

JOSE CARAOS, PETITIONER, VS. IÑIGO S. DAZA, JUDGE OF FIRST INSTANCE OF BATANGAS, JOSE A. ALANO, PROVINCIAL FISCAL OF BATANGAS, AND THE DIRECTOR OF PRISONS, RESPONDENTS.*G.R. No. L-442. May 23, 1946*

Ponente: DE JOYA, J.

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This is a case of certiorari and habeas corpus in which the petition was filed originally in this Court.

Petitioner Jose Caraos alleges in his petition that on January 6, 1944, he, with his two brothers, Ramon Caraos and Emilio Caraos, were prosecuted for the crime of homicide in Criminal case No8 374, entitled People vs. Jose Caraos, in the Court of First Instance of Batangas; that after due trial, on May 3, 1944, said court rendered its judgment convicting herein petitioner of said crime and sentenced him to suffer a term of imprisonment, ranging from six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, to indemnify the heirs of the deceased Leoncio Tlagan in the sum of Two Thousand (52,000) Pesos, and to pay one-third (1/3) of the costs; while his said two brothers were acquitted of the crime charged; that petitioner did not appeal from said decision, and on May 3, 1944, he commenced serving his sentence in the provincial jail of Batangas; that on November 9, 1944, he was released from said provincial jail "by order of the Provincial Governor of Batangas pursuant to a pardon issued by the authority concerned on those days of Japanese military occupation"; that by virtue of a complaint filed by Mrs. Estrella Punzalan Vda. de Ylagan, wife of the deceased Leoncio Ylagan, victim in said homicide case, with the Department of Justice, after liberation, the respondent Jose A. Alano, provincial fiscal of Batangas, conducted an investigation, on February 8, 1946, to determine the facts and circumstances of the release of herein petitioner from the provincial jail of Batangas, taking the testimony of Antonio Casanova, chief of police of Taal, Batangas, Estrella Punzalan Vda. de Ylagan, Marceliano K. Medina, provincial warden of Batangas, from June, 1942 to December, 1944, Maximo M. Malvar, provincial governor of Batangas, during the Japanese occupation, and petitioner Jose' Caraos himself; that, on March 6, 1946, said Estrella Punzalan Vda. de Ylagan filed an ex parte motion in the Court of First Instance of Batangas, requesting the issuance of a warrant for the arrest of herein petitioner to continue serving the unexpired portion of the penalty imposed upon him; and that on the same day, March 6, 1946, respondent Judge Sigo S. Daza ordered the issuance of an order of commitment for the incarceration of petitioner Jose Caraos, and at the same time ordered his arrest for that purpose. The following day, March 7, 1946, the respondent Judge ordered the confinement of herein petitioner in the provincial jail of Batangas. Jose Caraos filed a petition for the reconsideration of said order dated March 6, 1946, which was denied on March 26, 1946.

To the petition for certiorari and habeas corpus, filed, in this Court, were attached a copy of the docket entries in said Criminal case No. 374, as Annex "A"; the transcript of the testimony of the witnesses that testified in the investigation conducted by the respondent provincial fiscal of Batangas, as Annex B; copy of said ex parte motion filed on March 6, 1946, by Estrella Punzalan Vda. de Tlagan, as Annex "C"; copy of said order issued by respondent Judge Iñigo S. Daza, on March 6, 1946, as Annex "B"; copy of the order, dated March 7, 1946, issued

by said respondent Judge, for the confinement in the provincial jail of Batangas of the person of petitioner Jose' Caraos, as Annex "E"; and copy of the order, dated March 26, 1946, issued by said respondent Judge, denying Jose' Caraos' petition for the reconsideration of said order, as Annex "F".

