

**CECILIO M. LINO, PETITIONER, VS. VALERIANO E. FUGOSO,
LAMBERTO JAVALERA, AND JOHN DOE, IN THEIR CAPACITY AS
MAYOR, CHIEF OF POLICE AND OFFICER IN CHARGE OF MUNICIPAL
JAIL, ALL O...**

G.R. No. L-1159. January 30, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a petition for a writ of habeas corpus filed in behalf of twelve persons alleged to be unlawfully detained by respondents Valeriano E. Fugoso, Lamberto Javalera and John Doe in their capacity as mayor, chief of police and officer in charge of the municipal jail of the City of Manila, respectively. It is alleged in respondents' return that ten of the petitioners had already been released, no sufficient evidence having been found to warrant their prosecution for inciting to sedition, but that the remaining two, Pascual Montaniel and Pacifico Deoduco, are being held in custody because of charges filed against them in the municipal court for unjust vexation and disobedience to police orders, respectively.

After hearing, by minute-resolution we dismissed the case with respect to the ten petitioners already released and we ordered the release of the remaining two, Montaniel and Deoduco, without prejudice to a reasoned decision which we now proceed to render.

The case of the ten petitioners has become academic by their release. The purpose of a writ of habeas corpus is only to set them free. After they are freed, the writ is purposeless. If they have been the victims of illegal arrest or detention, they can have recourse to criminal actions in the proper courts.

As regards the remaining two petitioners, the pertinent facts as admitted at the hearing by respondents, are as follows: Pascual Montaniel was arrested without warrant by the police officers of Manila on November 8, 1946, for inciting to sedition, and Pacifico Deoduco, on November 7, 1946, for resisting arrest and disobedience to police orders. On November 11 when this petition for habeas corpus was filed, these two petitioners were still under arrest. They were thus held in confinement for three and four days, respectively, without warrants and without charges formally filed in court. The papers of their cases were not transmitted to the City Fiscal's office until late in the afternoon of November 11. Upon investigation by that office, no sufficient evidence was found to warrant the prosecution of Pascual Montaniel for inciting to sedition and of Pacifico Deoduco for resisting arrest, but both remained under custody because of informations filed with the municipal court charging Montaniel with unjust vexation and Deoduco with disobedience to an agent of a person in authority under the second paragraph of article 151 of the Revised Penal Code. These informations were filed on the same day when this case was heard before this Court, that is, on November 12, 1946. And so far, no warrants of arrest or orders of commitment are shown to have been issued by the municipal court pursuant to the informations thus filed.

Under these facts, the detention of Pacifico Deoduco and Pascual Montaniel is illegal. Even assuming that they were legally arrested without warrant on November 7 and 8, 1946, respectively, their continued detention became

illegal upon the expiration of six hours without their having been delivered to the corresponding judicial authorities. (Article 125, Rev. Pen. Code, as amended by Act No. 3940.) Their cases were referred to the City Fiscal late in the afternoon of November 11, 1946, that is, four and three days, respectively, after they were arrested. The illegality of their detention was not cured by the filing of information against them, since no warrants of arrest or orders of commitment have been issued by the municipal court up to the hearing of this case before this Court.

It must be observed, in this connection, that in said informations, the two petitioners¹ are charged with light offenses punishable by law with arresto menor or a fine ranging from 5 to 200 pesos or both, according to the second paragraphs of articles 151 and 287, respectively, of the Revised Penal Code. Under Rule 108, section 10, when the offense charged is of that character, "the judge with whom the complaint or information is filed, shall not issue any warrant or order for the arrest of the defendant, but shall order the latter to appear on the day and hour fixed in the order to answer to the complaint or information," although in particular instances he may also "order that a defendant charged with such offense be arrested and not released except upon furnishing bail." The general rule, therefore, is that when the offense charged is light the accused should not be arrested, except in particular instances when the court expressly so orders in the exercise of its discretion. In the instant case, the municipal court has not yet acted on the informations nor exercised its discretion to order the arrest of the two petitioners and, therefore, they are still detained not because of the informations filed against them but as a continuance of their illegal detention by the police officers. While an arrest may be made without warrant when there are reasonable grounds therefor (Rule 109, section 6, Rules of Court), the prisoner cannot be retained beyond the period provided by law, unless a warrant is procured from a competent court. (4 Am. Jur., p. 49; Diers vs. Mallon, 46 Neb., 121; 50 Am. St. Rep., 598; Burk vs. Howley, 179 Penn., 539; 57 Am. St. Rep., 607; Karner vs. Stump, 12 Tex. Civ. App., 460; 34 S. W., 656; Johnson vs. Americus, 46 Ga., 80; Leger vs. Warren, L. R. A., 216-218 [Bk. 51.] It is obvious in the instant case that the City Fiscal had no authority to issue warrants of arrest (vide authorities cited above, and Hashim vs. Boncan and City of Manila, 71 Phil., 216) and was powerless to validate such illegal detention by merely filing informations or by any order of his own, either express or implied.

It is not necessary now to determine whether the City Fiscal is a judicial authority within the purview of article 125 of the Revised Penal Code, as amended by Act No. 3940, for even if he were, the petitioners' case was referred to him long after the expiration of the six hours provided by law. And since the City Fiscal, unlike a judicial authority, has no power to order either the commitment or the release on bail of persons charged with penal offenses (Adm. Code, section 2460), the petitioners' further confinement after their case had been referred to the City Fiscal was but a mere continuation of their illegal detention by the police officers. In the eyes of the law, therefore, these prisoners should have been out of prison long before the informations were filed with the municipal court, and they should not be retained therein merely because of the filing of such informations it appearing particularly that the offenses charged are light and are not, as a general rule, grounds for arrest, under Rule 108, section 10. Under such circumstances, only an order of commitment could legalize the prisoner's continued confinement, and no such order has ever been issued. Indeed, the municipal court could acquire jurisdiction over said prisoners only by the issuance of a warrant of arrest, an order of commitment or a writ of summons as provided in the aforementioned rule.

We reiterate the minute-resolution above mentioned.

Paras, Feria, Pablo, and Hilado, JJ., concur.

MORAN, C. J.:

I certify that Mr. Justice Padilla concurred in this decision.

CONCURRING

PERFECTO, J.:

The facts in this case can better be gathered from the pleadings. Copies of the petition and of the return, the latter with the annexes, accompany this opinion as appendices A and B.[1]

At the hearing of this case, counsel of both parties disclosed the additional fact that the twelve detainees in whose behalf these proceedings have been initiated after their arrest, were required to post a bail bond for their provisional release of P12,000 each.

The petition was filed in the morning of November 11, 1946. The case was heard the next morning, and in the evening of November 12, it was possible for this Court to obtain the necessary majority for the early disposal of this case, with the result that the two remaining detainees were then immediately released. The first ten were released by respondents in the very afternoon of the day when the petition was filed.

If we could only have our own way, we would have the case heard and disposed of in the very day the petition was filed, by expediting the procedure in the same way as we did when we ordered the release on habeas corpus of Special Prosecutor Liwag, in *Tañada vs. Quirino* (42 Off. Gaz., 934). The Rules of Court, which provide that the writ of habeas corpus may be issued at any hour in the day or at night, and the very nature of the writ, make imperative the immediate disposal of cases like the present one, if the remedy is to be effective and there is an earnest desire to avoid a failure of justice, especially as respondents are bent on exerting all the power and ability at their command to mock at the action of the courts, as exemplified by the case of *Villavicencio vs. Lukban* (39 Phil., 778-812).

At the hearing of this case, our attention was called at the significant fact that petitioner himself, the ten released detainees, and other persons who came to attend the hearing in this Court, were refused entrance in the Malacañan compound where the building of the Supreme Court is located. They were allowed to come in after we asserted that all the people are free to come to the Supreme Court which is an institution that belongs to them.

The present case offers one of the most shocking examples of official disregard for fundamental human rights, as guaranteed in our Constitution, and as is intended to be promoted and encouraged by the Charter of the United Nations.

While Carlos P. Romulo, the eloquent spokesman of the Republic of the Philippines in the General Assembly of the United Nations, is making world history with his courageous sponsorship of the independence of all subjugated peoples and countries and is making for our Republic the proud record as one of the staunchest champions of fundamental human rights, always placed in the forefront whenever there is a battle for freedom, it seems paradoxical that here, in Manila, in the very heart of our country, in the nucleus of our national culture, twelve humble, peaceful and law-abiding citizens, while in the peaceful exercise of their constitutional rights of freedom of expression and to peaceably assemble, the right to enlist public support in the pursuit of their right to a decent living wage, and the right to petition their own Government for the redress of their grievances, are abruptly interrupted in the exercise of their rights and violently hauled into prison as dangerous criminals.

Counsel for respondents tried to justify the unwarranted official invasion of private civil liberties by the ignorance

of erring officials of the constitutional Bill of Rights. Such ignorance does not justify anything. It only aggravates the situation. It shows unpardonable dereliction of duty and recklessness of responsible high authorities.

It is a universal rule that ignorance of the law does not exempt anyone from any responsibility for violating it. Peace officers are duty bound to know the law. They are also known as law officers, because it is their essential function to enforce the laws. They form part of the Executive Department of our Government, the department whose primary function is to execute the laws. No peace officers should be allowed to enter in the actual performance of his functions without first acquiring the indispensable knowledge of the laws they are called upon to enforce. At least they ought to know the Constitution, a copy of which they should always carry in their pockets for immediate consultation, with the same fidelity as the priests stick to their breviary of prayers. They should be compelled to learn by heart the Bill of Rights, if possible, commit to memory all its provisions. Peace officers are supposed, not only to enforce the laws, but also to protect the citizens in their rights, and in order that they may perform this duty, they should first know what these rights are. Without that knowledge, they become a menace to social order. If it is dangerous to let a person drive an automobile when that person does not know how to drive it, it is no less dangerous to entrust the enforcement of laws to armed individuals who are ignorant of them.

It has been alleged that the twelve detainees were not deprived of their personal liberty absolutely, because they were allowed to enjoy provisional release upon a bail of P12,000 each. If they choose not to post said bail, they cannot complain for having to remain in prison.

