Republic of the Philippines
Court of Appeals
Manila

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Date: 11 MAR 2010 Time 2pm

SPECIAL DIVISION OF FIVE

IN THE MATTER OF THE PETITION FOR THE HABEAS CORPUS OF:

DR. MERRY MIA-CLAMOR, DR. ALEX MONTES
GARY LIBERAL, TERESA QUINAWAYAN
LYDIA OBERA, REYNALDO MACABENTA
ANGELA DOLORICON, DELIA OCASIA
JANICE JAVIER, FRANCO REMOROSO
AILENE MONASTERYO, PEARL IRENEMARTINEZ
ELEN CARANDANG, DANY PANERO
RAYOM AMONG, EMILY MARQUEZ
EMELIA MARQUEZ, JANE BALLETA
GLENDA MURILLO, ACE MILLENA
ELY CASTILLO, LALYN SALIGUMBA
JOVY ORTIZ, SAMSUNG CASTILLO
MARK ESTRELLADO, MIANN OSEO
SELVIA PAJANOSTAN, LOLIBETH DONASCO
JENELYN PIZARO, RAMON DE LA CRUZ
JACQUELINE GONZALES, MARIA ELENA SERATO
MERCY CASTRO, LEA DE LUNA
JUDILYN OLIVEROS, VALENTINO PAULINO
YOLANDA YAUN, EDWIN DEMATERA
SHERILYN RIOCASA TAWAGON, GERRY SUSTINO
JENMARK BARRIENTOS, MARK ESCARTIN

CA-G.R. SP NO. 112695

RONEO S. CLAMOR, ET AL.,
Petitioners,

- versus -

GEN. VICTOR S. IBRADO, ET. AL.,
Respondents.

X----------X

Notice of DECISION

S i r:

Please take notice that on **March 9, 2010,** a **Decision**, copy hereto attached, was rendered by the **Special Division of Five** of the Court of Appeals in the above-entitled case, the original copy of which is on file with this Office.

You are hereby required to inform this Court, within five (5) days from receipt hereof, of the date when you received this notice and a copy of the **Decision.**

Very truly yours,

Marie Claire Victoria Mabutas-Sordan
Division Clerk of Court

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Camp Capinpin, Tanay, Rizal

P/SUPT. MARION BALONGLONG – per.
Rizal Philippine National Police
Rizal Provincial PNP

/rfl

REPUBLIC OF THE PHILIPPINES
COURT OF APPELAS
MANILA

SPECIAL DIVISION OF FIVE

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF: **CA-G.R. SP NO. 112695**

DR. MERRY MIA-CLAMOR, DR. ALEX MONTES, GARY LIBERAL, TERESA QUINAWAYAN, LYDIA OBERA, REYNALDO MACABENTA, ANGELA DOLORICON, DELIA OCASIA, JANICE JAVIER, FRANCO REMOROSO, AILENE MONASTERYO, PEARL IRENE MARTINEZ, ELEN CARANDANG, DANY PANERO, RAYOM AMONG, EMILY MARQUEZ, EMELIA MARQUEZ, JANE BALLETA, GLENDA MURILLO, ACE MILLENA, ELY CASTILLO, LALYN SALIGUMBA, JOVY ORTIZ, SAMSUNG CASTILLO, MARK ESTRELLADO, MIANN OSEO, SELVIA PAJANOSTAN, LOLIBETH DONASCO, JENELYN PIZARO, RAMON DELA CRUZ, JACQUELINE GONZALES, MARIA ELENA SERATO, MERCY CASTRO, LEA DE LUNA, JUDILYN OLIVEROS, VALENTINO PAULINO, YOLANDA YAUN, EDWIN DEMATERA,

Members:

ALIÑO-HORMACHUELOS,
Chairperson,
DE LEON,
VILLON,
PIZARRO[1], and
ACOSTA[2], *JJ.*

---

1 *vice* Justice Isaias P. Dicdican.
2 *vice* Justice Antonio L. Villamor

SHERILYN RIOCASA TAWAGON, GERRY SUSTINO, JENMARK BARRIENTOS, MARK ESCARTIN, RONEO S. CLAMOR, LEONILO DOLORICON, OFELIA B. BALLETA, RAYMUNDO L. APUHIN, MARGIE M. OCASLA, REYNAN A. GABAN, MA. LUCRESIA QUINAWAYAN, ROY S. MONTES, MARIA CHRISTINA S. MACABENTA, EDGARDO GONZALES and COMMUNITY MEDICINE DEVELOPMENT FOUNDATION (COMMED) represented by its Secretary DR. JULIE P. CAGUIAT,
Petitioners,

- versus -

GEN. VICTOR S. IBRADO, AFP CHIEF OF STAFF; **LT. GEN. DELFIN N. BANGIT,** COMMANDING GENERAL, PHILIPPINE ARMY; **BRIG. GEN. JORGE SEGOVIA,** CHIEF OF THE 2nd INFANTRY DIVISION, PHILIPPINE ARMY; **COL. AURELIO BALADAD,** COMMANDER OF THE 202nd INFANTRY BRIGADE, PHILIPPINE ARMY, **DIRECTOR-GENERAL JESUS A. VERSOZA,** PHILIPPINE NATIONAL POLICE ; **and P/SUPT. MARION BALONGLONG,** RIZAL PHILIPPINE NATIONAL POLICE,
Respondents.

Promulgated:

09 MAR 2010

x----------x

CERTIFIED TRUE COPY:

Atty. Maria Claire Victoria Mabutas-Sordan
Division Clerk of Court
Court of Appeals
Manila

Division

DECISION

ALIÑO-HORMACHUELOS, J.:

PREFATORY STATEMENT

For resolution is a Very Urgent Petition for Habeas Corpus[3] filed by the petitioners in behalf of their family members who are being detained by respondents at Camp Capinpin in Tanay, Rizal.

