THIRD DIVISION

G.R. No. 251693 — JODY C. SALAS, *ex rel* Person Deprived of Liberty (PDL) RODOLFO C. SALAS, *petitioner* v. HON. THELMA BUNYI-MEDINA, Presiding Judge of the Regional Trial Court of the City of Manila, Branch 32, JCINSP. LLOYD GONZAGA, Warden of the Manila City Jail Annex, and all those taking orders, instructions, and directions form him, *respondents*.

September 28, 2020

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CONCURRING OPINION

LEONEN, *J*:

I concur with the opinion of my esteemed colleague, Associate Justice Samuel H. Gaerlan. I add the following to his well-written piece.

First, in general, *habeas corpus* is indeed not the proper remedy to inquire into the illegal detention of a person under judicial process. However, there are extraordinary circumstances where it may be the only viable remedy.

For instance, in *In re: Salibo v. Warden*,[1] *habeas corpus* was allowed, despite the issuance of judicial process, because the deprivation of liberty was due to mistaken identity. In that case, Datukan Malang Salibo was arrested by virtue of a warrant against a "Butukan S. Malang," one of the many accused allegedly involved in the Maguindanao massacre. Considering that Datukan Malang Salibo sufficiently proved that he was not the "Butukan S. Malang" named in the arrest warrant, this Court held that Datukan Malang Salibo was being illegally deprived of liberty.

In allowing the release of Datukan Malang Salibo, this Court pronounced:

> It is true that a writ of habeas corpus may no longer be issued if the person allegedly deprived of liberty is restrained under a lawful process or order of the court. The restraint then has become legal, and the remedy of habeas corpus is rendered moot and academic. . . .
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> . . . .
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> [I]nstead of availing themselves of the extraordinary remedy of a petition for habeas corpus, persons restrained under a lawful process or order of the court must pursue the orderly course of trial and exhaust the usual remedies. This ordinary remedy is to file a motion to quash the information or the warrant of arrest.

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[1] 757 Phil. 630 (2015) [Per J. Leonen, Second Division].

At any time before a plea is entered, the accused may file a motion to quash complaint or information based on any of the grounds enumerated in Rule 117, Section 3 of the Rules of Court[.]

. . . .

In filing a motion to quash, the accused "assails the validity of a criminal complaint or information filed against him [or her] for insufficiency on its face in point of law, or for defects which are apparent in the face of the information." If the accused avails himself or herself of a motion to quash, the accused "hypothetical[ly] admits the facts alleged in the information." "Evidence aliunde or matters extrinsic from the information are not to be considered."

"If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order [the] amendment [of the complaint or information]." If the motion to quash is based on the ground that the facts alleged in the complaint or information do not constitute an offense, the trial court shall give the prosecution "an opportunity to correct the defect by amendment." If after amendment, the complaint or information still suffers from the same defect, the trial court shall quash the complaint or information.

. . . .

However, . . . [p]etitioner Salibo was not arrested by virtue of any warrant charging him of an offense. He was not restrained under a lawful process or an order of a court. He was illegally deprived of his liberty, and, therefore, correctly availed himself of a Petition for Habeas Corpus.

The Information and Alias Warrant of Arrest issued by the Regional Trial Court, Branch 221, Quezon City in *People of the Philippines v. Datu Andal Ampatuan, Jr., et al.* charged and accused Butukan S. Malang, not Datukan Malang Salibo, of 57 counts of murder in connection with the Maguindanao Massacre.

Furthermore, petitioner Salibo was not validly arrested without a warrant. . . .

. . . .

It is undisputed that petitioner Salibo presented himself before the Datu Hofer Police Station to clear his name and to prove that he is not the accused Butukan S. Malang. When petitioner Salibo was in the presence of the police officers of Datu Hofer Police Station, he was neither committing nor attempting to commit an offense. The police officers had no personal knowledge of any offense that he might have committed. Petitioner Salibo was also not an escapee prisoner.