If the detention was illegal, and there is no doubt about it, respondents themselves admitting the illegality as to the ten detainees they released before the hearing of this case, the fact that respondents required them to post bail does not legalize their illegal detention. The bail requirement tends only to show respondents' stubbornness in insisting to enforce an illegal power to have the detainees under an involuntary control.

But even in the false hypothesis that respondents could require the detainees to post bail for their provisional release, the fact that respondents fixed the large amount of P12,000 for each, seems an unbelievable sarcasm.

It is a fact that the twelve detainees joined the workers' strike in a desperate endeavor to secure a decent living wage. They went into strike because with what they were being paid for their daily labor they had not enough to make both ends meet. At the time of their arrest, they were not even earning the insufficient salary or wage against which they were protesting by means of strike. If those persons were not earning enough to live as decent human beings, and at the time of their detention they were not receiving even the miserable pittance they were complaining of, is it not an insulting joke to require them to raise each P12,000 for bail, an amount, which even we, the members of the Supreme Court, occupying the highest ranks in our judicial system, and receiving the highest salary allowed by law to a judicial officer, could not raise with the urgency required by the situation of a man who is deprived of his personal freedom?

It is also alleged that the officers who arrested the detainees believe that the latter committed sedition. Respondents themselves confess that the detainees did not commit such crime. Sedition is the crime usually resorted to by tyrants as a pretext to silence or suppress those persons who have the firmness of character to oppose them and expose their abuses. Socrates was sentenced to drink hemlock for the sedition of giving freedom and wings to the Greek thought in his painstaking philosophical search for truth. Because he preached the gospel of human brotherhood, Jesus was crucified for sedition.

The tyrants of one-fourth of a century ago, who controlled the situation in the Philippines—tyrants are wild animals that may appear in any country—following the foot-steps of their predecessors in other places, tried to smash the crusade for clean government, which was our lot to wage in one of the newspapers of Manila, by prosecuting us for the crime of sedition. (*United States vs. Perfecto and Mendoza*, 43 Phil., 58, 62-64.) The following paragraphs

in the decision of the Supreme Court in that case, seem to us to ring with trenchant actuality:

"When the citizens of a state become convinced that the administration of the affairs of their government is not carried on in accordance with the law, or is not conducted for the best interest of all concerned, they have not only a right but it is their duty to present the cause of their grievances to the public, and the free press of the state usually affords the best avenue for that purpose. To that end, the organic laws of all modern free states have wisely provided that 'no law shall be passed, abridging the freedom of the press' and that no person shall be punished except for an abuse of that freedom. The interest of civilized society and the maintenance of good government demand a full and free discussion of all affairs of public interest. Complete liberty to comment upon the administration of the Government, as well as the conduct of public men, is necessary for free speech. The people are not obliged, under modern civilized governments, to speak of the conduct of their officials, of their servants, in whispers or with bated breath. (United States vs. Bustos, 37 Phil., 731.)

"The right to assemble and petition the Government, and to make requests and demands upon public officials, is a necessary consequence of republican and democratic institutions, and the complement of the right of free speech. (United States vs. Bustos, supra.)

"The freedom of the press consists in the right to publish the truth, with good motives and for justifiable ends, although said publication may be offensive to the Government, to the courts, or to individuals.

"Chief Justice Marshall of the Supreme Court of the United States, in discussing the freedom of the press, said: 'The spirit of the constitution and the opinion of the people cannot be curbed by those who administer the Government. Among those principles which are held most sacred by the people of America, there is none more deeply rooted in the public mind than that of the liberty of the press.'

"Mr. Daniel Webster had occasion to discuss the same question. He said: 'It is important to safeguard to the utmost the right to free speech and the free press. It is the ancient and constitutional right of our people to judge public matters and public men. It is such a self-evident right as the right to breathe the air and to walk on the surface of the earth. I will defend this high constitutional prerogative in time of war, in time of peace, and all the time. Dead or alive I shall maintain it.'

"It is the particular duty of the people of the state to zealously maintain the right to express freely, either verbally or by publication, their honest convictions regarding the acts of public officials and the governing class. If the people of a free state should give up the right of free speech; if they are daunted by fear and threats, and abdicate their convictions; if the governing body of the state could silence all the voices except those that extol their acts; if nothing relating to the conduct of the governing class can reach the people except that which will uphold the men in power, then we may well say 'Good-bye' to our liberties forever. While under such circumstances free governments may still be maintained, their life, their soul, and their essentials will be gone. If the publication of the conduct of public officials annoys them, let them examine their own act and determine the fundamental cause of the complaint. Even during the time of the illustrious Voltaire, he expressed the opinion that 'tolerance was never the cause of internal strife in the state, but, on the contrary, the pursuit of intolerance has covered the world with blood. The tyrants of our thoughts have caused the greater part of the misfortunes of the world.'

"Mr. Ralph Waldo Emerson in discussing the question before us, said: 'If there were a country where knowledge could not be spread without incurring the penalty of the law; where there is no free speech, where correspondence and publicity are violated, that country would not be civilized, but it would be barbarous.'

"Mr. Henry Ward Beecher on one occasion said: 'The term "free" is akin to the wind that blows over the regions infected with malaria and exposes to the light the germs of the disease. When the freedom of speech is curtailed, infection sets in and death quickly follows.'

Our schoolboys are no more compelled to count "Ichi, ni, san, si," to sing "Hamabe No Uta," to salute "ohayoo,"

or "kombanwa," or to intersperse their talk with "arigatoo" or "sayoonara." No more lecturer is teaching us the "tyu no yu" and flower arrangement as the highest expressions of culture. The political philosophy of "Daitoa Kyoeiken" (Greater East Asia Co-Prosperity Sphere, under the Japanese hegemony) has banished as unwanted nightmare. The voice of the Nippon geo-politicians preaching "Hakko Ichiu," the Emperor's way, the universal brotherhood under the benevolent guidance of the direct descendant of Amaterasu Omikami, we do not hear any more. The bowlegged and be-sworded samurai successors, indoctrinated in the traditions of Bushido knighthood, ceased to plunder, to rape, and to cut throats in our midst. Our sleep is no more disturbed by the hobnail terror stalking in our sidewalks at midnight. The public bowings to brutal sentries, and by high officials and employees of the government towards the Imperial Palace at Tokyo, are no more. But it seems, as exemplified in this case, that the feudalistic ideology behind all occupation facts and acts has left its pernicious virus in our soil.

The wanton disregard shown by those responsible for the arrest to the rights of the twelve detainees, those rights being among the fundamental ones guaranteed by the constitution, cannot be explained otherwise.

There was absolutely no legal ground to disturb or obstruct the twelve detainees in their absolutely lawful and peaceful activities, and much less to deprive them of their personal freedom and then keep them in jail for an indefinite period of time, only interrupted upon the filing of a petition for a writ of habeas corpus in this case.

It is our opinion that those government officers who are responsible for the detention and confinement of the twelve detainees, depriving them of personal liberty without due process of law, as guaranteed by the Constitution, are liable for prosecution under article 124 of the Revised Penal Code which provides as follows:

"Arbitrary detention.—Any public officer or employee who, without legal grounds, detains a person, shall suffer:

"1. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if the detention has not exceeded three days;

"2. The penalty of prision correccional in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;

"3. The penalty of prision mayor, if the detention has continued for more than fifteen days but not more than six months; and

"4. That of reclusion temporal, if the detention shall have exceeded six months.

"The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person."

But even if the detention in question was made "for some legal ground," a conjecture in support of which no sufficient ground appears in this case, still those who made the arrest are liable for prosecution under article 125 of the Revised Penal Code, because they failed to deliver the twelve detainees to the proper judicial authorities within the period of six hours after detention. Said article is as follows:

"Delay in the delivery of detained persons to the proper judicial authorities.—The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours." (As amended by Com. Act No. 3940.)

The idea of prosecuting them under the above cited articles of the Revised Penal Code may appear to be hard, but we must not forget that "dura lex, sed lex" and whatever may be the consequences the law must be given its way.

We can imagine how the erring officials will feel at the prospective prosecution and how they might consider

unbearable the idea of being sent to jail, but was it sweet or delicious for the twelve detainees to be illegally deprived of their freedom and confined in prison for so many days and nights, without any fault on their part at all? If respondents are zealous in keeping their own personal freedom, they cannot deny the victims of their recklessness the same legitimate desire.

Everybody can imagine the indescribable physical, mental, and moral sufferings endured by the twelve detainees and their respective families. The indignation felt by one who is the victim of an unjustifiable onslaught upon his individual dignity, the paralyzing anguish of the down-trodden who feels overwhelmed by brutal superior force against which his weakness cannot offer but the answer of futile despair, the excruciating thought of the alarm their absence will produce in their humble little homes, where their unprotected wives will try to drown their worries in bitter tears, while their little ones are trying to understand in infantile amazement the absence of their father and the tragedy entailed by that absence, are things that can hardly be attenuated by the thought that, after all, the Nippon kempei has already banished as an asphyxiating dream, and the unfortunate situation cannot be as bad as the sadistic and bestial horrors that the very mention of Fort Santiago conjure in our imagination, the mere memory of which produces thick sweat and blood congelation. There is no treasure in the world that can adequately compensate such sufferings. The only consolation that the situation may offer is the bereft hope that such sufferings may have the effect of awakening the conscience of our public officials so as to induce them to make the firm resolve to avoid the repetition of such abuses as the ones depicted in this case, that the guilty ones will earnestly repent of their misdeeds and will henceforth endeavor to accord the proper regard to the rights and liberties of their fellow human beings, thus contributing to diminish so many rampant manifestations of moral misorientation, including attempts to degrade the highest tribunal of the country, that now offend the good sense of the average citizen.

The provisions of law punishing arbitrary or illegal detention committed by government officers form part of our statute books even before the advent of American sovereignty in our country. Those provisions were already in effect during the Spanish regime; they remained in effect under American rule; continued in effect under the Commonwealth. Even under the Japanese regime they were not repealed. The same provisions continue in the statute books of the free and sovereign Republic of the Philippines. This notwithstanding, and the complaints often heard of violations of said provisions, it is very seldom that prosecutions under them have been instituted due to the fact that the erring individuals happened to belong to the same government to which the prosecuting officers belong. It is high time that every one must do his duty, without fear or favor, and that prosecuting officers should not answer with cold shrugging of the shoulders the complaints of the victims of arbitrary or illegal detention.

