

**URSU LUANGCO, ARISTON RAMOS, RESTITUTO REDOÑA,
SIMPLICION IBÁÑEZ, AND BENITO BAGOHEN, PETITIONERS AND
APPELLANTS, vs. THE PROVINCIAL WARDEN OF TACLOBAN, LEYTE,
RESPONDENT AND AP...**

G.R. No. L-142. October 05, 1946

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal taken by the petitioner Igmidio Lagera from the decision rendered on May 30, 1945, by the Court of First Instance of Leyte presided by Judge F. Borromeo Veloso, and by all the other petitioners from the decision rendered on February 23, 1945, by the same court presided by Judge Sotero B. Cabahug, in which decisions the petitioner's applications for writ of habeas corpus were denied.

From the decisions appealed from it appears that the petitioners in these two cases (G.R. No. L-142 and G.R. No. L-143), were members of the Philippine Constabulary of the so-called Republic of the Philippines, and they were convicted, sometime during the year 1944, of the crime of robbery and of robbery homicide defined and penalized by Act No. 65 enacted by the Assembly of the so-called Republic of the Philippines, by the Court of Special Criminal Jurisdiction created in Leyte by Ordinance No. 7 promulgated by the President of the said Republic.

The definition of the crime of robbery found in the Revised Penal Code of the Commonwealth of the Philippines, was adopted in said Act No. 65 and penalized with a penalty heavier than that imposed by the Revised Penal Code for the crime of robbery, if committed by officers and persons, such as the herein petitioners, charged or connected with the supervision and control of the production, procurement and distribution of foods and other necessities.

The petitioners, in support of their appeal, allege that "the lower court erred in not holding that Act 65 and Ordinance No. 7 of the Republic of the Philippines were null and void ab initio, because (1) the procedure prescribed therein did not afford a fair trial and violated fundamental human rights; and (2) Ordinance No. 7 deprived the Supreme Court of its jurisdiction to review, reverse, affirm or modify on appeal final judgment of inferior courts in violation of the Constitution;" and "The lower court erred likewise in not holding that the punitive sentences imposed by the Court of Special Criminal Jurisdiction by virtue of the provisions of Act 65 and Ordinance No. 7 ceased to have legal force and effect upon the reestablishment or restoration of the Commonwealth of the Philippines."

It is not necessary for us to discuss the first ground or assignment of error, for it is included in the second.

In the case of *Peralta vs. Director of Prisons*, (75 Phils., 285), the decision, concurred in by Messrs. Justices Jaranille, Pablo, Bengzon, and in its result by Chief Justice Moran, in which the same questions of fact and law we raised are decided, held that the punitive sentence rendered by the Courts of Special Criminal Jurisdiction ceased to have force and effect upon the restoration of the Commonwealth of the Philippines; and in their

respective five separate concurring opinions, Messrs. Justices Ozaeta, De Joya, Perfecto, Hilado and Briones held that said punitive sentence was null and void ab initio. Although, the dispositive part of the decision of the majority does not constitute a precedent for only five Justices concurred therein, it is plain that all the Justices, except Mr. Justice Paras, were unanimous in that said sentence ceased to be effective or valid at least after the restoration of the Commonwealth government. Because if it were null and void ab initio during the Japanese occupation, it must have been necessarily void also after said restoration.

Applying the decision in said case to the present, it is evident that the punitive sentences imposed upon the petitioners by the Court of Special Criminal jurisdiction, created by Ordinance No. 7 of the President of the so-called Republic of the Philippines, for violation of Act No. 65 promulgated by the Assembly of said Republic, ceased to have any force and effect after the restoration of the Commonwealth of the Philippines, and therefore the confinement of the petitioners by virtue of said punitive sentences has become illegal at least after said restoration.

It may not be amiss to say, in connection with Mr. Justice Paras' dissenting opinion, that there is no legal way for this Court to order the reconstitution of the record of the criminal cases against the appellants, for there is no appeal from the judgment of conviction rendered by the Court of Special Criminal Jurisdiction of Leyte pending before us. The appeal under consideration is from this order of the Court of First Instance of Leyte denying the appellant's petition for habeas corpus. Besides, it would be of no avail to order such reconstitution, inasmuch as, we would have, after all, to dismiss the case against the appellants for the reasons stated, in this decision.

