

## JOSE M. NAVA, ET AL., PETITIONERS VS. HON. MAGNO GATMAITAN, ETC., RESPONDENT.

*G. R. No. L-4855. October 11, 1951*

Ponente: PARAS, C.J.

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### PARAS, C.J.:

By express mandate of the Constitution (Article III, Section 1, Paragraph 14), the privilege of the writ of habeas corpus shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist. The power to suspend the privileges of the writ of habeas corpus in case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, has been lodged by the Constitution (Article VII, Section 10, Paragraph 2) in the President.

On January 31, 1905, for the first time in Philippine history, the writ of habeas corpus was suspended in the provinces of Batangas and Cavite under the following Executive Order issued by Governor General Luke E. Wright:

"WHEREAS, certain organized bands of ladrones exist in the Provinces of Cavite and Batangas who are levying forced contributions upon the people, who frequently require them, under compulsion, to join their bands, and who kill or maim in the most barbarous manner those who fail to respond to their unlawful demands, and are therefore terrifying the law-abiding and inoffensive people of those provinces; and

"WHEREAS, these bands have in several instances attacked police and constabulary detachments, and are in open insurrection against the constituted authorities, and it is believed that the said bands have numerous agents and confederates living within the municipalities of the said provinces; and

"WHEREAS, because of the foregoing conditions there exists a state of insecurity and terrorism among the people which makes it impossible in the ordinary way to conduct preliminary investigations before the justices of the peace and other judicial officers:

"In the interest of public safety, it is hereby ordered that the writ of habeas corpus is from this date suspended in the Provinces of Cavite and Batangas."

On October 22, 1950, for the second time in Philippine history, the suspension of the privilege of the writ of habeas corpus was decreed by virtue of the following Proclamation No. 210 issued by the President:

"WHEREAS, lawless elements of the country have committed overt acts of sedition, insurrection and rebellion for the purpose of overthrowing the duly constituted authorities and, in pursuance thereof, have created a state of lawlessness and disorder affecting public safety and the security of the state;

"WHEREAS, these acts of sedition, insurrection and rebellion consisting of armed raids, sorties and ambushes and the wanton acts of murder, rape, spoilage, looting, arson, planned destruction of public and" private buildings, and attacks against civilian lives and properties, as reported by the Commanding General of the Armed Forces, have seriously endangered and still continue to endanger the public safety;

"WHEREAS, these acts of sedition, insurrection and rebellion have been perpetrated by various groups of persons well organized for concerted action and well armed with machine guns, rifles, pistols and other automatic weapons, by reason whereof there is actual danger of rebellion which may extend throughout the country; .

"WHEREAS, 100 leading members of these lawless elements have been apprehended and are presently under detention, and strong and convincing evidence has been found in their possession to show that they are engaged in rebellious, seditious and otherwise subversive acts as above set forth; and

"WHEREAS, public safety requires that immediate and effective action be taken to insure the peace and security of the population and to maintain the authority of the government;

"NOW, THEREFORE, I, ELPIDIO QUIRINO, President of the Philippines, by virtue of the powers vested upon me by Article VII, section 10, Paragraph (2) of the Constitution, do hereby suspend the privilege of the writ of habeas corpus for the persons presently detained, as well as all others who may be hereafter similarly detained for the crimes of sedition, insurrection or rebellion, and all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith."

The writ of habeas corpus was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. (*Villavicencio vs. Lukban*, 39 Phil., 778, 788.) It secures to a prisoner the right to have the cause of his detention examined and determined by a court of justice, and to have ascertained if he is held under lawful authority. (*Quintos vs. Director of Prisons*, 55 Phil., 304, 306.)

The necessity for suspending the writ of habeas corpus in 1905 arose obviously from the fact that it was "impossible in the ordinary way to conduct preliminary investigations before the justice of the peace and other judicial officers," so that undoubtedly it was never aimed at the indefinite detention of suspects, but at an investigation (other than judicial) to determine whether there is evidence sufficient for the filing in court of the necessary information.

The immediate cause for the issuance of Proclamation No. 210 on October 22, 1950, was the apprehension and detention of 100 alleged leading members of lawless elements in whose possession strong and convincing evidence was allegedly found showing that they are engaged in rebellious, seditious and otherwise subversive acts. The privilege of the writ of habeas corpus had to be suspended not only because it was desirable for the prosecuting officials to have sufficient time to investigate and file the necessary charges in court, but also because a public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of six hours, shall suffer the penalties provided in article 125 of the Revised Penal Code. In other words, the only effect of Proclamation No. 210 is that any person detained thereunder has no right to have the cause of his detention examined and determined by a court of justice through a writ of habeas corpus.

The important question is whether or not, after a person covered by the Proclamation has been formally indicted in court by the" filing against him of an information charging rebellion with multiple murder, arson and robberies, he may be entitled to bail.

Under paragraph 16, Section 1, Article III of the Constitution, all persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. The crime of rebellion or insurrection is certainly not a capital offense, because it is penalized only by prison mayor and a fine not to exceed 20,000 pesos. The privilege of the writ of habeas corpus and the right to bail guaranteed under the Bill of Rights are separate and co-equal. If the intention of the framers of the Constitution was that the suspension

of the privilege of the writ of habeas corpus carries or implies the suspension of the right to bail, they would have very easily provided that all persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong and except when the privilege of the writ of habeas corpus is suspended. As stated in the case of *Ex parte Milligan*, 4 Wall. 2, 18 Law Ed. 297, the Constitution limited the suspension to only one great right, leaving the rest to remain forever inviolable.

"It is essential to the safety of every government that, in a great crisis, like the one we have just passed through, there should be a power somewhere of suspending the writ of habeas corpus. In every war, there are men of previously good character, wicked enough to counsel their fellow citizens to resist the measures deemed necessary by a good government to sustain its just authority and overthrow its enemies; and their influence may lead to dangerous combinations. In the emergency of the times, an immediate public investigation according to law may not be possible; and yet, the peril to the country may be too imminent to suffer such persons to go at large. Unquestionably, there is then an exigency which demands that the government, if it should see fit, in the exercise of a proper discretion, to make arrests, should not be required to produce the person arrested in answer to a writ of habeas corpus. The Constitution goes no further. It does not say after a writ of habeas corpus is denied a citizen, that he shall be tried otherwise than by the course of common law. If it had intended this result, it was easy by the use of direct words to have accomplished it. The illustrious men who framed that instrument were guarding the foundations of civil liberty against the abuses of unlimited power; they were full of wisdom, and the lessons of history informed them that a trial by an established court, assisted by an impartial jury, was the only sure way of protecting the citizen against oppression and wrong. Knowing this, they limited the suspension of one great right, and left the rest to remain forever inviolable."

The purpose of the Proclamation has already been accomplished in respect of those who are now facing charges in court, to be dealt with necessarily in accordance with the Constitution and the law. The court, in passing upon petitions to bail and granting the same in proper cases, does not inquire into the cause of their detention which is plainly under and by virtue of commitments issued by the court upon the filing of the information for rebellion with multiple murder, arson and robberies. The court, therefore, cannot be said to be interfering in an act of the Executive, for it cannot be seriously contended that, after the filing of the information, the accused continues to be under detention as a result of an executive commitment and still covered by the suspension of the privilege of the writ of habeas corpus. Otherwise, the suspension will operate as a judgment of conviction, in violation of the constitutional mandate that no person shall be held to answer for a criminal offense without due process of law (Article III, Section 1, Paragraph 15). "The laws which protect the liberties of the whole people must not be violated or set aside in order to inflict, even upon the guilty, unauthorized though merited justice." *Ex parte Milligan*, supra.

The right to bail, along with the right of an accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf (Article III, Section 1, Paragraph 17, of the Constitution), tends to aid the accused to prove his innocence and obtain acquittal. If it be contended that the suspension of the privilege of the writ of habeas corpus includes the suspension of the distinct right to bail or to be provisionally at liberty, it would a fortiori imply the suspension of all his other rights (even the rights to be tried by a court) that may win for him ultimate acquittal and, hence, absolute freedom. The latter result is not insisted upon for being patently untenable. It is not correct to say that, if a person covered by Proclamation No. 210 is not entitled to be released before he is indicted in court, there is more reason to hold that he should not be released after an information is filed against him, because it is then logical to assume that the Government holds sufficient evidence. If he cannot secure his release before the filing of an information, it is because, in view of the suspension of the privilege of the writ of habeas corpus, the court cannot look into the

legality of his detention under an executive act, and not because he is assumed to be guilty. And, as already stated, after the filing of the information, in granting bail in proper cases, the court does not determine the legality of his prior detention which has already been superseded by a detention under judicial process, but merely proceeds with and carries into effect its jurisdiction over the criminal case and grants a right guaranteed by the Constitution. Besides, it is significant that in all criminal prosecutions the accused shall be presumed to be innocent (Article III, Section 1, Paragraph 17).

We are not insensitive to the proposition that the very nature of the crime of rebellion suggests the likelihood that a person accused thereof will jump his bail. The remedy, however, is unfortunately not in the hands of the court. The lawmakers or the framers of the Constitution should have made the offense capital or even unbailable.

In the cases now before us, the accused have been charged with rebellion so complexed with other offenses as to make them capital. Their right to bail is accordingly not absolute and may be denied when evidence of guilt is strong. The filing of the information implies that the prosecution holds sufficient evidence for conviction, 'and it is fair to suppose that the court will duly exercise its judgment when called upon to pass on the question of whether or not the evidence of guilt is strong. At any rate, on admission to bail, the accused is delivered to the custody of his sureties as a continuance of the original detention. (U. S. vs. Addison and Gomez, 27 Phil., 563; U. S. vs. Sunico and Ng Chiong, 40 Phil. 826).

