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(G. R. No. L-68347. November 7, 1985)

CYNTHIA NOLASCO, MILA AGUILAR, and WILLIE TOLENTINO, *petitioners, vs.* **HON. JUAN PONCE ENRILE, MAJOR GEN. FABIAN C. VER, LT. GEN. FIDEL RAMOS and COL. JESUS ALTUNA,** *respondents.*

(G. R. No. L-68347. November 7, 1985)

MILA AGUILAR, *petitioner, vs.* **MILITARY COMMISSION NO. 25,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA AND ARRAIGNMENT; PLEA *IN ABSENTIA*; NOT ALLOWED.— We hold that AGUILAR had not been legally arraigned when a plea of "not guilty" had been entered for her together with the other defendants who had refused to plead. There can be no arraignment or plea *in absentia*. Under both the 1964 Rules of Court[6] and the 1985 Rules on Criminal Procedure,[7] a defendant must be present at the arraignment and must personally enter his plea. Even under Section 62 of the Manual of Courts Martial, it is provided that "during arraignment, the *accused* and personnel *will stand.*"

2. ID.; ID.; ID.; ARRAIGNMENTN *IN ABSENTIA*; A VIOLATION OF DUE PROCESS CLAUSE.— Respondent MC 25, in its Answer submitted in G.R. No. 69482, invoked Section 5(c) of Presidential Decree No. 39[8] to justify a plea *in absentia*, stating that she was informed of the date set for trial and apprised of the content of the charge sheet through the prescribed service. The cited provision, allowing trial *in absentia*, and which presupposes arraignment *in absentia* (through publication), was promulgated in 1972. It should give way to the 1973 Constitution, effective January 17, 1973, which provides that "after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his

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failure to appear is unjustified."[9] In the Constitutional provision, "arraignment" cannot be construed as inclusive of "arraignment *in absentia*." As a matter of fact, in the codification made in Presidential Decree No. 1835, Section 5, the codal section replaces Section 5(c) of Presidential Decree No. 39. And it should be borne in mind that actual arraignment is an element of due process. Even military tribunals are bound to observe fundamental rules of law and arraignment *in absentia* would be violative of due process.

3. ID.; MILITARY COMMISSION; JURISDICTION OVER SUBVERSION CASES FILED PRIOR TO THE LIFTING OF MARTIAL LAW.— If all the accused in the Subversion Case had not been arraigned by January 12, 1981, there would be no question but that the case should be referred to Fiscals for filing with the civil Courts. The provision does not expressly provide for a case where some defendants had been arraigned prior to January 12, 1981, but other defendants had not been arraigned before said date. We find, in the light of the attendant facts, particularly, that AGUILAR was still not arraigned in the Subversion Case as of January 12, 1981, that MC 25 had lost jurisdiction to try AGUILAR in the Subversion Case when she was brought before that tribunal on September 14, 1984 to appear before the ongoing trial of the other defendants. Moreover, with the lifting of Martial Law on January 17, 1981, Military Commissions were dissolved and they could no longer try civilians.

4. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST DOUBLE JEOPARDY; CANNOT ATTACH IN THE ABSENCE OF ARRAIGNMENT.— That is so in respect of those who are already undergoing trial at the time of the lifting of Martial Law. That yardstick does not apply to AGUILAR who was not within the Military Commission's jurisdiction when Martial Law was lifted. Her case was not effectively pending before said Commission at that point of time. The Subversion Case, therefore, should be transferred to the civil Court for further proceedings. No "irreparable prejudice" will be caused the State inasmuch as, due to the absence of arraignment, no double jeopardy can attach. Nor has any evidence been presented against AGUILAR thus far. The inconvenience and "difficulties" attendant to the transfer, and the quantity of evidence that the State may have to

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trial must yield to the Constitutional rights of a defendant, and to the desired objective for normalcy and civilian supremacy to prevail, with judicial power vested exclusively in civil Courts.

TEEHANKEE, *J., concurring and dissenting opinion*:

1. CRIMINAL LAW; REBELLION; IMPOSABLE PENALTY.— The *rebellion* case filed against her on *March 18, 1977* with *Special Military Commission No. 1* against over 74 accused alleges the commission of rebellion during the period from August, 1973 to March 18, 1977. Rebellion was during this period *not* a capital offense, being punishable only with "*prision mayor* [6 years and 1 day to 12 years] and a fine not exceeding 20,000 pesos" under Article 135 of the Revised Penal Code, which was increased on June 10, 1976 by P.D. 942 to *reclusion temporal* [12 years and 1 day to 20 years] in its medium period with the same amount of fine;[5]

2. ID.; SUBVERSION; INFORMATION MUST BE SPECIFIC WHETHER THE ACCUSED IS AN OFFICER OR A RANKING MEMBER OF THE COMMUNIST PARTY; REASON THEREFOR.— The *subversion* case filed against her on *October 3, 1978* with Military Commission No. 25 is in vague and general terms, charging her and her nine co-defendants of being "officers and/or ranking members of the Communist Party of the Philippines (CPP) and/or the New People's Army." The decision points out that "there was no indication of who were officers and who were ranking members. If Aguilar should now be charged before a civil court with Subversion, the complaint or information against her can be made more specific that she is an officer of the Communist Party, or a ranking member thereof. As a ranking member, the charge against her will not be a *capital offense*."

3. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT; ACCUSED MUST BE PRESENT THEREAT AND PERSONALLY ENTER HIS PLEA.— The majority decision holds correctly on the issue of arraignment *in absentia* that petitioner "AGUILAR had not been legally arraigned when a plea of 'not guilty' had been entered for her together with the other defendants who had refused to plead. There can be no arraignment or plea *in absentia*. Under both the 1964 Rules of Court (Sections 1 and 2, Rule 116) and the 1985 Rules on Criminal Procedure (Section 1[a] and [b], Rule

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1985 Rules on Criminal Procedure (Section 1[a] and [b], Rule 116), a defendant must be present at the arraignment and must personally enter his plea. Even under Section 62 of the Manual of Courts Martial, it is provided that during arraignment, the accused and personnel will stand.'"

4. ID.; MILITARY COMMISSION; WITH ITS DISSOLUTION UPON THE LIFTING OF MARTIAL LAW, IT COULD NO LONGER TRY CIVILIANS.— Since petitioner "AGUILAR was not arraigned in the *subversion* case before MC 25," the majority decision then further holds correctly that the military commission had lost jurisdiction to try her as of *January 12, 1981* (date of effectivity of General Order No. 69 which phased out military commissions) and that accordingly "a new complaint or information should be filed against her before the *civil courts*."[10] The majority decision expressly rules that "in the light of the attendant facts, particularly, that AGUILAR was still not arraigned in the Subversion Case *as of January 12, 1981*, that MC 25 had *lost jurisdiction* to try AGUILAR in the Subversion Case when she was brought before that tribunal on September 14, 1984 to appear before the ongoing trial of the other defendants. Moreover, with the lifting of Martial Law on *January 17, 1981*, Military Commissions were *dissolved* and they could no longer try civilians."

