

ROGER CHAVEZ, PETITIONER VS. THE HONORABLE COURT OF APPEALS, THE PEOPLE OF THE PHILIPPINES & THE WARDEN OF THE CITY JAIL OF MANILA, RESPONDENTS.

G.R. No. L-29169. August 19, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The thrust of petitioner's case presented in his original and supplementary petitions invoking jurisdiction of this Court is that he is entitled, on habeas corpus, to be freed from imprisonment upon the ground that in the trial which resulted in his conviction[1] he was denied his constitutional right not to be compelled to testify against himself. There is his prayer, too, that, should he fail in this, he be granted the alternative remedies of certiorari to strike down the two resolutions of the Court of Appeals dismissing his appeal for failure to file brief, and of mandamus to direct the said court to forward his appeal to this Court for the reason that he was raising purely questions of law.

The indictment in the court below—the third amended information—upon which the judgment of conviction herein challenged was rendered, was for qualified theft of a motor vehicle, one (1) Thunderbird car, Motor No. H9YH-143003, with Plate No. H-16648 Pasay City '62 together with its accessories worth P22,200.00. Accused were the following: Petitioner herein, Roger Chavez, Ricardo Sumilang alias "Romeo Vasquez", Edgardo P. Pascual alias "Ging" Pascual, Pedro Rebullo alias "Pita", Luis Asistio alias "Baby" Asistio, Lorenzo Meneses alias "Lory" Meneses, Peter Doe, Charlie Doe and Paul Doe.[2]

Averred in the aforesaid information was that on or about the 14th day of November, 1962, in Quezon City, the accused conspired, with intent of gain, abuse of confidence and without the consent of the owner thereof, Dy Sun Hiok y Lim, in asporting the motor vehicle above-described.

Upon arraignment, all the accused, except the three Does who have not been identified nor apprehended, pleaded not guilty.

On July 23, 1963, trial commenced before the judge presiding Branch IX of the Court of First Instance of Rizal in Quezon City.

The trial opened with the following dialogue, which for the great bearing it has on this case, is here reproduced:

"COURT:

The parties may proceed.

FISCAL GRECIA:

Our first witness is Roger Chavez [one of the accused].

ATTY. CARBON [Counsel for petitioner Chavez]:

I am quite taken by surprise, as counsel for the accused Roger Chavez, with this move of the fiscal in presenting him as his witness. / object.

COURT:

On what ground, counsel?

ATTY. CARBON:

On the ground that I have to confer with my client.

It is really surprising that at this stage, without my being notified by the Fiscal, my client is being presented as witness for the prosecution. I want to say in passing that it is only at this very moment that I come to know about this strategy of the prosecution.

COURT (To the Fiscal):

You are not withdrawing the information against the accused Roger Chavez by making [him a] state witness?

FISCAL GRECIA:

I am not making him as state witness, Your Honor..

I am only presenting him as an ordinary witness.

ATTY. CARBON:

As a matter of right, because it will incriminate my client, I object.

COURT:

The Court will give counsel for Roger Chavez fifteen minutes within which to confer and explain to his client about the giving of his testimony.

COURT: [after the recess]

Are the parties ready?

FISCAL:

We are ready to call on our first witness, Roger Chavez.

ATTY. CARBON:

As per understanding, the proceedings was suspended in order to enable me to confer with my client.

I conferred with my client and he assured me that he will not testify for the prosecution this morning after 1 have explained to him the consequences of what will transpire.

COURT:

What he will testify to does not necessarily incriminate him, counsel.

And there is the right of the prosecution to ask anybody to act as witness on the witness-stand including the accused.

If there should be any question that is incriminating then that is the time for counsel to interpose his objection and the court will sustain him if and when the court feels that the answer of this witness to the question would incriminate him.

Counsel has all the assurance that the court will not require the witness to answer questions which would incriminate him.

But surely, counsel could not object to have the accused called on the witness stand.

ATTY. CARBON: I submit.

ATTY. CRUZ [Counsel for defendants Pascual and Meneses]:

MAY IT PLEASE THE COURT:

This incident of the accused Roger Chavez being called to testify for the prosecution is something so sudden that has come to the knowledge of this counsel.

This representation has been apprised of the witnesses embraced in the information.

For which reason I pray this court that I be given at least some days to meet whatever testimony this witness will bring about.

I therefore move for postponement of today's hearing.

COURT:

The court will give counsel time within which to prepare his cross-examination of this witness.

ATTY. CRUZ:

I labored under the impression that the witnesses for the prosecution in this criminal case are those only listed in the information.

I did not know until this morning that one of the accused will testify as witness for the prosecution.

COURT:

That's the reason why the court will go along with counsels for the accused and will give them time within which to prepare for their cross-examination of this witness.

The court will not defer the taking of the direct examination of the witness.

Call the witness to the witness-stand.