And it should be borne in mind that if the worse comes to the worst—to the extent that the security of the State is in fact imperiled and the regular constitutional processes can no longer be observed with general safety to the people,—the President is authorized by the Constitution (Article VII, Section 10, Paragraph 2) to "place the Philippines or any part thereof under martial law." Even then, the primordial objective should be a "regime of justice" as contemplated in the Preamble of the Constitution. The stubborn fact, however, is that the mere suspension of the privilege of the writ of habeas corpus is an admission that the courts can function and are functioning normally; otherwise, there is no need for the suspension as there will be no court to grant the writ.

Reyes, and Jugo, JJ., concur.

### **PABLO, M.;**

En tiempos normales la Constitucion de Filipinas rige en su totalidad. Algunos de los derechos individuates, como el derecho del acusado a la libertad provisional bajo fianza, se hace efectivo por los juzgados por orden perentoria. Cuando a un acusado se le detiene y no se resuelve su peticion de libertad bajo fianza, puede acudir a un tribunal de superior categoria por medio de un recurso de mandamus para obligarle a actuar en un sentido u otro, que es su deber imperative. Un condenado por un juzgado sin jurisdiction acude en certiorari a un tribunal superior para pedir la anulacion de la condena. Un individuo ilegalmente detenido por alguna autoridad u otra persona, puede acudir a los tribunales por medio de un recurso de habeas corpus y pedir que se le ponga en libertad. Los mismos abogados en ejercicio indistintamente utilizan un recurso u otro. Existe confusion en cuanto a que clase de recurso debe ejercitarse en cada caso. No es extrano. El reglamento dice que "el mandamiento de Habeas Corpus sc hara extensivo a todos los casos de confinamiento o detencion ilegales, en los cuales se prive a una persona de su libertad, o impida a una persona ejercer sus legitimos derechos en la custodia legal de otra." (Art. 1, Regla 102). Revisando los expedientes de este Tribunal, se vera que en algunos casos se empleo el recurso de habeas corpus para solicitar la libertad provisional de un acusado mediante prestacion de fianza, como en *Herras Teehankee* contra el Director de Prisiones, *Juez Rovira* y otros [1] (43 Off. Gaz., 513) ; otros utilizaron los remedios de certiorari y 'mandamus, como en el asunto de *Marcos y Lizardo* contra el Juez de Primera Instancia de Ilocos Norte (VII Lawyers' Journal, 66) ; en *Payao* contra *Juez Lesaca*, el recurso de mandamus; en *Herras Teehankee* contra *Rovira* y otros [2] (42 Off. Gaz1., 717), los recursos de certiorari y mandamus; y en el asunto de *Montalbo*

contra Juez Santamaria (54 Jur. Fil., 1026), el recurso de mandamus. Este Tribunal, desatendiendo tecnicismos, decidio los asuntos en el fondo; tuvo en cuenta no el titulo sino la esencia de la solicitud, Galao y otro contra Juez Diaz y otro[3] (41 Off. Gaz., 873).

Estos recursos de certiorari y mandamus no son mas que remedios derivativos del recurso de habeas corpus; los tres se dirigen a un mismo fin: el obtener la libertad del que esta indebida o ilegalmente detenido.

En Estados Unidos el recurso de habeas corpus se utiliza para la obtencion de libertad provisional bajo fianza:

"It is proper to use the writ of habeas corpus for the purpose of securing admittance to bail." Ex parte Perkov, 45 F. Supp. (D.C. Cal. 1942), 864.

"The writ of habeas corpus may be had for purpose of letting prisoner to bail in civil and criminal actions as authorized in Constitution." Ex parte Womack, 71 Pac. 2d (Okl. Cr. App. 1937), 494.

"Remedy of person in custody on criminal charge to secure release on bail is by habeas corpus." Bennett v. State, 118 So. (Fla. 1928), 18.

"Prisoner denied bail or asked excessive bail has absolute right to invoke habeas corpus remedy, and court's duty to grant writ and to admit to bail is mandatory." Ex parte Stegman, 163 A. (N. J. Ch. 1933), 422.

"Persons held under indictment for capital offense are entitled as of right to hearing by way of habeas corpus upon issue of bail." Ex parte Readhimer, 60 S. W. (2d) (Tex Cr. App. 1933), 788.

"The use of the writ of habeas corpus to speedily determine whether a person charged with an offense is entitled to bail before trial and conviction is authorized by law, so as to render effective the rights to bail and to liberty as provided by the Constitution." Ex parte McDaniel, 97 So. (Fla. 1923), 317.

"The use of the writ of habeas corpus to speedily determine whether a person charged with an offense is entitled to bail before trial and conviction is authorized by law." Ex parte Hatcher, 98 So. (Fla. 1923), 72.

"A writ of habeas corpus is an appropriate and proper remedy in aid of bail." Mozorosky v. Hurlburt, 198 Pac. (Or. 1921), 556.

"Where a lieutenant in a military posse, seeking a deserter, was wounded by a shot in the dark, and fired at the place where he saw the flash, and killed the shooter, who was found near an illicit still, and, although the lieutenant was confined thereafter by the federal authorities for over a year, the state authorities had taken no steps to bring the charge made against the lieutenant and another member of the posse by indictment to a hearing conclusion, habeas corpus would issue to release both defendants on bail." State of Florida v. Tooher, 283 F. (U.S.D.C. Fla. 1922) 845.

"A person charged with being an accessory before the fact to murder by counseling, hiring, or otherwise procuring murder to be committed is charged with a capital offense under statutes of this state, and when held in actual custody under a mittimus issued by a committing magistrate to await the action of the grand jury has a right upon habeas corpus proceedings before a justice of the Supreme Court to show by all the evidence proper in the case, including that for the prosecution, that the proof is not evident and the presumption is not great of the guilt of the accused of a capital offense, and that consequently the accused is entitled to bail under the Constitution." (Syllabus No. 1, Ex parte Nathan, 50 So., 38.)

"On the lower court refusing bail on appeal being taken, habeas corpus proceedings therefor in the Supreme Court is the proper practice." (Syllabus No. 2, Packenham v. Reed, 79 Pac, 786.)

"Any one who is in custody on a criminal charge for want of bail is entitled to a writ of habeas corpus admission to bail, and the petitioner need only allege that he is confined for want of bail." (In re Haigler, 137 Pac, 423.)

"Under Const. U. S. art. 1, section 9, and Const. Wash. art. 1, section 13, providing that the privilege of the writ of habeas corpus shall not be suspended unless, in cases of rebellion or invasion, the public safety may require it; section 20, providing that all persons charged with crime shall be bailable by sufficient sureties except for capital offenses; and section 22, providing that in criminal prosecutions the accused shall have the right to appeal; and Rem. & Bal. Code, section 1077, providing<sup>1</sup> relative to habeas corpus that the writ may be had for the purpose of admitting to bail in civil and criminal actions—habeas corpus will lie to procure the release on bail of a person held under a body execution pending an appeal from an order denying a motion to vacate the order for the issuance of such execution, notwithstanding Rem. & Bal. Code, section 1075, providing relative to habeas corpus that no court or judge shall inquire into the legality of any judgment or process whereby the party is in custody or discharge him when the term of commitment has not expired, when he is held upon any process issued on any final judgment of a court of competent jurisdiction." {State v. Foster, 146 Pac, 169.)

"Application for a writ of habeas corpus by Kizzie Nathan alleging that she is unlawfully restrained of her liberty in the actual custody of the sheriff of Leon county on a charge of accessory before the fact to murder, by being denied the right to bail; Held: Petitioner was permitted to give bail with sufficient sureties as required by law." Ex parte Nathan (Before a Justice of the Supreme Court of Florida), 50 So., 38.

"Appeal from an order in habeas corpus refusing the petitioner admission to bail who is held on a charge of murder in the first degree; Held: Looking at all of the evidence offered and viewing it in the light of the presumption of innocence, and remembering that to grant bail is the rule and the refusal of it is the exception, petitioner is admitted to bail with sufficient sureties in such sum as may be reasonable and just in view of all the circumstances of the case." In re Haight (Supreme Court of Arizona), 137 Pac, 423.

"Petition for a writ of habeas corpus alleging that an appeal was taken by the relator from an order of the inferior court denying his motion to vacate an order of arrest. It appears that one Amy D. Bronson secured a judgment against the relator for damages for injury to person, and the judgment being unsatisfied, an execution was issued against his person and was arrested and taken into custody by the sheriff until the judgment is satisfied. The petition prays for an order fixing bail pending determination of the appeal; Held: The writ of habeas corpus is an appropriate and proper remedy in aid of bail. Writ of habeas corpus granted and relator released on bail upon a bond of \$3,000." State vs. Poster (Supreme Court of Washington), 146 Pac, 169.

"Petition for writ of habeas corpus to admit to bail. Petitioner had been committed to the reform school of the state of Washington until he should attain the age of 13 years, or until he should otherwise be regularly discharged therefrom. Thereafter he gave notice of appeal. Bail was denied pending the hearing on appeal; Held: An infant has a right of appeal when committed to the reform school, and incidentally a right to be admitted to bail pending such appeal. Habeas corpus is an appropriate remedy to bail." Packenham vs. Reed, 37 Wash., 258, 79 Pac, 786.

"The writ of habeas corpus lies where the imprisonment is illegal and no other remedy is available to secure a release therefrom. As in the case of other extraordinary prerogative writs, the writ of habeas corpus will not ordinarily be granted where there is another adequate remedy, by appeal or writ of error or otherwise. But, although another remedy exists, it is not necessarily exclusive so as to oust a court of jurisdiction to grant relief on habeas corpus, and, in the exercise of its discretion, the writ may be granted notwithstanding the existence of another remedy. Generally where another remedy is provided, failure to take advantage of it until the expiration of the time within which relief may be had will not authorize relief in habeas corpus, but in such cases the writ may issue in the discretion of the court. Defenses which might have been made in an action cannot be reserved as grounds of attack in habeas corpus upon the judgment after rendition." (29 C. J., 17-18.)