5. ID.; ID.; DOES NOT FORM PART OF THE JUDICIAL SYSTEM HENCE IT HAS NO AUTHORITY OR JURISDICTION WHATSOEVER TO TRY CIVILIANS FOR CIVIL OFFENSES UNDER GENERAL LAW.— The majority decision correctly orders in the judgment that "Respondent Military Commission No. 25 shall *not* take jurisdiction over petitioner, Mila Aguilar, in (the subversion case). The Temporary Restraining Order heretofore issued is hereby made *permanent*."[12] In other words, military commissions, which are admittedly not courts and do not form part of the judicial system but are adjuncts of the executive department "by which military discipline is preserved," have no authority or jurisdiction whatsoever to try civilians for civil offenses under general law. With the lifting of martial law, there can be no dispute about the established principle that "Civilians like petitioner placed on trial for offenses under general law are entitled to trial by judicial process, not by executive or military process. Judicial power is vested by the Constitution exclusively in the Supreme Court and in such inferior courts as are duly established by law."

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6. ID.; ID.; DOES NOT HAVE JURISDICTION OVER A CASE WHERE ACCUSED HAD NOT BEEN ARRAIGNED UPON THE EFFECTIVITY OF G.O. NO. 69.— The majority decision postulates that there continues a valid pending *rebellion* case against petitioner Mila Aguilar for which she must continue to be detained. But the decision itself shows the contrary. Under the *ratio decidendi* of this case and disposition of the *subversion* case, and given exactly the same background facts, the Court must likewise hold that Special Military Commission No. 1 never acquired jurisdiction over her in the *rebellion* case. The rulings at bar in the *subversion* case are fully applicable, *mutatis mutandis*, to the *rebellion* case, *i.e.* her arraignment *in absentia* was null and void;[15] consequently, "the military commission had lost jurisdiction to try her as of *January 12, 1981* (date of effectivity of G.O. No. 69 which phased out military commissions") and "a new complaint or information should be filed against her before the *civil courts*;"[16] and that "in the light of the attendant facts, particularly, that AGUILAR was still not arraigned in the [Rebellion] case as of January 12, 1981, that [Special Military Commission No. 1] had lost jurisdiction to try AGUILAR in the [Rebellion] case when she was brought before that tribunal on [August 16, 1984][17] to appear before the ongoing trial of the other defendants. Moreover, with the lifting of Martial Law on January 17, 1981, Military Commissions were dissolved and they could no longer try civilians."

7. ID.; ID.; COMMITMENT ORDERS ISSUED AGAINST ACCUSED OVER WHOM IT NEVER ACQUIRED JURISDICTION BEFORE ITS DISSLLUTION WERE VOID AND INEFFECTUAL.— The two military commissions never acquired jurisdiction over petitioner Aguilar in the *subversion* and *rebellion* cases. As stated in the majority decision itself, since she was still not arraigned as of *January 12, 1981* when military commissions were phased out under G.O. 69, they lost jurisdiction to try her in *both* cases; furthermore, with the lifting of martial law on January 17, 1981 under Proclamation 2045, "military commissions were *dissolved* and they *could no longer try civilians*." The commitment orders issued by said military commissions on August 16, 1984 and August 17, 1984 in the *rebellion* and *subversion* cases against petitioner Aguilar over whom they never acquired jurisdiction before their

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dissolution on January 17, 1981 were void and ineffectual. They no longer had the competence nor authority to issue the same against petitioner. At that date, military commissions were legally in existence only to terminate the trial of those other accused who had been properly arraigned before their dissolution and whose cases could not be transferred to the civil courts without running afoul of double jeopardy or other similar circumstances. *There exists, then, no "other order from any other court or competent authority"* to hold petitioner Aguilar under custody. The metropolitan trial court's order of August 13, 1984 for her release on ₱600. — bail, *after over fourteen months of detention*, should now be ordered to be honored and implemented without further delay, in line with the basic principle that freedom should be the general and normal state of the people.

8. CRIMINAL LAW; REBELLION; MUST BE SUPPORTED BY EVIDENCE.— Petitioner's position in the *rebellion* case is even much stronger than in the *subversion* case, as shown by the very facts stated in the majority decision, *viz*. the *rebellion* case filed against her covered the period from August, 1973 to March 18, 1977 when rebellion was bailable, *not* being a capital offense;[19] and the prosecution rested its case in 1982, and had "not presented a single evidence against her" nor is "her name mentioned in any of the prosecution's evidence."[20] So there is no evidence whatever to support the charge of rebellion. The best proof of this is the very finding of the Quezon City fiscal who conducted the preliminary investigation and *twice* rejected the charges for "Subversion/Rebellion And/or Conspiracy to Commit Rebellion/Subversion or Sedition" filed against her after her arrest on August 6, 1984 and found that she and her co-petitioners could be charged only for the minor offense of *illegal possession of subversive documents*.[21] Indeed, as asserted by her counsel, "(S)urely if the petitioners were either ranking leaders or members of the Communist Party of the Philippines or the National Democratic Front, it is exceedingly bizarre that the sole crime imputed to them is only Violation of P.D. 33 [Illegal Possession of Subversive Materials]. xxx The truth is that at the time of their arrest, petitioners were engaged in legal activities."

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ABAD SANTOS, *J., concuring and dissenting opinion*:

REMEDIAIL LAW; MILITARY COMMISION; REFERRAL OF THE CASE TO THE PROPER COURT AFTER ITS DISSOLUTION MUST BE DONE WITHIN TEN (10) DAYS.— I concur in the ruling that Military Commission No. 25 has no jurisdiction to try Mila Aguilar for the *subversion case*. But thirty days is too long a period for the military to refer the case to the civilian authorities. The referral is a simple procedure so a more reasonable period would be ten days. If a referral is made within the period, the civil authorities should conduct a preliminary investigation to determine whether or not an information for subversion should be filed against Mila Aguilar. The preliminary investigation should not be ex-parte. Whether or not a referral is made, Mila Aguilar should not be detained in the meantime because the civil courts are functioning normally and in the light of the rules and regulations implementing PD Nos. 1877 and 1877-A, the authorities should resort to said courts for her detention. If an information be filed, she can apply for bail and it is for the prosecution to show that the evidence against her is strong.

