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G.R. No. 80508. January 30, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for prohibition with preliminary injunction to prohibit the military and police officers represented by public respondents from conducting "Areal Target Zonings" or "Saturation Drives" in Metro Manila.

The forty One (41) petitioners state that they are all of legal age, bonafide residents of Metro Manila and taxpayers and leaders in their respective communities. They maintain that they have a common or general interest in the preservation of the rule of law, protection of their human rights and the reign of peace and order in their communities. They claim to represent "the citizens of Metro Manila who have similar interests and are so numerous that it is impracticable to bring them all before this Court."

The public respondents, represented by the Solicitor General, oppose the petition contending inter alia that petitioners lack standing to file the instant petition for they are not the proper parties to institute the action.

According to the petitioners, the following "saturation drives" were conducted in Metro Manila:

1. March 5, 1987 at about 9:30 PM in Tindalo, Kagitingan, and Magdalena Streets, Tondo, Manila.
2. June 19, 1987 at about 10:00 PM in Mata Street, Pinday Pira Extension and San Sebastian Street, Tondo, Manila.
3. July 20, 1987 at about 8:00 AM in Bangkusay Street, Tondo, Manila.
4. August 11 to 13, 1987 between 11:00 PM and 2:00 AM in six blocks along Aroma Beach up to Happy Land, Magsaysay Village, Tondo, Manila.
5. August 19, 1987 at 9:00 PM in Herbosa Extension, Quirino Street, and Pacheco Street, Tondo, Manila.
6. August 28, 1987 at 10:30 PM, in Block 34, Dagat-dagatan, Navotas, Metro Manila.
7. August 30, 1987 at 9:30 PM at Paraiso Extension, Magsaysay Village, Tondo, Manila.
8. October 12, 1987 at 12:00 midnight in Apelo Cruz Compound, Quezon City.
9. October 17, 1987 at 11:00 PM in Quirino Street, Tondo, Manila.
10. October 23, 1987 at 2:30 A.M. in Sun Valley Drive, Manila International Airport, Pasay City.

11. November 1, 1987 at 4s00 A.M. in Cordillera Street, Sta. Mesa, Manila.

12. November 3, 1987 at 5:00 A.M. in Lower Maricaban, Pasay City, Metro Manila.

According to the petitioners, the "areal target zonings" or "saturation drives" are in critical areas pinpointed by the military and police as places where the subversives are hiding. The arrests range from seven (7) persons during the July 20 saturation drive in Bangkusay, Tondo to one thousand five hundred (1,500) allegedly apprehended on November 3 during the drive at Lower Maricaban, Pasay City. The petitioners claim that the saturation drives follow a common pattern of human rights abuses. In all these drives, it is alleged that the following were committed:

"1. Having no specific target house in mind, in the dead of the night or early morning hours, police and military units without any search warrant or warrant of arrest cordon an area of more than one residence and sometimes whole barangay or areas of barangay in Metro Manila. Most of them are in civilian clothes and without nameplates or identification cards.

"2. These raiders rudely rouse residents from their sleep by banging on the walls and windows of their homes, shouting, kicking their doors open (destroying some in the process), and then ordering the residents within to come out of their respective residences.

"3. The residents at the point of high-powered guns are herded like cows, the men are ordered to strip down to their briefs and examined for tattoo marks and other imagined marks.

"4. While the examination of the bodies of the men are being conducted by the raiders, some of the members of the raiding team force their way into each and every house within the cordoned off area and then proceed to conduct search of the said houses without civilian witnesses from the neighborhood.

"5. In many instances, many residents have complained that the raiders ransack their homes, tossing about the residents' belongings without total regard for their value. In several instances, walls are destroyed, ceilings are damaged in the raiders' illegal effort to 'fish' for incriminating evidence.

"6. Some victims of these illegal operations have complained with increasing frequency that their money and valuables have disappeared after the said operations.

