

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. BENEDICTO JOSE Y SANTOS, DEFENDANT AND APPELLEE.

G.R. No. L-22. December 20, 1945

Ponente: FERIA, J.

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FERIA, J.:

On May 24, 1945, Benedicto Jose y Santos was accused of a violation of article 159 of the Revised Penal Code in an information filed by the City Fiscal of Manila, as follows:

"That on or about some time prior to April 19, 1944, the said accused was prosecuted and convicted in Criminal Case No. 3 of the Court of Special and Exclusive Criminal Jurisdiction of the City of Greater Manila, for a violation of section 8 (6) and 2 (6) of Act No. 65 of the National Assembly of the Republic of the Philippines in connection with section 11 of Ordinance No. 1 of the President of said Republic, and sentenced to ten years of imprisonment, which sentence he commenced to serve on the aforesaid date, April 19, 1944.

"That after serving about six months of his sentence aforesaid, the said accused was, on October 15, 1944, granted a pardon by the President of the Republic of the Philippines, on condition that the said accused should not again violate any of the Penal Laws of the Philippines, a condition which was duly accepted by him, for which reason he was immediately released from confinement.

"That some time prior to April 5, 1945, the said accused, while enjoying the conditional pardon granted him as aforesaid, did willfully, unlawfully and feloniously violate the condition of said pardon, by then committing¹, in the City of Manila, Philippines, the crime of qualified theft, for which he was prosecuted, convicted and sentenced in Criminal Case No. A-605 of the Municipal Court of said city, the said accused having been received on the said date, April 5, 1945, at the new Bilibid Prison to serve the said sentence imposed upon him. Contrary to law."

Defendant filed a motion to quash the information upon the ground that the facts charged do not constitute an offense, because both the judgment rendered by the Court of Special and Exclusive Criminal Jurisdiction and the conditional pardon granted by the President of the so-called Republic of the Philippines, are void and without legal effect in accordance with the proclamation of General Douglas MacArthur of October 23, 1944; because, even without such proclamation, the proceedings of said court would be null and void inasmuch as it was exclusively a creature and an agency of the Imperial Japanese Army in the Philippines and the motives behind its creation are diametrically opposite to the political policies of the present regime; and because the fundamental constitutional rights guaranteed by the Constitution of the Commonwealth were denied an accused under the procedure adopted by said court. Defendant alleged as a further ground for his motion to quash that the court has no jurisdiction to try the case because it has no authority to take cognizance of and continue to final judgment proceedings commenced and pending in the courts under the so-called Eepublic of the Philippines.

The City Fiscal opposed this motion to quash on the ground that "there should be no question as to the legality of the sentence imposed upon him (defendant) by the said Court of Special and Exclusive Criminal Jurisdiction and the pardon granted him after serving six months of his sentence by the then President of the defunct Republic

because, as said before, the defunct Republic being a de facto government, the courts created by it as well as the laws and ordinances under it should be upheld as being legal in conformity with the principles of International Law as elicited in the case of *Williams vs. Bruffy* (26 U. S. 176, 185; 25 Law. ed., 716), which, among other things, says (referring to de facto government) 'its legislation is in general recognized and the rights acquired under it are with few exceptions respected after the restoration of the authorities which were expelled.' "

The court, after considering both the motion to quash and the opposition thereto, rendered a resolution dismissing the case with costs de oficio. In said resolution the court held: first, that the facts alleged in the information constitute no offense, because article 159 of the Revised Penal Code punishes one convicted by a court of the legitimate or the Commonwealth Government, who violates a conditional pardon granted him by the Chief Executive, that is, the Governor General or his legitimate successor, the President of the Commonwealth, and not one convicted by a summary criminal court created by the National Assembly of the so-called Republic of the Philippines, who violates a conditional pardon granted him by the President of the said Republic; and besides, the proceedings provided for the trial of the offenses punishable under Act No. 65 and Ordinance No. 7 are repugnant to and derogatory of the constitutional rights of every accused under the Constitution of the Commonwealth; secondly, that the proceeding's had in said criminal case No. 3 of the said Court of Special and Exclusive Criminal Jurisdiction are now void and without legal effect in accordance with the proclamation of General Douglas MacArthur; and thirdly, that granting that the so-called Republic of the Philippines was a de facto government, the validity of its acts against the lawful government and its citizens depended entirely upon its ultimate success, and having been overthrown by the forces of liberation, all such acts necessarily perished with it.

