

**URSU LUANGCO, PETITIONER AND APPELLANT, VS. THE
PROVINCIAL WARDEN OF LEYTE,. RESPONDENT AND APPELLEE.***G.R. No. L-654. December 24, 1946*

Ponente: FERIA, J.

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This is an appeal from the order of the Court of First Instance of Leyte, which dismissed the appellant's petition for habeas corpus on the ground of pendency of another action, because in case G. R. No. L—142 (p. 473, ante), the petition for habeas corpus filed by the same appellant and others in the Court of First Instance of Leyte on the ground of nullity of the sentence of the Court of Special Criminal Jurisdiction of Leyte, on which is based the petition in the present case, was denied, and their appeal from the order denying the writ in said case G. R. No. L-142 was pending in this Court when the order now on appeal was rendered.

The office of the Solicitor General submits in its brief that "the lower court did not err in denying the present petition," but contends that the crime of robbery charged in the information in cases Nos. 2 and 3 in which the defendant was convicted and sentenced to death, the nullity of which is being assailed not only in this but in the previous case, is the one penalized in article 294 of the Revised Penal Code, because the crime charged was robbery with homicide, and Act No. 65 of the Assembly of the so-called Republic of the Philippines adopted only article 293 and not article 294 of the said Code.

It is true that in the said cases Nos. 2 and 3, the felony charged is robbery and homicide committed by reason thereof, and the information does not say whether the appellant was being charged for violation of said Act No. 65 or of article 294 of the Revised Penal Code. But it is not less true that said Act No. 65 in penalizing the crime of robbery in general as defined in article 293 of the Revised Penal Code, if committed by persons charged with the supervision and control of the production, procurement, and distribution of foods and other necessities, has adopted and penalized all kinds of robbery embraced in the definition thereof in said article 293. This article does not punish but only defines the crime of robbery in general, saying that "any person who with intent to gain, shall take any personal property, belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery." The different kinds or forms of robbery so defined are penalized by said Act No. 65, not with the penalties fixed in articles 294 to 300 for each kind or form of robbery therein described, but with a heavier penalty the maximum of which was life imprisonment or death, at the discretion of the Court of Special Criminal Jurisdiction, depending upon the form and manner of, and the circumstances attending, its commission. In other words said Act No. 65 penalized all cases of robbery as defined in general in said article 293, committed by means of either violence against or intimidation of person, or force upon a thing, in whatever form and manner, in any place, and under any circumstance, with a penalty ranging from imprisonment to death in the discretion of the court; and did not adopt the provisions of articles 294 to 300 because they penalized with fixed penalties each and every one of the different forms and manners of committing the robberies therein described.

Although in the complaint filed against the appellant in the cases Nos. 2 and 3 in the Court of First Instance of

Leyte, acting as Court of Special Criminal Jurisdiction, no reference was made, either to Act No. 65 of the so-called Republic of the Philippines, or to article 294 of the Revised Penal Code, there is no doubt that the appellant was charged with violation of Act No. 65, for he was then H member of the Philippine Constabulary; the information was filed with, and the appellant was convicted by, a Court of Special Criminal Jurisdiction; the order appealed from states that the petitioner is serving sentence rendered by the Court of Special Criminal Jurisdiction of Leyte under said Act No, 65; and this Court has already so held in tho case G. R. No. L-142.

The lower court did not, therefore, err in holding that there was another action pending between the same parties and for the same cause, and dismissing the petition for Habeas corpus filed by the appellant (sec. 2, Rule 73, in connection with sec. 1 id]. Rule 8, Rules of Court).

The decision appealed from is therefore affirmed, with costs against the appellant. So ordered.

Moran, C. J., Perfecto, Hilado, Bengzon, Padilla, and Tuason, JJ., concur.

PARAS, J.:

I concur in the result for the same reasons stated in my dissenting opinion in case No. L-142.

PABLO, M.:

Conforme con la parte dispositiva.

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