"7. All men and some women who respond to these illegal and unwelcome intrusions are arrested on the spot and hauled off to waiting vehicles that take them to detention centers where, they are interrogated and 'verified.' These arrests are all conducted without any warrants of arrest duly issued by a judge, nor under the conditions that will authorize warrantless arrest. Some hooded men are used to fingerprint suspected subversives.

"8. In some instances, arrested persons are released after the expiration of the period wherein they can be legally detained without any charge at all. In other instances, some arrested persons are released without charge after a few days of arbitrary detention.

"9. The raiders almost always brandish their weapons and point them at the residents during these illegal operations.

"10. Many have also reported incidents of 'on-the-spot beatings', maulings and maltreatment.

"11. Those who are detained for further 'verification' by the raiders are subjected to mental and physical torture to extract confessions and tactical information." (Rollo, pp. 2-4)

The public respondents stress two points in their Comment which was also adopted as their Memorandum after the petition was given due course.

First, the respondents have legal authority to conduct saturation drives. And second, they allege that, the accusations of the petitioners about a deliberate disregard for human rights are total lies.

Insofar as the legal basis for saturation drives is concerned, the respondents cite Article VII, Section 17 of the Constitution which provides:

"The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed. (Emphasis supplied by the respondents.)

They also cite Section 18 of the same Article which provides:

"The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call, out such armed farces to prevent or suppress lawless violence, invasion ' or rebellion. x x x."

There can be no question that under ordinary circumstances, the police action, of the nature described by the petitioners would be illegal and blatantly violative of the express guarantees of the Bill of Rights. If the military and the police must conduct concerted campaigns to flush out and catch criminal elements, such drives must be consistent with the constitutional and statutory rights of all the people affected by such actions.

There is, of course, nothing in the Constitution which denies the authority of the Chief Executive, invoked by the Solicitor General, to order police actions to stop unabated criminality, rising lawlessness, and alarming communist activities. The Constitution grants to Government the power to seek and cripple subversive movements which would bring down constituted authority and substitute a regime where individual liberties are suppressed as a matter of policy in the name of security of the State. However, all police actions are governed by the limitations of the Bill of Rights. The Government cannot adopt the same reprehensible methods of authoritarian systems both of the right and of the left the enlargement of whose spheres of influence it is trying hard to suppress. Our democratic institutions may still be fragile but they are not in the least bit strengthened through violations of the constitutional protections which are their distinguishing features.

In *Roan v. Gonzales* (145 SCRA 687; 690-691 [1986]), the Court stated:

"One of the most precious rights of the citizen in a free society is the right to be left alone in the privacy of his own house. That right has ancient roots, dating back through the mists of history to the mighty English kings in their fortresses of power. Even then, the lowly subject had his own castle where he was monarch of all he surveyed. This was hits humble cottage from which he could bar his sovereign lord and all the forces of the Crown.

"That right has endured through the ages albeit only in a few libertarian regimes. Their number, regrettably; continues to dwindle against the onslaughts of authoritarianism. We are among the fortunate few, able again to enjoy this right after the ordeal of the past despotism. We must cherish and protect it all the more now because it is like a prodigal son returning.

"That right is guaranteed in the following provisions of Article IV of the 1973 Constitution:

"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."

x x x x x x x x

Only last year, the Court again issued this reminder in *20th Century Fox Film Corporation v. Court of Appeals* (164 SCRA 655; 660-661 [1988]):

"This constitutional right protects a citizen against wanton and unreasonable invasion of his privacy and liberty as to his person, papers and effects. We have explained in the case of *People v. Burgos* (144 SCRA 1) citing *Villanueva v. Querubin* (48 SCRA 345) why the right is so important:

