

EDUARDO N. ASWAT, PETITIONER, VS. BRIGADIER-GENERAL ALEJANDRO GALIDO, IN HIS CAPACITY AS COMMANDER OF THE SOUTHERN LUZON COMMAND, ARMED FORCES OF THE PHILIPPINES, CAMP GUILLERMO...

G.R. No. 88555. November 21, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

In this Petition for Habeas Corpus, petitioner challenges the jurisdiction of the General Court-Martial which was convened by then respondent Brigadier General Alejandro Galido[1] as Commanding General of the Southern Luzon Command ("SOLCOM") to try petitioner for a specification (offense) committed outside a military reservation or installation.

Petitioner Eduardo N. Aswat and victim Felix B. Nebres were both enlisted men of the Armed Forces of the Philippines ("AFP") respectively holding the ranks Private First Class and Corporal. Aswat and Nebres were assigned to the SOLCOM but Aswat was detailed as caretaker of Brigadier General Galido's Baguio resthouse while Nebres was assigned to act as a personal driver of Brigadier General Galido's wife. On 29 December 1988, petitioner was involved in a shooting incident at Dominican Hills, Baguio City, which resulted in the death of Nebres.

Records disclose that petitioner voluntarily surrendered to the Baguio City police authorities and was briefly incarcerated at the Baguio City Jail until he was transferred to a SOLCOM detention cell on 31 December 1988. Petitioner has been detained at the SOLCOM Headquarters in Camp Guillermo Nakar, Lucena City since then.

On 20 April 1989, petitioner was charged before a SOLCOM General Court-Martial ("SOLCOM-GCM") with violation of Article 94 of the Articles of War ("A.W."), the specification being homicide.

While the court-martial proceedings were going on, petitioner filed the instant petition, contending: (1) that the specification of homicide with which he was charged was committed outside a military installation and hence the offense was cognizable by a regular, civilian court; (2) that he is entitled to be released on bail as a matter of right pursuant to Section 13, Article III of the Constitution; and (3) that he should be given his due base pay and other pay, aside from the allowances he has been receiving, computed from the time of commencement of his detention.

The Court en banc issued the writ of habeas corpus and required respondent to make a return of the writ before the Third Division of the Court.[2] After hearing, the Court, through the Third Division, resolved to require the parties to file their memoranda in amplification of their respective oral arguments.[3]

Petitioner seeks to make a distinction between offenses committed outside and those committed inside a military installation or reservation. He assails the jurisdiction of the SOLCOM-GCM, alleging that the specification of homicide was committed in Baguio City and in an area outside any military installation or reservation.

The distinction upon which petitioner anchors his argument was obliterated sometime ago. As the law now stands, as long as the accused is subject to military law, as defined under Article 2, A.W.,[4] he shall be punished as a court-martial may direct. Article 94, A.W. provides:

"Article 94. Various Crimes.- Any person subject to military law who commits any felony, crime, breach of law or violation of municipal ordinances which is recognized as an offense of a penal nature and is punishable under the penal laws of the Philippines or under municipal ordinances, (A) inside a reservation of the Armed Forces of the Philippines, or (B) outside any such reservation when the offended party (and each one of the offended parties if there be more than one) is a person subject to military law, shall be punished as a court-martial may direct: In imposing the penalties for offenses falling within this article, the penalties for such offenses provided in the penal laws of the Philippines or in such municipal ordinances shall be taken into consideration."[5] (Underscoring supplied).

Article 94, A.W., in its original form, did refer only to offenses committed inside a Philippine military reservation as falling within the jurisdiction of a court-martial. In 1948, however, R.A. No. 242 amended Article 94, A.W. by providing that offenses committed outside a military reservation shall also be punished as a court-martial may direct, but only "when the offended party (and each one of the offended parties if there be more than one)" is similarly subject to military law.[6]

There is no question that both petitioner and the deceased Nebres were subject to military law at the time the latter was shot and killed.

Moreover, when the petitioner asked for the affirmative relief of bail from the SOLCOM-GCM, he in effect recognized the jurisdiction of the General Court-Martial. Hence, petitioner is properly deemed estopped to deny such jurisdiction.

Petitioner next contends that his right to bail is explicitly guaranteed in Section 13, Article III of the Constitution.

Although the right to bail applies to "all," the Court has very recently ruled that the guarantee is not without any exception. In *Commendador vs. De Villa, et al.*,[7] the Court en banc, speaking through Mr. Justice Cruz, held:

"We find that the right to bail invoked by the private respondents in G.R. Nos. 95020 has traditionally not been recognized and is not available the military, as an exception to the general rule embodied in the Bill of Rights. This much was suggested in *Arula*, where We observed that the right to a speedy trial is given more emphasis in the military where the right to bail does not exist.

The justification for this exception was well explained by the Solicitor General as follows:

'The unique structure of the military should be enough reason to exempt military men from the constitutional coverage on the right to bail.

