

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF
ROLANDO N. ABADILLA, SUSAN S. ABADILLA, IN HER OWN BEHALF
AND IN BEHALF OF THE MINORS JUNE ELIZABETH, ROLANDO, JR.,
DAPHINE JE...**

G.R. No. 79173. December 01, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The validity of the detention of an individual is challenged in this Petition for habeas corpus. The petitioners are the spouse and minor children of the detainee while the respondents are ranking officers of the Armed Forces of the Philippines (AFP).

The record of the case discloses that on January 27, 1987, a group of officers and enlisted men of the AFP seized control of the radio-television broadcasting facilities of the Republic Broadcasting System (GMA-Channel 7) located in Quezon City, ostensibly for the purpose of toppling the existing constitutional government. While the takeover might have been a prelude to similar operations throughout the national capital, it did not succeed. On January 29, 1987, the mutineers surrendered to the military authorities and the possession of the facility was restored to the owners and managers thereof. Soon thereafter, the military authorities conducted an investigation of the matter.

On April 18, 1987, a group of enlisted men staged a mutiny inside the Fort Bonifacio military facility in Makati, Metropolitan Manila. The mutiny, dubbed as "The Black Saturday Revolt",^[1] did not succeed either. After the incident, the military authorities also conducted an investigation.

The first investigation was concluded on March 12, 1987. The investigation disclosed that Colonel Rolando N. Abadilla of the Philippine Constabulary (PC) of the AFP was one of the leaders of the unsuccessful takeover of the GMA radio-television facilities.^[2] The Board of Officers investigating the matter recommended that the case of Colonel Abadilla be endorsed for pre-trial investigation and that the appropriate charges be filed against him for violation of Article of War 67 (Mutiny or Sedition), Article of War 94 (Various Crimes) in relation to Article 139 of the Revised Penal Code and Section 1 of Presidential Decree No. 1866, and such other offenses that may be warranted by the evidence. Accordingly, a charge sheet was prepared against the Colonel.

The investigation conducted on "The Black Saturday Revolt" ended on May 27, 1987. It was found at said investigation that Colonel Abadilla was also involved in the mutiny. The Board of Officers conducting the investigation also recommended that the case be endorsed for pre-trial investigation and that the appropriate charges be filed against the Colonel.^[3] The Colonel was likewise charged, accordingly.

Colonel Abadilla was at large when both investigations were conducted.

On May 4, 1987 or some two weeks before the second investigation was concluded, herein respondent Major General Renato De Villa, Commanding General of the PC and Vice-Chief of Staff of the AFP issued an Order for

the arrest and confinement of Colonel Abadilla.[4]

On May 21, 1987, respondent AFP Chief of Staff General Fidel V. Ramos issued General Orders No. 342 dropping Colonel Abadilla from the rolls of regular officers of the AFP.[5] The pertinent portions of the said General Orders are as follows -?

"DROPPING FROM THE ROLLS OF REGULAR OFFICERS

"The names of the following officers are dropped from the rolls of Regular Officers, Armed Forces of the Philippines for cause effective as of 9 May 1987 pursuant to Article of War 117. (Authority: Letter from the President, dated 9 May 1987).

"BRIGADIER GENERAL JOSE MARIA CARLOS ZUMEL xxx

"COLONEL ROLANDO N ABADILLA 0-4937 PHILIPPINE CONSTABULARY (GENERAL STAFF CORPS)

"MAJOR REYNALDO C CABAUTAN xxx

"BY ORDER OF THE SECRETARY OF NATIONAL DEFENSE:

"xxx."

On July 7, 1987, the Assistant City Fiscal of Quezon City filed an Information for Slight Physical Injuries with the Metropolitan Trial Court of Metropolitan Manila in Quezon City against Colonel Abadilla.[6] The case was docketed as Criminal Case No. 0237558.

On July 27, 1987, a combined element of the Philippine Army and Philippine Constabulary arrested Colonel Abadilla.[7] He was detained first in Camp Crame in Quezon City and later, up to the present, in Fort Bonifacio in Makati.