Although it is not necessary to decide in this case, and there is doubt in the minds of some members of this court as to whether the appellants may after their release be prosecuted for robbery under the Revised Penal Code, the writer of this decision is of the opinion that the appellants' conviction for violation of Act No. 65 and their release on the ground of nullity of the punitive sentence imposed upon them, will not be a bar to their being prosecuted now for robbery under the Revised Penal Code. Because the crime of robbery penalized by this Code is not the same robbery punished by said Act No. 65. The former is an offense punished by a municipal law continued in force by the invader, and the latter is a crime of political complexion created and penalized by an Act, prosecuted, under a different procedure, and before a Court of Special Original Jurisdiction (promulgated and organized by the occupant), all of which became null and of no effect upon the restoration of the legitimate or Commonwealth Government. Besides, as the Court of Special Criminal Jurisdiction that convicted the defendants had no jurisdiction to try offenses penalized by the Revised Penal Code, the defendants could not set up the defense of double jeopardy if prosecuted now for robbery under said Code, for they had not been in danger of being convicted thereof by said court, although the robbery under the Penal Code was necessarily included in the robbery penalized by said Act No. 65.

We therefore reverse the decision appealed from and order the release of the petitioners, with costs. So ordered.

Moran, C. J., Bengzon, Briones, Padilla, and Tuason, JJ., concur.

CONCURRING

PERFECTO, J.:

On the strength of the theories advanced in our opinions in *Co Kim Cham vs. Valdes*, *Tan Keh and Dizon* (75 Phil., 113, 371), and in *Peralta vs. Director of Prisons*, (75 Phil., 285), we concur in the reversal of the appealed decision and in the immediate release of petitioners, without costs.

Whether or not, after their release, petitioners-appellants may again be prosecuted for the acts upon which they were tried and convicted under the judicial proceedings declared null and void, is a question not properly raised by the parties in these cases, and should not be passed upon unless and until an appeal is squarely submitted for our decision.

CONCURRING

HILADO, J.:

I concur in the reversal of the decisions appealed from and the consequent release of petitioners. My grounds are those stated in support of my following opinions heretofore delivered: (1) my dissenting opinion, both from the main decision and from the resolution on the motion for reconsideration, in *Co Kim Cham vs. Valdez Tan Keh, and Dizon* (75 Phil., 113, 371); (2) my concurring opinion in *Peralta vs. Director of Prisons*, (75 Phil., 285); (3) my concurring opinion in *People vs. Jose*, (75 Phil., 612); (4) my dissent in *Alcantara vs. Director of Prisons*, (75 Phil., 494); (5) my concurring opinion in *De Castro vs. Court of Appeals*; (75 Phil., 824); and (6) the doctrine in *Jones vs. United States* (137 U. S. 202; 34 Law ed., 691, 696, and in the cases therein cited), that:

"Who is the sovereign, de jure or de facto, of a territory is not a judicial, but a political, question, the determination of which by the legislative and executive department of any government conclusively binds the judges as well as all other officers, citizens and subjects, of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances. (*Gelston vs. Hoyt*, 16 U. S., 3 Wheat, 246, 324 [4:381, 401] *United States vs. Palmer, Id.*, 610 [471]; the *Divina Pastora*, 17 U. S., 4 Wheat, 52 [4:512]; *Foster vs. Neilson*, 27 U. S. 2 Pet. 253, 307, 309 [7:415, 433, 434]; *Keene vs. M'Donough*, 33 U. S. 8 Pet., 308 [8:955]; *Garcia vs. Lee*, 37 U. S. 12 Pet., 511, 520 [9:1176]; *Williams vs. Suffolk Ins. Co.*, 38 U. S. 13 Pet., 415 [10:226]; *United States vs. Yorba*, 68 U. S. 1 Wall., 412; 423 [17:635; 637]; *United States vs. Lynde*, 78 U. S. 11 Wall., 632, 638 [20:230, 232]. It is equally well settled in England. *The Pelican*, Edw. Admin Appx. D; *Taylor vs. Barclay*, 2 Sim. 213; *Emperor of Austria vs. Day*, 3 DeG. F. & J., 217, 221, 233; *Republic of Peru vs. Peruvian Guano Co.*, L. R. 36 Ch. Div. 489, 497; *Republic of Peru vs. Dreyfus*, L. R. 38 Ch. Div. 348, 356, 359)" (137 U. S. 213, 34 Law ed. 696.)