On May 2, 1946, on behalf of the respondents, the provincial fiscal of Batangas filed an answer to said petition for certiorari and habeas corpus, expressly admitting the allegations made in said petition, except those contained in paragraphs 4, 5, 12, 13, 14, 15, and 17, to the effect that herein petitioner had been released on November 9, 1944, pursuant to pardon granted or executive clemency extended to him by the proper authorities; that the orders issued by the respondent judge for his arrest and confinement are illegal and null and void; and that he is now being illegally detained, all of which were expressly denied. As special defenses, respondents allege (1) that the respondent Judge has jurisdiction to issue the order of arrest and confinement of the petitioner, for the service of the unexpired portion of his sentence; (2) that the petitioner's release from the Batangas provincial Jail, where he was temporarily confined as an insular prisoner, was ordered in a state of emergency to provide for his safety; (3) that normal conditions having returned, it is but just and legal that he should be rearrested and ordered to serve the unexpired portion of his sentence; (4) that the respondent Judge had a perfect right to issue the order complained of, in the exercise of his inherent powers, to compel obedience to the judgment rendered by the court and to control the conduct of its ministerial officers; (5) that there was no pardon granted or executive clemency extended to the petitioner, at the time he was released from jail, in November or December, 1944.

On May 13, 1946, on behalf of the respondent Director of Prisons, the Solicitor-General filed an answer, alleging that petitioner Jose' Caraos has been confined in the New Bilibid Prison, since April 8, 1946, by virtue of a mittimus issued by the Court of First Instance of Batangas, having been convicted of the crime of homicide, on May 3, 1944, and sentenced to six (6) years and one (1) day of prison mayor to twelve (12) years and one (1) day of reclusion temporal; that said respondent Director of Prisons has no knowledge or information of any valid pardon granted by competent authority to said petitioner so as to entitle him to be released from custody; that the pardon alleged in the petition was illegal, null and void, and that herein petitioner therefore, subject to imprisonment for the unexpired portion of his sentence.

It is an undisputed fact that on May 3, 1944, herein petitioner was found guilty of the crime of Homicide, committed on the person of one Leoncio Ylagan, and sentenced by the Court of First Instance of Batangas to an indeterminate penalty ranging from six (6) years and one (1) day of prison mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal as maximum, and to indemnify the heirs of the deceased in the sum of Two Thousand (2,000) Pesos, and to pay one-third (1/3) of the costs; and that herein petitioner did not appeal from said decision, and he commenced serving said sentence from May 3, 1944. It is also admitted that herein petitioner was released from the provincial jail of Batangas, where he was confined temporarily, as an insular prisoner, in November or December, 1944.

Petitioner alleges that he was released "by order of the Provincial Governor of Batangas, pursuant to a pardon issued by the authority concerned on those days of Japanese military occupation." Such is the vague and ambiguous language used by the petitioner in the petition for certiorari and habeas corpus filed in this Court. And the only question to be determined in this case is whether such pardon or executive clemency had really been extended to herein petitioner by the proper authorities, in November or December, 1944.

According to the testimony given by petitioner Jose Caraos, in the investigation conducted by the respondent provincial fiscal, on February 8, 1946, certain relatives and friends of his, upon whom he depended to work for his release or pardon, approached the provincial governor of Batangas to intercede, on his behalf, for his release or pardon; that one week before he was actually released by the provincial warden, he had heard that he was going to be released or pardoned, and that before his release on November 9, 1944, there had been bombing and

strafing in the vicinity of the provincial capitol of Batangas, where the provincial jail was located; and that he received his release papers, but lost them*

Marceliano K. Medina, provincial warden of Batangas at the time, stated that by order of the provincial governor all the prisoners were released in December, 1944, on account of continuous bombing, but that he could not remember whether herein petitioner Jose Caraos was included among them; and that certain other prisoners had been released prior to December, 1944, by executive clemency, but whether herein petitioner was included among them, he could not remember.

Maximo M. Malvar, provincial governor of Batangas at the time, testified that he ordered the release of all prisoners in December, 1944, on account of continuous bombing and scarcity of food; and that others had been released pursuant to executive clemency prior thereto, but he could not remember whether herein petitioner was included among them.

