

MARCELO D. MONTENEGRO, PETITIONER AND APPELLANT, VS. GEN. MARIANO CASTAÑEDA AND COLONEL EULOGIO BALAO, RESPONDENTS AND APPELLEES.

G.R. No. L-4221. August 30, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

The purpose of this appeal from the Court of First Instance of Quezon City is to test the validity of Proclamation No. 210 suspending the privilege of the writ of habeas corpus.

A few months ago the same proclamation came up for discussion in connection with the request for bail of some prisoners charged with rebellion.[1] The divided opinion this Court did not squarely pass on the validity of the proclamation; but, assuming it was obligatory, both sides proceeded to determine its effect upon the right of such prisoners to go on bail.

This decision will now consider the points debated regarding the aforesaid presidential order.

The facts are few and simple: About five o'clock in the morning of October 18, 1950, Maximino Montenegro was arrested with others at the Samanillo Bldg., Manila, by agents of the Military Intelligence Service of the Armed Forces of the Philippines, for complicity with a commnistic organization in the commission of acts of rebellion, insurrection or sedition. So far as the record discloses, he is still under arrest in the custody of respondents. On October 22, 1950, the President issued Proclamation No. 210 suspending the privilege of the writ of habeas corpus. On October 21, 1950, Maximino's father, the petitioner, submitted this application for a writ of habeas corpus seeking the release of his son.

Opposing the writ, respondents admitted having the body of Maximino, but questioned judicial authority to go further in the matter, invoking the above-mentioned proclamation.

Petitioner replied that such proclamation was void, and that, anyway, it did not apply to his son, who had been arrested before its promulgation. Heeding the suspension order, the court of first instance denied the release prayed for. Hence this appeal, founded mainly on the petitioner's propositions:

(a) The proclamation is unconstitutional "because it partakes of a bill of attainder, or an ex post facto law; and unlawfully includes sedition which under the Constitution is not a ground for suspension";

(c) Supposing the proclamation is valid, no prima facie

(b) "There is no state of invasion, insurrection or rebellion, or imminent danger thereof," the only situations permitting discontinuance of the writ of habeas corpus; showing was made that the petitioner's son was included within the terms thereof.

Proclamation No. 210 reads partly as follows:

"WHEREAS, lawless elements of the country have committed overt acts of sedition, insurrection and rebellion for the purpose of overthrowing the duly constituted authorities and, in pursuance thereof, have created a state of lawlessness and disorder affecting public safety and the security of the state;

"WHEREAS, these acts of sedition, insurrection and rebellion consisting of armed raids, sorties and ambushes and the wanton acts of murder, rape, spoilage, looting, arson, planned destruction of public and private buildings, and attacks against police and constabulary detachments, as well as against civilian lives and properties, as reported by the Commanding General of the Armed Forces, have seriously endangered and still continue to endanger the public safety;

"WHEREAS, these acts of sedition, insurrection and rebellion have been perpetrated by various groups of persons well organized for concerted action and well armed with machine guns, rifles, pistols and other automatic weapons, by reason whereof there is actual danger of rebellion which may extend throughout the country;

"Whereas, 100 leading members of these lawless elements have been apprehended and are presently under detention, and strong and convincing evidence has been found in their possession to show that they are engaged in rebellious, seditious and otherwise subversive acts as above set forth; and

"Whereas, public safety requires that immediate and effective action be taken to insure the peace and security of the population and to maintain the authority of the government;

"Now, THEREFORE, I, ELPIDIO QUIRINO, President of the Philippines, by virtue of the powers vested upon me by article VII, section 10, paragraph (2) of the Constitution, do hereby suspend the privilege of the writ of habeas corpus for the persons presently detained, as well as all others who may be hereafter similarly detained for the crimes of sedition, insurrection or rebellion, and all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith."

A. It is first argued that the proclamation is invalid because it "partakes" of a bill of attainder or an ex post facto law, and violates the constitutional precept that no bill of attainder or ex post facto law shall be passed. The argument is devoid of merit. The prohibition applies only to statutes. *U. S. vs. Gen. EL*, 80 Fed. Supp. 989; *De Pass vs. Bidwell*, 124 Fed., 615.[1] A bill of attainder is a legislative act which inflicts punishment without judicial trial. (16 C. J. S. p. 902; *U. S. vs. Lovett* (1946) 328 U. S. 303). Anyway, if, as we find, the stay of the writ was ordered in accordance with the powers expressly vested in the President by the Constitution, such order must be deemed an exception to the general prohibition against ex post facto laws and bills of attainder—supposing there is a conflict between the prohibition and the suspension.

