

**AURELIO S. ALVERO, PETITIONER, VS. ARSENIO P. DIZON ET AL.,
RESPONDENTS.***G.R. No. L-342. May 04, 1946*

Ponente: DE JOYA, J.

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This is a petition for certiorari with injunction originally filed in this court.

In "the petition it is alleged that petitioner Aurelio S. Alvero has been accused of treason, in criminal case No. 3 of the People's Court; that at the hearing on his petition for bail, the prosecution presented, as part of its evidence, certain documents which had been allegedly seized by soldiers of the United States Army, accompanied by Filipino guerrillas, in the petitioner's house; that petitioner immediately objected to the presentation of said documents, and called the attention of the respondent judges to the fact that he had filed a petition, in which he protested against the procedure of the government in the seizure of said documents, and asked for their return to the petitioner—that the respondents permitted the prosecution to present said documents as evidence, which were considered, upon the termination of the presentation of the evidence for both parties, in denying said petition for bail; that the petition filed on December 1, 1945, for the return of the documents allegedly seized illegally in petitioner's house, was not considered by the respondents, before the commencement of the trial of petitioner's case, on the merits, due perhaps to an involuntary oversight; that at the commencement of the trial of said criminal case No. 3, and during its course, the prosecution again presented, as evidence, against the petitioner said documents which had been taken from his house, and petitioner renewed his objection thereto, and asked for their return to him, alleging that their seizure was illegal and that their presentation would be tantamount to compelling him to testify against himself, in violation of his constitutional rights; that in deciding the question so raised, the respondent judges, in open court, stated that the prosecution might in the meanwhile continue presenting said documents, without prejudice to the final resolution of said petition, when the prosecution should finish presenting its evidence; that in concluding the presentation of its evidence and resting the case, after offering said documents as part of its evidence, the petitioner again raised the question of the admissibility of said documents, and the respondent judges then ordered the substantiation of said allegations of petitioner, and set for hearing his petition for the return of said documents; that said petition was heard on February 16, 1946, and at said hearing, the petitioner and his wife testified, without any contradiction that, on February 12, 1945, on the occasion of the arrest of the petitioner by soldiers of the United States Army, the latter searched the house of the petitioner and seized, among other things, the documents which he had in his house; that when said petition for the return of said documents was submitted for the consideration and decision of the respondent judges, the latter, on February 26, 1946, issued an order denying said petition, and admitted as competent evidence the documents presented by the prosecution, marked as Exhibits A, C, G, H, K, L, P, R, R-1, R-2, U, Z, CC, DD, FF, HH; that on the same date that said order was issued, denying the petition for the return of said documents, petitioner asked for the reconsideration of said order, which was also denied. (Petition, pars. 1-12.)

And herein petitioner now claims that the respondent judges, in denying the petition for the return of said

documents, acted without jurisdiction and committed a grave abuse in the exercise of their discretion, alleging that even the seizure of documents by means of a search warrant legally issued, constitutes a violation of the rights guaranteed in paragraphs 3 and 18 of section 1 of Article III of the Constitution, and, consequently, when their seizure cannot be justified by the corresponding search warrant, the court should order their immediate return; that the petitioner has no other speedy and adequate remedy for the protection of his rights guaranteed by the Constitution, other than this petition for certiorari, as the right of appeal granted by law to a person accused of a crime, is costly and highly prejudicial to the petitioner, as it presupposes that the prosecution has established the guilt of the accused by means of legal and competent evidence, as alleged in the last three (3) paragraphs of the petition.

Consequently, herein petitioner asks for the annulment of the order issued by the respondent judges, on February 26, 1946, in said criminal case No. 3, entitled—People of the Philippines vs. Aurelio S. Alvero,—the return to him of the documents presented by the prosecution, mentioned above, and the issuance of a writ of preliminary injunction.

In their answer filed on March 21, 1946, herein respondents have substantially admitted the allegations made and contained in the first twelve (12) paragraphs of the petition, except the portions alleging that the documents in Question had been obtained by means of force and intimidation or through coercion; and that certain soldiers of the American Army took certain personal properties of herein petitioner, at the time the search was made; and that the acquisition of said documents was manifestly a violation of petitioner's constitutional rights and that their admission as evidence for the prosecution, would be tantamount to compelling petitioner, as accused, to testify against himself—all of which portions have been expressly denied by the respondents.

