

ANICETO ALCANTARA, PETITIONER, VS. DIRECTOR OP PRISONS, RESPONDENT.

G.R. No. L-6. November 29, 1945

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FERIA, J:

This is a petition for the issuance of a writ of habeas corpus and for the release of the petitioner on the ground that the latter is unlawfully imprisoned and restrained of his liberty by the respondent Director of Prisons in the provincial jail at Vigan, Ilocos Sur.

Petitioner was convicted by the Court of First Instance of Ilocos Sur (Criminal case No. 23) of the crime of illegal discharge of firearms with less serious physical injuries. Upon appeal, the Court of Appeals of Northern Luzon at Baguio modified said sentence (CA-G. R. No. 790) and sentenced the petitioner to an indeterminate penalty of from four months and twenty-one days of *arresto mayor* to three years, nine months and three days of *prision correccional*. The sentence as modified became final on September 12, 1944, and on June 23, 1945, petitioner commenced serving his sentence.

Petitioner now questions the validity of the decision of the Court of Appeals of Northern Luzon, on the sole ground that said court was only a creation of the so-called Republic of the Philippines during the Japanese military occupation of the Islands; that the Court of Appeals was not authorized by Commonwealth Act No. 3 to hold sessions in Baguio, and that only two Justices constituted the majority which promulgated the decision in question. The petitioner does not question the validity of said decision on the strength of the Proclamation of General Douglas MacArthur of October 23, 1944, which according to our decision in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon*, G. R. No. L-5 (p. 113, ante), does not refer to judicial processes.

In the said case of *Co Kim Cham vs. Valdez Tan Keh and Dizon*, this Court ruled that the so-called Republic of the Philippines and the Philippine Executive Commission established in the Philippines during the Japanese regime were governments *de facto* organized by the belligerent occupant, and the judicial acts thereof were good and valid and remained good and valid after the restoration of the Commonwealth Government, except those of a political complexion. In that same case this Court held that the Court of Appeals which was continued throughout the Japanese occupation, was the same Court of Appeals that existed prior to the Japanese occupation and was lately abolished by Executive Order No. 37. The division of the Court of Appeals into several District Courts of Appeals, and the reduction of the number of Justices sitting in each division, during the regime of the so-called Republic, effected no substantial change in its nature and jurisdiction.

Even assuming that the Court of Appeals of Northern Luzon was a new court created by the belligerent occupant or the *de facto* governments established by him, the judgments of such court, like those of the courts which were continued during the Japanese occupation, were good and valid and remain good and valid, and therefore enforceable now after the liberation or occupation of the Philippines, provided that such judgments do not have a political complexion, as this court held in its decision in the above- mentioned case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* supra, in accordance with the authorities therein cited.

Obviously, the sentence which petitioner is now serving has no political complexion. He was charged with and convicted of an offense punishable under the municipal law of the Commonwealth, the Revised Penal Code. Therefore, the sentence of the Court of First Instance of Uocos Sur, as modified by the Court of Appeals of Northern Luzon, is valid and enforceable.

A punitive or penal sentence is said to be of a political complexion when it penalizes either a new act not defined in the municipal laws, or acts already penalized by the latter as a crime against the legitimate government, but taken out of the territorial law and penalized as new offenses committed against the belligerent occupant, incident to a state of war and necessary for the control of the occupied territory and the protection of the army of the occupier. They are acts penalized for public rather than private reasons, acts which tend, directly or indirectly, to aid or favor the enemy and are directed against the welfare, safety and security of the belligerent occupant.

As examples, the crimes against national security, such as treason, espionage, etc., and against public order, such as rebellion, sedition, etc., were crimes against the Commonwealth or United States Government under the Revised Penal Code, which were made crimes against the belligerent occupant.

In view of the foregoing, the petition for the writ of habeas corpus is denied.

Moran, C. J., Ozaeta, Paras, Jaranilla, Pablo, and Bengzon, JJ., concur.

