

CRISPULO TALABON, PETITIONER, VS. THE ILOILO PROVINCIAL WARDEN, RESPONDENT.

G.R. No. L-1153. June 30, 1947

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal from the judgment of the Court of First Instance of Iloilo denying the petitioner's petition for habeas corpus.

On November 2, before the attorney for the petitioner was notified of the decision of the Court of First Instance of Iloilo dated October 31 denying the petitioner's petition, another petition for habeas corpus was originally filed with this Court by the same petitioner based on substantially the same grounds. In view of the objection of the attorney for the respondent to the jurisdiction of this Court to entertain the original petition for habeas corpus, based on the ground that the petitioner had also appealed from the decision of the Court of First Instance of Iloilo denying his petition, the attorney for the petitioner, in his reply, moved that the petition and other pleadings filed originally with this Court, together with the papers sent up from the lower court, be considered as an appeal from the decision of the Court of First Instance of Iloilo.

The grounds of the petition for habeas corpus filed with the Court of First Instance of Iloilo and with this Court are, that the "petitioner was charged of (with) murder and was confined in the concentration camp and in the provincial jail of Iloilo since 1942 up to the present time, and under the pretext of a fantastic trial he was continually imprisoned and restrained of his liberty without having promulgated the corresponding authority of any decision against him;" and "the petitioner is deprived of his absolute right of appeal and denied of prompt and speedy justice," because "he cannot prosecute any appeal to a higher tribunal of justice;" for the reason that the judgment which convicted the defendant to be imprisoned for not less than 12 years and 1 day to not more than 20 years and 1 day of reclusion temporal, was rendered verbally by the trial judge, without the court's finding of facts.

According to the return of the respondent to the petition filed with the Court of First Instance of Iloilo, as well as his answer or return to the petition filed with this Court, the petitioner is in custody under warrant of commitment issued by the Judge of the Court of First Instance of Iloilo and signed by the clerk of said court which reads as follows:

"To the Provincial Warden of Iloilo

"Somewhere in Passi

"SIR:

"I hereby commit to you the person of Crispulo Talabon, who is sentenced by this Honorable Court of First Instance, First Branch, to suffer an indeterminate sentence of from twelve (12) years to twenty (20) years of reclusion temporal; to indemnify the heirs of the deceased in the sum of two thousand pesos (P2,000) and to pay the costs of the action. One-half of the preventive imprisonment undergone by the accused herein is

credited to him.

"Issued by Hon. Judge Ceferino de los Santos of First Instance, Iloilo, this 22nd day of January, 1945.

(Sgd.) "TEODORO A. LUNTAO

"Deputy Clerk of Court"

According to section 13 of Rule 102: "If it appears that the prisoner is in custody under a warrant of commitment in pursuance of law, the return shall be considered prima facie evidence of the cause of restraint;" and section 4 of the same rule provides:

"SEC. 4. When writ not allowed or discharge authorized.—If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge, or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. * * *"

The above-quoted provision of section 4 of Rule 102, is in conformity with the well-established rule that a petition for a writ of habeas corpus to secure the discharge of one restrained of his liberty by virtue of a judgment, is a collateral attack upon the said judgment; and the writ lies only where the judgment attacked is absolutely void, because the court that rendered it had no jurisdiction; and it does not lie where it is merely voidable by reason of errors, omissions, irregularities, or defects in the judgment (III Freeman on Judgments, 3171-3173).

The sole question involved in this appeal, therefore, is whether or not the court that convicted the petitioner had jurisdiction of the person of the petitioner and of the offense, and to impose the particular penalty above stated; for as above stated, it is "well settled that where the court had jurisdiction of the subject matter of the prosecution, and the punishment imposed by the court is of the character prescribed by law for the offense, habeas corpus will not lie for the release of the prisoner because of mere errors, irregularities, and defects in the sentence." (25 Am. Jur., pp. 184-185.) And "it has been held that one who is imprisoned under a judgment may not procure his discharge by aid of the writ upon the ground only that an error was made by the clerk in recording the sentence; that the judgment failed to state the particular offense of which he was convicted or to adjudge expressly the defendant's guilt; that the trial judge fixed the prisoner's punishment within the limits prescribed by a statute when the jury should have done so; that an order for the issuance of an execution was omitted in a judgment imposing a fine; that the verdict was received and sentence imposed by a judge other than the one who presided at the trial; that two defendants who had been tried under a joint indictment had been given a joint sentence; or even that the wrong name was inserted in a sentence, at least if the prisoner was sufficiently designated to preclude any mistake." (25 Am. Jur., p. 186.)

After considering the facts and law of the case, it is obvious that the lower court did not err in denying the petitioner's petition, because the lower court had jurisdiction over the petitioner, the offense with which the latter was charged and of which he was convicted, and to impose upon him the penalty above stated. And for that reason, the petitioner does not question the jurisdiction of the trial court. The principal ground alleged in the petition is, that the petitioner is illegally detained for the reason that the judgment rendered by said court is not in writing and does not contain findings of facts as the basis of conviction, in violation of the provision of section 2, Rule 116, of the Rules of Court which was enacted in conformity with the provision of section 12, Article VIII of the Constitution, and provides the following:

"SEC. 2. Form of judgment.—The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctively a statement of the facts

proved or admitted by the defendant and upon which the judgment is based. If it is of conviction the judgment or sentence shall state (a) the legal qualification of the offense constituted by the acts committed by the defendant, and the aggravating or mitigating circumstances attending the commission thereof, if there is any; (b) the participation of the defendant in the commission of the offense, whether as principal, accomplice, or accessory after the fact; (c) the penalty imposed upon the defendant; and (d) the civil liability or damages caused by the wrongful act to be recovered from the defendant by the offended party, if there is any."

The fact that the judgment of the Court of First Instance of Iloilo was made verbally without prejudice to put it subsequently in writing, and that no written decision with findings of facts has been rendered up to the filing of the petition, did not make that judgment absolutely void, because failure on the part of the court to comply with the above quoted provisions of the Rules of Court and the Constitution did not divest the lower court of its jurisdiction acquired over the offense and the petitioner. In many cases (among them, those of *Montelibano and Sichon vs. Director of Lands*, 21 Phil., 449; *Ungson vs. Basco and Zandueta*, 29 Phil., 575; and *Director of Lands vs. Sanz*, 45 Phil., 117) in which the trial court had failed to comply with the provision of section 133 of the old Code of Civil Procedure requiring that a decision in civil cases must be in writing and contain findings of facts, this Court did not dismiss the appeal on the ground that the court a quo had thereby lost its jurisdiction, but remanded the case to the lower court for compliance with said requirement. To hold otherwise would be to rule that a court that has jurisdiction will preserve it if it does not commit any error or applies correctly the law, and it will lose its jurisdiction if it does not act in accordance with the law, which is obviously untenable.

The provision of section 12, Article VIII, of the Constitution that "no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based," which had been incorporated substantially in section 2, Rule 116 of the Rules of Court, refers only to the form of the judgment. It does not affect the jurisdiction of the court rendering it. The substance of the judgment is defined in section 1, of said Rule 116, which says that it is "the adjudication by the court that the defendant is guilty or is not guilty of the offense charged, and the imposition of the penalty provided for by law on the defendant, who pleads or is found guilty thereof."

