

COL. ANTONIO Q. ROMERO, COL. LUISITO SANCHEZ, MAJ. ABRAHAM PURUGGANAN, MAJ. RODOLFO LAZARO, MAJ. ROME RANAY, CAPT. ROLAND DETABALI, CAPT. REDEMPTO TAIBA, CAPT. FAUSTINO DANTES, ...

G.R. No. 84076. February 20, 1989

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PER CURIAM:

The factual background of this case dates back to the unsuccessful coup d' etat of 28 August 1987. In its wake, the suit entitled "People of the Philippines vs. LTC Gregorio Honasan, et al.," was filed before respondent General Court-Martial No. 9. Herein petitioners, seventy (70) in all, were among the military personnel charged in the said case for alleged Violation of Article of War (AW) 67 (Mutiny), AW 96 (Conduct Unbecoming of an Officer and a Gentleman, and AW 94 (Various Crime) in relation to Article 248 (Murder), and Article 6 (Consummated, frustrated and attempted felonies) all of the Revised Penal Code (Annex "F", p. 142).

Petitioners seek -

(1) to annul and set aside the following:

- a) the charge sheets dated 15 October 1987 and 1 December 1987 signed by respondent Perreras;
 - b) the Pre-trial Investigation Report of the PTI Panel headed by respondent Col. Paredes.
 - c) the findings and recommendations of the respondent Staff Judge Advocate of the CESAFP;
 - d) the amended charges and specifications;
 - e) the referral by respondent LTC Munar by order of respondent Brigadier Gen. Casclang of the amended charges and specifications for trial by respondent General Court Martial No. 9; and
 - f) all the proceedings undertaken by all the other respondents in furtherance of the trial against petitioners, including the denial by respondent General Court Martial No.9 of herein petitioner's Motion to Defer and Hold in Abeyance Further Proceedings;
- (2) To prohibit respondent Gen. Court Martial No. 9 from further hearing and trying the charges filed against petitioners, and all the other respondents from taking any further actions on the charges; and
- (3) To order another investigation in accordance with AW 71 and in strict observance of due process.

Petitioners also applied for a Writ of Preliminary Injunction or a Temporary Restraining Order to enjoin respondents from continuing with the Court-Martial proceedings against them contending that great or irreparable injury would result to them before their case could be heard. The Solicitor General, on behalf of respondents, opposed the issuance of a Temporary Restraining Order.

On 26 September 1988, the Solicitor General filed a Comment to the Petition, to which petitioners filed their Consolidated Reply, and thereafter the case was deemed submitted for resolution.

Briefly, the essential facts follow:

As a result of the aborted coup d'etat of 28 August 1987, a Board of Officers headed by Brig. Gen. Hermogenes B. Peralta, Jr., the AFP Inspector General, was constituted to investigate the incident.

The then AFP Chief of Staff, Gen. Fidel Ramos, issued General Order No. M-15 dated 31 August 1987 constituting among several others, respondent General Court-Martial No. 9 "to try the case of military personnel involved in the 28 August 1987 incidents" (Annex "A", Rollo, p. 43).

On 7 October 1987, a Pre-trial Investigation (PTI) panel composed of respondents Col. Francisco Paredes, as Chairman, and Lt. Col. Faustino Montano and Lt. Col. Dulcisimo Franco as members, was constituted pursuant to Office Order No. 158, OTJAG, AFP, to conduct a pre-trial investigation of military personnel implicated in the incident.

Prior to the creation of the PTI Panel, several investigation committees were constituted in the General Headquarters, in the Philippine Army, and in the Philippine Constabulary, to pursue the investigations. The result of the investigations was reviewed by a Board of Officers on the basis of which, a series of progress reports were submitted to the Chief of Staff, culminating in the preparation of a Charge Sheet dated 15 October 1987 signed by respondent Capt. Al Perreras, JAGS, GHO, as Accuser (Rollo, p. 11). That Charge Sheet charged forty-four (44) officer for alleged violation of AW 67 (Mutiny) and AW 96 (Conduct Unbecoming of an Officer and a Gentleman) (Annex "B", Rollo, p. 45).

On 1 December 1987, another Charge Sheet was signed by respondent Capt. Perreras, as Accuser, this time charging nine (9) Officers, (seven [7] of whom were already charged in the first Charge Sheet dated 15 October 1987 for violation of AW 67 [Mutiny] and AW 96 [Conduct Unbecoming of an Officer and a Gentleman] and adding two [2] more officers) and sixty-seven (67) enlisted personnel for alleged violation of AW 94 (Various Crimes) in relation to Article 248, Revised Penal Code (Murder), Article 6, Revised Penal Code, and Article 294 (Robbery) (Annex "C", Rollo, p. 49). Both Charge Sheets were ultimately referred to the PTI Panel headed by respondent Col. Paredes.