Respondents have also expressly denied the allegations contained in the remaining three (3) paragraphs of the petition.

And as defenses, respondents allege (1) that petitioner himself has admitted the legality of the seizure of the documents in question in his motion for reconsideration, dated February 26, 1946; (2) that petitioner has not proven that said documents had been illegally seized from him; (3) that the seizure of the documents in question took place, on February 12, 1945, in Pasay, Rizal, which was then still a combat zone, and that the seizure of certain papers in the house of the petitioner was made by soldiers of the United States Army of Liberation or its instrumentalities; (4) that said seizure was effected lawfully under the terms of the proclamation of the Commander in Chief of the United States Liberation Forces, dated December 29, 1944, in which he declared his purpose to remove alleged collaborators, when apprehended, from any position of political and economic influence in the Philippines and to hold them in restraint for the duration of the war; (5) that the documents in question had been properly admitted as evidence for the prosecution in said criminal case No. 3, as herein petitioner, as accused in said case, had expressly waived his right to object to their admissibility, particularly Exhibits A, FF, HH and P; (6) that petitioner's evidence of alleged ownership, relative to Exhibits C, H, K, I, P, R, R-1 and R-2, is altogether insufficient, and petitioner himself has expressly admitted that said documents are not his personal papers but part of the files of the New Leaders' Association, which was proven to be an organization created, for the purpose of collaborating with the enemy; (7) and that none of the exhibits referred to in the petition has been satisfactorily identified by the petitioner as included among the papers allegedly wrongfully seized from his house and belonging to him.

Considering the allegations made by the parties in their respective pleadings, and their supporting papers, as well as the admissions made therein, the following facts appear to have been sufficiently established:

(1) That on February 12, 1945, while the battle for Manila was raging, soldiers of the United States Army,

accompanied by men of Filipino Guerrilla Forces, placed herein petitioner under arrest, having been suspected of collaboration with the enemy, and seized and took certain papers from his house in Pasay, Rizal;

(2) That on or about October 4, 1945, petitioner was accused of treason, in criminal case No. 3 of the People's Court; after which, on December 1, 1945, he filed a petition, demanding the return of the papers allegedly seized and taken from his house;

(3) That petitioner also filed a petition for bail, at the hearing of which the prosecution presented certain papers and documents, which were admitted as part of its evidence, and said petition was denied;

(4) That at the trial of the case on the merits, the prosecution again presented said papers and documents, which were admitted as part of its evidence, and were marked as exhibits, as described in the petition for certiorari, filed in this court;

(5) That herein petitioner had failed to object properly to the admission of said papers and documents at the hearing on said petition for bail, and at the trial of the case on the merits, in not having insisted that the question of the legality of the search and seizure of the papers and documents taken from his house should have been litigated and finally decided first, and thus practically waived his objection to their admissibility, as evidence for the prosecution ;

(6) That at the hearing on his petition for the return of the papers taken from his house, held after they had been admitted as part of the evidence for the prosecution, at the hearing on the petition for bail and at the trial of the case on the merits, herein petitioner had failed to identify satisfactorily the documents now in question, and his ownership thereof; and

(7) That petitioner himself in his petition for reconsideration, dated February 26, 1946, admitted the legality of the seizure of the documents taken from his house, and at the hearing on his petition for bail, he himself called for some of the documents in question.

The right of officers and men of the United States Army to arrest herein petitioner, as a collaborationist suspect, and to seize his personal papers, without any search warrant, in the zone of military operations, is unquestionable, under the provisions of article 4, Chapter II, Section I, of the Regulations relative to the Laws and Customs of War on Land of the Hague Conventions of 1907, authorizing the seizure of military papers in the possession of prisoners of war (Wilson, International Law, 3d ed., 1989, p. 524); and also under the proclamation, dated December 29, 1944, issued by Gen. Douglas MacArthur, as Commander in Chief of the United States Army, declaring his purpose to remove certain citizens of the Philippines, who had voluntarily given aid and comfort to the enemy, in violation of the allegiance due the Governments of the United States and the Commonwealth of the Philippines, when apprehended, from any position of political and economic influence in the Philippines and to hold them in restraint for the duration of the war. (41 Off. Gaz., No. 2, pp. 148, 149.) As a matter of fact, petitioner himself, in his motion for reconsideration, dated February 26, 1946, expressly admitted the legality of the seizure of his personal papers and documents at the time of his arrest.