EVIDENCE FOR THE PROSECUTION

ROGER CHAVEZ, 31 years old, single, buy and sell merchant, presently detained at the Manila Police Department headquarters, after being duly sworn according to law, declared as follows:

ATTY. 1BASCO [Counsel for defendant Luis Asistio]:

WITH THE LEAVE OF THE COURT:

This witness, Roger Chavez is one of the accused in this case No. 0-5311. The information alleges conspiracy. Under Rule 123, Section 12, it states:

'The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.'

COURT:

That is premature, counsel. Neither the court nor counsels for the accused know what the prosecution wants to

establish by calling this witness to the witness-stand.

ATTY. IBASCO:

I submit. COURT:

The Fiscal may proceed."^[3]

And so did the trial proceed. It began with the "direct examination" of Roger Chavez by "Fiscal Grecia".

Came the judgment of February 1, 1965. The version of the prosecution as found by the court below may be briefly narrated as follows:

A few days before November 12, 1962, Roger Chavez saw Johnson Lee, a Chinese, driving a Thunderbird car. With Ricardo Sumilang (movie actor Romeo Vasquez) in mind, whom he knew was in the market for such a car, Chavez asked Lee whether his car was for sale. Lee answered affirmatively and left his address with Chavez. Then, on November 12, Chavez met Sumilang at a barbershop, informed him about the Thunderbird. But Sumilang said that he had changed his mind about buying a new car. Instead, he told Chavez that he wanted to mortgage his Buick car for P10,000.00 to cover an indebtedness in Pasay City. Upon the suggestion of Chavez, they went to see Luis Asistio, who he knew was lending money on car mortgages and who, on one occasion, already lent Romeo Vasquez P3,000.00 on the same Buick car. Asistio however told the two that he had a better idea on how to raise the money. His plan was to capitalize on Romeo Vasquez' reputation as a wealthy movie star, introduce him as a buyer to someone who was selling a car and, after the deed of sale is signed, by trickery to run away with the car. Asistio would then register it, sell it to a third person for a profit. Chavez, known to be a car agent, was included in the plan. He furnished the name of Johnson Lee who was selling his Thunderbird.

In the morning of November 14, Chavez telephoned Johnson Lee and arranged for an appointment. Sometime in the afternoon, Chavez and Sumilang met Lee in his Thunderbird on Highway 54. Sumilang was introduced as the interested buyer. Sumilang's driver inspected the car, took the wheel for a while. After Sumilang and Lee agreed on the purchase price (P21,000.00), they went to Binondo to Johnson Lee's cousin, Dy Sun Hiok, in whose name the car was registered. Thereafter, they went to see a lawyer-notary public in Quezon City, known to Chavez, for the drafting of the deed of sale. After the deed of sale was drawn up, it was signed by Sumilang as the vendee, Dy Sun Hiok the vendor, and Sumilang's driver and Johnson Lee the witnesses thereto.

As payment was to be made at Eugene's restaurant in Quezon City, all of them then drove in the Thunderbird car to that place. The deed of sale and other papers remained in the pockets of Johnson Lee.

At Eugene's, a man approached Sumilang with a note which stated that the money was ready at the Dalisay Theater. Sumilang then wrote on the same note that the money should be brought to the restaurant. At the same time he requested Lee to exhibit the deed of sale of the car to the note bearer.^[4]

Then, the two Chinese were left alone in the restaurant. For Sumilang, who had left the table to pose for pictures with some fans and came back, again left never to return. So did Chavez, who disappeared after he left on the pretext of buying cigarettes. The two Chinese could not locate Sumilang and Chavez. They went out to the place where the Thunderbird was parked, found that it was gone. They then immediately reported its loss to the police. Much later, the NBI recovered the already repainted car and impounded it.

Right after the meeting at Eugene's, Chavez, Sumilang and Asistio converged that same day at Barrio Fiesta, a restaurant at Highway 54 near the Balintawak monument in Caloocan. There, Asistio handed to Sumilang P10,000.00 cash and a golf set worth P800.00 as the latter's share in the transaction. On the 14th of November, the registration of the car was transferred in the name of Sumilang in Cavite City, and three days later, in the name of

Asistio in Caloocan.

From the court's decision, Ricardo Sumilang's version, corroborated in part by Asistio, may be condensed as follows:

In the last week of September, 1962, Sumilang saw Roger Chavez at a gas station. The latter informed him that there was a Thunderbird from Clark Field for sale for a price between P20,000.00 and P22,000.00. Chavez said that it could be held for him with a down payment of P10,000.00.

To raise this sum, Sumilang and Chavez, on October 1, went to the house of a certain Nena Hernaez de los Reyes who wrote out a check for P5,000.00 as a loan to Sumilang. That check was exhibited in court. Sumilang and Chavez then went to Pasay City to see a certain Mario Baltazar, an agent of the Pasay City Mayor, and Narsing Cailles, Chief of the Fire Department. Sumilang asked the two for a P10,000.00-loan backed up by the P5,000.00-check aforesaid on condition that it should not be cashed immediately as there were not enough funds therefor. Baltazar and Cailles agreed to give the money the next day, as long as the check would be left with them and Sumilang would sign a promissory note for P10,000.00. Baltazar later informed Sumilang that Chavez picked up the money the next day. Four or five days afterwards, Chavez returned P4,000.00 to Sumilang because P6,000.00 was enough for the deposit. And so, Sumilang gave back the P4,000.00 to Baltazar.

