

**JUAN PONCE ENRILE, PETITIONER, VS. HON. OMAR U. AMIN,
PRESIDING JUDGE OF REGIONAL TRIAL COURT OF MAKATI,
BRANCH 135, HON. IGNACIO M. CAPULONG, PRESIDING JUDGE OF
REGIONAL TRIAL ...**

G.R. No. 93335. September 13, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Together with the filing of an information charging Senator Juan Ponce Enrile as having committed rebellion complexed with murder[1] with the Regional Trial Court of Quezon City, government prosecutors filed another information charging him for violation of Presidential Decree No. 1829 with the Regional Trial Court of Makati. The second information reads:

"That on or about the 1st day of December 1989, at Dasmariñas Village, Makati, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, having reasonable ground to believe or suspect that Ex-Col. Gregorio "Gringo" Honasan has committed a crime, did then and there unlawfully, feloniously, willfully and knowingly obstruct, impede, frustrate or delay the apprehension of said Ex. Lt. Col. Gregorio "Gringo" Honasan by harboring or concealing him in his house,"

On March 2, 1990, the petitioner filed an Omnibus Motion (a) to hold in abeyance the issuance of a warrant of arrest pending personal determination by the court of probable cause, and (b) to dismiss the case and expunge the information from the record.

On March 16, 1990, respondent Judge Ignacio Capulong, as pairing judge of respondent Judge Omar Amin, denied Senator Enrile's Omnibus motion on the basis of a finding that "there (was) probable cause to hold the accused Juan Ponce Enrile liable for violation of PD No. 1829."

On March 21, 1990, the petitioner filed a Motion for Reconsideration and to Quash/Dismiss the Information on the grounds that:

- (a) The facts charged do not constitute an offense;
- (b) The respondent court's finding of probable cause was devoid of factual and legal basis; and
- (c) The pending charge of rebellion complexed with murder and frustrated murder against Senator Enrile as alleged co-conspirator of Col. Honasan, on the basis of their alleged meeting on December 1, 1989 preclude the prosecution of the Senator for harboring or concealing the Colonel on the same occasion under PD 1829.

On May 10, 1990, the respondent court issued an order denying the motion for reconsideration for alleged lack of merit and setting Senator Enrile's arraignment to May 30, 1990.

The petitioner comes to this Court on Certiorari imputing grave abuse of discretion amounting to lack or excess of jurisdiction committed by the respondent court in refusing to quash/dismiss the information on the following

grounds, to wit:

- I. The facts charged do not constitute an offense;
- II. The alleged harboring or concealing by Sen. Enrile of Col. Honasan in a supposed meeting on 1 December 1989 is absorbed in, or is a component element of, the "complexed" rebellion presently charged against Sen. Enrile as alleged co-conspirator of Col. Honasan on the basis of the same meeting on 1 December 1989;
- III. The orderly administration of Justice requires that there be only one prosecution for all the component acts of rebellion;
- IV. There is no probable cause to hold Sen. Enrile for trial for alleged violation of Presidential Decree No. 1829;
- V. No preliminary investigation was conducted for alleged violation of presidential Decree No. 1829. The preliminary investigation, held only for rebellion, was marred by patent irregularities resulting in denial of due process.

On May 20, 1990 we issued a temporary restraining order enjoining the respondents from conducting further proceedings in Criminal Case No. 90-777 until otherwise directed by this Court.

The pivotal issue in this case is whether or not the petitioner could be separately charged for violation of PD No. 1829 notwithstanding the rebellion case earlier filed against him.

Respondent Judge Amin sustained the charge of violation of PD No. 1829 notwithstanding the rebellion case filed against the petitioner on the theory that the former involves a special law while the latter is based on the Revised Penal Code or a general law.

The resolution of the above issue brings us anew to the case of *People v. Hernandez* (99 Phil. 515 [1956]) the rulings of which were recently repeated in the petition for habeas corpus of *Juan Ponce Enrile v. Judge Salazar*, (G.R. No. 92163 and 92164, June 5, 1990). The Enrile case gave this Court the occasion to reiterate the long standing proscription against splitting the component offenses of rebellion and subjecting them to separate prosecutions, a procedure reprobated in the Hernandez case. This Court recently declared:

"The rejection of both options shapes and determines the primary ruling of the Court. Which is that Hernandez remains binding doctrine operating to prohibit the complexing of rebellion with any other offense committed on the occasion thereof, either as a means necessary to its commission or as an unintended effect of an activity that constitutes rebellion." (Emphasis supplied)

This doctrine is applicable in the case at bar. If a person can not be charged with the complex crime of rebellion for the greater penalty to be applied, neither can he be charged separately for two (2) different offenses where one is a constitutive or component element or committed in furtherance of rebellion.

The petitioner is presently charged with having violated PD No. 1829 particularly Section 1 (c) which states:

"SECTION 1. The penalty of prison correccional in its maximum period, or a fine ranging from 1,000 to 6,000 pesos, or both, shall be imposed upon any person who knowingly or wilfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

xxx xxx xxx

(c) harboring or concealing, or facilitating the escape of, any person he knows, or has reasonable ground to believe or suspect, has committed any offense under existing penal laws in order to prevent his arrest, prosecution and conviction."