APPEARANCES OF COUNSEL

Jose W. Diokno, Joker P. Arroyo, Rene A.V. Sarmiento, Dan Malabonga and Cesar Maravilla for petitioners.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

G.R. No. 68347 entitled "*Nolasco, et al. vs. Hon. Juan Ponce Enrile, et al.*" is a Petition for *Mandamus* to compel respondents to comply with the Order to release Cynthia NOLASCO, Willie TOLENTINO and Mila AGUILAR issued by the Metropolitan Trial Court of Quezon City in Criminal Case No. 223466 for Illegal Possession of Subversive Documents, which respondents have refused to do on the ground that they are in custody under a Presidential Detention Action (PDA). In this Court's Resolution of December 19, 1984, we ordered NOLASCO and TOLENTINO

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released, while in respect of AGUILAR, the case was set for hearing and she continued to remain under custody. NOLASCO and TOLENTINO were released from detention on January 12, 1985 pursuant to the Order of the President "on the basis of findings that they no longer pose any appreciable danger to national security and public order."[1] G.R. No. 68347, therefore, is now confined to AGUILAR' s petition for release.

G.R. No. 69482, entitled "*Mila Aguilar vs. Military Commission No. 25*," is a Petition for *Certiorari*, Prohibition and *Mandamus* with Preliminary Injunction praying that said Commission be restrained from further proceeding with Criminal Case No. MC-25-113 for Subversion, entitled "*People vs. Jose Ma. Sison, et al.*" insofar as AGUILAR, who is one of the ten (10) defendants therein, is concerned on the ground that it lacks jurisdiction over her, and that the Commission be ordered to dismiss the subversion charge against her. On January 10, 1985, this Court issued a Temporary Restraining Order enjoining said Military Commission from further proceeding with the case insofar as AGUILAR is concerned.

The two cases were ordered consolidated upon motion of petitioners' counsel.

The background facts for those two consolidated cases may be stated as follows:

1. On March 18, 1977, before Special Military Commission No. 1, petitioner Mila Aguilar (hereinafter referred to as AGUILAR), who is listed as No. 74 among the defendants, was charged with Rebellion[2] in Criminal Case No. SMC 1-1 (hereinafter referred to as SMC 1) entitled "*People vs. Jose Ma. Sison, et al.*" (hereinafter referred to as the Rebellion Case). The charge alleged that the rebellion was committed "in or about the month of August, 1973 to February, 1974 and for sometime prior and subsequent thereto." During the alleged period (August, 1973 to March 18, 1977), Rebellion was not a capital offense, being punishable only with "*prision mayor* and a fine not exceeding

[1] *Rollo*, p. 147.

[2] Article 134, in relation to Article 135, Revised Penal Code.

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₱20,000 pesos" under Article 135 of the Revised Penal Code. Presidential Decree No. 942, effective on June 10, 1976, increased the penalty to *reclusion temporal* in its medium period and a fine in the same amount. It was only on January 16, 1981, and through Presidential Decree No. 1834, that Rebellion became a capital offense with Article 135 of the Code being amended by raising the penalty for Rebellion to "*reclusion perpetua* to death."

2. On October 3, 1978, AGUILAR and nine others were charged before Military Commission No. 25 (hereinafter referred to as MC 25) with Subversion[3] in Criminal Case No. MC-25-113 entitled "*People of the Philippines vs. Jose Ma. Sison, et al.*," committed "on or about the year 1968 and for sometime prior and subsequent thereto" (hereinafter referred to as the Subversion Case).

3. AGUILAR was at large until August 6, 1984 when she was arrested. In the meantime:

(a) In the Rebellion Case, arraignment was held on October 28, 1978, without the presence of AGUILAR. The other defendants in custody refused to plead, and pleas of "not guilty" were entered for them including one for AGUILAR. In June, 1982, trial commenced and towards the latter part of that year the prosecution rested its case. In July, 1984, Petitions for *Certiorari*, Prohibition and *Mandamus* were filed against SMC 1 in G.R. Nos. 67850 and 67851 of this Court, entitled "*Ruben Guevarra, et al. vs. Special Military Commission No. 1.*" On July 31, 1984, we issued in those cases a Temporary Restraining Order enjoining SMC 1 from proceeding with the Rebellion Case.[4]

(b) In regards to the Subversion Case, a Petition for *Habeas Corpus*, Prohibition and *Mandamus* with Preliminary Injunction was filed in G.R. No. 50155 entitled "*Saturnino Ocampo, et al. vs. Military Commission No. 25*" in March, 1979 which, however, was dismissed on November 6, 1981. A Motion for Reconsideration was denied on July 20, 1982. Trial in the

[3] Violation of R.A. No. 1700, as amended by P.D. No. 885.

[4] G.R. No. 68347 *Rollo*. p. 229.

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Subversion Case resumed on January 16, 1984. It may be mentioned that a plea of "not guilty" had also been entered for AGUILAR notwithstanding that she had not yet been arrested up to then.

4. (a) As previously stated, AGUILAR was arrested on August 6, 1984 in Quezon City, together with one, Cynthia Nolasco (hereinafter referred to as NOLASCO).

(b) On that same date, an apartment leased by NOLASCO at No. 239-B Mayon, Quezon City, was raided as a suspected CPP-NPA under-ground house, which was found under the charge of Willie Tolentino (hereinafter referred to as TOLENTINO). Several documents were seized from the apartment, and TOLENTINO was arrested.

(c) On August 7, 1984, a Presidential Detention Action (PDA) was issued against AGUILAR, NOLASCO and TOLENTINO.

(d) On August 13, 1984, an Information was filed against AGUILAR, NOLASCO and TOLENTINO for Illegal Possession of Subversive Documents in Criminal Case No. 223466 of the Quezon City Metropolitan Trial Court (hereinafter referred to as the Subversive Documents Case). That Court ordered the release of the three defendants on the same day, August 13, 1984, on a ₱600.00 bail for each, "subject to the existence of any other order from any other court or competent authority to the effect that they continue to remain under your custody."

(e) On August 16, 1984, in the Rebellion Case, SMC-1 ordered AGUILAR held in custody. On August 17, 1984, in the Subversion Case, MC 25 also directed AGUILAR's confinement during the pendency of trial.[5]

(f) As the custodial authorities had refused to release them because of the PDA, the three defendants filed the Petition for *Mandamus* in G.R. No. 68347. In our Resolution of December 19, 1984 in that case, we ordered the release of NOLASCO and TOLENTINO, but reserved action in regards to AGUILAR. NOLASCO and TOLENTINO were subsequently released such

[5] Annexes "1" and "2", Reply by respondents to Traverse.

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that, in G.R. No. 68347, AGUILAR has remained the sole petitioner. Hence, the consolidation of these two cases.