About the end of October or at the beginning of November, Chavez asked Sumilang for another P3,000.00. Sumilang sent Chavez to Baltazar and Cailles, with a note requesting that they accommodate him once more. He also sent a check, again without funds. Baltazar gave the money after verifying the authenticity of the note.

On November 14, Chavez appeared at Sumilang's house with the news that the car was ready if Sumilang was ready with the rest of the money. So Sumilang got P9,000.00 from his mother and another P4,000.00 from his aparador. He immediately gave P6,000.00 to Chavez, intending to pay out the balance upon the car's delivery. It was then that Chavez told Sumilang that the car was already bought by a Chinese who would be the vendor.

The purchase price finally agreed upon between Sumilang and Johnson Lee was P21,000.00, plus P500.00 agent's commission at the expense of the buyer. Sumilang told Lee that he already paid part of the price to Chavez.

At Eugene's, Chavez asked Sumilang for the balance, Sumilang accommodated. There, Sumilang also saw a friend, "Ging" Pascual. In the course of their conversation at the bar, Sumilang mentioned the proposed transaction thru Chavez. Pascual warned that Chavez was a "smart" agent and advised that Sumilang should have a receipt for his money. A certain Bimbo, a friend of Pascual, offered to make out a receipt for Chavez to sign.

After Sumilang returned from posing for some photographs with some of his fans, Bimbo showed him the receipt already signed by Chavez. Sumilang requested Pascual and Bimbo to sign the receipt as witnesses. And they did. This receipt was offered as an exhibit by the prosecution and by Sumilang.

When Sumilang was ready to leave Eugene's, Johnson Lee turned over to him the deed of sale, the registration papers and the keys to the car. After shaking hands with Lee, Sumilang drove away in the car with his driver at the wheel.

Two or three days afterwards, Sumilang dropped by the Barrio Fiesta on his way to a film shooting at Bulacan. He saw Asistio with many companions. Asistio liked his Thunderbird parked outside. Asistio offered to buy it from him for P22,500.00. As the offer was good, and knowing Asistio's and his friends' reputation for always getting what they wanted, Sumilang consented to the sale. Asistio tendered a down payment of P1,000.00; the balance he promised to pay the next day after negotiating with some financing company. Before said balance could be paid, the car was impounded.

The trial court gave credence to Sumilang's averment, strengthened by Baltazar's and Cailles' corroborations, that he paid good money for the car. Sumilang was thus cleared. So was Asistio whom the trial court believed to be a mere buyer of the car. And so, the prosecution's theory of conspiracy was discounted.

As to the other accused, the court found no case against Pedro Rebullo alias "Pita" and Lorenzo Meneses alias "Lory". The accused "Ging" Pascual was also acquitted for in the first place he was not identified by Johnson Lee in court.

As to Roger Chavez, however, the court had this to say: "Roger Chavez does not offer any defense. As a matter of fact, his testimony as witness for the prosecution establishes his guilt beyond reasonable doubt." [5] The trial court branded him "a self-confessed culprit". [6] The court further continued:

"It is not improbable that true to the saying that misery loves company Roger Chavez tried to drag his co-accused down with him by coloring his story with fabrications which he expected would easily stick together what with the newspaper notoriety of one and the sensationalism caused by the other. But Roger Chavez's accusations of Asistio's participation is utterly uncorroborated. And coming, as it does, from a man who has had at least two convictions for acts not very different from those charged in this information, the Court would be too gullible if it were to give full credence to his words even if they concerned a man no less notorious than himself." [7]

The trial court then came to the conclusion that if Johnson Lee was not paid for his car, he had no one but Roger Chavez to blame.

The sum of all these is that the trial court freed all the accused except Roger Chavez who was found guilty beyond reasonable doubt of the crime of qualified theft. He was accordingly sentenced to suffer an indeterminate penalty of not less than ten (10) years, one (1) day, as minimum and not more than fourteen (14) years, eight (8) months and one (1) day as maximum, to indemnify Dy Sun Hiok and/or Johnson Lee in the sum of P21,000.00 without subsidiary imprisonment in case of insolvency, to undergo the accessory penalties prescribed by law, and to pay the costs. The Thunderbird car then in the custody of the NB1 was ordered to be turned over to Ricardo Sumilang, who was directed to return to Asistio the sum of P1,000.00 unless the latter chose to pay P21,500.00, representing the balance of the contract price for the car.

The foregoing sentence was promulgated on March 8, 1965. Roger Chavez appealed to the Court of Appeals.