The most important exception to the necessity for a search warrant is the right of search and seizure as an incident to a lawful arrest. A lawful arrest may be made either while a crime is being committed or after its commission. The right to search includes in both instances that of searching the person of him who is arrested, in order to find and seize things connected with the crime as its fruits or as the means by which it was committed. (*Agnello vs. United States*, 269 U. S., 20.)

When one is legally arrested for an offense, whatever is found in his possession or in his control may be seized and used in evidence against him; and an officer has the right to make an arrest without a warrant of a person

believed by the officer upon reasonable grounds to have committed a felony. (Carroll vs. United States, 267 U. S., 132.)

The majority of the states have held that the privilege against compulsory self-incrimination, which is also guaranteed by state constitutional provisions is not violated by the use in evidence of articles obtained by an unconstitutional search and seizure. (People vs. Defore, 242 N. Y., 13; 150 N. E., 585.)

It is true that on December 1, 1945, herein petitioner filed a petition, demanding the return of certain papers and documents allegedly seized and taken from his house at the time of his arrest; but when he consented to their presentation, as part of the evidence for the prosecution, at the hearing on his petition for bail and at the trial of the case on the merits, without having insisted that the question of the alleged illegality of the search and seizure of said papers and documents should first have been directly litigated and established by a motion, made before the trial, for their return, he was and should be deemed to have waived his objection to their admissibility as part of the evidence for the prosecution; since the privilege against compulsory self-incrimination may be waived. (Weeks vs. United States, 232 U. S., 383; Silverthorne Lumber Co. vs. United States, 251 U. S., 385; Gouled vs. United States, 255 U. S., 298; People vs. Carlos, 47 Phil., 626, 630, 631.)

At the hearing on his petition for bail, petitioner himself requested the production of the document marked as Exhibit A, which was a letter sent by him to Dr. Jose P. Laurel; the document marked as Exhibit HH, which was a memorandum to Col. Suzuki, dated December 30, 1944; and the document marked as Exhibit P, which was a memorandum on Nippongo classes. And he is now, therefore, estopped from questioning their admission.

Furthermore, petitioner could not properly identify many of said documents, such as Exhibit FF, nor satisfactorily establish his ownership thereof; while the prosecution has sufficiently established the fact that some of the papers now in question, such as Exhibit C, had been received at the Office of the CIC of the United States Army in the City of Manila, since February 11, 1945, that is, one day prior to the seizure of certain papers and documents in the house of the petitioner. And with reference to Exhibits C, G, H, K, L, P, R, R-1 and R-2, petitioner himself admitted that they are not his personal papers but part of the files of the New Leader's Association. And it is well established rule in this jurisdiction that in a petition for the production of papers and documents, they must be sufficiently described and identified, otherwise the petition cannot prosper. (Liebenow vs. Philippine Vegetable Oil Co., 39 Phil., 60, 67, 69; Rule 21, section 1, Rules of Court.)

The purpose of the constitutional provisions against unlawful searches and seizures is to prevent violations of private security in person and property, and unlawful invasions of the sanctity of the home, by officers of the law acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted. (Adams vs. New York, 192 U. S., 585.) But it does not prohibit the Federal Government from taking advantage of unlawful searches made by a private person or under authority of state law. (Weeks vs. United States, 232 U. S., 383; Burdeau vs. McDowell, 256 U. S., 465.)

As the soldiers of the United States Army, that took and seized certain papers and documents from the residence of herein petitioner, on February 12, 1945, were not acting as agents or on behalf of the Government of the Commonwealth of the Philippines; and that those papers and documents came into the possession of the authorities of the Commonwealth Government, through the Office of the CIC of the United States Army in Manila, the use and presentation of said papers and documents, as evidence for the prosecution against herein petitioner, at the trial of his case for treason, before the People's Court, cannot now be legally attacked, on the ground of unlawful or unreasonable searches and seizures, or on any other constitutional ground, as declared by the Supreme Court of the United States in similar cases. (Burdeau vs. McDowell, 256 U. S., 465; Gambino vs. United States, 275 U. S., 310.)

In view of the foregoing, it is evident that the petition for certiorari with injunction, filed in this case, is absolutely without merit, and it is, therefore, hereby denied and dismissed with costs. So ordered.