Only by an earnest enforcement of the provisions of articles 124 and 125 of the Revised Penal Code will it be possible to reduce to its minimum such wanton trampling of personal freedom as depicted in this case. The responsible officials should be prosecuted, without prejudice to the detainees' right to the indemnity to which they may be entitled for the unjustified violation of their fundamental rights.

The question of economic rehabilitation of our country is an everyday topic in the newspapers. We deem more important still the moral rehabilitation of our people; especially that of the officialdom. The Constitution requires (section 5, Article 14) that "All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency and to teach the duties of citizenship," and it will be highly desirable that this mandate should be borne in mind by all officers of the government, and that the qualities the Constitution ordains to be developed in all citizens should be, with more emphasis, required from officials and employees of the government, thus correcting the negative tropism shown in this case in regard to fundamental civil liberties.

The filing of information for insignificant misdemeanors against Pascual Montaniel and Pacifico Deoduco

appears to us as a poor face-saving device to justify, in some way, their further detention, and should not be countenanced as a means to defeat the release of said two detainees.

In explaining in this concurring opinion, our position in voting in favor of the resolution of November 12, 1946, we wish to make it clear that we do not interpret article 125 of the Revised Penal Code as legalizing detentions not exceeding six hours. Said article does not legalize an illegal detention. It only offers a justifying circumstance which exempts the erring official from criminal prosecution, provided that the detention is made upon legal grounds and do not last more than six hours, but it will, and cannot, defeat a petition for a writ of habeas corpus in behalf of a person illegally detained although the petition is filed before the termination of the six hours period mentioned in the article, as the constitutional guarantee of personal freedom is not subject to any time limit.

We wish to emphasize that it is highly dangerous to make of the fundamental rights of the citizens a kind of shuttlecock of passing moods or momentary whims of persons wielding some kind of government power. When the oestrous of official intolerance and braggadocio employed to cow into submission the twelve detainees has subsided, everybody will recognize in the cool and serene recesses of their conscience, that those who, under the pretext of subduing allegedly seditious persons; committed the arbitrariness complained of in the petition, trod a perilous path that, as shown by the experience of other countries, usually lead to the implantation of a dictatorship, whose whole philosophy is built upon the hateful slogan that everything, including the most cherished possessions and the most blessed ideals of the people, should be sacrificed for the sake of the state supremacy.

We are glad that two civic-minded groups of citizens, the Philippine Civil Liberties Union and the Philippine Lawyers Guild, have taken pains to appear in this Court in behalf of the twelve detainees, and we congratulate them for the success of their endeavors.

By actual personal experience and upon conclusive evidence, we know that it is not enough that the civil liberties and fundamental human rights be guaranteed in express constitutional provisions in order that they should effectively be protected. Eternal vigilance and constant willingness and readiness to fight for them are necessary.

When World War I was nearing its end, in the exercise of the freedom of the press, guaranteed by the Jones Law, as Editor of *La Nacion*, we made exposures of many unsatisfactory aspects of public affairs as they were then conducted. We made revelations regarding the scandals of the Philippine National Bank which caused many millions of losses to our Government. The powerful wanted us to be silenced. The Governor General, first through his Secretary, Mr. Irwin, and later through General Crame, Chief of the Philippine Constabulary, tried to intimidate us with drastic action by the Government if we should not stop the publication of the irregularities and illegalities we were denouncing then in the columns of our paper. They reminded us that the war justified any extraordinary measure by the Government, and that our denunciations, by tending to destroy public confidence in the authorities, were highly seditious. Our invariable answer to Mr. Irwin and General Crame was that the Governor General and they themselves were free to do what it would please them, but nothing shall deter us from doing what, according to our conscience, was our public duty. As we did not allow ourselves to be intimidated, a series of criminal prosecutions were instituted against us. Although the lower courts should invariably find us guilty, the Supreme Court had always acquitted us, by upholding the freedom of the press.

The existence of liberal elements, always watchful and ready to defend the victims of violations of the Bill of Rights, is necessary to vitalize democracy and to give tangible reality to the guarantees of the Constitution. The fight for personal freedom must go on, over and over again, as the forces of reaction are always ready to snatch any opportunity to set at naught the guarantees of the fundamental law, as happened in the bail incident in *People vs. Jalandoni* (G. R. No. L-777), and all liberal forces must always be ready to answer the summons of

endangered liberties.

The attainment of great ideals needs faith, passionate adherence to them, the militant attitude manifested in the unflinching readiness to fight and face hardships and sacrifices, unconquerable steadfastness and unbreakable perseverance in the face of obstacles and setbacks. These are the conditions and qualities with which thinkers and philosophers were able to discover the truth which have guided humanity as beacons in the path of progress; the founders of great religions, to transmit to millions their message of hope and the gospel of eternal moral principles: Columbus, to discover the New World, and Magellan to traverse the two largest oceans and encircle the globe; astronomers, to pierce the immensity of space to conquer new stars, parsecs away; bacteriologists, to scavenge dangerous microorganisms; scientists, to fossick in the mysteries of matter to wrest new revelations which enhance the intellectual horizon of man and increase his means for enjoyment of life and happiness. The same conditions and qualities are among those needed by all liberal and progressive spirits to keep lighted the torch of liberty, to squelch the hydra of reaction, to conserve the moral heritage of advancement and conquests in the emporium of human rights bequeathed by the champions and martyrs who waged the heroic battles for real spiritual values and for the dignity of man as the image of God.

Appendix A

PETITION

Petitioner Cecilio M. Lino, through his undersigned counsel, respectfully alleges:

- That the petitioner is of legal age and a resident of the City of Manila, Philippines; the respondent Valeriano E. Fugoso is the Mayor of the City of Manila; the respondent Lamberto T. Javalera is the Chief of Police of the said City; and the respondent John Doe is the Officer in Charge of the Municipal Jail of the same City;

- That the petitioner is the President of the City Employees' and Workers' Union, Congress of Labor Organization (CLO), duly registered as a labor organization under the provisions of Commonwealth Act No. 213; and he files this petition on behalf of the following persons, members of the said labor organization, who are imprisoned and deprived of their liberty, to wit:

- Ricardo Suarez (Juarez)
- Gregorio Santiago
- Ismael de Jesus
- Serafin Pascual
- Amado Racanday
- Antonio Bulagda (Burlagada)
- Mauro Fernandez
- Jose Badeo
- Francisco Nevado (Lebado)
- Pascual Montaniel
- Pedro Martinez and
- Pacifico Deoduco;

- That, within the time comprised between November 5 and November 8, 1946, the persons above named were arrested without warrant and without lawful cause, upon order of the respondent Valeriano E. Fugoso, as Mayor of the City of Manila, by members of the Police Department of the said City, of which the respondent Lamberto T. Javalera is the Chief, and, immediately thereafter, were taken to, and detained at, the Municipal Jail of the aforementioned City, of which the respondent John Doe is the Officer in Charge;

- That since their arrest all the persons mentioned in paragraph 2 hereof have been detained and deprived of their liberty by the respondents at the said Municipal Jail, although no charges have been filed against any of the above mentioned persons in any lawful court, nor has any judicial or other proper authority issued any order authorizing their continued detention, and notwithstanding the lapse of the period of six hours from the time of their arrest and/or commitment;

- That the aforementioned persons were arrested while in the peaceful exercise of their constitutional rights of freedom of speech and of the press and peaceably to assemble and petition the Government for the redress of their grievances, specifically, while performing the following acts to enlist public support in the pursuit of their right to a living wage, to wit:

(a) Ricardo Suarez (Juarez), Gregorio Santiago, Ismael de Jesus and Serafin Pascual—arrested on November 5, 1946 at Pinkian Street, Tondo, Manila, for no apparent reason, but for posting and distributing handbills explaining the plight of the city laborers on strike, and appealing to and for the sympathy and lawful support of the public;

(b) Amado Racanday, Antonio Bulgada (Burlagada) and Mauro Fernandez—arrested on November 6, 1946, while standing at the corner of Gral. Luna and California streets, Paco, Manila, for no apparent reason, except that they had joined the city laborers' strike, and for having in their possession some copies of the handbills above mentioned;

(c) Jose Badeo and Francisco Nevado (Lebado)—arrested on November 6, 1946, while standing at the corner of Perez and California Streets, Paco, Manila, for no apparent reason except that they had joined the city laborers' strike and had in their possession a notice of a meeting of their labor organization;

(d) Pascual Montaniel—arrested on November 8, 1946, at Cristobal Street, Paco, Manila, for no apparent reason, except that he made a friendly greeting to a non-striker;

(e) Pedro Martinez—arrested on November 8, 1946, at Juan Luna Street, Gagalangin, Manila, for no apparent reason, except that he had joined the city laborers' strike and walked along the street with a paper band strung diagonally from his shoulder around his body bearing the following words: "Damayan Kami! Huag Mageskirol" (Help us! Do not be a scab); and

(f) Pacifico Deoduco—arrested on November 7, 1946, at Cristobal Street, Manila, for no apparent reason except that he had joined the city laborers' strike.

Wherefore, petitioner prays that a writ of habeas corpus be directed forthwith to the respondents commanding them, or any of them, to have the bodies of the above named persons who are restrained and deprived of their liberty before this Honorable Court at a time and place to be designated by this Court; and, after due hearing, forthwith to order their discharge from confinement, with costs against the respondents.

Manila, Philippines, November 11th, 1946.

Emmanuel Pelaez,

Francisco A. Rodrigo

Enrique M. Fernando

Manuel M. Crudo

Claudio Teehankee and

Jose W. Diokno

By: (Sgd.) Emmanuel Pelaez Counsel for the Petitioner c/o Philippine Civil Liberties Union 503 China Bank Building, Dasmariñas, Manila

By: (Sgd.) Claudio Teehankee Counsel for the Petitioner c/o Philippine Lawyers' Guild, 319 Lardizabal Street, Manila

VERIFICATION

Cecilio M. Lino, of legal age, after being duly sworn in accordance with law, deposes and says:

- That he is the petitioner in the foregoing petition for a writ of habeas corpus;
- That he caused the same to be prepared and presented; and
- That all the facts therein alleged are true and correct.