On April 18, 1968, the Court of Appeals required Atty. Natividad Marquez, counsel for Roger Chavez, to show cause within ten days from notice why Chavez' appeal should not be considered abandoned and dismissed. Reason for this is that said lawyer received notice to file brief on December 28, 1967 and the period for the filing thereof lapsed on January 27, 1968 without any brief having been filed.

On May 13, 1968, Atty. Marquez registered a detailed written explanation. She also stated that if she were allowed to file appellant's brief she would go along with the factual findings of the court below but will show however that its conclusion is erroneous. [8]

On May 14, 1968, the Court of Appeals, despite the foregoing explanation, resolved to dismiss the appeal. A move to reconsider was unavailing. For, on June 21, 1968, the Court of Appeals, through a per curiam resolution, disposed to maintain its May 14 resolution dismissing the appeal, directed the City Warden of Manila where Chavez is confined by virtue of the warrant of arrest issued by the Court of Appeals, to turn him over to Muntinglupa Bilibid Prisons pending execution of the judgment below, and ordered remand of the case to the Quezon City court for execution of judgment.

It was at this stage that the present proceedings were commenced in this Court.

Upon the petitions, the return, and the reply, and after hearing on oral arguments, we now come to grips with the main problem presented.

We concentrate attention on that phase of the issues which relates to petitioner's assertion that he was compelled to testify against himself. For indeed if this one question is resolved in the affirmative, we need not reach the others; in which case, these should not be pursued here.

1. Petitioner's plea on this score rests upon his averment, with proof, of violation of his right — constitutionally entrenched — against self-incrimination. He asks that the hand of this Court be made to bear down upon his conviction; that he be relieved -of the effects thereof. He asks us to consider the constitutional injunction that: "No person shall be compelled to be a witness against himself,"[9] fully echoed in Section 1, Rule 115, Rules of Court where, in all criminal prosecutions, the defendant shall be entitled: "(e) To be exempt from being a witness against himself."

It has been said that forcing a man to be a witness against himself is at war with "the fundamentals of a republican government";[10] that "[i]t may suit the purposes of despotic power but it can not abide the pure atmosphere of political liberty and personal freedom." [11] Mr. Justice Abad Santos recounts the historical background of this constitutional inhibition, thus: " 'The maxim *Nemo tenetur seipsum accusare* had its origin in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons, which has long obtained in the continental system, and, until the expulsion of the Stuarts from the British throne in 1688, and the erection of additional barriers for the protection of the people against the exercise of arbitrary power, was not uncommon even in England. While the admissions of confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence, if an accused person be asked to explain his apparent connection with a crime under investigation, the ease with which the questions put to him may assume an inquisitorial character, the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner, and to entrap him into fatal contradictions, which is so painfully evident in many of the earlier state trials, notably in those of Sir Nicholas Throckmorton, and Udal, the Puritan minister, made the system so odious as to give rise to a demand for its total abolition. The change in the English criminal procedure in that particular seems to be founded upon no statute and no judicial opinion, but upon a general and silent acquiescence of the courts in a popular demand. But, however, adopted, it has become firmly embedded in English, as well as in American jurisprudence. So deeply did the iniquities of the ancient system impress themselves upon the minds of the American colonists that the states, with one accord, made a denial of the right to question an accused person a part of their fundamental law, so that a maxim which in England was a mere rule of evidence became clothed in this country with the impregnability of a constitutional enactment.' (Brown vs. Walker, 161 U.S., 591, 597; 40 Law. ed., 819, 821.)."[12] Mr. Justice Malcolm, in expressive language, tells us that this maxim was recognized in England in the early days "in a revolt against the thumbscrew and the rack." [13] An old Philippine case [1904][14] speaks of this constitutional injunction as "older than the Government of the United States"; as having "its origin in a protest against the inquisitorial methods of interrogating the accused person"; and as having been adopted in the Philippines "to wipe out such practices as formerly prevailed in these Islands of requiring accused persons to submit to judicial, examinations, and to give testimony regarding the offenses with which they were charged."

So it is then that this right is "not merely a formal technical rule the enforcement of which is left to the discretion of the court"; it is mandatory; it secures to a defendant a valuable and substantive right; [15] it is fundamental to our scheme of justice. Just a few months ago, the Supreme Court of the United States (January 29, 1968), speaking thru Mr. Justice Harlan warned that "[t]he constitutional privilege was intended to shield the guilty and imprudent as well as the innocent and foresighted." [16]

It is in this context that we say that the constitutional guarantee may not be treated with unconcern. To repeat, it is mandatory; it secures to every defendant a valuable and substantive right. Tanada and Fernando (Constitution of the Philippines, 4th ed., vol. I, pp. 583-584) takes note of U.S. vs. Navarro, supra, which reaffirms the rule that the constitutional proscription was established on broad grounds of public policy and humanity; of policy because it would place the witness against the strongest temptation to commit perjury, and of humanity because it would be to extort a confession of truth by a kind of duress every species and degree of which the law abhors.[17]

Therefore, the court may not extract from a defendant's own lips and against his will an admission of his guilt. Nor may a court as much as resort to compulsory disclosure, directly or indirectly, of facts usable against him as a confession of the crime or the tendency of which is to prove the commission of a crime. Because, it is his right to forego testimony, to remain silent, unless he chooses to take the witness stand — with undiluted, unfettered exercise of his own free, genuine will.

