

HAYDEE HERRAS TEEHANKEE, PETITIONER, VS. THE DIRECTOR OF PRISONS AND HON. LEOPOLDO ROVIRA, POMPEYO DIAZ, ANTONIO QUIRINO AND JOSE P. VELUZ, JUDGES OF THE PEOPLE'S COURT, RESPOND...*G. R. No. L-278. July 18, 1946*

Ponente: HILADO, J.

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On February 16, 1946, we approved a minute resolution ordering that "petitioner Haydee Herras Teehankee, upon her filing in this Court of a bond in the sum of Fifty Thousand Pesos (P50,000) and upon said bond being duly approved, be forthwith set at liberty. This is now written to set forth at length the reasons underlying such order.

Petitioner was one of the persons detained by the Counter Intelligence Corps Detachment of the United States Army mentioned in this Court's decision in case of Raquiza vs. Bradford (75 Phil., 50). As said in that decision, petitioner was apprehended by the said Counter intelligence Corps Detachment under Security Commitment Order No. 286 wherein she was specifically charged with (a) "active collaboration with the Japanese," and (b) "previous association with the enemy." (Ibid., p. 630). When she, along with her co-detainees and co-petitioners in that case, was delivered by the United States Army to the Commonwealth government pursuant to the proclamation of General of the Army Douglas MacArthur of December 29, 1944, she was detained by said Government under that charge. And under the same charge she has remained in custody of the Commonwealth Government during all the time herein referred to.

Until the instant case was submitted for decision, no information had been filed against the petitioner under the People's Court Act and the correlative provisions of the penal laws. When petitioner submitted to the People's Court her petition dated October 2, 1945, seeking temporary release under bail, said court by its order dated October 4, 1945, signed by Judge Antonio Quirino, directed the Solicitor General, as head of the Office of Special Prosecutors, "to file his comment and recommendation, as soon as possible." In compliance with said order, the office of Special Prosecutors filed its recommendation dated October 5, 1945, wherein it was manifested "that on the strength of the evidence at hand, the reasonable bail recommended for the provisional release of the petitioner be fixed at Fifty Thousand (P50,000) Pesos."

Presiding Judge Leopoldo Rovira of the People's Court, in view of said recommendation, entered an order dated October 9, 1945, referring the petition for consideration by the Fifth Division of the Court, but adding that in his opinion "it should be denied notwithstanding the recommendation of the Solicitor General for her provisional release under a bond of fifty thousand pesos (P50,000)." And on that same date Judge Pompeyo Diaz of the same court entered an order disposing of the petition, as well as the recommendation of the Solicitor General, in these words:

"* * * in view of the gravity of the offense as can be deduced from the fact that the Office of Special Prosecutors recommends as high as fifty thousand pesos (P50,000) for her provisional release, it is ordered that

the said petition for provisional release be, as it is hereby denied."

A motion to reconsider this order was denied by Judge Diaz on October 13, 1945.

Petitioner filed with this Court a petition for certiorari and mandamus (Herras Teehankee vs. Rovira, 75 Phil., 634), praying that the orders above mentioned be set aside, they having been entered with abuse of discretion and without hearing granted to petitioner. This Court, on December 20, 1945, rendered a judgment the dispositive part of which provides and decrees as follows:

"Wherefore, it is the judgment of this Court that (a) the order of the People's Court, dated October 9, 1945, denying petitioner's petition for provisional release under bail, and the order of said Court, dated October 13, 1945, denying petitioner's motion for reconsideration of said order of October 9, 1945, which we declare to have been entered with grave abuse of discretion, be set aside; and (b) that for the proper application of the pertinent constitutional, statutory, and reglamentary provisions alluded to in the body of this decision, a hearing of petitioner's application for bail be held before the People's Court with due notice to the Solicitor General, as well as to the petitioner, as hereinabove outlined, said hearing, whether summary or otherwise, to be such as would enable the People's Court to exercise its sound discretion in the disposal of the aforesaid petition, without costs. So Ordered."

Pursuant to this decision, the People's court proceeded to hear the petition for provisional release under bail in the presence of the petitioner on December 27, 1945. At such hearing, notwithstanding the special prosecutor's statement that he had no objection to the petition, Judge Antonio Quirino asked him questions tending to compel disclosure of the prosecution's evidence, to which petitioner objected upon the ground that, under the circumstances, the only thing for the court to do was to grant the petition. The court reserved its decision, but petitioner came to this Court to raise the issue in the same case (Herras Teehankee vs. Rovira, supra) in a motion filed on January 2, 1946. This Court, on January 11, 1946, resolved said motion as follows:

"Considering the motion of petitioner's counsel in G. R. No. L-101, Haydee Herras Teehankee, petitioner, vs. Leopoldo Rovira, et al., respondents, filed on January 2, 1946, and the answer thereto filed by respondent Hon. Antonio Quirino, as Associate Judge of the People's Court, dated January 3, 1946; it appearing on page 16 of the transcript Annex D of said motion that at the hearing held before the People's Court on December 27, 1945, pursuant to the decision of this Court, counsel for petitioner made a verbal petition asking the People's Court to issue an order for petitioner's release on bail in the amount of P50,000, said counsel announcing that should the People's Court deny his said petition, he will seek the corresponding extraordinary legal remedy before this Court, and it appearing that the People's Court reserved its decision on the said oral petition, which is, therefore, still pending resolution, which fact makes petitioner's motion of January 2, 1946, premature; said motion is denied, but with instruction for the People's Court to render its decision on the aforesaid verbal petition, taking into account that when the Special Prosecutor in capital cases like the present, does not oppose the petition for release on bail, the court should, as a general rule, in the proper exercise of its discretion, grant the release after approval of the bail which it should fix for the purpose; but if the court has reasons to believe that the Special Prosecutor's attitude is not justified, it may ask him questions to ascertain the strength of the state's evidence or to judge the adequacy of the amount of bail; when, however, the Special Prosecutor refuses to answer any particular question on the ground that the answer may involve a disclosure imperilling the success of the prosecution or jeopardizing the public interest, the Court may not compel him to do so, if and when he exhibits a statement to that effect of the Solicitor General, who, as head of the office of special Prosecutors, is vested with the direction and control of the prosecution, and may not, even at the trial, be ordered by the Court to present evidence which he does not want to introduce—provided, of course, that such refusal shall not prejudice the rights of the defendant or detainee."

On the same date, January 11, 1946, at 4:05 p.m., the People's Court was served with a copy of the above-quoted resolution. Since its receipt of said copy until this case was submitted, said Court has failed to decide petitioner's

verbal application for release under bail presented on December 27, 1946, and which it was instructed to decide; but on the contrary, respondent judge Antonio Quirino, for the second time, called said application for hearing on January 15, 1946, and insisted on addressing to the special prosecutor practically the same questions as those which he had addressed to him at the hearing of December 27, 1945, and upon said prosecutor's declining to answer with the presentation of a certificate, dated January 14, 1946, of the Solicitor General to the effect ""that the office of Special Prosecutors is not, for the present, in a position to disclose the strength or nature of the evidence which it has at hand in the case of the herein petitioner as it believes it would imperil the success of the prosecution and jeopardize public interest," ordered the arrest of said special prosecutor (Liwag) for alleged contempt of court, and the application for bail was left undecided. That detention of Private Prosecutor Liwag gave rise to the habeas corpus proceedings instituted in his behalf in case G. R. No. L-237, (42 Off. Gaz., 934), on January 15, 1946, which resulted in the release of said official pursuant to an order, of the same date, by Hon. Gregorio Perfecto, Associate Justice of this Court. The order issued by Justice Perfecto was predicated upon the instructions contained in our resolution of January 11, 1946, above quoted, to the effect that even where the People's Court believes that the special prosecutor's attitude in not opposing the, petition for provisional release under bail is not justified, if the Solicitor General files a statement under his official oath, to the effect that the disclosure of the evidence in the hands of the prosecutor may imperil the success of the prosecution and jeopardize public interest, the authority of the People's Court to inquire into the prosecution's evidence ceases and, therefore, the prosecutor cannot be held guilty of contempt for refusing to answer the questions of the court. Respondent Judge Antonio Quirino filed before this Court on January 17, 1946, a motion to reconsider the order issued by Mr. Justice Perfecto which in truth was a motion to reconsider our instructions aforementioned, and this court by unanimous vote denied the motion.

Based upon what had erroneously been done by the People's Court at this second hearing, petitioner filed a verified motion in said case G. R. No. L-101[1] dated January 16, 1946, asking this Court to grant her directly provisional release under bail. We denied the motion with the Qualification that "there having been unnecessary delay in the disposition by respondents of the petition for provisional release under bail, said respondents are hereby directed to act on and dispose of said petition without any further delay. " This order of denial was founded on the circumstance that the People's Court had not yet rendered its decision on the verbal petition, and we then believed that, with the order of release issued by Justice Perfecto in the habeas corpus proceedings instituted by Special Prosecutor in with the unanimous denial by this Court of the motion for reconsideration filed by Judge Quirino, our instructions had become clear to the People's Court and that, therefore, they would be followed in subsequent proceedings by said court if no new circumstances should develop. But after the People's Court had been served with a copy of our order of denial, it held another hearing on January 28, 1946, the third on the same petition, after which, instead of acting upon the verbal application for provisional release under bail, it entered an order dated January 31, 1946, purporting to pass upon petitioner's motion for reconsideration of the People's Court's order of October 9, 1945, which had been set aside by our decision of December 20, 1945. However, in the body of its order the People's Court held that, under the circumstances, it still had absolute discretion on the matter, contrary to the instructions contained in our resolution of January 11, 1946; and upon the basis of a secret knowledge acquired in a private conference had with the special prosecutor at the back of the petitioner, it held further that there was "a myriad points which would establish the guilt of the petitioner, contrary to our first resolution dated December 20, 1945, above quoted, wherein we held that the hearing should be in the presence of the petitioner or at least with due notice to her.

With the foregoing background, the instant proceedings were commenced and prosecuted. Petitioner's original petition dated February 2, 1946, was for the writ of habeas corpus which, in substance, alleges the facts stated in the preceding paragraphs except the last order of the People's Court dated January 31, 1945, of which petitioner

had not yet been notified. After receiving copy thereof, petitioner filed a supplementary petition for certiorari dated February 4, 1946, praying that she be declared entitled to provisional liberty; that the People's Court's order of January 31 be declared null and void because it is contrary to the Constitution and the rules of court and entered with grave abuse of discretion, and that her immediate liberty under such bail as the court might fix, be decreed. In paragraph 3 of said supplementary petition, counsel states that, in view of the aforesaid order of the People's Court of January 31, he agrees that this proceeding be considered as a combined proceeding in certiorari and habeas corpus, the latter in aid of the former.

Under date of February 4, 1946, the Director of Prisons, who is one of the respondents herein represented by the office of the Solicitor General, filed his return wherein it is submitted that the said petition for the writ of habeas corpus is improper, under date of February 6, 1946, the said Director of Prisons, by the same counsel, filed a "constancia" wherein he manifests that, in connection with the supplementary petition, he reiterates what has been alleged in his aforesaid return or answer dated the 4th of the same month.

It is significant that no answer to the aforesaid supplementary petition has been filed by the People's Court.

On February 8, 1946, this Court by resolution ordered as follows:

"The Solicitor General having filed a 'constancia' to the supplementary petition, * * *, and the time to file the People's Court's answer to said supplementary petition having expired; it is ordered that the case be set for hearing, * * *."

None of the parties appeared when the case was called for oral argument.

The original petition for the writ of habeas corpus was verified. The supplementary petition, was not, it is true. But this omission is immaterial, since the facts upon which the present decision is based are those appearing of record, those within the judicial notice of the court, those alleged in the verified petition, and those alleged or admitted in the respondents' answer.

Section. 19 of Commonwealth Act No. 682 (People's Court Act), in its pertinent part, reads as follows:

"Provided, however, That existing provisions of law to the contrary notwithstanding, the aforesaid political prisoners may, in the discretion of the People's Court, after due notice to the Office of Special Prosecutors and hearing, be released on bail, even prior to the presentation of the corresponding information, unless the Court finds that there is strong evidence of the commission of a capital offense.

We have held in *Herras Teehankee vs. Rovira* (supra), "This proviso must be read and understood in the light of such provisions of the Constitution as may bear on the subject so as to harmonize the former with the latter and avoid their conflicting with each other. Of course, where harmonization is impossible and conflict inevitable, the statute gives way to the Constitution. This is in consonance with the well-settled rule that in construing a statute in relation to constitutional provisions, the courts take into consideration the principle that every statute is to be read in the light of the Constitution and that the Constitution and a statute involving constitutional rights will be construed together as one law." (11 Am. Jur. Constitutional Law, section 96).

Section 1, paragraph 16, of Article III, of the Constitution, provides as follows:

"All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong, Excessive bail shall not be required." (Italics supplied).

As we have held in the same case of *Herras Teehankee vs. Rovira* (supra), "This constitutional mandate refers to all persons, not only to persons against whom a complaint or information has already been formally filed; it lays down the rule that all persons shall before conviction be bailable¹, except those charged with capital offenses

when evidence of guilt is strong. According to this provision, the general rule is that any person, before being convicted of any criminal offense, shall be bailable, except when he is charged with a capital offense and the evidence of his guilt is strong. Of course, only those persons who have been either arrested, detained, or otherwise deprived of their liberty may have occasion to seek the benefit of said provision. But in order that a person can invoke this constitutional precept, it is not necessary that he should wait until a formal complaint or information is filed against him. From the moment he is placed under arrest, detention or restraint by the officers of the law, he can claim this guarantee of the Bill of Rights, and this right he retains unless and until he is charged with a capital offense and the evidence of his guilt is strong, indeed, if, as admitted on all sides, the precept protects those already charged under a formal complaint or information, there seems to be no legal or just reason for denying its benefit to one against whom, the proper authorities may yet conclude that there exists no sufficient evidence of guilt. To place the former in a more favored position than the latter would be, to say the least, anomalous and absurd. If there is a presumption of innocence in favor of one already formally charged with a criminal offense (Constitution, Art. III, section 1, paragraph 17), a fortiori this presumption should be indulged in favor of one not yet so charged, although already arrested or detained

It is argued that the subsequent words "before conviction" and "except those charged with capital offenses," used in the aforequoted constitutional provision evidently qualify the words "all persons," which should be read "persons charged or defendants." This is reading into the Constitution a qualification that is absent therefrom, and its effect is to curtail individual freedom which is one of the most precious treasures jealously protected in our constitution. The words "before conviction" do not necessarily qualify the words "all persons" to mean "persons charged or defendants," because a person merely arrested with, still no information against him is also a person before conviction; i. e., one who has not been convicted. All the phrase "except those charged with capital offenses," being an exception to the general rule concerning "all persons," cannot be construed as qualifying the meaning of the words "all persons." The function of an exception is neither to color nor dominate nor destroy the general rule. Indeed, it is often said that an exception confirms the general rule. The rule that must seek in an exception the reasons for its being, cannot justify its existence.

The provision on bail in our Constitution is patterned after similar provisions contained in the Constitution of the United States and that of many states of the union. And it is said that:

"The Constitution of the United States and the constitutions of many of the states provide that all persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption of guilt is great, and, under such provisions, bail is a matter of right which no court or judge can properly refuse, in all cases not embraced in the exceptions, under such provisions bail is a matter of right even in cases of capital offenses, unless the proof of guilt is evident or the presumption thereof is great." (6 C. J., sec. 168, pp. 953, 954).