The City Fiscal duly appealed from said resolution to this Court.

The Solicitor General, in his brief for the appellant, upheld the resolution of the lower court on the ground that, although the so-called Republic of the Philippines was a de facto government and consequently its legislative and judicial acts are valid as a general rule, as an exception to that rule, such acts as are hostile in their purpose and mode of enforcement to the authority of the national government, or impair the rights of the citizen under the constitution, are null and of no effect. Therefore, the judicial act or punitive sentence imposed upon the appellee Benedicto Jose by the Court of Special and Exclusive Criminal Jurisdiction, under a summary procedure which denies an accused a fair hearing and deprives him of his right to appeal, is null and void because said act impaired the rights of the citizen under the Commonwealth Constitution, and was in excess of the powers of the said de facto government. As a logical corollary, the conditional pardon granted to the appellee, which was a mere sequence of said proceedings, should also be deemed null and ineffective.

The questions involved in this appeal are: (1) whether or not the sentence of ten years' imprisonment imposed upon the defendant by the Court of Special and Exclusive Criminal Jurisdiction should be denied validity after the reoccupation of the Philippines and restoration of the Commonwealth Government, and (2) whether the defendant can now be prosecuted for having allegedly violated the conditional pardon granted by the President of the so-called Republic of the Philippines.

- As to the first question, the alleged crime of which the defendant was prosecuted and convicted in criminal case No. 3 of the Court of Special and Exclusive Criminal Jurisdiction, according to the information above copied, was for a violation of sections 3 (b) and 2 (b) of Act No. 65 of the National Assembly of the so-called Republic of the Philippines, in connection with section 11 of Ordinance No. 1 of the President of the said Republic. Said section 11 of Ordinance No. 1 reads as follows:

"No one except the control organization or the persons designated by said organization shall engage in the purchase, importation, sale or transfer of rice and corn, or act as agent, broker, or intermediary in the purchase, sale or transfer of such commodities for the purpose of their sale or transfer unless authorized by the Minister

of Agriculture and Commerce."

Section 3(b) and 2(b) of Act No. 65 provide for the imposition in its maximum period of the penalty imposed by section 14 of said Ordinance No. 1 for the violation of the above-quoted provisions by private individuals. In accordance with our decision in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* (G. R. No. L-5, promulgated on September 17, 1945, p. 113, ante), judicial acts of the governments de facto established by the Japanese forces of occupation in these Islands remained good and valid, except those which were of a political complexion, upon the restoration of the Commonwealth Government; and in the case of *Peralta vs. Director of Prisons* (G. R. No. L-49, promulgated on November 12, 1945, p. 285, ante), we have expounded our opinion as well as the opinion of writers on International Law on the nature and description of a punitive sentence of a political complexion.

Applying to the present case what we have stated in the said decisions relating to penal sentences of a political complexion, it is evident that the punitive sentence which convicted the appellee to ten years' imprisonment, was of a political complexion and, therefore, it became of no effect upon the reoccupation of the Philippines and restoration of the Commonwealth Government, because it penalized as a crime an act "not criminal by the municipal law." As Hall says, upon the restoration of the legitimate government in a territory which has been occupied by an enemy, by virtue of the right of postliminium, "judicial acts done under his control, when they are not of a political complexion, * * * remain good * * * Political acts on the other hand fall through as of course * * * the execution also of punitive sentence ceases as of course when they have had reference to the acts not criminal by the municipal law of the state * * *." (International Law, seventh ed., p. 518.)

- As to the second question, we hold that the appellee cannot now be prosecuted criminally for a violation of the conditional pardon granted by the President of the so-called Republic of the Philippines, for the following reasons:

Because, without necessity of discussing and determining the intrinsic validity of the conditional pardon, as an act done by the President of the so-called Republic of the Philippines, after the restoration of the Commonwealth Government, no elaborate argument is required to show that the effectivity of a conditional pardon depends on that of the sentence which inflicts upon a defendant the punishment from, which the latter was exempted by the pardon. If a punitive sentence is or becomes null and void, the conditional pardon which remits the punishment inflicted by that sentence ceases to be of any effect in so far as the individual upon whom it is bestowed is concerned, for the latter cannot be required to serve, a void sentence of penalty imposed on him, even without such pardon.

