

**MAJOR ZOSIMO R. MAGNO, AND CAPTAIN ROSARIO J. TAMAYO,
PETITIONER, VS. GENERAL RENATO DE VILLA, IN HIS CAPACITY AS
CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES,
COMMODORE PROC...**

G.R. No. 92606. July 26, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The threshold issue raised in this case is whether or not General Court Martial No. 6 committed any jurisdictional error in not ordering the dismissal or quashal of the Charge Sheet against petitioners and their co-accused on the ground that more than one offense is charged therein and in proceeding with the arraignment and entering a plea of not guilty for the petitioners when they refused to plead.

The antecedents are not disputed.

Petitioners are officers of the Armed Forces of the Philippines. Major Zosimo Magno is with the Philippine Constabulary while Captain Rosario Tamayo is with the Philippine Army.

In a Memorandum dated 28 March 1989, Lt. Col. Rodolfo G. Munar, Chief, Military Justice Division of the Judge Advocate General's Office (JAGO) of the Armed Forces of the Philippines (AFP) made the following findings and recommendation involving Capt. Antonio Gelvero and herein petitioners:

"10. Premises considered, there exists probable cause against CAPT ANTONIO G GELVERO PAF, MAJ ZOSIMO R MAGNO PC, MAJ ROSARIO J TAMAYO and LTC ROBERTO F GUILLERGAN for viol of AW 94, in rel to Art 217 of the RPC, AW 95, and AW 96 and against BG DOMINGO T RIO AFP (Ret) for viol of AW 95 to warrant preferment of CM charges against them. x x x." [1]

In due course, a charge sheet was prepared. During the pre-trial investigation, petitioners submitted their Counter-Affidavits. [2] Both denied the charges and alleged that the multiple charges or "shotgun charges" levelled against them are illegal and unconstitutional since they were deprived of their constitutional right to be informed of the nature and cause of the accusation against them and to enable them to answer the said charges squarely. [3]

The Charge Sheet [4] contains the following charges and specifications:

CHARGE: I - VIOLATION OF THE 94th ARTICLE OF WAR (Various Crimes) in relation to Article 217 of the Revised Penal Code (Malversation of Public Funds and Property)

SPECIFICATION:

In that CAPTAIN ANTONIO G GELVERO, Philippine Air Force, MAJOR ZOSIMO R MAGNO, Philippine Constabulary and CAPTAIN ROSARIO J TAMAYO, Philippine Army, did on or about the first semester of 1987

at then Regional Unified Command Headquarters, Camp Delgado, Iloilo City, conspiring and confederating together and mutually helping one another, feloniously and with grave abuse of confidence, embezzle by fraudulently converting to their personal use money amounting to P600,000.00, property of the Government of the Philippines, entrusted to them for proper disposition and appropriation in accordance with law and regulations.

CHARGE: II - VIOLATION OF THE 95th ARTICLE OF WAR (Frauds against the Government)

SPECIFICATION:

In that CAPTAIN ANTONIO G GELVERO, Philippine Air Force, MAJOR ZOSIMO R MAGNO Philippine Constabulary, and CAPTAIN ROSARIO J TAMAYO, Philippine Army, did on or about the 1st semester of 1987 at then Regional Unified Command Headquarters, Camp Delgado, Iloilo City, conspiring and confederating together and mutually helping one another, having charge and control of money of the government of the Philippines, knowingly and willfully misappropriate and apply to their own benefit money amounting to P481,800.00 property of the government of the Philippines furnished and intended for the military service thereof.