Further affiant sayeth naught.

Manila, November 11, 1946.

(Sgd.) Cecilio M. Lino

Affiant

Subscribed and sworn to before me this 11th day of November, 1946, at the City of Manila, Philippines. The affiant exhibited to me his Residence Certificate No. A-20721, issued at the City of Manila, on January 9, 1946.

(Sgd.) F. A. Rodrigo

Notary Public

Until December 31, 1947

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Appendix B

RETURN OF WRIT

Come now the respondents in the above-entitled case, Valeriano E. Fugoso, Lamberto T. Javalera and John Doe, in their respective capacities as Mayor, Chief of Police and Officer in Charge of the Municipal Jail, all of the City of Manila, through their counsel, the undersigned City Fiscal, and in making their return to the petition filed herein, to this Honorable Court respectfully allege:

- That they admit the allegations contained in paragraphs 1 and 2 of said petition.

- That they admit the fact, stated in paragraph 3 of said petition, regarding the arrest of the persons whose names are listed in paragraph 2 thereof, without warrant, by members of the Manila Police Department, and their detention until yesterday, November 11, 1946, at the Municipal Jail of the City of Manila; but they deny the rest of the allegations, especially that which states for a fact that said detained persons were arrested without lawful cause upon order of the respondent Valeriano E. Fugoso, as Mayor of the City of Manila, the truth of the matter being that the arrest was lawful, it having been made by members of the Manila Police Department duly appointed and qualified as such who acted in the performance of their official duties, and acting in the belief that the said detained persons, before or at the time of their arrest, were committing acts in violation of the laws of the land.

- That they admit the fact, alleged in paragraph 4 of said petition, that all the arrested persons have been placed under detention until yesterday, November 11, 1946, at the Municipal Jail of the City of Manila; but they deny the rest of the allegations, specially that part which says that no charges have been filed against them notwithstanding the lapse of the period of six hours from the time of their arrest and commitment, the truth of the matter being that charges for inciting to sedition, disobedience to police orders and resisting arrest have been filed against them by the arresting police officers with the Office of the City Fiscal which has conducted the preliminary investigation of said cases in accordance with law.

- That they deny the allegations contained in paragraph 5 of said petition, the same being merely conclusions of facts and/or of law.

As special defenses, respondents hereby allege:

(a) That all of the twelve detained persons were arrested by police officers for acts which the arresting officers believed to constitute inciting to sedition, resisting arrest and disobedience to police orders, filing the corresponding cases against them with the Office of the City Fiscal immediately thereafter.

(b) That yesterday, November 11, 1946, before and after the receipt by them of their respective copies of the petition for habeas corpus herein filed, complaints had already been presented with the Municipal Court of Manila against Pascual Montaniel and Pacifico Deoduco not for inciting to sedition but for unjust vexation and for disobedience to police orders, respectively, the same being criminal cases Nos. 6765 and 7666 of the Municipal Court of Manila, copies of which complaints are being attached hereto and made a part hereof as Annexes 1 and 2.

(c) That likewise, before and after the receipt by them of their respective copies of the petition for habeas corpus, said respondents Valeriano E. Fugoso and Lamberto T. Javalera had already been notified of the dismissal by the Office of the City Fiscal of the cases for inciting to sedition against all the detained persons, for insufficiency of evidence, and of filing in the Municipal Court of Manila complaints against Pascual Montaniel and Pacifico Deoduco, as aforesaid.

(d) That, similarly, before and after his receipt of a copy of the petition for habeas corpus the respondent John Doe, in his capacity as Officer in charge of the Municipal Jail, had received from the City Fiscal letters bearing date of November 11, 1946, copies of which are hereto attached as Annexes 3 and 4 of this Return, wherein he was advised that the cases against said detained persons for inciting to sedition have been dismissed for insufficiency of evidence, but that complaints were being filed against Pascual Montaniel and Pacifico Deoduco for unjust vexation and for disobedience to police orders, respectively, and wherein said respondent John Doe has been ordered by the City Fiscal to forthwith release all of said detained persons with the exception of Pascual Montaniel and Pacifico Diodoco, an order which has been complied with by said respondent John Doe as shown by the fact that said detained persons, with the exception of the latter two, had forthwith been released from

custody.

(e) That Pascual Montaniel and Pacifico Deoduco continue to be detained and are being deprived of their liberty not without lawful cause, for the reason that there are at present pending against them criminal complaints with the Municipal Court of Manila for unjust vexation and disobedience to police orders as stated above.

Wherefore, respondents herein pray this Honorable Court to dismiss the petition, with costs against the petitioner.

Manila, November 12, 1946.

(Sgd.) JOSE P. BENGZON

City Fiscal

Annex 1

INFORMATION

The undersigned accuses Pascual Montaniel y Avelar of the crime of unjust vexation, committed as follows:

That on or about the 8th of November, 1946, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully, feloniously and unjustly vex and annoy one Jesus Cambare, who was then a driver at the City Motor Pool assigned to the Department of Engineering and Public Works of the Government of the City of Manila, while in the act of managing, driving and operating a jeep being used by the Assistant City Engineer of said City in the latter's official capacity, by then and there stopping the jeep driven by said Jesus Cambare without any just cause therefor and telling him to stop driving for the City of Manila while the strike of city laborers was still going on, all in a threatening attitude, and to the great disgust and annoyance of the aforementioned Jesus Cambare. Contrary to law.

(Sgd.) JULIO VILLAMOR

Assistant Fiscal

Witnesses:

Jesus Cambare—615 Merced, Paco

Dets. Felix T. Pineda and

Victoriano Antonio—Det. Bureau

Chief Clerk—Dept. of Engineering and

Public Works, City Hall (bringing records re
appointment of Jesus Cambare as driver at the

City Motor Pool)

Annex 2

INFORMATION

The undersigned accuses Pacifico Deoduco of a violation of the second paragraph of Art. 151 of the Revised Penal Code, committed as follows:

That on or about the 7th day of November, 1946, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously disobey Vicente Celeridad, a duly appointed and qualified police

officer of the City of Manila and, therefore, an agent of a person in authority, while the latter was acting in the performance of his official duties, to wit: while he was guarding the premises of the City Motor Pool on Cristobal St., in said City, which acts of disobedience was in the following manner: That said accused, having entered and was actually found in the aforesaid premises where he had no right to be, without the knowledge and consent of the authorities concerned, and having been ordered several times by the aforesaid police officer to go out of and leave the said premises, defiantly and persistently refused to do so, but instead he continued to remain therein. Contrary to law.

(Sgd.) JULIO VILLAMOR

Assistant City Fiscal

November 11, 1946.

Witnesses:

Pat. V. Celeridad, Precinct No. 3.

Pat. Pedro Camata, Precinct No. 3.

Chief Clerk, Manila Police Dept., to bring a certified

copy of the latest appointment of Pat. Vicente

Celeridad of the Manila Police Dept.

Bail recommended: P200

Annex 3

November 11, 1946

The Prison Officer

City Jail, Manila

Sir:

With reference to the case of inciting to sedition presented with this Office against (1) Ricardo Suarez, (2) Gregorio Santiago (3) Ismael de Jesus, (4) Serafin Pascual, (5) Amado Racanday, (6) Antonio Bulagua (Burlagua), (7) Mauro Fernandez, (8) Jose Radeo, (9) Francisco Navado (Levado), (10) Pascual Montaniel, and (11) Pedro Martinez, please be informed that after an investigation has been conducted in the premises, it was found out that there is no sufficient evidence to warrant the prosecution of said accused in court, it appearing that the leaflets, posters and other propaganda sheets which said accused distributed to the public and pasted or posted at different places within the city, did not contain any statement or phrases of seditious nature or of the nature to incite to the commission of sedition. This Office, however, is filing a complaint with the Municipal Court against Pascual Montaniel y Avelar for unjust vexation only, wherein a bail of P100 has been recommended for his temporary release.

In view of the foregoing, all of the said accused, except Pascual Montaniel y Avelar, should be released from custody or their bonds cancelled, if any have been put up for their temporary release unless they are held on other charges.

Respectfully,

(Sgd.) JOSE P. BENGZON

City Fiscal

ANNEX

November 11, 1946

The Prison Officer
City Jail, Manila

Sir:

With reference to the cases of disobedience to the Police and resisting arrest presented to this Office against Pacifico Deoduco y Docio, please be informed that after an investigation has been conducted in the premises, it was found out that there is no sufficient evidence to warrant his prosecution in court for the offense of resisting arrest. This Office, however, is filing today a complaint with the Municipal Court against the said accused for disobedience to an agent of a person in authority, under the second paragraph of Art. 151 of the Revised Penal Code, wherein a bail of P200.00 has been recommended for his temporary release.

Very respectfully,

(Sgd.) Jose P. Bengzon

City Fiscal

[1] Omitted.

CONFORME

BRIONES, M.:

El presente caso es un incidente de la famosa huelga declarada y efectuada en Noviembre del año pasado (1946) por obreros organizados de la ciudad de Manila en el servicio municipal de limpieza de calles y en obras publicas tambien municipales. Como fondo historico del caso en general, y de esta opinion en particular, cabe incluir en la narration de hechos el de que—como es acostumbrado en este genero de convulsiones sociales—despues de mucho apasionamiento por ambos lados, de no poca nerviosidad y de laboriosas negociaciones, la huelga que duro unas dos semanas quedo satisfactoriamente solucionada, aviniendose los huelguistas a volver a su trabajo a cambio de ciertas concesiones que hizo el Municipio de Manila, particularmente en la cuestion de bonificaciones y salarios. Sin embargo, resulta de autos y de la historia el dia reflejada principalmente en la prensa (de lo cual podemos naturalmente tomar conocimiento judicial) que la exaltation de los animos, la pasion ai rojo vivo produjeron algunos incidentes, unos dramaticos, otros comicos, llegando la tension nerviosa de algunos a exagerar tremendamente las proporciones del movimiento hasta el extremo de imaginarse rebeliones y sediciones alii donde no habia sino un espiritu algun tanto militante de parte de los obreros en la defensa de sus derechos e intereses y en la propaganda de su causa con la mira de ganarse la simpatia del publico. Uno de esos incidentes es la cogida o aprehension por la policia, sin previa orden de arresto, por el especioso pretexto de que estaban incitando y promoviendo nada menos que una sedicion contra el gobierno constituido, de doce obreros huelgistas, confinandoseles en la carcel por dicho motivo.