On February 10, 2010, the First Division of the Supreme Court through Chief Justice Reynato S. Puno issued a writ of habeas corpus directing the respondents to produce the bodies of the 43 detainees and required respondents to make a return of the writ and show cause of the restraint. The Supreme Court delegated the hearing and resolution of the merits of the petition to the undersigned ponente.[4] Hearings were conducted on February 12 and 15, 2010.

On February 26, 2010, the undersigned submitted a Report to the members of the Division for consultation pursuant to Section 9, Rule VI (Process of Adjudication) of the 2009 Internal Rules of the Court of Appeals (IRCA).

On March 3, 2010, the Division met for its consultation and deliberation.

On even date, Justice Francisco P. Acosta filed a Dissenting Opinion, thus the unanimous vote of the members of the Division could not be attained. Hence, on March 5, 2010, a Special

3 Rollo, pp. 2-28.
4 Rollo, pp. 37-44.

Division of Five was formed with the addition of Justice Magdangal M. de Leon and Justice Sesinando E. Villon to the Division.

On March 8, 2010, the Special Division of Five met in consultation. Justice Pizarro joined Justice Acosta in the latter's dissent. However, the two additional members of the Division namely, Justice de Leon and Justice Villon concurred with the findings and conclusion reached in the Report which then became the herein majority opinion and **DECISION**.

After the consultation/deliberation, the Division members whose opinions constitute the majority, agreed to assign this case to the undersigned ponente for the writing of the opinion of the Court.

THE FACTUAL ANTECEDENTS:

Forty-three (43) detainees, subjects of this petition, are allegedly leaders and members of Community Medicine Development Foundation (COMMED) and Community for Health Development (CHD), non-government organizations composed of people from the medical profession as well as volunteer health workers from various communities that train and educate people on how to respond to natural disasters and calamities and provide free health services to destitute communities. On February 1 to 7, 2010, COMMED conducted a Community First Responders Health Training at a training facility inside the farmhouse owned by Dr. Melecia Velmonte, an infectious disease specialist and COMMED's Chair of the Board. The farmhouse is located at 266 Dela Paz Street, Brgy. Maybangcal, Morong, Rizal.[5]

Respondents, who are in the highest ranks of the Armed

5 Id., Petition, p. 3.

Forces and the National Police in the Philippines, alleged that they received an information from a reliable source that the premises were being occupied by communist rebels and members of the New People's Army (NPA)[6]. On February 6, 2010, at around 6:15 a.m., a raiding team consisting of elements from the 16th Infantry Batallion, 202nd Brigade of the Philippine Army, the Rizal Criminal and Detection Team and Rizal Police Provincial Office headed by respondents Col. Aurelio Baladad, Commander of the 202nd Infantry Brigade and P/Supt. Marion Balonglong, Commanding Officer of Rizal Provincial Public Safety Management Company, entered and searched the farmhouse owned by Dr. Velmonte.[7] Respondents were armed with Search Warrant No. 1565-10[8] issued by Judge Cesar A. Mangrobang of the Regional Trial Court, Branch 22 of Imus, Cavite. The warrant reads as follows:

"Republic of the Philippines
REGIONAL TRIAL COURT
FOURTH JUDICIAL REGION
Branch 22
IMUS, CAVITE

PEOPLE OF THE PHILIPPINES
Plaintiff,

- versus-

SEARCH WARRANT NO. 1565-10
For: Violation of RA 8294 (Illegal)
Possession of Firearms)

MARIO CONDES of Brgy. Maybangcal,
Morong, Rizal,
Accused.
x----------x

SEARCH WARRANT

THIS SEARCH WARRANT IS VALID

6 Record, Annex "A-16", pp. 178-183.
7 Id., p. 181.
8 Id., Annex "A", p. 156.

ONLY UNTIL 14 FEBRUARY 2010.

TO ANY PEACE OFFICER:

G R E E T I N G S:

It appearing to the satisfaction of the undersigned after examining under oath P/Supt. MARION D. BALONGLONG and his witness PO1 ARNEL TARASONA that there is a probable cause to believed (sic) that Violation of RA 8294 (Illegal Possession of Firearms and Ammunition) has been committed and that there are good sufficient reason to believed (sic) that MARIO CONDES has in his possession or control at Brgy. Maybangcal, Morong, Rizal the following described properties to be seized to wit:

a. M16 Rifle
b. Caliber 9mm Pistol
c. 12 Gauge Shotgun
d. Caliber 45 Pistol

You are hereby commanded to make an immediate search at any time in the day and night of the premises above described and forthwith seize and take possession of the above described properties and bring said properties to the undersigned to be dealt as the law directs.

WITNESS IN MY HAND this 5th day of February, 2010 at Imus, Cavite, Philippines.

(Sgd.)
CESAR A. MANGOBANG
Judge"

The search, conducted in the presence of Dr. Velmonte's son Jose Manuel Velmonte and Barangay Kagawads Eduardo G. Manalo and Ariel Guzon[9], led to the discovery of the following

9 Id., Annex "A-12", p. 172.

items:

> **Confiscated from possession and control of Romeo dela Cruz:**
>
> One (1) pc Caliber 45 Colt Mr IV with Serial Number 041362;
> One (1) pc pistol Magazine for caliber .45; and
> Six (6) pcs live ammunition for caliber .45
>
> **Confiscated from possession and control of Del Ayo Avera:**
>
> One (1) pc Caliber 38 no serial number; and
> Six (6) pcs live ammunition for caliber .38
>
> Confiscated from possession and control of Reynaldo Macabenta
> One (1) caliber .45 Armscor with Serial No. 1055923;
> One (1) pc pistol magazine for caliber .45; and
> Six (6) pcs live ammunition for caliber .45
>
> **Also seized during the implementation of the search warrant were the following:**
>
> Three (3) pcs hand grenades;
> One (1) canister 10x12 improvised landmine;
> Five (5) pcs improvised claymore mines;
> Two (2) kg Ammonium Nitrate; and
> Thirty-seven (37) pcs improvised explosive sticks."[10]

None of the foregoing was covered by a license to carry or possess.

