

BENIGNO S. VIRAY, PETITIONER, VS. THE AMNESTY COMMISSION OF THE ARMED FORCES OF THE PHILIPPINES, AND JUAN D. CRISOLOGO, RESPONDENTS.

G.R. No. L-2540. January 28, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for a writ of prohibition filed by Benigno S. Viray against the Amnesty Commission of the Armed Forces of the Philippines and Juan D. Crisologo, seeking to prohibit the respondent Amnesty Commission from taking jurisdiction over the petition for amnesty filed before it by its co-respondent Crisologo. The facts necessary for a proper understanding and decision of this case, gathered from the pleadings, including their annexes, may be briefly stated as follows:

Respondent Crisologo now confined at the stockade of the Armed Forces of the Philippines, is a regular Philippine Army Officer (Major) graduated at the old Philippine Constabulary Academy in 1923. He served continuously for twenty-seven years in the Philippine Constabulary and was inducted into the United States Armed Forces in the Far East (USAFFE) in 1941 as captain and was assigned "S-2" (intelligence) of the Zamboanga Sector, USAFFE under Col. Wilson. During the first months of the war with Japan, particularly in the month of March, 1942, after Zamboanga was said to have been invaded or occupied by the Japanese forces, Crisologo was alleged to have ordered the execution of eight persons among them, one Boy Viray. For this act, he was charged before a general court martial with murder, was tried and convicted and later sentenced to life imprisonment by the said court martial. At the beginning of the trial he refused to take advantage of the benefits of Amnesty Proclamation No. 8 of President Roxas. After conviction however, and on June 8, 1948, he filed an application with the respondent Amnesty Commission, invoking said Amnesty Proclamation.

Present petitioner Benigno S. Viray, father of Boy Viray, one of the eight ordered executed by Crisologo, immediately filed a petition with the respondent Commission opposing Crisologo's application for amnesty on the ground that Crisologo was not entitled to it because he was not a member of the guerrilla forces when he ordered the execution of his son Boy Viray; that Crisologo is now estopped from invoking amnesty because he had already once refused it; that inasmuch as he did not admit having committed the offense of which he was accused, then he could not very well invoke the amnesty that covered and extinguished it; and finally, since the decision convicting him of murder has not yet become final but is still subject to review by higher authorities, it is premature to ask for amnesty. This petition was followed by a pleading wherein Viray questioned the jurisdiction of the Amnesty Commission to take cognizance of and decide Crisologo's application for amnesty.

In resolution No. 29, series of 1948, of the respondent Commission, said body held that it had jurisdiction over the application. Dissatisfied with said resolution Viray has filed the present petition for a writ of prohibition.

In our opinion the fact that respondent Crisologo had declined to take advantage of the Amnesty Proclamation at the beginning of his trial before the court martial does not now preclude him from invoking it, especially after he

was found guilty and convicted. Before his trial, he may and he must have entertained the idea and the belief that the killing was justified and was done in the performance of his duties as an official according to the criminal law, and that consequently, there was no need for amnesty. However, after the court martial had disagreed with him and disabused him of his belief, he realized the necessity of invoking amnesty. There is nothing in the law that stands in his way toward seeking the benefits of a law which in his opinion covers and obliterates the act of which he had been found criminally responsible.

As to the alleged incompatibility of his plea of not guilty before the court martial with his present petition for amnesty, we fail to find any such inconsistency. It must be borne in mind that a plea of not guilty to a charge of or complaint for an offense does not necessarily mean that the accused in so pleading disclaims the commission of the act. The plea may equally imply that admitting the commission thereof, nevertheless, he is not criminally responsible. In the present case, there is nothing to show that Crisologo denied having ordered the execution of the eight persons, including Boy Viray. On the contrary, it seems that he admits having given such order of execution but that he claims that the persons he ordered executed were aiding the enemy.

Furthermore, this point has already been passed upon by this Court in the case of Barrioquinto vs. Fernandez, L-1278 (46 Off. Gaz., 3031),^[1] where it was held that "in order to entitle a person to the benefits of the amnesty proclamation of September 17, 1946 (Proclamation No. 8), it is not necessary that he should, as a condition precedent or sine qua non, admit having committed the criminal act or offense with which he is charged and allege/, the amnesty as a defense." One of the reasons given in support of that doctrine was that a contrary ruling would be unjust to him and disadvantageous to the accused because to require him to admit having committed the offense or being responsible therefor before he could invoke the benefits of amnesty, since there is no law which makes such admission or confession inadmissible as evidence against him in court during trial, in the event that the Amnesty Commission finds that the offense does not come within the terms of the Amnesty Proclamation, nobody or few would assume the risk of submitting their cases to the Amnesty Commission.