On 18 April 1988, the PTI Panel rendered its PTI Report (Annex "D", Rollo, p. 92), and recommended trial by General Court-Martial only for violation of AW 67 (Mutiny); that all enlisted personnel, save those it recommended for charging, under AW 67, be proceeded against under AW 105 (Disciplinary Powers of Commanding Officers) and thereafter dropped from the Charge.

Upon referral of the PTI Report to the respondent Staff Judge Advocate (SJA), the latter, on 6 May 1988, recommended the charging, inclusive of enlisted personnel, not only of Violation of AW 67 (Mutiny) but also of AW 94 (Murder) (Annex "E", Rollo, p. 131).

On 11 May 1988, the Charge Sheets dated 15 October 1987 and 1 December 1987 (Annexes "B" and "C"), were amended and referred to respondent General Court-Martial No. 9 for trial by respondent LTC Rodolfo Munar "by command or order of Brig. Gen. Manuel B. Casaclang, AFP" (Annex "F", pp. 140-192).

On 17 June 1988, respondent General-Court Martial No. 9 set the case for arraignment of the accused. Petitioners moved to defer arraignment and to hold further proceedings in abeyance on the primary ground that petitioners were denied due process during the pre-trial investigation and were not given an opportunity to question the PTI Report since no one was furnished a copy thereof.

Respondent General Court-Martial No. 9 denied petitioners' Motion for deferment of arraignment.

On 5 July 1988, petitioners filed an Appeal with the respondent Chief of Staff (CSAF), detailing their objections

to the PTI Report and the proceedings during the PTI investigation and prayed that the charges be withdrawn (Annex "G", Rollo, p. 198).

On 8 July 1988, at the hearing before respondent General Court-Martial No. 9, petitioners filed a Motion to Defer and Hold Further Proceedings in Abeyance to the ground that the proffered Charges and Specifications were pending appeal before the CSAF.

On 15 July 1988, in open hearing, respondent General Court-Martial No. 9 denied petitioners' Motion to Defer and Hold Further Proceedings in Abeyance and announced its intention to proceed with the arraignment of the accused, including petitioners, unless restrained.

On 22 July 1988, petitioners availed of the instant petition for Certiorari, Prohibition and Mandamus, predicated on the following grounds:

"1) Respondents denied petitioners due process at all stages of the proceedings against them, respondents thereby acting without, or in excess of, jurisdiction, or with grave abuse of jurisdiction amounting to lack or loss of jurisdiction.

a) The respondent General Court-Martial No. 9 was constituted even before the petitioners were investigated and charged.

b) The constitution of Pre-trial Panel even before the charge sheets had been prepared was highly irregular.

c) The Charge Sheet dated 15 October 1987 and 1 December 1987 which were referred to the PTI Panel for PTI Investigation were null and void and the PTI Panel's cognizance thereof was in excess of jurisdiction.

d) The Pre-trial Proceedings were a charade.

e) The Pre-trial Resolution is a mere collection of other reports.

f) The enlisted Personnel of the First Scout Ranger Regiment (FSRR) having been exonerated by the PTI Panel and punished for their alleged participation in the 2B August 1987 incidents, their inclusion again in the charge sheet for violation of AW 67 and 94 thereby reverting to the original charge sheet dated 1 December 1987 shows the pre-determination of petitioner's guilt, and that the referral of the charges for pre-trial investigation was just a bare formality.

g) The action of the respondent SJA was without jurisdiction.

h) The obstinate insistence of the respondent General, Court-Martial No.9 in taking cognizance of the patently void charges is grave abuse of discretion amounting to lack or loss of jurisdiction.

2) The trial of petitioners without any prima facie evidence existing on record constitutes patent abuse of discretion, manifest injustice and a gross subversion of the Constitutional presumption of innocence in favor of petitioner.

a) The entirety of the prosecution evidence is grossly insufficient to warrant the indictment of petitioners" (Petition, pp. 17, 18, 19, 21, 26, 30, 32).

We shall discuss the above in the sequence presented.