CHARGE: III - VIOLATION OF THE 96th ARTICLE OF WAR (Conduct Unbecoming (sic) an Officer and a Gentleman)

SPECIFICATION:

In that CAPTAIN ANTONIO G GELVERO Philippine Air Force, MAJOR ZOSIMO R MAGNA Philippine Constabulary and CAPTAIN ROSARIO J TAMAYO Philippine Army did at then Regional Unified Command Headquarters, Camp Delgado, Iloilo City, on or about 19 February 1987 and 2 April 1987, with intent to deceive and injure wrongfully and unlawfully make and issue to then 1st LIEUTENANT ANTONIO G GELVERO 13 checks, in words and figures as follows, to wit:

Check Number	Payee	Date	Amount
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SN4-2151283-6	Antonio Gelvero	2-19-87	P100,000.00
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SN4-2151284-0	-do-	-do-	100,000.00
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SN4-2151285-1	-do-	-do-	100,000.00
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SN4-2151286-2	-do-	-do-	100,000.00
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SN4-2151287-3	-do-	-do-	100,000.00
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SN4-2151288-4	-do-	-do-	100,000.00
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SN4-2151446-1	-do-	2-08-87	100,000.00
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SN4-2151449-4	-do-	-do-	2,000.00
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SN4-2151450-5	-do-	-do-	100,000.00
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SN4-2151451-6	-do-	-do-	100,000.00
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SN4-2151452-0	-do-	-do-	71,000.00
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SN4-2151474-1	-do-	-do-	100,000.00
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SN4-2151475-2	-do-	-do-	8,000.00
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TOTAL P1,081,000.00			
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then well knowing that the issuances of said checks were not authorized, as they were all issued without the corresponding disbursement voucher duly processed and approved as required under established accounting procedures and that no appropriations and allotments obligated/earmarked for the purpose in accordance with law and regulations, which acts constitute conduct unbecoming of an officer and a gentleman.

Trial was referred to General Court Martial No. 6 (hereinafter referred to as GCM 6).

When GCM 6 convened on 1 March 1990 for the arraignment and trial of petitioners and their co-accused, petitioners questioned the Charge Sheet on the ground that "[i]t charges petitioners of (sic) more than one offense." [5] Specifically, petitioners, through their counsel, Atty. Renecio Espiritu, argued that under the charge sheet they are charged for four (4) offenses, namely: violations of (a) AW 94, (b) AW 95, (c) AW 96, and (d) Art. 217 of the Revised Penal Code, which is taken in relation to AW 94 and AW 95, each of which carries a different penalty. Counsel stressed that the constitutional right of the accused to be informed of the nature of the charges against them with particularity was violated when the charge sheet charged them with more than one offense. However, probably confused as to what had to be properly and effectively done, they merely stated that "this is a ground for a demurrer to the evidence or demurrer to the charge sheet." [6] After a few legal skirmishes between the civilian counsel, on the one hand, and the Trial Judge Advocate and the Co-Trial Judge Advocate on the other, and following the pronouncement of the President of GCM 6 for the parties to go through the proper sequence before entry of a special plea, [7] the introduction of petitioner's counsel, the statement by the Co-Trial Judge Advocate of the general nature of the charges and that no member of the court would be a witness, and after asking the petitioners and co-accused if they challenge any member of the court, [8] counsel for petitioners reiterated his earlier observation that the charge sheet charges more than one offense. Unable to adjust his bearing after the confusion however, said counsel did not press for a quashal of the Charge Sheet. Instead, after confessing that petitioners "really do not know x x x which of these particular violations of the Articles of War whether 94, 95 and 96 is the particular offense being charged of the accused (sic)," counsel "ask for a bill of particulars on the matter." [9]

Thereafter, petitioners, with co-accused Gelvero, were arraigned. The latter, through counsel, entered a plea of not guilty to each of the three charges and specifications. Petitioners, through their counsel, announced that in view of their special plea that "there is a multiplication of charges against" them, and that they "are going on certiorari on that particular issue," they will not enter a plea, [10] and it would be "up for the Trial Judge Advocate to enter the plea there because if there is no plea, it would be a plea of Not Guilty." [11]

The Law Member then directed that a plea of not guilty be entered for petitioners. [12]

On 30 March 1990, petitioners filed the instant petition, raising more issues than what they pleaded before GCM 6, to wit:

- "1. Whether the Charge Sheet which indicted petitioners of alleged violations of Articles of War Nos. 94, 95, and 96, and Article 217 of the Revised Penal Code (Malversation) violates Constitutional provision (sic) and Procedural Laws? (Criminal Procedure and Manual of Court Martial).
2. Whether the legal basis of questioned document report No. 187-88 dated October 11, 1988 can be classified as an (sic) evidence illegally seized?
3. Whether there exist (sic) conspiracy between petitioners herein and Lt. Antonio G. Gelvero in violating the Articles of War (AW 94, 95, and 96) and Article 217 of the Revised Penal Code?
4. Whether the affidavit of Lt. Antonio G. Gelvero admitting that he forged the signatures of petitioners will legally justify petitioners (sic) contention that the cases against them be dismissed for want of evidence." [13]

As regards the first issue, petitioners contend that the challenged Charge Sheet violates "Rule 110 Sec. 12[14] of the Rules on Criminal Procedure" which provides that a complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses, Section 14 of Article III of the 1987 Constitution which provides that the accused has the right to be informed of the nature and cause of the accusation against him, and Section 27 of the Manual for Courts-Martial prohibiting multiplicity of charges.

In Our resolution of 3 April 1990,[15] We required respondents to comment on the petition.

In their Comment filed on 22 June 1990 by the Office of the Solicitor General, respondents submit that the only basic issue in this case is whether or not respondents, in denying petitioners' motion to quash, committed any jurisdictional error, correctible by a writ of certiorari or writ of prohibition. They maintain that no such error was committed and in support thereof, they argue that petitioners are subject to military law. In the Philippines, military law is substantially set forth in the Articles of War,[16] Manuals for Court-Martial, promulgated AFP rules and regulations, and such other relevant statutes and rules defining rights, duties and privileges of military personnel as well as those pertaining to infractions and the appropriate punishments for violation thereof. On 17 December 1938, the President of the Philippines, pursuant to the authority vested upon him as Commander-in-Chief of the Armed Forces of the Philippines under Article 37 of C.A. No. 408, promulgated Executive Order No. 178, known as the Manual for Courts-Martial, Philippine Army (hereinafter referred to as the Manual), prescribing the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions and other military tribunals of the Philippine Army.

Respondents further argue that the proceedings had against petitioners were done in accordance with the prescribed procedure and that "insofar as the cases against petitioners-accused are concerned, court martial jurisdiction over their persons and over the subject matter has already long attached or has already long been acquired";[17] consequently, in denying petitioner's motion to quash and in directing that a plea of "not guilty" be entered into the record, respondents did not act without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. Certiorari and prohibition or prohibitory injunction under Sections 1 and 2 of Rule 65 and Section 1 of Rule 58, respectively, of the Rules of Court cannot then prosper. Finally, they stress that petitioners have not raised any question or issue affecting respondents' jurisdiction or legal authority over the subject criminal case and their jurisdictional competence to issue the assailed order denying the motion to quash.

In Our resolution of 5 July 1990, We required petitioners to file a Reply to the Comment of respondents. In their Reply, which was filed on 26 July 1990, petitioners reiterated their main arguments that their indictment for four (4) offenses "violates Rule 110 Sec. 12[18] of the Rules on Criminal Procedure which prohibits multiplicity of charges," Article III, Section 14 of the 1987 Constitution which mandates that an accused must be informed of the nature and cause of the accusation against him, and Section 27 of the Manual which prohibits multiplicity of charges.[19] They, however, categorically admit that:

"x x x In this instant case the jurisdiction of Court Martial No. 6 over the person of the petitioners and the nature of the offenses of which they were charged is not assailed before the Honorable Supreme Court, but it is the grave abuse of discretion by the Honorable Members of Court Martial No. 6 in continuously ignoring the legal issues (Procedural Laws and Constitutional Provisions) raised before it, such acts (is) without or in excess of their jurisdiction and with grave abuse of discretion, and there is no appeal, speedy and adequate remedy in the ordinary course of law, thus the writ of certiorari and prohibition x x x." [20]