Estrella Punzalan Vda. de Ylagan testified that after herein petitioner Jose Caraos had been sentenced in May, 1944, she saw him in Taal, Batangas, in the early part of December, 1944, although in her ex parte motion, dated March 6, 1946, she stated that herein petitioner was released on November 9, 1944, due to continuous bombing and scarcity of food. The statement made by Estrella Punzalan Yda. de Ylagan, in her motion dated March 6, 1946, to the effect that herein petitioner was released on November 9, 1944, must have been influenced and induced by the declaration made by said petitioner that he had been released on November 9, 1944, when he testified before the respondent provincial fiscal, on February 8, 1946, in the opinion of the Court, there is not sufficient evidence to establish the fact that on November 9, 1944, herein petitioner was released from the provincial jail of Batangas, pursuant to a pardon granted or executive clemency extended to him by competent authority.

Under the law, the only authority that could have granted pardon or executive clemency to herein petitioner, during the Japanese occupation, was the President of the so-called Philippine Republic, or the Commander-in-Chief of the Japanese Imperial forces. (*Sameth vs. Director of Prisons*, p. 613, ante). But no competent or satisfactory evidence has been presented to show that such pardon had been granted. The order issued for his arrest was, therefore, legal and proper. (*People vs. Ponce de Leon*, 56 Phil. 386, 391).

If herein petitioner had really been pardoned either by the Commander-in-Chief of the Japanese Imperial Forces or by the President of the so-called Philippine Republic, on November 9, 1944, he should have presented certified copies of his petition for pardon and of the alleged pardon extended to him. There must be records of such official acts, if they had really taken place; and herein petitioner has failed to present any, coming either from the Insular Government or the provincial government of Batangas.

In a similar case, an unsigned and uncertified copy claimed to have been furnished to the clerk of court or the Chief of Constabulary of an alleged pardon was not considered competent evidence to establish the fact that pardon had really been granted to the accused (*United States vs. Zapanta and Lampano*, 33 Phil. 567).

When in the petition for certiorari and habeas corpus filed in this case, the petitioner alleged that he had been released "by order of the Provincial Governor of Batangas pursuant to a pardon issued by the authority concerned on those days of Japanese military occupation," he himself unwittingly revealed that no pardon had been legally granted by competent authorities; and that if petitioner had been pardoned at all, it must have been extended to him by the provincial governor of Batangas, who had absolutely no right or authority to extend to him executive clemency. In case of an invalid pardon, the original sentence imposed upon the prisoner must be carried out, (*Cabantag vs. Wolfe*, 6 Phil. 273).

The other possible and logical conclusion is that herein petitioner was among the prisoners whose mass release was ordered by the provincial governor of Batangas, sometime in December, 1944, for their own safety and protection, due to the continuous bombing and strafing of the vicinity in which the provincial jail was located, by the American Air Force, and the scarcity of food; in which case it was his duty to surrender himself upon the restoration of normalcy.

If the contention of the petitioner were true, his relatives and friends, who had allegedly helped to secure his pardon, and who must have been known to him, should have been presented as witnesses to testify to that effect, at the investigation conducted by the provincial fiscal. Failure on his part to present their testimony, unfortunately for him, gives rise to the presumption that there were no such witnesses; and that if there were any, their testimony would be adverse and unfavorable to the pretension of the prisoner. (*United States vs. Sarikala*, 37 Phil. 486; *Ahern vs. Julian*, 39 Phil. 607; *Ramos vs. Ramos*, 45 Phil. 562).

Furthermore, no special reason has been advanced why herein petitioner should have been pardoned; and strange to say, in his testimony given before the respondent provincial fiscal, he failed to disclose the nature of the release papers he claimed to have received, and the authority by which they had been allegedly issued.