XXX XXX XXX

The prosecution in this Makati case alleges that the petitioner entertained and accommodated Col. Honasan by giving him food and comfort on December 1, 1989 in his house. Knowing that Colonel Honasan is a fugitive from justice, Sen. Enrile allegedly did not do anything to have Honasan arrested or apprehended. And because of such failure the petitioner prevented Col. Honasan's arrest and conviction in violation of Section 1 (c) of PD No. 1829.

The rebellion charges filed against the petitioner in Quezon City were based on the affidavits executed by three (3) employees of the Silahis International Hotel who stated that the fugitive Col. Gregorio "Gringo" Honasan and some 100 rebel soldiers attended the mass and birthday party held at the residence of the petitioner in the evening of December 1, 1989. The information (Annex "C", p. 3) particularly reads that on "or about 6:30 p.m., 1 December, 1989, Col. Gregorio "Gringo" Honasan conferred with accused Senator Juan Ponce Enrile accompanied by about 100 fully armed rebel soldiers wearing white armed patches". The prosecution thereby concluded that:

"In such a situation Sen. Enrile's talking with rebel leader Col. Gregorio "Gringo" Honasan in his house in the presence of about 100 uniformed soldiers who were fully armed, can be inferred that they were co-conspirators in the failed December coup." (Annex A, Rollo, p. 65; Emphasis supplied)

As can be readily seen, the factual allegations supporting the rebellion charge constitute or include the very incident which gave rise to the charge of the violation under Presidential Decree No. 1829. Under the Department of Justice resolution (Annex A, Rollo p. 49) there is only one crime of rebellion complexed with murder and multiple frustrated murder but there could be 101 separate and independent prosecutions for "harboring and concealing" Honasan and 100 other armed rebels under PD No. 1829. The splitting of component elements is readily apparent.

The petitioner is now facing charges of rebellion in conspiracy with the fugitive Col. Gringo Honasan. Necessarily, being in conspiracy with Honasan, petitioner's alleged act of harboring or concealing was for no other purpose but in furtherance of the crime of rebellion thus constituting a component thereof. It was motivated by the single intent or resolution to commit the crime of rebellion. As held in *People v. Hernandez*, supra:

"In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive." (p. 535)

The crime of rebellion consists of many acts. It is described as a vast movement of men and a complex net of intrigues and plots. (*People v. Almasan* [CA] O.G. 1932). Jurisprudence tells us that acts committed in furtherance of the rebellion though crimes in themselves are deemed absorbed in the one single crime of rebellion. (*People v. Geronimo*, 100 Phil. 90 [1956]; *People v. Santos*, 104 Phil. 551 [1958]; *People v. Rodriguez*, 107 Phil. 659 [1960]; *People v. Lava*, 28 SCRA 72 [1969]). In this case, the act of harboring or concealing Col. Honasan is clearly a mere component or ingredient of rebellion or an act done in furtherance of the rebellion. It cannot therefore be made the basis of a separate charge. The case of *People v. Prieto*[2] (80 Phil., 138 [1948]) is instructive:

"In the nature of things, the giving of aid and comfort can only be accomplished by some kind of action. Its very nature partakes of a deed or physical activity as opposed to a mental operation. (*Cramer v. U.S.*, ante) This deed or physical activity may be, and often is, in itself a criminal offense under another penal statute or provision. Even so, when the deed is charged as an element of treason it becomes identified with the latter crime and can not be the subject of a separate punishment, or used in combination with treason to increase the penalty as article 48 of the Revised Penal Code provides. Just as one can not be punished for possessing opium in a prosecution for smoking the identical drug, and a robber cannot be held guilty of coercion or trespass to a

dwelling in a prosecution for robbery, because possession of opium and force and trespass are inherent in smoking and in robbery respectively, so may not a defendant be made liable for murder as a separate crime or in conjunction with another offense where, as in this case, it is averred as a constitutive ingredient of treason."

The prosecution tries to distinguish by contending that harboring or concealing a fugitive is punishable under a special law while the rebellion case is based on the Revised Penal Code; hence prosecution under one law will not bar a prosecution under the other. This argument is specious in rebellion cases.

In the light of the Hernandez doctrine the prosecution's theory must fail. The rationale remains the same. All crimes, whether punishable under a special law or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and can not be isolated and charged as separate crimes in themselves. Thus:

"This does not detract, however, from the rule that the ingredients of a crime form part and parcel thereof, and hence, are absorbed by the same and cannot be punished either separately therefrom or by the application of Article 48 of the Revised Penal Code.xxx (People v. Hernandez, supra, at p. 528)

The Hernandez and other related cases mention common crimes as absorbed in the crime of rebellion. These common crimes refer to all acts of violence such as murder, arson, robbery, kidnapping etc. as provided in the Revised Penal Code. The attendant circumstances in the instant case, however, constrain us to rule that the theory of absorption in rebellion cases must not confine itself to common crimes but also to offenses under special laws which are perpetrated in furtherance of the political offense.