On the other hand there is no doubt it was erroneous to include those accused of sedition among the persons as to whom suspension of the writ is decreed. Under the Constitution the only grounds for suspension of the privilege of the writ are "invasion, insurrection, rebellion .or imminent danger thereof." Obviously, however, the inclusion of sedition does not invalidate the entire proclamation; and it is immaterial in this case, inasmuch as the petitioner's descendant is confined in jail not only for sedition, but for the graver offense of rebellion and insurrection. Without doing violence to the presidential directive, but in obedience to the supreme law of the land, the word "sedition" in Proclamation No. 210 should be deemed a mistake or surplusage that does not taint the decree as a whole.

B. In his second proposition appellant insists there is no state of invasion, insurrection, rebellion or imminent danger thereof. "There are" he admits "intermittent sorties and lightning attacks by organized bands in different places"; but, he argues, "such sorties are occasional, localized and transitory. And the proclamation speaks no more than of overt acts of insurrection and rebellion, not of cases of invasion, insurrection or rebellion or imminent danger thereof." On this subject it is noted that the President concluded from the facts recited in the

proclamation, and others connected therewith, that "there is actual danger of rebellion which may extend throughout the country." Such official declaration implying much more than imminent danger of rebellion amply justifies the suspension of the writ.

To the petitioner's unpracticed eye the repeated encounters between dissident elements and military troops may seem sporadic, isolated, or casual. But the officers charged with the Nation's security, analyzed the extent and pattern of such violent clashes and arrived at the conclusion that they are warp and woof of a general scheme to overthrow this government *vi et armis*, by force and arms.

And we agree with the Solicitor General that in the light of the views of the United States Supreme Court thru Marshall, Taney and Story quoted with approval in *Barcelon vs. Baker*, (5 Phil., 87, pp. 98 and 100) the authority to decide whether the exigency has arisen requiring suspension belongs to the President and "his decision is final and conclusive" upon the courts and upon all other persons.

Indeed as Justice Johnson said in that decision, whereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery can not be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.

But even supposing the President's appraisal of the situation is merely *prima facie*, we see that petitioner in this litigation has failed to overcome the presumption of correctness which the judiciary accords to acts of the Executive and Legislative Departments of our Government.

C. The petitioner's last contention is that the respondents failed to establish that his son is included within the terms of the proclamation.

On this topic, respondents return officially informed the court that Maximino had been arrested and was under custody for complicity in the commission of acts of rebellion, insurrection and sedition against the Republic of the Philippines. Not having traversed that allegation in time, petitioner must be deemed to have conceded it.

"* * * In the absence of a denial, or appropriate pleading avoiding their effect, averment of facts in the return will be taken as true and conclusive, regardless of the allegations contained in the petition; and the only question for determination is whether or not the facts stated in the return, as a matter of law, authorizes the restraint under investigation." (39 C. J. S., 664-665.)

D. An interesting issue is posed by *amici curiæ*. The Bill of Rights prohibits suspension of the privilege of the writ of habeas corpus except when the public safety requires it, in cases of (1) invasion (2) insurrection or (3) rebellion.

Article VII Section 10 authorizes the President to suspend the privilege, when public safety requires it, in cases of (1) invasion (2) insurrection or (3) rebellion or (4) imminent danger thereof.

"Imminent danger," is no cause for suspension under the Bill of Rights. It is under Article VII. To complicate matters, during the debates of the Constitutional Convention on the Bill of Rights, particularly the suspension of the writ, the Convention voted down an amendment adding a fourth cause of suspension: imminent danger of invasion, insurrection or rebellion.

Professor Aruego, a member of the Convention, describes the incident as follows:

"During the debates on the first draft, Delegate Francisco proposed an amendment inserting, as a fourth cause for the suspension of the writ of habeas corpus imminent danger of the three causes included herein. When submitted to a vote for the first time, the amendment was carried.

"After his motion for a reconsideration of the amendment was approved, Delegate Orense spoke against the amendment alleging that it would be dangerous to make imminent danger a ground for the suspension of the writ of habeas corpus. In part, he said:

"Gentlemen, this phrase is too ambiguous, and in the hands of a President who believes himself more or less a dictator, it is extremely dangerous; it would be a sword with which he would behead us.

