

PEDRO BOTUYAN, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-2240. June 26, 1948

Ponente: BENGZON, J.

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BENGZON, J.:

Petition for habeas corpus filed on behalf of prisoner Pedro Botuyan by his wife Flora C. de Botuyan.

Her allegations are, in substance, that in December, 1941, Pedro Botuyan entered jail to serve a sentence the minimum of which was ten years four months and two days; on February 5, 1945, he was released upon a conditional pardon; that he has not violated the terms of such pardon, and therefore his recent apprehension and current detention by the respondent are unauthorized and illegal.

After giving due course to the, petition, this court received another pleading by the prisoner himself practically confirming the above allegations, but specifically setting forth that after his release on February 5, 1945, he was re-arrested in April, 1948 "for no just cause or reason."

The Solicitor General, for the respondent, admitted the averments as to the extent of the penalty and previous confinement. He denied, however, that the prisoner had lawfully been discharged from custody, asserting that order for his release was null and void, it having been issued by the Japanese Detachment Commander in the New Bilibid Prison —(not by the Director of Prisons) — at a time when the Japanese forces had already lost effective control of the City of Manila and the province of Rizal.

These defensive allegations of fact by the Government have not been traversed by petitioner, and the issue purely one of law. As to the validity of the orders of release of prisoners in Bilibid made by Japanese officers on February 5, 1945, we decided in *Sameth vs. Director of Prisons*, 43 Official Gazette, p. 149, that:

"The court takes judicial notice of the fact that on February 5, 1945, the seat of the government of the so-called Philippine Republic had been transferred to the City of Baguio, and that the Commander in Chief of the Japanese imperial forces had likewise left the City of Manila, and that the Japanese imperial forces no longer had effective control over the city of Manila and the Province of Rizal, as they had been retreating to the mountains, pursued by the United States Army and the Philippine Guerrilla Forces; and, consequently, with the loss of effective control over the City of Manila and the Province of Rizal, the authority of the enemy forces of occupation had ipso facto ceased. And any order given or issued under the circumstances, by the President of the so-called Philippine Republic, or by the Commander in Chief of the Japanese imperial forces, on February 5, 1945, would be null and void. (Wilson, *idem.*, p. 316; Wheaton, *idem.*, pp. 232, 233; Hyde, *idem.*, Vol. III, p. 1881.) A fortiori, any verbal order for the pardon or release of herein petitioner, allegedly given or issued on February 5, 1945, by the Japanese detachment commander in the New Bilibid Prisons, in Muntinglupa, Province of Rizal, before abandoning the said place, to avoid annihilation or capture by the approaching United States Army and the Philippine Guerrilla Forces, was absolutely null and void and of no legal force and effect whatsoever." (Italics ours).

The situation obtaining in this litigation is practically on all fours with the Sameth incident. Consequently we must hold that the release of Botuyan was not valid.

The petition is denied, the prisoner being under duty to serve the unexpired portion of his sentence. So ordered.

Parás, Actg. C.J., Pablo, Briones, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

This case being analogous to the Sameth case, L-351, decided on April 30, 1946 (43 Off. Gaz., 149) with five Justices dissenting, including ourselves, and there being no reason why we should change the stand taken by us in said case, we vote to the immediate release of petitioner.

Our written dissenting opinion in the Sameth case explains our vote.

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