

BGEN. JOSE COMENDADOR, BGEN. MARIELO BLANDO, CAPT. DANILO PIZARRO, CAPT. MANUEL ISON, COL. LUISITO SANCHEZ, LTC. ROMELINO GOJO, LTC. ARSENIO TECSON, LTC. RAFAEL GALVEZ, LTC. TIB...

G.R. No. 93177. August 02, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

These four cases have been consolidated because they involve practically the same parties and related issues arising from the same incident.

The petitioners in G.R. Nos. 93177 and 96948 and the private respondents in G.R. Nos. 95020 and 97454 are officers of the Armed Forces of the Philippines facing prosecution for their alleged participation in the failed coup d'etat that took place on December 1 to 9, 1989.

The charges against them are violation of Articles of War (AW) 67 (Mutiny), AW 96 (Conduct Unbecoming an Officer and a Gentleman) and AW 94 (Various Crimes) in relation to Article 248 of the Revised Penal Code (Murder).

In G.R. No. 93177, which is a petition for certiorari, prohibition and mandamus, they are questioning the conduct of the Pre-Trial Investigation (PTI) Panel constituted to investigate the charges against them and the creation of the General Court Martial (GCM) convened to try them.

In G.R. No. 96948, the petitioners, besides challenging the legality of GCM No. 14, seek certiorari against its ruling denying them the right to peremptory challenge as granted by Article 18 of Com. Act No. 408.

In G.R. No. 95020, the orders of the respondent judge of the Regional Trial Court of Quezon City are assailed on certiorari on the ground that he has no jurisdiction over GCM No. 14 and no authority either to set aside its ruling denying bail to the private respondents.

In G.R. No. 97454, certiorari is also sought against the decision of the Regional Trial Court of Quezon City in a petition for habeas corpus directing the release of the private respondents. Jurisdictional objections are likewise raised as in G.R. No. 95020.

I

Before the charges were referred to GCM No. 14, a Pre-Trial Investigation (PTI) Panel had been constituted pursuant to Office Order No. 16 dated January 14, 1990, to investigate the petitioners in G.R. Nos. 93177 and 96948.

The PTI Panel issued a uniform subpoena dated January 30, 1990, individually addressed to the petitioners, to wit:

You are hereby directed to appear in person before the undersigned Pre-Trial Investigating Officers on 12 Feb

90 9:00 a.m. at Kiangnan Hall, Camp Crame Quezon City, then, and there to submit your counter-affidavit and the affidavits of your witnesses, if any, in the pre-trial investigation of the charge/charges against you for viol of Aws _____ DO NOT SUBMIT A MOTION TO DISMISS.

Failure to submit the aforementioned counter-affidavits on the date above specified shall be deemed a waiver of your right to submit controverting evidence.

On the same date, the petitioners acknowledged receipt of a copy of the charge sheet, sworn statements of witnesses, and death and medical certificates of victims of the rebellion.

At the first scheduled hearing, the petitioners challenged the proceedings on various grounds, prompting the PTI Panel to grant them 10 days within which to file their objections in writing. This was done through a Motion for Summary Dismissal dated February 21, 1990.

In a resolution dated February 27, 1990, the PTI Panel denied the motion and gave the petitioners 5 days from notice to submit their respective counter-affidavits and the affidavits of their witnesses.

On March 7, 1990, the petitioners verbally moved for reconsideration of the foregoing denial and the PTI Panel gave them 7 days within which to reduce their motion to writing. This was done on March 14, 1990.

The petitioners now claim that there was no pre-trial investigation of the charges as mandated by Article of War 71, which provides:

Art. 71. Charges; Action upon. - Charges and specifications must be signed by a person subject to military law, and under the 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. (Underscoring supplied.)

They also allege that the initial hearing of the charges consisted merely of a roll call and that no prosecution witnesses were presented to reaffirm their affidavits. While the motion for summary dismissal was denied, the motion for reconsideration remains unresolved to date and they have not been able to submit their counter-affidavits.

At the hearing of May 15, 1990, the petitioners in G.R. No. 96948 manifested that they were exercising their right to raise peremptory challenges against the president and members of GCM No. 14. They invoked Article 18 of Com. Act No. 408 for this purpose. GCM No. 14 ruled, however, that peremptory challenges had been discontinued under P.D. No. 39.

