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FIRST DIVISION

[G.R. No. L-49460. October 23, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODOLFO MONTINOLA,** *accused-appellant.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; WHEN MOOT AND ACADEMIC.— ACCORDINGLY, with the Solicitor General's submittal that the remand to the Military Commission of Criminal Case No. CCC-XII-927 of the Circuit Criminal Court at Bacolod City against the accused is now barred by LOI 772, the instant appeal from the questioned orders of May 28, 1976 and July 15, 1976 may be declared moot and academic and dismissed, as prayed for by the parties. Said orders have been rendered moot and ineffective by the provisions of Presidential LOI No. 772 dated November 27, 1978. Let the said case remain with the Circuit Criminal Court at Bacolod City for trial and disposition on the merits.

R E S O L U T I O N

TEEHANKEE, *J.*:

This is an appeal by the accused Rodolfo Montinola from two Orders of May 28, 1976 and July 15, 1976 of the civil Circuit Criminal Court of Negros Occidental ordering the transfer to the military tribunal, upon joint motion of May 25, 1976 of the Provincial Fiscal and the Constabulary Judge Advocate, of Criminal Case No. CCC-XII-927 docketed with it against the said accused for frustrated murder. The appeal was certified to this Court by the Eighth Division* of the Court of Appeals per its resolution of October 16, 1978 as involving purely questions of law and jurisdiction.

On July 7, 1979, the accused filed a motion stating *inter alia* that

* Composed then of Melencio-Herrera, *J.*, *ponente*, and Relova and Gopengco, *JJ.*

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"1. On February 2, 1979, the Chief, Prosecution Division Military Tribunals, for the Judge Advocate General, AFP, transmitted the illegal possession charge (Violation of General Orders Nos. 6 and 7 in relation to Presidential Decree 9) filed against him to the Provincial Fiscal of Negros Occidental 'pursuant to Presidential Letter of Instruction No. 772, dated November 27, 1978';

"2. On June 28, 1979, the Provincial Fiscal of Negros Occidental filed the corresponding information for 'Violation of General Orders Nos. 6 and 7, in relation to Presidential Decree No. 9' in the Court of First Instance of Negros Occidental, where it was docketed as Criminal Case No. 3484;

"3. He was allowed to post bail for his provisional liberty;

"4. There seems no reason why the related frustrated homicide charge filed against him should not now be also transferred to the civil courts from the military tribunals pursuant to the same Presidential Letter of Instruction No. 772 dated November 27, 1978 — save for the circumstance that its transfer by the civil Court of First Instance of Negros Occidental to the Military Tribunals was challenged by him in the above-entitled appeal which is pending;

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"8. With the promulgation of Presidential Letter of Instruction No. 772 on November 27, 1978, however, there is no reason why the instant frustrated murder case should not be included within the purview of 'the announced policy towards normalization' that 'All criminal cases to be filed by the Judge Advocate General or by any personnel of the Ministry of National Defense and/or the military establishment shall be referred in the first instance to the Civil Courts and no longer to the Military Commission.'"

The accused prayed that "plaintiff-appellee be directed to inform the Court whether or not the above-entitled frustrated murder case will be transferred to the civil courts pursuant to Presidential Letter of Instruction No. 772 and, with an affirmative reply from the plaintiff-appellee, that the above-entitled appeal be declared moot and academic and therefore dismissed."

Solicitor General Estelito P. Mendoza, pursuant to the Court's Resolution of July 25, 1979, filed his comment on October 12, 1979, concurring with the accused's motion and stating *inter alia* that

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"Because of the appeal of accused-appellant, the orders of the Circuit Criminal Court directing the transfer of his case to the military tribunal have not been implemented.

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"Pertinent portion of Presidential Letter of Instruction No. 772 dated November 27, 1978, provides as follows:

> 'In line with the announced policy towards normalization henceforth:
>
> '1. All criminal cases to be filed by the Judge Advocate General or by any personnel of the Ministry of National Defense and/or the military establishment shall be referred in the first instance to the Civil Courts and no longer to the Military Commission.'

"The foregoing Letter of Instruction covers all criminal cases which as of its date have not been filed in the Military Commission. The case for frustrated murder against herein accused-appellant has not been filed with the Military Commission. It is still docketed as Criminal Case No. CCC-XII-927 in the Circuit Criminal Court of Bacolod City. Evidently, LOI 772 now bars the remand of the case to the Military Commission where it has not been filed up to the present. Thus, the Civil Court has jurisdiction over the case against accused-appellant for frustrated murder."

In his prayer, the Solicitor General submitted that "the Circuit Criminal Court, Bacolod City, has jurisdiction to try and decide Criminal Case No. CCC-XII-927 against herein accused-appellant (for frustrated murder), and the instant appeal from the questioned orders of said court may be considered moot and academic."

ACCORDINGLY, with the Solicitor General's submittal that the remand to the Military Commission of Criminal Case No. CCC-XII-927 of the Circuit Criminal Court at Bacolod City against the accused is now barred by LOI 772, the instant appeal from the questioned orders of May 28, 1976 and July 15, 1976 may be declared moot and academic and dismissed, as prayed for by the parties. Said orders have been rendered moot and ineffective by the provisions of Presidential LOI No. 772 dated November 27, 1978. Let the said case remain with the Circuit Criminal Court at Bacolod City for trial and disposition on the merits.

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SO ORDERED.

Makasiar, Fernandez, Guerrero, De Castro, and *Melencio-Herrera JJ.,* concur.

SECOND DIVISION

[G.R. No. L-49481. October 23, 1979]

GAS CORPORATION OF THE PHILIPPINES, *petitioner, vs.* **THE HONORABLE ACTING MINISTER OF LABOR AMADO G. INCIONG, THE SECOND DIVISION OF THE NATIONAL LABOR RELATIONS COMMISSION, THE HONORABLE LABOR ARBITER TITO F. GENILO, JESUS VALDEZ and FERNANDO SANTOS,** *respondents.*

SYLLABUS

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; THE STANDARD OF DUE PROCESS THAT MUST BE MET IN PROCEEDINGS BEFORE ADMINISTRATIVE TRIBUNALS ALLOWS A CERTAIN LATITUDE AS LONG AS THE ELEMENT OF FAIRNESS IS NOT IGNORED.— It is equally well-settled, however, that the standard of due process that must be met in proceedings before administrative tribunals allows a certain latitude as long as the element of fairness is not ignored. So the following recent cases have uniformly held: *Maglasang v. Ople, Nation Multi Service Labor Union v. Agcaoili, Jacqueline Industries v. National Labor Relations Commission, Philippine Association of Free Labor Unions v. Bureau of Labor Relations, Philippine Labor Alliance Council v. Bureau of Labor Relations,* and *Montemayor v. Araneta University Foundation.* From the Comment of the office of the Solicitor General, it is quite clear that no imputation of arbitrariness can be justified. The opportunity to present its