It is evident that noncompliance with the above-quoted provision of the Constitution by a court of competent jurisdiction, as noncompliance with the provision of a statute relating to the same matter, is an error or irregularity; but it is not jurisdictional, nor does it make the judgment absolutely void for lack of jurisdiction. The Constitution is superior to a statute, and is called the supreme law of the land, not because it is different in nature or character from the latter, nor because noncompliance therewith is jurisdictional, where it does not so provide, but because it is the fundamental or organic law. A constitution only differs from a statute in that the latter must provide the details of the subject of which it treats, whereas a constitution states the general principles and builds the substantial foundation and general framework of law and government, and for that reason a statute contrary to or in violation of the Constitution is null and void.

The judgment that convicted the petitioner-defendant, not absolutely void because the court that rendered it had jurisdiction over him, the offense and the particular penalty imposed therein, is defective because it does not conform to the form required by the law and the Constitution, and the proper remedy for the petitioner is to appeal from said judgment, or petition for mandamus to compel the Judge of the Court of First Instance to put in writing the decision of the court in said case. As a matter of fact, according to the return of the respondent filed with the Court of First Instance of Iloilo and this Court, and not denied by the petitioner, a notice of appeal from the judgment of conviction has been filed by the petitioner. Although the petitioner had the right to wait, that the judgment of said court be put in writing before filing his notice of appeal (*Director of Lands vs. Sanz*, 45 Phil., 117), had he proceeded with his appeal, this Court would have entertained it by remanding the case to the lower court for the rendition of a judgment in writing with findings of facts on which it is based. Besides, in criminal

cases the appellant is not required to make any assignment of errors (section 7, Rule 120), for generally the question involved in the appeal is whether or not the evidence shows beyond reasonable doubt the defendant's guilt, and the appellate court has the obligation to revise all the evidence in the record and apply the law to the case.

The allegation or claim of the petitioner, through his Atty. Pedro R. Davila in the present case, that there was an unreasonable delay in the trial of the defendant is groundless, for he can not ignore the fact that the delay was due to unsettled conditions then prevailing in the unoccupied territory wherein he was prosecuted, as shown in the pleadings and other papers attached to the record; and said Attorney Davila was precisely one of the judges presiding the Court of First Instance of Iloilo that tried cases in areas not occupied by the Japanese, although for some justifiable reason the trial of the case against the petitioner was transferred from the branch presided by him to that presided by Judge Ceferino de los Santos.

From the pleadings and the certified copies of the correspondence in connection with said trial, attached to the record sent up to this Court for the purpose of the appeal in this case, the following appear: A certified copy of the letter of the Acting Clerk of Court dated November 29, 1943, enclosing a subpoena issued by order of Pedro R. Davila, then Judge of Court of First Instance of Iloilo (now attorney for the petitioner) to be served upon the witness Procopio Talabon, requiring him to appear and testify at the trial of the case against the petitioner on December 14, 1943; a certified copy of a letter written by the Acting Clerk of Court to "The Executive Secretary, Somewhere," (that is, address unknown) of the Philippine Government, informing him that the trial of the case for murder against the petitioner was set for hearing on December 14, 1943, at Bocare, Tubungan, Iloilo; another certified copy of a communication dated December 15 from the same Acting Clerk of Court to "The Executive Secretary, Somewhere," informing the latter that "in view of the heavy rainfall and flood it was difficult and dangerous to go ahead with the trial," which was again set for the 20th of the same month in one of the barrios of Miagao, Iloilo, and presumably could not have been held there, because according to a certified copy of a subpoena issued by the Deputy Clerk of Court, Procopio Talabon was required to appear as a witness before the Court of First Instance of Iloilo, second branch, to testify at the trial of the petitioner to be held on July 30, 1944, at 9 o'clock a. m. somewhere in Bato, Tubungan; and a certified copy of a letter dated July 29, 1944, written by the Assistant Provincial Fiscal to the Deputy Clerk of Court, advising the latter not to forget "to subpoena Dr. Garces for the trial of Talabon case the coming Monday," and also to subpoena other witnesses, "despite our motion contesting the qualification of Judge Davila to hear the case himself."

The reason why Judge Ceferino de los Santos who presided the court that convicted the petitioner could not render a written decision containing findings of fact on which the judgment of conviction is based, is given in the answer or return of the respondent to the petition filed with the Court of First Instance of Iloilo, and is not contradicted or denied by the petitioner. The return says:

"That when the Americans landed in Iloilo in March, 1945, the said Judge De los Santos was advised that he ceased to be Acting Judge of the Court of First Instance and he left the said case without a written sentence against the accused;

"That the said Judge, Hon. Ceferino de los Santos was reappointed as Judge only a few months ago and upon being asked regarding his decision in the said case, signified his intention of rendering same as soon as he has the records of the case in his possession as well as the transcription of the stenographic notes of the trial;

"That on August 3, 1946, the same attorney, Mr. Pedro R. Davila, filed a motion praying this Honorable Court for the immediate release of the prisoner, alleging the same reasons as he alleged in this petition of Habeas Corpus;

"That this Court, presided by Honorable Manuel Blanco, on August 12, 1946, issued an order requesting the

said Judge De los Santos, who is now presiding the Court of First Instance of Vigan, Ilocos Sur, through the Honorable, the Secretary of Justice, to render the corresponding sentence in the said criminal case No. 4;

"That in compliance with the said order of this Honorable Court the Clerk of Court on August 15, 1946, sent by registered mail to said Judge, Hon. Ceferino de los Santos, the said motion of Attorney Davila;"

Not only the delay in the termination of the trial of the case and in the rendition of the judgment was not unreasonable or without justification—and the arguments advanced to support the contrary are based on mere conjectures or baseless assumption of facts not found in the record; but even assuming, *arguendo*, that there was such a delay, it does not constitute a sufficient ground for issuing a writ of habeas corpus and discharging the petitioner herein.

Not the delay in putting the oral judgment in writing, because "the constitutional right to a public and speedy trial does not extend to the act of pronouncement of sentence" (*Reed vs. State*, 147 Ind., 41; 46 N. E., 135, 136). Trial and judgment are two different stages of a judicial proceeding: the former is provided for in Rule 115, and the latter is covered by Rule 116, of the Rules of Court. "The period of the trial terminates when the judgment begins" (*Felismino vs. Gloria*, 47 Phil., 967). Therefore, the decision of this Court in the case of *People vs. Conde* (45 Phil., 650), in which no trial was ever held, can not correctly be invoked as a precedent in order to grant the petition in the present case; and the phrase "*enjuiciado pronta y publicamente*" is not a correct translation of "public and speedy trial," and it is more comprehensive than the latter, and can not serve as a basis for a contrary conclusion because the English text must prevail (section 15, Adm. Code).

And not the delay, if any, in the prosecution of the trial, because it is obvious that, the case against the petitioner having already been tried and judgment rendered against him, the petitioner can no longer invoke his right to a speedy trial as a ground for his discharge on habeas corpus, inasmuch as said right is waived if not exercised in due time. If the trial of a criminal case is unreasonably delayed, the detention of the defendant becomes illegal, and habeas corpus is the only legal remedy for obtaining his release, in order to avoid his detention for an unreasonable period of time. After trial has terminated, the delay of the Court to render the sentence does not make the detention illegal, because the defendant may, by mandamus, compel the court which unreasonably delays rendering the decision to do so, and for that reason the defendant or prisoner is not granted the constitutional right to a speedy judgment.

In view of all the foregoing, the decision of the Court of First Instance of Iloilo denying the petitioner's petition for habeas corpus is affirmed, with costs against the appellant. So ordered.

Moran, C.J., Paras, Pablo, Hontiveros, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

Delay—shocking, shameless, scandalous—appears to be the most characteristic feature of the administration of justice in petitioner's case.