"The fact of the existence of another remedy does not necessarily preclude a resort to the writ of habeas corpus to obtain relief from illegal detention. Thus, while there are decisions to the effect that, even when a judgment is wholly void, a defendant will not, except in rare and extraordinary cases, be relieved from imprisonment

thereunder if appropriate relief can be granted by writ of error or appeal, it is the well established general rule that one restrained of his liberty by virtue of a judgment, order or sentence, void by reason of the court's want of jurisdiction to make the same, may be released by a writ of habeas corpus, whether such release could have been secured by writ of error or not. The existence of a statutory remedy whereby a person restrained, of his liberty may be released is usually held to be cumulative and not exclusive. Thus it has been ruled that the writ of habeas corpus may be issued to determine the legality of the confinement of a person in a state insane asylum, without first compelling a resort to a statutory proceeding<sup>1</sup> for that purpose—at least where there is some doubt as to the effect of the statute. And it has been held that a parent may have the writ issued for the purpose of securing the release of his child from a benevolent institution although a remedy is given the parent by the act under which the child was committed; the remedy so provided being merely cumulative. The discretion of federal courts to issue writs of habeas corpus or to require the petitioner to resort to appeal or writ of error if appropriate relief can be thereby obtained is treated elsewhere in this article." (12 R. C. L., 1186-1187.)

Y el Tribunal Supremo de los Estados Unidos en *Ex parte Bollman* y *Ex parte Swartwout*, (2 Law. Ed., 554) dijo:

"The appropriate process of bringing up a prisoner, not committed by the court itself, to be bailed, is by the writ now applied for. Of consequence, a court possessing the power to bail prisoners not committed by itself, may award a writ of habeas corpus for the exercise of that power."

Si hemos de atenernos a la definition del habeas corpus y a los precedentes americanos citados, el recurso que tiene un acusado para pedir la libertad bajo fianza es el de habeas corpus. Pero no debe confundirse el remedio de habeas corpus con el que originariamente obtuvieron los que luchaban por los derechos individuales contra las demasias del monarca. El habeas corpus de la legislation vigente es mas amplio en su esfera de accion; no se dirige solamente contra las detenciones del Ejecutivo; es un instrumento procesal contra los juzgados que indebidamente ordenan la detencion de una persona, contra la Comision de Inmigracion que detiene provisionalmente a los que estan condenados a deportacion, contra el amo que priva de su libertad al criado, contra la dueña de la casa de hetairas que priva a una pupila de su libertad, contra el superintendente de un hospital que detiene ilegalmente a un paciente, contra el Senado de Filipinas y de los Estados Unidos por la detencion de un condenado por desacato, contra la Camara de Representantes de los Estados Unidos, contra cualquiera, ya sea un funcionario publico o no, que en una u otra forma detiene ilegalmente a alguna persona.

En casos de invasion, rebellion o insurreccion, o peligro inminente de ellas, cuando la seguridad publica lo requiera, el privilegio del mandamiento de habeas corpus se suspende, o se declara la ley marcial en cualquier parte o en toda la nacion.

En Estados Unidos no se determina quien puede suspenderlo. Su Constitucion dice asi:

"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it." (Par. 2, Sec. 9, Art. I, Constitution of the United States).

En Filipinas la Asamblea Constituyente tuvo a bien confiarlo al Presidente. El Articulo III, parrafo 14 de la Constitucion dice textual mente:

"El Presidente sera el generalising de todas las fuerzas armadas, y, siempre que fuere necesario, podra Hamarlas para impedir o sofocar toda manifestacion de violencia ilegal, invasion, insurreccion o rebellion. En caso de invasion, insurreccion o rebellion, o peligro inminente de ellas, cuando la seguridad publica lo requiera, podra suspender el privilegio del mandamiento de habeas corpus o declarar la ley marcial en todo el pais o en cualquier parte de el."

En 22 de octubre de 1950, el Presidente suspendio el privilegio del habeas corpus para aquellos detenidos por rebellion o insurreccion. La razon por que se toma esta medida descansa en la seguridad publica.

No es un secreto para nadie las frecuentes matanzas a sangre fría de niños, viejos y mujeres, las emboscadas de pasajeros inocentes, de la viuda del Presidente Quezon y comitiva, el robo a sangre y fuego, el secuestro de particulares y de funcionarios públicos; el de inspectores de elección está a la orden del día; son víctimas del secuestro personas pertenecientes a diferentes partidos. No solamente existe el deseo de derrocar al gobierno establecido sino también el de sembrar el terror y la anarquía en todas partes para frustrar la expresión libre del sufragio, que es el alma de la democracia. Para impedir la ola destructora de rebelión o insurrección, el Poder Ejecutivo, como medida de propia preservación, detiene a todos cuantos tienen intervención en ella. Si se suelta a los detenidos, pueden volver a las andadas, pueden reunirse con sus compañeros y reduplicar su obra de destrucción; de ahí la necesidad de suspender el recurso de habeas corpus. El gobierno, escudado por la suspensión del habeas corpus, podría con facilidad suprimir la rebelión e insurrección deteniendo indefinidamente a todos los sospechosos; pero eso daría lugar a muchas injusticias, la detención de inocentes. Consciente de su obligación de velar por los derechos individuales, no se vale de este privilegio: detuvo pero entregó los detenidos a los tribunales de justicia para que fuesen juzgados. Eso es motivo de satisfacción. No quiere obrar solo; no quiere ser despota; solicita la colaboración de los tribunales. Desea que los juzgados— y no él—decidan quienes son los culpables y quienes son los injustamente acusados. Pero debe entenderse que mientras no estén absueltos, no deben ser puestos en libertad bajo fianza; su libertad pone en peligro la seguridad del Estado. En muchos respectos la libertad de los acusados pone en peligro la seguridad nacional, ya facilitando ayuda económica o provisiones de boca, proporcionando medicinas o transmitiendo informes a los que están en espera del momento oportuno para dar el golpe de gracia y, lo que es peor aun, empleando el "sabotaje."

Si su detención por el Poder Ejecutivo está justificada por la seguridad pública ¿por qué no está justificada también su detención cuando esta se ordena por los tribunales de justicia? Es tan peligroso el detenido por rebelión e insurrección puesto en libertad por el Poder Ejecutivo como el acusado de los mismos delitos puesto en libertad por el Poder Judicial. Si el objeto de la suspensión del recurso de habeas corpus es suprimir la rebelión e insurrección, ¿no es un contrasentido conceder libertad a los que están acusados de rebelión o insurrección? Soltarlos es ayudarles: es poner en peligro la salud del pueblo.

Mientras rige la suspensión del recurso de habeas corpus, por tanto, los acusados de rebelión o insurrección no tienen derecho a la libertad provisional bajo fianza. Razón fundamental: para ponerles a buen recaudo.

Se arguye que la suspensión del privilegio de habeas corpus se aplica solamente a las detenciones realizadas por el Poder Ejecutivo y no a los acusados ante los tribunales de justicia.

La proclama no distingue para qué clase de detención está suspendido el recurso: es aplicable, por tanto, no solamente a los detenidos por el Poder Ejecutivo sino también a los detenidos por orden judicial. Sería el mayor de los absurdos privar de este privilegio a los detenidos por el Poder Ejecutivo y no a los detenidos por los tribunales. No parece sino que los tribunales tienen que regirse por la parte de la constitución suspendida. Si es constitucional privar del recurso de habeas corpus a los detenidos por el Poder Ejecutivo, con mayor razón se debe privar de ello a los acusados ante los tribunales porque el ministerio fiscal posee pruebas que demuestran su culpabilidad.

Se arguye que el Poder Ejecutivo puede detener por todo el tiempo que quiera sin necesidad de dar cuenta de la detención, pero en cuanto los detenidos se han colocado bajo la jurisdicción de los tribunales, ya tienen derecho a la libertad bajo fianza. Esta teoría fomenta el establecimiento de un gobierno dictatorial y autocrático y no quisiera que en Filipinas se estableciese un gobierno de tal naturaleza.

Si los tribunales ponen en libertad, bajo fianza, a los que atentan contra la seguridad del Estado, a pesar de la suspensión del habeas corpus, entonces, para afrontar la situación, el Poder Ejecutivo no acusaría a los detenidos

ante los tribunales: los detendria indefinidamente por su propia cuenta. Aun mas, detendria a cualquier ciudadano; entonces hasta los inocentes estarian en peligro. Los tribunales no tendrian oportunidad de absolver a los inocentes. Esto seria el reinado de la fuerza y no de la ley. Y eao es precisamente lo que quiere evitar el Poder Ejecutivo al poner a disposicion de los tribunales a los detenidos por rebelion. Los que pretenden velar por los derechos individuales, alucinados por el oropel de la decantada libertad, son los que, tal vez sin quererlo, estan fomentando el establecimiento de un regimen al estilo Nazi, la ereccion del Poder Ejecutivo en un despota.

Tal como se desarrollan los acontecimientos, el Poder Ejecutivo entrega los detenidos a los tribunales de justicia para que puedan ser juzgados cuanto antes; si son culpables que se les condene, pero si son inocentes, que les absuelva. No es esto un ordenado proceso legal y constitucional? Por que obligar de una manera indirecta al Poder Ejecutivo a detener indefinidamente a los acusados de rebelion sin colocarlos bajo la jurisdiccion de los tribunales? Es mejor que continue acusandolos ante los tribunales para que puedan ser juzgados prontamente. Es indispensable que los dos poderes, Ejecutivo y Judicial, actuen al unisono cuando la seguridad publica lo requiere.

Si la suspension del privilegio de habeas corpus es infundada y arbitraria, que lo declare asi este Tribunal; que declare nula la suspension. Pero si los acontecimientos aconsejan la medida por necesaria e indispensable, que los detenidos permanezcan detenidos hasta que hayan sido absueltos en sentencia judicial.