It is to be observed that the word "charged" is not used in the American constitutions, the reason being that no one would apply for bail unless he is detained for some charge either oral or in writing made either by a private individual or by a public officer. Certainly the charge need not be a formal information in order that a person detained may apply for bail. Thus, it has been said that:

"By the common law all offenses, including treason, murder, and other felonies, were bailable before indictment found, although the granting or refusing of such bail in case of capital offenses was a matter within the discretion of the court." (6 C. J., sec. 167, p. 953; italics ours).

The provisions of our Rules of Court on the matter of bail which are intended to make effective the constitutional provision on the same matter, contain a clear distinction between persons formally charged and persons merely arrested, it is a distinction favorable to the petitioner. Thus, sections 3 and 4 of Rule 110 use the words "the

defendant" in providing for instances in which such defendant may be bailed as of right or in the discretion of the court. Whereas section 6 which refers precisely to capital offenses uses the words "persons in custody for the commission of a capital offense" in providing that he shall be admitted to bail if the evidence of his guilt is not strong. Had this provision, which is interpretative of the Constitution, been intended to refer only to persons formally charged, it would have used the word "defendant" as the other provisions above mentioned. The petitioner's case falls squarely under this section 6 of Rule 110, for she is a "person in custody for the commission of a capital offense," and, therefore, she is entitled to bail if the evidence of tier guilt is not shown to be strong.

Technical and useless efforts have been made to draw a distinction between the situation of a person detained and that of a person already charged so as to exclude the former from the constitutional protection. But the more efforts are made in that direction, the clearer becomes the distinction in favor of the detainee. The presumption of innocence in favor of one against whom there already is a formal charge (Constitution, Art. III, section 1, paragraph 17) should clearly be stronger in favor of one not yet so charged, though already arrested or detained. And since the personal liberty guaranteed by the Constitution is predicated upon the presumption of innocence, such guarantee should obviously be stronger in favor of a person merely arrested or detained than of a person already accused. The right to freedom is a sacred right, complementing the right to life, and the guarantee contained in the fundamental law for the preservation of such sacred right should not be lightly brushed aside. All doubts that may arise in the construction of the Constitution—and, in the instant case none exists—should be resolved in favor of individual freedom.

We reiterate now that, under the Constitution, all persons, without distinction, whether formally charged or not yet so charged with any criminal offense, "shall before conviction be bailable, " the only exception being when the for charge is a capital offense and the court finds that the evidence of guilt is strong. The power of the court to make such finding implies a full exercise of judicial discretion. It is for this reason that capital offenses are said to be bailable in the discretion of the court, in construing section 63 of the Code of Criminal Procedure which provides that "all prisoners shall be bailable before conviction, except those charged with the commission of capital offenses when proof of guilt is evident or the presumption of guilt is strong," which is substantially the same as Article III, section 1, paragraph 16, of our Constitution, this Court, through Mr. Justice Moreland, said: "It is clear that even capital offenses are bailable, in the discretion, of the court, before conviction." (Italics ours; United States vs. Babasa, 19 Phil. 198).

And such discretion has no other reference than to the determination as to whether or not the evidence of guilt is strong. Thus, in *Marcos vs. Cruz* (67 Phil., 82), this Court, through Justice Imperial, held that "when the crime charged is punishable with death, the right to be admitted to bail is discretionary on the court, depending on whether or not the evidence of guilt is strong." And this was a mere reiteration of a ruling laid down in a former case (*Montalbo vs. Santamaria*, 54 Phil. 955). In that case the accused was charged with murder with the qualifying circumstance of evident premeditation and the aggravating circumstance of treachery. The accused applied for provisional release under bail. The judge refused to determine whether the evidence of guilt was strong upon the belief that he had no discretion to grant the application. The accused filed a petition for mandamus against him with this Court. And this Court, through Mr. Justice Villamor, held:

"The object of this application is to require the respondent judge to comply with his ministerial duty of considering and deciding whether the proof is evident or the presumption of guilt is strong against the defendant, for the purpose of granting or denying his provisional liberty. Suppliant does not ask that the matter be decided one way or the other, but simply that it be decided. In other words, it is proposed not to interfere with the judicial discretion to grant or deny the motion for provisional liberty, but to enforce the exercise of said discretion according to the judgment and discretion of the respondent. In this case a judge &as declined to make a decision which the law enjoins upon him." (Italics ours).

And in the dispositive part this Court said:

"* * * wherefore, the respondent judge is hereby ordered to determine whether in the case at bar the proof is evident or the presumption of guilt is strong against the defendant, and to exercise judicial discretion in denying or granting the petition for provisional liberty. Without special pronouncement of costs. So ordered." (Italics ours).

And this is the rule in the United States:

"Although the right to bail in capital cases, except those in which the proof is evident or the presumption great, is generally absolute, the determination as to whether the evidence in any particular case comes within these exceptions is a matter for the sound discretion of the court or officer hearing the application. (Italics ours; 8 C. J. S., p. 56 on Bail.)

"Primarily the prisoner cannot demand bail as a matter of right where the offense is a capital one, since, upon ascertaining the character of the charge against him, the next question would be as to the degree of proof and the nature of the presumption of guilt. Therefore the power to admit to bail generally becomes a matter of judicial discretion in this class of cases, and, although the exercise of this discretion will not be controlled unless manifestly abused, it should be exercised with great caution." (Italics ours; 6 C. J., sec. 170, pp. 954, 955).

It is well-known rule of statutory construction that "all statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it. They are, therefore, to be construed in connection and in harmony with the existing law, and, as a part of a general and uniform system of jurisprudence, and their meaning and effect is to be determined in connection, not only with the common law and the constitution, but also with reference to other statutes and the decisions of the courts * * *." (59 C. J., 1038).

Since the People's Court Act and the Constitution and other statutes in this jurisdiction should be read as one law, and since the language used by this Court in construing the Constitution and other statutes on the matter of bail is substantially the same as the language used by the People's Court Act on the same subject, the most natural and logical conclusion to follow in cases of capital offenses before conviction is that the discretion provided in said Act is the same discretion provided in the Constitution and similar statutes, that discretion having reference only, as above stated, to the determination of whether or not the evidence of guilt is strong. To hold that the People's Court has uncontrolled discretion in such cases to deny bail even where the evidence of guilt is not strong or there is absolutely no evidence at all, is to make the Act offensive not only to the letter but also to the spirit of the Constitution, and this is contrary to the most elementary rules of statutory construction.

A statute, which provides that 'a person charged with an offense may be admitted to bail before conviction, as follows: 1st, as a matter of discretion in all cases where the punishment is death; 2nd, as a matter of right in all other cases, and that "no person shall be admitted to bail when he is charged with an offense punishable with death, when the proof is evident and the presumption great, " 'is inconsistent with the constitutional provision that 'all persons shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident or the presumption great,' since it denies bail as a matter of absolute right in capital cases where the proof is not evident nor the presumption great. (People vs. Tinder, 19 Cal. 559, 542; 81 Am. Dec., 77).

It is to be observed in this connection that we hold no portion of the People's Court Act to be unconstitutional, but, upon the contrary, we rely upon the presumption of constitutionality, and because of that presumption we construe the Act in consonance with the mandates of the constitution.

"It is an elementary principle that where the validity of a statute is assailed and there are two possible interpretations, by one of which the statute would be unconstitutional and by the other it would be valid, the court should adopt the construction which would uphold it. It is the duty of courts to adopt a construction of a

statute that will bring it into harmony with the Constitution, if its language will permit." (11 Am. Jur., Constitutional Law, section 97).

However, the discretion of the Court, as above described, is not absolute nor beyond control, indeed, its very concept repels the idea of unlimited power. It must be sound, and exercised within reasonable bounds. Since judicial discretion, by its very nature, involves the exercise of the judge's individual opinion, the law has wisely provided that its exercise be guided and controlled by certain well-known rules which, while allowing the judge a rational latitude for the operation of his own individual views, prevent them, from getting out of control. An uncontrolled or uncontrollable discretion is a misnomer. It is a fallacy. Lord Mansfield, speaking of the discretion to be exercised in granting or denying bail said: "But discretion, when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful; but legal and regular." (Rex vs. Wilkee, 4 Burr. 2527, 2539, 98 Reprint, 327, cited in note 26 [a], 6 C. J., p. 954).

"The policy pervading our jurisprudence is to commit as little as possible to judicial discretion, presuming that 'that system of laws is best which confides as little as possible to the discretion of the judge—that judge is best who relies as little as possible upon his opinion.' In pursuance of this policy, ever since the provisions 'that all persons shall be bailable by sufficient sureties except for capital offenses, where the proof is great,' became a part of the settled constitutional and statutory laws of nearly all the states of the union, the courts have endeavored, with more or less success, to formulate some stable rules to guide their judgment." (In re Thomas, 20 Okl. 167, 171; 93 P., 980; 39 L. R. A. N. S., 752 and note, cited in 6 C. J., p. 955, note 31 [a].)

"How exercised. The discretion exercised by the court in granting or refusing bail is not an arbitrary but a judicial one; it is governed or directed by known and established rules, and in truth cannot be otherwise applied than to decide whether or not the facts bring the case within their operation." (6 C. J., p. 954).

In this jurisdiction inferior courts are controlled in the exercise of their discretion, first, by the applicable provisions of the Constitution and the statutes; second, by the rules which the Supreme Court may promulgate under the authority of Article VIII, section 13, of the Constitution; and, third, by those principles of equity and justice that are deemed to be part of the laws of the land, upon the basis of constitutional, legal and reglamentary provisions combined with well-known principles of practice and procedure, this Court in its resolution of January 11, 1946, above quoted, gave the following instructions to the People's Court:

- (1) In capital cases like the present, when the prosecutor does not oppose the petition for release on bail, the court should, as a general rule, in the proper exercise of its discretion, grant the release after approval of the bail which it should fix for the purpose;
- (2) But if the court has reasons to believe that the special prosecutor's attitude is not justified, it may ask him questions to ascertain the strength of the state's evidence or to judge the adequacy of the amount of bail;
- (3) When, however, the special prosecutor refuses to answer any particular question on the ground that the answer may involve a disclosure imperiling the success of the prosecution or jeopardizing the public interest, the court may not compel him to do so, if and when he exhibits a statement to that effect of the Solicitor General, who, as head of the Office of Special Prosecutors, is vested with the direction and control of the prosecution, and may not, even at the trial, be ordered by the court to present evidence which he does not want to introduce—provided, of course, that such refusal shall not prejudice the rights of the defendant or detainee.

The first instruction is predicated upon section 7 of Rule 110 of the Rules of Court in connection with sections 15 and 22 of the People's Court Act. Section 15 of the People's Court Act, in entrusting the Office of Special Prosecutors with "the direction and control of the prosecution" in cases mentioned in said Act "the provisions of

any law or rules of court to the contrary notwithstanding," necessarily confers upon said office the exclusive power, coupled with the correlative responsibility, of deciding, among others, such questions as to whether or not it will oppose bail petitioned by a detainee in any of said cases, whether or not it should adduce evidence, and the kind or quantity thereof, or whether or not to reveal such evidence at the hearing of any such petitions. The law assigns to the court and the public prosecutor their respective powers and responsibilities in the judicial elucidation of these cases, just as in all others. The very exigencies of an orderly and efficient administration of justice demand that the judge should not invade the province of the prosecutors any more than the latter can invade that of the former. If the prosecutor prosecutes, and the judge judges, each within his proper sphere, neither need have any compunction over the discharge of his own mission.

Section 22 of the People's Court Act provides that the prosecution and trial of cases before said court should be in accordance with the rule's of court, and section 7 of Rule 110 provides that at the "hearing of an application for admission to bail made by any person who is in custody for the commission of a capital offense, the burden of showing that the evidence of guilt is strong is on the prosecution." The prosecutor is free to satisfy or not to satisfy that burden. The Solicitor General is free to oppose or not to oppose the application for bail, as above stated, according to what he believes to be in the best interests of the state. And it is unnecessary to say that if he refuses to satisfy his burden because he does not oppose the application for bail, the usual course open to the court leads to the granting of the bail.

When the first proviso of section 19 of Commonwealth Act No. 682 and Article III, section 1, paragraph 16, of the Constitution, refer to the case where the court finds that there is strong "evidence" of the commission of a capital offense, they necessarily mean evidence properly adduced by the parties or any of them before it, in the manner and form prescribed by the laws and rules of judicial procedure. If, for any reason, any party should abstain from introducing evidence in the case for any definite purpose, no law nor rule exists by which he may be so compelled and the court before which the case is pending has to act without that evidence and, in so doing, it clearly would not be failing in its duties, if the Constitution or the law plots a certain course of action to be taken by the court when certain evidence is found by it to exist, and the opposite course if that evidence is wanting, and said evidence is not voluntarily adduced by the proper party, the court's clear duty would be to adopt that course which has been provided for in case of absence of such evidence. Applying the principle to the case at bar, it was no more within the power—nor discretion—of the court to coerce the prosecution into presenting its evidence than to force the prisoner into adducing hers. And when both elected not to do so, as they had a perfect right to elect, the only thing remaining for the court to do was to grant the application for bail.

Let not the case of *Payao vs. Lesaca*, (63 Phil. 210), be invoiced in respondents' favor, True, in said case this Court approved of the action of the trial court in considering the record of the preliminary investigation in determining the question of bail. But it must be remembered, in the first place, that at the same preliminary investigation the accused must, under the law, be presumed to have been present; confronted with the witnesses against her; had the right to cross-examine them, make objections, present her own evidence, and to be heard in her own defense; and, in the second place, the provincial fiscal presented said record at the hearing (vide, page 214, volume cited on the question of bail) again in the presence of the accused who again had a right to interpose objections, adduce evidence and be heard in defense. Had the fiscal not presented said record at the hearing, it would not have been considered by the Court of First Instance, since, generally, the record of the preliminary investigation before the justice of the peace is not by itself a part of the record of the case in the Court of First Instance (*United State vs. Abuan*, 2 Phil.; 130).

In the case of *Marcos vs. Cruz* (67 Phil. 82), involving a capital crime a preliminary investigation ex parte was conducted by the Judge of First instance previous to the arrest of the defendants. After their arrest, the defendants

asked for provisional release under bail, and the petition was denied by respondent judge upon the ground that the evidence disclosed at the ex parte preliminary investigation was strong and that, therefore, the defendants were not entitled to bail. This Court disapproved the procedure followed by respondent judge as follows:

"Se arguye que el juez recurrido, antes de expedir el mandamiento de arresto de los acusados, examinó a los dos testigos de cargo que presentó el Fiscal y que estas pruebas establecieron asimismo la presunción de culpabilidad de los acusados y el requerimiento adicional de que las pruebas de culpabilidad deben ser evidentes. No podemos prestar nuestro asentimiento a esta pretensión. No debe olvidarse que tales pruebas se recibieron en ausencia de los acusados y éstos no tuvieron oportunidad de verles declarar ni de repreguntarles. * * *. Otras razones que impiden el que tales pruebas se puedan tener en cuenta contra los acusados son: que el Fiscal no las produjo ni ofreció en la vista de las peticiones de libertad bajo fianza * * *. En tales circunstancias era deber del Juez recurrido requerir al Fiscal que presente sus pruebas para demostrar que el delito imputado era capital, que las pruebas eran evidentes y que la presunción de culpabilidad era fuerte."