The police officers, therefore, had no probable cause to arrest petitioner Salibo without a warrant. They deprived him of his right to liberty without due process of law, for which a petition for habeas corpus may be issued.

. . . .

Petitioner Salibo's proper remedy is not a Motion to Quash Information and/or Warrant of Arrest. None of the grounds for filing a Motion to Quash Information apply to him. Even if petitioner Salibo filed

> a Motion to Quash, the defect he alleged could not have been cured by mere amendment of the Information and/or Warrant of Arrest. Changing the name of the accused appearing in the Information and/or Warrant of Arrest from "Butukan S. Malang" to "Datukan Malang Salibo" will not cure the lack of preliminary investigation in this case.
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> A motion for reinvestigation will not cure the defect of lack of preliminary investigation. The Information and Alias Warrant of Arrest were issued on the premise that Butukan S. Malang and Datukan Malang Salibo are the same person. There is evidence, however, that the person detained by virtue of these processes is not Butukan S. Malang but another person named Datukan Malang Salibo.
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> Petitioner Salibo presented in evidence his Philippine passport, his identification card from the Office on Muslim Affairs, his Tax Identification Number card, and clearance from the National Bureau of Investigation all bearing his picture and indicating the name "Datukan Malang Salibo." None of these government-issued documents showed that petitioner Salibo used the alias "Butukan S. Malang."
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> Moreover, there is evidence that petitioner Salibo was not in the country on November 23, 2009 when the Maguindanao Massacre occurred.
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> A Certification from the Bureau of Immigration states that petitioner Salibo departed for Saudi Arabia on November 7, 2009 and arrived in the Philippines only on December 20, 2009. A Certification from Saudi Arabian Airlines attests that petitioner Salibo departed for Saudi Arabia on board Saudi Arabian Airlines Flight SV869 on November 7, 2009 and that he arrived in the Philippines on board Saudi Arabian Airlines SV870 on December 20, 2009.[2] (Citations omitted)

Second, I reiterate my concurrence in *Ocampo v. Judge Abando*[3] regarding the non-applicability of the *Hernandez* doctrine. *Ocampo*, like the present case, involves the prosecution of the leaders of the Communist Party of the Philippines/New People's Army/National Democratic Front of the Philippines that allegedly implemented "Operation Venereal Disease." There, this Court held that the *Hernandez* doctrine[4]—a doctrine stating that a common crime committed in furtherance of rebellion is absorbed in the rebellion charge—is not a ground for the dismissal of the charges for the common crime, at least at the prosecutor level.

In *Ocampo,* I added the following points to call for a more nuanced interpretation of what constitutes rebellion, so as to prevent violations of human rights carried out under the pretext of armed conflict:

> We survey the evolution of the political offense doctrine to provide better context.

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2 Id. at 648–658.

3 726 Phil. 441 (2014) [Per C.J. Sereno, En Banc].

4 Also called the "political offense doctrine."

As early as 1903, this court distinguished common crimes from crimes committed in furtherance of a political objective. In *United States v. Lardizabal*, the accused, Commanding Officer of Filipino insurgents, ordered the execution of an American prisoner before retreating from the enemy. We said in this case that the accused's act falls under the Amnesty Proclamation of 1902, thus:

> . . . [the execution] was not an isolated act such as a "political offense committed during the insurrection pursuant to orders issued by the civil or military insurrectionary authorities," but was a measure which, whether necessary or not, was inherent in the military operations for the preservation of the troops commanded by him and of which he was the supreme officer on that island. ***It was an act which, while from the standpoint of military law might be regarded as one of cruelty, was at the same time one depending absolutely upon the discretion of an officer in charge of a command for securing the safety of the troops under his control and constitutes no other offense than that of sedition, within which term the war itself is included by the letter and spirit of the proclamation.***