CONCURRING

DE JOYA, J.,

The principal question involved in this habeas corpus case is the validity of the judicial proceedings held, during the Japanese occupation, in the Court of First Instance of Ilocos Sur, in which herein petitioner was accused of frustrated murder, and in the Court of Appeals of Northern Luzon, in which, on appeal, said petitioner was found guilty of illegal discharge of firearms with less serious physical injuries, and sentenced to a term of imprisonment ranging from four months and twenty-one days of arresto mayor to three years, nine months and three days of prison correccional; and the effect on said proceedings of the proclamation of General Douglas MacArthur, dated October 23, 1944. The decision of this question requires the application of principles of International Law, in connection with the municipal law of this country.

Under the Constitution of the Commonwealth of the Philippines, International Law is a part of the fundamental law of the land (Article II, sec. 3). As International Law is an integral part of our law, it must be ascertained and administered by this Court, whenever questions of right depending upon it are presented for our determination (Kansas vs. Colorado, 185 U. S., 146; 22 Sup. Ct., 552; 46 Law. ed., 838).

Since International Law is a body of rules accepted by nations as regulating their mutual relations, the proof of their existence is to be found in the consent of nations to abide by them; and this consent is evidenced chiefly by the usages and customs of nations, as found in the writings of publicists and in the decisions of the highest courts of the different countries of the world (The Habana, 175 U. S., 677; 20 Sup. Ct, 290; 44 Law. ed., 320).

But while usages and customs are the older and original source of International Law, great international treaties are a later source of increasing importance, such as The Hague Conventions of 1899 and 1907.

The Hague Convention of 1899, respecting laws and customs of war on land, expressly declares that:

"ARTICLE XLII. Territory is considered occupied when it is actually placed under the authority of the hostile army.

"The occupation applies only to the territory where such authority is established, and in a position to assert itself.

ART. XLII. The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to reestablish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." (32 Stat, II, 1821.)

The above provisions of The Hague Conventions have been adopted by the nations giving adherence to them, among which is the United States of America (32 Stat., II, 1821).

The commander in chief of the invading forces or military occupant may exercise governmental authority, but only when in actual possession of the enemy's territory, and this authority will be exercised upon principles of International Law (New Orleans vs. Steamship Co. [1874], 20 Wall., 387; Kelly vs. Sanders [1878], 99 U. S., 441; Macleod vs. United States, 229 U. S., 416; 33 Sup Ct., 955; 57 Law. ed., 1260; II Oppenheim on International Law, sec. 167).

It will thus be readily seen that the civil laws of the invaded state continue in force, in so far as they do not affect the hostile occupant unfavorably. The regular judicial tribunals of the occupied territory continue to act in cases not affecting the military occupation, and it is not usual for the invader to take the whole administration into his own hands, because it is easier to preserve order through the agency of the native officials, and also because the latter are more competent to administer the laws of the territory; and the military occupant generally keeps in their posts such of the judicial and administrative officers as are willing to serve under him, subjecting them only to supervision by the military authorities, or by superior civil authorities appointed by him (Young vs. United States, 97 U. S., 39; 24 Law. ed., 992; Coleman vs. Tennessee, 97 U. S., 509; 24 Law. ed., 1118; Macleod vs. United States, 229 U. S., 416; 33 Sup Ct., 955; 57 Law. ed., 1260 Taylor, International Law, sees. 576, 578; Wilson, International Law, pp. 331-337; Hall, International Law, 6th ed. [1909], pp. 464, 465, 475, 476; Lawrence, International Law, 7th ed., pp. 412, 413; Davis, Elements of International Law, 3d ed., pp. 330-332, 335; Holland, International Law, pp. 356, 357, 359; Westlake, International Law, Part II, War, 2d ed., pp. 121-123).

In 1811, during the occupation of Catalonia, Spain, by the French army, a Frenchman, accused of the murder of a Catalan in that province, was tried and convicted by the assize Court of the Department of the Pyrenees Orientales, France. Upon appeal to the French Court of Cassation, the conviction was quashed, on the ground that the courts of the territory within which the crime had been committed had exclusive jurisdiction to try the case and that "the occupation of Catalonia by French troops and its government by the French authorities had not communicated to its inhabitants the character of French citizens, nor to their territory the character of French territory, and that such character could only be acquired by a solemn act of incorporation which had not been gone through." (Hall, International Law, 6th ed., p. 461.)