1. Petitioners' contention that they were denied due process at all stages of the proceedings against them is without solid basis.

a) True, General Court Martial No. 9 was constituted barely three (3) days after the incident, before all the personnel involved could be identified, and even before petitioners were investigated and charged. That does not indicate, however, a pre-judgment against petitioners. Rather, it was but part of an entire machinery that had to be

put into motion in a concerted effort to bring to justice the perpetrated of the attempted coup d' etat. That the explosive event had actually taken place on the 28th of August 1987, and that military personnel were involved, are of public knowledge and of which the Court may take judicial notice. But who the military personnel were, and the extent of their participation, could only be pinpointed after investigation. And once identified, democratic processes required their trial by a General Court-Martial considering their membership in the Armed Forces. Absent any prima facie showing of their culpability, no charges could be filed any of the General Court-Martials created could be disbanded.

b) Similarly, the constitution of the Pre-trial Panel even before the Charge Sheets had been prepared cannot be said to have been highly irregular. Strict adherence to the exact sequence prescribed in proceedings of this nature may not have been observed but that should not be equated with denial of due process. And even if such were considered a defect, it was a formal one and certainly not jurisdictional.

c) We find the Charge Sheets dated 15 October 1987 and 1 December 1987, which were referred to the PTI Panel, valid. They were the product of investigations conducted by special Investigation Committees such as those at the Philippine Army, General Headquarters and the Philippine Constabulary (Rollo, p. 204). The Investigation Reports from these committees were then referred to a Board of Officers chaired by the Inspector General who, in turn, made its findings and recommendations to the Chief of Staff, AFP, for the approval of the latter (Rollo, p. 205). It was only after these investigations were completed that the questioned Charge Sheets were seen fit to be prepared and were thereafter referred to the PTI Panel. This Panel, therefore, cannot be faulted for having taken cognizance of the same for its own study and evaluation. As the PTI Investigation Report (Annex "B", Petition) indicated:

"xxx With this predicament and in order to arrive at the most Judicious and fair resolution of this case, this Committee deemed it wise and necessary to refer to previous reports of investigation conducted in this case since they offer first hand information and/or revelations on the same and thus enable it to determine the sequence of events that led to its execution and to identify the officers and men who should face prosecution and extenuate those who had no hand in the putsch." (Rollo, p. 302)

But petitioners further argue that the said Charge Sheets are invalid because the same were signed by Capt. Al T. Perreras, as Accuser, but who did not himself conduct the pre-trial investigation.

Under military law, the conduct of investigations is primarily governed by Article 71 of the Articles of War, reading:

"Art. 71. Charges; Action upon.-Charges and specifications must be signed by a person subject to military law, and under oath either that he has personal knowledge of, or has investigated, the matters set forth therein and that the same are true in fact, to the best of his knowledge and belief.

"No charge will be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. This investigation will include inquiries as to the truth of the matter set forth in said charges, form of charges, and what disposition of the case should be made in the interest of justice and discipline. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides.

"Before directing the trial of any charge by general court-martial the appointing authority will refer it to his staff judge advocate for consideration and advice.

xxx xxxx" (Commonwealth Act 408, as amended).

Contrary to petitioners' contention, there was substantial compliance with the foregoing requirements. The Accuser, Capt. Parreras, is a person subject to military law. He had signed the Charge Sheets after he had made his own investigation based on the respective reports submitted by the various committees created to investigate the incident. Considering the massive implication of military personnel and the magnitude of the investigation involved, Capt. Parreras could not have effectively conducted the investigation by himself alone.

At any rate, the records disclose that Capt. Parreras had sworn to the truth of the matters set forth in the Charge Sheets to the best of his knowledge and belief before Capt. Gervacio Dieta, JAGS (GHQ), and a Major also attached to the JAGS (GHQ), as required by AW 71, *supra*.

Further, it was not until 18 April 1988 or four (4) months after the second Charge Sheet of 1 December 1987 that the PTI Report was prepared thereby indicating that the PTI Panel took time to evaluate the fact-finding inquiries by the Investigating Committees. The PTI Report was duly referred to the Staff Judge Advocate pursuant to Article 71, *supra*, who recommended that a charge for Violation of AW 94 (Various Crimes) in addition to AW 67 (Mutiny) be included. That a careful screening had also been conducted is shown by the fact that of the total number of 633 officers and enlisted personnel initially implicated, only 53 officers and 67 enlisted personnel were formally charged before General Court Martial No. 9.

The referral of the charges to the General Court-Martial was thus made only after a thorough and impartial investigation, as mandated by AW 71, *supra*.

d) Petitioners contend next that the Pre-trial proceedings were a charade because the PTI Panel, headed by Col. Francisco Paredes, did not really conduct any honest-to-goodness investigation as mandated by AW 71; that it failed to give the accused the opportunity to cross-examine the witnesses, and that some of the petitioners were not furnished a copy of the charge and specifications.