With respect to the objection that inasmuch as the decision of the court martial convicting Crisologo of murder has not yet become final, he may not invoke the benefits of amnesty, we believe that amnesty may be invoked at any stage of the criminal proceedings—before trial, during trial, after conviction and pending appeal. Administrative Order No. 11 implementing Amnesty Proclamation No. 8 and creating 14 Guerrilla Amnesty Commissions provides for the consideration by the Seventh Guerrilla Amnesty Commission of cases already decided by the Courts of First Instance but not yet elevated on appeal. Department Order No. 20, dated December 24, 1946, issued by the Secretary of National Defense pursuant to the powers vested in him under Administrative Order No. 17 of President Roxas, provides for the consideration by the Amnesty Commission of the Armed Forces of the Philippines, one of the respondents in this case, of all court martial cases (like the present case) pending review under the Articles of War. In other words, both Administrative Order No. 11 and Department Order No. 20 both implementing Amnesty Proclamation No. 8, contemplated the consideration by an Amnesty Commission, of cases not yet final, decided either by the civil courts or by the courts martial. We therefore find that respondent Crisologo is perfectly warranted in invoking the benefits of amnesty even though his case is still pending review by higher authorities.

But the most important question involved in the present case is whether or not respondent Crisologo who, at the time he was said to have ordered the killing of the eight deceased, was a member of the regular Army and not a member of the guerrilla forces, is entitled to the benefits of Amnesty Proclamation No. 8. The doubt is, possibly, engendered not only by Proclamation No. 8 itself but also by the message of President Roxas to Congress urging its concurrence in the amnesty. The President in his message to Congress, spoke of his grave concern regarding the large number of members of guerrilla and other resistance organizations who were being prosecuted before the

courts for alleged acts of murder, assaults, etc. committed during the period of occupation by the Japanese forces. In Amnesty Proclamation No. 8 itself, the first three paragraphs of its preamble speak of volunteer armed forces of Filipinos and other nationalities operating as guerrillas in furtherance of the resistance movement against the enemy, and the second and third paragraphs of the body of the Proclamation speak of the establishment and functions of Guerrilla Amnesty Commissions. Administrative Order No. 11 created fourteen Guerrilla Amnesty Commissions. From all this, it is claimed that the intention of the President in issuing his Amnesty Proclamation was to confine its benefits only to members of guerrilla forces and to exclude therefrom those who were in the regular Armed Forces.

We cannot agree to this contention. It would be too narrow a view of the Proclamation and the desire and intention inspiring it. We see no reason why the benefits of the amnesty should be confined to a certain portion of the population that heroically operated and fought against the enemy ~~hji~~ to the exclusion of another portion which because of its discipline, training and equipment, may have equally fought and operated, perhaps even more effectively, tho for a shorter period of time, against the enemy. We are inclined to believe that the reason the guerrilla forces were particularly and (seemingly) exclusively mentioned in the presidential message as well as in the proclamation itself, including the denomination of the Amnesty Commissions as "Guerrilla" Amnesty Commissions is that by far, the great majority of people who resisted the enemy and in every corner of the Philippines, and in the course of said resistance may have committed acts penalized by the Revised Penal Code were members of the guerrilla forces. Before the occupation of the Philippines by Japan at the beginning of 1942, there could not have been any case or at least not many cases to be covered by an amnesty like that contained in Proclamation but No. 8. At that time there could have been/few if any enemy spies or fifth columnists, and if caught, they were dealt with and tried by the civil courts or by courts martial. It was only after the occupation of the Islands when some of its inhabitants may have had occasion or temptation to identify themselves with the enemy or otherwise aid it in its war against us, and because of such treasonable activities, were eliminated or otherwise punished by our regular armed forces and by members of the resistance movement, that acts and offenses subject to amnesty could have been committed. It will be remembered that the resistance by the regular Armed Forces (USAFFE) after the invasion was not of long duration. After the fall of Bataan and Corregidor in April and May, 1942, all organized resistance against the enemy practically ceased. The unit of the Zamboanga Sector (USAFFE) to which Crisologo belonged surrendered to the Japanese on May 14, 1942, in obedience to orders of Gen. Sharp, Commanding General of the USAFFE forces in Mindanao. So that, resistance by the regular Armed Forces against the enemy was relatively short-lived. On the other hand, after the invasion and after the surrender of the regular Armed Forces, many patriotic Filipinos and other nationalities, including members of the regular Armsd Forces after their release from the concentration camps, began to operate as guerrillas on a more or less extensive scale, and in all the provinces to further the resistance movement up to Liberation. It was therefore natural that the President should have concentrated on these guerrillas in his message to Congress and also in his Amnesty Proclamation itself. But there was no reason for him to exclude and we now see no reason for us to exclude from the benefits of the amnesty, other persons who fought against and resisted the enemy and in the course of said fight and resistance committed acts and offenses covered by the Amnesty.