Under that unblushing cloak, which may seem harmless to the indifferent and unaware, we shall find revolting cancerous ulcers: callous unconcern for fundamental human rights, complete disregard for the guarantees established by law for the protection of an accused, wanton violations of mandatory provisions of the law, contempt and scorn of basic safeguards of the Constitution.

To adequately describe the sadistic perversion of the administration of justice in petitioner's case it is necessary to

have the imagination of the author of the Apocalypses and the pen of Dante.

It is a case in which all sense of justice appears to be obliterated in Nazi or Nippon fashion.

No case can show with more nauseating reality, no matter whether due to simple error or negligence, or to some form of bad faith, the utter futility of a system of justice where the individuals charged with the duty of administering it lacked the moral fiber and the proper spirit to place themselves in the level of their lofty mission.

No one with a burning passion for justice may receive with deaf ears petitioner's pleadings for relief. The facts in the record show with apodictic conclusiveness that petitioner is a defenseless victim of a travesty of the administration of justice.

Petitioner Crispulo Talabon, in his petition dated November 2, 1946, and received in this Court four days later, alleges that he has been denied of his liberty since June, 1942; that he was charged of murder and trial was conducted on November 16, 1944; that the presiding judge announced verbally in open court the dispositive part of his decision sentencing petitioner to not less than 12 years and 1 day nor more than 20 years and 1 day of reclusion temporal; that said verbal judgment, without the court's findings of facts as the basis of conviction, is illegal, deprives petitioner of his right to appeal, and denies him the prompt and speedy justice guaranteed by the Constitution; that on September 26, 1946, more than four years after his being deprived of his personal freedom, he filed with the Court of First Instance of Iloilo, a petition for a writ of habeas corpus, which was set for hearing on September 28, 1946; that at said hearing both parties have presented their corresponding evidence, but the presiding judge, Querube Makalintal has intentionally ignored the right of petitioner for immediate action in the proceedings and failed to decide the case until the petition to this Court had been made; that on October 22, 1946, Provincial Fiscal Roman Ibañez filed another answer and, for an intentional purpose to delay the disposition of the case, Judge Makalintal ordered the hearing of the same on October 26, in which the same evidence presented on September 28, was re-admitted; that petitioner decided to present anew his petition for a writ of habeas corpus before this Court to obtain the justice that he could not get otherwise.

Respondent provincial warden of Iloilo, through the Provincial Fiscal Roman Ibañez, answered in the first case of habeas corpus that the case of *People vs. Talabon*, No. 4 of the Court of First Instance of Iloilo, was heard and tried on November 16, 1944, by Honorable Ceferino de los Santos, presiding the first branch of the Court of First Instance of Iloilo, and after the trial, said judge announced verbally in open court the dispositive part of his decision, convicting the accused of homicide and sentencing him to an imprisonment of not less than 12 years and 1 day nor more than 20 years and 1 day of reclusion temporal; that the accused filed his notice of appeal against said sentence; that when the Americans landed in Iloilo in March, 1945, Judge De los Santos was advised that he ceased to be acting judge of the court and "he left the said case without a written sentence against the accused"; that after said judge was reappointed months before October 22, 1946, date of the answer, and upon being asked regarding his decision in the said case, signified his intention of rendering same "as soon as he has the records of the case in his possession as well as the transcript of the stenographic notes of the trial"; that on August 3, 1946, Atty. Pedro R. Davila filed a motion for the immediate release of the prisoner, and on August 12, 1946, Honorable Manuel Blanco, presiding the Court of First Instance of Iloilo, "issued an order requesting the said Judge De los Santos, who is now presiding the Court of First Instance of Vigan, Ilocos Sur, through the Honorable, the Secretary of Justice, to render the corresponding sentence in the said criminal case No. 4"; that in compliance with the said order, the clerk of court on August 15, 1946, "sent by registered mail to said judge, Honorable Ceferino de los Santos, the said motion of Attorney Davila"; that respondent's counsel may produce the transcript of the stenographic notes taken at the trial of the case; that on January 22, 1945, the accused was committed to the respondent Iloilo provincial warden, by the deputy clerk of court Teodoro A. Luntao; "that the mere fact that the judge who tried the case has not rendered his written decision until now is not a sufficient ground to have the

prisoner released."

In his answer before this court, respondent alleges that petitioner was duly tried "on November 16 and 17, 1944, and convicted on January 22, 1945," and that a commitment order, duly signed by the deputy clerk of court was received by respondent before keeping petitioner in his custody; that the petitioner was defended by Atty. Basilio Sorioso, who announced his intention to appeal and in fact took steps to appeal, after the decision was announced to the petitioner on January 22, 1945; that the information in criminal case No. 4 was among those papers sent by the clerk of court to Judge Ceferino de los Santos on November 1, 1946; that the case happened during the guerrilla days and the papers were scattered so it took a considerable time before all the records could be finally located; that as the petition for a writ of habeas corpus filed with the Court of First Instance of Iloilo was decided by Judge Makalintal on October 31, 1946, the Supreme Court is divested of jurisdiction to entertain other petition for a writ of habeas corpus made by the same petitioner and based on the same grounds.

The commitment issued by the deputy clerk mentioned in the answer states that Crispulo Talabon was sentenced "to suffer an indeterminate sentence from 12 years to 20 years of reclusion temporal and to indemnify the heirs of the deceased in the sum of P2,000 and to pay the costs of their action, one-half of the preventive imprisonment undergone by the accused to be credited to him."

The record of criminal case No. 4, *People versus Crispulo Talabon*, for murder, composed of 30 pages was delivered to the court "by Mrs. Ceferino de los Santos from Pototan, through her son-in-law, and sent by the clerk of court to Under-Secretary of Justice Roberto Concepcion," and in the letter of transmission, dated November 1, 1946, the clerk of court states also that the transcript of the stenographic notes was also forwarded to said Under-Secretary of Justice by air mail since October 23, 1946.

Among the facts stated in the decision of Judge Makalintal, attached as Annex B of respondent's answer, are the following: That Crispulo Talabon was tried under the civil government of the portion of the Province of Iloilo "which was not under occupation by the Japanese forces" and the trial held in the municipality of Dingle; the presiding judge rendered decision in open court, dictating to the stenographer only the dispositive part of the decision, and the judgment "was not prepared in the form required by section 2, Rule 116 of the Rules of Court, no statement of facts upon which said judgment was based having been made." The petitioner was committed to the custody of the provincial warden on June 22, 1945, but on October 5, 1945, another commitment was issued addressed to the Director of Prisons; "steps have been taken both by this court and by the Department of Justice to enable the Honorable Ceferino de los Santos, now judge of Ilocos Sur, to reduce to writing his decision against the petitioner, the stenographic notes taken therein having been transcribed and submitted to the said judge through the Department."

Petitioner filed a reply wherein it appears that, although Attorney Sorioso manifested his intention to appear on January 22, 1945, the clerk of court of Iloilo refused to transmit the records of criminal case No. 4 to the Supreme Court, as there was no sense of appealing against a decision limited to a mere "verbal dispositive part," and that petitioner's counsel was furnished with Judge Makalintal's decision only on November 4, 1946, two days after he mailed the petition to the Supreme Court.

After a long and protracted deliberation, this court issued on December 10, 1946, the following resolution:

"The parties in L-1153, *Crispulo Talabon vs. The Iloilo Provincial Warden*, are required to inform this Court within 15 days from notice of the facts that may explain why, notwithstanding the fact that petitioner has been detained since 1942, the hearing of his case took place only on November 16 and 17, 1944, and why, although the dispositive part of the sentence was announced by the trial judge since January 22, 1945, no written and duly signed decision has as yet been rendered at the time the petition for a writ of habeas corpus has been

filed."