It is thus clear that the People's Court, in the exercise of its discretion, can consider no evidence that has not properly been presented to it by the parties, and that, when the special prosecutor elects not to oppose the application for bail and, consequently, refuses to present any evidence, "the court should, as a general rule, in the proper exercise of its discretion, grant the release after approval of the bail which it should fix for the purpose."

We said "in the proper exercise of its discretion," for the reason that, since such discretion has reference to the weight of evidence, it should be exercised in favor of the applicant when there is no evidence—much less strong evidence—presented by the prosecution. In other words, the discretion should be exercised as if the court, after examining the evidence, found none against the applicant. Of course, the discretion is negligible when no evidence is presented by the prosecutor, but some amount of discretion still remains, for, as stated in our first instruction, the discretion should be exercised in favor of the applicant "as a general rule." We used advisedly these words "as a general rule," for there may be an exception, as that referred to in the second instruction.

The prosecutor might not oppose the application for bail and might refuse to satisfy his burden of proof, but where the court has reasons to believe that the prosecutor's attitude is not justified, as when he is evidently committing a gross error or a dereliction of duty, the court must possess a reasonable degree of control over him in the paramount interest of justice. Under such circumstance, the court is authorized by our second instruction to inquire from the prosecutor as to the nature of his evidence to determine whether or not it is strong, it being possible for the prosecutor to have erred in considering it weak and, therefore, recommending bail.

The course followed by the respondents was obviously predicated on this implied authority, but the power of the court to that effect must have its limitation founded equally on the paramount interest of justice. And we come now to our third instruction. The questions made by the court to the prosecutor may involve a disclosure of evidence that may imperil the success of the prosecution or jeopardize the public interest. In such event, according to our third instruction, the prosecutor may not be compelled to make the disclosure "if and when he exhibits a statement to that effect of the Solicitor General, who, as Head of the Office of Special Prosecutors, is vested with the direction and control of the prosecution, and may not even at the trial be ordered by the court to present evidence which he does not want to introduce—provided, of course, that such refusal shall not prejudice the right of the defendant or detainee."

It must be observed that the court is made to rely upon the official statement of the Solicitor General on the question of whether or not the revelation of evidence may endanger the success of the prosecution and jeopardize the public interest. This is so, for there is no way for the court to determine that question without having the evidence disclosed in the presence of the applicant, disclosure which is sought to be avoided to protect the interests of the prosecution before the trial. In this connection, we bear in mind what Chief Justice Marshall said

in Burr's trial with reference to the power of the court to determine whether or not a document in the possession of the President contains secret information, Chief Justice Marshall said that "much reliance must be placed on the declaration of the President" and that "the court ought to consider the reasons which would induce the President to refuse to exhibit such a letter as conclusive on it." Of course, the Solicitor General is not the President, but the question involved was one that might affect the trial on the merits, unlike the matter before us which is a mere incident concerning bail. Thus, to a certain extent the rule may be adopted by analogy. The Solicitor General is a high officer of the Government, made responsible by law for the prosecution of offenses before the People's Court, and he is in a better position than anyone else, including the court itself, to determine the risks which a disclosure of his evidence may entail. Since the judgment of the Solicitor General on this simple matter may be deemed to be reliable and there being no way for the court to verify it without running the risks sought to be avoided, it is made final. If further developments show the Solicitor General to have betrayed his trust, he may surely be called to account.

The power of the Solicitor General is not, however, unlimited under our third instruction. He cannot refuse to make a disclosure when his refusal shall prejudice the right of the defendant or detainee. The prosecutor may not, for instance, choose to make disclosures damaging to the applicant, and later refuse to disclose other evidence favorable to her, on the pretext that such disclosure may imperil the success of the prosecution.

It may be said that there is nothing in these instructions expressly indicating the course to be followed by the People's Court in case the Solicitor General refuses validly to disclose his evidence under our third instruction. This is so, because things that are self-evident need not be expressly stated. The situation is clear. If the Solicitor General refuses validly to disclose his evidence and, for that reason, no evidence lies before the court, then the situation comes under our first instruction, and the petition for bail should be granted. We do not need to state this expressly, for it is self-evident from the instructions themselves. We do not have to repeat in the third instruction what is already covered in the first. These instructions, which are simple and clear, having reference to three different possibilities simply and clearly defined, are directed to judges who are presumed to be versed in the law, and should not be clogged with repetitions that can in no measure add to their lucidity.

It is our considered opinion that the procedure adopted by the People's Court, after the third hearing of January 28, 1946, whereby it examined the special prosecutor's evidence in a private inquiry without the presence of the petitioner, and upon the basis of knowledge acquired therein it denied the application for bail, is improper, arbitrary, and constitutes a grave abuse of discretion;

Firstly, because it violates our order of December 20, 1945, wherein it was held that the hearing on applications for bail should be in the presence of the applicant or at least with due notice to her, and, therefore, such private inquiry cannot be a part of the hearing. The knowledge or information thus obtained was without the safeguards of confrontation, cross-examination and opportunity to be heard in defense on the part of the prisoner and cannot be a proper ground for denying bail, as ruled expressly by this Court in *Marcos vs. Cruz*, *supra*;

Secondly, because such private inquiry is inconsistent with our three instructions above mentioned. The procedure outlined in said three instructions is such as to allow no room for a private conference between the court and the special prosecutor. If such kind of conference were permissible, we would not have to qualify or limit the power of the court to inquire in the three instances contemplated in our three instructions. The nature of such instructions is such as clearly to show that nothing can be used against the applicant that has not been brought properly before the court in her presence, it is precisely for this reason that the Solicitor General is given the final word on the question of whether the disclosure of the prosecution's evidence may endanger the success of the prosecution because there is no way for the court to make such determination without having the evidence disclosed in the presence of the applicant and without thus running the risks sought to be avoided. If private conference were

permissible, we would not have required the solemn statement of the Solicitor General, and, instead, we would have provided that, upon the prosecutor's refusal to disclose evidence in the presence of the applicant, the court may call him to a private conference. But we did not do so, because a private conference is strongly repugnant to the requirements of a hearing provided by law, and thus the solemn statement of the Solicitor General is made the end of the court's power to inquire legally in a case where the prosecutor does not oppose the granting of the bail; and

Thirdly, the knowledge acquired in such private conference is not different in character from a Judge's personal or special knowledge, upon which, by well-settled rules of evidence, he, as judge, has no right to act.

"* * * and it is hardly necessary to state that the judge has no right to act upon his ova personal or special knowledge of facts as distinguished from that general knowledge which might properly be important to other persons of intelligence. More than two hundred years ago in Sir John Fenwick's trial, it was said by the solicitor general: 'I do not say that a judge upon his private knowledge ought to judge, he ought not. But if a judge knows anything whereby the prisoner might be convicted or acquitted (not generally known), then I do say he ought to be called from the place where he sate and go to the bar and give evidence of his knowledge.' In a Utah case one of the briefs contained the statement: 'The fact that the Utah Nursery Company, a corporation, is a foreign corporation, was personally known to the county judge, had been admitted in oral argument by counsel for appellant and did not need to be proven.' The court said that nothing in the record supported the statement that it was admitted by counsel that the corporation was a foreign corporation, and counsel would not seriously contend that the personal knowledge of the judge meets the requirements of the law that proof of the facts shall be made. The law is well settled upon the point that the judge's personal knowledge cannot be used—in criminal cases he should be, if not a witness, certainly not a judge—in civil cases, his knowledge must not be made apparent to the jury." (1 Jones on Ev., 2d ed., pp. 644, 645, sec. 133.)

In a case where a Public Utility Commission issued a regulation of telephone rates upon data gathered in a private investigation, Mr. Justice Cardozo said:

"From the standpoint of due process—the protection of the individual against arbitrary action—a deeper vice is this, that even now we do not know the particular or evidential facts of which the Commission took judicial note and on which it rested its conclusion. Not only are the facts unknown; there is no way to find them out. When price lists or trade journals or even government reports are put in evidence upon a trial, the party against whom they are offered may see the evidence or hear it and parry its effect. Often if they are copied in the findings without preliminary proof, there is at least an opportunity in connection with a judicial review of the decision to challenge the deductions made from them. The opportunity is excluded here. The Commission, withholding from the record the evidential facts that it has gathered here and there, contents itself with saying that in gathering them it went to journals and tax lists; as if a judge were to tell us, 'I looked at the statistics in the Library of Congress, and they teach me thus and so.' This will never do if hearings and appeals are to be more than empty forms. What the Supreme Court of Ohio did (in sustaining the order of the Commission) was to take the word of the Commission as to the outcome of a secret investigation, and let it go at that. 'A hearing is not judicial, at least in any adequate sense, unless the evidence can be known.'" (Ohio Bell Telephone Co. vs. Public utilities Commission, 301 U. S. 292; 57 Sup. 724).

We shall now proceed to resume the attitude observed by respondent Judges in connection with the application for bail filed by the petitioner. It must be recalled that in our first decision of December 20, 1945, we held, in connection with the application for bail filed by the petitioner, that the People's Court should hold a hearing with due notice to both the Solicitor General and the applicant, and that the order issued by the People's Court denying such application without such hearing was null and void. It must be observed, furthermore, that the People's Court then denied the petition only because the Solicitor General recommended a bail of P50,000 from which it inferred that the crime involved must be serious, when said court admittedly granted bail in the same amount to other

detainees of the same class as the herein petitioner. After the People's Court was notified of our aforesaid order, it held a hearing on December 27, 1945, wherein the herein petitioner filed a verbal application for bail, which the Special Prosecutor did not oppose. The court, however, instead of granting the bail, directed questions to the special prosecutor to compel him to reveal his evidence, the applicant, without waiting for the decision of the People's Court granting or denying the application for bail, came to this Court asking that the People's Court be ordered to grant the bail applied for. We denied the petition as premature, but we ordered the People's Court to render its decision on the foresaid verbal petition in conformity with the three instructions above mentioned. The People's Court called another hearing on January 15, 1946, and notwithstanding the special prosecutor's having reiterated that he had no objection to the application for bail, the court insisted on addressing to him practically the same questions as those made at the hearing of December 27, 1945. And upon the prosecutor's declining to answer, supported by his presentation of a certificate of the Solicitor General that the answer to said questions may imperil the success of the prosecution and jeopardize the public interest, respondent court, through Judge Antonio Quirino, in violation of our third instruction above mentioned, ordered the arrest of the special prosecutor for alleged contempt of court. The petitioner came to this Court asking that she be granted bail in view of the grave abuse of discretion committed, by the People's Court, particularly by Judge Quirino. We likewise denied that motion to give the People's Court the chance to dispose of the case in accordance with law and the constitution as construed by this Court. But the People's court called another hearing on January 28, 1946, in which again the special prosecutor reiterated that he had no objection to the release under bail applied for, but the People's Court after asking him some unimportant questions called him to a private hearing at the back of the applicant, to inquire from him the strength of his evidence. Thereafter, the People's Court issued an order disregarding, either knowingly or unwittingly, all the instructions issued by this Court, and maintaining its alleged unbridled discretion on the matter, a theory which we have rejected in our previous decision and instructions. And, what is worse, the People's court, relying on information acquired in private conference with the special prosecutor, declared that there was "a myriad of points" against the applicant and denied the application. It will thus be observed that, in connection with the application for bail filed by the petitioner, the People's Court has disregarded the law and the Constitution, not only once but as many as four times—first, on October 9, 1945; second, on December 27, 1945; third, on January 15, 1946, when it ordered the arrest of the special prosecutor who was acting in conformity with our instructions; and fourth, on January 28, 1946, when it held a private conference with the special prosecutor. On the first three occasions we exhausted all the measures to make the People's Court act in accordance with its discretion vested by the law and the constitution as construed by this Court in its order and instructions. But all to no avail. Considering that this attitude of the People's Court seriously affects petitioner's sacred right of individual freedom guaranteed by the Constitution which has been delayed for nearly four months, this Court directly granted her request for release under bail instead of ordering the People's Court to do so. Further delay was thus avoided.

It is maintained that this body has no authority to grant provisional release under bail in a petition for certiorari. The argument is advanced that all this Tribunal may do is to annul the People's Court's order and remand the case for further proceedings. We recognize no such limitation, in several certiorari cases, this Court in addition to annulling the attacked decision or order, issued such other directives as were found to be necessary in the interest of justice. (Cf. *Javier vs. Paredes and Gregorio*, 52 Phil. 910; *Beech vs. Jimenez and Crossfield*, 12 Phil., 212). And it must be recalled that this is a combined proceeding for certiorari and habeas corpus, the latter in aid of the former, as above stated. And, furthermore, in a special civil action for certiorari, this Court has the power to grant "such of the relief prayed for as the petitioner is entitled to, with or without costs, as justice requires." (Rule 67, sec. 8). One of the reliefs prayed for in the instant case is that the petitioner be granted directly by this Court provisional release under bail, and considering the unjustified delays suffered by the petitioner due to the insistent attitude of the People's Court in disregarding the law and the Constitution as construed by this Court, it is; our

considered opinion that the petitioner is entitled to the relief prayed for in the interest of justice. Particularly so in the instant case which is a combined proceeding of certiorari and habeas corpus.

"So also the writ has always been held to be available to a prisoner entitled to be admitted to bail and to whom such right has been denied."

"Farrell vs. Hawley, 78 Conn., 150; 61 Atl., 502; 112 A. S. R. 98; c Ann. Cas., 874; 70 L. R. A., 686;

"In re Schriber, 19 Idaho 531; 114 P., 29; 37 L. R. A (N. S.) 693;

"Hight vs. United States, Morris (Ia.) 407; 43 Am. Dec., 111;

"Ex Parte Alexander, 59 Mo., 598; 21 Am. Rep. 393;

"Peo. vs. McLeod, 1 Hill (H. Y.) 377; 25 Wend. 483; 37 Am. Dec. 328;

"In re Thomas, 20 Okl. 167; 93 P., 39 L. R. A (N. S.) 752;

"In re Williamson, 26 Pa. St. 9; 67 Am. Dec., 374;

"Ex parte Newman, 38 Tex. Crim. 164; 41 S. W., 628, 70 A. S. R., 740;

"State vs. Foster, 84 Wash., 58; 146 P., 169; L. R. 1915 E., 340 and note."

"Denial of Bail.—subject to statutory limitations, the writ of habeas corpus may be used to procure the admission to bail of a party entitled thereto; whether in a criminal case or a civil action, unless admittance is a matter of discretion and has been refused by the proper authorities without any abuse of discretion. (*Italics supplied*). (29 C. J., sec. 84, p. 94).

"U. S. — U. S. vs. Hamilton, 3 Dall. 17; 1 Law ed., 490.

"Ala. — Ex. p. State, 205, Ala. 11; 87 S., 594; State vs. Lowe, 204 Ala., 288; 85 S., 707; Ex. p. Croom, 19 Ala. 561.

"Ariz. — In re Haigler, 15 Ariz, 150; 137 P., 423;

"Ark. — Ex. p. White 9 Ark. 222.

"Cal. — Ex. p. Curtis, 92 Cal. 188; 28 P., 223; Ex. p. Duncan, 53 Cal. 410.

"Colo. — Romeo vs. Downer, 69 Colo. 281; 193 P 559.

"Fla. — Russel vs. State, 71 Fla. 236; 71 S., 27; Ex. p. Bathen, 50 S., 58 Benjamin vs. State, 25 Fla., 675, 6 S., 455; Holley vs. State, 15 Fla. 688; Finch vs. State, 15 Fla. 653.