On July 30, 1987, another Information, this time for violation of Presidential Decree No. 1866 (Illegal Possession of Firearms and Ammunition) was filed by the Assistant City Fiscal of Quezon City against Colonel Abadilla.[8] The case was assigned to Branch 104 of the Regional Trial Court in Quezon City and was docketed as Criminal Case No. Q-53382.

On the same date, July 30, 1987, Mrs. Susan S. Abadilla, the spouse of Colonel Abadilla together with their minor children June Elizabeth, Rolando, Jr., Daphine Jennifer, Ma. Theresa, Anna Rosanna, Vincent Marcus and Bart Joseph, went to this Court and filed the instant Petition for habeas corpus, challenging the validity of the detention of Colonel Abadilla.[9]

The main arguments in the Petition are as follows --

(1) When Colonel Abadilla was dropped from the rolls of officers effective May 9, 1987, he became a civilian and as such, the order for his arrest and confinement is null and void because he was no longer subject to military law;

(2) His detention is illegal because he is not charged with any criminal offense, either before a civil court or a court-martial;

(3) Even assuming that the order for the arrest and confinement of Colonel Abadilla was valid at the initial stage, the said order became functus officio and/or moot and academic when the Colonel was dropped from the rolls of officers;

(4) Even assuming that Colonel Abadilla is subject to military law, his detention remains illegal because under

Article of War 70, a person subject to military law can be detained only if he is charged with a crime or a serious offense under the Articles of War.

In the meantime, the Regional Trial Court, with Judge Maximiano O. Asuncion presiding therein, granted the Motion to Quash and the Supplement thereto filed by the counsel of Colonel Abadilla. Accordingly, the Information in Criminal Case No. Q-53382 was dismissed by the trial court.[10]

In a resolution dated August 4, 1987, this Court resolved to issue the writ of habeas corpus. The respondents were required to make a return of the writ on August 10, 1987.[11]

On August 10, 1987, the respondents, represented by the Office of the Solicitor General (OSG), submitted the Return of the writ.[12] The main arguments in the Return are as follows -?

- (1) In the event that proceedings with a view to military trial are commenced against a person subject to military law before the termination of military service, military jurisdiction will fully attach on the said person.;
- (2) The confinement of Colonel Abadilla as a person subject to military jurisdiction is authorized by Article of War 70; and
- (3) The continued confinement of Colonel Abadilla in Fort Bonifacio is imperative and justified on account of the criminal case/s filed against him by both the military and civil authorities.

As instructed by this Court, the petitioners submitted their Reply to the Return of the writ on September 7, 1987.[13] The main arguments in the Reply are as follows -?

- (1) The pendency of a case in the civil courts has no relevance to the issue of military jurisdiction over Colonel Abadilla. This view notwithstanding, Criminal Case No. Q-53382 filed against Colonel Abadilla has been dismissed by the trial court. The pendency of Criminal Case No. 0237558 filed against the Colonel does not warrant his continued confinement inasmuch as the Colonel has posted bail for his provisional liberty;
- (1) Colonel Abadilla is not in the active service of the AFP nor is he a person under sentence adjudged by courts-martial. As such, he does not fall under the category of a person subject to military law as defined by Article of War 2;
- (2) An officer dropped from the rolls by order of the President is fully separated from the service and is no longer subject to military law (Citing Gloria, Philippine Military Law Annotated).;
- (3) Under Section 10 of the Manual for Courts-Martial, Philippine Army, court-martial jurisdiction over officers in the military service of the Philippines ceases on discharge or separation from the service. The case of Colonel Abadilla does not fall under any of the exceptions to this rule. This observation has been upheld in *Martin v. Ver*, 123 SCRA 745 (1983);
- (4) The pronouncement of the United States Supreme Court in *Toth v. Quarles*, 350 U.S. 11 (1955), cited in *Olague v. Military Commission No. 34*, G.R. Nos. 54558 and 69882, May 22, 1987, supports the stand taken by the herein petitioners; and
- (5) Under the provisions of Presidential Decree No. 1850, as amended by Presidential Decree No. 1952, court-martial jurisdiction over the person of accused military personnel cannot be exercised if they are already separated from the active service, provided that jurisdiction has not attached beforehand unless otherwise provided by law.