Moreover, the mention of the guerrillas and similar forces in Proclamation No. 8 is confined to the preamble. The preamble is not exactly an essential part of an act or proclamation. It is an introductory or preparatory clause, explanatory of the reasons for the enactment, usually introduced by the word "whereas". Corpus Juris says:

"Legislature may have had in view a particular mischief, which is recited in the preamble, and to prevent which was the immediate and principal object of the statute, but may then, in the body of the act, provide a remedy for general mischiefs of the same nature. *Holbrook vs. Holbrook*, 1 Pick (Mass) 248; *Proprietors School Fund's Appeal*, 2 Walk. (Pa.) 37; *Mace vs. Cammel*, Lofft 783, 98 Reprint 917; *Colohan vs. Cooke*,

Willes 393" (59 C. J. 1005, footnote 93[b].)

On the other hand, the title of Proclamation No. 8—

Granting Amnesty to all Persons who Committed Acts Penalized under the Revised Penal Code in Furtherance of the Resistance to the Enemy—says that it is available to all persons. So does the first paragraphs of the enacting clause itself—

"Now, therefore, I, Manuel Roxas, President of the Philippines, in accordance with the provisions of Article VII, Section 10, Paragraph 6 of the Constitution, do hereby declare and proclaim an amnesty in favor of all persons who committed any act penalized under the Revised Penal Code in furtherance of resistance to the enemy or against persons aiding in the war efforts against the enemy, and committed during the period from December 8, 1941 to the date when each particular area of the Philippines was actually liberated from enemy control and occupation. This amnesty shall not apply to crimes against chastity or to acts committed from purely personal motives." (underlining in both quotations are ours.)

Furthermore, the exception contained in the last sentence of the paragraph just quoted makes no mention or reference to members of the regular Armed Forces (USAFFE) like respondent Crisologo. Had it been the intention of the President to exclude from the benefits of the amnesty, members of the Armed forces (USAFFE), the easiest and most effective way, of carrying out and accomplishing such an intention would have been to Include them in the exception contained in the last sentence of said enacting clause. But this was not done. Besides, as was decided by this Court in the case of People vs. Gajo et al., G. R. No. L-1212, promulgated on June 27, 1949, interpreting the meaning and scope of this same Amnesty Proclamation No. 8, any reasonable doubt as to whether a given case falls within the Proclamation shall be resolved in favor of the accused (Administrative Order No. 11, 40 Off. Gaz. 2360).

Lastly, it would be quite unfair and unjust to exclude from the benefits of the Amnesty Proclamation those who not only through patriotic motives but because of their membership in the Armed Forces were called upon and were obliged to resist the enemy may have had occasion to commit acts and offenses penalized by the Revised Penal Code and who now invoke the benefits of the Amnesty Proclamation. We are not convinced that the President who issued the Proclamation and the members of Congress who concurred in it intended and contemplated such exclusion.

In view of the foregoing, we find that respondent Amnesty Commission has jurisdiction to entertain, hear and decide the petition filed before it by respondent Crisologo. Petition for prohibition denied. There is no pronouncement as to costs.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Reyes, and Torres, JJ., concur.

[1] 82 Phil., 642.

DISSENTING OPINION

TUASON, J.:

The petition for prohibition should, in my judgment, be sustained.