"Ind. — Ex. p. Richards, 102 Ind., 260, 1 N. E., 639; Ex. p. Sutherland, 56 Ind., 595; Ex. p. Moore, 30 Ind., 197; Ex. p. Hefren, 27 Ind., 87; Lumm vs. State, 3 Ind., 293; State vs. Best, 7 Blackf. 611.

"Iowa. — Ford vs. Dilley, 174 Iowa, 243; 156 N. W., 513.

"Kan. — In re Rolf, 30 Kan 758; 1 P., 523;

"Mich. — In re Tubbs, 139 Mich., 102, 102 N. W., 626.

"Miss. — Marely vs. State, 109 Miss. 169; 68 S., 75, 770; Street vs. State, 43 Miss. 1; Ex. p. Gray, 30 Miss. 673;

"Mo. — Alexander's Pet., 59 Mo. 598, 21 Am. R., 393.

"Nev. — Ex. p. Nagel, 41 Nev., 86; 167 P., 689.

"N. I. — Peo. vs. Folmsbee, 60 Barb., 480.

"N. C. — State vs. Herndon, 107 N. C., 934; 12 SRE., 268; State vs. Wiley, 64 N. C. 821; State vs. Edney, 60 N. C., 463.

"The power of the Supreme Court or of a justice thereof, to bail in all cases, whether it be treason, murder, arson or any other offense, is indisputable. (*People vs. Van Home*, 8 Barb., 158; *People vs. Pery*, 8 Abb. Pr. N. S., 27, cited in note on p. 758, 39 L. R. A., new series). "The Supreme Court of the United States has power to admit to bail on a charge of high treason." (*U. S. vs. Hamilton*, 3 Dall., 17; 1 Law ed., 490, cited in note on pp. 758, 759; 39 L. R. A., new series).

To hold this Court powerless to grant bail directly under the circumstances of the instant case is certainly to destroy the great function of the highest tribunal of the land created by the Constitution as the ultimate bulwark of the liberties of the people.

No costs. So Ordered.

Moran, C. J., and Bengzon J., concur.

[1] 75 Phil., 634.

PARAS, J., concurring in the result:

I concur in the result for the simple reasons stated in our concurring and dissenting opinion in *Herras Teehankee vs. Rovira*, (75 Phil., 634), in which the main questions raised were the same as those involved in this case.

PERFECTO, J., concurring:

We concur in the following pronouncements of the decision;

1. That "in connection with the application for bail filed by the petitioner, the People's Court has disregarded the law and the Constitution, not only once but as many as four times—first, on October 9, 1945; second, on December 8, 1946; third, on January 15, 1946, when it ordered the arrest of the special prosecutor who was acting in conformity with our instruction; and fourth, on January 16, 1946, when it held a secret conference with the special prosecutor."
2. That this Supreme Court has authority to grant provisional release under bail in a petition for certiorari. As a matter of fact, "in several certiorari cases, this Court, in addition to annulling the attached decision or order, issued such other directives as were found to be necessary in the interest of justice."
3. That in a special civil action for certiorari, this Court has the power to grant "such of the relief prayed for as the petitioner is entitled to, with or without costs, as justice requires" (Rule 67, sec. 8.)
4. That "considering the unjustified delays suffered by petitioner due to the insistent attitude of the People's Court in disregarding the law and Constitution as construed by this Court, it is our considered opinion that the petitioner is entitled to be released prayed for in the interest of justice. Particularly so in the instant case which is a combined proceeding of certiorari and habeas corpus."
5. That "subject to statutory limitations, the writ of habeas corpus may be used to procure the admission to bail of a party entitled thereto whether in a criminal case or a civil case, unless admittance is a matter of discretion and has been refused by the proper authorities without any abuse of discretion."
6. That "the power of the Supreme Court or a justice thereof, to bail in all cases, whether it be treason, murder, arson, or any other offenses, is indisputable."
7. That "to hold this Court powerless to grant bail directly, under the circumstances of this instant case, is certainly to destroy the great functions of the highest tribunal of the land, created by the Constitution as the ultimate bulwark of the liberties of the people."
8. That "under the Constitution, all persons, without distinction, whether formally charged, or not yet so charged, with any criminal offense, 'shall before conviction be bailable,' the only exception being when the charge is a capital offense and the court finds that the evidence is strong."
9. That "it is clear that even capital offenses are bailable in the discretion of the court before conviction." (*United States vs. Babasa*, 19 Phil. 198.)

10. That "in capital cases like the present, when the prosecutor does not oppose the petition for release on bail, the court should, as a general rule, in the proper exercise of its discretion, grant the release, after approval of the bail which it should fix for the purpose," although we disagree with the qualification that it is a general rule only, because, to our mind, the true rule must be unqualified, without exception, and compulsory.

11. That the Solicitor General "is vested with the direction and control of the prosecution, and may not even at the trial, be ordered by the court to present evidence which he does not want to introduce—provided, of course, that such refusal shall not prejudice the rights of the defendant or detainee."

12. That "the very exigencies of an orderly and efficient administration of justice demands that the judge should not invade the province of the prosecutors any more than the latter invade that of the former. If the judge judges, and the prosecutor prosecutes within their proper sphere, neither might have any compunction over the discharge of his own mission."

13. That Section 15 of the People's Court Act confers upon the office of special prosecutors "the exclusive power, coupled with the correlative responsibility, of deciding, among others, such, questions as to whether or not it will oppose bail petition by a detainee in any of said cases (the ones provided for in the Act), whether or not it should adduce evidence, and the kind and quality thereof, or whether or not to reveal such evidence at the hearing of any such petitions" for bail.

14. That "at the hearing of an application for admission to bail made by any person who is in custody for the Commission of capital offense, the burden of showing that the evidence of guilt is strong is on the prosecution" (sec. 7, of Rule 110). The prosecutor is free to satisfy or not to satisfy that burden.

15. That "if, for any reason, any party should abstain from introducing evidence in the case for any definite purpose, no law or rule exists by which he may be so compelled and the court before which the case is pending has to act without the evidence and, in so doing, it clearly would not be failing in its duties. Applying the principle to the case at bar, it was no more within the power—nor discretion—of the court to coerce the prosecution into presenting its evidence than to force the prisoner into adducing hers. And when they elected not to do so, as they had a perfect right the only thing remaining for the court to do was to grant the application for bail."

16. That "the procedure adopted by the People's Court after the third hearing on January 28, 1946, whereby it examined the special prosecutor's evidence in a private inquiry without the presence of the petitioner, and upon the basis of knowledge acquired therein, it denied the application for bail, is improper, arbitrary, and constitutes a grave abuse of discretion."

On the strength of the legal principles, doctrines and rules maintained in our several opinions in "Duran vs. Abad Santos (75 Phil., 410), and in *Herras Teehankee vs. Rovira*, (75 Phil., 634), and of the above pronouncements of the majority opinion in this case, we concurred in the resolution adopted on February 16, 1946, ordering that "petitioner Haydee Herras Teehankee, upon her filing in this Court of a bond in the sum of P50,000 and upon said bond being duly approved, be forthwith set at liberty."

The present case is the third recourse resorted to by petitioner to obtain from this Supreme Court relief against her detention, the first being the petition in *Raquiza vs. Bradford*, (75 Phil., 50), and the second the one in *Herras Teehankee vs. Rovira*, *supra*.

After twelve months of detention, after the ordeals of legal battles she fought in the People's Court and in this Supreme Court, petitioner's endeavors were at last, although belatedly, crowned with success, with the resolution in the present case, ordering her release on bail, exactly as we have repeatedly proposed months ago in *Herras Teehankee vs. Rovira*, *supra*.

To win this last battle for personal liberty, it has been necessary for petitioner to wage a series of the most relentless legal fights known in judicial history, with the characteristic steadfastness of one who is fully convinced that reason and law are on one's side, and for the highest tribunal of the land to undergo one of the most speedy and heartening doctrinal evolutions in the brief span of a few months, in which the last development resulted in an outright reversal of the position originally taken on the same Question.

The initial position was taken in the several months old, but already obsolete case of *Duran vs. Abada Santos*, supra, where it was our lot to be a lone dissenter against doctrines now happily scraped and discarded. Several evolutionary phases appear in the decision and directive orders issued in *Herras Teehanicee vs. Rovira*, supra. The present of the evolution as it appears in the decision rendered in this case, reverses the position taken in the *Duran* case, although we believe it needs some additional progressive steps in order to meet fully the requirements of the letter and spirit of the Constitution regarding the great question of personal liberty. Upon this we have to refer to our opinions in *Raquiza vs. Bradford*, supra, *People vs. Bañes*, supra, and *People vs. Samano*, (Res., 41 Off. Gaz., 532 and 43 Off. Gaz., 5030), *People vs. Abad*, and *People vs. Barrera de Reyes*, (46 Off., Gaz., 981).

There are things to be deplored in petitioner's case. One of them, the crux in this case, is the judicial stubbornness which caused such a miscarriage of justice that will remain forever as an unerasable blot in our government. Such manifestation of entetement had not been cured even by the specific instructions and directives which this Supreme Court, with utmost fatherly complaisance and maternal forbearance, vouchsafed to an erring inferior court in *Herras Teehankee vs. Rovira*, supra, so much so that against its effects the authority of the Supreme Court had to be invoked to protect the rights of and restore to freedom one of the special prosecutors of the government, who in the honest performance of his official duties and in his courageous efforts to protect the high interests of state and justice, had been illegally imprisoned. (*Tañada vs. Quirino*, 42 Off. Gaz., 934.)

No better manifestation of such ungovernable headstrongness may be shown than the one displayed by an inferior court when, by insisting on giving effect to its order which was set aside in a final and executory decision rendered by the Supreme Court, it showed wanton contempt and disregard for the authority of the highest tribunal of the country, and in disregarding the law and Constitution, not only once, but as many as four times.

The order dated January 31, 1946, issued by respondent fudges, copy of which is attached to their answer dated February 4 as Annex A, is expressly intended to restore and give full effect to the order of the People's Court dated October 9, 1945, which is one of the two orders specifically set aside by the decision rendered by the Supreme Court on December 20, 1945, in *Herras Teehankee vs. Rovira*, supra, as having been rendered "with grave abuse of discretion."

This manifestation of defiant disobedience and contempt to a legal decision of a duly constituted authority, such as the Supreme Court, should not, lest we expose ourselves to be tattooed with the stigma of judicial flanderie or accessorial condescension, be allowed to pass unnoticed and without our irrevocable reproof and our sternest objurgation if we have to avoid in our Judiciary, in our government, in our country, the reign of official insubordination and the enthroning of Irresponsible anarchy. In discipline and lawlessness in any bracket of government are not better than lawlessness and terrorism in any segment of the community. The contagion of official bad example inevitably attacks the social consciousness and moral equilibrium of the ruck. The evil effects of the resulting demoralization, of unpredictable extent, shall then be hard to check and cure.

Courts and fudges will be recreant to their official duty if, by actual practice, they fail to make an example of respectful subordination to higher organs, agencies, and functionaries in the official hierarchy, of official discipline in the exercise of their functions, of obedience to and respect for final and irrevocable orders of superior authority. Their official conduct is a mirror for the people to look upon. They are among the first who should set

the example of respect to law and authority. Public officials cannot trample upon the Constitution, the laws and constituted authority without producing alarm and disturbance in all social strata. The crystalline surface of the pool of public conscience cannot remain unrippled at the impact of the fall of the stone of public scandal thrown into it. Such effects must be, in the interest of social order, avoided at all costs. The survival of human society demands it.

Among the three powers of government, the judiciary is in the material sense the weakest. Although its function in society is as noble and important as the ones entrusted to the legislative and executive powers, and there is none loftier that our mind may conceive or to which the most ambitious heart may aspire, it needs the active and positive help of other agencies to make it effective. Congress must provide for the adequate budget, and the executive power the necessary force to make effective the orders and decisions of tribunals.

To compensate for that comparative physical weakness of the judicial power, it is necessary that judges and courts should acquire the unbounded moral force which springs from the general faith and confidence of government and people alike. That moral force, although intangible, immeasurable and imponderable, is as effective as any cosmic force, if not more. We hold as an axiom that spiritual energy is stronger than atomic energy, the mighty basic force of material universe. But to obtain and retain public faith and confidence, it is necessary that courts and judges should show by their acts that they are actually entitled to such faith and confidence. Recalcitrant insubordination and indiscipline are not the means. On the contrary, they will only provoke public suspicion and distrust, if not popular wrath and condemnation.

Let all remember that any showing of insubordination, indiscipline, obstinate disobedience on the part of any public officer, sooner or later, will rebound multiplied against the guilty one. Then, it will be too late to complain and deplore that his own authority is ignored, despised, or trampled upon. Such faults become veritable boomerang which might cause disaster to the very functionaries who dare to perpetrate them in utter defiance of higher authority. They need vigorous corrective measures, the least one a strong reprimand, to avoid their recurrence, by annihilating, obliterating, or neutralizing the first bacilli at the inception of such official infectious morbidity.

We feel happy that our brethren had, at last, voted for the decision concerning the petitioner which permits us to concur in, although we cannot but regret that so much time and effort were lost in the past in fruitless attempts to attain justice, the one belatedly given now to petitioner. With a weaker-heart, she would have accepted her former failures and defeats with the fatalistic submission shown by petitioner in *Duran vs. Abad Santos*, and justice would have been deprived of the belated opportunity of shining as lastly it did in this case.

Never yielding to defeatist despair, we are convinced that the long and bitter travails and failures precluding the final success of petitioner, as all intense human experiences, will garner new sparkles to the wisdom treasured by our tribunals. Experience is the praecognitum of the dialectics of progress in human history. Hope and faith in the ultimate good are the driving forces behind all endeavors towards an ideal.

BRIONES, M., conforme y disidente:

La proposición de que el artículo 19 de la Ley No. 682 que crea el Tribunal del Pueblo (People's Court) es nada más que una derivación del Artículo I, inciso 16, Título III de la Constitución del Commonwealth, es cosa que ha sido definitivamente resuelta en nuestra decisión de 20 de Diciembre, 1945, recaída en el presente caso. Allí dijimos clara y categóricamente que la disposición constitucional de que "todo acusado podrá, antes de su condena, ser puesto en libertad bajo fianza con garantía suficiente, excepto en casos de delito capital cuando existan pruebas Claras de su culpabilidad" es aplicable no sólo a los acusados bajo dicha ley sino también a los

detenidos simplemente, en los casos en que se trata de un delito castigado con pena capital, verbigracia, el de traición definido en el artículo 114 del Código Penal Revisado. En las muy detenidas y laboriosas discusiones que precedieron y culminaron en dicha decisión de 20 de Diciembre se explayaron con toda amplitud las razones y argumentos que sobre este punto importante algunos Sres. Magistrados exponen ahora en sus disidencias, y la Corte, antes de firmar y promulgar aquella sentencia, se hizo perfecto cargo de tales argumentos y razones. Es una lástima que premuras de tiempo y de trabajo hayan impedido que estas disidencias se escribieran y dieran a publicidad entonces, en lugar de que sus distinguidos autores se limitaran a la frase sacramental de "I concur in the result" o "conforme con la parte dispositiva". No cabe duda de que con ello y con los fundamentos de la opinión de la mayoría vigorosamente expuestos en la ponencia del Magistrado Hilado, el Tribunal del Pueblo, la judicatura, el foro y el público, en general, hubieran reportado los beneficios de una amplia y comprensiva ilustración acerca de tan importante punto constitucional y jurídico.