Aside from structural peculiarity, it is vital to note that mutinous soldiers operate within the framework of the democratic system, are allowed the fiduciary use of firearms by the government for the discharge of their duties and responsibilities and are paid out of revenues collected from the people. All other insurgent elements carry out their activities outside of and against the existing political system.'

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'The argument that denial from the military of the right to bail would violate the equal protection clause is not acceptable. This guarantee requires equal treatment only of persons or things similarly situated and does not apply where the subject of the treatment is substantially different from others. The accused officers can complain if they are denied bail and other members of the military are not. But they cannot say they have been discriminated against because they are not allowed the same right that is extended to civilians.' " (Underscoring

supplied)

Petitioner, as already noted, is a person subject to military law, and under Article 70, A.W., "any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require."

Confinement is one way of ensuring presence during sessions of the General Court-Martial; the more important reason underlying the authority to impose confinement is the need to enable the proper military authority to instill discipline within the command and thereby achieve command efficiency. By confining the petitioner, petitioner's unmilitary conduct may be curtailed from spreading within the ranks of the command. The necessity for such confinement is a matter properly left to the sound discretion of petitioner's superior officers. In *Domingo vs. Minister of National Defense*,^[8] the Court en banc, speaking through Mr. Justice Vasquez, held:

"The petitioner is a person subject to military law facing charges before a general court-martial, and his release from confinement pending the trial of the charges against him is a matter that lies largely in the discretion of the military authorities. They are undeniably in a better position to appreciate the gravity of said charges and the feasibility and advisability of releasing him or relaxing the terms of his confinement pending the trial and disposition of the case filed against him."

The authority of the respondent to order the arrest and confinement of the petitioner flows from his general jurisdiction over his command. Petitioner being assigned to SOLCOM, he is directly under the command of then Brigadier General Galido.

The third issue raised by the petitioner concerns his right to receive base pay and other pay during the pendency of his detention. At present, petitioner is receiving a monthly allowance of P540.00.^[9]

The law defines "pay" to include "base pay and all additional pay for the length of service or type of duty such as longevity pay and flying pay," and distinguishes "pay" from "allowances" which is limited to "quarters, subsistence, travel, and such other allowances as may by law become payable to army personnel."^[10]

Concerning this issue, Section 18, Article 6 of R.A. No. 138, as amended, provides:

"Section 18. An enlisted man awaiting trial by Court-martial or the result thereof, is not entitled to receive pay as distinguished from allowances until the result of the trial is known; Provided, that any enlisted man who is placed on a full duty status and performs regular duties while awaiting trial by court-martial, or the result thereof, shall be entitled to receive all his pay and allowances for the period of such duty unless the same shall have been lawfully forfeited by the approved sentence of a court-martial prior to actual payment thereof to the enlisted man. For the purposes of this section, the restoration to full duty status of enlisted men awaiting trial by court-martial, or the result thereof, shall be as directed by the Chief of Staff, with the approval of the Secretary of National defense." (as amended by R.A. 1067)." (Underscoring supplied)

Petitioner, during detention, ceased to perform his ordinary military duties. His continued detention necessarily restrains his freedom of work, and he cannot carry out his normal military functions. There is no showing by petitioner that he was placed on "full duty status" and performing "regular duties" pending trial. On the premise of "no work no pay", petitioner cannot insist on his right to receive base pay or any other pay while under detention. However, while petitioner is not entitled to receive any base pay or any other pay during his detention, the law expressly permits him to receive his regular and other allowances, if otherwise entitled thereto, while under detention.

ACCORDINGLY, the Court Resolved to DISMISS the Petition for Habeas Corpus for lack of merit. No pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Brigadier General Alejandro Galido who had died after commencement of this case, was substituted by Brigadier General Federico Ruiz, Jr.

[2] Rollo, p. 7.

[3] Id., p. 21.

[4] Article 2 (a), (b), (c) and (d) of Commonwealth Act No. 408, as amended, provide:

"Article 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; all members of the reserve force, from the dates of their call to active duty and while on such duty; all trainees undergoing military instructions; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same;

b. Cadets, flying cadets, and probationary second lieutenants;

c. All retainers to the camp and all persons accompanying or serving with the Armed Forces of the Philippines in the field in time of war or when martial law is declared though not otherwise subject to these articles;

d. All persons under sentence adjudged by courts-martial. (as amended by R.A. 242 and R.A. 516)."

[5] As amended by R.A. No. 242 and further amended by P.D. No. 1166.

[6] In *Arula vs. Espino*, 28 SCRA 540, 555 (1969), the Court held that "whenever persons subject to military law commit offenses punishable under Article 94 outside a military reservation and the offended party (or any one of the offended parties if there be more than one) is not a person subject to military law, they fall under the exclusive jurisdiction of civil courts."

[7] G.R. No. 95020, 20 August 1991.

[8] 124 SCRA 529, 543 (1983).

[9] TSN, 28 October 1989, p. 32.

[10] Section 1, R.A. No. 138, as amended.

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