On September 9, 1987, the petitioners submitted their Traverse to the Return of the writ.[14] It is contended therein that, contrary to the view of the Solicitor General, jurisdiction over a person is acquired not by the mere

filing of a charge or information, or by the commencement of an investigation, but by the arrest of the defendant. The petitioners stress that inasmuch as Colonel Abadilla was arrested after he had become a civilian, the charge sheets prepared against him by the military authorities are null and void for lack of jurisdiction over the person of the Colonel.

On September 24, 1987, the petitioners submitted their Additional Traverse together with a Motion to Decide the Petition.[15] On the issue of military jurisdiction, and in support of their contentions, they cite the treatise of Colonel William Winthrop entitled *Military Law and Precedents*. [16]

Inasmuch as the parties herein had already presented their respective arguments, the case was, therefore, deemed submitted for deliberation.

The sole issue in habeas corpus proceedings is the legality of the detention.[17] Therefore, the issue that must be resolved by this Court is this: Is the detention of Colonel Abadilla illegal? The resolution of this issue will of course, relate to the jurisdiction of the military authorities over the person of Colonel Abadilla.

I.

We shall first resolve the problem of jurisdiction.

In *Olague v. Military Commission No. 34*, [18] this Court held that a military commission or tribunal cannot try and exercise jurisdiction over civilians for offenses allegedly committed by them as long as the civil courts are open and functioning, and that any judgment rendered by such body relating to a civilian is null and void for lack of jurisdiction on the part of the military tribunal concerned. For the same reasons, the doctrine announced in *Aquino, Jr. v. Military Commission No. 2* [19] and all decided cases affirming the same, in so far as they are inconsistent with the *Olague* pronouncement, were deemed abandoned. There is no doubt, therefore, that military authorities cannot try civilians.

The petitioners contend that the *Olague* doctrine applies to Colonel Abadilla on the ground that he had become a civilian since May 9, 1987 when he was dropped from the rolls of officers of the AFP. They argue that on account of his civilian status, Colonel Abadilla is no longer subject to military law. In support of their arguments, the petitioners cite the Articles of War, [20] the Manual for Courts-Martial of the AFP, [21] Presidential Decree No. 1850, as amended, as well as the dissertations on military law of Colonel William Winthrop [22] and Colonel Claro Gloria. [23] They likewise invoke the pronouncement of this Court in *Martin v. Ver* [24] and that of the Supreme Court of the United States in *Toth v. Quarles*. [25]

On the other hand, the Solicitor General contends that military jurisdiction had fully attached on Colonel Abadilla inasmuch as proceedings were initiated against him before the termination of his service in the military.

We agree.

As early as March, 1987, months before Colonel Abadilla was dropped from the rolls of officers, the military authorities began the institution of proceedings against him. As of that time, he was certainly subject to military law. He was under investigation for his alleged participation in the unsuccessful mutinies when he was an officer of the AFP. As a military officer, it was incumbent upon him to appear before his superior officers conducting the investigation even for the purpose of clearing his name. He did not do so. His superiors could not confine him during the period of investigation because, as stated earlier, he was at large. This disregard for military duty and responsibility may have prompted his superiors to cause him to be dropped from the rolls of officers.

It is clear that from the very start of this controversy, the military authorities intended to try Colonel Abadilla as a person subject to military law. This can be gleaned from the charge sheets prepared against him.

The fact that Colonel Abadilla was dropped from the rolls of officers cannot and should not lead to the conclusion that he is now beyond the jurisdiction of the military authorities. If such a conclusion were to prevail, his very own refusal to clear his name and protect his honor before his superior officers in the manner prescribed for and expected from a ranking military officer would be his shield against prosecution in the first place. His refusal to report for duty or to surrender when ordered arrested, which led to his name being dropped from the roll of regular officers of the military, cannot thereby render him beyond the jurisdiction of the military courts for offenses he committed while still in the military service. This Court cannot countenance such an absurd situation. Established principles in remedial law call for application.