"It is deference to one's personality that lies at the core of this right but it could be also looked upon as a recognition of a constitutionally protected area, primarily one's home but not necessarily thereto confined., (Cf. *Hoffa v. United States*, 385 US 293 [1966]) What is sought to be guarded is a man's prerogative to choose who is allowed entry to his residence. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the kind of objects he wants around him. There the state, however powerful, does not as such have access except under the circumstances above noted, for in the traditional formulation, his house, however humble, is his castle. Thus is outlawed any unwarranted intrusion by government, which is called upon to refrain from any invasion of his dwelling and to respect the privacies of his life. (Cf. *Schmerber v. California*, 384 US 757 [1966], *Brennan, J.* and *Boyd v. United States* 116 630 [1886]). In the same vein, *Landynski* in his authoritative work (*Search and Seizure and the Supreme Court* [1966]), could fitly characterize constitutional right as the embodiment of a 'spiritual concept: the belief that to value the privacy of home and person and to afford its constitutional protection against the long reach of government is no less than to value human dignity, and that his privacy must not be disturbed except in case of overriding social need, and then only under stringent procedural safeguards.' (ibid, p. 74.)"

The decision of the United States Supreme Court in *Rochin v. California*, (342 US 165; 96 L. Ed. 183 [1952]) emphasizes clearly that police actions should not be characterized by methods that offend a sense of justice. The court ruled:

"Applying these general considerations to the circumstances of the present case, we are compelled to conclude that the proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism about combatting crime too energetically. This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents--this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation."

It is significant that it is not the police action per se which is impermissible and which should be prohibited. Rather, it is the procedure used or in the words of the court, methods which "offend even hardened sensibilities." In *Breithaupt v. Abram* (352 US 432, 1 L. Ed. 2nd 448 [1957]), the same court validated the use of evidence, in this case blood samples involuntarily taken from the petitioner, where there was nothing brutal or offensive in the taking. The Court stated:

"Basically the distinction rests on the fact that there is nothing 'brutal' or 'offensive' in the taking of a sample of blood when done, as in this case, under the protective eye of a physician. To be sure, the driver here was unconscious when the blood was taken, but the absence of conscious consent, without more, does not necessarily render the taking a violation of a constitutional right; and certainly the test was administered here would not be considered offensive by even the most delicate. Furthermore, due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by that whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct. x x x."

The individual's right to immunity from such invasion of his body was considered as "far outweighed by the value of its deterrent effect" on the evil sought to be avoided by the police action.

It is clear, therefore, that the nature of the affirmative relief hinges closely on the determination of the exact facts surrounding a particular case.

The violations of human rights alleged by the petitioners are serious. If an orderly procedure ascertains their truth, not only a writ of prohibition but criminal prosecutions would immediately issue as a matter of course. A persistent pattern of wholesale and gross abuse of civil liberties, as alleged in the petition, has no place in civilized society.

On the other hand, according to the respondents, the statements made by the petitioners are a complete lie.

The Solicitor General argues:

"This is a complete lie.

Just the contrary, they had been conducted with due regard to human rights. Not only that, they were intelligently and carefully planned months ahead of the actual operation. They were executed in coordination with barangay officials who pleaded with their constituents to submit themselves voluntarily for character and personal verification. Local and foreign correspondents, who had joined these operations, witnessed and recorded the events that transpired relative thereto. (After Operation Reports: November 5, 1987, Annex 12; November 20, 1987, Annex 13; November 24, 1987, Annex 14). That is why in all the drives so far conducted, the alleged victims who numbered thousands had not themselves complained.

"In her speech during turn-over rites on January 26, 1987 at Camp Aguinaldo, President Aquino branded all accusations of deliberate disregard for human rights as 'total lies'. Here are excerpts from her strongest speech yet in support of the military:

"All accusations of a deliberate disregard for human rights have been shown up to be total lies.

" x x x. To our soldiers, let me say go out and fight, fight with every assurance that I will stand by you through thick and thin to share the blame, defend your actions, mourn the losses and enjoy with you the final victory that I am certain will be ours.

"You and I will see this through together.

"I've sworn to defend and uphold the Constitution.

"We have wasted enough time answering their barkings for it is still a long way to lasting peace. x x x The dangers and hardships to our men in the field are great enough as it is without having them distracted by this worthless carping at their backs.

"Our counter-insurgency policy remains the same: economic development to pull out the roots — and military operations to slash the growth — of the insurgency.

"The answer to terror is force — now.