In *United States v. Pacheco*, two men selling English dictionaries within the Dagupan area were abruptly abducted and killed by the accused and his men. Witnesses testified that it was presumed by the accused that the salesmen were American spies because the dictionaries being sold were written in English. This court observed:

> It does not appear from the record that the aggressors were impelled to kill the deceased by any motive other than that the latter were suspected of being spies and, therefore, traitors to the revolutionary party to which the defendants belonged. From the foregoing statement of facts, it may therefore be said that **the two murders prosecuted herein were of a political character** and the result of internal political hatreds between Filipinos, the defendants having been insurgents opposed to the constituted government.
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> The case has to do with two crimes for which, under the penal law, the severest punishment has always been inflicted. However, considering the circumstances under which these crimes were committed and the fact that the sovereign power in these Islands, in view of the extraordinary and radical disturbance which, during the period following the year 1896, prevailed in and convulsed this country, and **prompted by the dictates of humanity and public policy, has deemed it advisable to blot out even the shadow of a certain class of offenses, decreeing full pardon and amnesty to their authors** — an act of elevated statesmanship and timely generosity, more political than judicial in its nature, intended to mitigate the severity of the law — it is incumbent upon us, in deciding this case, to conform our judgment to the requirements and conditions of the decree so promulgated.

Then in the landmark case of *People v. Hernandez*, this court defined the term, political offense:

> 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.** If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the Philippines Islands or any part thereof." then **said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter**.

This court in *Hernandez* first clarified whether common crimes such as murder, arson, and other similar crimes are to be complexed with the main crimes in the Revised Penal Code. 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**.

Article 48 of the Revised Penal Code covering complex crimes provides:

> Art. 48. *Penalty for complex crimes.* — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The *Hernandez* ruling was then affirmed by this court in subsequent cases, such as *Enrile v. Salazar*. It is worthy to note, however, that in "affirming" the doctrine in *Hernandez*, this court in *Enrile* said:

> It may be that in the light of contemporary events, the act of rebellion has lost that quintessentially quixotic quality that justifies the relative leniency with which it is regarded and punished by law, that present-day rebels are less impelled by love of country than by lust for power and have become no better than mere terrorists to whom nothing, not even the sanctity of human life, is allowed to stand in the way of their ambitions. ***Nothing so underscores this aberration as the rash of seemingly senseless killings, bombings, kidnappings and assorted mayhem so much in the news these days, as often perpetrated against innocent civilians as against the military, but by and large attributable to, or even claimed by so-called rebels to be part of, an ongoing rebellion.***

> It is enough to give anyone pause — and the Court is no exception — that not even the crowded streets of our capital City seem safe from such unsettling violence that is disruptive of the public peace and stymies every effort at national economic recovery. ***There is an apparent need to restructure the law on rebellion, either to raise the penalty therefor or to clearly define and delimit the other offenses to be considered as absorbed thereby, so that it cannot be conveniently utilized as the umbrella for every sort of illegal activity undertaken in its name***. The Court has no power to effect such change, for it can only interpret the law as it stands at any given time, and what is needed lies beyond interpretation. Hopefully, Congress will perceive the need for promptly seizing the initiative in this matter, which is properly within its province.

However, other cases declined to rule that all other crimes charged in the Information are absorbed under alleged political offenses. In *Misolas v. Panga*, this court ruled:

> Neither would the doctrines enunciated by the Court in *Hernandez* and *Geronimo*, [sic] and *People v. Rodriguez* [107 Phil. 659] save the day for petitioner.
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> In *Hernandez*, the accused were charged with the complex crime of rebellion with murder, arson and robbery while in Geronimo, the information was for the complex crime of rebellion with murder, robbery and kidnapping. In those two cases[,] the Court held that aforestated common crimes cannot be complexed with rebellion as these crimes constituted the means of committing the crime of rebellion. These common crimes constituted the acts of "engaging in war" and "committing serious violence" which are essential elements of the crime of rebellion [See Arts. 134-135, Revised Penal Code] and, hence, are deemed absorbed in the crime of rebellion. Consequently, the accused can be held liable only for the single crime of rebellion.
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> On the other hand, in *Rodriguez*, the Court ruled that since the accused had already been charged with rebellion, he can no longer be charged for illegal possession of firearms for the same act of unauthorized possession of firearm on which the charge of rebellion was based, as said act constituted the very means for the commission of rebellion. Thus, the illegal possession of the firearm was deemed absorbed in the crime of rebellion.
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> However, in the present case, petitioner is being charged specifically for the qualified offense of illegal possession of firearms and ammunition under P.D. 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.