Compulsion as it is understood here does not necessarily connote the use of violence; it may be the product of unintentional statements. Pressure which operates to overbear his will, disable him from making a free and rational choice, or impair his capacity for rational judgment would in our opinion be sufficient. So is moral coercion "tending to force testimony from the unwilling lips of the defendant." [18]

2. With the foregoing as guideposts, we now turn to the facts. Petitioner is a defendant in a criminal case. He was called by the prosecution as the first witness in that case to testify for the People during the first day of trial thereof. Petitioner objected and invoked the privilege of self-incrimination. This he broadened by the clear-cut statement that he will not testify. But petitioner's protestations were met with the judge's emphatic statement that it "is the right of the prosecution to ask anybody to act as witness on the witness-stand including the accused," and that defense counsel "could not object to have the accused called on the witness stand." The cumulative impact of all these is that accused-petitioner had to take the stand. He was thus peremptorily asked to create evidence against himself. The foregoing situation molds a solid case for petitioner, backed by the Constitution, the law, and jurisprudence.

Petitioner, as accused, occupies a different tier of protection from an ordinary witness. Whereas an ordinary witness may be compelled to take the witness stand and claim the privilege as each question requiring an incriminating answer is shot at him,[19] an accused may altogether refuse to take the witness stand and refuse to answer any and all questions.[20] For, in reality, the purpose of calling an accused as a witness for the People would be to incriminate him.[21] The rule positively intends to avoid and prohibit the certainly inhuman procedure of compelling a person "to furnish the missing evidence necessary for his conviction." [22] This rule may apply even to a co-defendant in a joint trial.[23]

And the guide in the interpretation of the constitutional precept that the accused shall not be compelled to furnish evidence against himself "is not the probability of the evidence but it is the capability of abuse." [24] Thus it is, that it was undoubtedly erroneous for the trial judge to placate petitioner with these words:

"What he will testify to does not necessarily incriminate him, counsel.

And there is the right of the prosecution to ask anybody to act as witness on the witness-stand including the accused.

If there should be any question that is incriminating then that is the time for counsel to interpose his Objection and the court will sustain him if and when the court feels that the answer of this witness to the question would incriminate him.

Counsel has all the assurance that the court will not require the witness to answer questions which would

incriminate him.

But surely, counsel could not object to have the accused called on the witness-stand."

Paraphrasing Chief Justice Marshall in Aaron Burr's Trial, Robertsons Rep. I, 208, 244, quoted in VIII Wigmore, p. 355,[25] while a defendant's knowledge of the facts "remains concealed within his bosom, he is safe; but draw it from thence, and he is exposed" — to conviction.

The judge's words heretofore quoted — "But surely, counsel could not object to have the accused called on the witness-stand" — wielded authority. By those words, petitioner was enveloped by a coercive force; they deprived him of his will to resist; they foreclosed choice: the realities of human nature tell us that as he took his oath to tell the truth, the whole truth and nothing but the truth, no genuine consent underlay submission to take the witness stand. Constitutionally sound consent was absent.

3. Prejudice to the accused for having been compelled over his objections to be a witness for the People is at once apparent. The record discloses that by leading questions Chavez, the accused, was made to affirm his statement given to the NBI agents on July 17, 1963 at 5:00 o'clock in the afternoon.[26] And this statement detailed the plan and execution thereof by Sumilang (Vasquez), Asistio and himself to deprive the Chinese of his Thunderbird car. And he himself proceeded to narrate the same anew in open court. He identified the Thunderbird car involved in the case.[27]

The decision convicting Roger Chavez was clearly of the view that the case for the People was built primarily around the admissions of Chavez himself. The trial court described Chavez as the "star witness for the prosecution." Indeed, the damaging facts forged in the decision were drawn directly from the lips of Chavez as a prosecution witness and of course Ricardo Sumilang for the defense. There are the unequivocal statements in the decision that "even accused Chavez" identified "the very same Thunderbird that Johnson Lee had offered for sale"; that Chavez' "testimony as witness for the prosecution establishes his guilt beyond reasonable doubt"; and that Chavez is "a self-confessed culprit."

4. With all these, we have no hesitancy in saying that petitioner was forced to testify to incriminate himself, in full breach of his constitutional right to remain silent. It cannot be said now that he has waived his right. He did not volunteer to take the stand and in his own defense; he did not offer himself as a witness; on the contrary, he claimed the right upon being called to testify. If petitioner nevertheless answered the questions in spite of his fear of being accused of perjury or being put under contempt, this circumstance cannot be counted against him. His testimony is not of his own choice. To him it was a case of compelled submission. He was a cowed participant in proceedings before a judge who possessed the power to put him under contempt had he chosen to remain silent. Nor could he escape testifying. The court made it abundantly clear that his testimony at least on direct examination would be taken right then and there on the first day of the trial.