Besides, under the provisions of Acts Nos. 1524 and 1561, which were the sources of article 159 of the Revised Penal Code, a violator of a conditional pardon was liable to suffer or serve the unexpired portion of the original sentence, irrespective of the length of time of said unexpired portion; and article 159 of the Revised Penal Code provides that if the penalty remitted by the granting of a pardon be higher than six years, the convict shall suffer the unexpired portion of his original sentence. As the unexpired portion of the original punitive sentence imposed upon the appellee is higher than six years (inasmuch as he had served only about six months of the ten years' imprisonment imposed upon him), if the appellee be now prosecuted and convicted, he shall have to be sentenced to serve the unexpired portion of his original sentence; but as the said sentence is now invalid and of no effect, it is obvious that the appellee *Benedicto Jose* can no longer be prosecuted, for no penalty can be imposed upon him for violation of said conditional pardon.

In order to avoid confusion and error, it may not be amiss to say that a conditional pardon remits the punishment to be served by virtue of a sentence, and does not remit, terminate, or set aside the sentence itself. Pardon is

prospective, that is, remits only the penalty not yet suffered, and not retrospective or does not affect that which has already been served and much less the sentence. (Robert vs. State, 51 N. Y. Supp., 691, 692; 30 App. Div., 106; In re Spencer [U. S.], 22 Fed. Cas., 921, 923.) The validity of a sentence is one thing, and the enforceability thereof another. A conditional pardon has the effect of suspending the enforcement of a sentence, or exempting the culprit from serving the unexpired portion of the penalty, if he does not violate the conditions under which pardon was granted. But the sentence is still valid. This is confirmed by the second paragraph of article 36 of the Revised Penal Code which provides that "a pardon shall in no case exempt the culprit from the payment of civil indemnities imposed upon him by the sentence." The punitive sentence had not therefore, become null and void before the restoration of the Commonwealth Government by the pardon, but only upon the restoration of said government by virtue of the right of postliminium, as above stated.

Violation of a conditional pardon is not a substantive offense or independent of the crime for the commission of which the punishment inflicted in the sentence was remitted by the pardon. In the case of United States vs. Ignacio (35 Phil., 202, 204), it was held that "the defendant accepted the conditional pardon and thereby secured his release from imprisonment. Having accepted the conditional pardon, he is bound by its terms. The record shows that he has been guilty of misconduct after his conditional pardon. By such misconduct, he forfeited his pardon and his right to liberty thereunder. When a pardoned person violates the conditions of his pardon, he is left in the exact situation in which he was when the pardon was granted, and the original sentence may be enforced against him. (Ex parte Wells, 18 Howard [U. S.], 307; Ex parte Kins, 61 Ark., 321; 30 L. R. A., 736; 54 Am. St. Rep., 209; Kennedy's Case 135 Mass., 48; Ex parte Marks, 64 Cal., 29.)"

Our holding that violation of a conditional pardon is not a substantive or independent offense, is in support of our conclusion that the invalidity of the original sentence upon the restoration of the Commonwealth Government carried with it the ineffectiveness of the conditional pardon, because "a conditional pardon delivered and accepted has¹ been said to constitute a contract between the sovereign power or the executive and the criminal that the former will release the latter upon the compliance with the conditions." (State vs. Eby, 170 Mo., 497; 71 S. W., 52; Peo. vs. Potter, 1 Edm. Sel. Cas. [N. Y.] 235; 1 Park Cr., 47; State vs. Smith, 17 S. C. L., 283; 19 Am. D., 679; Lee vs. Murphy, 22 Gratt. [63 Va.], 789; 12 Am. R., 563; 46 C. J.; 1202.) Consequently, if a culprit violates the conditions¹ of the contract of conditional pardon, this is resolved of set aside, and the original punitive sentence, which, has not been nullified but only suspended in its force and effect by such pardon, shall have to be enforced against him. But if the said sentence is no longer good and valid and cannot be enforced, the defendant cannot be criminally prosecuted for the violation of the conditional pardon. :

For the foregoing reasons, the resolution appealed from is affirmed, without costs. So ordered.

