

**IN THE MATTER OF THE PETITION
FOR HABEAS CORPUS OF
DR. MERRY MIA-CLAMOR,
ET AL., vs. GEN. VICTOR S.
IBRADO, ETC., ET AL.**

MAR 09 2010

CA-G.R. SP No. 112695

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CONCURRING OPINION

~~RECEIVED~~ TRUE COPY:

Marie Claire Victoria Mabutas-Jordan
Atty. Marie Claire Victoria Mabutas-Jordan
Division Clerk of Court
Court of Appeals
Manila

DE LEON, J.:

I fully concur with the straightforward yet incisive *ponencia* of Madame Justice Portia Aliño-Hormachuelos.

At the outset, it will be remembered that the writ of *habeas corpus* is a prerogative writ, the objective of which is to determine the validity or legality of its subject's confinement or detention. Expounding on the nature and purpose of said prerogative writ, the recent case of *Fletcher vs. Director of Bureau of Corrections*¹ states that it "obtains immediate relief for those who have been illegally confined or imprisoned without sufficient cause," at the same time warning that it "should not be issued when the custody over the person is by virtue of a judicial process."

The foregoing disquisition encapsulates the doctrinal truth that once a person detained is duly charged in court, he may no longer question his detention through a petition for issuance of a writ of habeas corpus. At this point, his remedy would be to quash the information and/or the warrant of arrest duly issued.²

The above principle is not without legal basis. In fact, it is embodied in the Rules of Court and is fleshed out in jurisprudence.

Section 4 of Rule 102, which cannot be any clearer, provides:

"Sec. 4. *When writ not allowed or discharge authorized.*
- If it appears that the person to be restrained of his liberty is in

¹ UDK-14071, July 17, 2009.

² See *Paredes vs. Sandiganbayan*, G.R. No. 89989, January 28, 1991, 193 SCRA 464.

the custody of an officer under process issued by a court or judge; or by virtue of a judgment or order of a court of record, and that court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. **Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.**" (*Emphasis supplied.*)

Meanwhile, jurisprudential precedents which apply the aforesaid rule range from the seminal case of *Velasco vs. Court of Appeals*,³ decided in 1995, to the more recent case of *Go vs. Ramos*,⁴ decided in 2009. In a catena of cases, the rule has been consistent that if a person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge, and that the court or judge had jurisdiction to issue the process or make the order, or if such person is charged before any court, the writ of habeas corpus will not be allowed.

In this case, it is settled that various informations have already been filed against the 43 detainees. Moreover, commitment orders pursuant to the criminal charges have already been issued against them. Applying the cited legal premises, it becomes evident that the instant petition for issuance of the writ of habeas corpus cannot prosper. The two above circumstances – namely, the filing of the informations and the issuance of the commitment orders – have, *ipso facto*, excluded the instant case from the coverage of the prerogative writ, thereby putting to rest the issue on the legality of the 43 subjects' detention.

Moreover, even assuming *arguendo* that the proceedings leading to the arrest and eventual detention of the 43 subjects of this petition were tainted with illegality, these can neither reverse the consequences of the filing of the criminal information against the subjects nor, more appropriately, affect the jurisdiction of the court issuing the commitment orders. Simply, the existence of sufficient defenses to a criminal charge is not a ground for the

³ G.R. No. 118644, July 7, 1995, 245 SCRA 677.

⁴ G.R. No. 167569, September 4, 2009.

subjects' discharge through the issuance of a writ of *habeas corpus*.

Besides, actual adjudication of the merits of the case is not only unnecessary; it also detracts from the nature of a *habeas corpus* proceeding, which is separate and distinct from the main case from which the proceedings spring. The words of Chief Justice John Marshall of the United States in the landmark case of *Ex parte Bollman & Swartwout*⁵ are instructive and enlightening:

"The question brought forward on a *habeas corpus* is always distinct from that which is involved in the cause itself. The question whether the individual shall be imprisoned is always distinct from the question whether he shall be convicted or acquitted of the charge on which he is to be tried, and therefore these questions are separated, and may be decided in different courts." (*Underscoring supplied.*)

WHEREFORE, premises considered, I vote to **DISMISS** the instant petition.

ORIGINAL SIGNER
MAGDANGAL M. DE LEON
Associate Justice

⁵ 4 Cranch 75 (1807) or 8 US 75 (1807).