The preamble to Proclamation No. 8 reads: "Granting Amnesty to all Persons who Committed Acts Penalized under the Revised Penal Code in Furtherance of the Resistance to the Enemy." The first "Whereas" of the proclamation speaks of "members of such '(guerrilla)' forces" who "committed acts penalized under the Revised

Penal Code." The -second introductory consideration was the fact that "charges have been presented, in the courts" for "such acts." The third was the fact that the patriotic purpose which prompted the commission of the acts "is not a valid defense under the laws of the Philippines." These "Whereases" constitute the basis of, and are confirmed by, the declaration that follows them. Thus, in the first paragraph of the dispositive part, the proclamation grants "an amnesty in favor of all persons who committed any act penalized under the Revised Penal Code," while the next succeeding paragraph provides for the appointment of amnesty commissions; "to determine who among those against whom charges have been filed before the courts of the Philippines or against whom charges may be filed in the future" are entitled to the grant.

These provisions, construed singly or in conjunction with the whole text, clearly demonstrate that the proclamation envisages crimes (1) penalized under the Revised Penal Code or the laws of the Philippines (2) for which, charges have been filed or may be filed in the courts.

Now, offenses committed by members of the Armed Forces and triable by courts-martial, whether committed against the enemy, the enemy's collaborators, or friendly citizens, are not crimes under the Revised Penal Code or under the general laws. Courts-martial take cognizance only of violations of the Articles of War. Captain Crisologo has been or is being tried for violation of section 92 of said Articles of War. The fact that the offense of which, he was or is accused happens to be punished under the Revised Penal Code does not make it an offense under that Code.

As to the meaning of courts} it should be noted that courts-martial do not come within the definition of the term. Courts-martial are agencies of executive character. (Winthrop's Military Law and Precedents, 2nd ed., p. 49; Ruffy et al, vs. The Chief of Staff, PA, et al, G. R. No. L-533, 75 Phil., 875.) "The distinction between courts-martial and the courts which pertain to the judicial branches of the state and the Federal Governments has long been recognized. While courts-martial may and do discharge judicial functions, and are therefore in a certain sense courts, they are not a part of the judiciary department of the government, and are more properly classed as an, executive agency belonging to the executive branch of the government. The power of Congress to provide for the trial and punishment of military and naval offenses in the manner practiced by civilized nations is given without any connection between it and the third article of the Constitution defining the judicial power of the United States; indeed, the two powers are entirely independent of each other." (36 Am. Jur. p. 244.)

And it was natural that persons who committed offenses triable and punishable under the Articles of War should be excluded from the benefits of the amnesty proclamation. Officers and men of the armed forces are subject to rigid discipline which is said to be the life-blood of an army. While common crimes committed by men not amenable to military law may be condoned in a sweeping legislation as a matter of policy, the same can not be done with respect to violations of military laws without seriously jeopardizing military morale so essential to an efficient army.

Moreover, cases of the latter kind can be dealt with directly by the Chief Executive as Commander-in-Chief of the Armed Forces, before or after prosecution is instituted. It is the President who convenes courts-martial, directly or thru commanding officers. He has complete control over these prosecutions; he has power to determine what offenses should be tried and to review the decisions of the military courts. A little reflection will show that there was no need for extending amnesty to members of the armed forces for offenses for which they should be prosecuted before military courts.

The second paragraph of the dispositive part of the proclamation provides for the appointment of amnesty commissions "simultaneously to be established." Further, such commissions were accordingly organized under Administrative Order No, 11 dated October 25 1946. These commissions were to deal with cases pending in the

courts or which might be filed in the courts in the futures Being contemporaneous with the promulgation and approval of Proclamation No. 8, that Executive Order may be said to reflect the real intent and meaning of the proclamation.

It was on November 15, 1946, that Administrative Order No. 17 was promulgated creating an amnesty commission known as Philippine Army Amnesty Commission, to take cognizance of all cases of persons subject to military law and falling within the terms of Amnesty Proclamation No. 8. For the reasons above stated, this administrative order enlarges, in my opinion, the scope of Amnesty Proclamation No. 3 and is invalid in so far as it undertakes to embrace cases not contemplated in that proclamation. The granting of amnesty is not the exclusive prerogative of the President. Under the Constitution it has to 'have the concurrence of the Congress, and .amnesty Proclamation No. 8 needed the approval of Congress before; it went into effects.

From what has been said, I do not believe the words "all persons" used in the preamble and in the body of the proclamation were conceived to apply to members of the armed forces. Furthermore, there is warrant in the text for the idea that "all persons" was used because there were not only persons who "operated as guerrillas" and who formed the bulk of the intended beneficiaries, but also "other patriotic individuals and groups" who did not belong to organized underground movements or were not guerrillas at all.

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