In G.R. No. 68347, respondents oppose the release of AGUILAR on the ground *inter alia* that she belongs to the highest echelon of the Communist Party of the Philippines' (CPP) central committee; that in 1982 a reward of ₱100,000.00 had been posted for her capture; and that to release her would undermine Government efforts to repel the movement to overthrow our democratic institutions with the use of deception, force and violence. While in G.R. No. 69482, respondent MC 25 upholds its jurisdiction over AGUILAR on the ground that her case was already filed and pending trial before it as of January 12, 1981 when General Order No. 69 (*infra*) was issued.

5. (a) As previously stated, the prosecution in the Rebellion Case had rested its case in the latter part of 1982; and that, on July 31, 1984, we had issued a Temporary Restraining Order in G.R. Nos. 67850 and 67851 enjoining SMC 1 from proceeding with the case.

(b) On September 14, 1984, in the Subversion Case, AGUILAR was brought before MC 25 to appear and be involved in the ongoing trial of the case. AGUILAR's counsel questioned the jurisdiction of the Commission over her, but the Commission upheld its jurisdiction. Challenging that ruling, on January 7, 1985, AGUILAR filed her Petition in G.R. No. 69482 for *Certiorari*, Prohibition and *Mandamus* with Preliminary Injunction. A Temporary Restraining Order enjoining MC 25 from proceeding further with the Subversion Case, insofar as it involves AGUILAR, was issued by this Court on January 10, 1985.

The basic issue to be resolved is whether or not MC 25 can still exercise jurisdiction over AGUILAR in the Subversion Case. What has first to be determined is the validity of the plea of "not guilty" entered by the Commission on her behalf in that case.

We hold that AGUILAR had not been legally arraigned when a plea of "not guilty" had been entered for her together with

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the other defendants who had refused to plead. There can be no arraignment or plea *in absentia*. Under both the 1964 Rules of Court[6] and the 1985 Rules on Criminal Procedure,[7] a defendant must be present at the arraignment and must personally enter his plea. Even under Section 62 of the Manual of Courts Martial, it is provided that "during arraignment, the *accused* and personnel *will stand*."

Respondent MC 25, in its Answer submitted in G.R. No. 69482, invoked Section 5(c) of Presidential Decree No. 39[8] to justify a plea *in absentia*, stating that she was informed of the date set for trial and apprised of the content of the charge sheet through the prescribed service. The cited provision, allowing trial *in absentia*, and which presupposes arraignment *in absentia* (through publication), was promulgated in 1972. It should give way to the 1973 Constitution, effective January 17, 1973, which provides that "after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."[9] In the Constitutional provision, "arraignment" cannot be construed as inclusive of "arraignment *in absentia*." As a matter of fact, in the codification made in Presidential Decree No. 1835, Section 5 provides:

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[6] Sections 1 and 2, Rule 116.

[7] Sections 1(a) and (b), Rule 116.

[8] "(5) Rights of Accused. — The accused shall be entitled:

xxx xxx xxx

(c) To be present at the arraignment, when he enters a plea of guilt and at the pronouncement of judgment of conviction. Where the accused is in custody or charged with a capital offense, he shall be entitled to be present at all stages of the trial. In cases where there is allegation of conspiracy and one or more accused are available for trial and others are not, trial may proceed against all, provided, that the indictment shall have been published at least once a week for two consecutive weeks in any newspaper of general circulation and a copy of a notice of trial shall have been served on the accused or on his next of kin or at his last known residence or business address with a person of sufficient discretion to receive the same."

[9] Section 19, Article IV.

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"SEC. 5. *After the arraignment* of an accused who is charged with subversion, the trial may proceed notwithstanding the absence of the accused, provided that he has been duly notified and his failure to appear is unjustified. Judgment may be promulgated *in absentia* and the penalty of confiscation of his properties in the Philippines may be immediately executed."

The codal section replaces Section 5(c) of Presidential Decree No. 39. And it should be borne in mind that actual arraignment is an element of due process.[10] Even military tribunals are bound to observe fundamental rules of law[11] and arraignment *in absentia* would be violative of due process.

As AGUILAR was not arraigned before MC 25, the next question is to determine whether MC 25 can try her at this late date in the Subversion Case, together with her other co-defendants, or whether a new Complaint or Information should be filed against her before the civil Courts. General Order No. 69, effective January 12, 1981, provides:

"(b) *Cases already investigated (ready for trial)* — All cases which, on the effective date of this Order, have been referred to the military tribunals for trial pursuant to Presidential Decree No. 39, as amended, wherein the accused have not as yet entered their pleas, shall be referred to the provincial or city fiscals or civil government prosecutors concerned, who, on the basis of the charges thus preferred by the Judge Advocate General, AFP, consequent to a finding of a *prima facie* case after preliminary investigation, shall file the corresponding informations before the civil courts of competent jurisdiction without the need of conducting another preliminary investigation."

If all the accused in the Subversion Case had not been arraigned by January 12, 1981, there would be no question but that the case should be referred to Fiscals for filing with the civil Courts. The provision does not expressly provide for a case where some defendants had been arraigned prior to January 12, 1981, but other defendants had not been arraigned before said date. We

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[10] *Borja vs. Mendoza*, 77 SCRA 422 [1977].

[11] *Aquino, Jr. vs. Military Commission No. 2*, 63 SCRA 546 [1975].

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find, in the light of the attendant facts, particularly, that AGUILAR was still not arraigned in the Subversion Case as of January 12, 1981, that MC 25 had lost jurisdiction to try AGUILAR in the Subversion Case when she was brought before that tribunal on September 14, 1984 to appear before the ongoing trial of the other defendants. Moreover, with the lifting of Martial Law on January 17, 1981, Military Commissions were dissolved and they could no longer try civilians.[12]

It is true that the dissolution of Military Commissions was conditioned on the final determination of cases pending with them.

"General Order No. 8 is also hereby revoked and the military tribunals created pursuant thereto are hereby dissolved upon final determination of cases pending therein which may not be transferred to the civil courts without irreparable prejudice to the state in view of the rules on double jeopardy, or other circumstances which render further prosecution of the cases difficult, if not impossible; xxx"[13]

That is so in respect of those who are already undergoing trial at the time of the lifting of Martial Law. That yardstick does not apply to AGUILAR who was not within the Military Commission's jurisdiction when Martial Law was lifted. Her case was not effectively pending before said Commission at that point of time.

The Subversion Case, therefore, should be transferred to the civil Court for further proceedings. No "irreparable prejudice" will be caused the State inasmuch as, due to the absence of arraignment, no double jeopardy can attach. Nor has any evidence been presented against AGUILAR thus far. The inconvenience and ("difficulties") attendant to the transfer, and the quantity of evidence that the State may have to reintroduce in a separate trial must yield to the Constitutional rights of a defendant, and to the desired objective for normalcy and civilian supremacy to prevail, with judicial power vested exclusively in civil Courts.

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[12] *Sison vs. Enrile*, 102 SCRA 33, 37 [1981].