Finally, this concurring opinion is also based on the considerations stated in my dissenting opinion in *Ibañez vs. Hernandez* (p. 775, post).

PABLO, M., Concurrerente y disidente:

Los recurrentes fueron acusados y condenados por el Juzgado de Primera Instancia de Leyte en la causa Criminal No. 1, por infracción del artículo 6 de la Ley No. 65 de la República establecida por el ejército japonés; en las causas criminales Nos. 2 y 3 por infracción del artículo 294, párrafo 1. del Código Penal Revisado (robo con homicidio), y en la causa criminal No. 4 por infracción del artículo 294, párrafo 4 del Código Penal Revisado, (robo con violencia e intimidación innecesarias). Contra el recurrente Ursu Luangco, se dictaron dos sentencias de pena capital y los expedientes fueron elevados ante este Tribunal en grado de consulta. Todos los demás acusados han presentado escritos de apelación y el Juzgado no les dio curso, en cumplimiento con las disposiciones de la Ordenanza No. 7. Porque se les impidió apelar, todos los recurrentes, excepto Ursu Luangco, presentaron recurso de mandamus ante este Tribunal, pidiendo que se ordene al Juzgado inferior que de curso a su apelación. Todos los expedientes han sido destruidos por la guerra.

En Abril 21, 1945, después de restablecido el Commonwealth, Igmidio Lagera presentó su solicitud de habeas corpus (causa civil No. 15) ante el Juzgado de Primera Instancia de Leyte y fue denegada por el Hon. Juez Borromeo Veloso en 2 de mayo de 1945; los otros recurrentes presentaron petición de habeas corpus (causa civil

No. 7 del mismo Juzgado) en enero 20, 1945 y fue denegada por el Hon. Juez Cabahug en febrero 23, 1945. Todos los recurrentes apelaron.

Las dos condenas de muerte impuestas contra Luangco no estan firmes aun porque estan pendientes en este Tribunal en grado de consulta.

Los otros recurrentes tampoco estan sufriendo condena final porque interpusieron recurso de mandamus pidiendo que este Tribunal ordene al Juzgado de Primera Instancia de Leyte que de curso a su apelacion. Es verdad que bajo la Ordenanza No. 7 no podian apelar; pero mientras no haya resolucion definitiva sobre su recurso de mandamus, las sentencias dictadas contra ellos no podian aun ser ejecutadas. Los recurrentes, pues, en las dos presentes causas de habeas corpus no son mas que simples presos preventivos en las causas criminales Nos. 1, 2, 3 y 4 del Juzgado de Primera Instancia de Leyte, pendientes de resolucion en este Tribunal. No tienen derecho al recurso solicitado.

Poner en libertad a los recurrentes es dejar impunes los delitos cometidos por ellos. Es fomentar, en vez de reprimir, la comision de delitos tan graves como los cometidos por estos recurrentes.

Porque fueron procesados bajo la Ordenanza No. 7 que es una medida legislativa de caracter politico (Peralta contra Director de Prisiones, (75 Phil., 285) todo el proceso es nulo y de ningun valor. Sin embargo, las querellas presentadas en las causas Nos. 2, 3 y 4 son validas porque versan sobre infraccion de los parrafos 1 y 4 del articulo 294 del Codigo Penal Revisado, que es ley municipal.

Dicho articulo no ha sido enmendado por la Ley No. 65.

Concurro con la mayoría en cuanto revoca las decisiones dictadas en estos dos expedientes de habeas corpus; pero disiento en cuanto ordena la libertad de los recurrentes. La vindicta publica exige que sean procesados de acuerdo con las leyes vigentes. Creo que este Tribunal debe ordenar al Ministerio Fiscal que proceda contra ellos en las causas criminales Nos. 2, 3 y 4 del Juzgado de Primera Instancia de Leyte, bajo las querellas ya presentadas.