CERTIFIED TRUE COPY:

M. Ramos
Atty. Marie Claire Victoria Mabutas-Sordan
Deputy Clerk of Court
Court of Appeals
Manila

SEPARATE DISSENTING OPINION

Division

PIZARRO, J.:

"Any action on Our part upholding the detention bodes ill for this Court and the entire nation. It is a desertion of our most solemn duty as the guardian of civil liberties, instead of continuously bearing, mighty and proud, the torch of freedom to illuminate the nooks and crannies of our democratic country."¹

Thus, our most junior member, Mr. Justice Francisco P. Acosta, so penned in his illustrious dissenting opinion.

After a painstaking review of the case, I must confess that I have to join the dissent.

The factual backdrop of this case is simple and uncomplicated. This cannot be said, however, of the threshold issues posed by the parties. At first blush, the pivotal issues may appear trifling or picayune. On deeper perusal, however, the issues are of paramount and transcendental importance involving as they do some of the most important rights of the Filipino in the line up of freedoms, sacrosanctly embodied in our 1987 Constitution.

The Antecedents:

¹ Dissenting Opinion of J. Francisco P. Acosta, p. 10.

On February 5, 2010, an *Application for Search Warrant*² was filed before Presiding Judge Cesar A. Mangrobang of the Regional Trial Court(RTC), Branch 22, Imus, Cavite, by Respondent P/Supt. Marion Balonglong, Commanding Officer of the Rizal Philippine National Police(PNP), based on the alleged information that a certain Mario Condes of Barangay Maybangcal, Morong, Rizal is in possession of unlicensed firearms.³ On even date, Judge Mangrobang issued Search Warrant No. 1565-10 ordering the conduct of a search of Mario Condes at Brgy. Maybangcal, Morong, Rizal, to seize the following items: a) M16 Rifle; b) Caliber 9mm Pistol; c) 12 Gauge Shotgun; and, d) Caliber 45 Pistol, in violation of *Presidential Decree(PD) No. 1866, as amended by Republic Act(RA) No. 8294*, otherwise known as *Illegal Possession of Firearms and Ammunition*.⁴

On February 6, 2010, a search was conducted in the farmhouse of Dra. Melecia Velmonte(Dra. Velmonte), located at 266 Dela Paz St., Brgy. Maybangcal, Morong, Rizal. Based on the *Return of Search Warrant*, the following items were purportedly discovered and/or recovered:

Confiscated from Romeo dela Cruz:

1)One(1) Caliber .45 Colt Mr IV with Serial No. 041362;

² Annex "A-1", Petitioners' Memorandum.

³ Annexes "A-2" to A-9", Petitioners' Memorandum.

⁴ Annex "A", Petitioners' Memorandum.

- 2) One(1) pistol Magazine for Caliber .45; and
- 3) Six(6) live ammunitions for Caliber .45.

Confiscated from Del Ayo Overa:

- 1) One(1) Caliber .38 with no serial number; and
- 2) Six(6) live ammunitions for Caliber .38.

Confiscated from Reynaldo Macabenta:

- 1) One(1) Caliber .45 Armscor with Serial No. 1055923;
- 2) One(1) pistol magazine for Caliber .45; and
- 3) Six(6) live ammunitions for Caliber .45.

Other items seized during the search conducted:

- 1) Three(3) hand grenades;
- 2) One(1) 10x12 canister with improvised landmines;
- 3) Five(5) improvised claymore mines;
- 4) Two(2) kg. Ammonium Nitrate; and
- 5) Thirty-Seven(37) improvised explosive sticks.⁵

Thereafter, forty-three(43) medical doctors, nurses, midwives, and community health workers from various organizations and provinces(43 detainees) were arrested and brought to Camp Capinpin, Tanay, Rizal.

On February 7, 2010, State Prosecutor II Romeo B. Senson(State Prosecutor Senson) of the Department of Justice, conducted inquest proceedings on the 43 detainees.⁶

On February 8, 2010, State Prosecutor Senson issued a resolution recommending the filing of charges against forty(40) detainees, out of the 43, for illegal possession of explosives with no bail recommended under *Presidential Decree(P.D.) No. 1866*, as

⁵ Annex "A-10", Petitioner's Memorandum.