[13] Proclamation No. 2045, p. 17.

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We have also noted that, in the Charge Sheet for Subversion, the ten defendants were accused of being "officers and/or ranking *members* of the Communist Party of the Philippines (CPP) and/or the New People's Army." There was no indication of who were officers and who were ranking members. Moreover, the guilt of a ranking member (not a ranking leader) should not be equated with that of an officer. If AGUILAR should now be charged before a civil Court with Subversion, the Complaint or Information against her can be made more specific that she is an officer of the Communist Party, or a ranking member thereof. As a ranking *member*, the charge against her will not be a capital offense.[14]

In so far as the Rebellion Case is concerned, while it is not involved in these two cases, it does have an important bearing. It should be recalled that, on August 16, 1984, SMC-1 had again ordered AGUILAR held in custody. And since the Order of Release of the Metropolitan Trial Court of Quezon City in the Subversive Documents Case was "subject to the existence of any other order from any other court or competent authority to the effect that they continue to remain under your custody," the release of AGUILAR cannot be ordered. Significant also is the fact that on July 31, 1984, this Court, in G.R. Nos. 67850 and 67851 entitled "*Ruben Guevarra, et al. vs. Special Military Commission No. 1*", had issued a Temporary Restraining Order enjoining SMC 1 from proceeding with the Rebellion Case. To all intends and purposes, therefore, it is still a pending case.

WHEREFORE, judgment in these two consolidated cases is rendered as follows:

(1) Respondent Military Commission No. 25 shall not take jurisdiction over petitioner, Mila Aguilar, in its Case No. MC-25-113, entitled "*People of the Philippines vs. Jose Ma. Sison, et al.*" The Temporary Restraining Order heretofore issued is hereby made permanent. Within 30 days after receipt of notice hereof, the said respondent shall refer the case against petitioner Mila Aguilar to the proper provincial or city Fiscal, or civil

[14] R.A. 1700, as amended by P.D. No. 885.

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government prosecutor, so that the corresponding Information may be filed against her before a civil Court of competent jurisdiction. The date of the referral shall be immediately advised to this Court.

(2) If, within forty-five (45) days after the date of referral, no Information is filed against petitioner, Mila Aguilar, before a civil Court, she shall be immediately released in relation to the MC-25-113 case, as well as in relation to Criminal Case No. 223466 of the Quezon City Metropolitan Trial Court where she has already filed bail, without prejudice to her detention during the continued pendency of the Rebellion Case in her regard.

(3) If, within forty-five (45) days after the mentioned referral, an Information is filed before a civil court against petitioner Mila Aguilar, charging her with a capital offense, her petitions in these consolidated G.R. No. 68347 and No. 69482 cases shall be deemed dismissed in view of the pendency of the Rebellion Case and of the capital offense case.

(4) If the Information filed before a civil Court does not charge petitioner, Mila Aguilar, with a capital offense, and the civil Court shall order her release on bail, she shall also be released in relation to Criminal Case No. 223466 of the Metropolitan Trial Court of Quezon City, on the strength of the bail she has already filed, but also without prejudice to her detention during the continued pendency of the Rebellion Case in her regard.

SO ORDERED.

Makasiar, C.J., Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas, Alampay, and *Patajo, JJ.*, concur.

Teehankee and *Abad Santos, JJ.*, see separate concurring and dissenting opinions.

Aquino, J., dissents. Section 5(c) of PD No. 39 applies to the case.

Concepcion, Jr., J., no part.

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TEEHANKEE, *J., concurring and dissenting*:

Petitioner Mila Aguilar, together with her co-petitioners in the *main case, G.R. No. 68347* (referring to the criminal case for Illegal Possession of Subversive Documents filed against them in the Metropolitan Trial Court of Quezon City), seeks to be set at liberty and prays of this Court to order her release on ₱600.- bail as fixed and granted by the said trial court and duly posted by them. Cynthia Nolasco and herein petitioner Mila Aguilar, Directress and Assistant Directress, respectively, of the Extension Services Center at St. Joseph's College in Quezon City, were taken into custody by several armed plainclothes men of the Constabulary Security Group in Quezon City on August 6, 1984 while on board a passenger jeepney at the intersection of Mayon and P. Margal Streets in Quezon City. A red Ford Fiera blocked the passenger jeepney. Then the men alighted from two cars and forcibly took the women from the jeepney and blindfolded them. They did not identify themselves nor warn the women about the arrest. The incident was first reported by the press as a criminal abduction. Willie Tolentino, a grant-in-aid scholar at the same college's non-formal Education Program had likewise been taken into custody on the same day by other armed plainclothes men of the same Constabulary Security Group at Cynthia Nolasco's apartment at Mayon Street, of which he was the caretaker. The apartment was ransacked without any search warrant shown to him.[1] The Quezon City fiscal on August 10, 1984 conducted an investigation of the subversion charges[2] filed against all three and found that they could be charged only for *illegal possession of subversive documents* under P.D. 33 and recommended their release on bail at ₱600.00 each, which they forthwith posted and the trial court approved on August 13, 1984. But the respondent military authorities refused to honor the court's release order on bail. When FLAG Atty. Cesar F. Maravilla went to Camp Crame in the morning of the next day, August 14th, to serve the court's

[1] *Rollo*, pp. 3-5.

[2] The charges were for "Subversion/Rebellion And/or Conspiracy To Commit Rebellion/Subversion or Sedition."

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order of release, the duty officer refused to receive the same, despite counsel's repeated explanations that it was a ministerial duty of the officer's part to receive it.[3] At 5:00 p.m. of the same day, the CSG legal officer furnished FLAG Atty. Rene V. Sarmiento a xerox copy of a Preventive Detention Action (PDA) dated August 7, 1984 issued against the three detainees, after earlier representations that no PDA was issued against them. The PDA was issued "on the basis of evidence and verified reports that [they] have violated P.D. 1835 [on subversion] and had committed acts inimical to public safety and public order." The FLAG lawyers went to Camp Crame on August 7th. The custodian there denied having custody of the detainees. They were able to see the detainees only in the afternoon of August 8th.[4] The military's motion of August 16, 1984 for reconsideration to amend the information to subversion under P.D. No. 1835 (excluding Tolentino) was rejected for lack of basis by the fiscal per resolution of November 16, 1984.

The Court per its Resolution dated December 19, 1984 but released only on January 7, 1985 granted the petition insofar as Cynthia Nolasco and Willie Tolentino were concerned, notwithstanding the PDA (which ordered their detention for at least one year). As stated in the majority decision, Nolasco and Tolentino were released from detention on January 12, 1985, after the President lifted the PDA "on the basis of findings that *they no longer pose any appreciable danger to national security and public order.*" (Italics supplied).