The military authorities had jurisdiction over the person of Colonel Abadilla at the time of the alleged offenses. This jurisdiction having been vested in the military authorities, it is retained up to the end of the proceedings against Colonel Abadilla. Well-settled is the rule that jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated.[26]

The petitioners stress that jurisdiction over a person is acquired not by the mere filing of a charge or an information, or by the commencement of an investigation, but by the arrest of the defendant. They maintain that the Colonel was arrested when he was already a civilian.

The argument is untenable.

The rule that jurisdiction over a person is acquired by his arrest applies only to criminal proceedings instituted before the regular courts. It does not apply to proceedings under military law. At the time the military investigations were commenced, Colonel Abadilla was an officer of the AFP subject to military law. As such, the military authorities had jurisdiction over his person pursuant to Article of War 2 and Section 8 of the Manual for Courts-Martial, AFP, which provide as follows:-

"Art. 2. Persons Subject to Military Law. -- The following persons are subject to these articles and shall be understood as included in the term 'any person subject to military law' or 'persons subject to military law,' whenever used in these articles:

"(a) All officers and soldiers in the active service of the Armed Forces of the Philippines or of the Philippine Constabulary; xxx;

" xxx. " and

8. COURTS-MARTIAL -- Jurisdiction in general -- Persons. -- The following persons are subject to military law:

"(a) All officers and soldiers in the active service of the Armed Forces of the Philippine Constabulary; xxx;

" xxx. "

As mentioned earlier, his earlier arrest could not be effected because he was at large. The initial stages of the investigations had against him before his arrest were, therefore, not improper.

As a whole, the authorities cited and relied upon by the petitioners do not satisfactorily support their contentions.

Article of War 2 enumerates who are subject to military law. In March, 1987, Colonel Abadilla was a military officer. Under this Article, he was subject to military law.

Section 10 of the Manual for Courts-Martial, AFP, which discusses court-martial jurisdiction in general, states the general rule to be:

"The general rule is that court-martial jurisdiction over officers, cadets, soldiers, and others in the military

service of the Philippines ceases on discharge or other separation from such service, and that jurisdiction as to an offense committed during a period of service thus terminated is not revived by a reentry into the military service."

Attention is called to the exception mentioned in the last sentence of the Section, to wit -?

"So also, where a dishonorably discharged general prisoner is tried for an offense committed while a soldier and prior to his dishonorable discharge, such discharge does not terminate his amenability to trial for the offense."

This exception applies to the case of Colonel Abadilla inasmuch as he is at present confined in Fort Bonifacio upon the orders of his superior officers, and his having been dropped from the rolls of officers amounts to a dishonorable discharge.

Section 1 of Presidential Decree No. 1850, as amended, even acknowledges instances where military jurisdiction fully attaches on an individual even after he shall have been separated from active service, to wit -?

"SECTION 1. Court martial jurisdiction over Integrated National Police and Members of the Armed Forces. xxx;

"(b) all persons subject to military law under Article 2 of the aforecited Articles of War who commit any crime or offense shall be exclusively tried by courts-martial or their case disposed of under the said Articles of War; Provided, that in either of the aforementioned situations, the case shall be disposed of or tried by the proper civil or judicial authorities when court-martial jurisdiction over the offense has prescribed under Article 38 of Commonwealth Act No. 408, as amended, or court-martial jurisdiction over the person of the accused military or Integrated National Police can no longer be exercised by virtue of their separation from the active service without jurisdiction having duly attached beforehand unless otherwise provided by law; xxx." (Emphasis supplied.)

The dissertations of Colonels Winthrop and Gloria are, at most, persuasive authorities. Indeed, this Court has cited the treatise of Colonel Winthrop in at least three cases[27] on account of the scholarly discussions contained therein. Works of this nature provide insight and information which have been of tremendous help to this Court in many judicial controversies. Regardless of their great value, they cannot prevail over opposing but nonetheless settled doctrines in Philippine jurisprudence.