Acaso se diga que sobre esta cuestión constitucional no había mayoría en la referida sentencia de 20 de Diciembre, puesto que la suscribieron incondicionalmente sólo tres Magistrados: el ponente, el Presidente del Tribunal y el que suscribe. Pero ésto es nada mas que aparente. Había mayoría porque otros tres Magistrados los Sres. Ozaeta, Parás y Perfecto que concurrieron en parte y disintieron en parte, hicieron constar categóricamente en su dictamen separado que estaban conformes con la doctrina sentada en la ponencia de que el Artículo I, incisos 16 y 17, Título III de la Constitución del Commonwealth era aplicable al presente caso, en relación con la primera disposición del artículo 19 de la Ley No. 682 (creando el Tribunal del Pueblo) y los artículos 3 al 8, regla 110, Reglamento de los Tribunales, que tratan de la prestación de fianza en causas criminales.

Me parece, pues, que en estos momentos ya no sirve ningún interés ni propósito perentoriamente útil el discutir si un detenido político bajo la Ley No. 682 es acreedor, por derecho propio y constitucional, a gozar de libertad provisional bajo fianza cuando las pruebas de que ha cometido un delito capital no son fuertes ni vehementes. Nuestra sentencia de 20 de Diciembre, 1945, tiene fuerza de ley en la materia, y a menos que la doctrina se abrogue por esta Corte, la misma tiene que regir, siquiera en el presente caso.

Por lo demás, no parece necesario argumentar mucho sobre el entronque del artículo 19 de la Ley No. 682 con la Constitución del Commonwealth. El aire del parentesco se revela en la analogía del lenguaje y en el sentido natural y lógico de la fraseología empleada. Cuando la Legislatura dicta una ley que por la letra y el espíritu roza con un precepto constitucional, la presunción es que este último se ha tenido en cuenta y la intención del legislador ha sido el desenvolverlo e implementarlo en el terreno del derecho positivo. Es verdad que el referido artículo 19 habla no solamente de acusados sino también de detenidos antes de la presentación de la correspondiente querrella, pero esta diferencia, en vez de excluir la garantía constitucional en favor de estos últimos, debe ser, por el contrario, motivo para incluirla, más aun, para imponerla. La razón es sencilla: la Ley No. 682 contiene una radicalísima desviación de las disposiciones legales en materia de detención ampliando el tiempo permitido por el Código Penal Revisado para la detención sin querrella, de 6 horas a 6 meses, sin incluir el encierro bajo las autoridades del ejercito americano. Teniendo en cuenta la posibilidad de tan larga detención era nada más natural que la garantía constitucional sobre fianza se considerase tan buena para el detenido como para el acusado. No se debe olvidar que el espíritu que informa las constituciones democráticas como la nuestra es siempre el de protección máxima para los fueros y libertades del individuo.

Pero aún suponiendo inexistente ese entronque constitucional, estimo que ello es indiferente. Proveyendo como provee el citado artículo 19 que los detenidos por delito capital tienen derecho a fianza cuando las pruebas de cargo no son fuertes o vehementes, los tribunales de justicia tienen el deber de hacer efectivo tal derecho, fuese o no constitucional. Convengo en la aserción de que las garantías constitucionales son básicamente, primordialmente, un sólido amparo contra los excesos y demasías del poder legislativo y poder ejecutivo; y que

en estos conflictos, los tribunales de justicia constituyen precisamente el baluarte más seguro para tales garantías. Pero a esto hay que añadir, además, que los tribunales de justicia actúan o deben actuar con igual celo, lo mismo si anda de por medio la constitucion que si una simple ley, sin coturno constitucional.

Entonces ¿por qué disiento de la resolución por virtud de la cual este Supremo Tribunal, directamente y por si mismo, ha autorizado la prestación de fianza para la libertad provisional de la recurrence, en vez de dejar esta función al Tribunal del pueblo? Mis razones y fundamentos se explanan a continuación.

(1) Creo que en este Tribunal ha sido unánime y definitiva la opinión de que la recurrente tenía derecho a ser oída en su solicitud pidiendo que el Tribunal del pueblo le permitiera prestar fianza para su libertad provisional. Por eso que en la parte dispositive de nuestra sentencia de 20 de Diciembre nemos declarado, bajo la firma y concurrencia de 7 Magistrados, que el Tribunal del Pueblo se extralimitó en sus facultades y cometió un grave abuso de discreción al denegar de plano la petición de fianza sin la celebración de previa audiencia en que se determinara si su caso era o no caucionable a tenor de la regla y de la excepción provistas en el artículo 19 de la Ley No. 682, y hemos ordenado, despues de anular el auto denegatorio de la fianza, que se viera la solicitud en una audiencia que debia celebrarse ante el Tribunal del Pueblo con debida notificación al Procurador General y a la peticionaria—audiencia que, "ya fuese de carácter sumario o algo por el estilo, debería ser tal que capacitase al Tribunal del Pueblo para ejercer su sana discreción en la disposición de la mencionada solicitud". Digo que ha habido unanimidad en este punto porque si bien es verdad que 3 Magistrados disintieron redactando un dictamen separado y un Magistrado preparó y firmó una opinión concurrente separada, sus conclusiones no sólo no eran incompatibles con la parte dispositiva de la ponencia, sino que, en realidad, implicaban algo más radical e inclusive más liberal para la peticionaria.

(2) Si nuestra opinión ha sido unanime, clara, categórica y terminante en cuanto a que debía de haber una audiencia (hearing) en que se investigase si había o no pruebas fuertes o vehementes contra la peticionaria para los efectos de la determinación de su derecho a prestar fianza ¿había la misma unanimidad, la misma claridad, el mismo carácter definitivo y categórico en cuanto a la clase o tipo de audiencia que debía ser? En otros términos ¿hablamos delineado una cartografía suficientemente clara, habíamos formulado una regla de trazos firmes, inconfundibles, a los que el Tribunal del Pueblo podría o debería ajustar el uso de sus facultades discrecionales? Siento tener que contestar negativamente. En el cuerpo de nuestra tantas veces citada decisión de 20 de Diciembre dijimos que al presentarse una solicitud de fianza ante el Tribunal del Pueblo debería celebrarse inmediatamente una audiencia, de carácter sumario o algo por el estilo, previa notificación debida al Procurador General y al peticionario. Si el Procurador General se opusiera al pedimento, en él recaería el onus probandi, esto es, la obligación de probar que el peticionario no tenía derecho a fianza por ser fuertes o vehementes las pruebas de que el mismo ha cometido un delito capital; pero el peticionario, a su vez, tendría derecho a rebatir tales pruebas, desde luego sumariamente.

Hasta aquí muy bien. Pero supdngase que el Procurador no se opusiera a la prestación de fianza y consintiera en ella no porque las pruebas de cargo no fueran vehementes, sino porque cree que no esta en situación de ponerlas al descubierto so pena de colocar en grave riesgo el exito de la prosecución ¿qué acción debería tomar el Tribunal del Pueblo? ¿Estaría obligado en tal caso a aceptar la recomendación de fianza, subordinando el ejercicio de su discreción al imperative del interés público invocado por el Procurador General? Esto es lo que ya no se contestó categóricamente, rectilíneamente, en nuestra referida decisión de 20 de Diciembre, prefiriendo dejarlo pasar sub silencio. En vez de delinear los contornos de una regla inequívoca, indubitable, optamos por envolver nuestro pensamiento en un lenguaje lato y generalizador. Dijimos entonces lo siguiente:

"In fine, the hearing is for the purpose of enabling the People's Court to exercise its sound discretion as to whether or not under the Constitution and laws in force petitioner is entitled to provisional release under bail."

(Herras Teehankee vs. Rovira, 75 Phil., 634, 644.)

Pero es el caso que la Constitución sólo contiene un precepto esquemático, más bien un principio; y las leyes sobre el particular tampoco son pormenoristas y detalladas para cubrir los diferentes casos y posibilidades. De ahí la necesidad de que se legislase judicialmente, tratando de llenar, según frase genial del Magistrado Holmes, los intersticios, las grietas, los espacios vacíos existentes en la Constitución y en la ley. (Southern Pacific Co. vs. Jensen, 244 U. S. 205, 221). El Tribunal del pueblo podía haber llenado esos intersticios; de hecho parecía que lo esperábamos.

Creo no haver ninguna revelación impropia si digo que al llegar a este punto de las discusiones adelanté la sugestión de que en caso de que el Procurador General consintiera en la prestación de la fianza no porque sus pruebas no fueran vehementes sino más bien porque no quisiera descubrirlas para no poner en peligro el éxito de la prosecución, declararíamos como regla que en tal caso debe parar la investigación y el Tribunal del pueblo no tiene más camino que el de conceder la petición de fianza. Se apoyaba esta sugestión en la teoría de que el interés de la prosecución que es también interés del Estado—el de castigar el crimen—debe disfrutar de prioridad sobre cualquiera otra consideración. No prevaleció, sin embargo, la proposición. Se pensó que a toda costa debía ponerse a salvo la discreción del Tribunal del Pueblo en materia de fianza; que en lo posible debían agotarse los medios para hallar una fórmula que hiciese compatible la función del Procurador General con las facultades discrecionales de dicho Tribunal. Este es el "background", el contrafondo de la decision de 20 de Diciembre—suprema tentativa de transacción entre dos principios que parecían irreconciliables. Alguien ha dicho que gobernar es transigir. Parece que no, pero la vida del derecho, en medio de la rigidez de sus principios y abstracciones, tampoco puede escapar en ocasiones a este imperativo categórico vital: transacción, compromiso, soluciones intermedias, desde luego todo ello ideológicamente.

(3) En la audiencia que se celebró ante el Tribunal del Pueblo con motivo de nuestra decisión de 20 de Diciembre, la peticionaria reiteró verbalmente su moción de que se le permitiera una fianza de P50,000 para su libertad provisional. El Tribunal del Pueblo se reservó su resolución y la peticionaria vino otra vez en queja ante Nos urgiendo que se tomara acción inmediata sobre el caso. Hallando prematura la queja la desestimamos mediante nuestra resolución de 11 de Enero, 1946, pero aprovechamos la oportunidad para formular nuevas instrucciones al Tribunal del Pueblo indicándole lo que debía hacer con respecto al pedimento de fianza. Es de reconocer que estas nuevas instrucciones son más explícitas que las anteriores. En ellas se declara que en casos de delito capital, cuando el Procurador General no se opone a la petición de fianza, por regla general el Tribunal debe acceder a ella; pero si el tribunal tuviera razones para creer que la actitud del Fiscal especial no es justificada (sospecha, por ejemplo, de una colusión entre las partes) aquél puede interrogarle para apreciar la calidad de las pruebas de cargo o determinar la suficiencia de la cuantía de la fianza. Sin embargo, "cuando el Fiscal especial rehusare contestar cualquier pregunta por la razón de que su contestación puede poner en peligro el éxito de la prosecución o el interés público, el mismo no puede ser obligado a hacerlo siempre que presentare un certificado a dicho efecto firmado por el Procurador General, quien, como jefe. de la oficina de los Fiscales especiales, tiene la dirección y control de la prosecución, y no puede ser compelido por el Tribunal, ni aún en el mismo juicio, a presentar una prueba que no desee articular—entendiéndose, sin embargo, que dicha negativa no perjudicará los derechos del acusado o detenido".

Después de dictada esta resolución de 11 de enero, el Tribunal del Pueblo, actuando de nuevo sobre la petición de fianza, convocó una audiencia con la presencia de ambas partes e hizo al Fiscal especial algunas preguntas pertinentes al caso. El Fiscal insistió en su negativa a revelar la naturaleza de sus pruebas invocando el interés público; en vista de esto, "the Court ordered the Special Prosecutor to submit his evidence for the court's inquiry".—"We have examined the evidence and we find a myriad points which would establish the guilt of the

petitioner" (palabras tomadas del auto del Tribunal del pueblo de enero 31, 1946). Consiguientemente se denegó la fianza.

En ésto se hace consistir la arbitrariedad o abuso de discreción que ahora se pretende corregir asumiendo directamente este Tribunal Supremo una facultad que propiamente compete al Tribunal inferior—la de recibir y aceptar la prestación de fianza. Se afirma que el Tribunal del Pueblo ha desobedecido, hasta con cierta contumacia, no sólo nuestro mandato de 20 de Diciembre, sino sobre todo nuestro mandato (directive) de 10 de Enero. Se asevera que desde el momento en que el Fiscal se negaba a descubrir sus pruebas con un certificado de su jefe el Procurador General sobre "razones de interés público", desde ese momento el deber del tribunal era conceder la fianza, ya no tenía facultad para una posterior inquisición llamando al Fiscal a una audiencia aparte, sin la presencia de la peticionaria. Es decir, se dice ahora con todo vigor que la regla que yo había estado sugiriendo antes de 20 de Diciembre y los Sres. Magistrados disidentes estaban propugnando era justamente la regla contenida en nuestros directives y era la misma regla infringida y desobedecida por el Tribunal del Pueblo en su auto de 31 de enero. En verdad, el raciocinio parece mágico por lo sorprendente.

¿Cómo puede decirse que esa regla estaba contenida en nuestros directives, teniendo en cuenta todos los antecedentes y circunstancias de que hablo más arriba? Si ello fuera verdad la regla se hubiera expuesto en términos categóricos, inconfundibles, sin equívocos ni ambigüedades. No se hubiera adoptado ese lenguaje que, como dije antes, condensa la fórmula de una solución intermedia, de un compromiso, de una transacción entre diversos pareceres. Nuestra resolución de 11 de enero, con ser algo más amplia y explícita, tampoco contiene específicamente esa regla ni en su letra ni en su espíritu. Claramente se ve que hay allí algo que aparece truncado, inconcluso; ostensiblemente hay todavía allí entrelíneas e intersticios que dejábamos a la inventiva y arbitrio del Tribunal del Pueblo el cubrirlos y llenarlos a satisfacción de todos los intereses afectados—el interés del Estado, el interés de la prosecución y el interés de la defensa. En el fondo, nuestra resolución de 11 de enero no es menos transaccional y conciliativa que nuestra decisión de 20 de Diciembre. En el "background", en el trasfondo de esa resolución había, por ejemplo, el criterio sostenido por algunos Magistrados de que la frase "audiencia sumaria o algo por el estilo" (summary hearing or otherwise) no significa una audiencia confrontativa o un careo y, por tanto, puede equivaler también a una audiencia en que sólo una parte estuviese presente, ora el Fiscal, ora el acusado o detenido. En el contrafondo de esa resolución también proyectaba su sombra la decisión en el asunto de la fianza de Pío Duran: había naturalmente el empeño laborioso, hasta penoso, de tratar de evitar a toda costa un conflicto entre el criterio sostenido en aquel asunto y el que finalmente se adoptó en el asunto que nos ocupa. Acaso la mayor prueba de que no había un común consenso acerca de la regla que la mayoría de ahora pretende imponer por primera vez, es que algunos Magistrados que concurrieron en dicha resolución de 11 de enero exponen ahora puntos de vista completamente contrarios a dicha regla, y no solo no es justo ni propio atribuir su actitud a un cambio súbito de opinión durante el interregno, sino que la presunción lógica es que al concurrir en la referida resolución de 11 de enero sabían lo que estaban haciendo.