But since the Quezon City trial court's order of release on bail carried the standard saving clause to effect release "subject to the existence of *any other order from any other court or competent authority* to the effect that they continue to remain under your custody" and respondents alleged that Mila Aguilar is a communist leader with two pending related cases of subversion and rebellion *before military commissions*, the court held in abeyance her release until the parties could be heard. So Mila Aguilar is now the sole remaining petitioner at bar.

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[3] *Rollo*, p. 6, Annex D, petition.

[4] *Rollo*, pp. 6-7, Annex E, petition.

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Concurrence

I. The hearing so held and the record established the following facts and legal findings and disposition, as stated in the majority decision penned by Mme. Justice Melencio-Herrera, with which I *concur*:

1. The *rebellion* case filed against her on *March 18, 1977* with *Special Military Commission No. 1* against over 74 accused alleges the commission of rebellion during the period from August, 1973 to March 18, 1977. Rebellion was during this period *not* a capital offense, being punishable only with "*prision mayor* [6 years and 1 day to 12 years] and a fine not exceeding 20,000 pesos" under Article 135 of the Revised Penal Code, which was increased on June 10, 1976 by P.D. 942 to *reclusion temporal* [12 years and 1 day to 20 years] in its medium period with the same amount of fine;[5]

2. The *subversion* case filed against her on *October 3, 1978* with Military Commission No. 25 is in vague and general terms, charging her and her nine co-defendants of being "officers and/or ranking members of the Communist Party of the Philippines (CPP) and/or the New People's Army." The decision points out that "there was no indication of who were officers and who were ranking members. If Aguilar should now be charged before a civil court with Subversion, the complaint or information against her can be made more specific that she is an officer of the Communist Party, or a ranking member thereof. As a ranking member, the charge against her will not be a *capital offense*."[6]

3. Since she had been taken into custody only on *August 6, 1984*, she was *not* legally arraigned in both cases. In the *rebellion* case, arraignment was held on October 28, *1978 without her presence*. Pleas of "not guilty" were entered for her by the military commission. Trial was held *in absentia*, insofar as she was concerned. It commenced in June, *1982* and the prosecution rested its case towards the latter part of that year. [It is noteworthy that petitioner Mila Aguilar's Traverse of March 6, 1985 that

[5] At page 2, majority decision.

[6] At pages 2, 4, *idem*.

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"the *prosecution* which *rested* its case in the later part of *1982* has *not* presented a *single evidence* against petitioner. *Petitioner's name* was *not mentioned* in any of the prosecution's evidence," is *unrebutted* and *not denied* in respondents' Reply to Traverse of July 16, 1985.] In G.R. No. 67850-51 of this Court entitled "*Ruben Guevarra, et al. vs. Special Military Commission No. 1*," this Court issued on *July 31, 1984* a temporary restraining order enjoining the military commission from proceeding with the *rebellion* case.[7]

4. In the *subversion* case, she was brought on September 14, 1984 before Military Commission No. 25 to appear and be involved in the ongoing trial of the case. She challenged the commission's jurisdiction and upon its denial, she filed on January 7, 1985 the *second case at bar*, G.R. No. 69482, to assail its jurisdiction and the Court issued a temporary restraining order enjoining the respondent military commission from proceeding further *against her* in the *subversion* case.

5. As formulated in the majority decision "(T)he *basic* issue to be resolved is whether or not MC 25 can still exercise *jurisdiction* over Aguilar in the *Subversion Case*. What has *first* to be determined is the validity of the plea of `not guilty' entered by the Commission on her behalf in that case."[8]

6. The majority decision holds correctly on the issue of arraignment *in absentia* that petitioner "AGUILAR had not been legally arraigned when a plea of `not guilty' had been entered for her together with the other defendants who had refused to plead. There can be no arraignment or plea *in absentia*. Under both the 1964 Rules of Court (Sections 1 and 2, Rule 116) and the 1985 Rules on Criminal Procedure (Section 1[a] and [b], Rule 116), a defendant must be present at the arraignment and must personally enter his plea. Even under Section 62 of the Manual of Courts Martial, it is provided that during arraignment, the accused and personnel will stand.'"[9]

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[7] At pages, 3, 4, *idem*.

[8] At page 4, *idem*.

[9] *Idem*, *idem*.

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7. Since petitioner "AGUILAR was not arraigned in the *subversion* case before MC 25," the majority decision then further holds correctly that the military commission had lost jurisdiction to try her as of *January 12, 1981* (date of effectivity of General Order No. 69 which phased out military commissions) and that accordingly "a new complaint or information should be filed against her before the *civil courts*."[10] The majority decision expressly rules that "in the light of the attendant facts, particularly, that AGUILAR was still not arraigned in the Subversion Case *as of January 12, 1981*, that MC 25 had *lost jurisdiction* to try AGUILAR in the Subversion Case when she was brought before that tribunal on September 14, 1984 to appear before the ongoing trial of the other defendants. Moreover, with the lifting of Martial Law on *January 17, 1981*, Military Commissions were *dissolved* and they could no longer try civilians."[11]

8. The majority decision correctly orders in the judgment that "Respondent Military Commission No. 25 shall *not* take jurisdiction over petitioner, Mila Aguilar, in (the subversion case). The Temporary Restraining Order heretofore issued is hereby made *permanent*."[12] In other words, military commissions, which are admittedly not courts and do not form part of the judicial system but are adjuncts of the executive department "by which military discipline is preserved," have no authority or jurisdiction whatsoever to try civilians for civil offenses under general law. With the lifting of martial law, there can be no dispute about the established principle that "Civilians like petitioner placed on trial for offenses under general law are entitled to trial by judicial process, not by executive or military process. Judicial power is vested by the Constitution exclusively in the Supreme Court and in such inferior courts as are duly established by law."[13] It is equally indisputable that " The presiding officer at

[10] At page 5, *idem*.

[11] At page 6, *idem*; italics supplied.

[12] At page 7, par. 1, *idem*.

[13] See writer's dissenting opinion in *Aquino, Jr. vs. Military Commission No. 2*, 63 SCRA 546 (1975).

