

MAJOR ROMEO G. ELEPANTE, PETITIONER, VS. HONORABLE JOB B. MADAYAG 1ST VICE EXECUTIVE JUDGE, BRANCH 145, MAKATI, METRO MANILA REGIONAL TRIAL COURT, AND MAJ. GEN. RODOLFO BIAZON, ...

G.R. No. 93559. April 26, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari questioning the decision[*] dated May 24, 1990, of the Regional Trial Court, Branch 145, National Capital Judicial Region, Makati, Metro Manila dismissing Major Romeo Elepante's petition for habeas corpus.

It appears on record that on May 11, 1990, Major Romeo Elepante filed a petition for habeas corpus with this Court docketed as G.R. No. 93172.

On May 15, 1990, the Court resolved to issue a writ returnable to the Executive Judge of the Regional Trial Court, Makati, Metro Manila. Also this Court directed the latter to hear and decide the case.

In an order dated May 17, 1990, Executive Judge Santiago Ranada, Jr., assigned the case to Judge Job Madayag. The latter heard the case with the conformity of the parties' lawyers.

In the hearing on May 24, 1990, Romeo Elepante testified that he is a Major in the Philippine Navy (Marines) and the Executive Officer of the Metropolitan Citizens Military Training Command; that on April 15, 1990, at about 3:00 o'clock in the morning, he was awakened in his house by a platoon of armed soldiers led by Captain Doctor who informed him that he was invited by the Intelligence Service of the Armed Forces of the Philippines; that the soldiers brought him to the National Capital Region Defense Command where he was detained; that there was no warrant for his arrest; that he was investigated for five (5) days and confined as prisoner at Fort Bonifacio; that no formal charges have been filed against him.

Except for a xerox copy of an order of arrest and confinement dated April 14, 1990, issued by Colonel Jorge Agcaoili, the Adjutant General of the Armed Forces of the Philippines, which was marked as Exhibit "1", Assistant Solicitor General Zoilo A. Andin, respondent's counsel, did not offer other documentary nor testimonial evidence.

On even date May 24, 1990, the trial court rendered a decision dismissing for lack of merit the petition for habeas corpus. The trial court opined that Major Elepante was arrested because of his involvement in several coup attempts. Citing Article 70 of the Articles of War, the trial court stated that it is the Chief of Staff of the Armed Forces of the Philippines who can order his release. It also pointed out that military procedure does not require that a formal charge must be filed before a military officer may be arrested and confined on orders of his commanding officer.

On June 11, 1990, Major Elepante filed this petition for review on certiorari, alleging inter alia, that there is no criminal complaint filed against him so that his continued detention is a violation of the Constitution. He also argues that confinement or detention is allowed under Article 70 of the Articles of War if a case is filed against a military officer.

In compliance with this Court's resolution En Banc dated June 21, 1990, the Office of the Solicitor General filed its comment. In his comment the Solicitor General pointed out that counsel for petitioner received on May 29, 1990, a copy of the trial court's decision dated May 24, 1990, so that when he filed this petition on June 11, 1990, the assailed decision had attained finality. Citing Rule 41, Section 18 of the Revised Rules of Court, appeal in habeas corpus should be filed within forty-eight (48) hours from notice of the judgment. The Solicitor General also argued that petitioner may be confined or restricted on the mere suspicion of having committed a crime or offense he being a military officer subject to the provision of Article 2 of the Articles of War and Section 8 of the Manual of Court Martial.

The First issue to be resolved is timeliness of the instant petition for review on certiorari.

Section 18 of Rule 41 of the Revised Rules of Court, explicitly provides, viz:

"SEC. 18. Appeal in habeas corpus cases, how taken. — An appeal in habeas corpus cases shall be perfected by filing with the clerk of the court or the judge who rendered the judgment, within forty-eight (48) hours from notice of such judgment, a statement that the person making it appeals therefrom."

As interpreted in the case of *Saulo v. Brig. Gen. Cruz* (109 Phil. 379 [1960]), which also involved a habeas corpus case, this Court ruled that the requirement under Section 18 of Rule 41 of the Old Rules of Court which provides that an appeal in habeas corpus should be perfected within twenty-four (24) hours (now forty-eight hours under Rule 41, Section 18 of the Revised Rules of Court), is not only mandatory but jurisdictional. Hence, this Court has no other alternative but to dismiss the appeal filed out of time.

The *Saulo* case was cited in *Medina v. Yan* (60 SCRA 73 [1974]) where the Court ruled that appeal in habeas corpus from the decision of the CFI shall be taken to the Court of Appeals where it involves factual questions or directly to the Supreme Court on pure questions of law. Amplifying the *Saulo* ruling, this Court ruled that the decision of the Judge to whom the writ is made returnable, either for the release of the detainee or for sustaining his detention, if not appealed on time, can become final just like an ordinary case.

In computing the forty-eight (48) hour period of appeal, this Court in *Kabigting v. Director of Prisons* (6 SCRA 281 [1962]), ruled that the date on which the decision was promulgated and/or served is not counted and the period starts to run the following day unless the same be a Sunday or legal holiday in which case the period of appeal is to be considered from the succeeding day. To perfect an appeal, a notice of appeal is required to be filed with the Clerk of Court or Judge who rendered the judgment (Rule 41, Section 18, Revised Rules of Court).

In the case at bar, counsel for petitioner received on May 29, 1990 a copy of the trial court's decision dated May 24, 1990 (Rollo, p. 8). Clearly when he filed the instant petition on June 11, 1990, thirteen (13) days had lapsed, so it was filed outside the forty-eight (48) hour reglementary period. This being so, the decision sought to be reviewed is already final so that this Court following the *Saulo* ruling, has no alternative but to dismiss the instant petition.

However, 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 the 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 in investigating or carrying the case to a final conclusion may even be punished as a court martial may direct.

PREMISES CONSIDERED, (a) the petition is hereby DISMISSED for the decision sought to be reviewed is already final and (b) General Rodolfo Biazon or his successor is directed to take appropriate action.

SO ORDERED.

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

[*] Penned by Judge Job B. Madayag

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