

**FRANKLIN DRILON, IN HIS CAPACITY AS SECRETARY OF JUSTICE,
SILVESTRE BELLO III, IN HIS CAPACITY AS THE UNDERSECRETARY
OF JUSTICE, AND AURELIO TRAMPE, IN HIS CAPACITY AS THE
ACTIN...**

G.R. No. 91626. October 03, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The Department of Justice has brought suit to annul the Decision of the Court of Appeals[1] promulgated on October 25, 1989, prohibiting the Government from pursuing criminal actions against the private respondents for the death of Ireneo Longno and Lonely Chavez during early martial law.

It appears that sometime in 1973, the private respondents were charged with double murder before Military Commission No. 34. On July 27, 1973, the military promulgated a decision acquitting Raul Paredes but sentencing Rodolfo Ganzon to life imprisonment with hard labor.[2] Paredes was thereupon released from custody while Ganzon was made to serve sentence until he was released on March 25, 1978 and placed under house arrest under guard.[3] In 1985, Ganzon joined the Kilusang Bagong Lipunan (KBL), the party in power, where he was designated as campaign manager.

In 1988, administrations having changed, then Secretary of Justice Sedfrey Ordoñez directed State Prosecutor Aurelio Trampe to conduct a preliminary investigation against the private respondents for the above murders. The private respondents moved for dismissal, in Ganzon's case, on the ground that he, Ganzon had been extended an absolute pardon by then President Ferdinand Marcos, and he, having been previously convicted, can no longer be tried anew, and in Paredes' case, on the ground that he, Paredes, had been acquitted. Trampe, however, denied both requests and reconsideration having been likewise denied, the private respondents went to the Court of Appeals on prohibition.

As above indicated, the Court of Appeals granted prohibition and disposed as follows:

WHEREFORE, the petition for prohibition filed by petitioners Mayor Rodolfo Ganzon and Raul Paredes is GRANTED. Respondent Acting City Fiscal Aurelio Trampe, or anyone in his stead, is hereby commanded to desist from filing criminal informations against petitioners Rodolfo Ganzon and Raul Paredes for the killing of Ireneo Longno, Jr. and Lonely Chavez, with the Regional Trial Court of Iloilo City. The preliminary injunction issued by this Court, pursuant to Our Resolution of February 10, 1989, is hereby made permanent.

IT IS SO ORDERED.[4]

The petitioners allege that the Court of Appeals, in granting prohibition, committed a grave abuse of discretion: (1) Rodolfo Ganzon has not adequately proved the fact of presidential pardon; (2) there exists no evidence in the files of the Government to prove pardon; (3) Ganzon's copy is a bare machine copy and Ganzon has failed to adequately establish the loss of the original; (4) the alleged pardon (or copy of it) had not been properly sealed

and authenticated, or executed in official Malacañang stationery; and (5) the disposition of the murder cases by the military does not preclude the filing of new informations by the civilian government.

As to the private respondents' "liability" for (re)trial by civilian authorities, the Court of Appeals said, invoking the case of *Cruz v. Enrile*:^[5]

3. As We closely read and perceive the *Cruz* case, the underlying reason for granting the petitions for habeas corpus and for excluding the civilian petitioners mentioned therein from the new informations which were ordered to be filed in the regular courts against the other civilian petitioners whose tribunal, to Our mind, is that it would be unjust and unfair for said civilian petitioners to again be prosecuted for the same offenses for which they had already served sentence, were acquitted and amnestied. The Hon. Supreme Court would want to spare them from the ordeals of another trial and to end their sufferings. We believe that the favorable treatment given to civilian petitioners in *Cruz* should likewise be accorded to Mayor Ganson and Paredes in the present case.