In G.R. No. 95020, Ltc. Jacinto Ligot applied for bail on June 5, 1990, but the application was denied by GCM No. 14. He thereupon filed with the Regional Trial Court of Quezon City a petition for certiorari and mandamus with prayer for provisional liberty and a writ of preliminary injunction. After considering the petition and the answer thereto filed by the president and members of GCM No. 14, Judge Maximiano C. Asuncion issued an order granting provisional liberty to Ligot.

On July 28, 1990, Ligot filed an urgent omnibus motion to enforce the order for his release and to declare in

contempt the commanding officer of the PC/INP Jail for disobeying the said order. He later also complained that Generals De Villa and Aguirre had refused to release him “pending final resolution of the appeal to be taken” to this Court.

After hearing, the trial court reiterated its order for the provisional liberty of Ligot, as well as of intervenors Ltc. Franklin Brawner, Lt/Col. Arsenio Tecson and Maj. Alfredo Oliveros, and later of additional intervenors Ltc. Romelino Gojo and Capt. Manuel Ison.

On August 22, 1990, the trial court rendered judgment inter alia:

(a) Declaring that Section 13, Article III of the Constitution granting the right to bail to all persons with the defined exception is applicable and covers all military men facing court-martial proceedings. Accordingly, the assailed orders of General Court-Martial No. 14 denying bail to petitioner and intervenors on the mistaken assumption that bail does not apply to military men facing court-martial proceedings on the ground that there is no precedent, are hereby set aside and declared null and void. Respondent General Court-Martial No. 14 is hereby directed to conduct proceedings on the applications of bail of the petitioner, intervenors and which may as well include other persons facing charges before General Court-Martial No. 14.

Pending the proceedings on the applications for bail before General Court-Martial No. 14, this Court reiterates its orders of release on the provisional liberty of petitioner Jacinto Ligot as well as intervenors Franklin Brawner and Arsenio Tecson.

On February 18, 1991, the private respondents in G.R. No. 97454 filed with this Court a petition for habeas corpus on the ground that they were being detained in Camp Crame without charges. The petition was referred to the Regional Trial Court of Quezon City, where it was raffled to respondent Judge Antonio P. Solano. Finding after hearing that no formal charges had been filed against the petitioners after more than a year after their arrest, the trial court ordered their release.

II

The Court has examined the records of this case and rules as follows.

It appears that the petitioners in G.R. Nos. 93177 and 96948 were given several opportunities to present their side at the pre-trial investigation, first at the scheduled hearing of February 12, 1990, and then again after the denial of their motion of February 21, 1990, when they were given until March 7, 1990, to submit their counter-affidavits. On that date, they filed instead a verbal motion for reconsideration which they were again asked to submit in writing. This they did on March 13, 1990. The motion was in effect denied when the PTI Panel resolved to recommend that the charges be referred to the General Court Martial for trial.

The said petitioners cannot now claim they have been denied due process because the investigation was resolved against them owing to their own failure to submit their counter-affidavits. They had been expressly warned in the subpoena sent them that “failure to submit the aforementioned counter-affidavits on the date above specified shall be deemed a waiver of (their) right to submit controverting evidence.” They chose not to heed the warning. As their motions appeared to be dilatory, the PTI Panel was justified in referring the charges to GCM No. 14 without waiting for the petitioners to submit their defense.

Due process is satisfied as long as the party is accorded an opportunity to be heard. If it is not availed of, it is deemed waived or forfeited without violation of the Bill of Rights.

There was in our view substantial compliance with Article of War 71 by the PTI Panel. Moreover, it is now settled that “even a failure to conduct a pre-trial investigation does not deprive a general court-martial of

jurisdiction.” We so held in *Arula v. Espino*,^[1] thus:

x x x

But even a failure to conduct a pre-trial investigation does not deprive a general court-martial of jurisdiction.