It matters not that, after all efforts to stave off petitioner's taking the stand became fruitless, no objections to questions propounded to him were made. Here involved is not a mere question of self-incrimination. It is a defendant's constitutional immunity from being called to testify against himself. And the objection made at the beginning is a continuing one.

There is therefore no waiver of the privilege. "To be effective, a waiver must be certain and unequivocal, and intelligently, understandably, and willingly made; such waiver follows only where liberty of choice has been fully accorded. After a claim a witness cannot properly be held to have waived his privilege on vague and uncertain evidence." [28] The teaching in Johnson vs. Zerbst [29] is this: "It has been pointed out that 'courts indulge every reasonable presumption against waiver' of fundamental constitutional rights and that we 'do not presume

acquiescence in the loss of fundamental rights.' A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege." *Renuntiatio non praesumitur*.

The foregoing guidelines, juxtaposed with the circumstances of the case heretofore adverted to, make waiver a shaky defense. It cannot stand. If, by his own admission, defendant proved his guilty still, his original claim remains valid. For the privilege, we say again, is a rampart that gives protection — even to the guilty.[30]

5. The course which petitioner takes is correct. Habeas corpus is a high prerogative writ.[31] It is traditionally considered as an : exceptional remedy to release a person whose liberty is illegally restrained such as when the accused's constitutional rights are , disregarded.[32] Such defect results in the absence or loss of jurisdiction[33] and therefore invalidates the trial and the consequent conviction of the accused whose fundamental right was violated.[34] That void judgment of conviction may be challenged by collateral attack, which precisely is the function of habeas corpus.[35] This writ may issue even if another remedy which is less effective may be availed of by the defendant.[36] Thus, failure by the accused to perfect his appeal before the Court of Appeals does not preclude a recourse to the writ.[37] The writ may be granted upon a judgment already final.[38] For, as explained in *Johnson vs. Zerbst*,[39] the writ of habeas corpus as an extraordinary remedy must be liberally given effect[40]so as to protect well a person whose liberty is at stake. The propriety of the writ was given the nod in that case, involving a violation of another constitutional right, in this wise:

"Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of Counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a Federal Court's authority to deprive an accused of his life or liberty. When this right is properly waived, the assistance of Counsel is no longer a necessary element of the Court's jurisdiction to proceed to conviction and sentence. If the accused, however, is not represented by Counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or liberty. A court's jurisdiction at the beginning of trial may be lost 'in the course of the proceedings' due to failure to complete the court — as the Sixth Amendment requires — by providing Counsel for an accused who is unable to obtain Counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus.[41]

Under our own Rules of Court, to grant the remedy to the accused Roger Chavez whose case presents a clear picture of disregard of a constitutional right is absolutely proper. Section 1 of Rule 102 extends the writ, unless otherwise expressly provided by law, "to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto."

Just as we are about to write *finis* to our task, we are prompted to restate that: "A void judgment is in legal effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. [42]

6. Respondent's return[43] shows that petitioner is still serving under a final and valid judgment of conviction for another offense. We should guard against the improvident issuance of an order discharging a petitioner from confinement. The position we take here is that petitioner herein is entitled to liberty thru habeas corpus only with respect to Criminal Case Q-5311 of the Court of First Instance of Rizal, Quezon City Branch, under which he was prosecuted and convicted.

Upon the view we take of this case, judgment is hereby rendered directing the respondent Warden of the City Jail of Manila or the Director of Prisons or any other officer or person in custody of petitioner Roger Chavez by reason of the judgment of the Court of First Instance of Rizal, Quezon City Branch, in Criminal Case Q-5311, entitled "People of the Philippines, plaintiff, vs. Ricardo Sumilang, et al., accused," to discharge said Roger Chavez from custody, unless he is held, kept in custody or detained for any cause or reason other than the said judgment in said Criminal Case Q-5311 of the Court of First Instance of Rizal, Quezon City Branch, in which event the discharge herein directed shall be effected when such other cause or reason ceases to exist.

No costs. SO ORDERED.

Conception, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Angeles and Fernando, JJ., concur.

Ruiz Castro, J., concurs in a separate opinion.

Petition granted:

[1] Criminal Case No. Q-5311, Court of First Instance of Rizal, Quezon City, Branch IX.

[2] The original information named only the accused Sumilang, Chavez, John Doe and Richard Doe. It was amended by substituting Edgardo P. Pascual for John Doe. Then, another amendment included the rest of the accused abovenamed.

[3] Tr., July 23, 1963, pp. 2-11; Italics supplied.

[4] Chavez at this point testified on direct examination that the Chinese (Johnson lee) handed the deed of sale to Romeo Vasquez who, in turn, delivered it to the emissary. Tr. (Annex A), p. 39.