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a court martial is not a judge whose objectivity and independence are protected by tenure and undiminished salary and nurtured by the judicial tradition, but is a military law officer. Substantially different rules of evidence and procedure apply in military trials. Apart from these differences, the suggestion of the possibility of influence on the actions of the court-martial by the officer who convenes it, selects its members and the counsel on both sides, and who usually has direct command authority over its members is a pervasive one in military law despite strenuous efforts to eliminate the danger.'" The late Justice Hugo Black of the U.S. Supreme Court stressed that '(A) Court Martial is not yet an independent instrument of justice but remains to a significant degree a specialized part of the over-all mechanism by which military discipline is preserved' and Free countries of the world have tried to restrict military tribunals to the narrowest jurisdiction deemed absolutely essential to maintaining discipline among troops in active service.'"[14]

Dissent

II. The judgment or dispositive portion of the majority decision then directs that the *subversion* case against petitioner Mila Aguilar be referred, within thirty (30) days after receipt of notice of the decision, by respondents to the proper provincial or city fiscal or civil government prosecutor for filing of the corresponding information before the civil court of competent jurisdiction. The judgment further provides conditionally that if within forty-five (45) days after date of referral, *no information is filed* against petitioner Mila Aguilar, then she shall be immediately released in relation to the *subversion* case as well as to the illegal possession of subversive documents pending in the Quezon City Metropolitan Trial Court where she has already posted the ₱600. - bail "without prejudice to her detention during the continued pendency of the rebellion case in her regard." It is in connection with such *inadequate and incomplete disposition* of the case and *denial of justice and due process* that I *dissent* from the majority decision and vote to grant Mila Aguilar's petition in the main case and set her free, like her released co-

[14] *Idem.*

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petitioners Cynthia Nolasco and Willie Tolentino, for the following reasons and considerations:

1. The majority decision postulates that there continues a valid pending *rebellion* case against petitioner Mila Aguilar for which she must continue to be detained. But the decision itself shows the contrary. Under the *ratio decidendi* of this case and disposition of the *subversion* case, and given exactly the same background facts, the Court must likewise hold that Special Military Commission No. 1 never acquired jurisdiction over her in the *rebellion* case. The rulings at bar in the *subversion* case are fully applicable, *mutatis mutandis*, to the *rebellion* case, *i.e.* her arraignment *in absentia* was null and void;[15] consequently, "the military commission had lost jurisdiction to try her as of *January 12, 1981* (date of effectivity of G.O. No. 69 which phased out military commissions") and "a new complaint or information should be filed against her before the *civil courts*;"[16] and that "in the light of the attendant facts, particularly, that AGUILAR was still not arraigned in the [Rebellion] case as of January 12, 1981, that [Special Military Commission No. 1] had lost jurisdiction to try AGUILAR in the [Rebellion] case when she was brought before that tribunal on [August 16, 1984][17] to appear before the ongoing trial of the other defendants. Moreover, with the lifting of Martial Law on January 17, 1981, Military Commissions were dissolved and they could no longer try civilians."[18]

2. Petitioner's position in the *rebellion* case is even much stronger than in the *subversion* case, as shown by the very facts stated in the majority decision, *viz.* the *rebellion* case filed against her covered the period from August, 1973 to March 18, 1977 when rebellion was bailable, *not* being a capital offense;[19]

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[15] *Supra*. par. 6 of Part I hereof (concurrence).

[16] *Supra*, par. 7, *idem*.

[17] Taken from Annex 1, Respondents' Reply to Traverse dated July 15, 1985.

[18] *Supra*, par. 7 of Part I hereof (concurrence).

[19] *Supra*, par. 1, *idem*.

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and the prosecution rested its case in 1982, and had "not presented a single evidence against her" nor is "her name mentioned in any of the prosecution's evidence."[20] So there is no evidence whatever to support the charge of rebellion. The best proof of this is the very finding of the Quezon City fiscal who conducted the preliminary investigation and *twice* rejected the charges for "Subversion/Rebellion And/or Conspiracy to Commit Rebellion/ Subversion or Sedition" filed against her after her arrest on August 6, 1984 and found that she and her co-petitioners could be charged only for the minor offense of *illegal possession of subversive documents*.[21] Indeed, as asserted by her counsel, "(S)urely if the petitioners were either ranking leaders or members of the Communist Party of the Philippines or the National Democratic Front, it is exceedingly bizarre that the sole crime imputed to them is only Violation of P.D. 33 [Illegal Possession of Subversive Materials]. xxx The truth is that at the time of their arrest, petitioners were engaged in legal activities."[22]

3. The two military commissions never acquired jurisdiction over petitioner Aguilar in the *subversion* and *rebellion* cases. As stated in the majority decision itself, since she was still not arraigned as of *January 12, 1981* when military commissions were phased out under G.O. 69, they lost jurisdiction to try her in *both* cases; furthermore, with the lifting of martial law on January 17, 1981 under Proclamation 2045, "military commissions were *dissolved* and they *could no longer try civilians*." The commitment orders issued by said military commissions on August 16, 1984 and August 17, 1984 in the *rebellion* and *subversion* cases against petitioner Aguilar over whom they never acquired jurisdiction before their dissolution on January 17, 1981 were void and ineffectual. They no longer had the competence nor authority to issue the same against petitioner. At that date, military commissions were legally in existence only to terminate the trial of those other accused who had been properly arraigned before their dissolution and whose cases could not be transferred

[20] *Supra*, par. 3. *idem*.

[21] *Supra*, at page 1.

[22] Petitioners' Reply, *Rollo*, p. 75.

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to the civil courts without running afoul of double jeopardy or other similar circumstances. *There exists, then, no "other order from any other court or competent authority"* to hold petitioner Aguilar under custody. The metropolitan trial - bail, *after over fourteen months of detention*, should now be ordered to be honored and implemented without further delay, in line with the basic principle that freedom should be the general and normal state of the people.

4. The only apparent reason for the majority decision's adverse disposition is its peremptory ruling that the rebellion case "is not involved in these two cases." But it recognizes that "it does have an important bearing" and cites the "significant fact" that this Court on July 31, 1984 (even *before* the apprehension of petitioner Aguilar on August 6, 1984) had issued a temporary restraining order in G.R. No. 67850-51 (involving another accused Ruben Guevarra similarly situated as Aguilar who had not been arraigned as of January 12, 1981 and therefore no longer fell under the jurisdiction of the military commission) enjoining the military commission from proceeding with the rebellion case. The happenstance that petitioner Aguilar did not herein implead Special Military Commission No. 1 in the *rebellion* case or did not join Guevarra as co-petitioner in the aforecited case G.R. No. 67850-51 instituted by Guevarra is immaterial. The special military commission had not insisted on bringing her into the trial, where the prosecution had rested its case since 1982. (See Annex 1, Respondents' Reply to Traverse dated July 15, 1985, wherein the commission's president announced at the August 16, 1984 proceeding that "So, prosecution cannot continue," as far as petitioner Aguilar was concerned.) The temporary restraining order issued by this Court in Guevarra's case was of a general character enjoining *all* further proceedings by the commission in the *rebellion* case and therefore likewise redounded in favor of Aguilar. The fact remains that the *rebellion* case is of course both involved in these two cases and *does* have an important bearing herein, because its pendency and the military commission's commitment order of August 16, 1984 to hold her in custody are cited as the reason for not complying with the Quezon City trial court's order of release on a ₱600.