En nombre de esos doce se ha presentado esta solicitud de mandamiento de habeas corpus por Cecilio M. Lino, presidente de la Union de Empleados y Obreros de la Ciudad, filial del "Congress of Labor Organizations" (CLO), defendiendoles como abogados Emmanuel Pelaez, Francisco A. Rodrigo y Enrique M. Fernando, miembros y representantes de la sociedad civica "Philippine Civil Liberties Union," y Manuel M. Crudo, Claudio Teehankee y

Jose" W. Diokno, miembros, y representantes del "Philippine Lawyers' Guild." En nombre de los recurridos ha comparecido ante esta Corte el Fiscal auxiliar Julio Villamor, de la ciudad de Manila.

Alegase en la solicitud que los doce obreros de que se trata fueron arrestados mientras estaban ejerciendo pacíficamente sus derechos constitucionales, a saber: la libertad de la palabra y de la prensa, y el de reunion pacifica para pedir del gobierno el alivio de sus agravios. Se detallan especificamente los actos en que estaban ocupados cuando fueron arrestados, a saber:

(a) Ricardo Suarez (Juarez), Gregorio Santiago, Ismael de Jesus y Serafin Pascual fueron arrestados el 5 de Noviembre, 1946, en la calle de Pinkian, arrabal de Tondo, Manila, mientras estaban distribuyendo y pegando en las parades hojas volantes en que se explicaban las miserias y tribulaciones de los obreros en huelga y se apelaba a la simpatia y sentimientos humanitarios del publico para que apoyara la causa de los huelguistas.

(b) Amando Racanday, Antonio Bulagada (Burlagada) y Mauro Fernandez fueron arrestados el 6 de Noviembre, 1946, mientras estaban tranquilamente parados en la esquina de las calles de California y Gral. Luna, Paco, Manila, y sin ningun motivo aparente como no fuese el de que se habian adherido a la huelga y se hallaron en su posesion copias de las hojas volantes mencionadas en el parrafo anterior.

(c) Jose Badeo y Francisco Nevado (Levado) fueron arrestados el 6 de Noviembre, 1946, mientras estaban tranquilamente parados en la esquina de las calles de Perez y California, Paco, Manila, y tambien sin ningun motivo manifiesto como no fuese el de que se habian adherido igualmente a la huelga y tenian en su poder el aviso de una reunion que la organizacion obrera a que estaban afiliados iba a celebrar.

(d) Pedro Martinez fue arrestado el 8 de Noviembre, 1946, en la calle de Juan Luna, Gagalangin, Manila, y sin ninguna razon aparente excepto que el mismo se habia adherido a la huelga y andaba paseandose a lo largo de dicha calle con una banda llamativa que llevaba diagonalmente alrededor de su cuerpo y en la cual estaban escritas las siguientes palabras en tagalo: ¡DAMAYAN KAMI, HUAG MAG-ISKIROL! (Help us! Don't be a scab!—Ayudadnos! ¡No seais desertores!)

(e) Pascual Montaniel fue arrestado el 8 de Noviembre, 1946, en la calle de Cristobal, Paco, Manila, sin ningun motivo aparente como no fuese el de que habia saludado amistosamente a uno que no era huelguista.

(f) Pacifico Deoduco fue arrestado el 7 de Noviembre 1946, en la citada calle de Cristobal tambien sin razon manifiesta excepto que se habia adherido a la huelga.

Se puso de manifiesto en la audiencia, en los informes orales producidos por las partes, que los obreros arriba mencionados fueron recluidos en los calabozos desde que fueron arrestados hasta que, por recomendacion del Promotor Fiscal de la Ciudad, la Policia los puso en libertad, menos Montaniel y Deoduco, a las tres y media de la tarde del 11 Noviembre, por haberse hallado, segun la carta de dicho Fiscal al oficial de las prisiones de Manila, "que no hay prueba suficiente para justificar la prosecucion de dichos acusados ante los tribunales, apareciendo que las hojas volantes, manifiestos y otras hojas de propaganda que tales acusados distribuyeron entre el publico y exhibieron o fijaron en diferentes lugares dentro de la ciudad, no contenian ninguna frase o expresion de caracter sedicioso o de tal naturaleza que incitase la comision del delito de sedition" (Carta del Fiscal de la Ciudad de Manila, Jose P. Bengzon, de 11 de Noviembre de 1946, al oficial de las prisiones de la ciudad, anexo 3). Se ordeno, sin embargo, la continuation de la detention de Montaniel y Deoduco, a pesar de que tampoco habia pruebas de sedition contra ellos, porque la Fiscalia decidio a ultima hora presentar querellas, a saber: (a) contra Montaniel, por supuesta vejacion injusta, alegandose que el 8 de Noviembre, mientras Jesus Cambare guiaba y manejaba un "jeep" de la oficina del Ingeniero de la ciudad, Montaniel trato de pararle diciendole que dejase de guiar al servicio de la ciudad de Manila mientras durase la huelga, "con gran disgusto y molestia de dicho Jesus

Cambare"; (b) contra Deoduco, por supuesta desobediencia a un policia, alegandose en la querella que el 7 de Noviembre, 1946, el acusado entro sin permiso en el deposito de vehiculos de motor (motor pool) de la ciudad situado en la calle de Cristobal, Paco, y que cuando el policia de guardia, Vicente Celeridad, le intimido que saliera del lugar, dicho acusado persistio en quedarse desobedeciendo asi al policia.

Al llegar a este punto parece importante, y hasta necesario, fijar especificamente el tiempo en que tuvieron lugar ciertos acaecimientos y tramites. Esto nos servira para poner de relieve ciertos hechos capitales y ciertos puntos en contencion, y evaluarlos en toda su densidad. De autos e informes resultan los siguientes hechos: (a) que la presente solicitud de habeas corpus se presento y registro en la escribania de esta Corte el 11 de Noviembre, 1946, a las 9 de la mañana poco mas o menos; (b) que el recurrido Alcalde Valeriano E. Fugoso fue emplazado de la solicitud en aquella misma mañana, a las 11:20; (c) que el recurrido jefe de policia Lamberto Javalera tambien fue emplazado de la solicitud en aquella misma mañana, a las 11:30; (d) que el recurrido oficial de las prisiones de la ciudad John Doe fue asimismo emplazado en aquella mañana, a las 11:30; (e) que a la 1:05 p. m. de aquel dia el Fiscal de la Ciudad envio su carta ya citada al oficial de las prisiones, dando instrucciones para que se pudiese inmediatamente en libertad a los detenidos, menos Montaniel y Deoduco; (f) que la policia recibio dichas instrucciones a las 2 de la tarde, y a las 3:30 p. m. las cumplimento soltando a los detenidos, excepto los ya mencionados Montaniel y Deoduco; (g) que, a pesar de que estos dos ultimos fueron arrestados el 8 y 7 de Noviembre, respectivamente, la policia no envio a la Fiscalia los papeles acerca de sus casos sino en la tarde del 11 de Noviembre, es decir, del mismo dia en que se presento la solicitud de habeas corpus; (h) que la querella contra Montaniel, por vejacion injusta, se presento ante el juzgado municipal de Manila a las 2 de la tarde del 11 de Noviembre, es decir, algunas horas despues de presentada la solicitud de habeas corpus; (i) que la querella contra Deoduco, por desobediencia a un policia, se presento ante el juzgado municipal solamente en la mañana del 12 de Noviembre, o sea, al dia siguiente de interpuesto el recurso de habeas corpus.

Tambien resultan de los autos e informes los siguientes hechos: (1) que respecto de los diez detenidos que posteriormente fueron puestos en libertad por no haberse hallado ningun cargo fundado contra ellos, la Fiscalia admite haber recibido a tiempo de la policia los papeles correspondientes, es decir, dentro de 6 horas despues de verificados los arrestos, pero que si no pudo presentar ninguna querella durante un periodo de 7 dias—del 5 al 11 de Noviembre—o decidir que no habia ninguna sedicion como despues decidio, fue porque tenia otros muchos trabajos y porque, ademas, necesitaba de tiempo para leer y desentrañar el significado de las hojas volantes y manifiestos, y ver si en ellos habia alguna manifestation sediciosa o criminal; (2) la Fiscalia admite que las hojas volantes y manifiestos no eran voluminosos sino que se componia de unas cuantas hojas y que normalmente no se necesitaban dias ni siquiera horas para leerlos y determinar su significacion y sentido, pues no estaban concebidos y escritos en jeroglificos, sino en un tagalo sencillo, llano y popular, como es usual en papeles de propaganda; (3) que durante la detencion de los arrestados se trato de gestionar y obtener su libertad provisional y la Fiscalia señalo a dicho efecto la prestacion de una fianza de P12,000 para cada uno, basando la Fiscalia su requerimiento en la gravedad del delito supuestamente cometido—el de sedicion; (4) que asi continuaron las cosas hasta que se presento ante esta Corte la solicitud de habeas corpus en la mañana del dia 11, viniendo luego la rapida sucesion de acontecimientos de que ya se ha hecho merito.