Acaso se diga que en nuestras instrucciones de 20 de Diciembre, máxime en las de 11 de enero estaba, por lo menos, en germen la regla de que se trata; que haciendo uso del raciocinio el Tribunal del pueblo hubiera podido hacer inferencias y deducciones encaminadas a dar cuerpo a la doctrina; que para eso están los abogados y los jueces—para desenredar lo que está enredado, para simplificar lo complejo, para aclarar los puntos oscuros de la ley y de la jurisprudencia. Pero entonces pregunto: si entre nosotros mismos los miembros de esta Corte hallábamos dificultades para un categórico y definitivo consenso y de hecho nuestras opiniones estaban harto divididas sobre cuál debía ser la regla concreta, específica; si la doctrina no salía de nuestras manos imperfectas de una sola vez, definitivamente contorneada, como al conjuro de un fiat divino, sino que como la estatua en manos del escultor sólo cobraba forma gradualmente, poco a poco, a ritmo con la operación laboriosa del cincel ¿cómo, en justicia, se podía exigir que el tribunal inferior diera inmediatamente en el blanco de la doctrina,

intuyendo y adivinando lo que no parecia ser mas que la nebulosa de una ideación? ¿No equivaldría ésto a poner una prima a la intuición, infligiendo, en cambio, uii castigo al fracas del don adivinatorio?

Las doctrinas jurídicas no son fórmulas cabalísticas, de un rito misterioso, que para descifrarlas sea precisa la intervención de una pitonisa o de un oráculo. Son fórmulas de verdad, de justicia, y deben leerse en su letra y en su espíritu, sin necesidad de violentar el magín para tratar de adivinar lo que trasciende mis alia de sus fronteras, lo que a lo mejor sólo existía aún en la mente del juez que las inventó. Así que nuestras instrucciones al Tribunal del Pueblo debían leerse de esta manera normal, ordinaria, y si el mismo no pudo deducir de su lectura la regla que hoy se trata de imponer, ello no debe atribuirse a falta de nadie, sino significa sólo que la doctrina que tan trabajosamente estábamos elaborando no había llegado aún a plena sazón y ahora solamente, al volver a nosotros para nuevos golpes de cine el, adquiriría perfecta viabilidad, definitivo relieve.

(4) Y este proceso lento, accidentado, en que parece que se ha tratado de medir bien cada paso que se ha dado, tanteando cuidadosamente el terreno antes de seguir adelante, no debe ser motivo de crítica contra esta Corte ni contra cualquier otro tribunal que colocado en iguales circunstancias actuase de la misma manera. No se trata defalta de caudillaje intelectual, como ligeramente se ha dicho en cierto sector. No se trata de balbuceos, de vacilaciones censurables. Se trata simplemente de una cautela, de una lentitud inherente en el sistema, en el método bajo el cual se ha estructurado siempre la vida jurídica no sólo aquí sino en todas partes. Roma no se fundó en un solo día, reza una frase familiar. Pues bien: la jurisprudencia tampoco es obra de un sólo día. No es criatura de un juez o un grupo de jueces; ni siquiera de una generación sino de varias generaciones de jueces. Su formación arquitectural tiene mucho de la lenta, paciente y trabajosa edificación de las catedrales de la edad media. Creo que hay otra imagen mejor y más apropiada todavía: su formación es semejante a la de ciertas capas geológicas, por aluvión, operándose casi imperceptiblemente en el lento devenir de los tiempos. Y esto es particularmente cierto cuando la constitución y las leyes, sobre todo las de carácter procesal, están redactadas nada más que en forma esquemática, sentando más bien principios o preceptos generales. En estos casos el juez asume prácticamente funciones de legislador, llenando intersticios, cubriendo vacíos—parafraseando otra vez a Holmes. La experiencia es la piedra de toque, es el crisol—cada caso, cada principio se prueba y se aquilata allí hasta verlo depurado. Este proceso jamás se ha descrito tan bellamente como en estas palabras de Munroe Smith que acota el Magistracy Cardozo en su pequeño hermoso libro que parece un breviario, "The Nature of the Judicial process":

"In their effort to give to the social sense of justice articulate expression in rules and in principles, the method of the lawfinding experts has always been experimental. The rules and principles of case law have never been treated as final truths, but as working hypotheses, continually retested in those great laboratories of the law, the courts of justice. Every new case is an experiment; and if the accepted rule which seems applicable yields a result which is felt to be unjust, the rule is reconsidered. It may not be modified at once, for the attempt to do absolute justice in every single case would make the development and maintenance of general rules impossible; but if a rule continues to work injustice, it will eventually be formulated. The principles themselves are continually retested; for if the rules derived from a principle do not work well, the principle itself must ultimately be re-examined.

* * * * *

"This work of modification is gradual, It goes on inch by inch. Its effects must be measured by decades and even centuries. Thus measured, they are seen to have behind them the power and the pressure of the moving glacier" (Nature of the Judicial process, pp. 23, 25.)

Ejemplo típico de este proceso en la formación de nuestra jurisprudencia es esta misma materia de la fianza en casos de delito castigado con pena capital. Aquí la doctrina ha ido ascendiendo por etapas. Se suscitó primeramente esta cuestión en la causa de los Estados Unidos contra Babasa, (19 Jur. ill. 209 [1911]). Esta Corte,

interpretando el párrafo 4.[o] del artículo 5 de la Ley Orgánica o constitucional de l. [o] de Julio de 1902 en relación con el artículo 63 del Código de Enjuiciamiento Criminal (Orden General No. 58), declaró lo siguiente;

"De estas disposiciones resulta claro que aún los delitos penados con pena capital son caucionables a discreción del Tribunal antes de la condena. En su consecuencia, la objeción de los apelantes de que el Tribunal a quo carecía de facultad o jurisdicción para admitir la fianza en el caso de autos, debe ser desestimada. Según los hechos probados en la presente causa, el Juez puede que hubiera hecho mal en admitir la fianza; pero tenía jurisdicción. Esa es la cuestión importante aquí. " (Estados Unidos contra Babasa, 19 Jur. Fil., págs. 209, 212.)

Posteriormente en la causa de Montalbo contra Santamaría (54 Jur. Fil., 1026 [1930]), se amplió un poco más la doctrina. No sólo se reafirmó la sentada en la causa anterior de Babasa sobre jurisdicción y competencia de los Juzgados de Primera Instancia en la materia, sino que habiéndose negado allí el Juez a actuar so pretexto de que la Ley Jones (Ley orgánica, constitucional) se lo prohibía, esta Corte le obligó mediante un mandamus a proceder, declarando lo siguiente;

"1.

ASESINATO; LIBERTAD PROVISIONAL DEL ACUSADO; FACULTAD DISCRECIONAL JUDICIAL.—El procesado en una causa por asesinato tiene derecho legal a solicitar su libertad provisional, y el Juez tiene el deber imperativo de ejercer la facultad que le confiere la ley para resolver si en dicha causa hay prueba evidente o presunción vehemente de la culpabilidad del acusado, y conceder o denegar la libertad provisional solicitada.

"2.

'MANDAMUS'; CUÁNDO PROCEDER SU EXPEDICIÓN.—Procede expedir un mandamus para obligar al juez recurrido a que cumpla un deber imperativo que le impone la ley. " (Montalbo contra Santamaría, 54 Jur. Fil., págs. 1026, 1027.)

Más tarde, en el asunto de Payao contra Lesaca, (63 Jur. Fil., 227 [1936]) la discusión sobre la materia adquirió mayores proporciones y amplitudes. Se comentó y discutió el Título III, artículo 1, párrafo 16 de la Constitución del Commonwealth en relación con la sección 66 de la Orden General No. 58. La Constitución dispone: "Todo acusado podrá, antes de su condena, ser puesto en libertad bajo fianza con garantía suficiente, excepto en casos de delito capital cuando existan pruebas claras de su culpabilidad. No se exigirán fianzas excesivas". La sección 66 de la Orden General No. 58 prescribe: "Cuando sea discrecional conceder al acusado la libertad bajo fianza, el tribunal con la debida anticipación deberá citar al Promotor Fiscal para el acto de audiencia en orden al incidente". Por primera vez se planteó o más bien insinuó la cuestión de sobre quien debía recaer el onus probandi en la determinación de la vehemencia o endeblez de las pruebas de cargo. Es de reconocer que aquí la cuestión no ha quedado resuelta clara e inequívocamente. La doctrina todavía no se ha redondeado, aún no se ha desprendido completamente de la etapa larval. He aquí, por ejemplo, el pronunciamiento de la Corte bajo la ponencia del Magistrado Laurel:

"Invocando el asunto de Montalbo contra Santamaria ([1930], 54 Jur. fil., 1026), la recurrente ahora comparece ante este Tribunal y sostiene que el recurrido debió haber practicado una investigación para determinar si las pruebas de culpabilidad son incontrovertibles contra ella. Indudablemente, en virtud de la adecuada solicitud, el Juez tiene la obligación legal de admitir pruebas al objeto de determinar si las relativas a la culpabilidad son tan incontrovertibles que justifiquen la denegación de la prestación de fianza. Pero cuando, como en el presente caso, la recurrente no ha presentado ni ofrecido presentar prueba alguna en la vista de la moción del Fiscal Provincial para la cancelación de la fianza, el 2 de Mayo de 1936, estuvo justificado el que el Juez ejercitara su

discreción, en vista de los hechos disponibles y que propiamente se le pusieron de manifiesto. En un caso así, la investigación judicial puede consistir en el examen de las pruebas practicadas durante la investigación preliminar previas a la presentación de la querrela en que se le acusa al procesado de la comisión de un delito. Puede consistir, también, en el examen de las pruebas que tiene en su poder el promotor fiscal." (Payao contra Lesaca, 63 Jur. Fil., 227, 231, 232.)

La última senteneia arriba transcrita, subrayada deliberadamente por el infrascrito, no ha hecho más que acentuar la ambigüedad dando lugar a que algunos opinen a que la misma autoriza y permits que se llame al promotor fiscal a una audiencia aparte para determinar qué clase de pruebas tiene en su poder, aún sin la presencia del acusado.

En el asunto de Marcos contra Cruz (67 Phil., 82), la doctrina avanzó un poco más, ascendiendo a una etapa más decisiva. En este asunto se declaró ya categóricamente que el onus probandi recae en el Fiscal, que para enervar el derecho del acusado a prestar fianza la prosecución debe tomar la iniciativa demostrando que las pruebas de que se ha cometido un delito capital son fuertes o vehementes. Esta doctrina quedó plasmada en forma de ley sustituyendo a la Orden General No. 58 cuando posteriormente se incorporó en el Reglamento de los Tribunales, regla 110, artículo 5 al 8. La doctrina, sin embargo, no se sometió a la piedra de toque que ahora nos ocupa, porque cuando el Juzgado, obedeciendo la orden de esta Corte, llamó una audiencia para considerar y resolver la petición de fianza de los acusados, el fiscal optó por retirar su oposición para no descubrir sus pruebas, y el Juzgado, dando por buena la acción del Fiscal, concedió presto la fianza. Es decir, no hizo lo que el Tribunal del pueblo ha hecho en el presente caso, desoyendo la recomendación del Fiscal e insistiendo en inquirir las pruebas que éste tenía en sus manos, aún a espaldas de la peticionaria. Parece significativo, sin embargo, el hecho de que el Magistrado Sr. Laurel que, como hemos visto, fué el ponente en el asunto de Payao contra Lesaca, se conformara sólo con la parte dispositiva de la ponencia del Magistrado Sr. Imperial en el asunto de Marcos. ¿Sería porque no estuviera aún muy seguro de la madurez de la doctrina en eso del onus probandi?

Lo que ahora tenemos, pues, es una nueva etapa en el proceso evolutivo de la doctrina—avance de pulgada por pulgada, según frase gráfica del Magistrado Cardozo en la cita arriba transcrita. Es la etapa en que puestos frente a frente el Procurador General y el Tribunal del Pueblo en el ejercicio de sus respectivas funciones, previo el cumplimiento de ciertos requisitos se concede prioridad a la acción o recomendación del procurador. Sobre si esta doctrina ya es final, inflexible, o definitivamente lograda, es cosa que nadie puede predecir, porque es perfectamente posible que ella sufra modificaciones ya restrictive, ya expansivamente, en "esos grandes laboratorios de experimento jurídico, los tribunales de justicia".

(5) Mi conclusión, pues, es que ahora que una mayoría viable de este Tribunal está de acuerdo sobre una doctrina clara, específica y firme, lo procedente es que ésta se incorpore en unas instrucciones finales al Tribunal del Pueblo para que la aplique y siga en el caso de autos. No me parece propio y correcto que suplantemos al tribunal inferior en el ejercicio de una función que, como la de recibir fianza, le compete primordial y básicamente según la ley y la jurisprudencia. Ni las reglas que rig en el certiorari como remedio especial, ni los precedentes en esta jurisdicción justifican una acción directa y drástica de nuestra parte. En el asunto de Montalbo contra Santamaría, supra, esta Corte expidió un mandamus; y en el de Marcos contra el juez de Ilocos Norte, idem., se concedió el certiorari anulándose la orden denegatoria de la fianza dictada por el Juez inferior, pero no se tomó acción directa aquí sino que se devolvió el expediente al Juzgado para ulteriores procedimientos de conformidad con un esquema de instrucciones o directives esbozado en la parte dispositiva de la sentencia.

No cabe invocar, en apoyo de una acción directa de esta Corte, la alegada contumacia del tribunal inferior en desacatar nuestras órdenes porque oreo haber demostrado hasta la saciedad que no ha habido tal cosa. Tampoco cabe invocar la prolongada detención de la recurrente, pues por atendibles que sean ciertas razones de comodidad

personal, no creo que por ellas se deban sacrificar los intereses superiores de la ley y de la administración de justicia. Unos cuantos días más de detención bien se puede tolerar si con ello ponemos a salvo la integridad de los procedimientos judiciales. *Salus populi suprema lex.*

Ademas ¿cómo podemos recibir directamente la fianza sin el convencimiento de que las pruebas de cargo no son fuertes o vehementes para justificar su prestación? Porque es evidente que si queremos asumir directamente esta función privative del inferior, debemos hacerlo bajo los requisitos que la condicionan, y uno de ellos es que se convoque una audiencia con la debida notificación a las partes para determinar la caucionabilidad del caso. Esta audiencia es absolutamente necesaria porque el requisito de que el caso es caucionable debe existir en el momento de prestarse la fianza; y ahora pregunto: ¿qué sabemos si en este momento el requisito todavía subsiste? ¿Qué sabemos si las condiciones han cambiado durante el interregno, es decir, si el Procurador General ya está en situación de revelar la naturaleza y calidad de sus pruebas? A menos, pues, que estemos preparados para convocar dicha audiencia, en justicia no podemos recibir directed ente la fianza.

Ahora bien, pregunto otra vez: ¿estamos en condiciones de implementar y poner en vigor este procedimiento? ¿tenemos los medios y la maquinaria para ello? Las dificultades saltan inmediatamente a la vista teniendo en cuenta consideraciones geográficas. Está bien si el caso es de Manila; pero ¿si es de provincia, máxime si es lejana?

Estimo, pues, que el método mejor y más seguro es el establecido en nuestros precedentes. No hay razón valedera para una radical desviación, por atajos no probados hasta ahora.