"Only feats of arms can buy us the time needed to make our economic and social initiatives bear fruit. x x x. Now that the extreme Right has been defeated. I expect greater vigor in the prosecution of the war against the communist insurgency, even as we continue to watch our backs against attacks from the Right. (Philippine Star, January 27, 1988, p. 1, Annex 15; underlining ours.)

"Viewed in the light of President Aquino's observation on the matter, it can be said that petitioners misrepresent as human rights violations the military and police's zealous vigilance over the people's right to live in peace and safety." (Rollo, pp. 36-38)

Herein lies the problem of the Court. We can only guess the truth. Everything before us consists of allegations.

According to the petitioners, more than 3,407 persons were arrested in the saturation drives covered by the petition. No estimates are given for the drives in Block 34, Dagat-dagatan, Navotas; Apelo Cruz Compound, Pasig; and Sun Valley Drive near the Manila International Airport Area. Not one of the several thousand persons treated in the illegal and inhuman manner described by the petitioners appears as a petitioner or has come before a trial court to present the kind of evidence admissible in courts of justice. Moreover, there must have been tens of thousands of nearby residents who were inconvenienced in addition to the several thousand allegedly arrested. None of those arrested has apparently been charged and none of those affected has apparently complained.

A particularly intriguing aspect of the Solicitor General's comment is the statement that local and foreign correspondents actually joined the saturation drives and witnessed and recorded the events. In other words, the activities sought to be completely proscribed were in full view of media. The sight of hooded men allegedly being used to finger point suspected subversives would have been good television copy. If true, this was probably effected away from the ubiquitous eye of the TV cameras or, as the Solicitor General contends, the allegation is a "complete lie."

The latest attempt to stage a coup d'etat where several thousand members of the Armed Forces of the Philippines sought to overthrow the present Government introduces another aspect of the problem and illustrates quite clearly why those directly affected by human rights violations should be the ones to institute court actions and why evidence of what actually transpired should first be developed before petitions are filed with this Court.

Where there is large scale mutiny or actual rebellion, the police or military may go in force to the combat areas, enter affected residences or buildings, round up suspected rebels and otherwise quell the mutiny or rebellion without having to secure search warrants and without violating the Bill of Rights. This is exactly what happened in the White Plains Subdivision and the commercial center of Makati during the first week of December, 1989.

The areal target zonings in this petition were intended to flush out subversives and criminal elements particularly because of the blatant assassinations of public officers and police officials by elements supposedly coddled by the communities where the "drives" were conducted.

It is clear from the pleadings of both petitioners and respondents, however, that, there was no rebellion or criminal activity similar to that of the attempted coup d'etats. There appears to have been no impediment to securing search warrants or warrants of arrest before any houses were searched or individuals roused from sleep were arrested. There is no strong showing that the objectives sought to be attained by the "areal zoning" could not be achieved even as the rights of squatter and low income families are fully protected.

Where a violation of human rights specifically guaranteed by the Constitution is involved, it is the duty of the court to stop the transgression and state where even the awesome power of the state may not encroach upon the rights of the individual.

It is the duty of the court to take remedial action even in cases such as the present petition where the petitioners do not complain that they were victims of the police actions, where no names of any of the thousands of alleged victims are given, and where the prayer is a general one to stop all police "saturation drives," as long as the Court is convinced that the event actually happened.

The Court believes it highly probable that some violations were actually committed. This is so inspite of the alleged pleas of barangay officials for the thousands of residents "to submit themselves voluntarily for character and personal verification." We cannot imagine police actions of the magnitude described in the petitions and admitted by the respondents, being undertaken without some undisciplined soldiers and policemen committing certain abuses. However, the remedy is not to stop all police actions, including the essential and legitimate ones.

We see nothing wrong in police making their presence visibly felt in troubled areas. Police cannot respond to riots or violent demonstrations if they do not move in sufficient numbers. A show of force is sometimes necessary as long as the rights of people are protected and not violated. A blanket prohibition such as that sought by the petitioners would limit all police actions to one on one confrontations where search warrants and warrants of arrests against specific individuals are easily procured. Anarchy may reign if the military and the police decide to sit down in their offices because all concerted drives where a show of force is present are totally prohibited.