As proofs of the search, a Receipt of Property Seized/Confiscated[11] and a Certification of Orderly Search[12] both dated February 6, 2010 were signed by barangay Kagawads Manalo and Guzon. Jose Manuel Velmonte refused to sign the

10 Id., Annex "A-10", pp. 169-170.
11 Id., Annex "A-11", p. 171.
12 Id., Annex "A-12", p. 172.

documents.

As a consequence, the forty-three detainees were arrested and brought to Camp Capinpin in Tanay, Rizal for investigation. Mario Condes who was named in the warrant was not one of those arrested.

Petitioners alleged that during the search, the military and police brought with them eight (8) 6 x 6 military trucks; two (2) armored personnel carriers; one (1) ambulance; one (1) Kia Pride vehicle and several PNP vehicles, the plate numbers of which were covered; that respondents ordered Dr. Velmonte's helper at gunpoint to open the gate; that Dr. Velmonte and her son Jose Manuel vigorously protested the validity of the search warrant but their objections were ignored; that the detainees did not witness the search conducted by the respondents as they were confined in one area; and that they were forcibly taken from the farmhouse without informing them of the reason for their arrest.[13]

On February 7, 2010, State Prosecutor Romeo B. Senson of the Department of Justice conducted inquest proceedings on the 43 detainees.[14] In a Resolution dated February 8, 2010, State Prosecutor Senson recommended the filing of Informations against the 43 medical workers for Violations of PD 1866 as amended by RA 8294[15] and RA 9516[16] and Comelec Resolution No. 8714[17] in

13 Id., Petitioners' Memorandum, pp. 108-110.
14 Id., Respondents' Memorandum, p. 349.
15 An Act Amending the Provisions of Presidential Decree No. 1866, as amended, entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of firearms, ammunition or explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes., approved on June 6, 1997.
16 An Act Further Amending the Provisions of Presidential Decree No. 1866, As Amended, Entitled Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and For Other Relevant Purposes, approved on December 22, 2008.
17 Rules and Regulations on the: (1) Bearing, Carrying or Transporting of Firearms or Other

relation to Article 261 (q) of the Election Code[18] before the Regional Trial Court (RTC) of Morong, Rizal. The dispositive portion of the Resolution provides:

> "**WHEREFORE**, it is respectfully recommended that the above resolution be approved charging the forty (40) persons, to wit: Gary Liberal y Apuhin, Samson Castillo y Mayoga, Rogelio Villarisi y Valino, Valentino Paulino y Abela, Alexis Montes y Sulinap, Aldrin Garcia y Sagrino, Linda Racel Otañez y Reyes, Janice Javier Y Quatchon, Edwin Detera y Bustamante, Jhon Mark Barrientos y Roldan, Antonio de Dios y Capile, Marvin Ortiz y Quidor, Mark Escartins y Espenida, Ramon dela Cruz y Santos, Renz Capillo y Mediavillo, Franco Romeroso y Bilogan, Mario delos Santos y Cerin, Yolanda Yaun y Billesa, Angela Loricon y Manogan, Ria de Luna y Bautista, Ma. Mercedes Castro y Icban, Jennylyn Vatar y Pizaro, Jane Balleta y Beltran, Cherrylyn Rico y Len, Teresa Quinadad y Roncales, Miann Oseo y Idjao, Janna Mendoza y Mejares, Delia Ocasla y Medrano, Glenda Murillo y Cervantes, Pearl Irene Martinez y delos Reyes, Judilyn Oliveros y Abuyan, Lilibeth Donasco y Candelario, Cristine Ann Evangelista y de Leon, Claire Cruz y Delos Reyes, Sylvia Labrador y Pajanustan, Jeans Trinidad y De

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Deadly Weapons; and (2) Employment, Availment or Engagement of the Services of Security Personnel or Bodyguards, During the Election Period for the May 10, 2010 National and Local Elections.

18 **Article XXII (ELECTION OFFENSES)**

Sec. 261. Prohibited Acts. - The following shall be guilty of an election offense:

(q) Carrying firearms outside residence or place of business. - Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: Provided, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

Leon, Helen Carandang y Orjena, Ma. Elena Serato y Ecleo, Mary Clamor y Mia and Emilia Marquez y Manguba for illegal possession of explosives with no bail recommended under P.D. 1866 and amended by R.A. No. 6516 (sic).

Respondent Romeo dele Cruz for illegal possession of .45 pistol with bail recommended of P80,000.00 as provided by PD 1866 as amended by R.A. 8294 and 9516 and also for violation of Comelec Resolution No. 8714, with bail recommended at P60,000.00.

Respondent Reynaldo Macabenta for illegal possession of .45 pistol with bail recommended of P80,000.00 as provided by PD 1866 as amended by R.A. 8294 and 9516 and also for violation of Comelec Resolution No. 8714, with bail recommended at P60,000.00.

Respondent Del Ayo Overa for illegal possession of .45 pistol with bail recommended of P60,000.00 as provided by PD 1866 as amended by R.A. 8294 and 9516 and also for violation of Comelec Resolution No. 8714, with bail recommended at P60,000.00 and the attached informations be filed with the appropriate court."