"In defense of the amendment, Delegate Francisco pointed out that it was intended to make this part of the bill of rights conform to that part of the draft giving the President the power to suspend the writ of habeas corpus also in the case of an imminent danger of invasion or rebellion. When asked why Delegate Rafols if the phrase, imminent danger, might not be struck out from the corresponding provision under the executive power instead, Delegate Francisco answered:

"Outright, it is possible to eliminate the phrase, imminent danger thereof, in the page I have mentioned. But I say, going to the essence and referring exclusively to the necessity of including the words, of imminent danger of one or the other, I wish to say the following: that it should not be necessary that there exists a rebellion, insurrection, or invasion in order that habeas corpus may be suspended. It should be sufficient that there exists not a danger but an imminent danger, and the word, imminent, should be maintained. When there exists an imminent danger, the State requires for its protection and for that of all the citizens the suspension of habeas corpus.

"When put to vote for the second time, the amendment was defeated with 72 votes against and 56 votes in favor of the same." (I Aruego's Framing of the Philippine Constitution, pp. 180-181)

Nevertheless when the President's specific powers under Article VII, were taken up, there was no objection to his authority to suspend in case of "imminent danger". (At least we are not informed of any debate thereon.) Now then, what is the effect of the seeming discrepancy?

Is the prohibition of suspension in the bill of rights to be interpreted as limiting Legislative powers only—not executive measures under section VII? Has Article VII (sec. 10) pro tanto modified the bill of rights in the same manner that a subsequent section of a statute modifies a previous one?

The difference between the two constitutional provisions would seem to be: whereas the bill of rights impliedly denies suspension in case of imminent danger of invasion etc., Article VII sec. 10 expressly authorizes the President to suspend when there is imminent danger of invasion etc.

The following statements in a footnote in Cooley's Constitutional limitations (8th Ed.) p. 129, appear to be persuasive:

"It is a general rule in the construction of writings, that, a general intent appearing, it shall control the particular intent; but this rule must sometimes give way, and effect must be given to a particular intent plainly, expressed in one part of a constitution, though apparently opposed to a general intent deduced from other parts. Warren V. Shuman, 5 Tex. 441. In Quick V. Whitewater Township, 7 Ind. 570, it was paid that if two provisions of a written constitution are irreconcilably repugnant, that which is last in order of time and in local position is to be preferred. In Gulf, C. & S. F. Ry. Co. v. Rambolt, 67 Tex. 654, 4 S. W. 356, this rule was recognized as a last resort, but if the last provision is more comprehensive and specific, it was held that it should 'be given effect on that ground.'"

And in Hoag vs. Washington Oregon Corp. (1915) 147 Pac. Rep., 756 at p. 763 it was said:

"It is a familiar rule of construction that, where two provisions of a written Constitution is repugnant to each other, that which is last in order of time and in local position is to be preferred. Quick v. White Water Township, 7 Ind. 570; G., C. & S. F. Ry. Co. v. Rambolt, 67 Tex. 654, 4 S. W. 356. So, even assuming the two

clauses discussed are repugnant, the latter must prevail."

Wherefore in the light of these precedents, the constitutional authority of the President to suspend in case of imminent danger of invasion, insurrection or rebellion under Article VII may not correctly be placed in doubt.

E. The petitioner insisted in the court below that the suspension should not apply to his son, because the latter had been arrested and had filed the petition before the Executive proclamation. On this phase of the controversy, it is our opinion that the order of suspension affects the power of the courts and operates immediately on all petitions therein pending at the time of its promulgation.

"A proclamation of the President suspending the writ of habeas corpus was held valid and efficient in law to suspend all proceedings pending upon habeas corpus, which was issued and served prior to the date of the proclamation. *Matter of Dunn*, D. C. N. Y. 1863, 25 How. Prac. 467, 8 Fed. Cas. No. 4,171."

F. Premises considered, the decision of the court a quo refusing to release the prisoner is affirmed, without costs.

Paras, C. J., Pablo, Padilla, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

[1] *Hernandez vs. Montesa*, G. R. No. L-4964, *Nava vs. Gatmaitan*, G. R. No. L-4855, *Angeles vs. Abaya*, G. R. No. L-5102, October, 1951. (90 Phil., 172.

[1] Cf. *Calder vs. Bull*, 3 Dall U. S. 386, 1 Law Ed. 648.

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