The better accepted concept of pre-trial investigation is that it is directory, not mandatory, and in no way affects the jurisdiction of a court-martial. In *Humphrey v. Smith*, 336 U.S. 695, 93 L ed 986 (1949), the Court said:

“We do not think that the pre-trial investigation procedure by Article 70 (The Philippine counter-part is article of war 71, Commonwealth Act 408) can properly be construed as an indispensable pre-requisite to the exercise of Army general court-martial jurisdiction. The Article does serve important functions in the administration of court-martial procedures and does provide safeguards to an accused. Its language is clearly such that a defendant could object to trial in the absence of the required investigation. In that event the court-martial could itself postpone trial pending the investigation. And the military reviewing authorities could consider the same contention, reversing a court-martial conviction where failure to comply with Article 70 has substantially injured an accused. But we are not persuaded that Congress intended to make otherwise valid court-martial judgments wholly void because pre-trial investigations fall short of the standards prescribed by Article 70. That Congress has not required analogous pre-trial procedure for Navy court-martial is an indication that the investigatory plan was not intended to be exalted to the jurisdictional level.

x x x

Shortly after enactment of Article 70 in 1920 the Judge Advocate General of the Army did hold that where there had been no pre-trial investigation, court-martial proceedings were void ab initio. But this holding has been expressly repudiated in later holdings of the Judge Advocate General. This later interpretation has been that the pre-trial requirements of Article 70 are directory, not mandatory, and in no way affect the jurisdiction of a court-martial. The War Department’s interpretation was pointedly called to the attention of Congress in 1947 after which Congress amended Article 70 but left unchanged the language here under consideration.”

A trial before a general court-martial convened without any pre-trial investigation under article of war 71 would of course be altogether irregular; but the court-martial might nevertheless have jurisdiction. Significantly, this rule is similar to the one obtaining in criminal procedure in the civil courts to the effect that absence of preliminary investigation does not go into the jurisdiction of the court but merely to the regularity of the proceedings.

As to what law should govern the conduct of the preliminary investigation, that issue was resolved more than two years ago in *Kapunan v. De Villa*,^[2] where we declared:

The Court finds that, contrary to the contention of petitioners, there was substantial compliance with the requirements of law as provided in the Articles of War and P.D. No. 77, as amended by P.D. No. 911. The amended charge sheets, charging petitioners and their co-respondents with mutiny and conduct unbecoming an officer, were signed by Maj. Antonio Ruiz, a person subject to military law, after he had investigated the matter through an evaluation of the pertinent records, including the reports of respondent AFP Board of Officers, and was convinced of the truth of the testimonies on record. The charge sheets were sworn to by Maj. Ruiz, the “accuser,” in accordance with and in the manner provided under Art. 71 of the Articles of War. Considering that P.D. No. 77, as amended by P.D. No. 911, is only of suppletory application, the fact that the charge sheets were not certified in the manner provided under said decrees, i.e., that the officer administering the oath has personally examined the affiant and that he is satisfied that they voluntarily executed and understood his affidavit, does not invalidate said charge sheets. Thereafter, a “pre-trial investigation” was conducted by respondent Maj. Baldonado, wherein, pursuant to P.D. No. 77, as amended by P.D. No. 911,

petitioners were subpoenaed and required to file their counter-affidavits. However, instead of doing so, they filed an untitled pleading seeking the dismissal of the charges against them. That petitioners were not able to confront the witnesses against them was their own doing, for they never even asked Maj. Baldonado to subpoena said witnesses so that they may be made to answer clarificatory questions in accordance with P.D. No. 77, as amended by P.D. No. 911.

The petitioners also allege that GCM No. 14 has not been constituted in accordance with Article 8 of the Articles of War because General Order No. M-6, which supposedly convened the body, was not signed by Gen. Renato de Villa as Chief of Staff.

Article of War No. 8 reads:

Art. 8. General Courts-Martial. - The President of the Philippines, the Chief of Staff of the Armed Forces of the Philippines, the Chief of Constabulary and, when empowered by the President, the commanding officer of a major command or task force, the commanding officer of a division, the commanding officer of a military area, the superintendent of the Military Academy, the commanding officer of a separate brigade or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority. x x x

While it is true that General Order No. M-6 was not signed by Gen. De Villa, there is no doubt that he authorized it because the order itself said it was issued "By Command of General De Villa" and it has not been shown to be spurious. As observed by the Solicitor General, the Summary Disposition Form showed that Gen. De Villa, as Chief of Staff, AFP, actually constituted GCM No. 14 and appointed its president and members. It is significant that General De Villa has not disauthorized or revoked or in any way disowned the said order, as he would certainly have done if his authority had been improperly invoked. On the contrary, as the principal respondent in G.R. No. 93177, he sustained General Order No. M-6 in the Comment filed for him and the other respondents by the Solicitor General.