⁶ See Respondents' Memorandum, pp. 2-3.

amended by Republic Act(R.A.) No. 8294 and 9516, while three(3) detainees, namely, Romeo Dela Cruz, Reynaldo Macabenta, and Del Oyo Overa, were charged for illegal possession of firearms under P.D. 1866, as amended by R.A. No. 8294 and 9516, and for violation of Commission on Elections Resolution No. 8714, in relation to Article 261(q) of the Election Code.⁷

On February 9, 2010, the families and relatives of the 43 detainees, as well as Community Medicine Development Foundation⁸(COMMED), filed a *Very Urgent Petition for Habeas Corpus*⁹ before the Supreme Court questioning the legality of the search warrant, the subsequent arrest and detention of the 43 detainees, and the absence of criminal charges filed against them.

The Proceedings Before the Court:

On February 10, 2010, the Supreme Court, acting on the petition, issued the Writ against the Respondents and required the latter to make a return of the writ on February 12, 2010 at 2:00 p.m. before the Honorable Acting Presiding Justice Portia A. Hormachuelos, Court of Appeals, and to show cause why the 43 detainees are being restrained.

⁷ See Petitioners' Memorandum, p. 18.

⁸ A non-government organization that aims, among others, to render medical and health services to poor communities by providing trainings and seminars to community health workers on how to address basic medical problems or emergency situations; See Petitioners' Memorandum at 9.

⁹ Clamor, et al. v. Ibrado, et al., G.R. No. 191003.

During the February 12, 2010 Friday hearing at the Court of Appeals, Manila, before the Special First Division composed of Acting Presiding Justice and Division Chairperson Portia A. Hormachuelos, Associate Justice Normandie B. Pizarro as Senior Member, and Associate Justice Francisco P. Acosta as Junior Member, only Col. Aurelio Baladad (Col. Baladad), out of the six(6) Respondents, appeared before this Court. The Respondents also failed to comply with the order of the Supreme Court to produce the bodies of the 43 detainees purportedly due to the lack of ample time to prepare for the detainees' transfer from Camp Capinpin, Tanay, Rizal, to this Court and the need to coordinate with the PNP to ensure the safety and security of the detainees. Thus, the court reset the hearing of the case to February 15, 2010 at 2:00 p.m. to give the Respondents ample opportunity to comply with the directive of the Supreme Court to produce the 43 detainees.

On the February 15, 2010 Monday hearing, the 43 detainees were presented before this Court. The Respondents, through counsels, manifested that commitment orders against the 43 detainees have already been issued by the RTC and MTC of Morong, Rizal, on February 12, 2010 and February 15, 2010, respectively.¹⁰

¹⁰ See Annexes "1" to "7", Respondents' Manifestation.

Upon motion of the Petitioners and despite the objection of the Respondents, this Court allowed the former to present on the stand one(1) of the 43 detainees, Dr. Alex Montes, as a witness. Montes narrated what transpired during his arrest in Morong, Rizal, and their subsequent detention at Camp Capinpin. The Respondents manifested their continuing objection to the presentation of evidence of the Petitioners and did not cross-examine the witness. On motion of the Petitioners, they were allowed to submit the affidavits of the other 43 detainees.

The Petitioners' Version:¹¹

On February 1, 2010, a health training entitled "Community First Responders Health Training" was being conducted by the Community for Health Development¹²(CHD) and COMMED in a facility within the farmhouse of the Chairman of COMMED, Dra. Velmonte, located at 266 Dela Paz St., Brgy. Maybangan, Morong, Rizal.¹³

On or about six(6) in the morning of February 6, 2010, around three hundred(300) heavily-armed soldiers and policemen headed by Col. Aurelio Baladad(Col. Baladad), Commander of 202nd Infantry Brigade, and P/Supt. Marion

¹¹ Based on the individual affidavits of the 43 detainees; Annexes "B" to "NN-1", Petitioners' Memorandum.

¹² Also a non-government organization with the same goal/purpose as that of COMMED; *Supra* at 8.

¹³ Petitioners' Memorandum, p. 8.

Balonglong(P/Supt. Balonglong), entered and searched the farmhouse of Dra. Velmonte. The search team brought eight(8) 6x6 military trucks, two(2) armored personnel carriers, one(1) ambulance, one(1) Kia Pride vehicle, an undetermined number of PNP vehicles, and two(2) K-9 dogs. The search team entered the premises without the permission of and without informing Dra. Velmonte of their purpose for conducting the search. No search warrant was likewise presented to Dra. Velmonte. The search team simultaneously barged into the two(2) houses, the kitchen, and the conference room where the 43 detainees were staying. At that time, some of the 43 detainees were asleep, others were doing their daily rituals, having or preparing to eat breakfast, while some were doing some physical exercises.