On February 9, 2010, petitioners, who are members of the immediate families of the detainees, filed the herein Very Urgent Petition for Habeas Corpus before the Supreme Court alleging that the search made on the farmhouse of Dr. Velmonte was illegal since the search warrant was directed against one Mario Condes who is not a resident of the farmhouse and the place to be searched was not particularly described therein; that the explosives and firearms allegedly found inside the farmhouse were planted; that the detainees were illegally arrested and detained at Camp Capinpin; and that the detainees' constitutional rights to life,

liberty, security and due process were repeatedly and unabashedly transgressed by respondents.[19]

On February 11, 2010, Criminal Case No. 10-9079-M[20] for Violation of PD 1866, as amended by RA 8294 and RA 9516, for Illegal Possession of explosives, grenades and improvised land mine was filed against forty of the detainees. The remaining three detainees were separately charged. Del Ayo Avera was charged in Criminal Case No. 10-9080-M[21] for Illegal Possession of homemade caliber 38 with four (4) live ammunitions and Criminal Case No. 7082[22] for Violation of Comelec Resolution 8714 in relation to Article 261 (q) of the Election Code. Romeo dela Cruz was charged in Criminal Case No. 7083[23] for Illegal Possession of caliber 45 pistol with one magazine and seven (7) live ammunitions and Criminal Case No. 10-9081-M[24] for Violation of Comelec Resolution 8714 in relation to Article 261 (q) of the Election Code. Reynaldo Macabenta was charged in Criminal Case No. 10-9078-M[25] for Illegal Possession of caliber 45 pistol with magazine loaded with six (6) live ammunitions and Criminal Case No. 7084[26] for Violation of Comelec Resolution 8714 in relation to Article 261 (q) of the Election Code.

On February 12, 2010, the Regional Trial Court (RTC), Branch 78 of Morong, Rizal presided by Acting Presiding Judge Amorfina Cerrado-Cezar issued Commitment Orders in Criminal Cases No. 10-9078-M[27], 10-9079-M[28] 10-9080-M[29] and 10-9081-

19 Rollo, Petition, p. 1-14.
20 Record, Annex "5", pp. 87-91.
21 Id., Annex "1", pp. 75-77.
22 Id., Annex "6", pp. 92-94.
23 Id.,Annex "4", pp. 84-86.
24 Id., Annex "7", pp. 95-97.
25 Id., Annex "2", pp. 78-80.
26 Id., Annex "3", pp. 81-83.
27 Id., Annex "4", p. 387.
28 Id., Annex "3", pp. 385-386.
29 Id., Annex "2", p. 384.

M[30] directing the jail warden of Camp Capinpin to take custody of the forty-three (43) detainees pursuant to Sections 5 and 7, Rule 112 of the Rules of Criminal Procedure. On February 15, 2010, the Municipal Trial Court (MTC) of Morong, Rizal presided by Judge Rodrigo L. Posadas issued Commitment Orders in Criminal Cases No. 7082[31], 7083[32] and 7084[33] likewise directing the jail warden of Camp Capinpin to take custody of detainees Del Ayo Avera, Romeo dela Cruz and Reynaldo Macabenta.

On February 12, 2010 respondents, represented by the Office of the Solicitor-General (OSG), filed a Return of the Writ affirming the validity of the seizure and arrests conducted by the respondents on the farmhouse of Dr. Velmonte. The OSG also argued that the writ of habeas corpus does not lie since several Informations had already been filed against the forty-three workers.[34]

On February 15, 2010, the forty-three detainees were presented before this Court. Petitioners, represented by their lead counsel Atty. Romeo T. Capulong, presented the testimony of Dr. Alexis Montes, who was allowed to render his testimony by way of observance of the ruling in the case of *Umil vs. Ramos*[35] invoked by petitioners. OSG's Assistant-Solicitor Renan E. Ramos vehemently objected to the presentation of said testimony.

This Court then directed the parties to submit their respective Memoranda on or before February 17, 2010 after which the case would be submitted for decision.

This petition raises the following issues[36]:

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30 Id., Annex "1", p. 383.
31 Id., Annex "7", p. 390.
32 Id., Annex "6", p. 389.
33 Id., Annex "5", p. 388.
34 Id., Exhibit "I", pp. 66-74.
35 187 SCRA 311.
36 Id., Petitioners' Memorandum, pp. 118-119.

I.

WHETHER OR NOT THE SEARCH CONDUCTED BY THE MILITARY AND POLICE RAIDING TEAM ON THE FARMHOUSE/COMPOUND OWNED BY DR. MELECIA VELMONTE LOCATED AT 266 DELA PAZ ST., BRGY. MAYBANGCAL, MORONG, RIZAL IS VALID.

II.

WHETHER OR NOT THE WARRANTLESS ARRESTS MADE ON THE 43 DOCTORS AND MEDICAL WORKERS ARE VALID ON FEBRUARY 6, 2010.

III.

WHETHER OR NOT THE CONSTITUTIONAL RIGHT TO DUE PROCESS AND OTHER CONSTITUTIONAL RIGHTS OF THE 43 DOCTORS AND MEDICAL WORKERS HAVE BEEN VIOLATED DURING THE CONDUCT OF THE SEARCH, ARREST AND WHILE UNDER DETENTION.

IV.

WHETHER OR NOT THE HONORABLE COURT MUST AND SHOULD INQUIRE

INTO THE LEGALITY OF THE PETITIONERS' ARREST AND CONTINUED DETENTION TO ENSURE THAT DUE PROCESS CLAUSE OF THE CONSTITUTION HAS IN FACT BEEN SATISFIED.

The fundamental issue before Us is whether this petition for *habeas corpus* can prosper and whether the detainees subject thereof are entitled to be discharged.

We rule in the negative.

Petitioners can no longer seek relief *via* this petition for *habeas corpus* in view of the filing of Informations against the 43 detainees which has placed them under the legal custody of the RTC, Branch 78 of Morong, Rizal and the MTC of Morong, Rizal.[37]

Section 1, Rule 102 of the Rules of Court states that the writ of *habeas corpus* extends to all case 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. The function of the special proceeding of *habeas corpus* is to inquire into the legality of one's detention[38] and if found illegal, the court shall order the release of the detainee.[39] If, however, the detention is proven lawful, then the *habeas corpus* proceedings terminate.[40]

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37 Bernarte vs. Court of Appeals, 263 SCRA 323 (1996).
38 In the Matter of the Petition for Habeas Corpus of Capt. Gary Alejano, et al., G.R. No. 160792, August 25, 2005, 468 SCRA 188; Ilagan *v.* Enrile, G.R. No. 70748, October 21, 1985, 139 SCRA 349, 364.
39 In Re: Azucena L. Garcia, G.R. No. 141443, August 30, 2000, 339 SCRA 292.
40 Martin Gibbs Fletcher vs. The Director of Bureau of Corrections, UDK-14071, July 17, 2009; Barredo v. Hon. Vinarao, Director, Bureau of Corrections, G.R. No. 168728, 02 August 2007, 529 SCRA 120.