Moran, C. J., Jamnilla, De Joya, Pablo, and Bengzon, JJ., concur.

CONCURRING AND DISSENTING

OZAETA, J.,

I concur in the result. The conditional pardon involved in this case had no legal basis because, for the reasons stated in my concurring opinion in the case of Peralta vs. Director of Prisons (G. R. No. L-49, p. 306, ante) the sentence in criminal case No. 3 of the Court of Special and Exclusive Criminal Jurisdiction, which said pardon

purported to remit, was null and void.

I dissent from the ratio decidendi of the majority opinion because I think it is untenable. The majority opinion holds that the sentence rendered against the herein appellee in said criminal case No. 3 of the Court of Special and Exclusive Criminal Jurisdiction was valid but that, as it was of a political complexion, "it became of no effect upon the reoccupation of the Philippines and restoration of the Commonwealth Government." If that sentence was valid and effective during the enemy occupation, then the conditional pardon granted during the same regime must, also be held valid; and there was no necessity to declare that "it became of no effect upon the reoccupation of the Philippines" because the penalty imposed by it had already been remitted. The effect of a sentence is, that the convict has to suffer the penalty imposed. Therefore, from the moment the penalty is remitted by pardon the sentence ceases to have further effect.

If the sentence as well as the conditional pardon were valid, it would be immoral and against public policy to sanction or condone a violation of any of its conditions.

The majority opinion denies effectivity to the conditional pardon as a result of its holding that the sentence it purported to remit became ineffective upon the restoration of the Commonwealth Government. Such reasoning, I think, is unsound. The effectivity of a pardon is not parallel to or coextensive with the effectivity of the sentence to which it applies. The former terminates the latter. If we assume, as the majority holds, that the sentence was valid and effective during the enemy occupation, we could not escape the conclusion that the conditional pardon in question became effective at once upon its acceptance by the prisoner as, in fact, he was released by virtue of it; and after his release the sentence was no longer effective. Thus the theory of the majority that "the punitive sentence which convicted the appellee to ten years' imprisonment * * * became of no effect upon the reoccupation of the Philippines and restoration of the Commonwealth Government," falls of its own weight, because how could a sentence which had been remitted and had ceased to have any force and effect before the restoration of the Commonwealth Government have been rendered ineffective upon such restoration? That would be tantamount to declaring that a person who died in October, 1944 was killed by a bomb which was dropped in February, 1945.

The weakness of the majority opinion becomes manifest when it has to resort to Acts Nos. 1524 and 1561 as the sources of article 159 of the Revised Penal Code, under which the accused has been prosecuted. Those Acts have no application because the accused is not prosecuted there-under but under the later and superseding penal statute, namely, article 159 of the Revised Penal Code; and under said article the accused could be sentenced to suffer prison correccional in its minimum period if the conditional pardon were valid. The fact that the second sentence of said article would have been applicable to the accused were it not for the restoration of the Commonwealth Government and the right of postliminium, would not preclude the application of the first sentence (which provides for the penalty of prison correccional in its minimum period) if the sentence against the accused were valid and effective during the enemy occupation. That is so because the pardon was granted on October 15, 1944, and the Restoration did not occur until February 27, 1945. So that if the sentence as well as the pardon were valid during enemy occupation, as the majority opinion holds, it would result that the period from October 15, 1944, to February 27, 1945, remained unserved but remitted. Hence the untenability of the majority's ratio decidendi.

The dictum of the majority that "violation of a conditional pardon is not a substantive offense or independent of the crime for the commission of which the punishment inflicted in the sentence was remitted by the pardon, because the penalty imposed for such violation is the unexpired portion of the punishment imposed by the original sentence," is, I think, incorrect. That may have been so before the enactment of article 159 of the Revised Penal Code; but since that enactment it is a substantive offense because the penalty therefor is no longer necessarily the remitted portion of the sentence, for when the unexpired portion is less than six years the convict who violates the

conditions of the pardon shall suffer the penalty of prison correccional in its minimum period.