The 43 detainees were all ordered to step outside the houses and proceed to the driveway where they were confined in one corner. When inquired as to the reason for their confinement, the search team offered no explanation. Moreover, despite Dra. Velmonte's vigorous protestations against the search being conducted, no search warrant was presented and Dra. Velmonte and her family members were not allowed to witness the search, as they were all ordered to join the 43 detainees at the driveway.

Upon the intervention of Dra. Velmonte's son, Jose Manuel, a search warrant was presented by Col. Baladad, but the

same was produced only after the search had already been conducted. After examining the same, Dra. Velmonte and her son noticed that the search warrant was directed against a person named Mario Condes, who was not a resident of the farmhouse and was not known to Dra. Velmonte, to her son, and to the 43 detainees. Likewise, the warrant failed to state that the house to be searched was the farmhouse of Dra. Velmonte located at 266 Dela Paz St., Brgy. Maybangcal, Morong, Rizal.¹⁴

After the search was conducted, Dra. Velmonte was informed by the search team that grenades and land mines were recovered from one of the beds within the premises. She vehemently denied the presence of said explosives within the compound. Notwithstanding the objections of the 43 detainees and the absence of arrest warrants, they were hogtied, blindfolded, forced to line-up, and were forcibly taken from the farmhouse to Camp Capinpin without informing them of the reason for their arrest. **Mario Condes was not among the 43 detainees arrested by the search team.**

Dra. Velmonte informed the CHD and COMMED of the search and arrest made by the search team. Consequently, in the afternoon of February 6, 2010 and the next day, February 7, 2010, the family, relatives, and counsels of the 43 detainees went to

¹⁴ *Supra*, note at 2.

Camp Capinpin. However, they were refused entry and were not allowed to confer with the detainees.

According to the 43 detainees, they were placed in incommunicado status; subjected to prolonged and repeated interrogation while blindfolded and handcuffed; deprived of sleep and individually interrogated at odd hours; made to listen to gunshots and the unnerving screams of the other detainees; deprived of the opportunity to confer with their counsels and visitation rights of families and relatives; threatened; forced to admit membership in the New People's Army; and, convinced to cooperate with the military in exchange for the dropping of case and giving of rewards. Jane Ballesta, an epileptic, was deprived of her medicines and Glenda Murillo suffered internal bleeding leading to a miscarriage due to the early morning search and was refused medical attention. They were also subjected to psychological torture, having been threatened with the infliction of harm on their person and their families if they refused to cooperate; deprived of privacy as the army officers took off their clothing and underwear every time they went to the comfort room; sexually harassed as the soldiers took off the women's clothing during the interrogations;¹⁵ and, physically tortured by electrocution and punches on the different parts of their bodies.¹⁶

¹⁵ No evidence relative to this claim was presented during the hearings conducted before the Court.

¹⁶ Petitioners' Memorandum, pp. 15-17.

In the inquest proceedings, State Prosecutor Senson simply made a roll call and head count of the 43 detainees and then announced that they have all been subjected to inquest and were charged of illegal possession of firearms and/or of explosives. They were not given the chance to inform the prosecutor of the illegality of their arrest and the ordeal they went through during their detention. Moreover, they were not given the chance to manifest their desire to seek legal assistance. Their counsels were not notified of such proceedings, thus, while the inquest proceedings were being conducted, their counsels were camping out at the gates of Camp Capinpin waiting for permission to confer with their clients.¹⁷

The Respondents' Version:

The Respondents counter that they filed an application for search warrant to be conducted at the house of Mario Condes at Brgy. Maybangcal, Morong, Rizal, based on the reliable information that the same was being occupied by communist rebels and members of the New People's Army(NPA). The search thereof was conducted by 1st Lt. Mariadita K. Omandam, 2nd Lt. Carlo AJ M. Angeles, Pfc. Joel Narciso Tuldog, Pfc. Alexander Lentija Niones, Cpl. Leonardo C. Macatangay, Pfc. Laurence B. Jerez, Cpl. Jeffrey G. Amon, Pfc. Glenford G. Polopot, Cpl. Rex A. Ebero, Pfc. Ernesto A. Rosela, PO3 Lawrence A.

¹⁷ Petitioners' Memorandum, pp. 14-15 and 17.