Settled is the rule that even if the arrest of a person is illegal at the inception, supervening events may bar his release or discharge from custody. Section 4, Rule 102 of the Rules of Court provides:

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

Be that as it may, after due consultation in the manner of collegiate appellate courts, We resolved to hear the testimony of Dr. Alexis Montes pursuant to the opinion in *Morales, Jr. vs. Enrile*[41] and *Umil vs. Ramos,*[42] invoked by the petitioners, that in all petitions for habeas corpus, the court must inquire into every phase and aspect of petitioner's detention – from the moment petitioner was taken into custody up to the moment the court passes upon the merits of the petition, and that only after such a scrutiny can the court satisfy itself that the due process clause of our Constitution has been satisfied.[43] Dr. Montes testified on his arrest and his feelings relative thereto; that he and the other

41 121 SCRA 538
42 Supra.
43 Supra.

detainees were handcuffed, blindfolded, questioned and fingerprinted, and their movements were restricted.[44]

However, notwithstanding the opinion in *Umil vs. Ramos*[45], the long-standing doctrine enunciated by the Supreme Court in *Ilagan vs. Enrile*[46] that a writ of habeas corpus is no longer available after an information is filed against the person detained and a warrant of arrest or an order of commitment has been issued by the court where said information has been filed, has not been overturned and is still controlling.

Accordingly, the subsequent filing of criminal charges against the detainees and the issuance of commitment orders for their continued detention at Camp Capinpin cured whatever irregularities or infirmities were attendant to their arrest, even assuming *arguendo* that their warrantless arrest and detention were initially illegal.[47] Indeed, it has been held in a long line of cases that even if the detention is at its inception illegal, it may, by reason of some supervening event, be no longer illegal at the time of the filing of the application.[48]

The writ will not issue where the person in whose behalf the writ is sought is in 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 the court or judge had jurisdiction to issue the process, render the judgment, or make the order.[49]

The Supreme Court has uniformly ruled that the filing of a charge, and the issuance of the corresponding warrant of arrest, against a person invalidly detained will cure the defect of that

44 Record, TSN, Dr. Alex Montes, February 15, 2010, pp. 758-876.
45 Supra.
46 G.R. No. 70748, October 21, 1985, 139 SCRA 349.
47 Bernarte vs. Court of Appeals, supra.
48 Office of the Solicitor General v. De Castro, A.M. No. RTJ-06-2018, August 3, 2007, 529 SCRA 157, 168-169; Velasco v. Court of Appeals, 245 SCRA 677 (1995).
49 Section 4, Rule 102 of the Rules of Court supra.

detention or at least deny him the right to be released because of such defect.[50]

In *Kiani vs. Bureau of Immigration and Deportation*[51] citing *Caballes v. Court of Appeals*[52], the Supreme Court categorically held:

> "*Habeas corpus* is not in the nature of a writ of error; nor intended as substitute for the trial court's function. It cannot take the place of appeal, certiorari or writ of error. The writ cannot be used to investigate and consider questions of error that might be raised relating to procedure or on the merits. The inquiry in a *habeas corpus* proceeding is addressed to the question of whether the proceedings and the assailed order are, for any reason, null and void. The writ is not ordinarily granted where the law provides for other remedies in the regular course, and in the absence of exceptional circumstances. Moreover, *habeas corpus* should not be granted in advance of trial. The orderly course of trial must be pursued and the usual remedies exhausted before resorting to the writ where exceptional circumstances are extant. In another case, it was held that *habeas corpus* cannot be issued as a writ of error or as a means of reviewing errors of law and irregularities not involving the questions of jurisdiction occurring during the course of the trial, subject to the caveat that constitutional safeguards of human life and liberty must be preserved, and not destroyed. It has also been held that where restraint is under legal process, mere errors and irregularities, which do not render the proceedings void, are not grounds for relief by *habeas corpus* because in such cases, the restraint is not illegal.

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50 Larranaga vs. Court of Appeals, G.R. No. 130644, March 13, 1998, 287 SCRA 581.
51 G.R. No. 160922, February 27, 2006, 483 SCRA 341.
52 G.R. No. 163108, February 23, 2005, 452 SCRA 312.

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. The privilege of the writ of habeas corpus shall not be allowed after the party sought to be released had been charged before any court.[53]

The detainees are not without any remedy. The issues raised by the petitioners may be properly threshed out in the trial courts before which the criminal charges against the detainees have been filed - i.e. the RTC, Branch 78, and the MTC, both of Morong, Rizal. This Court is satisfied that these issues[54], which are not pivotal in this petition for habeas corpus by virtue of the Rule and settled jurisprudence aforecited[55], may be more fully and properly ventilated in the said criminal cases.

Corollarily, petitioners' motion for the transfer of custody of the detainees from Camp Capinpin to Camp Crame is to be submitted to the sound discretion of the criminal courts which now exercise jurisdiction over them. Hence, petitioners' Urgent Motion to Transfer Detention filed before this Court must likewise be denied. As already noted, both the RTC and MTC have directed the jail warden of Camp Capinpin to take custody of the detainees.[56] The Motion may of course be refiled in the aforementioned trial courts.

Having established that the detainees' continued imprisonment is by virtue of a valid court process, We find it unnecessary to dwell on the other issues raised by the petitioners.

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53 Carlos T. Go, Sr. vs. Luis T. Ramos, G.R. Nos. 167569, 167570, 171946, September 4, 2009; In the Matter of the Petition for Habeas Corpus of Engr. Ashraf Kunting, G.R. No. 167193, April 19, 2006, 487 SCRA 602, 607; Commissioner Rodriguez vs. Judge Bonifacio, 344 SCRA 519 (2000).
54 Id., Petitioners' Memorandum, pp. 118-119.
55 Note 53.
56 Record, Annexes "1" to "7", pp. 383-390.