In *Baylosis v. Chavez, Jr.*, this court held that:

> . . . The Code allows, for example, separate prosecutions for either murder or rebellion, although not for both where the indictment alleges that the former has been committed in furtherance of or in connection with the latter. Surely, whether people are killed or injured in connection with a rebellion, or not, the deaths or injuries of the victims are no less real, and the grief of the victims' families no less poignant.
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> Moreover, it certainly is within the power of the legislature to determine what acts or omissions other than those set out in the Revised Penal Code or other existing statutes are to be condemned as separate, individual crimes and what penalties should be attached thereto. The power is not diluted or improperly wielded simply because at some prior time the act or omission was but an element or ingredient of another offense, or might usually have been connected with another crime.
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> The interdict laid in *Hernandez, Enrile* and the other cases cited is against attempts to complex rebellion with the so called "common" crimes committed in furtherance, or in the course, thereof; this, on the authority alone of the first sentence of Article 48 of the Revised Penal Code. Stated otherwise, the ratio of said cases is that Article 48 cannot be invoked as the basis for charging and prosecuting the complex crime of rebellion with murder, etc., for the purpose of obtaining imposition of the penalty for the more serious offense in its maximum period (in accordance with said Art. 48). ***Said cases did not — indeed they could not and were never meant to — proscribe the legislative authority from validly enacting statutes that would define and punish, as offenses sui generis crimes which, in the context of Hernandez, et al. may be viewed as a complex of rebellion with other offenses. There is no constitutional prohibition against this, and the Court never said there was.*** What the Court stated in said cases about rebellion "absorbing" common crimes committed in its course or furtherance must be viewed in light of the fact that at the time they were decided, there were no penal provisions defining and punishing, as specific offenses, crimes like murder, etc. committed in the course or as part of a rebellion. This is no longer true, as far as the present case is concerned, and there being no question that PD 1866 was a valid exercise of the former President's legislative powers.

It is not our intention to wipe out the history of and the policy behind the political offense doctrine. What this separate opinion seeks to accomplish is to qualify the conditions for the application of the doctrine and remove any blanket application whenever political objectives are alleged. The remnants of armed conflict continue. Sooner or later, with a victor that emerges or even with the success of peace negotiations with insurgent groups, some form of transitional justice may need to reckon

> with different types of crimes committed on the occasion of these armed uprisings. Certainly, crimes that run afoul the basic human dignity of persons must not be tolerated. This is in line with the recent developments in national and international law.[5] (Citations omitted, emphasis in the original)

It bears repeating here what I had said before in *Ocampo*:

> The rebel, in his or her effort to assert a better view of humanity, cannot negate himself or herself. Torture and summary execution of enemies or allies are never acts of courage. They demean those who sacrificed and those who gave their lives so that others may live justly and enjoy the blessings of more meaningful freedoms.
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> Torture and summary execution — in any context — are shameful, naked brutal acts of those who may have simply been transformed into desperate cowards. Those who may have suffered or may have died because of these acts deserve better than to be told that they did so in the hands of a rebel.[6]

IN VIEW OF THE FOREGOING, I vote to **DISMISS** the Petition for *Habeas Corpus*.

MARVIC M.V.F. LEONEN
Associate Justice

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5 Id. at 473–478.
6 Id. at 496–497.