

TEODORO CANTOS (TEODORO TATISHI), PETITIONER, VS. WILHELM D. STYLER, COMMANDING GENERAL, UNITED STATES ARMY FORCES. WESTERN PACIFIC, RESPONDENT.

G. R. No. L-492. June 28, 1946

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a petition for habeas corpus filed by petitioner Teodoro Cantos (Teodoro Tatishi) against Lieutenant General Wilhelm D. Styler, Commanding General of the United States Army Forces, Western Pacific, upon the ground that petitioner is a Filipino citizen, residing in Hang, Davao City, and is now confined by order of the respondent at the residence of the High Commissioner in Manila, Philippines, with no legal cause whatsoever.

Petitioner was born in Davao on December 7, 1913, his father being Japanese and his mother, Filipino. At the age of 27 he elected to become a Filipino citizen under the name of Teodoro Cantos, and was given Philippine citizenship by the Court of First Instance of Davao on September 17, 1938. On March 25, 1946, he was indicted for war crimes before the military commission duly constituted by order of General Styler, respondent. The charges are as follows:

"SPECIFICATIONS

"1. In that Teodoro Tatishi, a Japanese civilian, and other persons connected and acting with Japan, did, at or near Tibungko, Davao City, Mindanao, Philippine Islands, on or about 28 December 1941, during a time of war between the United States of America, its allies and Japan, willfully and unlawfully kill Sixto Babao, Dalmacio Babao, Francisco Cobling and Martin Marquez, unarmed, non-combatant Filipino civilians, by striking them with a saber, and by shooting them, in violation of the laws of war.

"2. In that Teodoro Tatishi, a Japanese civilian and other persons connected and acting with Japan, did, at or near Hang, Davao City, Mindanao, Philippine Islands, on or about 7 January 1942, during a time of war between the United States of America, its allies and Japan, willfully, unlawfully and forcibly take and loot personal property of Justina Larracoecha Babao, in violation of the laws of war.

"Dated: 25 March 1946."

The military commission, after hearing, found petitioner guilty of the charges and sentenced him to death by hanging.

There seems to be no question that petitioner is charged with war crimes before a military commission duly constituted. It is maintained, however, that the petitioner being a Filipino civilian when he allegedly committed the crimes charged and the Philippine courts being open and capable to administer justice, the military commission has no jurisdiction to try him. It is well settled that war crimes may be committed not only by lawful belligerents but by any "men and bodies of men, who, without being lawful belligerents" "nevertheless commit hostile acts of any kind." (Par. 351, Rules of Land Warfare). "Persons of the enemy territory who steal within the

lines of hostile army for the purpose of robbing, killing, etc." are also war criminals subject to the jurisdiction of military commissions. (Par. 352, id. id.). And in the preamble to the Hague Convention it is declared that "until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience."

All this goes to show that war crimes may be committed by any person regardless of his nationality. Thus, the Supreme Court of the United States, in *Ex parte Quirin* (317 U. S., No. 1 [Off. Rep. Sup. Ct.], pp. 37, 38), said that "citizenship in the United States of an enemy belligerent does not relieve him from the consequences of a belligerency which is unlawful because in violation of the law of war. Citizens who associate themselves with the military army of the enemy government, and with its aid, guidance and direction enter this country bent on hostile acts, are enemy belligerents within the meaning of the Hague Convention and the law of war."

Here, the petitioner is a Filipino citizen though of a Japanese father, and associating himself with Japan in the war "against the United States of America and the Philippines, committed atrocities against unarmed and noncombatant Filipino civilians and looted Filipino property. He is, indeed, a war criminal subject to the jurisdiction of the military commission, and his confinement by the respondent is not illegal. (*In re Yamashita*, 66 Sup. Ct., 340; 90 Law. ed., 499.)

It is argued that, by direction of the President of the United States of America, the Joint Chiefs of Staff of the American Military Forces, on September 12, 1945 instructed General Douglas MacArthur, Commander-in-Chief of the United States Army Forces, Pacific, to proceed with the trial before appropriate military tribunals of such Japanese war criminals as have been or may be apprehended, and that, therefore, the petitioner, who is a Filipino citizen, cannot be a Japanese war criminal subject to the jurisdiction of the military commission constituted under such presidential authority. There is before us no conclusive evidence that General Douglas MacArthur's authority is thus limited. At any rate, we believe that the military commission may look through the naturalization papers into the real nationality of a person with Japanese blood charged with war crimes. After due hearing the military commission found the petitioner to be a Japanese mestizo. The certificate of Filipino citizenship was issued in his favor after he had sworn to have renounced his allegiance and fidelity to Japan and pledged faith and allegiance to the United States of America and the Philippines. But there is evidence before the military commission to the effect "that during the war he was a member of the Japanese civilian army and committed atrocities against unarmed and noncombatant Filipino civilians. In his oath of naturalization he swore that he owned real property in the Philippines worth P1,200 as required by the Naturalization Law. It appears, however, from his sworn testimony before the military commission that he never owned any property in the Philippines. If the military commission believes, as it apparently does, that, by reason of the above circumstances, the petitioner never acquired Filipino citizenship or he already lost it, we certainly find no reason to interfere.