CONCURRING

PARAS, J.,

From the meager details appearing in the record we can deduce that the petitioner had been convicted of a violation of the Food Control Regulations, promulgated by the "President" of the "Republic of the Philippines." Before the war, during the war and until the present time, there have been such regulations on food control. (See Commonwealth Act No. 600, enacted on August 17, 1940; Executive Order No. 371, dated October 2, 1941; and Executive Order No. 62, dated August 14, 1945). There is, of course an honest conflict of opinion as to the validity of the proceedings under which the petitioner had been prosecuted and convicted; but I concur in the result for the following reasons: The prosecution of offenders at the outset was a plausible attempt to curb food control violations during the emergency period. Conditions, however, had culminated to such a climax that there had been serious scarcity of food supplies and consequent starvation. The instinct of self-preservation and necessity knew no law at the time, so much so that further arrests and prosecutions were not made in spite of rampant violation of the regulations. Indeed, we may take judicial notice of the fact that even the authorities had then violated said regulations by purchasing commodities over and above the ceiling prices fixed by them. Under a realistic view of these circumstances, I would consider the alleged conditional pardon granted to the petitioner as having become absolute and therefore beyond the purview of article 159 of the Revised Penal Code.

CONCURRING

PERFECTO, J.,

We concur in the affirmance of appealed Judge Dizon's resolution. The grounds alleged in said resolution are well-taken, and are in keeping with the legal propositions maintained in our two opinions in the case of *Co Kim Cham vs. Valdez Tan Ken and Dizon* (G. R. No. L-5, p. 153, ante) and in the case of *Peralta vs. Director of Prisons* (G. R. No. L-49, p. 334, ante).

CONCURRING

HILADO, J.,

As in G. R. No. 49 (p. 355, ante), "Peralta vs. Director of Prisons", I concur in the result, as well as in the reasons upon which the majority base their opinion not inconsistent with the views expressed in my dissenting opinion in G. R. No. L-5 (p. 199, ante), and those set forth in my concurring opinion in "Peralta vs. Director of Prisons." But the importance of the principles involved would seem to justify more elaboration with a view to further strengthening the grounds upon which we order the defendant's release.

Besides the arguments advanced in my dissenting opinion in "Co Kim Cham vs. Valdez Tan Keh and Dizon" and my concurring opinion in "Peralta vs. Director of Prisons," to show that the so-called Republic of the Philippines was not even a de facto government within the meaning of International Law, there are three historical facts which, in my opinion, would conclusively prove that the said "Republic" was not such a de facto government. Said facts are: (1) the Pact of Alliance concluded and signed by and between the Imperial Government of Japan and the said "Republic" on October 14, 1943; (2) Proclamation No. 29 of the President of the "Republic of the Philippines", dated September 21, 1944, proclaiming martial law and placing "the Philippines and all parts thereof" thereunder for the alleged reason that "the danger of invasion" was "imminent"; and (3) Proclamation No. 30 of the same "President" proclaiming the existence of "a state of war * * * between the Republic of the Philippines and the United States of America and Great Britain, effective September 23, 1944, at 10 o'clock in the morning". Because of their decisive bearing on the vital questions above referred to, these documents are hereinbelow transcribed at length:

PACT OF ALLIANCE BETWEEN THE PHILIPPINES AND JAPAN

"The President of the Republic of the Philippines and His Majesty the Emperor of Japan, now that Japan has decided to recognize the Philippines as an independent state;

"Being determined that the two countries shall closely cooperate, each as good neighbor respecting the self-asserting independence of the other, to establish Greater East Asia based on justice, thereby contributing to the peace of the whole World and being determined firmly and unshakably to eradicate all sources of evil in the way, have resolved for that purpose to conclude a Pact of Alliance and named their respective Plenipotentiaries, that is to say:

"The President of the Philippines His Excellency, Mr. Claro M. Eecto, Minister of States;

"His Majesty, the Emperor of Japan His Excellency, Mr. Syozo Murata Zyusanmi, Ambassador Extraordinary and Plenipotentiary;

"who, after having communicated to each other their respective Full Powers, found to be in good and due form, have agreed upon the following Articles:

"Article 1

"There shall be between the High Contracting Parties perpetual relations of good neighbor and amity on the basis of mutual respect of sovereignty and territories.