In the *Olague* and *Cruz* cases, the civilian petitioners therein objected to their trial by the military commissions. They contended that the military commissions had no jurisdiction to try civilians for offenses alleged to have been committed during martial law, and that the proceedings before military commissions would be in gross violation of their rights to due process of law. On the other hand, in contrast, the record does not show that civilian petitioners Mayor Ganson and Raul Paredes interposed their objection to their being tried by Military Commission No. 3; in fact, they submitted to the latter's jurisdiction. Mayor Ganson accepted the verdict of conviction and Paredes that of acquittal. It turned out later, as held in *Cruz*, that military commissions had no jurisdiction to try and decide criminal cases over civilians. Under the circumstances, petitioners should not be made to undergo another prosecution, just like the petitioners-civilians in *Cruz* who, having served sentence, or having been acquitted or amnestied, were not ordered to be included in the informations to be filed against the other civilians whose cases were not dismissed/terminated by the military commission. The loss of freedom during the period of trial before the Military Commission No. 3 by petitioners, and after his conviction on the part of Mayor Ganson until he was granted presidential pardon, could no longer be regained by them.^[6]

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As to the alleged grant of pardon in favor of Rodolfo Ganson:

1. But first, We would like to state that, from the evidence, We find that Mayor Ganson was extended absolute pardon by the former President. Former Deputy Presidential Executive Assistant Joaquin Venus, Jr. declared before us that Ganson's absolute pardon was signed by the former President in Iloilo City on January 27, 1986 in his presence; that the pardon was accepted by Mayor Ganson as signified by his signature thereon; that Exhibit C-1 is a photocopy of the signed original; that the original copy was given to Mayor Ganson while he retained a photocopy for transmittal to former Presidential Executive Assistant Juan Tuvera x x x.

Likewise, former Presidential Executive Assistant Juan Tuvera testified that he was given by Deputy Presidential Executive Assistant Venus the xerox copy of the presidential pardon extended to Mayor Ganson; that Exhibit C-1 is a copy of said pardon bearing the signature of the former president of which he is familiar; that he showed to the former President the xerox copy of the pardon and the latter confirmed having signed the original; that the former President asked him to give the copy to him as he would show the same to some visitors and to the former First Lady later in the evening x x x.

We find no reason, and none has been offered, why these two high ranking officials of the former administration would trifle with truth and declare falsehood regarding the presidential grant of pardon to Mayor Ganson. We find them to be trustworthy and their testimony to be deserving of full faith and credit. If Mayor Ganson was not actually extended absolute pardon, then he should have remained incarcerated or under house arrest until the present time. But such is not the case, and the military or the Government has not

explained why Mayor Ganzon has been enjoying unrestrained freedom all these years since January 27, 1986.[7]

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As to the first question—whether or not the Government may proceed criminally against the private respondents despite a verdict earlier rendered by Military Commission No. 34—this Court reiterates its ruling in the case of *Tan v. Barrios*,[8] as well as *Cruz v. Enrile's own modification*,[9] giving *Olaguer v. Military Commission No. 34*[10] prospective application. As Tan held:

In the interest of justice and consistency, we hold that *Olaguer* should, in principle, be applied prospectively only to future cases and cases still ongoing or not yet final when that decision was promulgated. Hence, there should be no retroactive nullification of final judgments, whether of conviction or acquittal, rendered by military courts against civilians before the promulgation of the *Olaguer* decision. Such final sentences should not be disturbed by the State. Only in particular cases where the convicted person or the State shows that there was serious denial of the Constitutional rights of the accused should the nullity of the sentence be declared and a retrial be ordered based on the violation of the constitutional rights of the accused, and not on the *Olaguer* doctrine. If a retrial is no longer possible, the accused should be released since the judgment against him is null on account of the violation of his constitutional rights and denial of due process.

It may be recalled that *Olaguer* was rescued from a court martial which sentenced him to death without receiving evidence in his defense. It would be a cruel distortion of the *Olaguer* decision to use it as authority for re-prosecuting civilians regardless of whether, unlike *Olaguer*, they had been accorded a fair trial and regardless of whether they have already been acquitted and released, or have accepted the sentences imposed on them and commenced serving the same. Not everybody who was convicted by a military court, much less those who were acquitted and released, desires to undergo the ordeal of a second trial for the same offense, albeit in a civil court. Indeed, why should one who has accepted the justness of the verdict of a military court, who is satisfied that he had a fair hearing, and who is willing to serve his sentence in full, be dragged through the harrow of another hearing in a civil court to risk being convicted a second time perchance to serve a heavier penalty? Even if there is a chance of being acquitted the second time around, it would be small comfort for the accused if he is held without bail pending the completion of his second trial which may take as long as, if not longer than, the sentence he has been serving or already served.