Voto por la denegacion de las solicitudes en las causas Nos. L-4855 y L-4964 y por que se declare nula y de ningun valor la orden del Hon. Juez Abaya del 12 de septiembre de 1951, concediendo libertad bajo fianza a 3os acusados.

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[1] 76 Phil., 630 and 756.

[2] 75 Phil., 634.

[3] 75 Phil., 109.

BENGZON, J. (in L-4964)

I fully agree to the views of the Chief Justice.

This case (like the other cases of Jose M. Nava et al., vs. Hon. Magno Gatmaitan, G. R. No. L-4-855 and Eugenio Angeles vs. Hon. Gavino S. Abaya, G. R. No. L-5102) involves the question whether the presidential proclamation suspending the privilege of the writ of habeas corpus for persons detained for rebellion or insurrection has equally suspended their right to bail after the information has been filed against them.

For purposes of discussion of this central issue I will assume that the information against Hernandez describes the crime of rebellion only, unattended by other crimes that make the offense a capital one. At the end of this opinion I shall explain my vote as to the disposition of petitioner's cause, the charge against him being rebellion with multiple murder, arsons and robberies.

Now inasmuch as the information does not describe a capital offense, (rebellion is punished with prision mayor) the prisoner is entitled, as a matter of right, to bail. This privilege is vouchsafed to him by the Constitution and the Rules of Court.

But it is alleged that the Executive proclamation suspending the privilege of the writ of habeas corpus had the effect of suspending the right to bail of all persons charged before the courts with crime of rebellion. I do not think so. What the proclamation suspended was the privilege of the writ—not the right to bail.

The writ of habeas corpus is of immemorial antiquity. Originally there were several forms of the writ: (1) habeas

corpus ad respondendum (2) ad satisfaciendum (3) ad prosequendum, testificandum, deliberandum (4) ad faciendum et recipiendum and (5) the great writ of habeas corpus ad subjiciendum. (Blackstone's Commentaries (Jones) p. 1676). The writ mentioned in the U. S.

Constitution is the writ ad subjiciendum. The American colonists brought it with them. (Ex parte Yerger 8. Wall [75 U. S.] 85 at p. 95.) And undoubtedly that is the same writ contemplated in our fundamental laws, the Philippine Bill, the Jones Law and the Philippine Constitution. It is an order issued by the court directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, \* \* \* to do, submit, to and .. I receive whatsoever the judge or court shall consider in that behalf. (Blackstone [Jones] p. 1676).

Marshall (in Ex parte Watkins 3 Pet. 193) explained the character of the writ as "a highly prerogative writ ; known to the common law, the great object of which is the liberation of those who may be imprisoned without sufficient cause. It is in the nature of a writ of error, to examine the legality of the Commitment."

Habeas Corpus. Este auto es una orden de producir, es decir, de presentar el cuerpo del detenido (habeas corpus, have the body) ante el Tribunal, para que este determine sobre la validez del arresto. Encyclopedia Juridica Espanola Tomo XVII, p. 406.

From the above descriptions and many others of the general nature of the writ, I deduce that when by Executive proclamation the privilege of the writ of habeas corpus is suspended, the Judiciary is thereby prevented from interfering with the Executive doings by inquiring into the legality of the detention of prisoners held by the Executive Department for rebellion or insurrection.

Here Hernandez does not ask for a writ of habeas corpus to inquire into the legality of his detention. No need for such inquiry because he is now detained by a judicial warrant of arrest. The Court knows the reason for the detention. Hernandez assumes for the moment the legality of the restraint; but he files a motion, in the case initiated against him (Criminal Case No. 15841) that he be allowed to go on bail. He did not petition for habeas corpus.

In this Court he is not asking for habeas corpus, he pleads for mandamus and/or certiorari. The cases decided by this Court show that his request should be granted.

Mandamus: Sy Guan vs. Amparo,[1] 45 Off. Gaz., 2447. Certiorari: Ocampo vs. Bernabe,[2] 43 Off. Gaz., 1632. Certiorari and Mandamus: Teehankee vs. Rovira,[3] 42 Off. Gaz., 717.

For one thing the Constitution does not provide that all accused persons shall be bailable except in capital offenses when the evidence of guilt is strong or when the President has suspended the writ of habeas corpus.

The proclamation of the Chief Executive did not have the effect of depriving the Courts of their normal powers or jurisdiction. It merely curtailed their privilege to issue the writ of habeas corpus at the request or on behalf of prisoners held for rebellion or insurrection. The proclamation did not suspend all the constitutional rights of such prisoners. Only the right to habeas corpus. Needless to say, martial rule has' not been established, luckily for all.

The English themselves, from whom Americans inherited the practice of the suspension, believe that the so-called "suspension of the Habeas Corpus Act" "is not in reality more than suspension of one particular remedy for the protection of personal freedom." (Ennyc Britanica, Habeas corpus)

Other remedies remain intact. The petition to go on bail is one of them. Pertinent excerpts from American decisions confirm this trend of thought.

- "The illustrious men who framed that instrument (Constitution) limited the suspension to one great right, and left

the rest to remain forever inviolable." *Ex parte Miligan*, 18 U. S. (Law Ed.) 281, 297.

- "This clause (suspension of the writ) refers only to the writ of habeas corpus ad subjiciendum when a person stands committed or detained as a prisoner for a crime, and does not include the other writ?'. This involved a construction of a similar clause in the constitution of the Confederate states. "On so grave a subject every word used must be supposed to have some import; and every word used in this clause does import that the power of suspension has reference only to the writ applicable in the case of persons imprisoned for crime. "The privilege." When one is committed to wait his trial for a crime, it is a privilege to be allowed a writ whereby the legality of his arrest may be inquired of, and he may be discharged or admitted to bail. But when one who has not committed and is not supposed to have committed a criminal offense is wrongfully restrained of his liberty, that he should be allowed to institute a civil suit to be relieved from the confinement is a right which every state is bound to secure at all times to its citizens; and these words must import that the power of suspension refers only to the former class of cases, otherwise no meaning can be attached to them." *Matter of Cain*, 1864, 2 Winst. L, N.C., 145. (Note, United States Code Annotated, Constitution Vol. I p. 747.)

- "The suspension of the writ of habeas corpus does not legalize a wrongful arrest and imprisonment; it only deprives the party thus arrested of the means of procuring his liberty, but does not exempt the" person making the illegal arrest from liability to damages, in a civil prosecution." *Griffin vs. Wilcox*, 1863, 21 Ind. 732, (Note, United States Code Annotated, Constitution Vol. I p. 748.)

- "The suspension merely disturbed 'one of the safeguards of civil liberty.'" (*Sinclair vs. Hiatt* 86 Fed. Supp. 828)

It is contended that because habeas corpus is one of the remedies[1] to obtain personal freedom thru bail after the information has been presented, the suspension of the writ, suspended the right to bail. The answer is that the proclamation suspended only that particular remedy (habeas corpus) to obtain personal freedom. Not the other remedies to secure bail. It is pretended that the suspension of the writ also suspended the right of the prisoners to defend themselves, to present witnesses, to face the accusers etc. because these rights would be ways to obtain their freedom?

An illustration will serve to emphasize the point. Hernandez like all accused persons, is entitled to speedy trial. If the prosecution or the court should unreasonably delay his trial, he may resort either to mandamus, or habeas corpus (*Conde vs. Rivera*, 45 Phil., 650; *Mercado vs. Santos*, 66 Phil., 215). Now, simply because the writ of habeas corpus (one of his remedies) has been suspended, would it be reasonable to hold that Hernandez has also lost the right to speedy trial, and that he may not enforce such right by mandamus? *Quod erat demonstrandum*. Suspension of one of two remedies does not suspend the other.

Another example: Suppose after trial, Hernandez is sentenced to life imprisonment, although the Penal Code punishes rebellion with prison mayor (I assume he is charged with rebellion only). Obviously that would be plain error, which Hernandez may rectify either by habeas corpus (*Cruz vs. Director of Prisons*, 17 Phil., 269) or by an ordinary appeal to this Court. Will anybody contend that simply because the writ has been suspended, Hernandez may not apply to this court for correction of the decision, thru an ordinary appeal?

It is urged that bail should not be allowed those charged with rebellion, because the moment they are released they will rejoin the dissidents and resume their destructive activities against the established government organizations. But as long as the Legislature has not deemed it proper to make rebellion a capital offense, we do not see how courts may refuse bail consistently with the constitutional precept that "All persons shall before conviction be bailable by sufficient sureties, "except those charged with capital offenses when evidence of guilt is strong."

And in my opinion, one of the surest means to ease the uprising is a sincere demonstration of this Government's

adherence to the principles of the Constitution together with an impartial application thereof to all citizens, whether dissidents or not. Let the rebels have no reason to apprehend that their comrades now under custody are being railroaded into Muntinlupa[2], without benefit of those fundamental privileges which the experience of the ages has deemed essential for the protection of all persons accused of crime before the tribunals of justice. Give them the assurance that the judiciary, ever mindful of its sacred mission will not, thru faulty cogitation or misplaced devotion, uphold any doubtful claims of Governmental power in diminution of individual rights, but will always cling to the principle uttered long ago by Chief Justice Marshall that when in doubt as to the construction of the Constitution, "the Courts will favor personal liberty" (Ex parte Burford 3 Cranch [7 U. S.] Law. Ed. Book 2 at p. 495).

Under normal conditions—when no suspension has been decreed—a person under detention may ask for a writ of habeas corpus to inquire into the legality of the restraint. If the court finds that he is illegally detained, it will order his release. If the court finds that he is legally held for a crime which is bailable, the court may permit him to go on bail.