Petitioner complied with the resolution by submitting to this court a statement of the clerk of the Court of First Instance of Iloilo, dated December 28, 1946, certifying that "up to the present date no written decision has ever been rendered in the above-entitled case." The respondent stated that petitioner, although detained since 1942, was finally tried only on November 16 and 17, 1944, "due to the fact that the detainee was at that time in the custody of the army which did not readily deliver said person to the civil authorities" and the conditions of the time were tumultuous and unstable, and explains that Judge De los Santos' failure to render a written decision was due to the fact that he assumed his office as Congressman after the liberation. Annexes presented by respondent show that the case against Talabon was scheduled for trial on December 14, 1943, but there is no explanation why the trial did not, take place on said date. It appears also that another trial was set for July 13, 1944. No explanation was given why said trial did not take place on that date.

There is no question that petitioner has been deprived of his personal freedom since June, 1942. He was tried for murder only on November 16 and 17, 1944, no explanation having been given why the trial has been delayed for more than two years. Respondent's allegation as to the tumultuous and unstable conditions of the time and that the army "did not readily deliver" the person of petitioner to the civil authorities is no justification. It is a matter of contemporary history, of which judicial notice should be taken, that the Japanese were able to occupy but very small portion of the Province of Iloilo and the remaining unoccupied territory of the province was ruled by the Commonwealth Government, whose agencies functioned regularly therein. Whether the delay in the trial was due to the army's fault or the civil officials', it was anyhow the fault of the Commonwealth Government of which the prosecution must answer, and the accused should not unjustly suffer the consequences.

From the last trial on November 17, 1944, up to January 22, 1945, when Judge De los Santos announced his judgment in the form of a "verbal dispositive part," without any statement of facts in support thereof, said judge had at his disposal more than two months to write a decision in conformity with the Constitution and the Rules of Court. There is absolutely no explanation why the more than two months' time was wasted in lazy inaction, amounting to censurable dereliction of duty.

Respondent's allegation that Judge De los Santos assumed his position as Congressman is futile and childish. It is a matter of judicial notice that the first time Congress met after liberation was in June, 1945. In fact, it was its first session after it was created by constitutional amendment. Judge De los Santos assuming his position as Congressman only in June, 1945, does not justify his failure to write a decision from November 17, 1944, to January 22, 1945, neither his failure to correct the first failure to write the decision from January 22, 1945 to June of the same year, that is, for a total period of about seven consecutive months. The failure is aggravated by the fact, brought by respondent himself, that the record of the case had been and remained in possession of Judge De los Santos until it was returned by his wife to the clerk of court only about November 1, 1946, when the clerk of the Court of First Instance of Iloilo forwarded it to the Under-Secretary of Justice to be delivered again to Judge Ceferino De los Santos in Ilocos Sur.

At the time this opinion is being written, several months after petitioner came to us to seek justice and relief for his illegal deprivation of liberty, almost five years after petitioner's ordeal begun in June, 1942, there is no information that a decision has already been written or that one is forthcoming in the near future.

According to the Constitution, since June, 1942, petitioner was entitled "to have a speedy and public trial" (Article III, section 1 [17]), and that right has been brazenly violated. He was arrested in June, 1942, and his case was not tried until November, 1944. As the trial mentioned by the constitutional mandate includes final and executory decision, as the last step, it will appear after about the years petitioner is still on trial. The violation of the

fundamental law is flagrant. If justice has any meaning at all, petitioner is entitled to proper redress.

Section 12 of Article VIII of the Constitution provides:

"No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based."

Upon the facts in this case, petitioner is confined by virtue of a commitment issued on January 22, 1945, based on a judgment consisting solely a "verbal dispositive part," without any statement of fact in support thereof, much less any statement of the law applicable.

Said judgment, having been rendered in open violation of the Constitution, is null and void. To make effective the constitutional mandate, the Rules, of Court requires that a decision be written and signed by the judge. (Section 2 of Rule 116.) No such thing has been done in this case. If the judgment, the "verbal dispositive part," upon which the commitment was issued was and is null and void, the commitment has no leg to stand on and it must fall by its own weight. The commitment becomes apodous. Petitioner's confinement, being based on said commitment, must be declared illegal. Therefore, petitioner is entitled to be immediately released.

We are not to end this opinion without condemning in unmistakable terms the indefensible delays in the administration of justice of which petitioner appears to be a pitiable victim.

Almost five years' delay in the trial and in the rendition of the decision in first instance is more than enough for one to clamor to heavens.

These shameful delays are but an index of some of the defects of our administration of justice. The whole system needs overhauling. Procrastination, laziness, lack of sense of duty, absence of civic spirit ought to be eliminated if the system is not to degenerate into one of injustice. To improve the methods in the administration of justice the revision of the Rules of Court, many parts of which are either obsolete or not conducive to a fair and speedy disposal of cases, must be undertaken as we have proposed since the very first time we came to sit in this court.

Records are kept as a guarantee against mistakes, lapses of memory, arbitrariness and injustice. That is the reason why the Constitution ordains that "no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based," (section 12, Article VIII), and the Constitutional Convention, to emphasize the mandatory nature of the provision, had used the negative form.

In petitioner's case, that constitutional mandate has been violated without any compunction and there is no reason or pretext that can attenuate or minimize the gravity of the violation. It is high time that the evil be eradicated. No judge should be allowed to violate with impunity the constitutional mandate nor the reglementary provision that appears in section 2 of Rule 116, and to make them effective proper sanctions should be adopted.

Judicial decisions, besides directly affecting the interested parties in a litigation, are among the potent factors in the shaping of the way of life of a people. Court decisions, resolutions and orders are very often of far-reaching effects. The people's interest requires that they be published, and publication requires written record. The practice of secrecy, blank records and unwritten actuations and the policy of concealment are highly detrimental to justice and to public interest. There is no reason why mistaken practices and methods, just because they are traditional, should be allowed to persist. Old moulds must give way to new ones which can better attain their purpose.

There is no reason why the machinery of the administration of justice should not be reformed and improved to better respond to the needs of the time.

That the work of judges is prosaic, arid, jejune, unemotional, unimaginative, bare of all dramatic interest, productive of ennui, is a prevalent idea in many persons. Their mistake is due to the failure of their minds to

penetrate the screen of appearances in the surface and to discover the real cosmos lying beneath. They forget that in the market of human interests, in the uninterrupted confusing euripus of passions and actions, in the inevitable conflicts arising from the motley and variegated social activities, tribunals are called upon to function as a kind of clearing-houses, settling differences, fixing values, wiping obstructions, so as to smoothen the flow of human life. There are legal problems the solution of which would exhaust all the ingenuity of a judge. Sometimes they call for intellectual and moral heroism to fight external hidden forces striving to veil the light of truth or to skew the line of duty traced by conscience. Sometimes the feeling of tragic defeat is inevitable. But there are times when discovery, invention, and achievement would duplicate the glorious feeling of Galileo in front of the leaning tower of Pisa, of Newton looking at the falling apple, of Archimedes shouting "Eureka!" in the streets of Syracuse, of Thomas Aquinas when, attending a royal banquet in the court of King Louis IX of France, suddenly brings down his huge list on the great table, with a crash that startled everyone like an explosion, causing goblets to leap and rattle, and crying out in a strong voice "and that will settle the Manichees!"