Jaranilla, Actg. C. J., Feria, Pablo, and Hilado, JJ., and Buenaventura, Santos, Santiago, and T. Santos, Acting Justices, concur.

CONCURRING:

PERFECTO, J.,

We concur in the decision, but we wish to make of record our express disagreement with the doctrine as stated in the following paragraphs of said decision:

"The majority of the states have held that the privilege against compulsory self-incrimination, which is also guaranteed by state constitutional provisions is not violated by the use in evidence of articles obtained by an unconstitutional search and seizure. (People vs. Defore, 242 N. Y., 13; 150 N. E., 585.)

"But it does not prohibit the Federal Government from taking advantage of unlawful searches made by a private person or under authority of state law. (Weeks vs. United States, 232 U. S., 383; Burdeau vs. McDowell, 256 U. S., 465.)"

We also disagree with the following pronouncement in the other concurring opinion:

"La traicion implica renuncia y privacion de la garantia contra irrazonables registros y secuestros, diligencias previas a la conviccion o absolution, actuaciones estas finales del proceso."

The theory is erroneous and retrogressive. It violates the spirit and the letter of the Constitution. There is no reason, either legal or moral, for depriving an accused of treason of the benefits of constitutional guarantees. Even those convicted of the most heinous crimes remain under the pale of the Constitution, and cannot be punished, including those sentenced to death, except in accordance with the due process clause of our fundamental law.

CONCURRENTE:

DE LA ROSA, Magistrado Actuante,

Voto con la mayoria por la denegacion del recurso.

El recurrente alega que los documentos relacionados en su petition, que el Fiscal ha presentado en el proceso por traicion que se sigue contra el ante el Tribunal del Pueblo, fueron secuestrados de su casa el 12 de Febrero de 1945 sin mandamiento de registro, y pide su devolution.

El delito de traicion tiende a derrocar al gobierno constituido y la autoridad de los Estados Unidos en Filipinas. La ley basica del Commonwealth contiene una declaration de derechos individuales, e incluye el privilegio contra registros y secuestros irrazonables, que se invoca en este recurso.

Pero esta es una garantia constitucional condicionada por la lealtad. Repudia las instituciones de su Gobierno el subdito que le hace la guerra o se adhiere a sus enemigos. En el exilio del Commonwealth, ensenoreose el regimen japones, con sus ideologias, normas y principios, y la ley basica de aquel fue sustituida por las instrucciones militares a la Comision Ejecutiva y la constitution de la llamada Philippine Republic. La deslealtad, por lo tanto, inherente a la traicion, supone remmncia a los beneficios de la garantia, que ha sido repudiada.

La estabilidad y preservation, necesarias en todo Gobierno, requieren medidas drásticas, el uso de la fuerza armada, inclusive, de mayor trascendencia que la retirada de una garantía constitucional, para reprimir, frustrar la traición.

El Gobierno otorga derechos y libertades individuales, pero se previene contra la traición, castigando severamente hasta la conspiración y la proposición para cometer este delito, actos preparatorios, ordinariamente no punibles. Mas aun, la abstención de denunciar la conspiración, ante las autoridades locales, que es, a lo sumo, una delincuencia por intención, también lo castiga. Estas disposiciones represivas son mas trascendentales que la privación temporal de un privilegio. De hecho estaban suspendidas las garantías constitucionales, con motivo de la guerra, cuando fueron secuestrados los documentos en cuestión.

La culpabilidad del recurrente, antes de que pronuncie su fallo el Tribunal del Pueblo, no se prejuzga revisando y apreciando la naturaleza de los documentos cuya devolución solicita. Prima facie, son pruebas o actos de traición, de modo que el apoderamiento de dichos documentos, de una manera expedita, sin red tape, antes de que fuesen ocultados o destruidos, esta justificado. Mas, los mismos no excluyen la inocencia del actor, de la misma manera que no la repelen las pruebas de cargo antes de ser rebatidas por la defensa, ni suponen culpabilidad, necesariamente, las pruebas aportadas en una investigación previa para ordenar el arresto de un acusado, privándole de libertad o restringiéndola, antes de su convicción.

La traición implica renuncia y privación de la garantía contra irrazonables registros y secuestros, diligencias previas a la convicción o absolución, actuaciones estas finales del proceso.

Petition denied.

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