

**MACARIO GUNABE, SULPICIO GUNABE AND MARGARITO DRILLON,
PETITIONERS, VS. THE DIRECTOR OF PRISONS, RESPONDENT.***G.R. No. L-1231. January 30, 1947*

Ponente: PARAS, J.

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The petitioners more or less admit that in November, 1942, they were charged in criminal cases Nos. 988 and 1010 of the Court of First Instance of Manila with murder and frustrated murder and that, in virtue of said cases (continued as criminal cases 1838 and 1839) which are still pending, the petitioners have been detained by the respondent Director of Prisons under proper commitment orders. Nevertheless, in the present petition for the writ of habeas corpus, the petitioners pray for their release on the grounds (1) that from one to four months after their arrest, their detention was unlawful as it was a brazen violation of their right to be delivered to the judicial authorities within six hours following their arrest, petitioner Macario Gunabe having been arrested on or about July 8, 1942, petitioner Sulpicio Gunabe on or about July 17, 1942, and petitioner Margarito Drillon on or about October 5, 1942; (2) that after the trial held about the end of September, 1943, the final termination of said cases were delayed to the prejudice of the substantial rights of the petitioners as defendants therein, nothing having been done by the prosecution since then until the liberation of the Philippines and until the date of the filing of the present petition for that matter, or for a period of more than three years now; (3) that, at any rate the petitioners should be released on amnesty, because the offenses for which they were prosecuted are political in nature, perpetrated by guerrilla men in the furtherance of their resistance movement during the enemy occupation.

With respect to the first ground, it is sufficient to state that the alleged failure of the authorities (who arrested or are detaining the petitioners) to deliver the latter to the judicial authorities within six hours—which may of course be the subject of criminal prosecution under article 125 of the Revised Penal Code—cannot affect the legality of the confinement of the petitioners which is admittedly under subsisting process, issued by a competent court. Indeed, if it appears that the persons alleged to be restrained of their liberty are in the custody of an officer under process issued by a court or judge having jurisdiction to issue the process, the writ of habeas corpus shall not be allowed. (Rules of Court No. 102, section 4.)

The second ground cannot be sustained. An accused is entitled to speedy trial, but this right is necessarily relative, consistent with reasonable delays, and usually depends upon circumstances. (Moran, Commentaries on the Rules of Court, Vol. II, p. 476.) Said right may be waived by not objecting to postponements or other delays of the trial. (Id., p. 476.) The record does not show that the cases in question were not finally disposed of during the enemy occupation because of machinations of the prosecution, or that the petitioners objected to the alleged delays or insisted in the dismissal of the cases by reason of such delays. It cannot be reasonably expected that, after the liberation, trial could be resumed immediately, in view of the destruction of the records; and reconstitution is as much the duty of the prosecution as of the defense. It is to be noted that, when the original cases were in December, 1946, continued as criminal cases Nos. 1838 and 1839, the period within which court records may be reconstituted had not as yet expired. The cases of Conde vs. Judge of First Instance and Provincial Fiscal of

Tayabas (45 Phil., 173), and Conde vs. Rivera and Unson (45 Phil., 650), are not in point, since the delay therein complained of was held to be due to the fault of the provincial fiscal.

The third ground is likewise untenable. As to whether the petitioners were or are entitled to amnesty, is a question that should be ventilated in the trial Court (Villa vs. Allen, 2 Phil., 436), or before the Guerrilla Amnesty Commission created pursuant to Proclamation No. 8 dated September 7, 1946, by the President of the Republic of the Philippines.

The petition will be, as the same is, hereby denied. So ordered, with costs against the petitioners.

Moran, C.J., Feria, Pablo, Bengzon, Briones, and Tuason, JJ., concur.

MORAN, C. J.:

I certify that Justice Padilla concurred in this decision.

DISSENTING

PERFECTO, J.:

Petitioners complain that they have been restrained of their liberty, since July 8, 1942, the former, and October 5, 1942, the latter, upon their arrest by the Japanese kempei, and allege that two criminal cases were filed with the Court of First Instance of Manila for murder and frustrated murder, months after said arrest, and that after the trial in September, 1943, nothing has been done by the prosecution to secure the final termination of the cases until the petition in this case was filed with this Court in December, 1946. This unreasonable delay, petitioners claim, entitle them to be freed on habeas corpus, under the authority of the two Conde cases (45 Phil., 173, 650).

Upon the facts of this case, there is no doubt that the three petitioners are entitled to the personal freedom they are seeking by their petition.

They appear to be the victims not only of unreasonable and unjustified delay in the administration of justice, but also of the beastly means employed by the Japanese kempei to serve their purposes.

We have already stated in our opinion in the Co Kim Cham case (75 Phil., 113), that all the judicial processes during and under the Japanese regime are null and void and should not be given effect, and it appearing that petitioners are confined, according to respondent's answer, by virtue of informations filed under said regime, petitioners are entitled to be released.

The nullity of judicial processes under which petitioners have been deprived of their liberty since 1942, or for about four and a half years, is aggravated by the fact that said processes are tainted with shocking delays and that their deprivation of liberty began by their arrest by the Japanese kempei, it being a fact of universal knowledge to Filipinos that the Japanese kempei never made any arrest that could have any shadow of legality.

For all the foregoing, we vote that the immediate release of the three prisoners be ordered without delay.

HILADO, J.:

I concur in this dissent of Mr. Justice Perfecto.

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