When normalcy is disturbed and the Executive decrees a suspension of the writ he thereby erects, so to speak, a fence around those detained for rebellion or insurrection, a fence which the judiciary may not penetrate by the writ of habeas corpus. The Executive thereby practically tells the judiciary: "Please do not meddle with these prisoners. I am holding them for investigation or for purposes of quelling the rebellion." So long as the proclamation subsists, just so long will the Courts keep away in obedience to Constitutional inhibition. But when the Executive, thru the fiscals, files an information and requests the Courts to punish a particular rebel, the reason for non-interference ceases, because he thereby takes the prisoner out of the fenced premises and brings him into the Temple of Justice for trial and punishment. Thereby he sets in motion a train of consequences resulting from the rituals of the Temple: the principles regulating criminal procedure, e.g., proceedings to obtain bail or to enforce other rights of the prisoner at the bar. Indeed it would be preposterous and paradoxical for the Executive in so presenting the detainee expressly to stipulate, "Here is the prisoner, judge him; but you may not release him from confinement."

I admit that by virtue of the Presidential proclamation, persons detained for rebellion against whom no information has been filed may not ask for bail. The admission must be made because, under the rules, they may obtain bail only by inquiring into the cause of detention i.e., by the writ of habeas corpus, which is in abeyance. *Sublata causa tollitur effectus*.

But once the information is formulated, the circumstances change. The accused may ask bail by mere motion in the case—not necessarily by habeas corpus proceedings. The suspension order does not preclude that motion—it only bars the remedy of habeas corpus. The suspension paralyzed one of the means to obtain freedom it could not extinguish the ultimate objective. And if his motion is denied where he is charged merely with rebellion—he will be entitled to mandamus to compel the judge to grant bail.[3] If he is booked for a capital offense and the court, refusing to exercise its discretion to determine whether the evidence is strong or not, flatly denies bail invoking the suspension, mandamus will lie to compel the judge to exercise his discretion to determine whether or not the evidence is strong and act accordingly.[4] However if such court, exercises its discretion, but without any proof denies bail declaring that the evidence is strong or makes no finding on that point certiorari will surely be available to redress judicial abuse of discretion.[5]

The storm center of these litigations has been represented as a clash between individual liberty and governmental security. A third aspect should not be overlooked: Curtailment of the power of adjudication.

Fundamentally the three great branches of the Government are independent, and none may encroach upon

territory of the other except in those few instances specially allowed by the Constitutional structure. It should follow as a matter of judicial dialectics that when the line of separation projects into the other's domain, and alternative choices are equally available, the part of wisdom is to follow the course that, deflecting the angle of deviation, reduces the encroachment to a minimum consistent with the intention of the framers of the Constitution. Now, the suspension of the writ undeniably effects a temporary invasion of normal judicial territory; yet it is authorized by the Constitution for reasons of paramount necessity. The metaphorical "fence" previously mentioned is constructed on judicial realm. Therefore the Courts, in loyalty to the original apportionment, and the basic theories of republican institutions, should not enlarge its area by approving the extension ably but erroneously sponsored by the prosecution. Logical should be the view that when the Executive submitted the information, he invited the Court to look into the case of the accused here, and thereby waived the suspension of the writ, opening the fictional fence, in so far as this particular detainee is concerned. Unless it could be pretended<sup>[6]</sup> that after this detainee is acquitted by the Court of the charges of rebellion, the Executive may still legally detain him, keep him within the enclosure, on the pretext that the remedy of habeas corpus is not available to secure his release from custody.

I have heretofore mentioned two alternatives equally available. In thus describing the situation I have favored the opposing school of thought. For in truth the competing theories are not of equal validity. The one maintains that the right to bail has been impliedly suspended with the suspension of the writ; whereas the other asserts that the right to bail is expressly guaranteed by the Constitution, not only as individual privilege but also as judicial prerogative. Express guarantee versus implied derogation. Considering that repeals by implication are never favored, the choice offers no doubt: the desired advantage to the prosecution should not outbalance the right of the prisoner nor the powers of the Court.

Nevertheless the conflicting propositions may be, and are, coordinated and reconciled in the manner herein advocated: bail before the information is filed has been suspended; after the information is filed, the right to bail emerges in full force and effect.

Before concluding I wish to touch upon the argument that although the only exception expressly mentioned to the right to bail is "when the offense is capital and the evidence of guilt is strong" another implied exception should be "when the writ of habeas corpus is suspended." By its effect section 1(14) of Article III (about suspension) appears to be an exception to section 1(16) (right to bail) of same Article III. But a little reflection will show that the paragraph about suspension is complete in itself, containing the general rule and the exception: the general rule being "no suspension of the writ" and the exception, "cases of invasion" etc. Consequently it may not be deemed as an exception to another paragraph, specially because it relates to procedure whereas the paragraph about bail is a substantive right. And this paragraph about bail is complete in itself, with the general rule and one exception. By the way, "an express exception excludes others." In re Estate of Enriquez 29 Phil., 167. (See also Chartered Bank vs. Imperial 48 Phil, 931.)

My vote in this case:

Amado V. Hernandez is actually charged with rebellion with multiple murder, arsons and robberies. That is a capital offense. But he is entitled to bail just the same unless the evidence of his guilt is strong. The lower court received no evidence, in the belief that the proclamation suspended bail. The error is plain and the right of petitioner to bail should be upheld. The respondent judge should therefore be directed to receive evidence for the People and then, determining whether it is strong or not, should deny or grant bail accordingly. Needless to say, the burden of proof lies on the prosecution. (Moran Comments 3d. Vol. II, p. 676)

Bengzon, J. (in L-4855) :

In view of my opinion in *Amado V. Hernandez vs. Hon. Agustin P. Montesa* G. R. No. L-964 I vote that the respondent judge be required to hear the evidence for the prosecution and act accordingly. What I said about Hernandez right to bail applies equally to the rights of herein petitioners.

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[1] 79 Phil., 670.

[2] 77 Phil., 55.

[3] 75 Phil., 634.

[1] It is not the only remedy—Mandamus or Certiorari may be used.

[2] Unjustly denying them bail might have that effect.

[3] *Sy Guan vs. Amparo*, 45 Off. Gaz., 2447.

[4] *Ocampo vs. Bernabe*, supra.

[5] *Tee Han vs. Kovira*, supra.

[6] Mistakenly of course

**PADILLA, J.:**

I am of the opinion that paragraph 14, section 1, Article III, of the Constitution, which prohibits the suspension of the privilege of the writ of habeas corpus, and paragraph 16 of the same section and article, which grants to all persons before conviction the right to be released on bail by sufficient sureties, except to those charged with capital offenses when the evidence of guilt is strong, and enjoins that excessive bail be not required, may be invoked and applied in normal times or during periods of normalcy in the life of the nation, for such is the import of paragraph 14 if the exception is to be taken into account. The exception has reference to the suspension of the privilege during such period as the necessity for it shall exist, which may be decreed by the President in cases of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it (Article VII, section 10, paragraph 2, of the Constitution). It envisages and is intended to confront an abnormal situation pregnant with perils and dangers to the existence of the State. The exception in paragraph 16, unlike the one in paragraph 14, refers to the denial of bail during a period of normalcy.

Unless martial law has been declared and proclaimed by the President, any citizen or inhabitant of the Republic may apply to the courts for a writ of habeas corpus. However, if upon the face of the petition it appears that the person in whose behalf the writ is applied for is held, detained, or deprived of his liberty by virtue of the proclamation suspending the privilege of the writ, or if in the return to the writ by the agent of the law holding or detaining a citizen or inhabitant or depriving him of his liberty, he states that such citizen or inhabitant is being held, detained, or deprived of his liberty because he is suspected of having something to do with invasion, insurrection or rebellion and such allegation is found true, the court to which the writ is returned need not go further than to dismiss or deny the petition because of the suspension by the President of the privilege of the writ of habeas corpus. If that is what the Court could do in the case of a detained suspect, there would be no cogent reason for the Court to act otherwise in the case of a detained person already indicted or charged with the crime of rebellion or insurrection, because then the detention of such person would be more justified.

When the President decrees the suspension of the privilege of the writ, he does it under and pursuant to a constitutional authority (Article VII, section 10, paragraph 2, of the Constitution). He must have reasons for the exercise of the power and authority with which he is clothed by the Constitution. The coordinate Judicial

Department cannot inquire into the constitutionality and sufficiency of such reasons which led him to exercise the power. The possibility of abuse of the power does not argue against its existence, does not destroy or remove it and does not vest in the coordinate Judicial Department the power or authority to inquire into the constitutionality, propriety and sufficiency of the causes which prompted the President to exercise the power conferred upon him by the Constitution. He, too, more than anybody else, will be judged by posterity. And any citizen chosen by the people to hold such an exalted position is amenable also to the hearkenings of his conscience and fearful of an adverse verdict of history. And he knows too well that he cannot hold the office for more than eight years.

Those who contend that when the Executive Department turns over a detained person suspected of subversive activities to the Judicial Department, the control of such person by the Executive ceases and the jurisdiction of the competent court attaches and begins and the legal process must be followed, such as the granting of bail before conviction, except to those charged with capital offenses when evidence of guilt is strong, and those who claim that if the competent court may acquit such person of the charge of rebellion or insurrection, it also must be deemed to possess the authority to grant bail which is less than the power to acquit, lose sight of the fact that the decree suspending the privilege of the writ of habeas corpus is authorized by the Constitution in times of abnormality and the right to be released on bail may be secured and is granted only in times of normalcy. The prosecution of a person detained under the terms of the proclamation suspending the privilege of the writ or the turning over of such person to the competent court does not mean that such court may ignore, disregard or brush aside the terms of the proclamation or decree, because the latter has the effect of a law promulgated under and pursuant to a constitutional authority. The competent court must take into consideration and apply the terms of the proclamation to such detained person against whom an information has been filed. The eventuality of an acquittal does not withdraw such person from the effects, force and vigor of the proclamation or decree. The acquittal of such person upon the merits of the case means that he is innocent of the charge and hence entitled to his immediate release. His acquittal on grounds other than upon the merits of the case entitles him to an immediate discharge by the trial court, but he may again be apprehended and detained under and pursuant to the terms of the proclamation. The filing of an information for rebellion or insurrection against such person is an act of good faith on the part of the agents of the Executive Department which this Court should encourage and not stifle, so that his guilt or innocence may be determined judicially. If this Court were to construe that, after the filing of the informations against such person, the proclamation or decree suspending the privilege of the writ of habeas corpus ceases to have force and effect as to him, such a construction would have the effect of goading the agents of the Executive Department not to file an information and to detain him indefinitely or as long as they believe his detention is necessary. The filing of an information only means that the competent court should proceed to try the person charged with rebellion, or insurrection and, if found guilty, to impose upon him the penalty provided by law or, if found innocent, to direct his immediate discharge. It cannot and does not mean that the competent court may order his release on bail by sufficient sureties, because that would be a violation of the proclamation or decree which has the effect of law.