DISSENTING

PARAS, J.:

A graphic exposition of the facts and status of the criminal cases in which the petitioners were prosecuted and convicted and which occasioned their confinement-now complained of-is contained in the decision of Judge Sotero B. Cabahug partly reading as follows:

"Los recurrentes eran miembros de la Constabularia Filipina de la titulada Republica de Filipinas el mayo 25, 1944, y estaban destacados en aquel dia en el municipio de Barugo, de esta provincia. Dichos recurrentes, juntamente con otros soldados, armados de fusiles, sin ninguna orden de registro y sin consentimiento de los dueños de la embarcacion de vela llamada 'Lucia II', entonces fondeada en las playas del citado municipio, registrar on dicha embarcacion y confiscaron tres sacos de palay y cuatro de arroz, avaluados en su totalidad en P176, y los llevaron a su campamento. Poco despues, en aquel mismo dia, volvieron a la embarcacion citada y arrestaron a Benigno Estacion y Luis Avila y se apoderaron de dinero en metalico y otros efectos que en total ascendieron a mas de P3,000. Despues de maltratar barbaramente a Benigno Estacion y Luis Avila, mataron a estos dos desgraciados, enterrandoles durante la noche en las playas del referido municipio de Barugo.

"Por estos actos barbaros e inhumanos ejecutados por los aquí recurrentes, ellos y sus compañeros fueron procesados en los expedientes Nos. 1, 2, 3, y 4 en el Juzgado EspeCial de esta provincia, por los delitos de violacion del articulo 2, parrafo (i) de la Ley No. 65; por robo con homicidio por la muerte de Benigno

Estacion; por robo con homicidio por la muerte de Luis Avila; y por robo en cuadrilla. Despues de la vista correspondiente en que los recurrentes se defendieron y fueron representados por abogados competentes, los recurrentes Ursu Luangco y Ariston Ramos fueron condenados, en el expediente No. 1, a una prision de ocho (8) años y un (1) dia como minimum a diez (10) años como maximum, y Simplicio Ibañez y Benito Bagohen a sufrir una prision de cuatro (4) años y dos (2) meses a cinco (5) años; en el expediente No. 2, Ursu Luangco ha sido condenado a la pena capital, Restituto Redoña y Ariston Ramos a cadena perpetua, y Simplicio Ibañez y Benito Bagohen a una prision de diez (10) años y un (1) dia a doce (12) años, ademas de haber sido condenados todos a indemnizar a los herederos del occiso Benigno Estacion en la suma de P2,000 y a pagarles la de P500 que era el valor del anillo de diamante robado; en el expediente No. 3, Ursu Luangco, otra vez fue condenado a la pena capital, Restituto Redoña y Ariston Ramos a la de cadena perpetua, Simplicio Ibañez a una prision de diez (10) años y un (1) dia a doce (12) años, y Benito Bagohen a una prision de seis (6) años y un (1) dia a ocho (8) años, aparte de haber sido condenados todos a indemnizar a los herederos de Luis Avila en la suma de P2,000 y a pagarles la cantidad robada de P180; y en el expediente No. 4, Ursu Luangco fue condenado a cadena perpetua, Restituto Redoña y Ariston Ramos a una prision de diez (10) años a quince (15) años, y Simplicio Ibañez y Benito Bagohen a sufrir una prision de cuatro (4) meses.

"Estas cuatro causas se vieron conjuntamente y esta sentencia se dicto en las mismas el 18 de julio de 1944 por el Honorable Vicente de la Cruz, quien era el que presidia el Juzgado Especial establecido en esta provincia.

"En virtud de la sentencia arriba mencionada, los aqui recurrentes fueron recludos en la carcel provincial y alli estan hasta ahora extinguiendo sus respectivas condenas, a excepcion de Ursu Luangco, cuya condena en los expedientes Nos. 2 y 3, se ha remitido a la Honorable Corte Suprema en grado de consulta y para su revision. Sin embargo, los otros recurrentes, cuya apelacion no ha sido admitida por el Juzgado Especial, acudieron a dicha Honorable Corte Suprema en un recurso de mandamus para compeler al citado Juzgado que admita la referida apelacion, el cual recurso sigue pendiente hasta ahora ante dicha Superioridad.