Inasmuch as Herein petitioner has not surrendered to proper authorities, after Liberation, his condition is analogous to that of a prisoner, who has escaped from the penitentiary establishment. Under such circumstances, it was not only the right but the imperative duty of the courts, in the exercise of their inherent powers (Rule 1B4, section 5, *Idles of Court*), concurrently with the Chief Executive (Rev. Adm. Code, section 64 (i), to order his arrest, so that he might serve the unexpired portion of his sentence; and the corresponding warrant of arrest was needed by the agents of the authorities for their own protection.

In view of the foregoing, it is evident that herein petitioner Jose Caraos has utterly failed to establish, by competent and satisfactory evidence, that he had been pardoned by the proper authorities, and released from the provincial jail of Batangas, by virtue thereof, on or about November 9, 1944; and he must, therefore, continue under confinement to serve the unexpired portion of the sentence imposed upon him; and, consequently, his petition for certiorari and habeas corpus must be denied and dismissed, with costs. So ordered.

Moran, C.J., Feria, and Pablo, JJ., concur.

DISSENTING

PARAS, J.:

The record of the case shows that all the prisoners in the provincial jail of Batangas were released in December, 1944, on account of the emergency: lack of food and continuous bombing of the vicinity. Some prisoners were, however, released on November 9 of the same year due to executive clemency. The only evidence as to the exact date of the release of the herein petitioner consists of his own testimony and that of the widow of the deceased. The former affirmed that he had been released on November 9. His statement to that effect is corroborated by that of the widow. His release, therefore, could not have been due to the emergency. Had this occurred on November 9, when the petitioner was released, no prisoners would have been allowed to remain. In fact, petitioner knew, a week before November 9, that he would be released on account of the efforts of his family and friends to obtain pardon from the Chief Executive. I vote to grant his release.

DISSENTING

PERFECTO, J.:

On January 6, 1944, petitioner was prosecuted with his brothers Ramon and Emilio for homicide, and on May 3, 1944, the Court of First Instance of Batangas sentenced petitioner to imprisonment from 6 years and 1 day to 12 years and 1 day, to indemnify the heirs of Leoncio Ilagan in the sum of P2,000.00 and to pay one-third of the costs. His two brothers were acquitted. The petitioner, who never enjoyed liberty since his arrest on December 27, 1943, commenced to serve his sentence in the provincial Jail of Batangas. On November 9, 1944, the petitioner was released.

Petitioner alleges that his release was the result of the work of his relatives and friends for executive clemency and by virtue of an order of the Provincial Governor in pursuance of a pardon issued by the authority concerned. In support of this allegation, petitioner invoices the testimonies given by himself, by the Provincial Warden and by the Provincial Governor before the Provincial Fiscal of Batangas in an investigation conducted by the latter on February 5, 1943. Petitioner alleges also that after investigation, respondent Fiscal Ilano filed a motion of parte with the Court of First Instance of Batangas for the issuance of a warrant of arrest against petitioner, which petition was verbally denied by Judge Macadaeg, who told respondent to withdraw said motion. On March 6, 1946, granting a motion ex parte filed by the widow of Leoncio Ilagan, respondent judge ordered the issuance of a warrant of arrest against petitioner. On March 7, the same Judge issued another order commanding the Provincial Jailer to confine the body of petitioner until further orders.

On March 7, 1946, petitioner filed a special appearance contesting the jurisdiction of the court over his person and the subject matter of the case. The motion was answered by Fiscal Enriquez on March 11. On March 18, petitioner filed a memorandum in support of the special appearance and on March 21, the Provincial Fiscal filed a reply memorandum. On March 26, respondent judge issued an order against petitioner's proposition.