The foregoing contentions, however, are not borne out by the record of the proceedings. Thus the Pre-trial Investigation Report (Annex) "D", Rollo p. 92) stated that all the accused were duly summoned but only 89 responded; that those who appeared were informed of the charges against them, of their right to present, either in defense or mitigation, witnesses requested by them; and that they chose instead to submit counter-affidavits upon advice/assistance of counsel.

The transcript of the proceedings at the Pre-trial also reveals the following statements made by the Presiding Officer:

"We have already issued the corresponding subpoena to all accused of (sic) this case. Some of them have already submitted their controverting evidence in the form of affidavits and other documents. May we call on those who have not yet submitted any so that this committee will be able to appraise itself of their stand at this time." (Pre-trial, November 20, 1987, Rollo, p. 307)

"In order to give all the parties the chance to present their controverting evidence to the prosecution sworn statements we are now calling on those who haven't received any to come and get their copies right now as soon as you are ready." (*ibid.*, Rollo, p. 310)

That the pertinent documents were either furnished or made available to the accused and/or counsel, contrary to petitioners' allegation, is further shown by the following statements made by the Panel Chairman:

"CHMN:

xxx But let me just put on record again that all the records now are with this Committee. If you fail to submit

any controverting evidence in so far as the documents which we gave you within ten days called for under PD 77 as amended by 911, that constitutes a waiver.

xxx xxx

"CHMN:

In the meantime we have prepared all available affidavits which we just came into this committee. We will now furnish you today, so that the computation of 10 days will start from receipt today." (Pre-trial, November 27, 1987, Rollo, P. 314)

As to the deprivation of their right to cross-examine, the transcript of the Pre-trial proceedings does not show that petitioners ever invoked that right. It appears that petitioners and their lawyers opted instead to submit counter-affidavits. Moreover, the right to cross-examine, being a personal one, is waivable.

Indeed, petitioners have failed to show that the Pre-trial proceedings rode roughshod over their constitutional rights. On the contrary, it discloses that petitioners were accorded their right to be heard. The essence of due process is due notice and opportunity to be heard.

e) The Pre-trial Resolution may have been a mere collation of other reports submitted by the various Investigating Committees. The fact remains, however, that the PTI Panel evaluated the same and derived its own conclusions.

f) The inclusion of the 39 enlisted personnel of the First Scout Ranger Regiment (FSRR) in the Charge Sheet for violation of AW 67 and AW 94, as recommended by respondent Staff Judge Advocate for CESAFP in a Report dated 6 May 1988 (Annex "E", Rollo, p. 131), thereby reverting to the original Charge Sheet dated 1 December 1987, does not show pre-determination of their guilt. It just confirms the thoroughness of the evaluation and review that the Investigation Reports were subjected to.

g) The action of respondent Staff Judge Advocate in recommending prosecution not only for Mutiny but also for Murder, far from being done without jurisdiction, as alleged, was but in keeping with the authority given him by AW 71, supra, and shows that he, too, had made his own assessment of the several investigation Reports and Charge Sheet submitted to him "for consideration and advise."

h) That respondent General Court Martial No. 9 took cognizance of the charges referred to it for trial was but in performance of a duty imposed upon it by law in the absence of any order of restraint that was prayed for by petitioners. It can hardly be faulted, therefore, with grave abuse of discretion.

2. Petitioners further contend that there is no prima facie evidence that could warrant the filling of charges against them before General Court-Martial No. 9.

The Court finds the contention hollow. The Pre-trial investigation Report showed the existence of a prima facie case. The affidavits of the prosecution witnesses namely: Col. Templo, Nelson Potenciano, Alfonso Cruz, Leonardo Hernal and Manuel Bernardo (Annexes "1", "2", "3", "4", Comment) attest that rebel soldiers from Nueva Ecija commandeered buses, proceeded to Metro manila, and headed for the different military installations therein. Whether, in point of fact, petitioners were part of the rebel group is a matter for determination at the trial proper where petitioners can present countervailing evidence and interpose all defenses at their command.

3. On petitioners' application for a Restraining Order -

As a general rule, an Injunction will not be granted to restrain a criminal prosecution. "Public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society." (Gorospa vs. Penaflorida, 101 Phil. 886 [1957]). The aforesaid rule is particularly applicable to the case at bar considering that the attempted

forcible overthrow of the constituted authority of 28 August 1987 convulsed the whole nation, affected the very existence of the State, and endangered the security of its people. Let, therefore, the trial proceed before General Court-Martial No. 9 without any further delay and let full and speedy justice be accorded petitioners.

ACCORDINGLY, the Court Resolved to deny the prayer for a Restraining Order and to dismiss the Petition.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

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