[5] Annex C, p. 7, Rollo, p. 101.

[6] Id., p. 14, Rollo, p. 108.

[7] Id., pp. 14-15, Rollo, pp. 108-109.

[8] Petitioner here submits the theory that the facts found by the trial court make out a case of estafa, not qualified theft.

[9] Section 1 (18), Bill of Rights, Article III, Constitution of the Philippines.

[10] Villaflor vs. Summers, 41 Phil. 62, 68.

[11] U.S. vs. Navarro, 3 Phil. 143, 155.

[12] Bermudez vs. Castillo, 64 Phil. 483., 495-496.

[13] Villaflor vs. Summers, supra, at p. 68.

[14] U.S. vs. Navarro, supra, at p. 152, cited in Tanada and Carreon, Political Law of the Philippines, vol. II, 1962 ed., pp. 278-279.

[15] III Martin, Rules of Court, 1964 ed., p. 262, citing 14 Am. Jur., 869.

[16] Marchetti vs. United States (U.S. Supreme Court), No. 2-October Term, 1967, January 29, 1968.

[17] See also: III Martin, p. 262; Tanada and Carreon, op. cit., pp. 278-279.

[18] State vs. Wolfe, 266 N.W. 116, 125; 104 ALR 464, 476; Anno., p. 479.

- [19] *Gonzales vs. Secretary of Labor*, 94 Phil. 325, 326.
- [20] *Cabal vs. Kapunan*, L-19052, December 29, 1962: 21 Am. Jur. 2d. p. 383; 98 C.J.S., p. 265; 8 Wigmore, *Evidence*, 1961 ed., p. 406; 3 Wharton's *Criminal Evidence*, 11th ed., pp. 1959-1960.
- [21] Navarro, *Criminal Procedure*, 1960 ed., p. 302.
- [22] *Bermudez vs. Castillo*, *supra*, at pp. 488-489.
- [23] 4 Moran, *Comments on the Rules of Court*, 1963 ed., p. 160; 98 C.J.S., p. 274; 3 Wharton's *Criminal Evidence*, 11th ed., pp. 1959-1960.
- [24] *Allen vs. State*, 171 ALR 1138, 1143, citing *Emery's Case*, 107 Mass 172, 9 Am
- [25] *Isabela Sugar Company, Inc. vs. Macadaeg*, 93 Phil. 995, 1000.
- [26] Tr., pp. 11, 13-23.
- [27] Tr., pp. 56-57.
- [28] 98 C.J.S., p. 314; Italics supplied.
- [29] 304 U.S. 458, 464, 82 L. ed. 1461, 1466.
- [30] *Marchetti V5. United States*, *supra*.
- [31] 25 Am. Jur., p. 150.
- [32] See: *Santiago vs. Director of Prisons*, 77 Phil. 927, 930; *Camasura vs. Provost Marshall*, 78 Phil. 131; *Harden vs. Director of Prisons*, 81 Phil. 741, 746; *Parulan vs. Director of Prisons*, 1968A Phil. 514, 516; see also *Counselman vs. Hitchcock* (1867), 142 U.S. 547, 35 , ed, 11-10, a case involving a violation of the privilege against self-incrimination and the writ of habeas corpus was allowed; *Sunal vs. Large*, 332 U.S. 174, 178-179, 91 L. ed. 1982, 1986-1987.
- [33] 39 C.J.S., pp. 449-450.
- [34] *Mitchell vs. Youell*, 130 F. 2d. 880, 882; *U.S. vs. Lawn*, 115 F. Supp. 674, 677.
- [35] *Abriol vs. Homeres*, 84 Phil. 525, 530, 534. See the dissenting opinion affirming the same view at pp. 538-539. See also: *Camasura vs. Provost Marshall*, *supra*, at p. 137.
- [36] 25 Am. Jur., p. 155.
- [37] 39 C.J.S., p. 446, citing *Johnson vs. Zerbst*, *supra*.
- [38] *Abriol vs. Homeres*, *supra*, at pp. 527, 534-535.
- [39] *Supra*, at p. 1467: "True, habeas corpus cannot be used as a means of reviewing errors of law and irregularities — not involving the question of jurisdiction — occurring during the course of trial; and the 'writ of habeas corpus cannot be used as a writ of error.' These principles, however, must be construed and applied so as to preserve — not destroy — constitutional safeguards of human life and liberty."
- [40] III Martin, p. 267: "The prohibition against self-incrimination, in order that it may produce its desired purpose and may not be rendered a dead letter, should be interpreted liberally in favor of the person invoicing the same." See: *Bermudez vs. Castillo*, *supra*, at p. 489.
- [41] Cited in *Abriol vs. Homeres*, *supra*, at pp. 533-534; Italics supplied.