Alfabeto, PO1 Ryan D. Dizon, and PO1 Eliazar T. Dalisay, assisted by Barangay Kagawads Eduardo G. Manalo and Ariel Guzon.¹⁸

Respondents further aver that the search was made in the presence of the owner of the house, Jose Manuel, and of the Barangay Kagawads; and, that in the course thereof, several hand grenades, improvised explosive sticks, and other explosive devices were found in the possession of forty-three(43) detainees. The 43 detainees were arrested as they were caught *in flagrante delicto* in possession of illegal explosives. In view of the unavailability of a detention facility large enough to accommodate the 43 detainees, the arresting officers decided to bring all of them to Camp Capinpin, Brgy. Sampaloc, Tanay, Rizal. Thereafter, inquest proceedings were conducted by State Prosecutor Senson, who recommended the filing of appropriate Informations against the 43 detainees. However, due to the retirement of then Chief State Prosecutor Jovencito Zuño and the absence of designation of an Acting Chief State Prosecutor, the Informations against the 43 detainees were filed before the RTC and Municipal Trial Court of Morong, Rizal only on February 11, 2010 after they were signed by Senior Assistant Chief State Prosecutor Severino H. Gana, Jr. in the afternoon of February 10, 2010.

¹⁸ Respondents' Memorandum, pp. 1-2.

The Analysis:

Given the foregoing factual milieu, I cannot help but disagree with the *ponencia*. To my mind, in the case at bench, the use of force cannot make wrongs into right. An illegal search and seizure, as well as an irregular inquest, cannot ripen into a valid Information, otherwise referred to as "remedial" or "curative" Informations.

I am not oblivious of the prevailing jurisprudence that a writ of *habeas corpus* should not be allowed after the party sought to be released had been charged before any court. Nonetheless, I owe it to my oath of office and to the public to exhibit more than just an inflexible obeisance to a martial law-era jurisprudence, *Hagan v. Enrile*¹⁹, with all due respect, that allows unlawful state acts to graduate into some "valid indictments". Ergo, practical adjustments, rather than rigid formulae, matters which should be foremost in the heart and mind of any handling magistrate, are necessary since courts must be vigilant in safeguarding the constitutional rights of the citizenry, especially in matters pertaining to their liberty.

To explicate.

Section 2, Article III of the *Constitution* provides:

¹⁹ G.R. No. 70748, Oct. 21, 1985.

SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
(Emphasis supplied)

Thus, any evidence obtained in violation of the above provision is inadmissible for any purpose in any proceeding.²⁰ The plain import of the Constitution is clear: that searches, seizures, and arrests are normally unreasonable unless authorized by a validly issued search warrant or warrant of arrest. Perforce, **between a person and the police must stand the protective mantle of a magistrate, clothed with the power and the duty to nullify a blatantly illegal search, seizure, and/or arrest.**

Corollarily, Sections 4 and 5, Rule 126 of the *Revised Rules on Criminal Procedure* enumerate the requisites for the issuance of a search warrant, to wit:

SEC. 4. Requisites for issuing search warrant. – A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be

²⁰ Section 3(2), Article III of the 1987 Constitution.

searched and the things to be seized which may be anywhere in the Philippines.

SEC. 5. Examination of complainant, record. – The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted. (Emphasis Ours)

Based on the foregoing rules and on prevailing jurisprudence, the requisites of a valid search warrant, the absence of even one will cause its downright nullification, are: 1)it must be issued upon probable cause; 2)the probable cause must be determined by the judge himself and not by the applicant or any other person; 3)in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and, 4)the warrant issued must particularly describe the place to be searched and persons or things to be seized.²¹

Without the need to discuss the first three(3) elements, the records at bench glaringly show that the search warrant, dated February 5, 2010, is unconstitutional as it failed to meet the last element — to state with particularity the place or person to be searched or the things to be seized — considering that the house number and street name of the place to be searched was

²¹ Pp. v. Francisco, G.R. No. 129035, August 22, 2002, 387 SCRA 569, 575; Del Rosario v. Pp., 410 Phil. 642, 662 (2001).

not even indicated therein. Verily, indicating only the Barangay and the municipality where the search will be conducted is a description which does not particularly point to a definite ascertainable place as to exclude all others. Of note, too, that even the person against whom the search warrant is addressed, *i.e.* a certain Mario Conde, was not even present in the house of Dr. Velmonte at the time of the search. Worth emphasizing, therefore, that a search warrant is **not and should not be used as a means to gain entry into a man's house for the purpose of obtaining incriminating evidence.**