The conversation and, therefore, alleged conspiring of Senator Ponce Enrile with Colonel Honasan is too intimately tied up with his allegedly harboring and concealing Honasan for practically the same act to form two separate crimes of rebellion and violation of PD No. 1829.

Clearly, the petitioner's alleged act of harboring or concealing which was based on his act of conspiring with Honasan was committed in connection with or in furtherance of rebellion and must now be deemed as absorbed by, merged in, and identified with the crime of rebellion punished in Articles 134 and 135 of the RPC.

"Thus, national, as well as international, laws and jurisprudence overwhelmingly favor the proposition that common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses, and assume the political complexion of the main crime of which they are mere ingredients, and consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty." (People v. Hernandez, supra, p. 541)

In People v. Elias Rodriguez, 107 Phil. 659 [1960], the accused, after having pleaded guilty and convicted of the crime of rebellion, faced an independent prosecution for illegal possession of firearms. The Court ruled:

"An examination of the record, however, discloses that the crime with which the accused is charged in the present case which is that of illegal possession of firearm and ammunition is already absorbed as a necessary element or ingredient in the crime of rebellion with which the same accused is charged with other persons in a separate case and wherein he pleaded guilty and was convicted." (at page 662)

xxx xxx xxx

"xxx[T]he conclusion is inescapable that the crime with which the accused is charged in the present case is already absorbed in the rebellion case and so to press it further now would be to place him in double jeopardy." (at. page 663)

Noteworthy is the recent case of Misolas v. Panga, (G. R. No. 83341, January 30, 1990) where the Court had occasion to pass upon a nearly similar issue. In this case, the petitioner Misolas, an alleged member of the New

Peoples Army (NPA), was charged with illegal possession of firearms and ammunitions in furtherance of subversion under Section 1 of PD 1866. In his motion to quash the information, the petitioner based his arguments on the Hernandez and Geronimo rulings on the doctrine of absorption of common crimes in rebellion. The Court, however, clarified, to wit:

"x x x in the present case, petitioner is being charged specifically for the qualified offense of illegal possession of firearms and ammunition under PD 1866. HE IS NOT BEING CHARGED WITH THE COMPLEX CRIME OF SUBVERSION WITH ILLEGAL POSSESSION OF FIREARMS. NEITHER IS HE BEING SEPARATELY CHARGED FOR SUBVERSION AND FOR ILLEGAL POSSESSION OF FIREARMS. Thus, the rulings of the Court in Hernandez, Geronimo and Rodriguez find no application in this case."

The Court in the above case upheld the prosecution for illegal possession of firearms under PD 1866 because no separate prosecution for subversion or rebellion had been filed.[3] The prosecution must make up its mind whether to charge Senator Ponce Enrile with rebellion alone or to drop the rebellion case and charge him with murder and multiple frustrated murder and also violation of P.D. 1829. It cannot complex the rebellion with murder and multiple frustrated murder. Neither can it prosecute him for rebellion in Quezon City and violation of P.D. 1829 in Makati. It should be noted that there is in fact a separate prosecution for rebellion already filed with the Regional Trial Court of Quezon City. In such a case, the independent prosecution under PD 1829 can not prosper.

As we have earlier mentioned, the intent or motive is a decisive factor. If Senator Ponce Enrile is not charged with rebellion and he harbored or concealed Colonel Honasan simply because the latter is a friend and former associate, the motive for the act is completely different. But if the act is committed with political or social motives, that is in furtherance of rebellion, then it should be deemed to form part of the crime of rebellion instead of being punished separately.

In view of the foregoing, the petitioner can not be tried separately under PD 1829 in addition to his being prosecuted in the rebellion case. With this ruling, there is no need for the Court to pass upon the other issues raised by the petitioner.

WHEREFORE, the petition is GRANTED. The Information in Criminal Case No. 90-777 is QUASHED. The writ of preliminary injunction, enjoining respondent Judges and their successors in Criminal Case No. 90-777, Regional Trial Court of Makati, from holding the arraignment of Sen. Juan Ponce Enrile and from conducting further proceedings therein is made permanent.

SO ORDERED.

Fernan, C.J., on official leave.

Narvasa, Melencio-Herrera, Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, and Regalado, JJ., concur.

Paras, J., on leave.

Medialdea, J., no part.

[1] Recently made the subject of a similar petition for certiorari and modified by the Supreme Court into an information for the simple crime of rebellion in G.R. Nos. 92163 & 92164, June 5, 1990.

[2] The doctrine relied upon was set down in treason cases but is applicable to rebellion cases. As Justice McDonough opined, rebellion is treason of less magnitude (U.S. v. Lagnosan, 3 Phil. 472, 484 1904).

[3] Justices Isagani A. Cruz and Abraham F. Sarmiento believe that PD 1866 is unconstitutional and should be struck down as illegal per se. Justice Sarmiento stated in his separate dissent that PD 1866 is a bill of attainder, vague and violative of the double jeopardy clause, and an instrument of repression.

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