The trial of thousands of civilians for common crimes before military tribunals and commissions during the ten-year period of martial rule (1971-1981) which were created under general orders issued by President Marcos in the exercise of his legislative powers, is an operative fact that may not be justly ignored. The belated declaration in 1987 of the unconstitutionality and invalidity of those proceedings did not erase the reality of their consequences which occurred long before our decision in *Olaguer* was promulgated and which now prevent us from carrying *Olaguer* to the limit of its logic. Thus, did this Court rule in *Municipality of Malabang vs. Benito*, 27 SCRA 533, where the question arose as to whether the declaration of nullity of the creation of a municipality by executive order wipe out all the acts of the local government thus abolished.[11]

In *Cruz*, the Court further issued the following guidelines.

The Court DECREES that all the petitioners in said proceedings "who have been serving (but not yet completed) their sentences of imprisonment" shall have "the option either to complete the service of their sentence, or be tried anew by the civil courts. Upon conviction, they should be credited in the service of their sentence for the full period of their previous imprisonment. Upon acquittal, they should be set free." [12]

The records show that the private respondents had been arraigned by the military court, pleaded not guilty, and, with respect to Raul Paredes, acquitted, and with respect to Ganzon, convicted and sentenced. The records also show that Ganzon had served time until 1978, when he was placed under "house arrest" by then President Marcos.

He also claims that in 1986, he was pardoned by the then President, an alleged pardon he is invoking to deter the reinvestigation by the Department of Justice. To the mind of the Court, Ganzon has accepted the judgment against him, and as Tan asked, "why should [he] who has accepted the justness of the verdict of the military court who is satisfied that he had a fair hearing, and who is willing to serve his sentence in full, be dragged through the harrow of another hearing in a civil court to risk being convicted a second time perchance to serve a heavier penalty?"[13]

To the mind of the Court, the private respondents' case falls squarely within Tan's ruling, and as we tolerated no reinvestigation there, we can not tolerate one here.

Apparently, the question is whether or not, with respect to Ganzon, he has completed the service of his sentence, since as we held in Cruz,[14] civilians serving sentences "may be given the option either to complete the service of their sentence,"[15] the option Ganzon has apparently accepted, "or be tried anew by the civil courts,"[16] the option he is obviously rejecting. The Court believes that the question is material since if he, Ganzon, has completed the service of his sentence. Tan and Cruz are with more reason applicable, and second, if he has served his sentence, the question of pardon is moot and academic.

As we indicated, Ganzon served six years in the stockades of the military—no doubt as a result of his conviction—but was released in 1978 and put under so-called house arrest (although then President Marcos never apparently carried this out seriously as Ganzon was free apparently, to move in and out of his residence). The Court is of the considered opinion that these twin developments—six-year service of sentence and subsequent release—are significant, since if then President Marcos ordered Ganzon's release after six years of imprisonment, he, then President Marcos, unavoidably commuted Ganzon's life imprisonment to six years (give or take a few days), although as a condition, Ganzon shall remain under "house arrest". The Court is of the opinion that if Ganzon's sentence had been commuted, he, Ganzon, has therefore served his sentence fully, and if he has served his sentence fully, he can no longer be reinvestigated, or, as the Cruz cases decreed be made to "complete the service of [his] sentence."

Under the 1973 Constitution, as is under the present Charter, the "pardoning power" of the President (that is, to grant reprieves; commutations, and pardons, remit fines and forfeitures[17]) is final and unappealable[18] so is commutation of sentence, in which the Chief Executive reduces a sentence.[19] It extinguishes criminal liability partially,[20] and has the effect of changing the penalty[21] to a lesser one.[22]

The Court does not believe, in Ganzon's case, that commutation of sentence need be in a specific form. It is sufficient, to our mind, that Ganzon was voluntarily released in 1978 with no terms or conditions, except that he should remain under house arrest.