The remedy is not an original action for prohibition brought through a taxpayers' suit. Where not one victim complains and not one violator is properly charged, the problem is not initially for the Supreme Court. It is basically one for the executive departments and for trial courts. Well meaning citizens with only second hand knowledge of the events cannot keep on indiscriminately tossing problems of the executive, the military, and the police to the Supreme Court as if we are the repository of all remedies for all evils. The rules of constitutional litigation have been evolved for an orderly procedure in the vindication of rights. They should be followed. If our policy makers sustain the contention of the military and the police that occasional, saturation drives are essential to maintain the stability of government and to insure peace and order, clear policy guidelines on the behaviour of soldiers and policemen must not only be evolved, they should also be enforced. A method of pinpointing human rights abuses and identifying violators is necessary.

The problem is appropriate for the Commission on Human Rights. A high level conference should bring together the heads of the Department of Justice, Department of National Defense and the operating heads of affected agencies and institutions to devise procedures for the prevention of abuses.

Under the circumstances of this taxpayers' suit, there is no erring soldier or policeman whom we can order prosecuted. In the absence of clear facts ascertained through an orderly procedure, no permanent relief can be given at this time. Further investigation of the petitioners charges and a hard look by administration officials at the policy implications of the prayed for blanket prohibition are also warranted.

In the meantime and in the face of prima facie showing that Some abuses were probably committed and could be committed during future police actions, we have to temporarily restrain the alleged banging on walls, the kicking in of doors, the herding of half-naked men to assembly areas for examination of tattoo marks, the violation of residences even if these are humble shanties of squatters, and the other alleged acts which are shocking to the conscience.

WHEREFORE, the petition is hereby REMANDED to the Regional Trial Courts of Manila, Malabon, and Pasay City where the petitioners may present, evidence supporting their allegations and where specific erring parties may be pinpointed and prosecuted.

Copies of this decision are likewise forwarded to the Commission on Human Rights, the Secretary of Justice, the Secretary of National Defense, and the Commanding General PC-INP for the drawing up and enforcement of clear guidelines to govern police actions intended to abate riots and civil disturbances, flush out criminal elements, and subdue terrorist activities.

"In the meantime, the acts violative of human rights alleged by the petitioners as committed during the police actions are ENJOINED until such time as permanent rules to govern such actions are promulgated.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Paras, Feliciano, Gancayco, Bidin, Cortes, Medialdea, and Regalado, JJ., concur.

Cruz, J., see dissent.

Padilla, J., see separate opinion.

Sarmiento, J., dissents, see dissenting opinion.

Griño-Aquino, J., joins JJ., Cruz, Padilla and Sarmiento.

DISSENTING OPINION

CRUZ, J.:

Mr. Justice Gutierrez and I are kindred spirits and usually find ourselves together on the side of liberty. It saddens me that in the case at bar he is on the side of authority.

This is not to say that liberty and authority are irreconcilable enemies. The two must in fact co-exist, for only in a well-ordered society can rights be properly enjoyed. Implicit in that theory, however, is the other imperative: that the highest function of authority is to insure liberty.

While acknowledging that the military is conducting saturation drives, the majority practically blinks them away on mere technicalities. First, there are no proper parties. Second, there is no proof. Therefore, the petition is dismissed.

The approach is to me too much simplification. We do not choose to see the woods for the trees. The brutal fact is staring us in the face but we look the other way in search of excuses.

The majority says it cannot act against the drives because no one directly affected has complained. Such silence, if I understand, the ponencia correctly, has in effect purged the drives of all oppressiveness and washed them clean.

(The reason for the silence is fear. These raids are conducted not in the enclaves of the rich but in the deprived communities, where the residents have no power or influence. The parties directly aggrieved are afraid. They are the little people. They cannot protest lest they provoke retaliation for their temerity. Their only hope is in this Court, and we should not deny them that hope.)