FERIA, J., dissenting:

We dissent from, each and every one of the erroneous conclusions of law of the majority regarding the three questions discussed in its decision, to wit: (1) That the constitutional precept of section 1 (16), Article III, of the Constitution of the Philippines is applicable not only to defendants or persons charged with an offense, but also to detainees for investigation against whom a complaint or information has not yet been filed; (2) that the People's Court law, Act No. 682, and the Philippine Constitution should be read as one law, and therefore the discretion provided in said Act is the same discretion provided in the Constitution, "that discretion having reference only to the determination of whether or not the evidence of guilt is strong;" and (3) that this Supreme Court has power to grant bail directly in the present case, confusing the, special civil action of certiorari, with certiorari as a mode of review, and that certiorari and habeas corpus may go together the latter in aid of the former.

1. Section 1(16), Article III, of the Constitution provides:

"All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required."

There is no room for doubt that this constitutional precept does not operate directly on the courts of justice, that is, it is not self-executing. It only constitutes a limitation on the legislative power of the law-making body or a prohibition for the latter to promulgate laws or rules of Court which would deprive a defendant charged with a non-capital offense of his right to bail before conviction. In cases of a capital offense where the evidence of guilt is strong, the legislative power is given a free hand, either to declare it not bailable, or to confer upon the courts discretion to grant or not bail to defendants charged therewith; and section 6, Rule 110, of our Rules of Court, promulgated by authority of the Constitution, provides that "no person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong." In many States of the Union wherein the same or a similar constitutional limitation exists, the state legislature, instead of providing that no defendant

charged with a capital offense shall be admitted to bail if the evidence of guilt is strong as provided in said section 6 of Rule 110, confers upon the courts discretion to grant bail to persons charged with a capital offense, irrespective of whether or not the evidence of his guilt is strong.

As to the right of defendant or person already accused of a non-capital offense or of a capital one when the evidence of his guilt is not strong, consecrated or guaranteed by the above-quoted constitutional precept, section 3 of the same Rule 110 provides that "After judgment by a justice of the peace, and before conviction by the Court of First Instance, the defendant shall be admitted to bail as of right." But, with respect to political prisoners suspected of having committed the crime of treason against the United States or the Commonwealth of the Philippines in connection with World War II, the Philippine Congress enacted Act 682, section 19 of which reads as follows:

" * * * That existing provisions of law to the contrary notwithstanding, the aforesaid political prisoners may, in the discretion of the People's Court, after due notice to the Office of Special Prosecutors and hearing, be released on bail, even prior to the presentation of the corresponding information, unless the court finds that there is strong evidence of the commission of a capital offense: * * *."

It is obvious that, notwithstanding the constitutional precept first quoted, the above provisions confer upon the People's Court discretionary power to release or not on bail detainees against whom charges have not yet been filed, except when they are to be charged with a capital offense and the evidence of guilt is strong, in which case said Court has no discretion or power to release them; while under the provisions of Rule 110 of the Rules of Court, a defendant or person charged with an offense is entitled to bail before conviction, unless charged with a capital offense and the evidence of guilt is strong, in which case the court shall not grant bail to the defendant.

Of course, if the already quoted constitutional provision extends its protection not only to those accused of offenses, but also to persons not yet charged or accused but detained for investigation (where the former is charged and the latter will be charged with a non-capital offense and even if charged with a capital offense where the evidence of guilt is not strong), the said provision of section 19 of Act 682 would be unconstitutional and void, since, in giving discretion to the People's Court to grant or not bail to political detainees referred to in section 2 of said Act No. 682, it deprives them of their assumed constitutional right to be released on bail before conviction.

But we are of the opinion that the constitution refers only to defendants or persons already charged with an offense, and not to detainees not yet charged or under investigation, for the following reasons:

First. Because it is elementary in constitutional law that a statute enacted by a legislative body is presumed to be constitutional. The parties in this case have not raised the question of the constitutionality of section 19, Commonwealth Act No. 682, in so far as it confers discretionary powers on the People's court to release political detainees on bail. And it is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties; and that when it is raised, if the record also presents some other ground upon which the court may rest its judgment, that course will be adopted and the constitutional question will be left for consideration until a case arises in which a decision upon such question will be unavoidable (Cooley's constitutional Limitations, seventh edition p. 231).

Secondly. From the very terms of the above-quoted constitutional provision it is to be inferred that, in using the word "persons", it refers to defendants or persons already charged with an offenses. It says: "All persons shall before conviction be bailable * * * except those charged with capital offenses." It is evident that no detainee or person not yet charged with an offense can be convicted or charged with a capital offense. The subsequent words "before conviction," and "except those charged with capital offenses," evidently qualify the word "persons" so

that it should be read "persons charged or defendants," because a person not yet charged can not be convicted, and the office of an exception is "to exempt something which would otherwise be within it." (2 Sutherland on Statutory Construction, second edition, sec. 351.) The enacting clause must necessarily be of the same nature as the one excepted therefrom; otherwise the exemption would have no reason to exist. Both must relate to or embrace the same subject. It was so construed by legislative bodies in the United States, and our own when it enacted General Orders No. 58, of which Rule 110 of the Rules of Court is a substantial transcript, as we shall show later on.

Thirdly. A person not yet charged with an offense need not be bailed, because his detention is merely temporary or provisional, and he shall be released or set free after investigation if not found guilty of any offense, and because, before the investigation is completed and he is accused, there would be no way of determining whether the offense to be charged is capital and the evidence of guilt strong and therefore not bailable, and, if the offense is bailable, the amount of the bail to be fixed, which depends upon the nature or gravity of the offense to be charged.

Fourthly. If immediately upon being detained for investigation, a person has the right to be and is released on bail, the investigation may be obstructed or the prosecution embarrassed, because it would be difficult, if not impossible, in many cases for the witnesses to identify the detainee, who is absent or has been released on bail, as the guilty party. To avoid this and at the same time not absolutely deny the detainee liberty, if the public safety would not be endangered or the public good not jeopardized by his release in the opinion of the People's Court, the latter is given discretionary power to grant or not grant provisional liberty on bail.

Fifthly. If a detainee has the right to be released on bail, and after investigation the special prosecutor does not file any charge or take any action during and after the expiration of the period during which his detention is allowed or considered legal by law, neither may the corresponding officer be prosecuted for arbitrary detention, nor the person released on bail petition for a writ of habeas corpus, for the latter is not detained or restrained of his liberty. The consequence would be that he would remain under bail for an indefinite period of time.

Sixthly. Under the provisions of Rule 110 of the Rules of Court, which were taken from the corresponding provisions of General Orders No. 58 and rulings thereon laid down by this Court, only defendants, that is, persons charged with an offense, are, before conviction, entitled to bail, for they use the words "defendant and person in custody of the law for the commission of an offense." A person detained for investigation is not, before he is charged with an offense, a defendant or a person in the custody of the law. The contention that "if the words 'person in custody' used in section 6 of said Rule 110 had been intended to refer only to persons formally charged, it would have used the word 'defendant', as the provisions of section 3 and 4 thereof," is groundless or without any foundation, because a person can not be in custody for the commission of an offense if he is still under investigation and it can not yet be determined whether or not he has committed any offense. A person is said to be in the custody of the law for the commission of an offense when he is charged with having committed it. It is elementary that one temporarily detained for investigation is not in the custody of the law. A detainee under investigation not yet charged with an offense is not in the custody of the law, because a person in the custody of the law can not be released except by order of the court and by authority of the law, while a person under investigation can be released by the officer in charge without any authority of law or order of the court.

The majority argues: "It is to be observed that the word 'charged' is not used in the American constitutions, the reason being that no one would apply for bail unless he is detained for some charge either oral or in writing made either by a private individual or by a public officer. Certainly the charge need not be a formal information in order that a person detained may apply for bail." And in support of its argument the majority quotes a portion of Corpus Juris, section 167 p. 953 which says "By the common law all offenses, including treason, murder, and other

felonies, were bailable before indictment found * * *." It is apparent that, by underscoring the words "before indictment found," the majority wants to convey the idea that an indictment is the original charge under the common law, that "before indictment found" means before a formal charge has been filed, which is an erroneous conception. An indictment is not the original charge, which is generally filed by the offended party or any other competent person. It is a charge of a capital offense filed by a grand jury based either on a coroner's inquest, whose report is a charge according to law, or on the report of a magistrate who has made a preliminary investigation of the charge of a capital offense against a person. "Before indictment" does not, therefore, mean before any charge has been filed against a person to be indicted. (Notes, Re Thomas, 39 L. R. A. N.S. page 759)

Lastly, the reason of the Constitution and the statutes enacted in conformity therewith in not extending the right to be released on bail to persons detained or not yet accused of an offense, is that if the proper officers detain a person suspected of having committed a crime for investigation for a longer period of time than that allowed by law as reasonably necessary for that purpose, they incur criminal liability (arbitrary detention), and the person so illegally detained may obtain his liberty through a writ of habeas corpus. The period of time required for the investigation of a person and fixed by law is generally very short. The mere fact that, due to an emergency created by World War II, the period of legal detention of political detainees for proper investigation has been extended to not more than six months, which is considered reasonably necessary to enable the special prosecutors to investigate and take the proper action against several thousands of detainees, would not make section 19 of Act No. 682 which does not grant them such rights unconstitutional, for the constitutional limitation under consideration remains the same and unchanged. To compensate for the extension of the period during which political detainees may be legally detained, said section 19 authorizes the People's Court to release them on bail at its discretion.

The provision in question of our constitution is a substantial or literal copy of the corresponding ones found in the Constitution of almost all the States of the Union; and the above-mentioned provisions of General Orders No. 58 were also taken from the laws of those States. We have not found, up to the present, any case in which the constitutionality or validity of similar provisions of General Orders No. 58 and Rule 110 of the Rules of Court has been questioned, or said provisions declared unconstitutional, on the ground that they do not confer upon detainees the same rights granted by the Constitution to defendants or, in the other words, that they, by implication, deprive detainees of the right to be released on bail before conviction of a non-capital offense.

It is argued in the majority's decision that "if, as admitted on all sides, the precept (of the Constitution) protects those already charged under a formal complaint or information, we find no legal or just reason for denying its benefits to one against whom the proper authorities may yet conclude that there exists no sufficient evidence of his guilt. To place the former in a more favored position than the latter would be to say the least anomalous and absurd."

This argument is unfounded. A defendant is not placed in more favored position than a detainee. A defendant or person charged with a crime has to continue in the custody of the law, and can not be released or discharged if the offense charged is not bailable, until he is tried and acquitted, and generally it takes a long time, months end even years, before his case can be finally disposed of. He can not be set free on habeas corpus. While a detainee, or person who is being investigated for the commission of an offense, can only be detained, according to law, under ordinary circumstances, for a short period of time, for six or more hours or at most twenty-four (see the provision of the old and Revised Penal Code), after which the officer detaining him has either to file the charge or set him free. If he is not charged or set free after the expiration of that period, he is entitled to be released on habeas corpus, and if a charge is filed against him, he becomes a defendant and, as such, is entitled as any other to be released on bail if the offense of which he is accused is bailable. The foregoing is corroborated by section 19 of

Act No. 682 which provides: "* * * That existing provisions of law to the contrary notwithstanding, the aforesaid political prisoners may, in the discretion of the People's Court, after due notice to the Office of Special Prosecutors and hearing, be released on bail, even prior to the presentation of the corresponding information, unless the Court finds that there is strong evidence of the commission of a capital offense: * * *" If this provision has to expressly empower the People's Court to grant bail to said detainees even before the presentation of the information. "the existing provisions of law to the contrary notwithstanding," it is because the provisions of law then existing or in force at the time of the enactment of said law did not authorize the courts to release on bail detainees under investigation or before they are formally charged with an offense.

Therefore, even assuming that the evidence of guilt of the petitioner who was then about to be charged with a offense was not strong, she is not entitled as a matter of right to be released on bail; because the People's Court has discretion either to release a detainee on bail or not, unless he is charged with a capital offense and the evidence of his guilt is strong, pursuant to the provision of section 19 of Act 682.

2. The discretion given the People's Court by section 19 of Act No. 682 to grant bail to political detainees before they are charged with a non-capital offense or with a capital one where the evidence of guilt is not strong, must be understood to be a sound or reasonable, not arbitrary, discretion; and this Court has no power to interfere with the action taken by the People's Court in the exercise of its discretion, by means of the special civil action or extraordinary legal remedy called certiorari, unless it be shown that the latter has gravely abused its discretion.

The majority decision (1) is clearly confused in concluding that the discretion conferred by section 19 of Act 682 upon the People's Court is to be exercised by the latter in determining whether or not the evidence of the commission of a capital offense is strong; and (2) also confuses judgment with discretion in its proper sense which section 19 above, quoted grants the People's Court when it says:

"Since the People's Court Act and the Constitution and other statutes in this jurisdiction should be read as one law, and since the language used by this Court in construing the Constitution and other statutes on the matter of bail is substantially the same as the language used by the People's Court on the same subject, the most natural and logical conclusion to follow in cases of capital offenses before conviction is that the discretion provided in said Act is the same discretion provided in the Constitution and similar statutes, that discretion having reference only, as above stated, to the determination of whether or not the evidence of guilt is strong. To hold that the People's Court has uncontrolled discretion in such cases to deny bail even where the evidence of guilt is not strong or there is absolutely no evidence at all, is to make the Act offensive not only to the letter but also to the spirit of the Constitution, and this is contrary to the most elementary rules of statutory construction."

It is very evident and it requires no argument to show the error of the majority in concluding that the discretion granted by the aforementioned section 19 to the People's Court has "reference only, as above stated, to the determination of whether or not the evidence of guilt (of capital offense) is strong. Therefore, all the arguments set forth in the majority decision in support of its conclusion that the People's Court has abused its discretion in determining whether the evidence of petitioner's guilt is strong are groundless, for they are predicated upon a clearly mistaken not to say false premise.

We shall only show that the majority confuses discretion with judgment.

In deciding a question submitted to a court for decision, if there is a law which must be applied or serves as guide to the judge, the latter has no discretion to decide it one way or the other. He must judge or decide it in accordance with such law; otherwise, the court's resolution or decision would be erroneous or contrary to law. But if there is no law and the court is given discretion, the latter may decide the question one way or the other, and whatever decision it renders is not erroneous, is right. As rightly stated by Mr. Justice Moreland of this Court in the case of

Asuncion vs De Yriarte, (28 Phil., 67):

"* * * He may exercise judgment—that is, the judicial function—in the determination of the question of law referred to, but he may not use discretion. The question whether or not the objects of a proposed corporation are lawful is one that can be decided one way only. If he err in the determination of that question and refuse to file articles which should be filed under the law, that decision is subject to review and correction and, upon proper showing, he will be ordered to file the articles. This is the same kind of determination which a court makes when it decides a case upon the merits. When a case is presented to a court upon the merits, the court can decide only one way and be right. As a matter of law, there is only one course to pursue. In a case where the court or other official has discretion in the resolution of a question, then, within certain limitations, he may decide the question either way and still be right. Discretion, it may be said generally, is a faculty conferred upon a court or other official by which he may decide a question either way and still be right."

We have, as an example of discretion granted the court by law, the provision of section 4, Rule 110, of the Rules of Court which says that "after conviction by the Court of First Instance, defendant may, upon application, be bailed at the discretion of the court." If the court grants the petition, it will be right, and if it denies it, it will also be right. Another example is section 6, Rule 114, which provides that "the court may in its discretion at any time before sentence permit a plea of guilty to be withdrawn."