It is, therefore, evident that the establishment of the government under the name of the Philippine Executive Commission, or the so-called Philippine Republic, afterwards, during Japanese occupation, respecting the laws in force in the country, and permitting our courts to function and administer said laws, as proclaimed in the City of Manila, by the commander in chief of the Japanese Imperial Forces, on January 3, 1942, was in accordance with the rules and principles of International Law.

If the military occupant is thus in duty bound to establish in the territory under military occupation governmental

agencies for the preservation of peace and order and for the proper administration of justice, in accordance with the local laws, it must necessarily follow that the judicial proceedings conducted before the courts established by the military occupant must be considered legal and valid, even after said government established by the military occupant had been displaced by the legitimate government of the territory.

Thus the judgments rendered by the Confederate Courts, during the American Civil War, merely setting the rights of private parties actually within their jurisdiction, not tending to defeat the legal rights of citizens of the United States, nor in furtherance of laws passed in aid of the rebellion, had been declared valid and binding (*Cook vs. Oliver*, 1 Woods, 437; *Fed. Cas.*, No. 3, 164; *Coleman vs. Tennessee*, 97 U. S., 509; 24 Law. ed., 1118; *Williams vs. Bruffy*, 96 U. S., 176; *Horn vs. Lockhart*, 17 Wall., 570; *Sprott vs. United States*, 20 Wall., 459; *Texas vs. White*, 7 Wall., 700; *Ketchum vs. Buckley* [1878], 99 U. S., 188); and the judgment of a court of Georgia rendered in November, 1861, for the purchase money of slaves was held valid judgment when entered, and enforceable in 1871 (*French vs. Tumlin*, 10 Am. Law. Reg. [N. S.], 641; *Fed. Case*, No. 5104).

The judgments rendered by the courts of the states constituting the Confederate States of America were considered legal and valid and enforceable, even after the termination of the American Civil War, because they had been rendered by the courts of a de facto government. The Confederate States were a de facto government, in the sense that its citizens were bound to render the government obedience in civil matters, and did not become responsible, as wrongdoers, for such acts of obedience (*Thorington vs. Smith*, 8 Wall. [U. S.] 9; 19 Law. ed., 361).

In the more recent case of *Ketchum vs. Buckley* ([1878], 99 U. S., 188), the Supreme Court of the United States held—"It is now settled law in this court that during the late civil war the same general form of government, the same general law for the administration of justice and the protection of private rights, which had existed in the States prior to the rebellion, remained during its continuance and afterwards. As far as the acts of the States did not impair or tend to impair the supremacy of the national authority, or the just rights of the citizens, under the Constitution, they are in general to be treated as valid and binding." (*Williams vs. Bruffy*, 96 U. S., 176; *Horn vs. Lockhart*, 17 Wall., 570; *Sprott vs. United States*, 20 Wall., 459; *Texas vs. White*, 7 Wall., 700.)

The government established in the Philippines, during Japanese occupation, would seem to fall under the following definition of de facto government given by the Supreme Court of the United States:

"But there is another description of government, called also by publicists a government de facto, but which might, perhaps, be more aptly denominated a government of paramount force. Its distinguishing characteristics are (1) that its existence is maintained by active military power within the territories, and against the rightful authority of an established and lawful government; and (2) that while it exists it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, but they may be administered, also, by civil authority, supported more or less directly by military force." (*MacLeod vs. United States* [1913], 229 U. S., 416.)

The government established in the Philippines, under the Philippine Executive Commission or under the so-called Philippine Republic, during Japanese occupation, was and should, therefore, be considered as a de facto government; and that the judicial proceedings conducted before the courts which had been established in this country, during said Japanese occupation, are and should be considered legal and valid and enforceable, even after the liberation of this country by the American forces, as long as said judicial proceedings had been conducted, in accordance with the law of the Commonwealth of the Philippines.

The judicial proceedings involved in the case under consideration merely refer to the prosecution of the petitioner

in this case, for the crime of frustrated murder, which was reduced to illegal discharge of firearms with less serious physical injuries, under the provisions of the Revised Penal Code, in force in this country under the Commonwealth government, before and during Japanese occupation.