WHEREFORE, premises considered, the petitioners are hereby DENIED the privilege of the Writ of Habeas Corpus. The instant petition is **DISMISSED.**

SO ORDERED.

ORIGINAL SIGNED
PORTIA ALINO-HORMACHUELOS
Senior Associate Justice

ORIGINAL SIGNED
MAGDANGAL DE LEON
Associate Justice

ORIGINAL SIGNED
SESINANDO E. VILLON
Associate Justice

ORIGINAL SIGNED
NORMANDIE B. PIZARRO
Associate Justice

ORIGINAL SIGNED
FRANCISCO P. ACOSTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court. (Sec. 5, Rule 8, RIRCA [a])

ORIGINAL SIGNED
PORTIA ALIÑO-HORMACHUELOS
Senior Associate Justice
Chairperson, Special Division of Five

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 0 9 2010

CA-G.R. SP No. 112695

x----------x

CERTIFIED TRUE COPY:

Atty. Maria Claire Victoria Mabutas-Sorda
Division Clerk of Court
Court of Appeals
Manila

Division

CONCURRING OPINION

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 prereogative 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 aforestated 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

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[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 SIGNED
MAGDANGAL M. DE LEON
Associate Justice

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

Republic of the Philippines
COURT OF APPEALS
Manila

SPECIAL FIRST DIVISION

* * * * *

RONEO S. CLAMOR, LEONILO DOLORICON, OFELIA B. BALLETA, RAYMUNDO L. APUHIN, MARGIE M. OCASLA, REYNAN A. GABAN, MA. LUCRECIA QUINAWAYAN, ROY S. MONTES, MARIA CHRISTINA S. MACABENTA, EDGARDO GONZALES and COMMUNITY MEDICINE DEVELOPMENT FOUNDATION (COMMED), represented by its Secretary Dr. JULIE P. CAGUIAT,

Petitioners,

-versus-

GEN. VICTOR S. IBRADO, AFP CHIEF OF STAFF, GEN. DELFIN N. BANGIT, COMMANDING GENERAL, PHILIPPINE ARMY; COL. AURELIO BALADAD, COMMANDER OF THE 202nd INFANTRY BRIGADE, PHILIPPINE ARMY; PHILIPPINE NATIONAL POLICE DIRECTOR GENERAL JESUS A. VERZOSA; AND P/SUPT. MARION BALONGLONG, RIZAL PHILIPPINE NATIONAL

CA-G.R. SP NO. 112695

Members:

HORMACHUELOS, Chairman
PIZARRO, &
ACOSTA, F. P., JJ.

POLICE,

Respondents,

Promulgated:

MAR 0 9 2010

x----------x

CERTIFIED TRUE COPY:
Atty. Marie Claire Victoria Mabutas-Sorde
Division Clerk of Court
Court of Appeals
Manila

Division

DISSENTING OPINION

ACOSTA, F. P., J.:

". . . the Constitution, particularly the Bill of Rights, defines the limits beyond which lie unsanctioned state actions. But on occasion, for one reason or another, the State transcends this parameter. In consequence, individual liberty unnecessarily suffers. The case before us, if uncurbed, can be illustrative of a dismal trend. Needless injury of the sort inflicted by government agents is not reflective of responsible government." **- Allado vs. Diokno**[1]

On the premise that "We are a government of laws and not of men", I regret I cannot join the Honorable Ponente in her opinion. It is my humble submission that this Court, sitting as a Habeas Corpus court, has the power to inquire into the legality of every aspect of the detention, despite the subsequent filing of the several informations against the 43 detainees. In other words, this Court is duty-bound ***not*** to take on its face the fact that informations have been filed against the detainees, and consider them as a ***cure*** to whatever

1 G.R. 113630, 5 May 1994

violations the law enforcers may have committed against the basic constitutional rights of the detainees. Indeed, a re-examination of the doctrines cited in the *ponencia* is respectfully suggested. It becomes apparent that the doctrine in *Ilagan vs. Enrile*, which notably was decided during the Martial Law regime, has been used as a shield by law enforcers to escape from the court's claws of judicial inquiry. And it is precisely pursuant to that doctrine that the courts' hands are tied thereby preventing Us to pass judgment on the very reason why the Petitioners instituted the instant case. To quote the words of Justice SARMIENTO in his dissenting opinion in *Umil vs. Ramos*, "*in my considered opinion, Ilagan vs. Enrile does not rightfully belong in the volumes of Philippine jurisprudence*".

Correspondingly, We have to be reminded that this Court should always stand as a guarantor of the basic constitutional and human rights and It has the bounden duty to see to it that these rights are respected and enforced.

The following are my staunch submissions in the matter before this Court:

The Search Warrant is not valid; The resultant arrest is likewise void.

A scrutiny of the subject search warrant dated 5 February 2010 reveals that it blatantly failed to particularly specify the exact address where the search was supposed to be conducted. In essence, the subject search warrant is a "*general warrant*", one which has always been declared unconstitutional for failure to state with sufficient particularity the place or person to be searched or things to be seized. Notably, the search warrant in this case only indicated the name of the person to searched, namely, MARIO CONDE, the barangay and the municipality where he is supposed to be found, obviously omitting the house number and street name, thereby rendering the address incomplete so as to enable the law enforcers to properly undertake the search.