The quotation from 6 Corpus Juris, section 170 to the effect that "the power to admit to bail generally becomes a matter of judicial discretion in this class of cases (capital offense) and although the exercise of this discretion will not be controlled unless manifestly abused, it should be exercised with great caution," is not an authority in support by the majority theory. It is of judicial notice that under the State Constitutions, as well as under our own, the power of legislatures to authorize the courts to exercise discretion to grant bail or prohibit the granting of bail in cases of capital offenses when the evidence of guilt is strong is not limited. And so, while in many states the statutes give the courts that discretion, in others, as in our jurisdiction, the laws do not grant the courts said discretion (section 6, Rule 110 of the Rules of Court). For that reason in Corpus Juris it is stated that "the power to admit to bail generally becomes a matter of discretion in this class of cases (capital offense)."

The decision in the case of Marcos vs Cruz confuses judgment with discretion, because it is said therein that "when the offense charged is capital, the court has discretion to grant bail for it has to decide whether or not the evidence is strong or the presumption of guilt is evident." The determination of whether or not the evidence or presumption of guilt is strong, is a matter of judgment and not of discretion, for the law fixes the criterion by which the judge must be guided in deciding whether or not the evidence of guilt is strong or shows beyond reasonable doubt that defendant is guilty. The court must follow it; otherwise, it will commit an error, not an abuse of discretion. The determination of the question whether or not the evidence of guilt of a defendant is strong for bail purposes, is the same kind of determination which a court makes when it decides a criminal case on the merits. "Strong evidence of guilt" for purposes of bail means such evidence as would not be "of less efficacy" than that which would sustain a conviction (6 American Jurisprudence p. 53). When a case is presented in a court upon the merits, the court can decide only one way and be right; if it decides the other way, it commits an error or is wrong. Just as a court has no discretion or faculty either to convict or acquit a defendant and still be right, for if it convicts a defendant where the evidence does not establish his guilt beyond a reasonable doubt, it will commit an error, and the appellate court will on appeal reverse its decision and acquit the defendant; so also a court has no discretion, but must use its judgment to be guided by law, in the determination of whether or not the evidence against a defendant who applied for bail is strong.

It must be borne in mind that at the hearing of a petition the Special Prosecutor must be heard or the evidence he has against the petitioner examined, in order that the Court may determine: first, whether it has discretion to grant bail, that is, whether the offense he will be charged with is not capital, and if capital whether the evidence of guilt

is not strong; and secondly, if it has discretion, whether to exercise that discretion in favor or against the petitioner. The petitioner may also be heard or his evidence examined by the Court, so that the latter may properly exercise its discretion, and not because the petitioner has the right to examine the evidence against him and produce his evidence in order to defend or protect his right to bail. For even if he can prove that he will not be charged with a capital offense, and if he will be charged, that the evidence of guilt against him is not strong, he will not be entitled as a matter of right to be released on bail as we have already shown.

The ease of a detainee is different from that of a defendant. The latter has the right to be released on bail unless the prosecution proves that the charge is capital and evidence of guilt is strong. If the prosecution fails to do so, or the defendant succeeds in destroying the prosecution's evidence, or proving that the crime of which he is accused is not capital or the evidence is not strong, he is entitled to bail as a matter of right, and the court has no discretion but is duty bound to grant his petition. While a detainee is not entitled to be released on bail, even if the prosecution fails to prove that he is to be charged with a capital offense and the evidence of his guilt is strong, or even if the offense he will be charged with is bailable. That is the reason why at the hearing of an application for admission to bail by a defendant, the burden of showing that evidence of guilt is strong is on the prosecutor, according to section 7 of Rule 110, because if he can not prove it or the defendant can destroy the evidence for the prosecution, the latter will be entitled to bail as a matter of right. Whereas in the case of a detainee, section 19 of Act 682 does not contain a similar provision; it only provides that " * * the aforesaid political prisoners may, in the discretion of the People's Court, after due notice to the Office of the Special Prosecutor and hearing, be released on bail * * " The inquiry by the court in the case of a defendant applying for bail is principally for the benefit of the applicant, while in the case of a detainee, it is primarily for the People's Court in order that the latter may exercise its discretion, and only secondarily for the applicant, because whatever may be the evidence of prosecution, he is not entitled as a matter of right to bail. If the evidence of guilt of a detainee to be charged with a capital offense is strong, the People's Court has no discretion to release him on bail; and if it is not strong, the detainee has no right to be released on bail, but it is discretionary on the People's Court to release him on bail or not.

In the case of *Duran vs. Abad Santos*, (75 Phil., 410), this Supreme Court, composed of six justices and five judges of the Court of First Instance designated to act as justices, held that:

"As may be seen from section 19 of Commonwealth Act No. 682, the release of political prisoners on bail, 'even prior to the presentation of the corresponding information, ' is purely discretionary on the People's Court. The only exception to it is when 'the Court finds that there is strong evidence of the commission of a capital offense,' in which case no bail whatever can be granted, as the provision appears mandatory. In other words, aside from that, the People's Court has the absolute discretion to grant bail or not."

In the case of *Payao vs. Lesaca*, (63 Phil. 210), this Court held that the judicial investigation for the determination of the right of a defendant to bail, "may consist in the examination of the evidence introduced during the preliminary investigation * * *. It may also consist in the examination of the evidence in the hands of the prosecuting officer." If even in the case of a defendant or person accused of a capital offense applying for bail before conviction, the investigation though bilateral, that is, both parties are heard, need not be confrontative, notwithstanding the right of a defendant to be released on bail if he can show that the evidence against him is not strong; a fortiori an investigation of the petition for bail of a detainee under Act No. 682 may consist in the examination of the evidence in the hands of the special prosecutor without necessity of showing them to the petitioner if the public interest so requires, since, as above stated, even if the petitioner succeeds in proving that the evidence against him is not strong, he is not entitled to bail as a matter of right, for the People's Court has discretion to grant or deny his petition.

It is true that the special prosecutor is entrusted by section 15 of Act 682 with the direction and control of the prosecution in the cases mentioned in section 2 thereof; but it is none the less true that, in the matter of bail, the law gives the People's Court discretionary power to grant or not grant it to a political detainee in cases of non-capital offenses or capital offenses where the evidence of guilt is not strong. Direction and control of the prosecution is one thing, and jurisdiction and power to grant bail is another. Direction and control of the prosecution simply means that the special prosecutor is free to drop a case against a detainee before a charge has been filed against him, and to conduct or direct, after a charge has been filed, the presentation of evidence against the defendant during the trial of the case on the merits, subject always to the control of the Court. But the prosecution can not control or prevent the exercise by the People's Court of its discretion in the granting or denying of bail. Therefore if the special prosecutor refuses or fails to show his evidence to the Court, the latter has the right to compel him to do so, ex parte if the disclosure thereof to the adverse party would endanger the public interest, in order that the court may act in the exercise of its discretion.

But the majority holds that the procedure adopted by the People's Court in examining ex parte the evidence in the hands of the special prosecutor in order to determine whether the evidence of guilt of the petitioner is strong, and to exercise its discretion if it is not, is illegal and improper; that the knowledge acquired thereby by the Court is not judicial but private or personal and the judge has no right to act on his personal knowledge, and; therefore the case stands as if no evidence had been produced at all against the petitioner.

There is no need for any argument to show that the knowledge acquired in the present case by the People's Court from an examination of the evidence in the hands of the prosecutor, is not a personal knowledge which a judge can not use in deciding a case according to rules of evidence; because the examination in this case was made in court in conformity with the decision of this Court in the case of *Payao vs. Lesaca*, supra. Therefore, the People's Court acted in accordance with law in refusing to grant bail to the petitioner, because according to section 19 of Act No. 682, the People's Court has no power to grant bail to political prisoners to be charged with a capital offense where the evidence of guilt is strong. And even assuming that there was no strong evidence that the petitioner is guilty of a capital offense, the People's Court's refusal to grant her bail was merely an exercise of the Court's discretion conferred by said section 19 of Act No. 682, and there being no allegation or showing that it has abused that discretion, this Court can not interfere with the action taken by the People's Court.

3. It is a well-settled rule in this and other jurisdictions that the extraordinary legal remedy or special civil action called certiorari, provided in Rule 67 of the Rules of Court, does not lie to correct errors of an inferior court. Its use is restricted to truly extraordinary cases—cases in which the action of the inferior court is wholly void. It was created for the purpose of relieving persons from the arbitrary acts of courts and judges, that is, acts which they have no authority or power in law to perform. (*Herrera vs. Barretto and Joaquin*, 25 Phil. 245; *Napa vs. Weissenhagen*, 29 Phil., 180; *Bustos vs. Moir and Fajardo*, 35 Phil. 415.)

The petition filed in this case is for certiorari as a special civil action under section 1 of said Rule 67, on the ground that the People's Court has abused its discretion. The only action which this Court may take if it finds that allegations in the petition to be true, is to annul the order of the People's Court which denies petitioner's petition, if the said court acted without or in excess of jurisdiction or with grave abuse of discretion. For according to section 1 of Rule 67, the prayer for relief in the petition should be "that judgment be rendered annulling or modifying the proceedings" of the lower court. And the judgment which this court may render is "for such of the relief prayed for as the petitioner is entitled to," in accordance with section 8 of the same Rule. This Court can not reverse the People's Court's resolution or decision and render a contrary one, much less execute or enforce its own decision as was done in the present case.

In annulling or modifying an act or order of the lower court without or in excess of jurisdiction or with grave

abuse of discretion under Rule 67, Rules of Court, the superior court, besides annulling the action of the lower court, may, as a mere sequence, set aside all the proceedings flowing from the act annulled, and consequently order the execution or enforcement of the previous proceedings set aside by the act complained of. In the cases of *Javier vs. Paredes*, (52 Phil. 910, 918, 919, and *Beech vs. Jimenez*, 12 Phil., 212, 221), quoted by the majority, this Supreme Court has not reversed any decision of the lower court or rendered a contrary one. In the case of *Javier*, this Court "declared that the respondent judge exceeded his jurisdiction in entertaining the aforesaid civil case No. 5050," and appointing a receiver therein, and "ordered that said civil case No. 5050 be dismissed, with the costs against the respondent Tomasa Gregorio; that the receiver, Vicente Zotomayor, be discharged, and that he deliver all of the products of the land in question, which may have come into his hands, to the petitioners; that the receiver's compensation, if any there be, shall be paid by the respondent Tomasa Gregorio and shall not be charged against the petitioners; and that the judgment of this court in civil case No. 3065 shall be executed immediately and without delay." And in the case of *Beech*, this Court affirmed "the first order contained in the judgment of the Court of First Instance of Manila in so far as it holds that the plaintiff is entitled to recover possession of the two properties described in the judgment, and so far as it orders that the defendants be ejected therefrom with costs," because the Court of First Instance had jurisdiction to make such orders in the judgment on appeal from the justice of the peace in a case of ejectment; but annulled all the other orders in the said judgment because they were made in excess of the Court's jurisdiction.

But the majority decision confuses certiorari as an extraordinary legal remedy or special civil action with certiorari as a mode of review of the decision of the lower court by the appellate or superior Court. Instead of merely annulling the order of the People's Court denying petitioner's petition for bail if it has really so acted with abuse of discretion, this Court rendered a contrary decision as if the present case is before it for review by certiorari.

We have said in the case of *Sotto vs. Commission of Elections* (p. 516, ante, that, besides certiorari known as a special remedy in the old Code of Civil Procedure and as a special civil action in Rule 67 of the Rules of Court, "under section 8, Article 711 of the Constitution of the Philippines, as well as our Rules of Court, final judgment and decrees of the inferior or lower courts may be reviewed by this Court by appeal, writ of error, or certiorari. By appeal the appellate court reviews all the findings of and of fact of the court a quo, as in special proceedings (Rule 105, Rules of Court). By writ of error the appellate court reviews only the findings of law or of fact of the lower court assigned in the assignment of errors of the appellant, as in ordinary civil actions (section 19, Rule 48). And by certiorari the appellate or superior Court can only review questions or errors of law decided or committed by the lower court, as provided in Rules 43, 44 and 46 of the Rules of Court. Questions or findings of fact of the inferior tribunal, can not be reviewed on certiorari."

The provision of section 8, Rule 67, of the Rules of Court that "if the court finds that the allegations of the petitioner are true, it shall render judgment for such of the, relief prayed for as the petitioner is entitled to, with or without costs, as justice requires," does not support the conclusion of the majority that this court may grant the petitioner any such relief as justice require, that is, grant her bail. In the first place the term "as justice requires," qualifies the word "with or without costs" which are omitted in the decision of the majority, and not the granting "of such relief as the petitioner is entitled to," because the latter need not be qualified by "as justice requires," inasmuch as it is already qualified by the words "is entitled to." Besides, this provision must be construed in connection with that of section 1 of the same Rule which provides that the prayer for relief in the complaint should be "that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer as the law requires with costs." This is the only relief which according to said section 1 of Rule 67 may be legally prayed for and granted. Any other relief, though prayed for, can not be granted. Therefore, under said Rule 67 this Court can not reverse the People's Court's decision and render a contrary one, but can only annul or modify the act

complained of and all the proceedings flowing therefrom, and consequently order the enforcement of all previous proceedings set aside by said act, because that is the only relief which may be prayed for, and to which the petitioner may be entitled. The relief prayed for in the instant case that the petitioner be granted directly by this court provisional release under bail can not be granted.

The portions of Corpus Juris (29 C. J. sec. 84, p. 94), and the many oases cited in the footnote thereof, quoted and cited by the majority in the last pages of its decision, refer to habeas corpus and not to certiorari. But the majority decision, in order to justify in a certain way the citation of said authorities, says immediately before citing them "particularly so in the instant case which is a Combined proceeding of certiorari and habeas corpus.tt

Just because petitioner prays that her petition in this case be considered as a combined petition for certiorari and habeas corpus, the latter in aid of the former, this Court can not consider and grant both reliefs, the habeas corpus in aid of certiorari; because the ground of a petition for certiorari and that for habeas corpus in connection with bail, are contradictory. The ground of a petition for habeas corpus is that the inferior court has refused to release defendant on bail, or required him to furnish an excessive bail for his release (which is tantamount to denial to grant bail), when he is entitled to bail as a matter of right. While the ground of a petition for certiorari is that the lower court had discretion to grant bail to the petitioner (and consequently that the petitioner is not entitled to bail as a matter of right), but denied his petition with grave abuse of discretion.

Besides, the resolution of the majority of February 16, 1946, granted the release of the petitioner upon her filing a bond in this court on the ground that the People's Court has patently abused whatever discretion, if any, it may possess in the premises. And for that reason the majority decision, which is an extended decision of said resolution, rests on the theory that the petitioner is not entitled to be released on bail as a matter of right for she was to be charged with a capital offense, but the People's Court has abused its discretion in considering the evidence and determining that it is strong. The extended decision can not be based on a different theory. The authorities on habeas corpus quoted in the last part of the majority decision are, therefore, out of place.

In view of all the foregoing, petitioner's petition should be dismissed with costs against her.

Pablo, J., concurs.

MORAN, C. J.:

I hereby certify that Justice Ozaeta concurred in the dispositive part of the majority decision for the reasons stated in his concurring and dissenting opinion in *Herras Teehankee vs. Rovira*, (75 Phil., 634) Justice Jaranilla and Justice De Joya dissented. These three Justices ceased to be members of the Court and can file or sign no opinion.

Writ granted.

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