The role of innovators and reformers is hard and often thankless. They are often in danger of being persecuted by the powerful whose intellectual and moral stature cannot measure up with the strong position to which they are catapulted by causes other than true merit. Their outspokenness is resented by those who are profiting by the wrongs sought to be corrected. The tyrants of the situation are prone to resort to any measure, no matter how unscrupulous, to silence or nullify them. History records many martyrdoms caused by intolerance against new ideas and methods. Nevertheless, innovation and reform should continuously be undertaken if death by stagnation is to be avoided. If need be, someone must be ready to face the ordeal, to accept sacrifice, to be immolated for the sake of better principles and ideals. The path of advancement and culture is strewn with the shredded victims of intolerance and of the temporary masters of an ugly situation. New truths must be discovered and new ideas created. New formulas must be devised and invented, and those barren and outworn discarded. Good and useful traditions must be preserved, but those hampering the progressive evolution of culture should be relegated and stored in the museum of memory. The past and the present are just stepping stones for the fulfilment of the promises of the future. No effort must be spared to translate into magnificent reality the beautiful dreams and aspirations of thinkers and poets.

Since the last decade of the nineteenth century, physical science has progressed by leaps and bounds. Polonium and radium were discovered by Madam Curie, Rontgen discovered the X-ray, and Rutherford the alpha, beta and gamma particles. Atom ceased to be the smallest unit of matter to become an under-microscopic planetarian system of neutrons, protons, and electrons.

Ion exchangers are utilized to make of electrons veritable lamps of Aladdin. Plants are grown in plain water, without any soil, but only with anions and cations. Sawdust has ceased to be a waste matter, and from it is produced wood sugar, weighing one-half of the sawdust processed. Inter-stellar space vacuum, almost absolute, is being achieved to serve ends that contribute to human welfare. Bacteria and other microbes are harnessed to serve useful human purposes. The aspergillus niger is made to manufacture the acetic acid to produce vinegar for the asking. The penicillum notatum and the bacillus brevis are made to produce penicillin and tyrothricin, two wonder drugs that are saving many lives from formerly lethal infections. DDT decimates harmful insects, thus checking effectively malaria, and illness- that used to claim more than one million victims a year in the world. The creation of synthetics has enriched the material treasures offered to man by nature. Means of transportation are developed to achieve supersonic speeds. Many scientific dreams are fast becoming marvelous realities. Thus, science marches on. There is no reason why the administration of justice should not progress onward, synchronized with the rhythm of general human advancement towards a better future.

Thus we wrote a few days after this court, by a small margin, finally voted, by the middle of January, 1947, to

turn down petitioner's plea for redress.

Now, as soon as we were afforded the opportunity of reading the majority opinion, for which we have been waiting for more than three months, we are constrained to add a few more statements.

The majority invoke sections 4 and 13 of Rule 102 in support of their position.

Under said section 4, if a person restrained of his liberty is in the custody of an officer "under process issued by a court or judge" with "jurisdiction to issue the process," the writ of habeas corpus shall not be allowed, and that, "if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process." Under section 13, the writ shall be considered prima facie evidence of the cause of restraint, "if it appears that the prisoner is in custody under a warrant of commitment in pursuance of law."

The facts in this case show conclusively that petitioner's commitment was issued by virtue of "a verbal dispositive part" of a so-called judgment, promulgated on January 22, 1945, more than two years ago, but which was never reduced to writing. We have already shown that said alleged judgment was and is null and void ab initio, being in open violation of express provisions of the Rules of Court and of the Constitution. The judge who rendered said verbal judgment was absolutely devoid of any legal power to render it. In rendering it, he went beyond the jurisdiction granted to him by law. He had jurisdiction to render a judgment as provided by the Rules of Court and the Constitution, but the judgment he rendered was beyond his official powers to render. It was illegal, and no court or judge has jurisdiction or power to commit an illegality. The commitment of petitioner was not issued "in pursuance of law." Evidently, under the very sections 4 and 13 of Rule 102, invoked by the majority, their stand has to fall as groundless.

They argue that, "however illegal or defective the judgment may be," the lower court "did not lose the jurisdiction over the offense and the petitioner and to impose upon him the proper penalty." This statement reveals that they are missing the real issue in this case. They commit the mistake of assuming that jurisdiction "over the offense" is involved in this case, when it is not. They commit the mistake of assuming that jurisdiction "to impose upon him the proper penalty" is in issue in this case, when it is not. The issue is whether petitioner is illegally deprived of his liberty, said deprivation being by virtue of a commitment issued in open violation of the Rules of Court and of the Constitution. No correct decision can be rendered in a litigation where the real issue is missed. No fair judgment can be rendered when it decides legal issues not raised therein. The error of judgment of the majority is on the source.

The majority dismissed the open violation of the Constitution perpetrated by the so-called oral judgment as a mere "non-compliance, error or irregularity," and that it does not make said judgment "absolutely void for lack of jurisdiction." When a judge jumps over an ordinary law, fixing his powers, functions and attributes, he is declared acting with lack of jurisdiction and his action is declared void. But when he jumps over the Constitution, acting in open violation of one of its specific mandates or transgressing one of its express prohibitions, made absolute by a language couched in negative form, according to the majority, he does not lose jurisdiction, and his action is not "absolutely void." The inconsistency is so flagrant and so offensive to reason and common-sense to merit further refutation.

Their repeated use of the adverb "absolutely" seems to imply that the unconstitutional action might still be "relatively void," and so the majority suggest that petitioner's relief is either "to appeal" from the oral judgment or to seek mandamus to compel the erring judge "to put in writing" the oral judgment. The first remedy is puerile. How can petitioner appeal against an oral judgment which ceased to exist with the air vibrations breathed by the judge pronouncing it? If only a sound apparatus had recorded it, the suggestion might have some basis. Unfortunately, there is nothing on record to intimate that any sound recording had been taken. The second remedy

is unrealistic. Unless he be a paranoiac, no accused can be expected to seek mandamus to compel a judge to write a sentence against him. Seppuku and kamikaze suicide may have sincere supporters, but it is preposterous to intimate that they can have a place within our legal philosophy or in any sensible system of justice.

It is also suggested that petitioner "could have waited for the judgment of the lower court to be put in writing before perfecting his appeal." To make that suggestion to petitioner, after he has undergone about five long years of imprisonment, is an unbearable cruelty. That is adding sarcasm to petitioner's tragedy. The least that can be said is that it is un-Christian.

The majority try to defend the delay in the trial of petitioner's case and in the rendition of the judgment therein as "not unreasonable or without justification," and although maintaining that petitioner "has already been tried and judgment rendered against him," to answer petitioner's claim that his constitutional right to a speedy trial has been violated, the majority advance the theory that judgment is not part of the "speedy trial" guaranteed to all accused by the fundamental law. Under such a theory, after the trial is over, an accused cannot complain whether judgment is rendered after five years, ten years, twenty years or fifty years. He might as well wait for the decision after his death. The proposition is absurd. To show that the speedy trial guaranteed by the Constitution must include the final step of that trial, that is, the decision, our legislature enacted a provision compelling trial judges, such as judges of first instance and of municipal and justices of the peace courts, to render judgment within ninety days from submission of each case, under penalty of not receiving salary and of being deprived of the privilege of leave. Such provision appears in section 129 of the Revised Administrative Code which says:

"Judge's certificate as to work completed.—Judges and auxiliary judges of first instance, judges of municipal courts, and justices of the peace shall certify on their applications for leave, and upon salary vouchers presented by them for payment, or upon the pay rolls upon which their salaries are paid, that all special proceedings, applications, petitions, demurrers, motions, and all civil and criminal cases which have been under submission for decision or determination for a period of ninety days or more have been determined and decided on or before the date of making the certificate, and no leave shall be granted and no salary shall be paid without such certificate.