For all the foregoing, petition is dismissed, without costs.

Paras, Feria, De Joya, Pablo, and Bengzon, JJ., concur.

DISSENTING

PERFECTO, J.:

Respondent failed to appear in this case or to answer the petition for a writ of habeas corpus.

The main question in this case is whether the military commission set up by respondent under the authority of General MacArthur, Commander-in-Chief, United States Army Forces, Pacific, has jurisdiction to try and convict petitioner for an alleged war crime, when petitioner is a naturalized Filipino citizen and not a Japanese.

Chief Justice Stone, in his majority opinion in the case of *Yamashita vs. Styer* (66 S. Ct. 340), speaking for the United States Supreme Court, stated:

"By direction of the President, the Joint Chiefs of Staff of the American Military Forces, on September 12, 1945, instructed General MacArthur, Commander-in-Chief, United States Army Forces, Pacific, to proceed with the trial, before appropriate military tribunals, of such Japanese war criminals as have been or may be apprehended. By order of General MacArthur of September 8, 1945, General Styer was specifically directed to proceed with the trial of petitioner upon the charge here involved. This order was accompanied by detailed rules and regulations which General MacArthur prescribed for the trial of war criminals. These regulations directed, among other things, that review of the sentence imposed by the commission should be by the officer convening it, with authority to approve, mitigate, remit, commute, suspend, reduce or otherwise alter the sentence imposed, and directed that no sentence of death should be carried into effect until confirmed by the Command Chief, United States Army Forces, Pacific.

From the foregoing, It is evident that the jurisdiction of the military commission is limited by the instructions given to General MacArthur, under whose authority the military commission has been set up, such jurisdiction not extending to any person except "Japanese war criminals".

It appearing from the record that petitioner Teodoro Cantos is a Filipino citizen, the military commission can not legally exercise jurisdiction over him, and all acts of said commission outside of its jurisdiction are null and void.

Judicial proceedings without or in excess of jurisdiction are without any legal effect.

"Courts created by statute and not by the Constitution are tribunals of special and limited jurisdiction only. They can exercise only such powers as are directly- conferred on them by legislative enactment and such as may be incidentally necessary to the execution of those powers. Therefore, unless authority for the exercise of jurisdiction in a given case can be found in the statutes, given either expressly or by necessary implication, their proceedings are void for the rule is that such a court can only take cognizance of such matters as are clearly within its jurisdiction." (14 Am. Jur. p. 369.)

"When a court or judicial officer exercises a special statutory power outside the scope of the usual jurisdiction of courts of general powers, the record of the proceedings must show that the statutory authority has been pursued." (*Cowdrey vs. Town of Caneadea*, 16 Fed. 532.)

"Where a court is exercising a special statutory jurisdiction, the record must show upon its face that the case is one where the court has authority to act. Jurisdiction in such cases is never presumed, and if it does not appear the judgment will be void and subject to collateral attack. *Rice vs. Travis*, 216 U.S. 249, 74 N. E., 801; *Payson vs. People*, 175 U.S. 267, 51 N. E., 588; *Haywood vs. Collins*, 60 U.S. 328. Whatever the rank of the court exercising a special statutory jurisdiction, it is governed by the same rules as courts of limited jurisdiction." (Cases cited) (*Keal vs. Rhydderek*, 148 N. E. 54).

"This Court has often held that, where jurisdiction is conferred on a court by special statute, which is to be exercised in a special manner therein prescribed, the record of such court must show the facts essential to give the court jurisdiction; otherwise no presumption as to its jurisdiction will be indulged. The statute in such cases, must strictly be pursued, and the jurisdiction must be made to appear in the mode pointed out by the

statute. (Morris vs. Dooley, 59 Ark. 483, 28 S. W., 30 Hindman v. O'Conner, 54 Ark. 643, 16 S. W. 1058, 13 L. R.A., 490; Gibney vs. Crawford, 51 Ark., 35, 9 S. W. 309, See, also, Cross vs. Wilson, 52 Ark. 312, 12 S. W., 576; Lusk vs. Perkins, 48 Ark. 238, 2 S. W. 847." (Reeves vs. Conger, 147 S.W. 438, 439.)

If petitioner is amenable to be prosecuted and convicted for any crime allegedly committed during the war, the proceeding can not take place before the commission set up by respondent, but before either a special tribunal with the proper jurisdiction or the ordinary civil courts of the Philippines.

Under the facts on record, petitioner is entitled to be discharged from confinement, and we vote that the writ of habeas corpus prayed for be issued.

BRIONES, J.:

I concur in this dissent.

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