The 1987 Constitution mandates that there be a particular description of "the place to be searched and the persons or things to be seized."[2]

On several occasions, the Supreme Court did not hesitate striking down a warrant which, on its face, failed to specifically comply with the aforementioned constitutional requirement. In *People vs. Simbahon*[3], the Supreme Court expressly emphasized the requirement of the particularity of the description of the place where

2 Section 2, Article III, 1987 Constitution
3 GR No. 132371, 9 April 2003

the search is to be conducted, to wit:

> **xxx the warrant failed to describe the place to be searched with sufficient particularity. The rule is that a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended. The constitutional requirement is a description which particularly points to a definitely ascertainable place, so as to exclude all others. xxx The Constitution and the Rules of Court limit the place to be searched only to those described in the warrant. The absence of a particular description in the search warrant renders the same void.**

Thus, considering that the search warrant is not valid, the search conducted pursuant to said warrant is necessarily rendered to be invalid. It is then as if there was no search warrant at all. Accordingly, the articles seized pursuant thereto are deemed to be the "*fruits of the poisonous tree*", thus, inadmissible as evidence. Definitely, the case against the detainees for illegal possession of firearms will not prosper for want of evidence. In *People vs. Aminnudin*[4], the Supreme Court, speaking through Justice ISAGANI CRUZ, emphatically ruled:

> **That evidence cannot be admitted, and should never have been considered by the trial court for the simple fact is that the marijuana was seized illegally. It is the *fruit of the poisonous tree*, to use**

4 GR No. 74869, 6 July 1988

> **Justice Holmes' felicitous phrase. The search was not an incident of a lawful arrest because there was no warrant of arrest and the warrantless arrest did not come under the exceptions allowed by the Rules of Court. Hence, the warrantless search was also illegal and the evidence obtained thereby was inadmissible.**

Consequently, the subsequent warrantless arrest undertaken cannot be legally justified. There must first be a lawful arrest before a search can be made and this process cannot at all be reversed. This was enunciated by the Supreme Court in *People vs. Chua Ho San*[5], *viz*:

> **xxx While a contemporaneous search of a person arrested may be effected to deliver dangerous weapons or proofs or implements used in the commission of the crime and which search may extend to the area within his immediate control where he might gain possession of a weapon or evidence he can destroy, a valid arrest must precede the search. The process cannot be reversed.**
>
> **In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, e.g., whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there be first a lawful arrest before a search can be made - the process cannot be reversed.** (underscoring supplied for emphasis)

5 GR No. 128222, 17 June 1999

The law enforcers cannot just indiscriminately intrude into the abode of Dr. MELECIA VELMONTE and claim that the Petitioners found congregating therein were committing an offense or have just committed an offense considering that they were not legally armed with the authority to barge into the premises. This is, fundamentally, the very act which is abhorred by Section 2, Article III of the Constitution.

Still, even if it is conceded that the search warrant was valid, the simple act of the Petitioners congregating in the subject premises is not tantamount to the commission of the alleged offense. Mere presence of persons at the crime scene, without more, is inadequate to support the conclusion that they committed the crime.[6]

Stated differently, none of the grounds for warrantless arrest enumerated under Section 5, Rule 113 of the Rules of Court was present when the arrest was done. Again, it cannot be gainsaid that at the time of the search, none of the Petitioners was actually committing or has just committed an offense. Besides, the records reveal that the basis for the application of the search warrant was an incident which happened on 3 January 2010, allegedly involving a certain MARIO CONDE, who was brandishing a firearm. Notably, CONDE was not in the subject premises when the search was

6 People vs. Lapavie, GR No. 130209, 14 March 2001

conducted. Such was the purported reason why the search warrant was in the first place issued. However, the acts carried out by the arresting officers are hardly in consonance with the said reasons which they themselves provided the court to issue the warrant.

The inquest proceedings conducted thereafter is not valid.

Section 14, Article III of the 1987 Constitution provides, *inter alia*, that in all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel. Pursuant thereof, Republic Act No. 7438 or AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF was enacted, which provides among others that:

> **Section 1. Statement of Policy. - It is the policy of the State to value the dignity of every human being and guarantee full respect for human rights.**
>
> **Section 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers. –**
>
> **(a) Any person arrested detained or under custodial investigation shall at all times be assisted by counsel.**

> **Section 3. Assisting Counsel – xxx**
>
> **In the absence of a lawyer, no custodial investigation shall be conducted and the suspected person can only be detained by the investigating officer in accordance with the provisions of Article 125 of the Revised Penal Code.**

Surprisingly in the present case, when the inquest proceedings were conducted upon the persons of the Petitioners, they were not allowed to be assisted by their counsels. Evidently, in view of the apparent illegality of the proceedings, the same should be deemed to be invalid, thus, it is as if the Respondents never conducted inquest proceedings on the Petitioners.

In essence, a preliminary investigation, or inquest like in the instant case, is a judicial inquiry. It is subject to the requirements of both substantive and procedural due process.[7] Stated differently, preliminary investigation or inquest is a component part of due process in criminal justice.[8] Hence, it goes to the very heart of the Bill of Rights provisions of the constitution. In effect, to deny an accused of any of his rights during the conduct of an inquest proceedings would be to deprive him of his right to due process, thereby invalidating the entire proceedings. The subsequent filing of the information based on a defective proceedings would just put at

7 Uy vs. Ombudsman, GR Nos. 156399-400, 27 June 2008
8 Duterte vs. Sandiganbayan, GR No. 130191, 27 April 1998

naught the most cherished right in all civilized nations. We might as well relegate the right to liberty from its prime position among the protected rights in our fundamental law to just some obscure crevice not worth revisiting.

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.

The information filed before the Regional Trial Court is null and void. Hence, the RTC has no jurisdiction over the case.

Considering that the inquest proceeding, which was the basis of the filing of the information before the RTC, is invalid, the said information therefore should likewise be invalid. Necessarily, the RTC does not have jurisdiction to hear the case, much less the power to issue the commitment order to justify the continued detention of the Petitioners.

Section 4, Rule 102 of the Rules of Court provides that the issuance of the writ of habeas corpus may not be allowed when the

alleged restraint of the Petitioners' liberty is by virtue of a process of a court which had jurisdiction to issue the same. However, in the instant case, it is my stand that the privilege of the writ of habeas corpus should be ***granted*** considering that the RTC's lack of jurisdiction over the case renders the *commitment order* issued to be invalid. Simply put, the continued detention of the Petitioners is, at the very least, highly irregular.