Alleging that he is deprived of his personal freedom in Muntinlupa by the Director of Prisons pursuant to the orders of respondent Judge dated March 6, 1946, petitioner comes now to ask relief by writ of habeas corpus. Fiscal Ilano, appearing for respondents, alleges that the Court of First Instance of Batangas has jurisdiction to order petitioner's arrest and confinement in prison for the purpose of serving the unserved portion of the sentence for the crime of which he was adjudged guilty, in pursuance of Section 5, paragraph (c), of Rule 124; that petitioner's release was done during emergency to provide for his safety; that normal conditions having returned, it was legal to order his apprehension by the proper authorities for the continuation of the service of his sentence; that the power of the lower court to issue like orders complained of was supported by Section 5, par. (e), of Rule 124; that no pardon or executive clemency was extended, to petitioner when he was released from Jail in November or December, 1944; that the record of the administrative investigation conducted by the fiscal on February 8, 1946, was not formally offered as evidence in the lower court and respondent judge had no way of considering the record as evidence; that even if the record was offered as evidence, the fact that the petitioner was granted pardon was not proved to the satisfaction of the fiscal.

There are two main questions in this case: (1) whether petitioner was released on November 9, 1944, on pardon issued through executive clemency, and (2) whether respondent judge had Jurisdiction to issue the orders complained of for the rearrest and recommitment of petitioner.

Upon the records, we are of opinion that there is enough evidence to support petitioner's theory to the effect that he was released unconditionally on November 9, 1944, in pursuance of a pardon issued through executive clemency. Petitioner testified that when he was released on November 9, 1944, the warden made him believe "that I was absolutely free". "I have — he continued — relatives and friends whom I depended upon to work for my

immediate release or pardon, is a matter of fact one week before my release I received Information that I would be released or pardoned.

From the testimonies of the Provincial Governor and the Provincial Warden, it appears that in December, 1944, for prisoners' safety, a mass release of the prisoners from the Provincial Jail was ordered because of the constant bombings and strafing by the American air force and the Provincial Government was unable to provide them with sufficient food, but that before that, there were other prisoners "who were released under executive clemency". From these undisputed and uncontradicted testimonies of two competent and disinterested witnesses upon whose veracity there is absolutely no reason to doubt, it is evident that those prisoners released from the provincial jail before the mass release made in December, 1944, due to exceptional circumstances created by an uncontrollable emergency, were given freedom "under executive clemency", the very words used by the Provincial Governor. It having been shown conclusively, without any dispute or contradiction, that petitioner was released on November 9, 1944, there is no way of eluding the logical consequence that he was released "under executive clemency".

From petitioner's testimony, which was neither impugned nor contradicted in any way, it appears that his relatives and friends approached Provincial Governor Maximo Malvar to intercede in petitioner's behalf for his release or pardon" and that when he was set free he was handed release papers which he, unfortunately, had lost. This testimony fits well in a pattern in which petitioner appears to have been released from confinement on pardon. The fact that when he was released he was handed what in the fiscal's question is simply described as "release papers," does not preclude the fact that among them was included a pardon issued through executive clemency. Let it be remembered that during the Investigation conducted by the fiscal, petitioner appeared alone, unassisted by any attorney, and he was made to answer only the questions the fiscal might propound to him and coached in words which might adequately stress what ideas the fiscal had in his mind during the investigation. The investigation was conducted by order of the Department of Justice and upon a complaint with it by Mrs. Estrella Punzalan, widow of Ilagan. It is probable that the fiscal conducted the investigation with the complaint in view and with the purpose of finding out grounds for petitioner's rearrest. Under such circumstances, it can not be expected that the petitioner could correctly present his case, notwithstanding this fact, if we are to be fair to him, his testimony offers enough ground in support of the theory that he was granted pardon, a word specifically mentioned by the fiscal in one of his questions addressed to petitioner. The question of fact we are discussing about, being directly related to the criminal case and which affects the personal liberty of an accused, must be viewed with the idea of deciding all doubts in favor of the accused. Under any or all criteria of logic, we believe that petitioner has conclusively proved that he was pardoned and released as a result of an executive clemency extended to him. The result must by necessity favor petitioner under the preponderance rule in civil cases or under the doubt rule in criminal cases. That petitioner had lost his release papers, including the pardon, and the fact that he was unable to exhibit them at the fiscal's investigation, is no reason to do him injustice; in the first place, because under the Japanese occupation any one was able to lose anything; and in the second place, the oral evidence on record supplies sufficiently the absence of the lost primary evidence. The doctrine in *U. S. vs. Zapanta* (33 Phil. 567) is not applicable here, because there is no evidence of the loss of the primary evidence of the pardon was presented or offered, the simple carbon copy of the alleged pardon not having been identified or certified as true copy, and there was no basis for admitting it as a proper secondary evidence.