Coming now to the right to peremptory challenge, we note that this was originally provided for under Article 18 of Com. Act No. 408 (Articles of War), as amended by Rep. Act No. 242, on June 12, 1948, to wit:

Art. 18. Challenges. - Members of general or special courts-martial may be challenged by the accused or the trial judge advocate for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time. Challenges by the trial judge advocate shall ordinarily be presented and decided before those by the accused are offered. Each side shall be entitled to the peremptory challenge, but the law member of the court shall not be challenged except for cause.

The history of peremptory challenge was traced in *Martelino v. Alejandro*,^[3] thus:

In the early formative years of the infant Philippine Army, after the passage in 1935 of Commonwealth Act No. 1 (otherwise known as the National Defense Act), except for handful of Philippine Scout officers and graduates of the United States military and naval academies who were on duty with the Philippine Army, there was a complete dearth of officers learned in military law, this aside from the fact that the officer corps of the developing army was numerically inadequate for the demands of the strictly military aspects of the national defense program. Because of these considerations it was then felt that peremptory challenges should not in the meanwhile be permitted and that only challenges for cause, in any number, would be allowed. Thus Article 18 of the Articles of War (Commonwealth Act No. 408), as worded on September 14, 1938, the date of the approval of the Act, made no mention or reference to any peremptory challenge by either the trial judge advocate of a court-martial or by the accused. After December 17, 1958, when the Manual for Courts-Martial of the Philippine Army became effective, the Judge Advocate General's Service of the Philippine Army conducted a continuing and intensive program of training and education in military law, encompassing the length and breadth of the Philippines. This program was pursued until the outbreak of World War II in the

Pacific on December 7, 1941. After the formal surrender of Japan to the allies in 1945, the officer corps of the Armed Forces of the Philippines had expanded to a very large number, and a great many of the officers had been indoctrinated in military law. It was in these environmental circumstances that Article of War 18 was amended on June 12, 1948 to entitle “each side” to one peremptory challenge, with the sole proviso that “the law member of court shall not be challenged except for cause.”

On September 27, 1972, President Marcos issued General Order No. 8, empowering the Chief of Staff of the Armed Forces to create military tribunals “to try and decide cases of military personnel and such other cases as may be referred to them.”

On November 7, 1972, he promulgated P.D. No. 39 (Governing the Creation, Composition, Jurisdiction, Procedure, and other matters relevant to Military Tribunals). This decree disallowed the peremptory challenge, thus:

No peremptory challenge shall be allowed. Challenges for cause may be entertained to insure impartiality and good faith. Challenges shall immediately be heard and determined by a majority of the members excluding the challenged member. A tie vote does not disqualify the challenged member. A successfully challenged member shall be immediately replaced.

On June 11, 1978, President Marcos promulgated P.D. No. 1498, or the National Security Code, which was a compilation and codification of decrees, general orders, LOI and policies intended “to meet the continuing threats to the existence, security and stability of the State.” The modified rule on challenges under P.D. No. 39 was embodied in this decree.

On January 17, 1981, President Marcos issued Proc. No. 2045 proclaiming the termination of the state of martial law throughout the Philippines. The proclamation revoked General Order No. 8 and declared the dissolution of the military tribunals created pursuant thereto upon final determination of the cases pending therein.

P.D. No. 39 was issued to implement General Order No. 8 and the other general orders mentioned therein. With the termination of martial law and the dissolution of the military tribunals created thereunder, the reason for the existence of P.D. No. 39 ceased automatically.

It is a basic canon of statutory construction that when the reason of the law ceases, the law itself ceases. *Cessante ratione legis, cessat ipsa lex*. This principle is also expressed in the maxim *ratio legis est anima*: the reason of law is its soul.

Applying these rules, we hold that the withdrawal of the right to peremptory challenge in P.D. No. 39 became ineffective when the apparatus of martial law was dismantled with the issuance of Proclamation No. 2045. As a result, the old rule embodied in Article 18 of Com. Act No. 408 was automatically revived and now again allows the right to peremptory challenge.

We do not agree with the respondents in G.R. No. 96948 that the right to peremptory challenge remains withdrawn under P.D. No. 39. To repeat for emphasis, this decree was itself withdrawn when martial law was lifted on January 17, 1981. Indeed, even if not so withdrawn, it could still be considered no longer operative, having been cast out under the new dispensation as, in the words of the Freedom Constitution, one of the “iniquitous vestiges of the previous regime.”

The military tribunal was one of the most oppressive instruments of martial law. It is curious that the present government should invoke the rules of that discredited body to justify its action against the accused officers.