Habiendo sido puestos en libertad diez de los doce detenidos antes de que se viera la presente solicitud de habeas corpus ¿es todavia pertinente que examinemos la totalidad de los hechos, incluso los relativos a los ya liberados? Creemos que si; la cuestion, a nuestro juicio, no ha venido a ser meramente academica, por las siguientes razones: primera, porque ya esta Corte habia asumido jurisdiccion sobre el caso mediante la presentacion de la solicitud de habeas corpus cuando los diez detenidos fueron soltados—de hecho, cabe afirmar que la interposicion de este recurso fue el motivo de que se les soltase, pues no podia ser simple coincidencia casual el que, al cabo de varios dias de extraña inaccion, se diese como de prisa y corriendo la orden de libertad provisional unas cuantas horas

despues de registrada en la escribania de esta Corte al solicitud de habeas corpus; segunda, porque si bien es cierto que Montaniel y Deoduco, los dos que no han sido soltados, fueron arrestados independientemente de los otros y en diferentes fechas, sus casos, sin embargo, son perfectamente identicos a los de los otros, pudiendo decirse que la policia arrestd y detuvo a todos ellos como partes de una conspiracion y sedicion organizada; asi que para lograr una adecuada perspectiva no hay mas remedio que enfocar conjuntamente los casos, o hay que decirlo mas bien en singular—el caso de los doce; y tercera, porque si bien es verdad que en los procedimientos de habeas corpus la cuestion principal es la liberacion fisica de la persona que esta privada de libertad y que cuando se ha obtenido tal resultado parece que los procedimientos deben darse por terminados y, por lo general, huelga todo comentario o exposicion de criterio sobre los hechos y la ley o doctrina juridica aplicable o deducible de los mismos, es evidente, sin embargo, que se dan casos en que los hechos son de tal transcendencia en relation con la vida de las instituciones, con la existencia del Estado, con las libertades publicas, con el orden social, o con la existencia de la misma comunidad civil y politica, que no porque deliberada o indeliberadamente se logra hurtarlos a la accion y decision de los tribunales, estos quedan excusados de exponer su criterio o hacer algun pronunciamiento, maxime si como en nuestro caso, en el caso de esta Corte Suprema, el pronunciamiento judicial, la exposicion de criterio puede no ser una cosa meramente teorica y academica, sino que puede irradiar un activo y eficaz influjo de saludable ejemplaridad y repercusion en la vida juridica sentando normas inequivocas de politica y conducta publica, o bien condenando y corrigiendo desmanes y abusos si abusos y desmanes se han cometido; y no cabe duda de que el que tenemos ante Nos es uno de esos casos. Este es un caso en que no hay mas remedio que hablar claro y fuerte para que lo oigan hasta los sordos, si se quiere que esta republica pise terreno firme y seguro en su lento caminar hacia el cumplimiento de sus destinos humanos e historicos; si se quiere que entre nosotros la constitucion, la ley, el orden, la libertad y la democracia no sean un mito, juguete de tiranuelos y despotillas, sino realidades vivientes y cotidianas; si se quiere, en una palabra, que este colosal experimento en que estamos empeñados—experimento de democracia politico-economico-social-cristiana en el gran pielago de la Oceania—resulte un acabado exito y una obra que podamos legar con orgullo a nuestros descendientes.

Lo primero que salta a la vista es que los doce obreros de que se trata no estaban cometiendo ningun delito, mucho menos el de sedicion, cuando sin previa orden judicial de arresto fueron aprehendidos como si hubiesen sido cogidos in fraganti en el preciso momento de perpetrar un crimen, de esos que dan lugar a procedimientos de oficio y captura y detencion inmediatas por cualquier agente de seguridad publica. Es verdad que eran huelguistas, pero ¿es acaso la huelga un crimen? Es verdad tambien que algunos de ellos fueron cogidos repartiendo y distribuyendo en las calles ciertas hojas volantes y pegando en muros y paredes ciertos manifestos, pero ¿eran criminosos, incendiarios o subversivos estos papeles? Tampoco: la Fiscalia de la ciudad, despues de examinarlos por varios dias—¡paciente y minucioso examen!—acabo por dictaminar a ultima hora que se trataba de literatura inocente, esto es, que no contenia ninguna manifestacion sediciosa, recomendando en consecuencia que diez de los doce fuesen inmediatamente soltados despues de una detencion no solo absolutamente injustificada, sino ademas ilegal porque excedio con mucho las 6 horas que fija el codigo penal como tiempo maximo de detencion en los casos en que no hay previa orden judicial de arresto y no se entrega al detenido a la autoridad judicial correspondiente dentro de dichas 6 horas.

Es cierto asimismo que algunos de los mencionados obreros fueron cogidos por la policia mientras estaban pacificamente parados en una esquina formando pequeños grupos, hallandose a lo mas en su poder copia del aviso para un mitin de la organizacion obrera a que estaban afiliados; pero ¿de cuando aca ha sido un crimen el estar pacificamente levantados en una esquina, siquiera fuese en pequeños grupos, y el tener en el bolsillo la copia de una convocatoria para un mitin pacifico? Esto jamas habia sido un crimen ni en los dias mas oscuros de nuestra sujecion a la soberania americana; menos ha de serlo ahora en que somos una nacion independiente, constituimos

una republica, y estamos cobijados bajo la sombra de nuestra propia bandera, teñida en grana de la sangre de tantos y tantos martires de la libertad que no, ¡no es posible hayan muerto en vano!

Es cierto igualmente que a uno de dichos obreros se le cogio porque andando por las calles tenia arrollada al cuerpo—¡notable experto en el arte de la propaganda!—Una banda en que se leian siguientes palabras en tagalo: "¡Damayan kami, huwag mag-eskirol!" (Help us, don't be a scab! ¡Ayudadnos, no seais desertores!); parece que la policia hallo esto como algo subversivo, como una incitacion a cometer sedicion. Resulta patente, sin embargo, que el gesto de este obrero propagandista no podia ser mas subversivo ni mas incendiario que el de Diogenes, el cinico, aquel que, metido en una barrica y portando una linterna, rodaba por las calles de Atenas en pleno dia buscando un hombre. Que sepamos, a ningun policia ateniense se le ocurrio coger a Diogenes por atentar contra la seguridad de la republica. * * *

Ahora llegamos al caso de Montaniel y Deoduco: el primero fue cogido porque trato de parar a un chofer de la ciudad mientras guiaba un "jeep" y le invito a que se sumase a la huelga; y el segundo porque entro sin permiso en un deposito de vehiculos de motor de la ciudad y no quiso salir de alli desobedeciendo las ordenes del policia de guardia. La policia creia que estos actos eran sediciosos, y arresto y detuvo a Montaniel y Deoduco por varios dias. Sin embargo, la Fiscalia, al igual que en los otros casos, dictamino que tampoco habia aqui sedicion, pero recomendo la continuacion de la detencion querellandoles por faltas que ni siquiera dan lugar a obligado arresto, segun el codigo penal: contra Montaniel, por supuesta vejacion injusta; y contra Deoduco, por supuesta desobediencia ligera a unas ordenes policiacas. ¿Verdad que esto hace recordar el laborioso parto de los montes? Un raton despues de tanto estruendo, tanta batahola. * * * Pero tambien hace recordar algo mas: la hoja de parra biblica para cubrir embarazos y verguenzas de ultima hora. * * * Algunos podran incluso decir que para el buen nombre y prestigio de la autoridad acaso hubiera sido mejor reconocer el error paladinamente, con gallarda hombradia, soltando a todos los detenidos sin excepciones forzadas y especiosas. Hay hasta grandeza y respetabilidad en la valiente admission de las propias faltas, yerros y limitaciones.

Se ha querido atenuar la gravedad de la accion policiaca tomando por sedicion lo que no era mas que llano ejercicio de derechos elementales de ciudadania, con la excusa de la ignorancia, alegandose que los aprehensores eran simples patrulleros o reclutas, por lo que no cabia esperar de ellos que discerniesen bien entre el delito de sedicion y un acto puramente inocente o una mera falta. Pero ¿es posible tal cuantia de ignorancia en el personal policiaco de este pais? ¿No se celebran acaso exámenes de servicio civil para la calificacion de dicho personal, fijandose ciertas reglas, normas y requisitos de estudios escolares para poder ser admitidos en tales exámenes? Pero suponiendo ya—lo que es mucho suponer—que cupiera invocar la ignorancia o falta de instruccion a favor del policia, patrullero o recluta de una aldea, de un villorrio ¿es posible, es siquiera medianamente decoroso que eso se invoque a favor del policia metropolitano de la ciudad de Manila, la capital de la republica? Ademas, tratandose de una huelga obrera de tales proporciones como la que motivo los arrestos que nos ocupan—suceso dramático, sensacional que agito y conmovio a todo el vecindario de la ciudad de Manila por afectar a ciertos servicios municipales indispensables—¿como se puede concebir que los patrulleros y reclutas del cuerpo de policia salieran a la calle para cumplir sus deberes en la custodia y mantenimiento del orden publico sin un plan previamente concertado y preparado por sus jefes y superiores, y sobre todo, sin recibir antes de estos las necesarias instrucciones sobre como iban a cumplir tales deberes, sobre que actos debian considerarse delictivos o sediciosos, sobre que actos y manifestaciones podian permitirse y tolerarse, etc., etc.? Es mas: suponiendo ya que los aprehensores, en la precipitacion o en el calor del momento, se equivocaran o se excedieran abusando de sus poderes, haciendo lo que hicieron, esto es, arrestando sin motivo justificado a los doce huelguistas de que se trata ¿no tenia, no tiene la policia de Manila un cuerpo o una division legal, compuesta de abogados, trabajando tranquilamente en sus mesas, entre las cuatro paredes de una oficina, rodeados de libros, sin prisas, sin excitaciones, depurando los hechos de cada caso, de cada arresto, examinando su fase legal, compulsando y

analizando papeles y documentos, evaluando precedentes locales y extranjeros, etc., etc.? Y ¿no tenía la policía de Manila, con toda su división legal, el periodo de 6 horas que señala la ley para todo ese trabajo de investigación, de examen, de análisis de los hechos y de la ley, para ver si se había cometido o no un crimen, si se había perpetrado o no el delito grave de sedición? Si hubiera habido el debido respeto, la debida consideración a la libertad, a los derechos constitucionales del individuo—derechos sagrados, inviolables, aunque ese individuo fuese un simple obrero, un humilde recogedor de cubetas municipales—¿por que la policía de Manila, con toda su batería de abogados, comenzando por el Jefe hasta el último oficial, no había de exprimir ese periodo legal de 6 horas, sacar de él todo el partido posible para estudiar y depurar los arrestos y ver que no estaban justificados a la luz de la ley de sedición—conclusión a que después se llegó, pero varios días después de tener pisoteada la libertad en los calabozos municipales, en contravención de la ley?