That if petitioner had been pardoned either by the Commander of the Japanese imperial Forces or by the President of the so-called Philippine Republic, he should have presented certified copies of his petition for pardon and the pardon extended to him, because there must be records of such official acts, is a proposition to which we can not agree, it appearing that petitioner was not given the opportunity to offer said certified copies. The investigation conducted by the fiscal was, at best, *ex parte*. And although petitioner was called to testify therein, he appeared to have been summoned as an ordinary witness, and was not given the necessary opportunity to be assisted by

counsel. In fact, petitioner contested fiscal's jurisdiction on the matter, before he was compelled to testify. If we have to be fair to petitioner, we must accept the evidence presented before the fiscal as the real fact, that is, that petitioner had been pardoned, it appearing that the evidence presented to said effect is not impugned or contradicted. And, if the evidence is not satisfactory to us, petitioner must be granted the necessary opportunity to offer what evidence he can present in a new investigation that must be conducted by a commissioner of this Court or by the lower court itself. He can present, then, the certified copies and the testimony of his relatives and friends, upon the absence of which the majority deny him the relief sought in the petition. Grave injustice is done! against petitioner by presuming from the lack of said evidence conclusions adverse to Him when he was not given the opportunity to offer it.

Under the theory maintained in our dissenting opinion in *Co Kim Cham vs. Dizon*, (75 Phil., 113), the judicial process under which petitioner was convicted and sentenced in 1943 was null and void as a result of General Mac Arthur's proclamation of October 29, 1944, and, therefore, there is no ground for confining the petitioner under the authority of a sentence which is now null and void. Even if said decision was valid, petitioner having been released on pardon through executive clemency, said pardon being one of his processes declared as valid by the majority opinion in *Co Kim Cham vs. Dizon*, L-5, Where a ceto government was recognized existing and functioning during the Japanese occupation, he is still entitled to the release by virtue of said pardon.

The theory that, under the law, the only authority that could have granted pardon or executive clemency during the Japanese occupation, "was the President of the so-called Philippine Republic, or the Commander-in-Chief of the Japanese Imperial Forces," lacks any support in the record. There is no evidence of any law existing in 1944, during the Japanese occupation, limiting to the President of the so-called Philippine Republic and the Commander-in-Chief of the Japanese Imperial Forces the power to grant pardon. We do not have any information as to the existence of any such law, which, besides, is not among those upon which judicial notice may be taken under the rules. If common experience prevailing during the enemy occupation should be taken as a criterion, we would rather say that no such law had existed and that, under the legal confusion, anarchy and chaos then obtaining, almost any public officer had unlimited powers of all kinds to the extent that no one is justified to maintain the theory that the power of pardon was exclusively exercised by both the President of the so-called Philippine Republic or the Commander-in-Chief of the Japanese Imperial Forces. As correctly stated by petitioner's counsel in his oral argument at the hearing of this case, it was not unusual for any Japanese officer to release or order the release of any person found guilty and sentenced to imprisonment by any court of justice. Although Filipino civil officers might not have exercised on their initiative the same power of pardon, it is not improbable that they had exercised it under directions of Japanese advisers, each of whom, at least, was attached to every Filipino government office, including the highest of them. If any evidence is needed, the recent case of *Sameth* (1-351) will readily come to our mind to show how the Director of Prisons himself had released many prisoners from Muntinlupa upon instructions or orders from Japanese commanders.