"In case any special proceeding, application, petition, demurrer, motion, civil or criminal case is resubmitted upon the voluntary application or consent in writing of all the parties to the case, cause, or proceeding, and not otherwise, the ninety days herein prescribed within which a decision should be made shall begin to run from the date of such resubmission."

The above provision was enacted evidently with the purpose of making more effective the speedy trial constitutional guarantee. The fact that the provision does not include the members of the Supreme Court, only means that the lawmaker cannot improve by a law the sense of duty and responsibility that must be expected from Justices.

Delay is one of the chronic weaknesses of our system of administering justice. Petitioner's case is just one more specimen of a long line of other cases stretching to decades. No effort must be spared to stamp out that weakness. Decisively it is out of rhythm in the Atomic Age just ushered, when the progressively accelerated human activities gained a new impetus. The weakness was already objectionable enough before the advent of the new age. Now it is simply unbearable. Placed in the highest rung of judicial ladder, this Supreme Court must assume leadership in combatting that weakness. All officers and employees within the machinery of the administration of justice, if they are to be loyal to public service, must follow the leadership in the crusade to reduce delay to the minimum possible. We cannot have a better opportunity to make an effective start in the crusade than by ordering petitioner's immediate release.

Respect to tribunals appears to be rooted in some minds in the form of an inflexible dogma, universal and absolute

as the pattern ideas of Plato, immutable as an eternal principle, indisputable as a creed of faith. They fail to perceive or suspect that it may become just an empty phrase when it is not founded on a factual foundation. Respect is a moral attitude. It is the manifestation of a psychical mood. It is not a spontaneous growth. It is not a perennial plant. It is the product of a reaction. Under proper stimuli, human beings react, and react in harmony with the nature of the stimuli. No one will feel respect if there is nothing to incite and invite that attitude. That something must necessarily be one deserving respect. Therefore, if courts of justice are to merit the respect of the people, that purpose cannot be attained by wistful a priori preachings, completely out of place in matters bound by the iron law of cause and effect. That respect can only be built, not on rhetorical figures, no matter how dazzling and beautiful they may be, but on the solidity of actual achievements. When the conduct of the agencies of justice, instead of meriting public respect, rather tends to alienate it, or invite execration, the more eloquence employed in oratorical appeals to regain the lost respect, the greater will be the repugnance to acquiesce or succumb to the verbal promptings and allurements which, in effect, will only serve to emphasize the incompatibility between the formal meaning of the words and the meaning of the substance they are supposed to symbolize.

Those who cannot see beneath or beyond the surface, which happens to be invulnerable to mentalities lazy enough to bother using: the gimlet and scalpel of cutting and piercing analysis, would jump to the rash conclusion that, by our advocacy for the correction of the inadequacies and weaknesses of the present administration of justice, we are undermining the traditional prestige of the courts of justice. In their narrow-mindedness or stark blindness, they fail to see that no words we may write or utter may increase the harm already done by the defects and flaws we are pointing out, and that behind our doings there are only the honest aims to secure speedy correction and to stabilize the shaking public confidence in the efficiency of our system of justice.

There should not be any question of the existence of the inadequacies we are pointing out Just a few days ago, the "Manila Post" published about the administration of justice the following editorial:

"In a speech before the Quezon Bar Association Solicitor Lorenzo M. Tañada discussed the flaws in the administration of justice. He underlined the reforms and innovations necessary to improve the judicial system. His observations merit careful consideration because justice is man's highest concern on earth.

"He scored the tardiness of judges. Cases are set for hearing at a certain time, but the judge starts the session an hour or so later, wasting the time of litigants and their lawyers who take pains to appear in court on time.

"He scored the delay in resolving simple motions. Some judges hear motions which they have not even read. He scored the liberality in granting postponements, the stupid practice of placing several cases in the trial calendar on the same day and the obvious partiality of judges to some parties.

"There are judges riot well versed in procedure; others lack adequate background on substantive law. In this case the fault lies with the appointing power for choosing incompetent men. Yet a judge, even if deficient in legal knowledge and trial experience, can be a good judge if he is conscientious and industrious, honest and scrupulously fair.

"Flaws have always existed in the judiciary but they are not irremediable. Their continued existence has been due in some measure to irresponsible lawyers who resort to chicanery and pettifogging.

"Lawyers and judges must cooperate in insuring the proper administration of justice. They should constantly be conscious of their noble mission. The people will respect and trust the courts if they see that lawyers and judges are painstaking, fair, able and high-minded. So precious a commodity as justice can only be entrusted to honorable men."

On March 2, 1947, the "Manila Tribune" published another editorial about failings of this very Supreme Court.

So far, no one has dared to publicly challenge the truth of the facts denounced by the Solicitor General of the

Republic and narrated in the two editorials, and this happens in a democracy where there are always volunteer knights willing to openly champion good causes and defy unjust accusations and belie falsehoods. The very actuation itself of this Supreme Court in this case, unless we palter with truth, is not above all possible criticism. There is no proceeding which, by its very nature, needs to be disposed of sooner than one of habeas corpus. Notwithstanding this fact, how many months had this habeas corpus case been dragged on in this Tribunal?

Now when as now is the duty of the Supreme Court in upholding the moral tenets of our Constitution and laws more imperative. In no idea is the moral sense more inherent and manifest than in justice. By the nature of their social function, the organs of judicial power are placed in the dominant position of the highest moral leadership. Never was the need of such moral leadership—inspired, dynamic, militant—felt with more acuteness than in the present stage of our travel toward national destiny. Wickedness and lack of scruples are on a rampage in every social strata, private and official. Flagrant violations of the fundamental law are committed with callous nonchalance, while robbery, banditry and gangsterism are practiced in broad daylight. Fundamental rights and privileges, liberties and immunities, whether private or official, are trampled down with satrapic insolence, while murders and wanton attacks against honor are perpetrated as exciting sport; graft, corruption, and absolute lack of principles in many high places; black market, gambling, shady negotiations, and exploitation of the innocent and the weak in some other spheres.

The physical or material uncleanness generally prevailing in government buildings and offices seem to exteriorize the psychical attitude of intellectual, moral or spiritual filth, demanding imperatively drastic cleansing to avoid wholesale poisoning and deleterious asphyxia. The moral debauchery and degradation has become so rampant and all-pervading that it seems to have paralyzed or relegated into complete futility the ordinary sources of moral guidance, inspiration and upliftment of the people, where spiritual and educational leadership used to originate. Even among those who had made the vow of poverty and consecrated themselves to charity, there are those who are trafficking and racketeering in the temple and have again erected as Aaron an altar to the golden calf. The press seems to be inadequate to expose and feature the magnitude of the social gangrene undermining the vitality of this Republic. There are no Savonarolas to arouse the higher thoughts and finer feelings, indispensable to avoid the onrush to the debacle. The ultimate hope to escape collapse must be pinned on the judiciary for the latter to fulfill with unrelentless straight-forwardness the duties of moral leadership entrusted to it by the Constitution. The judiciary should be the mighty euphroe that must link the loosened or severed moral cords and strengthen the bonds which will keep society from disintegrating. It can do no better than by starting to effectively enforce to the full extent the mandates of the fundamental law.