The Court realizes that the recognition of the right to peremptory challenge may be exploited by a respondent in a court-martial trial to delay the proceedings and defer his deserved punishment. It is hoped that the accused

officers in the cases at bar will not be so motivated. At any rate, the wisdom of Com. Act No. 408, in the light of present circumstances, is a matter addressed to the law-makers and not to this Court. The judiciary can only interpret and apply the laws without regard to its own misgivings on their adverse effects. This is a problem only the political departments can resolve.

The petitioners in G.R. Nos. 95020 and 97454 question the propriety of the petition for certiorari and mandamus and the petition for habeas corpus filed by the private respondents with the Regional Trial Courts of Quezon City. It is argued that since the private respondents are officers of the Armed Forces accused of violations of the Articles of War, the respondent courts have no authority to order their release and otherwise interfere with the court-martial proceedings.

The petitioners further contend that under Sec. 9 (3) of BP 129, the Court of Appeals is vested with “exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions.” Rather irrelevantly, the petitioners also cite the case of *Yang v. Court of Appeals*,^[4] where this Court held that “appeals from the Professional Regulation Commission are now exclusively cognizable by the Court of Appeals.”

It should be noted that the aforecited provision and the case cited refer to ordinary appeals and not to the remedies employed by the accused officers before the respondent courts.

In *Martelino*, we observed as follows:

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 x x x.

The Regional Trial Court has concurrent jurisdiction with the Court of Appeals and the Supreme Court over petitions for certiorari, prohibition or mandamus against inferior courts and other bodies and on petitions for habeas corpus and quo warranto.^[5] In the absence of a law providing that the decisions, orders and ruling of a court-martial or the Office of the Chief of Staff can be questioned only before the Court of Appeals and the Supreme Court, we hold that the Regional Trial Court can exercise similar jurisdiction.

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 in 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 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.

x x x

National security considerations should also impress upon this Honorable Court that release on bail of respondents constitutes a damaging precedent. Imagine a scenario of say 1,000 putschists roaming the streets of the Metropolis on bail, or if the assailed July 25, 1990 Order were sustained, on "provisional" bail. The sheer number alone is already discomfiting. But, the truly disquieting thought is that they could freely resume their heinous activity which could very well result in the overthrow of duly constituted authorities, including this Honorable Court, and replace the same with a system consonant with their own concept of government and justice.

The argument that denial from the military of the right to bail would violate the equal protection clause is not acceptable. This guaranty 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.

On the contention of the private respondents in G.R. No. 97454 that they had not been charged after more than one year from their arrest, our finding is that there was substantial compliance with the requirements of due process and the right to a speedy trial.

The petition for habeas corpus was directly filed with this Court on February 18, 1991, and was referred to the Regional Trial Court of Quezon City for raffle, hearing and decision. It was heard on February 26, 1991, by the respondent court, where the petitioners submitted the charge memorandum and specifications against the private respondents dated January 30, 1991. On February 12, 1991, pursuant to Office Order No. 31-91, the PTI panel was created and initial investigation was scheduled on March 12, 1991 at 2:00 p.m. On March 20, 1991, the private respondents received the copies of the charges, charge sheets and specifications and were required to submit their counter-affidavits on or before April 11, 1991. There was indeed a delay of more than one year in the investigation and preparation of the charges against the private respondents. However, this was explained by the Solicitor General thus:

x x x The AFP Special Investigating Committee was able to complete its pre-charge investigation only after one (1) year because hundreds of officers and thousands of enlisted men were involved in the failed coup. All of them, as well as other witnesses, had to be interviewed or investigated, and these inevitably took months to finish. The pre-charge investigation was rendered doubly difficult by the fact that those involved were dispersed and scattered throughout the Philippines. In some cases, command units, such as the Scout Rangers, have already been disbanded. After the charges were completed, the same still had to pass review and approval by the AFP Chief of Staff.