"Del anterior relato de hechos, se desprende claramente que aun cuando se declarase nula e ilegal la sentencia dictada por el Juzgado Especial en el expediente No. 1 por violacion de la Ley No. 65, en relacion con la Ordenanza No. 7, los aqui recurrentes no tienen, ciertamente, derecho alguno al remedio que solicitan en la presente causa; por lo mismo que todavia quedarian las tres condenas a ellos impuestas en los expedientes Nos. 2, 3 y 4 por dos delitos de robo con homicidio y uno de robo en cuadrilla, los cuales delitos estan castigados por nuestro propio Codigo Penal Revisado aprobado por la Legislatura Filipina en 8 de diciembre de 1930, tan es asi que el Honorable Juez De la Cruz, al dictar su decision condenatoria en los citados expedientes Nos. 2, 3 y 4, cita el articulo 294, parrafos 1 y 4 del mencionado Codigo. El Juzgado cree que el silencio que guardan las recurrentes sobre las sentencias condenatorias contra ellos dictadas en los ultimos tres expedientes es muy significativo; ello no indica otra cosa mas que su tacito reconocimiento de la legalidad y validez de dichas sentencias, cuyas penas, naturalmente, tienen que ser extinguidas en su totalidad, a menos que las mencionadas sentencias sean revocadas por un Tribunal competente o los recurrentes fuesen objeto de la clemencia ejecutiva."

As the criminal cases against the petitioners have not thus reached a final stage and, at the time of the loss or destruction of the records, were pending in this court on appeal or otherwise, it is proper and becomes necessary, in my judgment, to order their reconstitution or, if this be impossible, the holding of a new trial. If, as held by five members of this court, the convictions were valid prior to the liberation of the Philippines from enemy occupation, the petitioners cannot further be criminally charged with the same acts for which they had already, for a time at least,

been validly prosecuted and sentenced, without placing them twice in jeopardy. If, as contended by five other members, the proceedings had in the court below were void ab initio, in view only of the inquisitorial and unconstitutional procedure provided for in Ordinance No. 7, there yet remains a valid indictment which may and should be proceeded with conformably to existing rules.

In *Peralta vs. The Director of Prisons*, (75 Phil., 285), cited by the majority, wherein the writ of habeas corpus was granted, no doctrine that can be said to be binding was enunciated because the members of this Court, though all concurring in the result, had expressed individual divergent views with respect to the fundamental basis for the allowance of the writ. Indeed, some held that Act No. 65 of the so-called Philippine Republic and Ordinance No. 7 of the President of said Republic, under which Peralta was indicted and convicted, as well as the creation of and the summary

procedure prescribed for, the courts of special and exclusive criminal jurisdiction, were perfectly valid, but that the punitive judgment imposed upon Peralta, while effective during the enemy occupation, ceased to be valid after the restoration of the Commonwealth of the Philippines by reason of its political complexion. Others predicated their votes on criticisms against the inquisitorial features of Ordinance No. 7, and on the consequent view that the proceedings that resulted in the conviction and imprisonment of Peralta are null and void, *ab initio*. Upon the other hand, I was of the opinion that Peralta could be set free by simply extending to him the benefit of, and applying the existing laws, without invoking any rule of international law.

The herein petitioners were charged with and convicted of robbery and robbery with homicide, offenses which, though covered by Act No. 65 and Ordinance No. 7 above referred to, are common law crimes penalized in the Revised Penal Code (also in force during the enemy occupation); and the penalty actually imposed upon them is in accordance with said Code. The result is that the present case is distinguishable from the *Peralta* case where the penalty prescribed in Act No. 65, which was heavier than that fixed in the Revised Penal Code, was imposed. Certainly, the punitive sentences against the herein petitioners did not penalize as a crime an act not criminal by the municipal law, and could not therefore have any political complexion. Indeed, the majority admit that the "definition of the crime of robbery found in the Revised Penal Code of the Commonwealth of the Philippines, was adopted in said Act No. 65."

Although the courts of first instance of the provinces were authorized by Ordinance No. 7 to sit as courts of special and exclusive jurisdiction, there is now no evidence before us, in view of the destruction of the records, that the Court of First Instance of Leyte, which tried and convicted the herein petitioners, followed the summary procedure adopted by said Ordinance. In all probability, the Rules of Court, then and now in force, might have been observed. As a matter of fact, I am not aware of any case in which a defendant had ever been actually subjected to the inquisitorial procedure condemned by some of the members of this Court. Hence, we cannot on said account set aside the herein punitive sentences.

I vote to affirm the appealed decision and to order the reconstitution on of the records of the criminal cases in question or, in its default, a new trial. I am really averse to the idea of setting at large the authors of such criminal acts as pictured and particularized in the appealed decisions, because I am skeptical about the possibility or their being legally held accountable therefor subsequently.

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