"Article II

"The High Contracting Parties shall closely cooperate on matters, political, economic, and military, for the successful prosecution of the War of Greater East Asia.

"Article III

"The High Contracting Parties shall closely cooperate with each other for the establishment of Greater East Asia.

"Article IV

"The matters of detail necessary for the execution of the present Pact shall be determined through consultations between the authorities concerned of the High Contracting¹ Parties.

"Article V

"The present Pact shall come into force as from the date on which the High Contracting Parties shall have completed the ratification of the Pact.

"Article VI

"The present Pact shall be ratified as soon as possible. The ratification shall be exchanged at Manila as soon as possible.

"In witness whereof the respective Plenipotentiaries have signed the Pact and hereunto affixed their respective seals.

"Done in duplicate, at Manila, this 14th day of October, 1943, corresponding to the fourteenth day of the tenth month of the eighteenth year of Shows.

(Sgd.) "CLARO M. RECTO

(Sgd.) "SYOZO MURATA

"Terms of understanding

"Attached to the Pact of Alliance between 'the Philippines and Japan'

"Additional Article 2 of the Pact

"The Principal modality of the close military cooperation for the successful prosecution of the War of Greater East Asia stipulated in the present Article shall be as follows:

"The Philippines will afford all kinds of facilities for Military actions to be undertaken by Japan; the Philippines and Japan will closely cooperate with each other to safeguard the territorial integrity and independence of the Philippines.

"In witness whereof the undersigned, duly authorized to that end by their respective Governments have signed the present Terms of Understanding.

"Done in duplicate, at Manila, this 14th day of October, 1943, corresponding to the fourteenth day of the tenth month of the eighteenth year of Showa.

(Sgd.) "CLARO M. RECTO

(Sgd.) "SYOZO MURATA

"REPUBLIC OF THE PHILIPPINES

"OFFICE OF THE PRESIDENT

"MANILA

"BY THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES**"PROCLAMATION NO. 29****"PROCLAIMING MARTIAL LAW THROUGHOUT THE PHILIPPINES**

"The danger of invasion being imminent and the public safety so requiring, I, Jose P. Laurel, President of the Republic of the Philippines, pursuant to the authority conferred upon me by section 9, article II, of the Constitution, do hereby place the Philippines and all parts thereof under martial law and suspend the privileges of the writ of habeas corpus therein.

"For the purpose of carrying this Proclamation into effect, the President of the Republic of the Philippines hereby assumes all powers of government essential to or incident in the establishment and maintenance of martial law all over the Philippines, and to that extent, will exercise such powers and functions personally or by delegation by him to the presently organized and existing civil authorities, or to such new agencies or instrumentalities as he may, from time to time, create, in accordance with the exigencies of the situation.

"It is further decreed that:

"1. The respective Ministers of State shall, subject to the authority of the President, exercise direct supervision and control over all district, provincial, and other local governmental agencies in the Philippines when performing functions or discharging duties affecting matters within the jurisdiction of his Ministry and may, subject to revocation by the President, issue such orders as may be necessary therefor.

"2. The Philippines shall be divided into nine Military Districts, seven to correspond to the seven Administrative Districts created under Ordinance No. 31, dated August 26, 1944; the eight, to comprise the City of Manila; and the ninth, the City of Cavite and the provinces of Bulacan, Rizal, Cavite, and Palawan.

"3. The Commissioners for each of said Administrative Districts shall have command, respectively, of the first seven military districts herein created, and shall bear the title of Military Governor; and the Mayors and Provincial Governors of the cities and provinces comprised therein shall be their principal deputies, with the title of deputy city or provincial military governor, as the case may be. The Mayor of the City of Manila shall be Military Governor for the eight Military District; and the Vice-Minister of Home Affairs, in addition to his other duties, shall be the Military Governor for the ninth Military District.

"4. All existing laws shall continue in force and effect until amended or repealed by the President, and all the existing civil agencies of an executive character shall continue exercising their powers and performing their functions and duties, unless they are inconsistent with the terms of this Proclamation or incompatible with the expeditious and effective enforcement of the martial law herein declared.