While accepting this explanation, the Court nevertheless must reiterate the following admonition:

This Court as protector of the rights of the people, must stress the point that if the participation of petitioner in several coup attempts for which he is confined on orders of Adjutant General Jorge Agcaoili cannot be established and no charges can be filed against him or the existence of a prima facie case warranting trial before a military commission is wanting, it behooves respondent then Major General Rodolfo Biazon (now General) to release petitioner. Respondents must also be reminded that even if a military officer is arrested pursuant to Article 70 of then Articles of War, indefinite confinement is not sanctioned, as Article 71 thereof mandates that immediate steps must be taken to try the person accused or to dismiss the charge and release him. Any officer who is responsible for unnecessary delay investigating or carrying the case to a final conclusion may even be punished as a court martial may direct.[6]

It should be noted, finally, that after the decision was rendered by Judge Solano on February 26, 1991, the government filed a notice of appeal *ad cautelam* and a motion for reconsideration, the latter was ultimately denied, after hearing, on March 4, 1991. The 48-hour period for appeal under Rule 41, Section 18, of the Rules of

Court did not run until after notice of such denial was received by the petitioners on March 12, 1991. Contrary to the private respondents' contention, therefore, the decision had not yet become final and executory when the special civil action in G.R. No. 97454 was filed with this Court on March 12, 1991.

III

Regarding the propriety of the petitions at bar, it is well to reiterate the following observations of the Court in *Arula*:

The referral of charges to a court-martial involves the exercise of judgment and discretion (AW 71). A petition for certiorari, in order to prosper, must be based on jurisdictional grounds because, as long as the respondent acted with jurisdiction, any error committed by him or it in the exercise thereof will amount to nothing more than an error of judgment which may be reviewed or corrected only by appeal. Even an abuse of discretion is not sufficient by itself to justify the issuance of a writ of certiorari.

As in that case, we find that the respondents in G.R. No. 93177 have not acted with grave abuse of discretion or without or in excess of jurisdiction to justify the intervention of the Court and the reversal of the acts complained of by the petitioners. Such action is indicated, however, in G.R. No. 96948, where we find that the right to peremptory challenge should not have been denied, and in G.R. Nos. 95020 and 97454, where the private respondents should not have been ordered released.

ACCORDINGLY, in G.R. No. 93177, the petition is DISMISSED for lack of merit. In G.R. No. 96948, the petition is GRANTED, and the respondents are DIRECTED to allow the petitioners to exercise the right of peremptory challenge under Article 18 of the Articles of War. In G.R. Nos. 95020 and 97454, the petitions are also GRANTED, and the orders of the respondent courts for the release of the private respondents are hereby REVERSED and SET ASIDE. No costs.

SO ORDERED.

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

[1] 28 SCRA 540.

[2] 168 SCRA 264.

[3] 32 SCRA 106.

[4] 186 SCRA 287.

[5] Sec. 5, Article VIII, 1987 Constitution of the Republic of the Philippines; Sec. 9(1) and Sec. 21(1), B.P. 129.

[6] *Elepante v. Madayag*, G.R. No. 93559, April 26, 1991.

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CONCURRING AND DISSENTING OPINION

SARMIENTO, J.:

I concur with the ponencia of my esteemed colleague, Mr. Justice Cruz, but I dissent insofar as he would deny bail to accused military personnel.

The Constitution explicitly grants the right to bail to "all persons" before conviction, with the only exception of "those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong."^[1] The Charter also states that "[T]he right to bail shall not be impaired even if the writ of habeas corpus is suspended."^[2] To deny the military officers here concerned of the right to bail is to circumscribe the inclusive meaning of "all persons"--the coverage of the right.

I believe that military officers fall within "persons".

The picture conjured up by the Solicitor General of "a scenario of say 1,000 putschists roaming the streets of the Metropolis on bail, or if the assailed July 25, 1990 Order were sustained, on 'provisional' bail...[t]he sheer number alone is already discomfoting...[b]ut, the truly disquieting thought is that they could freely resume their heinous activity which could very well result in the overthrow of duly constituted authorities, including this Honorable Court, and replace the same with a system consonant with their own concept of government and justice."^[3] But would a scenario of 1,000 murderers or drug pushers roaming the streets of the metropolis justify a denial of the right to bail? Would not that dark picture painted by the solicitor General be reproduced by 1,000 "equally dangerous" elements of society?

We gave bail Senator Enrile and General Brawner. I find no reason why the petitioners should not be granted the same right.

The majority would point to tradition, supposed to be firmly settled, as an argument to deny bail. I submit, however, that tradition is no argument. First, the Constitution does not say it. Second, we are a government of laws, not tradition.

If there are precedents that attest to the contrary, I submit that a reexamination is in order.

[1] CONST., art. III, sec. 13.

[2] Supra.

[3] Decision, 20.

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