Los abusos, arbitrariedades, extralimitaciones y excesos autoritarios por parte de la policía o de cualquier agente de seguridad y orden público son una cosa que jamás debe ser tomada ligeramente, frivolamente, con la indiferencia y despreocupación con que muchas veces se toman ciertas cosas que se estiman inevitables o rutinarias—"matter of course," como se dice en inglés—si se quiere que la causa de la democracia y libertad no sufra entre nosotros un quebranto que puede ser fatal para la existencia misma de la república. La historia y la experiencia nos demuestran de consuno que la indiferencia, la dejadez de los pueblos es la que siempre ha echado a perder la libertad en el mundo. Es harto significativo que en nuestra misma época los gobiernos totalitarios, de sangre y de fuerza, hayan todos tenido que afianzarse en la policía para consolidar su poder por los cuatro costados y asegurar la castración, mejor todavía, la estrangulación de la voluntad popular, el abatimiento de toda resistencia ciudadana: el nazismo, en Hitler y su gestapo; el fascismo, en los rufianes de camisa negra de Mussolini; el despotismo nipón, en su famoso kempetai; y el absolutismo comunista, en la ogpu. Y el proceso de disolución ha comenzado siempre por la inercia, la abulia de las masas. Pocas frases históricas tienen la perenne significación vital de esta: "La vigilancia es el eterno precio de la libertad." O de estas otras de nuestro gran Dr. Rizal: "La resignación no siempre es virtud; es crimen cuando alienta tiranías"—"No hay tiranos donde no hay esclavos." O de esta otra: "Cada pueblo tiene el gobierno que se merece."

(Así que, entre parentesis, merecen plácemes las sociedades de carácter cívico y profesional y algunos de sus miembros que románticamente, desinteresadamente, han comparecido en el presente caso para romper lanzas por la causa de la libertad. Ellos pertenecen a una orden benemerita que puede propiamente llamarse la Orden de los Vigilantes de la Libertad.)

Se arguye en favor de los recurridos que la policía entregó a la Fiscalía de Manila los papeles correspondientes dentro de las 6 horas que fija el artículo 125 del Código Penal Revisado y que, por tanto, la demora ilegal, si la hubo, no tuvo lugar en los cuarteles de la policía sino en la oficina del Fiscal. Aunque ello no se trasluce clara e inequívocamente en autos, parece que se puede admitir que respecto de los 10 que han sido puestos en libertad los papeles se entregaron a la Fiscalía oportunamente; no así respecto de Montaniel y Deoduco, los dos cuya detención se ha prolongado. Resulta de autos y de los informes producidos en la audiencia que Deoduco fue arrestado el 7 de Noviembre y Montaniel el 8; que los papeles en ambos casos se entregaron por la policía a la Fiscalía en la tarde del 11 de Noviembre, 4 y 3 días respectivamente después del arresto, es decir, mucho después de las 6 horas fijadas por la ley; que la querrela contra Montaniel se presentó, como queda dicho más arriba, en la misma tarde del día 11, y la querrela contra Deoduco, por desobediencia, ya en la mañana del 12, esto es, en el mismo día de la vista de la presente solicitud de habeas corpus.

La Fiscalía explica la demora diciendo que por aquellos días estaba sobrecargada de trabajos; que, además de los 12 obreros detenidos de que se trata, había otros muchos por diferentes delitos y faltas; que necesitaba de tiempo para examinar bien las hojas volantes y demás papeles; que también necesitaba de tiempo para atar bien los cabos

y las circunstancias a fin de ver si con la huelga estaba relacionado un movimiento coordinado de sedicion, y si los actos de los 12 arrestados formaban parte de ese movimiento. La Fiscalia admite haber fijado en la cantidad prohibitiva de P12,000 la fianza que debia prestar cada detenido para su libertad provisional mientras se estudiaban los casos. Mas tarde, cuando la Fiscalia se convencio de que no habia sedicion ni nada que se le pareciera, recomendo una fianza de P100 para Montaniel y de P200 para Deoduco.

Sin discutir la responsabilidad de la Fiscalia por la demora—si esta se puede o no justificar administrativamente es cuestion que no nos compete considerar ni resolver—vamos a limitarnos a comentar y discutir la fase juridica, legal. Esta en orden naturalmente el hacer la siguiente pregunta: ¿es correcta, es acertada la asercion de que el "Promotor Fiscal de Manila es un funcionario judicial (judicial officer)," y que, por tanto, la entrega al mismo de la persona de un detenido dentro del periodo de 6 horas equivale a la entrega a las autoridades judiciales correspondientes (proper judicial authorities) de que habla el articulo 125 delCodigo Penal Revisado? Creemos que no: ni por su letra ni por su espiritu puede aplicarse por extension la fraseologia de ese articulo al Fiscal de la ciudad de Manila o a cualquier otro Fiscal; ese articulo no puede referirse mas que a un tribunal, a un juzgado, sea municipal, sea de primera instancia. Asi que estoy de perfecto acuerdo con la ponencia cuando positivamente sienta la doctrina de que "si bien un arresto puede hacerse sin orden cuando hay motivos razonables para ello (regla 109, articulo 6, Reglamento de los Tribunales), el detenido no puede ser recludo fuera del periodo prescrito por la ley, a menos que una orden de arresto se obtenga antes de un tribunal competente" (veanse las autoridades que se citan), y que "en el presente caso el Fiscal de la ciudad no tenia autoridad para expedir ordenes de arresto y carecia de facultad para convalidar tal detencion ilegal con solo presentar las querellas, o con una orden de su propia cuenta, ora tacita, ora expresa" (veanse asimismo las autoridades que se citan).

De lo dicho se sigue que cuando la policfa entrega a la Fiscalia de la ciudad despues del periodo de 6 horas prescrito por la ley los papeles sobre un detenido arrestado sin previa orden al efecto, no por ello se cura la ilegalidad del arresto y detencion, sino que dicha ilegalidad continua y persiste hasta que el Fiscal presenta la querella y obtiene una orden de arresto del tribunal competente, o que, tratandose de delito, mediante la prestacion de una fianza cuya cuantia se fijare y recomendare por dicho Fiscal, la policfa soltare al detenido, a tenor de lo previsto en el articulo 2460 del codigo administrativo.

Puede ocurrir, sin embargo, que la policia entregue los papeles a la Fiscalia de la ciudad dentro del periodo de 6 horas, pero que la Fiscalia no solo deja pasar dicho periodo, sino que transcurren dias, hasta semanas sin actuar sobre el caso en uno u otro sentido. La cuestion en orden naturalmente es la siguiente: ¿es legal o ilegal la detencion del arrestado en tal caso? En otras palabras: ¿queda suspendido el periodo de 6 horas durante el tiempo que el Fiscal de la ciudad tarda en actuar sobre el caso? La contestation tiene que ser necesariamente negativa. La rigidez, la inflexibilidad del periodo de 6 horas reza no solo para la policia, sino hasta para cualquier otra agencia o ramo oficial, sin excluir a la Fiscalia de la ciudad de Manila. Si por cualquier motivo la Fiscalia dejare de actuar dentro de dicho periodo, el deber de la policia o del que tenga la custodia del detenido es soltarle, quiera o no quiera el Fiscal, lo recomiende o no lo recomiende. De otra manera, la restriccion que estatuye la ley a favor de los detenidos sin previa orden de arresto—restriccion que implementa las garantias de la libertad establecidas en la Constitucion—resultaria un mito. La filosofia de la ley es, a saber: solamente se verifica un arresto sin previa orden cuando hay motivos razonables para ello, v. gr., cuando un individuo es cogido in fraganti cometiendo un delito. La ley presupone, por tanto, que el Estado tiene a mano todos los elementos necesarios para decidir que accion ha de tomar dentro del periodo de 6 horas, ya entregando la persona del detenido a las autoridades judiciales correspondientes mediante la querella procedente, a tenor del articulo 125 del codigo penal revisado; ya poniendole en libertad provisional bajo una fianza razonable, de acuerdo con el citado articulo 2460 del codigo administrativo; o ya poniendole completamente en la calle por falta de meritos en el caso. Si ninguna de estas cosas puede hacer el Estado en 6 horas no puede ser mas que por dos motivos: o porque se quiere cometer una

arbitrariedad, o la maquinaria oficial se halla en un deplorable estado de confusion, ineptitud o impotencia.

Se arguye con enfasis que bajo esta interpretacion la prosecucion del crimen sufriria un serio quebranto, sobre todo en la ciudad de Manila; que materialmente la Fiscalia no puede actuar adecuadamente sobre algunos casos en el plazo perentorio de 6 horas. Si esto es verdad el remedio no es infringir la ley como cosa inevitable, rutinaria; el remedio seria—o recabar de la Legislatura que se reforme la ley en la forma que se estime conveniente, o implementar y perfeccionar la maquinaria de la prosecucion criminal colocandola a la altura de las circunstancias. No hay nada mas anarquico, mas subversivo y fatal para el principio de la autoridad del buen gobierno que el tener leyes que no se cumplen, leyes que se infringen hasta por los llamados a ponerlas en vigor. "To be or not to be, that is the question." O existe la ley y hay que cumplirla; o si la ley es mala o impracticable, hay que reformarla o derogarla. Lo que no se debe permitir es el disolvente espectaculo de la diaria inobservancia de la ley.

Tenemos un precedente recientisimo: la ley sobre el Tribunal del Pueblo (Ley del Commonwealth No. 682, articulo 19). Una de las disposiciones mas importantes de esa ley es precisamente la que reforma el articulo 125 del codigb penal revisado, extendiendo el periodo de 6 horas a 6 meses a fin de legalizar la detencion de los que, sospechosos de traicion, fueron arrestados y detenidos por las autoridades del ejercito americano inmediatamente despues de la liberation de Filipinas de la conquista japonesa. De paso se puede precisamente decir que esa reforma es uno de los mejores argumentos contra la tesis de que durante el tiempo en que la Fiscalia de la ciudad estudia el caso el periodo de 6 horas queda en suspenso y se legaliza la detencion. Si esto fuese correcto, no hubiera habido necesidad de insertar esa disposicion reformatoria en la ley sobre el Tribunal del Pueblo.

DISSENTING

TUASON, J.:

The writ should have been denied or dismissed as to all the persons on whose behalf the petition was filed, including Pascual Montaniel and Pacifico Deoduco.