Further, the Supreme Court held in *People v. Ramos*²² that a search may be conducted by law enforcers **only** on the strength of a search warrant **validly** issued by a judge as provided in Article III, Section 2 of the *Constitution*. **Simply put, if the search warrant is invalid, the search that may have been carried out pursuant thereto is rendered unlawful.** Hence, pursuant to the doctrine pronounced in *Stonehill v. Diokno*²³, articles obtained during the search are inadmissible in evidence as the same are treated as a product of unreasonable searches and seizures. The *raison d'être* is that the State cannot simply intrude indiscriminately into the houses, papers, effects, and most importantly, on the person of an individual. The constitutional provision guarantees an impenetrable shield against unreasonable searches and seizures. **As such, it protects the privacy and sanctity of the person himself**

²² 222 SCRA 557 [1993].

²³ 20 SCRA 383 [1967].

against unlawful arrests and other forms of restraint.²⁴ For, *a man's house is his castle, et domus sua cuique tutissimum refugium* — *One's home is the safest refuge for all.*²⁵

Applying the foregoing, what began as an obvious trespass into the sanctity of one's abode worsened to higher forms of transgressions of the freedoms of the citizens. Simply stated, as the search warrant is invalid, **the Respondents have no authority to be at Dra. Velmonte's house either to conduct a search or to arrest the persons found therein.**

Closer to the point, the records of the case apparently show that the conduct of the search operation was highly irregular due to the following: 1)the search team entered the premises of the farmhouse without prior advice to and despite the vehement objection of the owner, Dra. Velmonte; and, 2)there were around three hundred(300) heavily-armed military men and policemen who entered the farmhouse despite the fact that the search warrant was supposed to be implemented against only one person, Mario Condes, who is not even a resident thereat and who is not known to Dra. Velmonte; 3)the 43 detainees were all brought to and confined at the driveway while the search was conducted; 4)the explosives found at the farmhouse were not recovered from any of the forty(40) detainees who were charged

²⁴ Pp. v. Aruta, G.R. No. 120915 April 3, 1998.

²⁵ First quoted by English jurist Sir Edward Coke (1552-1634). It is a proverbial expression that illustrates the principle of individual privacy. In the American system of government, the principle is provided under the Fourth Amendment to the United States Constitution — part of the Bill of Rights — which prohibits "unreasonable searches and seizures."

with illegal possession of explosives while 5) the grenades and landmines were not also found in the possession of the detainees but were recovered from underneath a bed. Clearly, there was no *flagrante delicto* arrest to speak of for the detainees cannot be said to have been caught in *flagrante delicto* in the act of committing an offense. There is nary an overt act showing that the 43 detainees have committed, are committing, or are about to commit, a crime.

In short, because the search was unlawfully carried out due to the irregularities in the conduct thereof, the items seized shall be inadmissible in evidence in line with the "fruit of the poisonous tree doctrine". Also, as the detainees cannot be considered to have been caught in the act of committing an offense, the warrantless arrest is uncalled for, as the rule is well settled that a warrantless arrest is lawful only under any of the circumstances found in Sec. 5, Rule 113 of the *Revised Rules of Court*.

Taking off from the above, the search warrant being invalid, and the search and the warrantless arrest being unlawful due to certain irregularities, the inquest proceedings conducted thereafter must necessarily be deemed as void. As pronounced in *Ladlad, et al. v. Velasco, et al.*,²⁶ [i]nquest proceedings are proper only when the accused has been lawfully arrested without warrant. Such doctrine finds basis

²⁶ G.R. No. 172070-72, June 1, 2007.

on *DQJ Circular No. 61*, dated 21 September 1993, which provides that the initial duty of the inquest officer is to determine if the arrest of the detained person was lawful, that is, if it was done in accordance with the provisions of paragraphs (a) and (b) of Section 5, Rule 113.²⁷ Simply put, if the arrest was not properly effected, the inquest officer should proceed under Section 9 of the said circular which provides:

Where Arrest Not Properly Effected. – Should the Inquest Officer find that the arrest was not made in accordance with the Rules, he shall:

- a) recommend the release of the person arrested or detained;*
- b) note down the disposition on the referral document;*
- c) prepare a brief memorandum indicating the reasons for the action taken; and*
- d) forward the same, together with the record of the case, to the City or Provincial Prosecutor for appropriate action. (Emphasis Ours)*

Clearly, what the inquest officer should have done was to recommend to the Chief Prosecutor the immediate release of the persons who were arrested by the Respondents. Besides, the inquest proceedings itself is tainted with irregularity since the 43 detainees were not provided with counsel. The detainees'

²⁷ *Ibid.*

constitutional rights to a counsel of their choice should have been observed.²⁸

Given all the foregoing, it is easy to see that there is no valid reason to restrain the 43 detainees and their continued detention is illegal. Therefore, they should be released.