The pronouncement of the Supreme Court in *Calvan vs. Court of Appeals*[9], through Justice JOSE VITUG, is in point:

> **The inquiry on a writ of habeas corpus is addressed, not to errors committed by a court within its jurisdiction, but to the question of whether the proceeding or judgment under which the person has been restrained is a complete nullity. The probe may thus proceed to check on the power and authority, itself an equivalent test of jurisdiction, of the court or the judge to render the order that so serves as the basis of imprisonment or detention. Keeping in mind the limitation that in habeas corpus the concern is not merely whether an error has been committed in ordering or holding the petitioner in custody, but whether such error is sufficient to render void the judgment, order, or process, an inquiry into the validity of the proceedings or process can be crucial in safeguarding the constitutional right of a potential accused against an obvious and clear misjudgment. The intrinsic right of the State to prosecute and detain perceived transgressors of the law must be balanced with its duty to protect**

9 GR No. 140823, 3 October 2000

> **the innate value of individual liberty.**
>
> **xxx**
>
> **While it is true that the usual remedy to an irregular preliminary investigation is to ask for a new preliminary or a reinvestigation, such normal remedy would not be adequate to free petitioner from the warrant of arrest which stemmed from that irregular investigation. xxx**

In this case, it is noteworthy that the authorities were trying to cure everything by filing the criminal informations against the detainees on 11 February 2010, the day after the Supreme Court issued the writ of Habeas Corpus directing the Respondents to produce the bodies of the 43 detainees before this Court. Apparently, it was only on 12 February 2010 that the commitment orders were issued by the RTC of Morong, Rizal, Branch 78, the day the Respondents were required to produce the 43 detainees before Us. Such that on even date, during the hearing, the Respondents failed to comply with the order of the Supreme Court on the flimsy excuse that they do not have logistics to secure the presentation of the 43 detainees while they are in fact the biggest military establishment in this country. Interestingly, it was only on 15 February 2010 that the 43 detainees were presented before this Court. Indeed, the undue delay employed by the Respondents in the presentation of the detainees reeks of bad faith which should never be condoned.

Moreover, one could not help but wince on the thought that 40

of the 43 informations filed against the subject detainees pertain to illegal possession of explosives under Republic Act No. 9516, an offense punishable by *Reclusion Perpetua*, hence, generally not bailable. Obviously, these informations were intended to ensure their continued incarceration. Certainly, in view of the grave violations posed upon the detainees, passing the burden of resolving the validity of the subject procedures to the lower court cannot be tolerated. It would then be a useless roundabout which will serve no practical purpose other than to prolong the violations of Petitioners' constitutional rights. Resultantly, passing the issues at hand to the lower court would give an impression that this Court is washing its hands on a matter which necessitates an extremely urgent resolution and attention.

Once and for all, We must free ourselves from the shackles of "curative informations" if We are to protect our cherished constitutional rights. If We continue to adhere blindly to the rule that once an information is filed, the Writ of Habeas Corpus is unavailable without due regard to the procedural orderliness of the antecedent proceedings that gave "life" to such an information, We would then be sanctioning lawlessness on the part of authorities who have once taken the oath to uphold the law. Allowing curative informations to justify illegal searches, arrests and detentions would definitely make every habeas corpus proceeding an exercise in futility, similar to a salt that had lost its taste. This is absolutely repugnant to the basic

and primordial constitutional right to due process of law.

I therefore vote to grant the privilege of the writ of habeas corpus to the Petitioners.

ORIGINAL SIGNED
FRANCISCO P. ACOSTA
Associate Justice

SEPARATE DISSENTING OPINION

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, sancrosanctly embodied in our 1987 Constitution.

The Antecedents:

On February 5, 2010, an *Application for Search Warrant*[2] was filed before Presiding Judge Cesar A. Mangrobang of the Regional Trial

[1] Dissenting Opinion of J. Francisco P. Acosta, p. 10.
[2] Annex "A-1", Petitioners' Memorandum.

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)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.*

[3] Annexes "A-2" to A-9", Petitioners' Memorandum.
[4] Annex "A", Petitioners' Memorandum.

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 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

[5] Annex "A-10", Petitioner's Memorandum.
[6] See Respondents' Memorandum, pp. 2-3.
[7] See Petitioners' Memorandum, p. 18.

Foundation[8](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.

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

[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.

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]

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

[10] See Annexes "1" to "7", Respondents' Manifestation.
[11] Based on the individual affidavits of the 43 detainees; Annexes "B" to "NN-1", Petitioners' Memorandum.

Community for Health Development[12](CHD) and COMMED in a facility within the farmhouse of the Chairman of COMMED, Dra. Velmonte, located at 266 Dela Paz St., Brgy. Maybangcal, 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 Infrantry Brigade, and P/Supt. Marion 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.

[12] Also a non-government organization with the same goal/purpose as that of COMMED; *Supra* at 8.
[13] Petitioners' Memorandum, p. 8.

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.**

[14] *Supra*, note at 2.

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

[17] Petitioners' Memorandum, pp. 14-15 and 17.
[18] Respondents' Memorandum, pp. 1-2.

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.

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,** ***Ilagan 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:

> *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

[19] G.R. No. 70748, Oct. 21, 1985.
[20] Section 3(2), Article III of the 1987 Constitution.

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 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 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

[21] Pp. v. Francisco, G.R. No. 129035, August 22, 2002, 387 SCRA 569, 575; Del Rosario v. Pp., 410 Phil. 642, 662 (2001).
[22] 222 SCRA 557 [1993].

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'etre* 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 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

[23] 20 SCRA 383 [1967].
[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."

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 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 on *DOJ 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' constitutional rights to a counsel of their choice should have been observed.[28]

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[26] G.R. No. 172070-72, June 1, 2007.
[27] *Ibid.*
[28] See Sec. 12, Art. III of the 1987 Constitution.

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 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