These observations notwithstanding, We have gone through the treatise of Colonel Winthrop and We find the following passage which goes against the contention of the petitioners, viz --

"3. Offenders in general -? Attaching of jurisdiction. It has further been held, and is now settled law, in regard to military offenders in general, that if the military jurisdiction has once duly attached to them previous to the date of the termination of their legal period of service, they may be brought to trial by court-martial after that date, their discharge being meanwhile withheld. This principle has mostly been applied to cases where the offense was committed just prior to the end of the term. In such cases the interests of discipline clearly forbid that the offender should go unpunished. It is held therefore that if before the day on which his service legally terminates and his right to a discharge is complete, proceedings with a view to trial are commenced against him, -- as by arrest or the service of charges, -- the military jurisdiction will fully attach, and once attached may be continued by a trial by court-martial ordered and held after the end of the term of the enlistment of the accused. xxx."[28]

The case of *Martin v. Ver*[29] cited by the petitioners is not in point. In *Martin*, this Court took the opportunity to discuss the general rule that "court-martial jurisdiction over persons in the military service of the Philippines ceases upon discharge or separation from such service" and an exception to the general rule recited in Article of

War 95 regarding frauds against the Government.

The case of *Toth v. Quarles*[30] decided by the Supreme Court of the United States is also inapplicable.

Toth involves a former serviceman named Audrey M. Toth who five months after his honorable discharge from the U.S. Air Force, was arrested by military authorities on a charge of murder allegedly committed in Korea when he was still an airman. A divided Supreme Court[31] held that Congress has no power to subject a discharged serviceman to trial by court-martial for offenses committed by him while in the military service and so to deprive him of the constitutional safeguards protecting persons accused of crime in a federal court.

The *Toth* ruling is inapplicable to the instant case for two reasons.

First -- *Toth* was honorably discharged from the military service. The arrangement was voluntary on the part of the serviceman. There was an ostensible intention on his part to live the life of a civilian again. Colonel Abadilla was not honorably discharged. On the contrary, he was dropped from the rolls of regular officers of the AFP. This arrangement did not have his express consent. In fact, he was at large at that time.

Second -- The proceedings against *Toth* began after his honorable discharge from the service. The proceedings against Colonel Abadilla were commenced when he was still a regular officer of the AFP.

Moreover, the doctrine in *Toth* is not a unanimous pronouncement as there were some persuasive dissenting views.

Although *Toth* was cited in *Olague v. Military Commission No. 34*,[32] the citation should not be construed as a sweeping endorsement of the entire doctrine therein. *Toth* was cited in *Olague* only for the purpose of emphasizing that military commissions or tribunals cannot try civilians. In *Olague*, this Court relied on the doctrine announced in *Ex-parte Milligan*,[33] and not the one in *Toth*, in arriving at the Decision of the Court.

Another point should be mentioned regarding the matter of jurisdiction. We agree with the respondents in their assertion that the pendency of a case in the civil courts has no relevance to the problem of military jurisdiction over Colonel Abadilla. The argument is well-taken.

II.

The matter of jurisdiction having been settled, We now proceed to discuss the remaining contentions of the petitioners.

The petitioners argue that even if it were to be assumed that Colonel Abadilla is subject to military law, his confinement remains illegal because under Article of War 70, a person subject to military law can be detained only if he is charged with a crime or a serious offense under the Articles of War.

The record of the case discloses that Colonel Abadilla has been charged by the military authorities for violation of Article of War 67 (Mutiny or Sedition) which is a serious offense, and the corresponding charge sheets have been prepared against him.

The important issue in this Petition has been resolved -- the detention of Colonel Abadilla under the circumstances obtaining in this case is not illegal. For this reason, the instant Petition for habeas corpus should be dismissed for lack of merit.