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- bail posted by petitioner. As already stressed above, the *rebellion* case and the commitment order against Aguilar are *void and ineffectual* for *loss of jurisdiction* since the dissolution of the military commissions on January 17, 1981. There is therefore no impediment against the release of Aguilar on the ₱600.- bail already posted by her in the *only remaining case* against her for illegal possession of subversive documents.

5. Technically, this Court may not make the same disposition in the *subversion* case at bar of ordering that the military commission not take jurisdiction over petitioner Mila Aguilar in the *rebellion* case and make permanent the temporary restraining order therein issued at Guevarra's instance enjoining said commission from all proceedings in the *rebellion* case against her, since the case is not being resolved here. But certainly, this Court *can* hold that the pendency of the rebellion case and the commitment order against Aguilar do *not* constitute a valid reason against her release on her approved ₱600. - bail for the oft repeated reason that the dissolved military commission never acquired jurisdiction over her.

6. The issue of the dissolved military commission's lost jurisdiction over accused like Ruben Guevarra in case G.R. No. 67850-51 and petitioner Aguilar herein, since, as already stated, they were arraigned in the rebellion case as of the military commission's dissolution of January 17, 1981, cannot but be resolved in the same manner as in the *subversion* case at bar. It is proper to indicate herein that both the subversion and rebellion charges against petitioner Aguilar be referred to the proper provincial or city fiscal or civil government prosecutor for preliminary investigation and for the filing or otherwise of the corresponding information before a civil court of competent jurisdiction. This is of course subject to any defense of a prior disposition that she may properly raise as submitted in her Traverse[23] such as the fact, as hereinabove stated, that the Quezon City fiscal had already conducted such preliminary investigation of the same rebellion and subversion charges and that on the basis of the same evidence submitted by the military,

[23] Record, pp. 226-235.

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first in the 1978 subversion case, as well as before the Quezon City fiscal in the preliminary investigation of the subversion and rebellion charges filed against her and her co-petitioners in August, 1984, the said civil prosecutor had *twice* ruled that *only* a charge of *illegal possession of subversive documents* could be filed against them. It will be up to respondents in such preliminary investigation as may be properly held to prove their seemingly excessive charges against petitioner Mila Aguilar of being a top communist leader. Suffice it to note that the majority decision in its dispositive portion recognizes the possibility that no information may be filed against petitioner Aguilar after the referral of the subversion case to the proper provincial or city fiscal or civil government prosecutor. Indeed, it would not be the first time, as in the case of Aristedes Sarmiento[24] wherein he and his wife were charged with subversion as ranking leaders of the NPA, that such charges be dismissed after the prosecution rested the case, for utter "worthlessness of evidence." Thus, the Court has always stressed that all persons are entitled to the constitutional presumption of innocence and that accusation is not synonymous with guilt.[25]

7. There is great need for an objective review of the charges against petitioner Aguilar in the same manner that after this Court's Resolution of December 19, 1984 for the release of her co-petitioners Cynthia Nolasco and Willie Tolentino, the President approved the Minister of National Defense' recommendation and findings that they "would no longer pose any appreciable danger to national security and public order."[26] As pleaded by petitioner Aguilar in her motion for temporary release on recognizance of January 18, 1985, she "continues to be afflicted with asthma, of which physical infirmity the Honorable Court was informed in petitioner's Urgent Motion to Transfer Detention (par. 2 thereof) dated August 30, 1984. And because of her continued detention, petitioner — a widow — has been

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[24] G.R. No. 62119, prom. August 27, 1984.

[25] *People vs. Dramayo*, 42 SCRA 59.

[26] Record, pp. 143-147, Annex 1, respondents' manifestation of January 21, 1985.

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unable to care for her 12-year old son, who is presently under the custody of petitioner's 81-year old mother, Ramona B. Aguilar — who herself is in need of petitioner's care."[27] She further invoked therein "valid humanitarian grounds for ordering at least petitioner's release on recognizance to the custody of persons of unquestioned good repute and probity, pending resolution of this petition as well as G.R. No. 69482," stating therein that "Father Bienvenido Baesa of the Order of Friars Minor (OFM) and Sister Giovanni Faustino of the Congregation of Franciscans of the Immaculate Concepcion (CFIC) are ready, able and willing to take custody over petitioner during the pendency of these proceedings. The CFIC runs the St. Joseph's College, where petitioner is employed as assistant directress of said college's Extension Service Center."[28] Releasing her on these humanitarian grounds, prescinding from the above legal and constitutional grounds, pending the proper preliminary investigation and determination of whether the filing of charges of rebellion and subversion against her in the civil courts may be justified (notwithstanding the previous contrary determination of the Quezon City fiscal last year), would be a meaningful step in the ongoing struggle for the hearts and minds of the people.

ABAD SANTOS, *J., concurring and dissenting opinion*:

I concur in the ruling that Military Commission No. 25 has no jurisdiction to try Mila Aguilar for the *subversion case*. But thirty days is too long a period for the military to refer the case to the civilian authorities. The referral is a simple procedure so a more reasonable period would be ten days. If a referral is made within the period, the civil authorities should conduct a preliminary investigation to determine whether or not an information for subversion should be filed against Mila Aguilar. The preliminary investigation should not be *ex-parte*. Whether or not a referral is made, Mila Aguilar should not be detained in the meantime because the civil courts are functioning normally

[27] *Rollo*, p. 140.

[28] *Idem*.

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and in the light of the rules and regulations implementing PD Nos. 1877 and 1877-A, the authorities should resort to said courts for her detention. If an information be filed, she can apply for bail and it is for the prosecution to show that the evidence against her is strong.

The reasons for holding that Military Commission No. 25 has no jurisdiction over Mila Aguilar in the *subversion case* are equally applicable to the *rebellion case* against her before Military Commission No. 1. This Court should do complete justice and also rule that Military Commission No. 1 has no jurisdiction over Mila Aguilar. The procedure indicated for the *subversion case* should then be followed in respect of the *rebellion case* with the added circumstance that it was punishable only with *prision mayor* at the time it was allegedly committed. Accordingly, pending proceedings on the *rebellion case* Mila Aguilar should be set free. And in the event she be accused of rebellion, she can post bail.

Mila Aguilar should also be set free on the bail which she had posted in the *subversive documents case*.

In fine, *Mila Aguilar should be set free immediately*.

FIRST DIVISION

(Adm. Case No. 2655. November 11, 1985)

LEONARD W. RICHARDS, *complainant, vs.* **ATTY. PATRICIO A. ASOY,** *respondent.*

SYLLABUS

LEGAL AND JUDICIAL ETHICS; ATTORNEYS; MALPRACTICE; COMMITTED IN CASE OF EVASION OF SERVICE OF PLEADINGS/ ORDERS/ PROCESSES OF