Our Constitution, of course, limits to the President of the Philippines the exercise of the power of pardon, but it is not right to judge government processes during the Japanese administration under the same legal standards prevailing in our Commonwealth.

Now, the next question raised in this case is whether the lower court has jurisdiction to order the arrest and recommitment of the petitioner for the purpose of compelling him to serve the remainder of his prison term after the criminal case for which he was prosecuted and sentenced had been completely terminated and after the petitioner had been committed to imprisonment and, as a matter of fact, had served many months of the imprisonment to which he was sentenced. Petitioner maintains the negative upon the principle of separation of powers and respondents maintain the affirmative upon the authority of Section 5, para, (c) and (e), of Rule 124.

Section 5, pars, (c) and (e), Rule 124, is as follows:

"SEC. 5. Inherent powers of courts.— Every court shall have power:

* * * * *

"(c) To compel obedience to its judgments, orders, and process, and to the lawful orders of a judge out of court, in a case pending therein;

* * * * *

(e) To compel the attendance of persons to testify in a case pending therein."

The above-quoted provisions do not support respondents' position. Paragraph (c) is clearly inapplicable. It requires the qualification "in a case pending therein" which can not exist in the present case. (1) because the criminal case in which petitioner had been sentenced had ceased to be pending since he began to serve the sentence on May 3, 1944 and (2) because the case has not; been and could never be pending before respondent judge, who is presiding over a court of the Commonwealth, which can not be confused or identified with the court under the Japanese regime which sentenced petitioner.

As to paragraph (e), it is evidently inapplicable because the rearrest and the recommitment of the petitioner were not made to compel a witness to testify in a pending case.

From the foregoing, it is evident that respondents were and are unable to point out any law upon which respondent judge's authority to order the rearrest and the recommitment of the petitioner can be upgraded. In fact, no such law exists. Much more, its existence is incompatible with the present legislation and the principle of separation of powers, one of the pillars of our system of government and democracy established by our Constitution, and recognized by all civilized nations as one of the fundamental safeguards of civil liberties since Montesquieu developed and perfected it upon the fecund germinal ideas firstly enunciated by the encyclopedic genius of Aristotle in the following words of his "Politics":

"All constitutions have three elements, concerning which the good lawgiver has to regard what is expedient for each constitution. When they are well-ordered, the constitution is well-ordered, and as they differ from one another, constitution differs. There is one (1) element which deliberates about public affairs; secondly (2) that which concerned magistracies— the questions being what they should be, over what they should exercise authority, and what should be the mode of electing to them; and thirdly (3) that which has judicial power." (Book IV, Ch. 14.)

"In great states it is possible, and indeed necessary, that every office should have a special function * * * certainly every work is better done which receives the sole, and not the divided, attention of the worker." (Book IV, Ch. 15.)

Under the principle of separation of powers, government functions are divulsed and apportioned among the three departments — legislative, executive, and judicial—and within the province of each one of them no encroachments are allowed without violating the tripartite division established by the Constitution.

Under that division of government functions, the custody, care, control, and supervision of prisoners are, by their very nature, functions of executive character and belong exclusively to the executive power. To said effect, the law has specifically created a Bureau of Prisons under the control and supervision of the Chief Executive, exercised through the corresponding department head, and the Prison law has been incorporated as Chapter 45 of Administrative Code. According to said law, the Bureau of prisons "shall have the general supervision and of insular and provincial prisons and all penal settlements and shall be charged with the safe-keeping of all prisoners

confined therein or committed to the custody of said Bureau." (Section 1707, Administrative Code.) Section 1724 of the same code provides that the "regulations of the Bureau of Prisons shall contain such rules as will best promote discipline in ill insular and provincial prisons and penal settlements and ibest secure the reformation and safe custody of prisoners of all classes."

