All of us must exert efforts to make our country truly free and democratic, where every individual is entitled to the full protection of the Constitution and the Bill of Rights can stand as a stolid sentinel for all, the innocent as well as the guilty, including the basest of criminals.

WHEREFORE, the search of the petitioners' premises on November 25, 1984, is hereby declared ILLEGAL and all the articles seized as a result thereof are inadmissible in evidence against the petitioners in any proceedings. However, the said articles shall remain in custodia legis pending the outcome of the criminal cases that have been or may later be filed against the petitioners.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Rollo, p. 81.

[2] *Ibid.*, pp. 81-81

[3] *Id.*, p. 82.

[4] *id.*, pp. 3-16.

[5] *id.*, p. 43.

[6] *id.*, pp. 76-84.

[7] *id.*, p. 83.

[8] *id.*

[9] *id.*

[10] 4 Wall. 2.

[11] Art. II, Sec. 8, 1973 Constitution.

[12] Annexes "E", "E-1", "E-2", "E-3", "E-4", "E-5", "E-6", "E7", "E-8", and "E-9".

[13] *U.S. v. Arceo*, 3 Phil. 381.

[14] 144 SCRA 1.

[15] *Silverthorne Lumber Co. v. U.S.*, 251 U.S. 385.

[16] *Pugliese* (1945) 133 F. 2d. 497.

[17] *Roan v. ponzales*, 145 SCRA 687.

[18] 218 U.S. 245.

[19] G.R. No. 76532, prom. Jan. 26, 1987

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