In the resolution of 9 August 1990,[21] We gave due course to the petition, considered the Comment of

respondents as their Answer, and required the parties to file simultaneously their respective Memoranda within twenty days from notice. Respondents, pursuant to their motion of 29 August 1990,[22] were allowed[23] to adopt the Comment as their Memorandum. Petitioners filed their Memorandum on 4 October 1990.[24]

Issues 2, 3 and 4 submitted by petitioners cannot be properly raised in this case. They go into the merits of some evidence which may or may not be offered or admitted at the appropriate time. This Court is neither a reviewer of evidence before its submission in court, nor, generally, a trier of facts.[25] This is specially true in cases before Courts-Martial because its decisions are not appealable to this Court. Pursuant to Sections 87 and 88 of the Manual, such decisions would pass the reviewing and the confirming authorities. This conforms to the principle, as hereinafter discussed, that courts-martial are not courts within the Philippine judicial system. This is not to suggest, however, that this Court is without corrective authority over the courts-martial. It does have that authority when jurisdictional errors are involved. In *Martelino, et al. vs. Alejandro, et al.*,[26] this Court ruled:

"It is true that civil courts as a rule exercise no supervision or correcting power over the proceedings of courts-martial, and that mere errors in their proceedings are not open to consideration. 'The single inquiry, the test, is jurisdiction.' But it is equally true that in the exercise of their undoubted discretion, courts-martial may commit such an abuse of discretion - what in the language of Rule 65 is referred to as 'grave abuse of discretion' - as to give rise to a defect in their jurisdiction. This is precisely the point at issue in this action suggested by its nature as one for certiorari and prohibition, namely, whether in overruling the petitioners' challenges, the general court-martial committed such an abuse of discretion as to call for the exercise of the corrective powers of this Court. It is thus obvious that no other way is open to this Court by which it may avoid passing upon the constitutional issue thrust upon it. Nor will the fact that there may be available remedies within the system of military justice bar review considering that the questions raised are questions of law."

We should then focus our discussion on the first issue, as reformulated by the Solicitor General.

It having been admitted that petitioners are subject to military law and that GCM 6 has validly acquired jurisdiction over their persons and over the nature of the offenses charged, the inquiry should then be limited to a determination of whether or not respondents acted with grave abuse of discretion or in excess of jurisdiction amounting to lack of jurisdiction in not ordering the quashal or dismissal of the charge sheet on the ground that more than one offense is charged therein. Petitioners anchor their plea principally on Section 13 (which they cite as Section 12) of Rule 110 of the Rules of Court on the theory that the Rules of Court should also apply to military personnel since the "Court Martial proceedings, and the Articles of War, are not and should not be interpreted (sic) as a (sic) complete, separate, and distinct rules of procedure than those used in the trial of civilians which is the Rules of Court." [27] Insistence on this provision of the Rules of Court is misplaced. Courts-Martial are not courts within the Philippine judicial system and are merely instrumentalities of the executive department.

In the leading case of *Olague, et al. vs. Military Commission No. 4, et al.*, [28] this Court held:

"x x x Military Commissions or tribunals, by whatever name they are called, are not courts within the Philippine judicial system. As explained by Justice Teehankee in his separate dissenting opinion [29] -

x x x

'The late Justice Black x x x added that '(A) Court-Martial is not yet an independent instrument of justice but remains to a significant degree a specialized part of the over-all mechanism by which military discipline is preserved,' as that exservicemen should be given 'the benefits of a civilian court trial when they are actually civilians x x x. Free countries of the world have tried to restrict military tribunals to the narrowest jurisdiction

deemed absolutely essential to maintaining discipline among troops in active service.'"