Now, petitioner contends that the judicial proceedings in question are null and void, and that the accused should be immediately released from custody, under the provisions of the proclamation issued by General Douglas MacArthur, dated October 23, 1944; as said proclamation nullifies all the laws, regulations and processes of any other government in the Philippines than that of the Commonwealth of the Philippines.

In other words, petitioner demands a literal interpretation of said proclamation issued by General MacArthur, a contention which, in our opinion, is untenable, as it would inevitably produce judicial chaos and uncertainties. When an act is susceptible of two or more constructions, one of which will maintain and the others destroy it, the Courts will always adopt the former (*United States vs. Coombs* [1838], 12 Pet., 72; 9 Law. ed., 1004; *Board of Supervisors of Grenada County vs. Brown* [1884], 112 U. S., 261; 28 Law. ed., 704; 5 Sup. Ct. Rep., 125; *In re Guarina* [1913], 24 Phil., 37; *Fuentes vs. Director of Prisons* [1924], 46 Phil., 22; *Yu Cong Eng vs. Trinidad* [1925], 47 Phil., 385). The judiciary, always alive to the dictates of national welfare, can properly incline the scales of its decisions in favor of that solution which will most effectively promote the public policy (*Smith, Bell & Co., Ltd. vs. Natividad* [1919], 40 Phil., 136). All laws should receive a sensible construction as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter (*United States vs. Kirby*, 7 Wall. [U. S.], 482; 19 Law. ed., 278; *Church of Holy Trinity vs. United States*, 143 U. S., 461; 12 Sup. Ct., 511; 36 Law. ed., 226; *Jacobson vs. Massachusetts*, 197 U. S., 39; 25 Sup. Ct., 358; 49 Law. ed., 643; 3 Ann. Cas., 765; *In re Allen*, 2 Phil., 630). The duty of the court in construing a statute, which is reasonably susceptible of two constructions to adopt that which saves its constitutionality, includes the duty of avoiding a construction which raises grave and doubtful constitutional questions, if it can be avoided (*United States vs. Delaware & Hudson Co.*, 213 U. S., 366; 29 Sup. Ct., 527; 53 Law. ed., 836).

According to the rules and principles of International Law, and the legal doctrines cited above, the judicial proceedings conducted before the courts of justice, established here during Japanese military occupation, merely applying the provisions of the municipal law of the territory, as the provisions of the Revised Penal Code in the instant case, which have no political or military significance, are and should be considered legal, valid and binding. It is to be presumed that General Douglas MacArthur knows said rules and principles of International Law, as International Law is an integral part of the fundamental law of the land, in accordance with the provisions of the Constitution of the United States. And it is also to be presumed that General MacArthur has acted, in accordance with said principles of International Law, which have been sanctioned by the Supreme Court of the United States, as the nullification of all judicial proceedings conducted before our courts, during Japanese occupation, would be highly detrimental to public interests.

For the foregoing reasons, I concur in the majority opinion, and the petition for habeas corpus filed in this case should, therefore, be denied.

DISSENTING**PERPECTO, J.,**

Following our opinions in the cases of Co Kim Cham vs. Valdez Tan Keh and Dizon (p. 153, ante), and Peralta vs. Director of Prisons (p. 334, ante), G. R. No. L—5 and G. R. No. L~49, respectively, the proceedings attacked by petitioner belong to the judicial processes declared null and void in the proclamation issued by General MacArthur on October 23, 1944, and, therefore, we vote for the granting of the writ of habeas corpus prayed for.

DISSENTING**HILADO, J.,**

Upon the grounds stated in my main dissenting opinion in G. R. No. L-5, Co Kim Cham vs. Valdez Tan Keh and Dizon (p. 199, ante), in my dissenting opinion upon the motion for reconsideration therein (p. 398, ante), and in my concurring opinion in G. R. No. L-49, Peralta vs. Director of Prisons (p. 355, ante), I dissent from the opinion of the majority herein. The writ of habeas corpus sought by petitioner should be granted because of the nullity of the judgment and proceedings under which he has been imprisoned and restrained of his liberty. As stated in the majority opinion, the sentence against him became final on September 12, 1944, and had been pronounced by the Japanese-sponsored Court of Appeals of Northern Luzon upon appeal from a judgment of conviction by the Japanese-sponsored Court of First Instance of Ilocos Sur.

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