

**JURRY ANDAL, RICARDO ANDAL AND EDWIN MENDOZA,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, REGIONAL TRIAL
COURT, BATANGAS BR. 05, LEMERY, THE DIRECTOR, BUREAU OF
CORRECTIONS, AND...**

G.R. Nos. 138268-69. May 26, 1999

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PER CURIAM:

The power of judicial review is an aspect of judicial power that allows this Court every opportunity to review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts and to determine whether or not there has been a grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of any branch or instrumentality of the government.[1]

The case before us is a petition for a writ of habeas corpus filed by Jury Andral, Ricardo Andral and Edwin Mendoza, all convicted of rape with homicide in Criminal Case No. 148-94 and 149-94, Regional Trial Court, Batangas, Branch 05, Lemery, affirmed by this Court in a decision en banc promulgated on September 25, 1997, and a resolution promulgated on February 17, 1998. They are scheduled for execution on June 16, 17, and 18, 1999. Petitioners seek a writ of habeas corpus on the basis of a claim of mistrial and/or that the decision of the Regional Trial Court, Batangas, Branch 05, Lemery, was void. They pray for a temporary restraining order to stay their execution and/or a preliminary injunction enjoining their execution.

The petitioners rely on the argument that the trial court was "ousted" of jurisdiction to try their case since the pre-trial identification of the accused was made without the assistance of counsel and without a valid waiver from the accused. The petitioners cite the case of *Olague v. Military Commission No. 34*[2], wherein in a separate opinion, Justice Claudio Teehankee stated that "Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgement is deemed ousted of its jurisdiction and habeas corpus is the appropriate remedy to assail the legality of the detention."

We agree with petitioners that the extra-ordinary writ of habeas corpus is the appropriate remedy to inquire into questions of violation of the petitioners' constitutional rights and that this Court has jurisdiction to entertain this review. Indeed, under the Constitution, the jurisdiction of this Court has been expanded "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government".[3]

And under Rule 102, Section 1 of the Revised Rules of Court, it is provided that "Except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto."

He may also avail himself of the writ where as a consequence of a judicial proceeding (a) there has been a deprivation of a constitutional right resulting in the restraint of a person; (b) the court had no jurisdiction to impose the sentence; or (c) an excessive penalty has been imposed, as such sentence is void as to such excess.[4]

However, in this case, we find that there was no violation of the constitutional rights of the accused and a resultant deprivation of liberty or due process of law. In fact, the petition may be viewed as an attempt at a second motion for reconsideration of a final decision of the Court, disguised as one for habeas corpus. The accused were sentenced to the supreme penalty of death as a result of a valid accusation, trial, and judgment by a court of competent jurisdiction, after a fair and equitable trial.

The factual milieu does not show a mistrial or a violation of the constitutional rights of the accused. As ruled by this Court, in its decision of September 25, 1997, "the constitutional infirmity cannot affect the conclusion since accused-appellants did not make any confessions or admissions in regard to the crime charged. Further the earring recovered from Jury Andal was not obtained in the course of the investigation itself, but obtained through a search incident to a lawful arrest." [5]

The Court has held in a long cases, that "any illegality attendant during the arrest is deemed cured when the accused voluntarily submitted themselves to the jurisdiction of the court by entering their plea" [6].

The trial court therefore had jurisdiction to try the case. The Court subsequently affirmed the decision based on a careful consideration of the evidence presented both by the prosecution and the defense. The absence of the testimony of Rufino Andal due to the failure of the defense counsel to present him as a witness will not make the judgment of the lower court invalid or void. The case was decided on the evidence presented, which this Court considered sufficient to support the judgment of conviction.

The issue of "DNA tests" as a more accurate and authoritative means of identification than eye-witness identification need not be belabored. The accused were all properly and duly identified by the prosecution's principal witness. Olimpio Corales, a brother in law of accused Jurry and Ricardo Andal. DNA testing proposed by petitioners to have an objective and scientific basis of identification of "semen samples to compare with those taken from the vagina of the victim" are thus unnecessary or are forgotten evidence too late to consider now.

The trial court imposed and this Court affirmed the correct sentence.

The death penalty is what the law prescribes in cases involving rape with homicide. [7]

We agree with the accused that they should be afforded every opportunity to prove their innocence, especially in cases involving the death penalty; in this case, the Court can state categorically that every opportunity was provided the accused. However, painful the decision may be in this case, we have conscientiously reviewed the case.

Four (4) Justices of the Court maintain their position as to the unconstitutionality of Republic Act No. 7659 in so far as it prescribes the death penalty for certain heinous crimes; nevertheless, they submit to the ruling of the majority to the effect that the law is constitutional and that the death penalty may be lawfully imposed in proper cases as the one at bar.

IN VIEW WHEREOF, we hereby resolve to DENY the petition for habeas corpus, and declare valid the judgment rendered by the trial court and affirmed by this Court. This resolution is final.

No costs.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

[1] Article VIII, Sections 1, 5 (2), 1987 Constitution

[2] 150 SCRA 144, 172 (1987).

[3] Article VIII, Section 1, 1987 Constitution

[4] Harden vs. Director of Prisons, 31 Phil. 741; Cruz vs. Director of Prisons, 17 Phil. 269.

[5] People of the Philippines vs. Jury Andal y Mercado, Ricardo Andal y Mercado, and Edwin Mendoza, G.R. No. 124933, September 25, 1997.

[6] People vs. De Guzman, 224 SCRA 93; see also People vs. Lopez Jr., 245 SCRA 95; People vs. Rivera, 245 SCRA 421.

[7] Section 11, Republic Act No. 7659, amending Article 355 of the Revised Penal Code.

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