"Moreover, military tribunals pertain to the Executive Department of the Government and are simply instrumentalities of the Executive power, provided by the legislature for the President as Commander-in-Chief to aid him in properly commanding the army and the navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives." [30]

In his concurring opinion in *Vargas vs. RADM Kilcline, et al.*, [31] Mr. Chief Justice Teehankee, to further emphasize the principle that courts-martial are not courts under the judicial system, stated:

"x x x I only wish to add, in order to avoid any misinterpretation of the statement in the main opinion that 'the United States Navy courts martial are courts duly constituted and under the jurisdiction of the United States Government,' that it is not to be taken as departing from the well-established principle that military commissions or tribunals or courts martial are admittedly not courts and do not form part of the judicial system and judicial process. As stressed in the leading case of *Toth vs. Quarles* (350 U.S. 5), '(A) Court-Martial is not yet an independent instrument of justice but remains to a significant degree a specialized part of the over-all mechanism by which military discipline is preserved,' and 'the presiding officer at a court martial is not a judge whose objectivity and independence are protected by tenure and undiminished salary and nurtured by the judicial tradition, but is a military law officer. Substantially different rules of evidence and procedure apply in military trials. Apart from these differences, the suggestion of the possibility of influence on the actions of the court-martial by the officer who convenes it, selects its members and the counsel on both sides, and who usually has direct command authority over its members is a pervasive one in military law, despite strenuous efforts to eliminate the danger.' x x x."

Consequently, the Rules of Court, which this Court adopted pursuant to its power and authority under the Constitution [32] to govern pleading, practice and procedure in all courts of the Philippines, is not applicable to pleading, practice and procedure in courts-martial. However, no legal obstacle bars certain guidelines relating to court-martial proceedings from adopting statutes relating to preliminary investigations of ordinary criminal cases triable by regular courts. [33]

The rule of procedure which shall be applied to petitioners is that prescribed in the Manual. [34] Section 31 thereof provides that charges and specifications shall be signed and sworn to substantially as indicated in the form, Appendix 3, which is the CHARGE SHEET. [35] A Charge Sheet may contain more than one charge. However, as provided for in Appendix 4 of the Manual, [36] the charges should be numbered, using the Roman numerals, viz., I, II, etc. The specification shall follow under each charge. When there is one specification under a charge, the specifications under that charge should be numbered, using the Arabic numerals, viz., 1, 2, etc.

The charge indicates, where the offense alleged is a violation of the Articles of War, the article alleged to have been violated. The specification sets forth the specific acts and circumstances relied upon as constituting the violation. [37]

Section 67 [38] of the Manual expressly provides that in order to prevent confusion and to guarantee to the accused an intelligent presentation of his defense for each offense charged against him, each specification must contain only one offense. This is founded upon the constitutional right of an accused person to be properly informed of the nature of the offense for which he is charged. Accordingly, if more than one offense is alleged in a specification, the accused may file a demurrer, [39] which is equivalent to a motion to quash under the Rules of Court. [40] Thus, the Manual itself assures protection of this right.

A careful scrutiny of the challenged Charge Sheet, more specifically Charges I, II and III and the specifications

thereunder do not yield the conclusion that GCM 6 had committed grave abuse of discretion or had acted in excess of jurisdiction amounting to lack of jurisdiction in denying the motion of petitioners and in later entering for them a plea of not guilty when they refused to make any plea after their arraignment. As clearly shown in the Charge Sheet, each specification recites the act constituting the alleged offense charged. There is no specification which recites the commission of more than one offense.

It cannot also be successfully argued that the acts for which petitioners have been charged cannot give rise to violations of more than one article of the Articles of War, unless the rule against double jeopardy is available to them. We do not find it to be so, for even conceding for the sake of argument that the three charges arose out of one transaction or one single act, the requisites of double jeopardy are not present.