Speaking of the civilization which flourished in Crete about five millennia ago, Will Durant made the following observation: "It is as difficult to begin a civilization without robbery as it is to maintain it without slaves." (The Life of Greece, p. 10.) The present difficulties should not lead us to despair. Let us, without expectation of any immediate personal reward, exert the maximum effort in the performance of our duties, and let us hope that our people may yet achieve its golden age of Pericles.

We talk in this wise because we have faith in the meliority of men and human institutions. Deteriorism and meliorism are always grappling in unrelentless struggle for predominance. We have thrown our lot for the side of improvement. The status quo must give way to betterment. No matter how far and high the horizon of our goal, the ideal must be kept burning for the realization of new hopes.

We vote to grant the remedy prayed for by petitioner and that his immediate release be ordered.

DISSENTING

HILADO, J.:

I am unable to agree with the majority in the disposition of this case. It appears that since the year 1942 petitioner has been under preventive detention, first under the custody of the remnants of the Filipino forces in Panay who continued defying the Japanese invaders after the fall of Bataan and Corregidor, later under the civil authorities of the Commonwealth Government in the free area of the province of Iloilo, and after liberation and up to the present in the provincial jail of Iloilo. In this Court's resolution of December 10, 1946, the parties were required to inform the Court why, notwithstanding the fact that petitioner had been detained since 1942 the hearing of his case took place only on November 16 and 17, 1944, and why, although the dispositive part of the sentence was announced by the trial judge since January 22, 1945, no written and duly signed decision had been rendered at the time the petition or a writ of habeas corpus was filed herein. The statement of the Clerk of the Court of First Instance of Iloilo of December 28, 1946, certifies that: "up to the present date no written decision has ever been rendered in the above-entitled case." Respondent, on the other hand, informed the Court that petitioner, although detained since 1942, was finally tried on November 16 and 17, 1944, "due to the fact that the detainee was at that time in the custody of the army, which did not readily deliver said person to the civil authorities," and adds that conditions were at the time tumultuous and unstable, and explains that Judge De los Santos' failure to render a written decision was due to the fact that he assumed his office as Congressman after the liberation. From the annexes presented by respondent it appears that the case against petitioner was scheduled for trial on December 14, 1943, but no explanation is given why such trial did not take place. It also appears that the trial was set for another date, July 13, 1944, but this again was not held without any explanation why.

The Bill of Rights of the Constitution ordains under section 1 (17):

"In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right * * * to have a speedy and public trial." (Italics supplied.)

Under Article VIII the same instrument establishes the following stern prohibitions:

"SEC. 12. No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based."

Judge De los Santos evidently transgressed this constitutional inhibition when he, on or about January 22, 1945, allegedly dictated verbally in open court only the dispositive part of his ill-denominated sentence quoted in the no less ill-denominated warrant of commitment of that date, signed by the Deputy Clerk of Court and transcribed on page 3 of the majority opinion, sentencing petitioner to the penalty of from 12 years to 20 years of reclusion temporal, to indemnify the heirs of the deceased in the sum of P2,000, and to pay the costs, with the credit of one-half of his preventive imprisonment. It is admitted on all sides that even that verbal decree was not preceded by any statement of the facts and the law on which it was based. Not being in writing, it was naturally not signed by the judge, and the accused has all along been absolutely unable to appeal therefrom. For how could he appeal from a verbal decision without a statement of facts and the law, naturally unsigned, and consisting only of the so-called dispositive part which itself is not in writing, and existing only in the memory of those who still happen to remember it?

The following principles, I think, are well settled:

"It is an established general rule that constitutional provisions are to be construed as mandatory unless, by express provision or by necessary implication, a different intention is manifest * * *." (12 C. J., p. 740, section 145.)

"As a general rule, all provisions that designate in express terms the time or manner of doing particular acts and that are silent as to performance in any other manner are mandatory and must be followed." (12 C. J., p. 740, section 147.)

"Reason for rule.—(1) 'Constitutions are expressions of the sovereign will of the people, the fountain of alt power and authority. The several departments of the government are created and vested with their authority by them, and they must exercise it within the limits and in the manner which they direct. The provisions of these solemn instruments are not advisory, or mere suggestions of what would be fit and proper, but commands which must be obeyed. Presumably they are all mandatory. Certainly no provision will be construed otherwise, unless the intention that it shall be unmistakably and conclusively appears upon its face.'" (Per Shields, J., in *State vs. Burrow*, 119 Tenn., 376, etc.; Note 36 [a], p. 740, 12 C. J.)

"SEC. 59. Relating to Crimes and Criminal Procedure.—Constitutional provisions relating to crimes and criminal procedure which are complete in themselves and furnish a rule for enforcement are self-executing, but the rule is otherwise as to provisions which indicate the necessity for legislative action to render them effective. * * *

"Provision that accused shall have the right to a speedy and public trial is self-executing * * *." (16 C. J. S., 119, section 59.)

"SEC. 62. Prohibitions and Restrictions.—Constitutional provisions imposing restrictions and prohibitions are mandatory.

"Constitutional provisions in the nature of prohibitions and restrictions are mandatory and must be obeyed." (16 C. J. S., p. 122, section 62.)

"SEC. 63. Prescribing Manner of Performing Acts.—Generally, constitutional provisions which designate specifically, without further provision, the time or manner of doing particular acts are mandatory.

"As a general rule, all provisions that designate in express terms the time or manner of doing particular acts and that are silent as to performance in any other manner are mandatory and must be followed. Such provisions are in general exclusive in respect of the manner of performance and impliedly forbid performance in a substantially different manner, as shown below in section 70. (16 C. J. S., p. 122, section 63.)"

If the above-quoted precept of our constitution is mandatory, if its prohibition against the rendering by any court of record of any decision without expressing therein clearly and distinctly the facts and the law on which it is based "must be followed", if this solemn provision is not merely advisory or a mere suggestion of what would be fit and proper, but is a command which must be obeyed, if the said prohibitory provision is complete in itself and clearly self-executing, if constitutional provisions, like that under consideration, designating specifically, without further provision, the manner of rendering judicial decisions, are mandatory, it seems self-evident and beyond cavil that no act of a judge of such a court in violation of said provision can possibly be valid. The sovereign people have ordained what is contained in this constitutional mandate, and the offending judge is not above them. I cannot subscribe to the theory that the act of such offending judge is merely voidable, valid unless and until voided. For this would place in the hands of the accused or the party the fulfillment or violation of the solemn mandate of the sovereign people, instead of exacting rigorous compliance therewith.

From this, I conclude that the so-called warrant of commitment signed by the Deputy Clerk of Court did not have any legal validity nor effect and could, therefore, not justify the detention thereunder of petitioner. I submit that sections 4 and 13 of Rule 102, invoked by the majority, are unavailing to respondent.

But it may be said that petitioner's detention may be justified in any case by his original arrest by authorities of the Commonwealth Government in that free region of the province. Against this we have the following stubborn

facts: (a) that those military forces who first apprehended and held petitioner, as well as the civil authorities of the Commonwealth Government in the aforesaid free area, were parts of the same government, of which there was a Court of First Instance functioning in that area and presided over by Judge Ceferino de los Santos—so that, in counting and determining the time and duration of said detention, as against the government, the period should be considered as continuous from the original apprehension to the present date; (b) that petitioner has been denied his constitutional right to a speedy trial guaranteed to him by the Bill of Rights; and (c) that since his trial on or about January 22, 1945, to the present day, the delay in the final disposition of his case has been occasioned not by the parties, prosecution or defense, but by the court itself through the latter's failure and neglect to render a written decision with a clear statement of the facts and the law on which it is based, as required by the Constitution.