The ruling that the petitioners are not proper parties is a specious pretext for inaction. We have held that technical objections may be brushed aside where there are constitutional questions that must be met. There are many decisions applying this doctrine. (Rodriguez v. Gella, 92 Phil. 603; Tolentino v. Commission on Elections, 41 SCRA 702; Philconsa v. Jimenez, 65 SCRA 479; Edu v. ERICTA, 35 SCRA 481; Gonzales v. Commission on Elections, 27 SCRA 835; Lagunsad v. Court of Appeals, 154 SCRA 199; Demetria v. Alba, 148 SCRA 208). Lozada was in fact an aberration.

I believe that where liberty is involved, every person is a proper party even if he may not be directly injured. Each of us has a duty to protect liberty and that alone makes him a proper party. It is not only the owner of the burning house who has the right to call the firemen. Every one has the right and responsibility to prevent the fire from spreading even if he lives in the other block.

The majority seems to be willing to just accept the Solicitor General's assertion that the claimed abuses are "complete lies" and leave it at that. But a blanket denial is not enough. The evidence is there on media, in the papers and on radio and television. That kind of evidence cannot be cavalierly dismissed as "complete lies."

The saturation drive is not unfamiliar to us. It is like the "zona" of the Japanese Occupation. An area was surrounded by soldiers and all residents were flushed out of their houses and lined up, to be looked over by a person with a bag over his head. This man pointed to suspected guerillas, who were immediately arrested and eventually if not instantly executed.

To be sure, there are some variations now. The most important difference is that it is no longer 1943 and the belligerent occupation is over. There is no more war. It is now 1990, when we are supposed to be under a free Republic and safeguarded by the Bill of Rights.

Article III, Section 2, clearly provides:

Sec. 2. 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 be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge 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. (Emphasis supplied.)

The provision is intended to protect the individual from official (and officious) intrusions, no matter how humble his abode and however lowly his station in life. Against the mighty forces of the government, the person's house is his castle, his inviolate refuge and exclusive domain where he is the monarch of all he surveys.

Yet in the dead of night, armed soldiers may knock on one's door and command him at gunpoint to come out so he and his neighbors, who have also been rounded up, can all be placed on public examination, as in a slave market. This is followed by the arrest and detention of those suspected of villainy, usually on the basis only of the tattoos on their bodies or the informer's accusing finger.

Where is the search warrant or the warrant of arrest required by the Bill of Rights? Where is the probable cause that must be determined personally by the judge, and by no other, to justify the warrant? Where is the examination under oath or affirmation of the complainant and the witnesses he may produce to establish the probable cause? Where is the particular description that must be stated in the warrant, of the places to be searched and the persons or things to be seized? And where, assuming all these may be dispensed with, is the admissible exception to the rule?

Saturation drives are not among the accepted instances when a search or an arrest may be made without warrant. They come under the concept of the fishing expeditious stigmatized by law and doctrine. At any rate, if the majority is really introducing the "zona" as another exception to the rule, it must not equivocate. It must state that intention is forthright language and not in vague generalizations that concede the wrong but deny the right.

To justify the "zona" on the basis of the recent coup attempt is, in my view, to becloud the issue. The "zonas" complained of happened before the failed coup and had nothing whatsoever to do with that disturbance. There was no "large scale mutiny or actual rebellion" when the saturation drives were conducted and there were no "combat areas" either in the places where the violations committed. The failed coup cannot validate the invalid "zonas" retroactively.

The ponencia says that "we cannot take judicial notice of the facts and figures given by the petitioners regarding these saturation drives conducted by the military and police authorities." Maybe so. But we can and should take judicial notice of the saturation drives themselves which are not and cannot be denied by the government.

I urge my brethren to accept the fact that those drives are per se unconstitutional. I urge them to accept that even without proof of the hooded figure and the personal indignities and the loss and destruction of properties and the other excesses allegedly committed, the mere waging of the saturation drives alone is enough to make this Court react with outraged concern.