"5. It shall be the duty of the Military Governors to suppress treason, sedition, disorder and violence; and to cause to be punished all disturbances of public peace and all offenders against the criminal laws; and also to protect persons in their legitimate rights. To this end and until otherwise decreed, the existing courts of justice shall assume jurisdiction and try offenders without unnecessary delay and in a summary manner, in accordance with such procedural rules as may be prescribed by the Minister of Justice. The decisions of courts of justice of the different categories in criminal cases within their original jurisdiction shall be final and unappealable: Provided, however, That no sentence of death shall be carried into effect without the approval of the President.

"6. The existing courts of justice shall continue to be invested with, and shall exercise, the same jurisdiction in civil actions and special proceedings as are now provided in existing laws, unless otherwise directed by the

President of the Republic of the Philippines.

"7. The several agencies of the Government of the Republic of the Philippines are hereby authorized to call upon the armed forces of the Republic to give them such aid, protection, and assistance as may be necessary to enable them safely and efficiently to exercise their powers and discharge their duties; and all such forces of the Republic are required promptly to obey such call.

"8. The proclamation of martial law being an emergency measure demanded by imperative necessity, it shall continue as long as the need for it exists and shall terminate upon proclamation of the President of the Republic of the Philippines.

"9. This proclamation shall take effect on September 22, 1944, at 9 o'clock in the morning.

"IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

"Done in the City of Manila, this 21st day of September, in the year of Our Lord, nineteen hundred and forty-four, and of the Republic of the Philippines, the first.

(Sgd.) "JOSE P. LAUREL

"President of the Republic

"of the Philippines

"By the President:

(Sgd.) "EMIHO ABELLO

"Executive Secretary"

"REPUBLIC OF THE PHILIPPINES

"OFFICE OF THE PRESIDENT

"MANILA

"BY THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES

"PROCLAMATION NO. 30

"PROCLAIMING THE EXISTENCE OF A STATE OF WAR IN

"THE PHILIPPINES

"WHEREAS, the Filipino people, during the whole period of their subjection to alien rule, have unremittingly labored for their freedom and independence and to this end fought two wars and countless revolutions;

"WHEREAS, upon the attainment by the Philippines of this cherished goal of freedom and independence and on the occasion of the inauguration of the Republic of the Philippines on October 14, 1943, the President appeal to all nations and peoples of the world for amity and goodwill and, to the United States of America especially, pleaded that the Philippines be spared the suffering and destruction incident to the resumption of military operations on our soil;

"WHEREAS, notwithstanding this appeal, the United States of America and Great Britain have attacked from the

air certain parts of the Philippines thereby violating- the territorial integrity of the Republic, and causing death or injury to its citizens and destruction or damage to their property;

"WHEREAS, the Philippines must safeguard its independence and territorial integrity as every self-respecting sovereign state is in honor bound to do; and

"WHEREAS, the Republic of the Philippines has entered into a Pact of Alliance with Japan, based on mutual respect of sovereignty and territories, to safeguard the territorial integrity and independence of the Philippines.

"NOW, THEREFORE, I, Jose P. Laurel, President of the Republic of the Philippines, do hereby proclaim that a state of war exists between the Republic of the Philippines and the United States of America and Great Britain, effective September 23, 1944, at 10:00 o'clock in the morning.

"Face to face with the grim realities of war, I earnestly, call upon every Filipino at this momentous hour to show his unswerving loyalty and to give his support to the Government, so that, regardless of the trials and tribulations we are undergoing and those we shall have to suffer in the near future, we may closely and firmly unite to safeguard the free and independent existence of the Philippines.

"IN WITNESS THEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

"Done in the City of Manila, this 22nd day of September, in the year of Our Lord, nineteen hundred and forty-four, and of the Republic of the Philippines, the first.