On another point, although Informations have already been filed against the 43 detainees, there is nothing to support the allegations therein charging the detainees of illegal possession of firearms and explosives because the evidence obtained during the search and arrest are inadmissible in evidence under the doctrine of the fruit of the poisonous tree. The manner in which the search was conducted, juxtaposed with the arrest and the inquest thereafter effected, strongly suggests that the filing of the Information(s) against the forty-three(43) detainees is designed for just one purpose – to make a mockery of the high writ of *habeas corpus*.

Assuming *ex gratia argumenti* that explosives and grenades were really found during the search, it is still immaterial considering that the search was, to reiterate at the expense of being redundant, illegal. Then too, one has to consider the undeniable fact that there is no such offense as “conspiracy to commit illegal possession of explosives” because, for sure, the

²⁸ See Sec. 12, Art. III of the 1987 Constitution.

records does not show that all the 40 detainees were in possession of the explosives.

To reiterate, the **Informations filed are just that — “remedial” or “curative” ones.** Such fact becomes more evident considering that the detainees have been restrained of their liberty five(5) days from the time they were arrested and brought to Camp Capinpin on February 6, 2010 until the filing of the corresponding Informations only on February 11, 2010. The detention of the detainees is way beyond the thirty-six(36)-hour limit prescribed under Art. 125 of the *Revised Penal Code*. Again, the Informations were filed to remedy the unlawful search and arrest and render moot the issue in the instant petition for *habeas corpus* — a matter I cannot simply tolerate. Extra-constitutional measures have no place in Our civil society. True, they may for a time be beneficial, yet the precedent is pernicious, for although established for good objects, they might, in time and as in this case, be availed of for some inhumane purpose. Truly, therefore, **there is a need to “slay the dragon at first sight” lest we be so enraptured by its paucity that we fail to recognize the embers of its fury.**

While the Petitioners did not present evidence showing that the 43 detainees were maltreated or tortured during their detention, still, I have misgivings that the said detainees remain in the custody of the Armed Forces of the Philippines. First, the

cases against the 43 detainees are criminal in nature, not political offenses. Hence, they should be under the custody of the Bureau of Jail Management and Penology (BJMP), as it is the official detention agency in our jurisdiction. Second, relinquishing custody over them to the BJMP will, in all probability, obviate unnecessary "charges" of maltreatment. The arresting officers are the military. Thus, the greater part of wisdom should dictate that the custody of the 43 detainees be with a more independent official entity.

It has not escaped Our notice that, to reiterate, only Col. Balabad, out of the six(6) named Respondents, appeared in the hearings conducted before this Court. As the second highest court of the land, this Court certainly did not deserve such a condescending treatment from the impleaded members of the military. Then too, their failure to produce the bodies of the 43 detainees during the first (February 12, 2010) of the two(2) hearings, before this Court, deserves Our repetitive injunction that the writ of *habeas corpus*, being a high writ of life and death matter, must not be trivialized and must be obeyed at the first opportunity. If the biggest military armed group in this country cannot promptly provide ample protection to a group of 43, then no one could really now be safe in our country of birth.

In the end, in a habeas corpus proceedings as the one at bench, an inquiry into the legality of the proceedings or processes is

necessarily called for as it is crucial in safeguarding the constitutional rights of the herein detainees against an obvious and clear misjudgment. Regardless of ideology, creed, or label, the paramount consideration which admits of no inclination should be the respect for the majesty of the law, springing forth from our respect in the constitutionally-guaranteed rights of the people.

There being no legal reason to detain the forty-three(43) detainees, who will soon be mourning their one(1)-month detention, their immediate release should be effected. To do so is not just Our legal duty but our high moral obligation as magistrates.

Premises considered, I therefore vote to **RELEASE** the forty-three(43) detainees and declare that all cases filed against them are considered as **DISMISSED**.

ORIGINAL SIGNED
NORMANDIE B. PIZARRO
Associate Justice