Confronted with this clear case of oppression, we should not simply throw up our hands and proclaim our helplessness. I submit that this Court should instead declare categorically and emphatically that these saturation drives are violative of human rights and individual liberty and so should be stopped immediately. While they may

be allowed in the actual theater of military operations against the insurgents, the Court should also make it clear that Metro Manila is not such a battleground.

The danger to our free institutions lies not only in those who openly defy the authority of the government and violate its laws. The greater menace is in those who, in the name of democracy, destroy the very things it stands for — as in this case — and so undermine democracy itself.

Where liberty is debased into a cruel illusion, all of us are degraded and diminished. Liberty is indivisible; it belongs to every one. We should realize that when the bell tolls the death of liberty for one of us, “it tolls the thee” and for all of us.

SEPARATE OPINION

PADILLA, J. :

This case is another classic instance of state power colliding with individual rights. That the State, acting through the government and its forces, has the authority to suppress lawless violence in all its forms cannot be denied. The exercise of that authority is justified when viewed from the standpoint of the general welfare, because the State has the elementary and indispensable duty to insure a peaceful life and existence for its citizens. A government that loses the very right to remain in power.

But, in the exercise of such authority, i.e., in the choice of the means and methods to suppress lawless violence, the right of the individual citizens to the dignity of his person and the sanctity of his home cannot and should not be violated, unless there is, in a particular case, a clear and present danger of a substantive evil that the State has a compelling duty to suppress or abate.

Petitioners’ vivid description of the “areal target zoning” or “saturation drive” allegedly conducted by police and military units in Metro Manila, obviously intended to ferret out criminals or suspected criminals in certain cordoned areas, while vigorously denied by respondents, deserves an effective and immediate response from this Court.

I submit that since this Court is not a trier of facts — and this case involves certainty of facts alleged by petitioners and denied by respondents — this case should be referred to a proper trial court where the petitioners can present evidence to support and prove the allegations they make of such brutal and inhuman conduct on the part of military and police units.

More than the military and police checkpoints sustained by this Court as a general proposition during abnormal times,[1] and which involve the right of military and police forces to check on vehicles and pedestrians passing through certain fixed points for the purpose of apprehending criminals and/or confiscating prohibited articles like unlicensed firearms, the “areal target zoning” and “saturation drives”, as described in petitioners’ allegations, are actual raids on private homes in selected areas, and are thus positive assaults against the individual person and his dignity. The individual is, as described, yanked out of his home, without any arrest warrant, to face investigation as to his connections with lawless elements. In short, the sanctity of the home is pulverized by military and police action. Thus, while the checkpoint is a defensive device, on the part of government, the “areal target zoning” or “saturation drive” is a direct assault against, an intrusion into individual rights and liberties.

Respondents, fortunately, have branded petitioners’ allegations of such brutality, as total lies. It is indeed difficult to even contemplate that such methods reminiscent of a “police state” can exist in a society built on a republican

and constitutional system. Respondents must be given a chance to face their accusers and prove that they are indeed fabricating falsehoods. But the stakes, I submit, are too high for this Court, as the guardian of individual liberties, to avoid a judicial confrontation with the issue.

I vote therefore, to refer this case (dispensing with normal venue requirements) to the Executive, Judge, RTC of Manila, for him —

- to receive the evidences of all the parties, in support and in refutation of the petitioners' allegations;
- to decide the case expeditiously on the bases of evidence, subject to review by this Court;
- to report to this Court on action taken.

[1] Valmonte vs. Gen. de Villa, et al., G.R. No. 83988, 29 September 1989.

DISSENTING OPINION

SARMIENTO, J.:

There is only one question here: Whether or not the police actions (saturation drives) complained of constitute a valid exercise of police power.