In this connection there is not the slightest attempt to justify Judge De los Santos' failure to reduce his decision to writing as thus required by the fundamental law, from January 22, 1945, to his assumption of the position of Congressman after liberation. It is a fact within the judicial notice of the courts that the Province of Iloilo was liberated in March, 1945, and the Congress of the Philippines did not convene for its first session after liberation until June of the same year. Much less is there any explanation of why during all these years the stenographic transcript was not submitted to the next judge presiding the court after the departure of Judge De los Santos, for the said new judge to render a decision in due form. In the case of *Conde vs. Rivera and Unson* (45 Phil., 650), this Court held that where the defendant's constitutional right to a speedy trial was violated by the prosecuting officer, without good cause, securing postponements of the trial against defendant's protest beyond a reasonable period of time, in that case for more than a year, the accused was entitled to relief, if he be restrained of his liberty, by a writ of habeas corpus to obtain his freedom. I believe the instant petitioner has a much stronger case here because the delay has been due to a failure or neglect on the part of the court itself, whoever may be the judge presiding, to do its duty as directed by the Constitution, not for one year but for almost two years and a half.

I am clearly of opinion that the writ prayed for should be granted.

DISSENTING

BENGZON, J.:

The Constitution provides that "no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based." (Article VIII, section 12.) Our rules prescribe that the judgment in criminal cases "must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctively a statement of the facts proved or admitted by the defendant and upon which the judgment is based. * * *" (Rule 116, section 2, Rules of Court.)

In view of these mandatory provisions, the decision allegedly promulgated orally by the judge of first instance of Iloilo should be declared void and non-existing. Consequently, the commitment order by the deputy clerk of court is without legal basis, and the respondent Provincial Warden of Iloilo has no authority to hold the petitioner.

To all intents and purposes, Talabon has been waiting in jail for the Court's verdict, more than one year after his trial had terminated—making liberal allowance for the confusion and disorder arising out of the liberation campaign. Under the precedent established in *Conde vs. Rivera and Unson* (45 Phil., 650), I am impelled to vote for the prisoner's immediate release.

PADILLA, J.:

I concur in the foregoing dissent.

DISIDENTE

BRIONES, M.:

El precepto constitucional que dice: "no decision shall be rendered without expressing therein clearly and distinctly the facts and the law on which it is based" (Artículo VIII, sección 12, Constitución de Filipinas), es de carácter mandatorio, imperativo. Por tanto, la infracción de dicho precepto afecta a la validez de la sentencia. Es decir, una sentencia verbal como la que pronuncio el Juez en la causa que nos ocupa, es enteramente invalida, es como si no existiera.

Otro derecho constitucional, básico, de todo acusado es a ser juzgado prontamente.

La detención del recurrente comenzó en Junio de 1942. El proceso se fue demorando y la vista no se terminó sino a fines de 1944. El Juez pronuncio su sentencia oral condenatoria el 22 de Enero, 1945. Hasta el 2 de Noviembre de 1946 en que el recurrente presentó ante esta Corte la presente solicitud de habeas corpus, el Juez no había dictado aun ninguna sentencia escrita y razonada tal como manda la Constitución y preceptua la regla 115, sección 2, Reglamento de los Tribunales. Es decir, un periodo de unos 4 años si la detención se cuenta desde su comienzo en Junio de 1942; cerca de 2 años si se cuenta desde Enero de 1945 en que se pronuncio la sentencia oral. El tiempo transcurrido desde Junio, 1942, hasta Enero, 1945, puede excusarse teniendo en cuenta las condiciones anormales durante la guerra, aunque en favor del acusado se podría decir que su procesamiento tuvo lugar en una zona de la Isla de Panay no ocupada por los japoneses y en donde el Gobierno del Commonwealth seguía funcionando. Lo que, a mi juicio, no tiene excusa es la detención ilegal, inconstitucional del acusado desde el 22 de Enero, 1945, hasta que el mismo planteó su solicitud de habeas corpus en Noviembre, 1946. Califico de ilegal e inconstitucional esa detención, porque teniendo derecho el acusado, según la Constitución, a ser juzgado prontamente, el Estado lo detenía en la cárcel aproximadamente por 2 años, sin ninguna sentencia válida contra él, colocándole en una situación de grave incertidumbre, paralizando inclusive su derecho de apelar. No cabe invocar el pretexto de la guerra porque se sabe que desde Abril, 1945, por lo menos, la Provincia de Iloilo ya estaba liberada del enemigo y los tribunales funcionaban normalmente. En el asunto de Conde contra Rivera y Unson (45 Jur. Fil., 683, Enero 25, 1924) se ha declarado lo siguiente:

"Sentamos la proposición legal de que, cuando un promotor fiscal, sin causa suficiente, obtiene el aplazamiento del juicio de un acusado, no obstante las protestas de este, por un periodo mayor de lo razonable, como en el presente caso durante mas de un año, el acusado tiene derecho a ser desagraviado mediante un recurso de mandamus para obligar el sobreseimiento de la querrela, o, si estuviere detenido, mediante habeas corpus para obtener su libertad. (16 C. J., 439 et seq.; In the Matter of Ford [1911], 160 Cal., 334; United States vs. Fox [1880], 3 Mont., 512. Véase también nuestra decisión anterior en el asunto de Conde contra Juzgado de Primera Instancia y Fiscal Provincial de Tayabas, No. 21236.)"

No veo ninguna razón porque no hemos de reafirmar, si acaso con mas vigor, la doctrina citada, aunque no sea mas que para inculcar en la conciencia pública la necesidad de un máximo respeto a las libertades civiles—esas libertades que no pocas veces son objeto de mofa y escarnio. En el asunto de Conde contra Rivera y Unson, *supra*, se trataba de un Fiscal que abrumaba a una ciudadana con la presentación de varias querrelas y, por añadidura, demoraba la tramitación de la causa por mas de un año con aplazamientos irrazonables de la vista. Esto se considero como un atropello a los derechos constitucionales de la acusada y esta Corte Suprema ordeno el

sobreseimiento inmediato de todas las querellas pendientes, y con la conminacion al Fiscal recurrido de que se abstuviera "de seguir intentando procesar a la acusada mediante querellas derivadas de los hechos expuestos en las querellas anteriores." Mas todavia: hicimos la declaracion doctrinal terminante de que si la acusada estuviese entonces detenida (estaba libre bajo fianza), tendria derecho a obtener su libertad mediante habeas corpus. En el asunto que nos ocupa no se trata del Fiscal, se trata de algo mas: se trata de una omision judicial, de que el mismo Juzgado ha dejado de dictar sentencia valida contra el acusado por cerca de dos años, sin que conste en autos un motivo razonable. De modo que, en realidad de verdad, aqui hay mas razones para actuar prontamente, para amparar el derecho constitucional del acusado de ser juzgado prontamente; en una palabra, para decretar su libertad mediante un mandamiento de habeas corpus, repitiendo lo declarado en el asunto de Conde contra Rivera y Unson, supra.

Y no se diga que la sentencia no forma parte del speedy trial, del juicio pronto y expedito. Parece elemental que la sentencia es precisamente lo que remata el proceso, de suerte que sin sentencia el juicio es una cosa incompleta, truncada. Cuando la Constitucion manda que el acusado sea juzgado prontamente, eso tiene que incluir necesariamente la sentencia: no se puede juzgar sin sentenciar.

Por tanto, debe expedirse el mandamiento de habeas corpus solicitado.

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