In the light of the foregoing discussion, the motion of petitioners to hold respondent General Ramos in contempt of court for approving the filing of court martial proceedings against Colonel Abadilla during the pendency of this case should be and is hereby denied. The Court has not issued a restraining order enjoining such proceedings. In

fact We now find that the court martial proceedings may proceed inasmuch as the military authorities have jurisdiction over Colonel Abadilla in the above-stated cases.

One last word. The man in uniform belongs to the elite in public service. His eminent credential is his absolute loyalty to the Constitution, the flag, his country and his people. He is the guardian against external and internal aggression.

He is a man of honor and courage. He is a gentleman. He is given arms to insure his capability as an instrument of peace. When he is drafted in the Philippine Constabulary he becomes a peace officer, a law enforcer, a law man. Respect for the law is his article of faith.

However, when he wavers and fails to live up to the highest standard of fidelity to his country and people, when he defies authority and discipline, when he commits offenses or when he turns against the very people and government he is sworn to protect, he becomes an outlaw and a disgrace to his uniform. The state has a right to hold him to account for his transgressions and to see to it that he can not use the awesome powers of his status to jeopardize the security and peace of the citizenry.

WHEREFORE, in view of the foregoing, the instant Petition for habeas corpus is hereby DISMISSED for lack of merit. We make no pronouncement as to costs.

SO ORDERED.

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

[1] Page 16, Rollo.

[2] Pages 22 to 26, Rollo.

[3] Pages 27 to 33, Rollo.

[4] Annex "B", Petition; page 12, Rollo.

[5] Annex "A", Petition; page 11, Rollo.

[6] Page 43, Rollo.

[7] Page 3, Petition.

[8] Pages 41 to 42, Rollo.

[9] The herein petitioners were represented by Dean Antonio Coronel and Former Justice Vicente G. Ericta.

[10] Annex "C", First Supplemental Expediente.

[11] Page 15, Rollo.

[12] Pages 16 to 21, Rollo.

[13] Pages 1 to 16, First Supplemental Expediente.

[14] Pages 1 to 9, Second Supplemental Expediente. A Traverse signifies a denial. Thus, where a defendant denies any material allegation of fact in the plaintiff's declaration, he is said to traverse it, and the plea itself is thence frequently termed a traverse (Black's Law Dictionary, Fifth Edition, page 1345).

[15] Pages 1 to 3, Third Supplemental Expediente.

[16] Second Edition, 1920.

[17] *Herrera v. Enrile*, L-40181, 62 SCRA 547 (1975).

[18] G.R. Nos. 54558 and 69882, May 22, 1987.

[19] 63 SCRA 546 (1975).

[20] Commonwealth Act No. 408, as amended.

[21] Executive Order no. 178 issued by President Manuel L. Quezon on December 17, 1938.

[22] *Military Law and Precedents*, Vols. 1 and 2, 1920 edition.

[23] *Philippine Military Law Annotated*, Revised Edition, 1956.

[24] 123 SCRA 745 (1983).

[25] 350 U.S. 11; 76 S. Ct. 1; 100 L. Ed. 8 (1955).

[26] *Lat v. Philippine Long Distance Telephone Co.*, 69 SCRA 425 (1975); *Republic v. Central Surety & Insurance Co.*, 25 SCRA 641 (1968); *Rizal Surety & Insurance Co. v. Manila Railroad Company*, 16 SCRA 908 (1966); *Tuvera v. De Guzman*, 13 SCRA 729 (1965).

[27] *Martin v. Ver*, *supra*; *Ruffy v. Chief of Staff*, 75 Phil. 875 (1946). See also *Aquino, Jr. v. Military Commission No. 2*, *supra*.

[28] *Supra*, at page 90. Later emphasis supplied.

[29] *Supra*.

[30] *Supra*.

[31] Mr. Justice Hugo L. Black wrote the majority opinion concurred in by five other Justices. Three Justices, Stanley Reed, Harold Burton and Sherman Minton, dissented.

[32] *Supra*.

[33] 4 Wallace (U.S.) 127, 18 L. Ed. 297.

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