For these reasons, I believe that after the filing of an information for rebellion or insurrection, the defendant charged with that crime is not entitled to be released on bail during the effectivity of the proclamation or decree suspending the privilege of the writ of habeas corpus.

**TUASON, J.:**

Under constitutional guaranty bail is a matter of right which no court or judge could properly refuse in all cases beyond the exceptions specified in the Constitution. The meaning of this fundamental provision is that a party accused of any and every bailable offense shall have the inestimable privilege of giving security for his attendance at court and shall not be imprisoned. (6 C. J. 893.)

The Constitution will "be searched in vain for any provision that abridges this right. Any argument in support of the contention that the suspension of the writ of habeas corpus carries with it the suspension of the right to bail is, and has to be, based on interference. I do not believe that the curtailment of the right to bail is a normal, legal, or logical outcome of the suspension of the writ. The error, I am inclined to believe, arises from a confusion of terms and misapprehension of the principles underlying the suspension of the writ.

The purpose of the suspension of the writ is to enable the executive, as a precautionary measure, to detain without interference persons suspected of harboring designs harmful to public safety. (Ex Parte Simmerman, 132 F. 2nd, 442, 446) The Constitution goes no further. (Ex parte Milligan, 4 Wallace 2, 18 Law. Ed. 281, 297.) If this is the purpose, the suspension can contemplate only cases which, without the suspension, are open to interference; such cases are arrests and detentions by the executive department. Since the suspension of the writ is designed to prevent the issuance of this extraordinary remedy, and since the writ issues from the courts but never to the courts, it necessarily follows that arrests and detentions by order of the courts are outside the purview of the constitutional scheme.

As stated, the theory of the prosecution stems from a misconception of the ends pursued by the suspension of the writ. If it is to have any color of validity, this theory must assume that the Constitution directs positive action to be taken, orders arrests and detentions to be made. Unfortunately or fortunately, the Constitution does not do so. The intent of the Constitution in authorizing the suspension of the writ of habeas corpus is no other than to give the authorities a free hand in dealing with persons bent on overthrowing the Government. The effects of the suspension are negative, not positive; permissive, not mandatory nor even directory. By the suspension, arrests and detentions beyond the period allowed under normal circumstances are tolerated or legalized. The Constitution is not in the least concerned with the disposition of persons accused of rebellion or insurrection, whether or how long they should be kept in confinement, or whether they should be set at large. In the nature of the governmental set-up under the Constitution, their immediate fate is left to the discretion, within reasonable and legal limits, of the proper department.

With these distinctions in mind, the query is, on what department of Government is entrusted the prerogative of deciding what is to be done with the prisoners charged with or suspected of rebellion or insurrection? The answer, as I shall endeavor presently to explain, is either the executive or the Court, depending on who has jurisdiction over them.

All persons detained for investigation by the executive department are under executive control. It is here where the Constitution tells the courts to keep their hands off— unless the cause of the detention be for an offense other than rebellion or insurrection, which is another matter.

By the same token, if and when formal complaint is presented, the court steps in and the executive steps out. The detention ceases to be an executive and becomes a judicial concern. Thereupon the corresponding court assumes its role and the judicial process takes its course to the exclusion of the executive or the legislative departments. Henceforward, the accused is entitled to demand all the constitutional safeguards and privileges essential to due process. "The Constitution does not say that he shall be tried otherwise than by the course of common law." (Ex parte Milligan, ante, 297.) The Bill of rights, including the right to bail and the right to a fair trial, are unaffected by the suspension of the writ of habeas corpus. The Constitution "suspended one great right and left the rest to remain forever inviolable." (Ex parte Milligan, ante, 297.)

Section 1, paragraphs 14 and 16, Title III, and section 10, paragraph 2, Article VII, of the Constitution are clear and specific requiring no construction. The two provisions pertain to different spheres of action devolving on different branches of the Government. To repeat, arrests and detentions for investigation by the executive are

executive affairs beyond the reach of the courts. Arrests and detentions after the presentment of proper indictment, are arrests effected by court warrant and are part of the judicial process with which the other branches can not meddle. There are no discordant provisions to reconcile, no conflict to adjust, no obscurity to clarify.

But if we are to resort to construction, the provision which secures the right to bail ought to prevail. This inestimable right, sanctified by tradition and ratified by express mandate of the Constitution, can not be abrogated by implications, much less forced implications drawn from faulty premises. If there be inconsistency between the clauses of the Constitution hereinbefore mentioned, which is not true, that which would impair the right to bail should give way. The rule, applicable to the interpretation of constitutions as well as statutes, leans heavily on the side of a narrow construction of an exception to the operation of the laws. (56 Am. Jur. Section 431.) And so is a rule of strict construction generally applied to the interpretation of statutes in derogation of rights, either of the public or of individuals, or in derogation of their natural rights, or rights which had been enjoyed from time immemorial. This rule has been applied to rights to life, liberty, and the pursuit of happiness. The scope of each statutes in derogation of rights, either of the public or of individuals, or in derogation of their, natural rights, or rights which had been enjoyed from time immemorial. This rule has been applied to rights to life, liberty, and the pursuit of happiness. The scope of each statutes is not to be extended beyond the usual meaning of their terms. No act should be construed as infringing an ordinary right except by unmistakably clear, unambiguous, and peremptory language bearing other construction. (Idem 397.)

The precept that the express mention or enumeration of conditions excludes, by force of logic, conditions not mentioned or enumerated, should not be lost sight of. And it should not be forgotten, as indicated in *Ex Parte Miligan*, that if the purpose of the Constitution was to suspend the right to bail of persons accused of rebellion or insurrection, it was easy to have accomplished it by the use of direct words. Note also that Article VII, section 10, paragraph 2, of the Constitution says the President may, not shall, suspend the privileges of the writ. In fact Article III, Section 14, is couched in negative terms. (The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist.), which plainly conveys the idea that the Constitution is for respecting individual liberty except in case of necessity.

To the plea that the security of the State would be jeopardized by the release of the defendants on bail, the answer is that the existence of danger is never a justification for courts to tamper with the fundamental rights expressly granted by the Constitution. These rights are immutable, inflexible, yielding to no pressure of convenience, expediency, or the so-called "judicial statesmanship." The legislature itself can not infringe them, and no court conscious of its responsibilities and limitations would do so. If the Bill of Rights are incompatible with stable government and a menace to the Nation, let the Constitution be amended, or abolished. It is trite to say that, while the Constitution stands, the courts of justice as the repository of civil liberty are bound to protect and maintain undiluted individual rights.

At this juncture a case not dissimilar to the cases under consideration in their animating principle came up before a United States (Second) Circuit Court. It was an application for bail Of ten communists who had been convicted by a lower court of advocacy of violent overthrow of the United States Government. Among other grounds of opposition to the application, the Government stressed the peril of granting the applicants bail, judged by their past acts. Mr. Justice Robert H. Jackson, of the United States Supreme Court, acting as Circuit Justice for the Second Circuit, overruled the objections in an eloquent decision from which I quote the following passages:

"The Government's alternative contention is that defendants, by misbehavior after conviction, have forfeited their claim to bail. Grave public danger is said to result from what they may be expected to do, in addition to

what they have done since their conviction. If I assume that defendants are disposed to commit every opportune disloyal act helpful to Communist countries, it is still difficult to reconcile with traditional American law the jailing of persons by the courts because of anticipated but as yet uncommitted crimes. Imprisonment to protect society from predicted but uncommitted offenses is so unprecedented in this country and so fraught with danger of excesses and injustice that I am loath to resort to it, even as a discretionary judicial technique to supplement conviction of such offenses as those of which defendants stand convicted,

\* \* \* \* \*

"But the right of every American to equal treatment before the law is wrapped up in the same constitutional bundle with those of these communists. If in anger or disgust with these defendants we throw out the bundle, we also cast aside protection, for .the. liberties of more worthy critics who may be in. opposition to. the. government of some future day.

\* \* \* \* \*

"If, however, I were to be wrong on all of those abstract or theoretical matters of principle, there is a very practical aspect of this application which must not be overlooked or underestimated—that is the disastrous effect on the reputation of American justice if I should now send these men to jail and the full Court later decide that their conviction is invalid. All experience with litigation teaches that existence of a substantial Question about a conviction implies a more than negligible risk of reversal. Indeed this experience lies back of our rule permitting and practice of allowing bail where such questions exist, to avoid the hazard of unjustifiable imprisoning persons with consequent reproach to our system of justice. If that is prudent judicial practice in the ordinary case, how much more important to avoid every chance of handing to the Communist world such an ideological weapon as it would have if this country should imprison this handful of Communist leaders on a conviction that our highest Court would confess to be illegal. Risks, of course, are involved in either granting or refusing bail. I am not naive enough to underestimate the troublemaking propensities of the defendants. But, with the Department of Justice alert to the dangers, the worst they can accomplish in the short time it will take to end the litigation is preferable to the possibility of national embarrassment from a celebrated case of unjustified imprisonment of Communist leaders. Under no circumstances must we permit their symbolization of an evil force in the world to be hallowed and glorified by any semblance of martyrdom. The way to avoid that risk is not to jail these men until it is finally decided that they should stay jailed."