(Sgd.) "JOSE P. LAUREL

"President of the Republic

"of the Philippines

"By the President:

(Sgd.) "EMILIO ABELLO

"Executive Secretary"

If the "Republic of the Philippines" had really been intended to be and to function as such a de facto government, certainly it would not have been in a position to enter into any Pact of Alliance, nor to proclaim martial law, nor to declare war or the existence of a state of war—all of which are functions appertaining solely to a de jure government otherwise empowered to perform them. In that case, the only power which at the time could have declared martial law would have been the Commander in Chief of the Imperial Japanese Forces stationed here. And there would not have been even an occasion for declaring a state of war since Japan had already declared war on the United States and Great Britain therefore, and no one would ever have thought of declaring a state of war to exist between such a de facto government and the United States and Great Britain—an utter absurdity. It clearly appears that Japan had so adulterated and corrupted the concept and purpose of a true de facto government as known in International Law (granting that this principle is applicable to the instant case), that the resulting organization cannot find a proper place in said law. It should be beyond cavil that the primary aim and purpose pursued by those who set up that organization should determine its true and real character. If we find that their primary aim and purpose was to devise an instrumentality or agency in aid of Japan in her war against her enemies, particularly the United States, no incidental benefit or semblance thereof, seemingly proceeding from the organization—be it in the form of judicial proceedings or otherwise—should be allowed to obscure our sight and becloud our judgment as to its essential reality. If it was intended to be and to serve as such instrumentality or agency, it simply could not be a genuine de facto government. The two concepts are so essentially different in nature and purpose that they cannot even be blended with each other, as you cannot blend oil with water. If we

say that the "Republic of the Philippines" was such instrumentality or agency, we cannot say that it was at the same time a de facto government within the meaning of International Law. And how can we escape calling it such instrumentality or agency under the tragic facts of our recent past?

The notorious Pact of Alliance was concluded and signed on the very day the "Republic of the Philippines" was inaugurated. In it the "Republic" agreed with Japan to "closely cooperate on matters political, economic, and military, for the successful prosecution of the War of Greater East Asia" (Art. II; italics supplied). The unmistakable purpose to create such an instrumentality or agency is here betrayed by the instant harnessing of the "Republic" to Japan's war machine. It was upon this pretext that slave labor was exacted from those thousands of Filipinos who were within the effective reach of the invaders, for work on airfields and other Japanese military installations, for service in the ill-named "Philippine Constabulary" and "Standing Army"; that direly needed food was taken from the mouths of our hungry children to feed the same Japanese soldiers who were later to murder them, etc. Under Article III "The High Contracting Parties shall closely cooperate with each other for the establishment of Greater East Asia.

As we have seen, the proclamation of martial law took place on September 21, 1944, and the declaration of war on September 22, 1944.

That said proclamation of martial law was made in aid of Japan is patent from its very first paragraph wherein it was declared that "the danger of invasion being imminent and the public safety so requiring", martial law was therein proclaimed—the "invasion" alluded to being no other than the coming and landing on Philippine soil of the American Forces of Liberation.

As to the declaration of war contained in the foregoing Proclamation No. 30, of course, it was made in aid of Japan in her war against the United States and Great Britain.

In the long history of the world, may I ask, what de facto government has ever played the role that the "Republic of the Philippines" agreed to play, and did play under the Pact of Alliance?

Things being thus, the fact that said "Republic" had a "Constitution" in whose preamble "The Filipino people" proclaimed "their independence," had a "President," a "Legislature," and a "Judiciary", far from proving that it was a de facto government, would conclusively disprove it. For, in the first place, if it were a truly independent government, it would not be merely de facto, and secondly, if it was not, then it was a mere fraud and a farce—the organization which has earned from President Roosevelt no less a condemnation than the following:

"I wish to make it clear that neither the former collaborationist 'Philippine Executive Commission' nor the present 'Philippine Republic' has the recognition or sympathy of the Government of the United States."
(Message of President Roosevelt, October 23, 1943, U. S. Naval War College, International Law Documents, 1943, pp. 93-94.)

If the handful of Filipinos who organized that "Republic" did so voluntarily, their conduct would be hostile to the United States and their own rightful Government, and, of course, no executive, legislative, or judicial act of such a hostile organization could possibly be valid or binding as against the rightful governments of the United States and the Commonwealth of the Philippines, and their citizens. If said Filipinos acted under duress exerted by the Japanese Imperial Forces, then the whole fabric of that "Republic" would be an utter nullity, and, whatever coercive force and effect its acts might have had by sheer military compulsion whilst the said invading forces remained in this country, they were clearly devoid of intrinsic efficacy as against said rightful governments and their citizens after the liberation. Among those citizens is the petitioner Benedicto Jose y Santos.

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