Once a sentence, condemning an accused to imprisonment, has become final and executory, the only thing that a courts has to do is to commit the prisoner to the proper Jail officers or employees of the executive department for the execution of the sentence. Once commitment is complied with and the prisoner begins to serve his prison term, the court loses completely its Jurisdiction on the prisoner.

A court, as one of the arms of the judicial power of government, tries ana decides a criminal case, but the function to execute its sentence or decision belongs to the executive power. When a prisoner is committed to prison to serve sentence, it is within the exclusive province of the executive department to see to it that the sentence is comfiled with and, in case imprisonment as penalty is imposed, that prisoner should serve the corresponding term according term law. In the exercise of this function, tribunals can not encroach without exceeding their proper jurisdiction and without violating the law. Tribunals are devoid of powers and authority concerning the oustody and safe-keeping of prisoners. The function belongs exclusively to executive officers who, in this respect, assume grave responsibilities, so much so that the Revised Penal Code provides penalties for Infidelity in the oustody of prisoners (see article 223, et seq.)

It is significant that the majority expressly recognizes in the Chief Excutive the power to order the arrest of petitioner, invoking to said effect the provisions of Setion 64 (i) of the Revised Administrative Code, although maintaining at tiie same time that the courts have the same inherent power "concurrently with the Chief Executive", invoking to said effect Sec. 5 of Rule 124 which, unfortunately, does not offer any provision in support of the alleged concurrent power. She very fact that the majority intimates that the power to arrest the petitioner, under the circumstances, is one specifically vested by law in the Chief Executive serves to strengthen our theory to the effect that such power is, by nature, of executive character.

If it is of executive character, it is incompatible with judicial functions and, therefore, can not be exercised by the courts. As we have shown, does not support the majority's theory that the courts have the same power in concurrence with the Chief Executive. And the rules can not provide, as intimated by the majority, because it will be violative of the fundamental principles of the separation of powers and it will be transgressive of an express provision of Section 14 of Art. VIII of the Constitution, limiting the power of the Supreme Court only wto promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law" which evidently can not comprehend the executive power to rearrest or order the rearrest of a prisoner who, while serving his sentence of imprisonment was, as alleged, improperly released without completing the service of his sentence.

Before concluding this opinion, it may not be amiss to recall what respondent Judge himself states in his order of March 26, 1946, from which we quote:

"He (Jose Caraos) was a convict at large during that time although he did not evade from his confinement. No existing records (were) left in the Provincial Warden's Office of the Governor at the present time for they "were burned during the war. This is indeed a unique case. The executive department of the Provincial government of Batangas by itself is powerless to arrest Jose Caraos in order to compel him to serve his unexpired portion of his sentence because there is not a record of his case on which to base any appropriate action."

This complete absence of record in the criminal case against petitioner adds another ground in support of the

theory that the lower—court lacked jurisdiction to order the rearrest and recommitment of Caraos. If there is no record of the case and no decision or sentence can be produced, upon what basis and authority may petitioner be compelled to serve the alleged sentence to imprisonment? Upon what authority may the lower court compel petitioner to serve a term of imprisonment? Upon what authority may it issue a commitment or mittimus? A sentence condoning the accused to suffer imprisonment for a shorter or longer period must not be left floating in thin air or projecting the fleeting shadow of a drifting cloud in the penumbra of nightmarish imagination.

The case for homicide can not be decided but by a court of record which, according to section 12, Article VIII, of the Constitution, shall not render a decision "without expressing therein clearly and distinctly the facts and the law on which it is based." In order that a sentence may be executed, a written decision must firstly exist and it shall contain a clear and distinct expression Of the facts and the law on which it is based. Where is that decision in the case of petitioner Caraos?

If no such decision exists, what decision shall be complied with in compelling petitioner to serve a term of imprisonment?

For all the foregoing, we are of opinion and so vote that petition must be granted and petitioner Jose Carraos released without the least delay.

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