Let us bear in mind that in the case just cited, the prisoners had already been found guilty and sentenced, and their right to bail lay within the court's discretion. In the cases at bar the accused have not yet been tried and so, unless we accept the theses that the right to bail has been suspended, bail is obligatory.

There is no denying that risk is present in every case of granting liberty on bail. The wise men who framed the Constitution did not overlook the possibility of escape; it was and is a matter of common knowledge and occurrence. But the possible escape of accused was considered a lesser evil than the imprisonment of persons who may be innocent, and are presumed innocent by law.

As a measure of expediency, denial of bail in the instant cases would not do away with the feared danger that the defendants might resume their nefarious activities. Temporary liberty on bail is not as perilous to public peace and order as complete freedom. The defendant's acquittal, which is by no means a remote probability, would leave the door wide open to the dreaded consequences. The point is, if the Government could afford the risk involved in acquittal, it could the risk that goes with conditional liberty during the short period that it takes to dispose of these cases.

The remark by the Judge Advocate General that by reason of the suspension of the writ of habeas corpus the Army could lawfully re-arrest and re-jail the defendants if they were absolved, happily is not the law. We are not to suppose that the courts are being made to work in vain, that their decisions could be ignored if they do not meet

with the approval of one of the parties.

Rebellion is punishable by prison mayor and persons accused of this crime are of right entitled to bail. The inclusion of murders, arsons, and kidnappings in the information must be regarded as aggravating circumstances, as in treason, and would not authorize the imposition of a penalty higher than the maximum provided for rebellion. Separate charges for murder, arson, and kidnapping ought to be instituted if the defendants are to be punished for these offenses. Murder, arson, or kidnapping is not an essential element of the definition of rebellion. There is no such creature known to law as the complex crime of rebellion or insurrection with murder, etc. For this reason I am of the opinion that Judge Abaya did not err in disregarding the offer—granting there was such an offer—of the City Fiscal to show that the evidence against the accused is strong.

### **BAUTISTA ANGELO, J.:**

The cases before us involve a fundamental issue which vitally concerns the security of the State and the welfare of our people. They involve a conflict between the State and the individual. When the right of the individual conflicts with the security of the State, the latter should be held paramount. This is the self evident political shibboleth. The State is the political body that stands for society and for the people to secure which individual rights must give way and yield. For as Justice Holmes well said, "when it comes to a decision by the head of the State upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment" (*Moyer vs. Peabody*, 55 Law. Ed. 410). Only having in mind this fundamental point of view can we determine in its true light the important case before us which has no precedent in the annals of our jurisprudence.

The President has issued the Proclamation under consideration with one primordial purpose: to promote, protect, and maintain the security of the nation. To his attention was brought definite evidence showing that groups or bands of people have taken up arms against the Government, or have engaged in subversive activities in several provinces, causing disturbances and hampering the peace and tranquility and the normal pursuits of the people. Already many had been wounded and killed, and many more are falling in the bloody trail. And the victims are civilians and military men alike. Stern measures had to be adopted to stave off a greater peril. The President saw no other course of action. A picture of the situation is well reflected in several passages of the Proclamation.

In the light of the precepts of our Constitution, the issuance of the Proclamation has no other legal consequence than the limitation of the right of the individual to his liberty. This is the immediate effect of the suspension of the privilege of the writ of habeas corpus. No other right or privilege vouchsafed to him by the Constitution has thereby been affected or impaired which he is free to invoke in line with the processes prescribed by our statutes. For, paraphrasing Justice Davis, "The illustrious men who framed that instrument (whose provisions are similar to ours on this point) limited the suspension to one great right, and left the rest to remain forever inviolable" (*Ex parte Milligan*, 18 U; S. [Law. Ed.] 281, 297). And in our opinion this limitation or restraint must continue so long as the Proclamation suspending the privilege of the writ remains pending if it is to achieve its wholesome purpose, or so long as the detainee is not pronounced innocent by our courts of justice. If the person indicted is pronounced innocent, the Government has no cause to hold him in confinement. His case does not come within the purview of the Proclamation.

Three fundamental reasons may be advanced in support of the view we have expressed in the preceding paragraph. These reasons are: (1) the express terms of the Proclamation; (2) the purpose of the Proclamation; and (3) the nature of the writ of habeas corpus. Tested under the force and strength of these reasons, the only logical conclusion that can be drawn in keeping with sound rules of statutory construction is that the herein petitioner should be denied the right to bail.

- The concluding paragraph of the Proclamation recites that the privilege of the writ of habeas corpus shall be suspended "for the persons presently detained, as well as all others who may be hereafter similarly detained for the crimes of sedition, insurrection, or rebellion, and all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith". Note the word "detained" employed in the Proclamation. It is employed without any qualification or distinction. To detain is "to hold or keep as in custody" (Webster's New International Dictionary, 2nd ed.). A person detained for purposes of investigation is no different from one detained after his arrest resulting from his indictment. One is held in custody or deprived of his liberty if he is detained before or after he is actually indicted. The scope of the Proclamation covers both. It is elementary in statutory construction that where the law does not distinguish, we ought not to distinguish. This is too obvious to require elaboration. It is, therefore, safe to conclude that in the light of the very terms of the Proclamation the suspension of the privilege of the writ of habeas corpus applies alike to all persons detained for the offenses enumerated therein whether formal charges had been filed against them or not.

"The meaning of this provision in the constitution of the United States would seem to be that, when the public safety is endangered by rebellion, or invasion, the privilege of this writ (habeas corpus) may be suspended as to persons suspected of or charged with aiding, sustaining or promoting such rebellion or invasion, and thereby endangering the public safety." (39 CJS 754-755; *People vs. Gaul*, 44 Barb. 98, N. Y., underscoring and word in parenthesis supplied.)

- As we have already adverted to, the paramount purpose behind the issuance of the Proclamation is to protect and safeguard public safety or national security or "to insure the peace and security of the population and to maintain the authority of the Government". This is the compelling objective of the Proclamation. The reasons and motives that have compelled the President to issue it are well narrated therein all pointing in bold relief to the necessity of placing the persons affected under restraint to prevent them from strengthening the forces of rebellion and increasing the danger to national security. If there is justification for their confinement while they are under investigation for the purpose of determining their participation or complicity in the acts for which they are held under suspicion, there is indeed more cogent and plausible reason, if not more, to keep them behind bars after they are indicted and turned over to the courts for the corresponding prosecution. Before they are indicted and formally charged, the right to hold them is merely predicated on suspicion or at best on circumstantial evidence of doubtful probative value. But after formal charges are filed against them, the suspicion becomes strengthened and the evidence reinforced and secure. The military authorities could hold them in confinement indefinitely if they so prefer, but they chose to turn them over to the courts not merely to give them an opportunity to prove their innocence but as a proof of their abiding faith in the processes of democracy. To release them on bail after their indictment would be to defeat the very purpose of the Proclamation because its logical result would be to give freedom to those who, if before were mere suspects, now are a real menace because the evidence against them is stronger and more compelling. We are not prepared to adopt an interpretation that would give such absurd and inconsistent result.

- Considering the very nature of the writ of habeas corpus in the light of law and precedents, the same conclusion can be reached. The law and precedents on the matter reveal to us that that writ is the only remedy open to a person held in confinement regardless of its nature. Section 1 of Rule 102, speaking of the scope of that writ, provides that it "shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty". It refers to all cases of confinement, whether before indictment or thereafter. It does not make any distinction. Precedents available here and elsewhere point to the same conclusion. They are all 'agreed that if a person is deprived of his liberty, his only remedy is to invoke that writ whether in the form of mandamus or certiorari. So we said in a case recently decided in this jurisdiction (*People vs. Alano*, No. L-1801, May 14, 1946;

45 Off. Gaz., No. 11, pp. 4935-4936). It has also been held that this privilege is not only the right to be discharged from imprisonment, but also the right to give bail if the offense is bailable, and if not bailable, the right to a speedy trial and without arbitrary delay. (In re Dugan, 1865-6 D. C 131, 139, see also in re Fagan, B. C. Mass. 1863, 2 Sprague, 91, 8 Fed. Cases No. 4604). It is, therefore, an all embracing remedy the purpose of which is to test the legality of restraint irrespective of its nature. If this is the only remedy available to one deprived of his liberty it logically follows that the Proclamation denies him the right to bail.

The power of the President to hold in custody indefinitely a person suspected of any of the acts covered by the Proclamation is not disputed. In fact opposing counsel are 'agreed that the President may so hold him so long as he believes it imperative to safeguard public safety. What they contend is that while that is an untrammelled prerogative of the Chief Executive granted to him by the Constitution, his function ends the moment he submits the case to the courts of justice. From that moment, they contend the executive function ends and the judicial function begins. Since then the accused is placed under the absolute power and authority of the courts to be dealt with in accordance with law and the constitution.

We have no quarrel with this pretense if carried to its logical conclusion. We concede that once the case is brought to court the indictee is placed under the full command of the court who can exercise over him his plenary jurisdiction. We also concede that the detainee, once indicted, can invoke in his favor all the rights guaranteed to him by law and the Constitution if he deems it necessary to protect his interest. And in this sense, he can invoke his right to a speedy trial, to be defended by counsel, to be confronted by and cross-examine witnesses, to have compulsory process in his favor, to secure the attendance of witnesses in his behalf, and to such other rights granted to the accused in ordinary cases. He may even ask for time to prepare for trial. This right is not denied to him for the simple reason of his confinement for he can always confer with his counsel or witnesses if he so desires, and the jail authorities, to be sure, will not dare deny him this privilege. In other words, he is not denied due process of law simply because of his confinement. The only limitation on his rights refers to his freedom which, as already stated, has been withheld from him by the Proclamation. The contention that to deny the accused the right to bail once the court has acquired jurisdiction over him would be a relinquishment of a judicial prerogative cannot stand in the light of what we have heretofore stated because that power has been obliterated as a necessary consequence of the suspension of the privilege of the writ of habeas corpus. What is not possessed cannot be relinquished. Under the same token the denial of bail is not a denial of a right because the same has been withheld by the Proclamation. And good reasons may be invoked in support of this limitation of right.