In *People vs. Doriquez*,^[41] We held:

"It is a cardinal rule that the protection against double jeopardy may be invoked only for the same offense or identical offenses. A simple act may offend against two (or more) entirely distinct and unrelated provisions of law, and if one provision requires proof of an additional fact or element which the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other. Phrased otherwise, where two different laws (or articles of the same code) define two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other."^[42]

AW 94, AW 95 and AW 96 are distinct, different, and separate offenses under the Articles of War. One single act or transaction may constitute a violation of any or all of such articles. We are not, however, unaware of Section 27 of the Manual which provides that one transaction, or what is substantially one transaction, should not be made the basis for an unreasonable multiplication of charges against a person.^[43] That has not been violated in this case, for, on the assumption that there had been multiplication of charges, it cannot be characterized as "unreasonable."

GCM 6 did not, therefore, commit any error of jurisdiction in proceeding with the arraignment and in ordering that a plea of not guilty be entered for each of the petitioners following their refusal to plead. Article 21 of the Articles of War and Section 10 of the Manual provide that when the accused, after arraignment, refuses to plead or answers foreign to the purpose, the court shall proceed to trial and judgment as if he had pleaded not guilty.

WHEREFORE, for lack of merit, the instant petition is DISMISSED with costs against petitioners.

SO ORDERED.

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

[1] Annex "E" of Petition; Rollo, 39-42.

[2] Annexes "G" and "H" of Petition; Id., 47-73.

[3] Id., 49, 61.

[4] Annex "I" of Petition; Rollo, 75-79.

[5] Petition, 5; Rollo, 6.

[6] TSN of the proceedings (Annex "K" of Petition), 2-3; Id., 84-86.

[7] Annex "K" of Petition, 10; Id., 92.

[8] Annex "K" of Petition; Id., 97.

[9] TSN of proceedings (Annex "K" of Petition), 17; Rollo, 99.

[10] Id., 109.

[11] Loc. cit.

[12] Id., 28.

[13] Rollo, 7-8.

[14] Now Section 13 which reads:

"SEC. 13. Duplicity of offense. - A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses."

[15] Between p. 116 and p. 117 of Rollo.

[16] C.A. No. 408, as amended.

[17] Rollo, 174.

[18] Now Section 13.

[19] Loc. cit., 184-185.

[20] Rollo, 209.

[21] Id., 193.

[22] Id., 194.

[23] Resolution of 11 September 1990.

[24] Loc. cit., 202-211.

[25] Cañete, et al. vs. Court of Appeals, et al., 171 SCRA 13; and the cited cases of Lim vs. Court of Appeals, 158 SCRA 308; Samson vs. Court of Appeals, 141 SCRA 194; Republic vs. Intermediate Appellate Court, 144 SCRA 705; Municipality of Meycauayan, Bulacan vs. Intermediate Appellate Court, 157 SCRA 640.

[26] 32 SCRA 106, 110.

[27] Rollo, 205.

[28] 150 SCRA 144, 159 (1987).

[29] In Aquino, Jr. vs. Military Commission No. 2, et al., 63 SCRA 546, 621 (1975).

[30] Citing Ruffy vs. Chief of Staff, 75 Phil. 875 (1946).

[31] 142 SCRA 232 (1986).

[32] Section 13, Article VIII of the 1935 Constitution, now paragraph (5), Section 5, Article VIII of the 1987 Constitution.

[33] For example, Section 12 of the Rules and Regulations Implementing Presidential Decree No. 1850, dated 4 October 1982, Defining Court-Martial Jurisdiction Over Members of the Armed Forces of the Philippines and Integrated National Police provides that the procedures prescribed in P.D. No. 77, as amended by P.D. No. 911, on preliminary investigations, shall be followed in the conduct of pre-trial investigations.

[34] Executive Order No. 178.

[35] A Manual For Courts Martial, Armed Forces of the Philippines, 1969 ed., 226-227.

[36] Manual, 229.

[37] Section 24; Id., 16.

[38] Id., 55.

[39] Section 64; Id., 55.

[40] Rule 117.

[41] 24 SCRA 163, 171.

[42] Citing *People vs. Bacolod*, 89 Phil. 621; *People vs. Capurro*, 7 Phil 24; *People vs. Alvares*, 45 Phil. 472.

[43] Manual, 17.

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