The Court can not consider Ganzon's house arrest as a continuation of his sentence, first, because in no way is arrest a penalty, but rather a mere means of "taking . . . a person into custody in order that he may be forthcoming to answer for the commission of an offense,"[23] or, during early martial law, a means to carry out Proclamation No. 1881,[24] and second, because of the records' own scant condition as the exact terms of his "house arrest" (which, parenthetically, no longer exists.[25]) Hence, the view of the Court is that irrespective of the "pardon." Ganzon has served his sentence and to reiterate, he can no longer be reinvestigated for the same offense, much more undergo further imprisonment to complete his service.

The fact that Ganzon might have gotten off too lightly, so to speak, is immaterial, and even as we sympathize with his victims' bereaved families, we can not ignore the legal effects of then President Marcos' acts as we did not ignore the legal implications of trials by military tribunals, although void,[26] as faits accomplis.[27]

The Court therefore need not consider whether or not Rodolfo Ganzon had been pardoned, and whatever "pardon"

the former President may have extended to him did not erase the fact that as early as 1978, he was a free man. Of course, he was supposed to have remained under house arrest but as we said, not as a continuation of his sentence, but pursuant to Marcos' vast arrest and commitment powers during martial rule. The question—of whether or not he should continue to remain under house arrest—is also a moot question as we noted,[28] and arrests except upon lawful judicial orders are no longer possible.

The Court's disposition, it is true, leaves Ganzon to all intents and purposes "scot-free", yet whatever liberal treatment he may have received is not his fault either, and in the second place, "worse" people have been better rewarded in this regime.

WHEREFORE, premises considered, the petition is DENIED. The Decision of the Court of Appeals is AFFIRMED. No pronouncement as to costs.

IT IS SO ORDERED.

Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Griño-Aquino, and Medialdea, JJ., concur.

Fernan, C.J., Narvasa, and Feliciano, JJ., in the result.

Regalado, J., pro hac vice.

Davide, Jr., J., in the result. If there is no proof of his pardon, Ganzon must be made to serve the sentence.

[1] Lantin, Jaime J.; Javellena, Luis and Isnani, Asaali, JJ., Concurring.

[2] Rollo, 4; 50.

[3] Id., 50

[4] Id., 57-58.

[5] Nos. 75983, 79077, 79599-600, 79862, 80565, April 15, 1988, 160 SCRA 700.

[6] Rollo, id., 53-54.

[7] Id., 54-55.

[8] G.R. Nos. 85481-82, October 18, 1990, 190 SCRA 686.

[9] Resolution, February 26, 1991.

[10] Nos. 54558 and 69882, May 22, 1987, 150 SCRA 144.

[11] Tan v. Barrios, supra, 700-701.

[12] Cruz v. Enrile, supra, 4.

[13] Tan v. Barrios, supra, 700.

[14] Cruz v. Tan, Resolution, February 25, 1991, supra.

[15] Supra, 4.

[16] Supra.

[17] CONST., (1973), art. IX, sec. 13, CONST. (1987), art. VII, sec. 19.

[18] FERNANDO, THE CONSTITUTION OF THE PHILIPPINES, 287 (1977 ed.).

[19] See *People v. Vera*, 65 Phil. 56, 110 (1937).

[20] REV. PEN. CODE, art. 94.

[21] *Supra*, art. 96.

[22] *People v. Vera*, *supra*.

[23] RULES OF COURT, Rule 113, sec. 1.

[24] The issuances carrying out Proclamation No. 1081 in connection with arrests and detention include General Orders Nos. 2, 2-A, 2-D, 19, Letter of Instructions No. 621, to mention a few, in connection with specific offenses. See also Proclamation No. 2045, Presidential Decrees Nos. 1836, 1877, 1877-A, and Proclamation No. 2045 were repealed by Executive Order No. 59 and Proclamation No. 2, respectively.

[25] Upon the repeal of Presidential Decree No. 1836 and Proclamation Nos. 2045 and 2045-A.

[26] *Olague v. Military Commission* No. 34, *supra*.

[27] *Tan v. Barrios*, *supra*; *Cruz v. Enrile*, *supra*.

[28] *Supra*, fn. 25.

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