According to the return the last two had been arrested by the police for inciting to sedition on the occasion of the strike of the City of Manila workers and had been duly charged after their arrest with unjust vexation and disobedience to public orders, respectively. The complaints had been filed by the City Fiscal with the municipal court, and the Fiscal had recommended a bail of P100 for Montaniel and P200 for Deoduco for their temporary release. The fiscal in his return further stated that these complaints had been docketed on "November 11, 1946, before and after the receipt by them (respondents) of their respective copies of the petition for habeas corpus herein filed." The last allegation contradicts the finding in the decision of the majority that "the complaints were filed on the same day when this case was heard before this Court, that is, on November 12, 1946."

The allegations in the return are presumed to be correct, the same not having been controverted. The return to the writ, of itself, is not conclusive of the facts alleged therein, but is prima facie proof of such facts. In the absence of a denial, or appropriate pleading avoiding their effect, they will be taken as true and conclusive, regardless of the allegations contained in the petition, and the only question for determination is whether or not the facts stated in their return, as a matter of law, authorizes the restraint under investigation. (39 C. J. S., 664, 665.)

Here Pascual Montaniel or Pacifico Diaduco entitled to be discharged upon the facts set forth in the return? The decision of the majority says yes. It reasons that "Even assuming that they (the prisoners) were legally arrested without warrant on November 7 and 8, 1946, respectively, their continued detention became illegal upon the expiration of six hours without their having been delivered to the corresponding judicial authorities. (Article 125,

Rev. Pen. Code, as amended by Act No. 3940.) Their cases were referred to the City Fiscal late in the afternoon of November 11, 1946, that is four and three days, respectively, after they were arrested. The illegality of their detention was not cured by the filing of the informations against them, since no warrants of arrest or orders of commitment have been issued by the municipal court up to the hearing of this case before this Court." The decision goes on to say that "the City Fiscal, who has no authority to issue warrants of arrest (*Hashim vs. Boncan and City Fiscal of Manila*, 71 Phil., 261) was powerless to validate such illegal detention by merely filing informations or by any order of his own, either express or implied."

With all modesty and with due respect to the opinion of the majority, I take a different view. The bringing of the prisoners before the City Fiscal made a whole lot of difference and totally changed the legal aspects of the detention. The Prosecuting Attorney of the City of Manila is a judicial officer with powers to make investigations on the same level as a municipal judge or justice of the peace. (*United States vs. Rubal*, 37 Phil., 577; section 2, Rule 108, of the Rules of Court.) Section 2, Rule 108 provides that "every justice of the peace, municipal judge or city fiscal shall have jurisdiction to conduct preliminary investigation of all offenses alleged to have been committed within his municipality or city, cognizable by the Court of First Instance." And with particular reference to the Fiscal of the City of Manila, section 2465 of the Revised Administrative Code ordains that he "shall cause to be investigated all charges of crimes, misdemeanors, and violations of ordinances, and have the necessary informations or complaints prepared or made against the persons accused."

I conclude from these provisions that when Montaniel's and Diaduco's cases were reported to the City Fiscal, that action put an end to the illegality of their detention, assuming that the prolonged detention had been unwarranted. In other words, if Montaniel's and Diaduco's detention had become illegal upon the expiration of six hours from the time of their arrest, it reacquired its lawful character the moment they were taken to the City Fiscal for appropriate action on their cases; in fact the prisoners could not thereafter be released by the police except in the manner provided by law. What the law is, I shall endeavor to explain.

There is legal and rational support for the proposition that after the case of an arrested person has been placed in the hands of a fiscal or municipal judge, it is the right, let alone the duty, of the police to keep him in custody until he is discharged according to law regardless of the illegality of his previous detention, which, by the way, is not to be confused with the arrest. This practice is made necessary, at least in the City of Manila, by the very nature of things as well as by express enactments. The law, statutory and common, is that an officer or private individual who has made an arrest of a person without a warrant has authority to detain him in custody until a preliminary hearing against him can be had (4 Am. Jur., 49) and he may then be committed to jail or held to bail (*William F. Downs vs. Sherlock Swann*, 23 L. R. A., N. S., 739, citing *Brish vs. Carter*, 98 Md., 445, and *Edger vs. Burke*, 96 Md., 722). Supplementing and confirming this general rule the Manila Charter specifically vests on the Chief of Police the power to keep the prisoner in custody or release him on bail, although in cases of violation of any penal law, as distinguished from violations of municipal ordinances, the bail is fixed by the City Fiscal and the release must be authorized or recommended by the latter. Section 2460 of the Revised Administrative Code thus states that "the chief of police may take good and sufficient bail for the appearance before the city court of any person arrested for violation of any city ordinances: Provided, however, That he shall not exercise this power in case of violations of any penal law, except when the fiscal of the city shall so recommend and fix the bail to be required of the person arrested."

In consonance with the foregoing rule and provision, the practice followed by the City Fiscal of Manila, when a person arrested without a warrant is brought before him, has been either to fix the bond and order the provisional release of the prisoner before filing a complaint or information or making an investigation, or else to file a complaint or information and leave it to the appropriate court to admit the detained person to bail. In neither case

it is necessary to, nor does the court, as a matter of fact, issue an order of arrest. This is so simply because the accused is already under arrest; and the court does not issue a commitment because there is no final judgment and because the arrest has not been effected by its order. It is to be remembered that the City Fiscal himself has no authority to order, but only to recommend to the police, the release of detained persons. Neither is the City Fiscal empowered to order the continued detention of such persons for the reason already stated, that it is upon the authority and responsibility of the Chief of Police that this functionary holds the prisoners until the court commands his discharge.

The previous illegality of the detention of Montaniel and Deoduco has no relevancy to their petition for habeas corpus and it is a mistake for this Court to allow itself to be influenced thereby. There can be no serious doubt as to the intent of article 125 of the Revised Penal Code, as amended by Act No. 3940, which says that "The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours." This provision refers solely to detention by a police officer prior to the retained person's delivery to the proper judicial officer. It does not restrict the time within which the fiscal of the city, a justice of the peace or a municipal judge should act on the case. It seeks to prevent abuses by the police—to prevent them from keeping for an unreasonable length of time arrested persons who are not properly charged before a competent judicial officer, or whose detention has no justifiable cause. It does not force the city fiscal, justice of the peace or municipal judge to release the prisoners at or before the expiration of six hours from the time of their arrest. Nothing could have been farther from the thought of the legislature than to tie so tightly the hands of the law, and coddle and pamper lawlessness to a calamitous extreme. It requires no mental effort to see that it is beyond the ability of any person to make an investigation of a criminal case, file a complaint or information, and secure an arrest warrant or commitment in six hours, or worse still what remains, if any, of that period computed from the time of the arrest. The theory sustained by the majority, if put into practice, would play havoc on the efforts of law-enforcement agencies and the administration of criminal law, certain to produce disastrous consequences, not difficult to imagine, in the maintenance of peace and order. The decision of this Court sets a precedent which will open the door to evasions of criminal prosecution. The populous conditions of Manila and other centers of population in the Philippines as they exist today, and the modern facilities of transportation and rapid transit afford easy means for avoiding re-arrest or fleeing from justice. Such evasions and such escapes would be the result of the holding that a person who has been arrested without a warrant and detained beyond the six-hour limit by the police should be discharged irrespective of the filing of a complaint after the lapse of that period, on the pendency of an appropriate criminal action against him. The situation which I have pictured will follow from the ruling that even if a crime has been committed by the person arrested and a complaint has been filed against him, he nevertheless should be released, without prejudice to his re-arrest on a formal information or complaint lodged against him.

I do not justify or condemn the arrest or the detention beyond the six-hour limit of the petitioners. This question is not in issue and must be judged in the light of the surrounding circumstances of the case which are not before us. But I do maintain that the illegal detention, if there was illegal detention, and the subsequent lawful restraint are separable and must not be confounded with each other. If a crime was committed as a result of the prolonged detention of the prisoners, there is the penal law and the proper machinery of justice to take care of the erring officials. To prosecution and punishment or correction of criminal offenders is a vital concern of the State, vital to its very existence. The interests of the people should not be sacrificed or jeopardized by the ignorance, negligence or malicious conduct of the police.

The opinion of the majority stems from the erroneous assumption that the right to the writ must be determined according to the facts as they appear at the time of the filing of the petition. Some early cases did hold that valid

process obtained after the time of service of the writ of habeas corpus was not sufficient, and that a person detained unlawfully must be discharged from the imprisonment under the unlawful proceedings, although he might thereafter be detained on lawful proceedings. But the better, present-day and preponderant rule, which is more in keeping with modern conditions and better safeguards against modern facilities for escape, is that a prisoner has no right to a writ of habeas corpus unless he is entitled to immediate release, and the writ will not issue unless he is presently in restraint of his liberty without warrant of law; that the writ of habeas corpus is concerned solely with the legality of the restraint at the time of the filing of the petition for its issue, or by the conditions existing at the time of the hearing or final decision thereon, and does not depend on the legality or illegality of the original caption; and that where the detention is lawful at the time of the return, it is sufficient to defeat the writ. (39 C. J. S., 443, 444.) The United States Supreme Court, in an opinion written by Mr. Justice Brandeis, declares that "the validity of a detention questioned by a petitioner for habeas corpus is to be determined by the conditions existing at the time of the final decision thereon." (United States ex. rel. Mensevich vs. Tod, 68 Law. ed., 591.) Conversely, it has been held, detention which was lawful in its inception may afterwards become unlawful and the prisoner is then entitled to be discharged on habeas corpus, as, for example, where a prisoner has been pardoned.

The statement therefore that "the city fiscal who has no authority to issue warrants of arrest (Hashim vs. Boncan and City Fiscal of Manila, 71 Phil., 261) was powerless to validate such illegal detention by merely filing an information or by any other of his own, either express or implied, must be qualified. If by validation of the illegal detention is meant wiping out of the penal offense that has already been consummated and which resulted from the unlawful detention, there can be no disagreement. But if it means that the detention having become illegal because it extended beyond six hours nothing short of a warrant of arrest issued by a competent judge could stop the release of the prisoners under detention, the conclusion is against law and sound principles of jurisprudence.

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