The fact that on twelve occasions between March and November, 1987 the military conducted the saturation drives in question is a fact open to question. The Solicitor General admits that they, the saturation drives, had been done "with due regard to human rights." "Not only that." So he states:

x x x they were intelligently and carefully planned months ahead of the actual operation. They were executed in coordination with barangay officials who pleaded with their constituents to submit themselves voluntarily for character and personal verification. Local and foreign correspondents, who had joined these operations, witnessed, and recorded the events that transpired relative thereto. (After Operation Reports: November 5, 1987, Annex 12; November 20, 1987, Annex 13; November 24, 1987, Annex 14). That is why in all the drives so far conducted, the alleged victims who numbered thousands had not themselves complained.

The question, then, is purely one of law: Are the saturation drives in question lawful and legitimate? It is also a question that is nothing novel: No, because the arrests were accompanied by a judicial warrant.[1]

Therefore, the fact that they had been carefully planned, executed in coordination with Tondo's barangay officials, and undertaken with due courtesy and politeness (which I doubt), will not validate them. The lack of a warrant makes them, per se, illegal.

According to the majority, "the remedy is not to stop all the police actions, including the essential and legitimate ones, . . . [w]e see nothing wrong in police making their presence visibly felt in troubled areas. . . "[2] But petitioners have not come to court to "stop all police actions" but rather the saturation drives, which, are, undoubtedly beyond police power.

That "[a] show of force is sometimes necessary as long as the rights of people are protected and not violated"[3] is a contradiction in terms. A "show of force" (by way of saturation drives) is a violation of human rights because it is not covered by a judicial warrant.

In all candor, I can not swallow what I find is a complete exaggeration of the issues:

x x x A show of force is sometimes necessary as long as the rights of people are protected and not violated. A blanket prohibition such as that sought by the petitioners would limit all police actions to one on one confrontations where search warrants and warrants of arrests against specific individuals are easily procured. Anarchy may reign if the military and police decide to sit down in their offices because all concerted drives where a show of force is present are totally prohibited.[4]

As a general rule, a peace officer can not act unless he is possessed of the proper arrest or search warrant. The exception is when a criminal offense is unfolding before him, in which case, action is justified and necessary. The majority would have the exception to be simply, the general rule.

The fact of the matter is that we are hear confronted by police officers on the beat or prowl cars on patrol. What we have — and I suppose that everybody is agreed on it — are lightning raids of homes, arbitrary confiscation of effects, and summary arrests of persons, the very acts proscribed by the Constitution. If this is a “show of force”, it certainly has no place in a constitutional democracy.

I find allusions to the last coup d’etat inapt. In that case, our men in uniform had all the right to act amidst crimes being committed in flagrante. The instant case is quite different. There are no offences being committed, but rather, police officers fishing for evidence of offences that may have been committed. As I said, in that event, a court warrant is indispensable.

That “the problem is not initially for the Supreme Court”[5] is to me, an abdication of judicial duty. As I indicated, the controversy is purely one of law — the facts being undisputed. Law, needless to say, is the problem of the Supreme Court, not the Executive.

Worse, it is passing the buck. The petitioners, precisely, have a grievance to raise, arising from abuses they pinpoint to the lower offices of the Executive (which presumably has its imprimatur). To make it an executive problem, so I hold, is to make the Executive judge and jury of its own acts, and hardly, a neutral arbiter.

I am also taken aback by references to “[w]ell meaning citizens with only second hand knowledge of the events. . .keep[ing] on indiscriminately tossing problems of the Executive, the military, and the police to the Supreme Court as if we are the repository of all remedies for all evils.”[6] First, the facts are not “second hand”, they are undisputed: There had been saturation drives. Second, the petitioners have trooped to the highest court with a legitimate grievance against the Executive (and military).

The fact that the majority would “remand” the case to the lower courts and various echelons of the Executive for investigation is to admit that walls have indeed been banged, doors kicked in, and half-naked men herded. I do not see therefore why we can not issue writ of prohibition as prayed for in the midst of this facts.

[1] CONS., art. III, sec. 21; *People v. Burgos*, No. 68955, September 4, 1986, 144 SCRA 1.

[2] Decision, 15; emphasis in the original.

[3] *Supra*; emphasis in the original.

[4] *Supra*.

[5] *Supra*; emphasis in the original.

[6] *Supra*.

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