It should be noted that the privilege of the writ of habeas corpus and the right of an accused person to bail are both embodied in the Bill of Rights of our Constitution. Section 1(14) of article III, refers to the first, and Section 1 (16) of the same Article refers to the second. It should also be noted that the suspension of the privilege of the writ of habeas corpus has reference only to cases of invasion, insurrection, and rebellion, whereas the right of an accused person to bail refers to all offenses with the exception only of those involving capital punishment when evidence of guilt is strong. Paragraph 14 is, therefore, a provision which is special or specific in nature, whereas paragraph 16 is a general one. And it is a well known rule of statutory construction that "when general and special provisions of a constitution are in conflict, the special provisions should be given effect to the extent of their scope, leaving the general provisions to control in cases where the special provisions do not apply" (16 C.J.S. p. 65) ; or "where there is a conflicting specific and general provision, or a particular intent which is incompatible with a general intent, the specific provision or particular intent will be treated as an exception, and should receive a strict, but reasonable, construction. The courts will neither curtail a general rule nor add to an exception by implication" (16 C.J.S. p. Q6). And, under this rule, the suspension of the privilege of the writ of the habeas corpus should be treated as an exception to the general clause providing for bail to all persons charged with offenses not involving a capital punishment. Another rule is that, "in case of a conflict in the provisions of a

constitution, if one or the other must yield, the one which, under the law, is the lesser right will yield" (16 C.J.S. p. 65). And speaking of the two conflicting provisions, there is no doubt that the suspension of the privilege is a greater right because it involves the security of the State. The right to bail must, therefore, yield because it merely involves the right of an individual.

There are other rules that may be invoked in support of our theory. Thus, it was held that "in ascertaining both the intent and general purpose, as well as the meaning, of a constitution or a part thereof, it should be construed as a whole. As far as possible, each provision should be construed so as to harmonize with all the others, (yet) with a view to giving effect to each and every provision in so far as it shall be consistent with the construction of the instrument as a whole" (16 C.J.S. p. 62). And "The presumption 'and legal intendment is that each and every clause in a written constitution has been inserted for some useful purpose, and courts should avoid a construction which would render any portion of the constitution meaningless" (16 C.J.S., p. 64).

In the light of the foregoing rules no other conclusion can be reached, for to hold that because of the incidence of the filing of a formal charge the court can grant an indictee his liberty under bail as counsel now contend would be to render ineffective and nugatory the suspension of the privilege exercised by virtue of a mandate of the same constitution. That is an unreasonable interpretation. It is our duty to reconcile and harmonize them so that both provisions can be given effect and validity. We should give them a fair, consistent and harmonious interpretation.

"It would be an absurdity to say that the action of the executive, under such circumstance, may be negated and set at naught by the judiciary, or that the action of the executive may be interfered with or impugned by the judiciary. If the courts are to be made a sanctuary, a city of refuge \* \* \* they will soon cease to be that palladium of the rights of the citizen \* \* \*."

"It is not the province of the courts to hinder, delay, or place obstructions in the path of duty prescribed by law for the executive, but rather to render to him all the aid and assistance in their power in his efforts to bring about the consummation most devoutly prayed for by every good and law-abiding citizen in the state." (In re Boyle, 45 L.R.A. 832, 836-837; underscoring supplied.)

Our country is in distress. Our individual and collective security in great peril. Our Chief Executive has taken stock of the gravity of the situation and to avert the spread of the subversive movement, has issued the Proclamation under consideration. It is our duty to find a way within the tenets of the law to the end that this great and compelling objective may be brought to a happy and successful fruition.

For all the foregoing reasons, I vote for denial of the right to bail.

BAUTISTA ANGELO, J., concurring in the result (in L-5102):

In G. R. No. L-5102 entitled Eugenio Angeles, the City Fiscal of Manila vs. Hon. Gavino S. Abaya, as Judge of the Court of First Instance of Manila, I vote for the granting of the petition that the respondent Judge be ordered to hear the evidence of the prosecution to enable it to prove the strength of the evidence of guilt of the defendants as authorized by section 1(16), Article III of our Constitution.

I predicate my vote merely on a matter of procedure which the respondent Judge has disregarded notwithstanding the express request made to that effect by the prosecution. The reasons advanced for denying such request are in my opinion untenable because the order of September 12, 1951, granting bail was not yet final when the request to present evidence was made and because estoppel does not operate against law and the Constitution. When, therefore, the respondent Judge denied the request of the prosecution to be given that opportunity considering the circumstances that had concurred in the incident regarding bail, he committed an abuse of discretion.

The prosecution is entitled to be given an opportunity to present evidence as to the guilt of the defendants because

the information charges a capital offense. There was, therefore, room for the respondent Judge to act on the petition to grant bail to defendants without passing on the controversial question touching on the effect of the suspension of the privilege of the writ of habeas corpus on the right to bail.

On this question, I have already expressed my view in a separate decision. The vote of the Court on this issue is divided and so far no decision has been reached. My vote in this case is merely limited to a matter of procedure which in my opinion should be decided in favor of the prosecution.

FERIA, J., dissenting (in L-4855 and L-4964) :

I dissent from the minute resolution which dismisses the petitions in these cases under section 2 of Rule 56, on the ground that after the rehearing thereof the necessary majority of six votes can not be had for the pronouncement of a judgment or decision.

In view of the result of the last deliberation and voting in these cases, five (5) Justices to four (4), and the fact that there is one vacancy now in the Supreme Court and Justice Montemayor, one of the Justices, is absent on vacation abroad, I submitted to the Supreme Court in bane the proposition, which was not accepted, that a recommendation be made by the Honorable Chief Justice of this Court to the President of the Philippines for the designation of two Justices of the Court of Appeals or district judges to sit temporarily as Justices of the Supreme Court until a judgment in this case is reached by the concurrence of six Justices, under section 9 of Judiciary Act of 1948, Republic Act No. 296. Said section 9 provides that "if on account of illness, absence, incapacity upon any of the grounds mentioned in section 1, Rule 126, of the Rules of Court of any of the Justices of the Supreme Court, or whenever, by reason of temporary disability of any Justice thereof or vacancies occurring therein, the requisite number of six Justices necessary to render or in a judgment in any given case can not be had, the President of the Philippines, upon the recommendation of the Chief Justice, may designate such number of Justices of the Court of Appeals or district judges as may be necessary to sit temporarily as Justices of the Supreme Court, until a judgment in said case is reached." Had the Chief Justice of this Court made that recommendation and the President designated two Justices of the Court of Appeals or District judges to sit temporarily as Justices of the Supreme Court, a judgment in the present case must have necessarily been reached.

Section 2 of Rule 56, in connection with section 1 of Rule 58 of the Rules of Court, provides that "When the Supreme Court in bane is equally divided in opinion or the necessary majority can not be had, the case shall be reheard and if on rehearing no decision is reached, the action shall be dismissed if originally commenced in the court; in appealed cases the judgment or order appealed from shall stand affirmed in civil cases?" and in criminal cases "the judgment of conviction of the lower court shall be reversed, and the defendant acquitted according to section 12 of Rule 120. Said provisions of the Rules, of Court were relatively of more frequent application to cases to be decided by the Supreme Court at the time and after said Rules were promulgated in 1940, because the number of Justices of the Supreme Court was reduced to seven by the Commonwealth Act No. 3 approved on December 31, 1935, which created the Court of Appeals although the second paragraph of section 2 of said Commonwealth Act. No. 3 contained substantially the same provisions as those of the second paragraph above-quoted of section 9 of the Judiciary Act of 1948. In *People vs. Galang*, No. 46787 decided on September 12, 1941, (73 Phil. 184, 201), Justices Paras and Hontiveros of the Court of Appeals were designated by the President to act as Justices of the Supreme Court in lieu of Justices Santos and Ozaeta under said section 2 of Commonwealth Act No. 3, and there were also several such designations after the occupation in cases decided by this Court.

But after the new Judiciary Act of 1948 was approved increasing the number of Justices from seven to eleven, the above quoted provisions of section 2 of Rule 56 and section 12 of Rule 120 became almost obsolete, because

there will always be eleven (11) Justices of the Supreme Court present and qualified to act, by the designation of sufficient number of Justices of the Court of Appeals or District Judges by the President of the Philippines upon recommendation of the Chief Justice of the Supreme Court if necessary in any given case until a judgment is reached according to section 9 of the above quoted of the Judiciary Act of 1948. With eleven qualified Justices of the Supreme Court present, the concurrence of six Justices necessary for the pronouncement of a judgment may always be had, except in very exceptional cases in which, notwithstanding such designation of temporary Justices of the President, the concurrence of six Justices can not be had, and said provisions of the Rules of Court may be applied.

I am of the opinion that the provisions of section 2, Rule 56 of the Rules of Court can not be applied to the present case, which is a very important one and requires a decision on the merits by the majority of this Court, because no recommendation has been made by the Chief Justice to the President of the Philippines to designate two Justices of the Court of Appeals or district judges to sit temporarily as Justices of the Supreme Court, for as above stated there is one vacancy in this Court and Justice Montemayor is absent on vacation abroad.

As there is no decision in the present case it is not necessary for the members of this Court to write their individual opinion or concur in the opinion of others, and for that reason I am not writing down my opinion on the merits.

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