[42] Gomez vs. Conception, 47 Phil. 717, 722, giving as authority Freeman on Judgments, sec. 117 citing Campbell vs. McCahan, 41 Ill., 45; Roberts vs. Stowers, 7 Bush, 295, Huls vs. Buntin, 47 Ill., 396; Sherrell vs. Goodrum, 3 Humph., 418; Andrews vs. State, 2 Sneed, 549; Hollingsworth vs. Bagley, 35 Tex., 345; Morton vs. Root, 2 Dill., 312; Commercial Bank of Manchester vs. Martin, 9 Smedes & M., 613; Hargis vs. Morse, 7 Kan., 259. See also Cornell vs. Barnes, 7 Hill, 35; Dawson and Another vs. Wells, 3 Ind., 399; Meyer vs. Mintonye, 106 Ill., 414; Olson vs. Nunnally, 47 Kan., 391; White vs. Foote L. & M. Co., 29 W. Va. 385.

[43] Par. 2(d).

CASTRO, J.:

In 1901, early in the history of constitutional government in this country, this Court reversed the conviction of an accused who, having pleaded "not guilty," was required by the judge to testify and answer the complaint. The case was that of United States v. Junio, reported in the first volume of the Philippine Reports, on page 50 thereof.

Resolution of the case did not require an extended opinion (it consumed no more than a page in the Reports). For indeed the facts fitted exactly into the prohibition contained in The President's Instruction to the (Second) Philippine Commission[1] "that no person shall ... be compelled in any criminal case to be a witness against himself."

There was no need either for a dissertation on the Rights of Man, though occasion for this was not lacking as the predominant American members of the Court were under a special commission to prepare the Filipinos for self-government. The privilege against self-incrimination was fully understood by the Filipinos, whose own history provided the necessary backdrop for this privilege.[2]

The Supreme Court simply said, "The judge had no right to compel the accused to make any statement whatever," and declared the proceedings void.

Nor was there a similar judicial error likely to be committed in the years to come, what with the constant reminder of a Bill of Rights enshrined in successive organic acts intended for the Philippines.[3] This is not to say that the Philippine history of the privilege ended with the Junio case. To be sure, violations of the privilege took other, and perhaps subtle, forms[4] but not the form directly prohibited by the privilege. Even in the recent case of Cabal v. Kapunan[5] it was assumed as a familiar learning that the accused in a criminal case cannot be required to give testimony and that if his testimony is needed at all against his co-accused, he must first be discharged.[6] If Cabal, the respondent in an administrative case, was required by an investigating committee to testify, it was because it was thought that proceedings for forfeiture of illegally acquired property under Republic Act 1379[7] were civil and not criminal in nature. Thus Mr. Justice (now Chief Justice) Concepcion could confidently say:

"At the outset, it is not disputed that the accused in a criminal case may refuse not only to answer incriminatory questions but also to take the witness stand. (3 Wharton's Criminal Evidence, pp. 1959-1960; 98 C.J.S., p. 264). Hence, the issue before us boils down to whether or not the proceedings before the aforementioned Committee is civil or criminal in character."

Today, perhaps because of long separation from our past, we need what Holmes called "education in the obvious, more than investigation of the obscure." [8] The past may have receded so far into the distance that our perspectives may have been altered and our vision blurred.

When the court in the case at bar required the petitioner to testify, it in effect undid the libertarian gains made over half a century and overturned the settled law. The past was recreated with all its vividness and all its horrors: John Lilburne in England in 1637, refusing to testify before the Council of the Star Chamber and subsequently

condemned by it to be whipped and pilloried for his "boldness in refusing to take a legal oath;"[9] the Filipino priests Gomez, Burgos and Zamora in 1872 condemned by the Inquisition to die by their own testimony.[10]

It is for this reason that I deem this occasion important for the expression of my views on the larger question of constitutional dimension.

No doubt the constitutional provision that "No person shall be compelled to be a witness against himself" [11] may, on occasion, save a guilty man from his just deserts, but it is aimed against a more far-reaching evil—the recurrence of the Inquisition and the Star Chamber, even if not their stark brutality. Prevention of the greater evil was deemed of more importance than occurrence of the lesser evil.[12] As Dean Griswold put the matter with eloquence:

"[T]he privilege against self-incrimination is one of the great landmarks in man's struggle to make himself civilized. . . . [W]e do not make even the most hardened criminal sign his own death warrant, or dig his own grave, or pull the lever that springs the trap on which he stands. We have through the course of history developed considerable feeling of the dignity and intrinsic importance of the individual man. Even the evil man is a human being."[13]

The Government must thus establish guilt by evidence independently and freely secured; it can not by coercion prove a charge against an accused out of his own mouth.[14]

This is not what was done here. What was done here was to force the petitioner to take the witness stand and state his part in the crime charged as "star witness for the prosecution," to use the very words of the decision, and, by means of his testimony, prove his guilt. Thus, the trial court said in its decision:

"Roger Chavez does not offer any defense. As a matter of fact,, his testimony as a witness for the prosecution establishes his guilt beyond reasonable doubt."

The petitioner has been variously described by the trial court as "a car agent . . . well versed in this kind of chicanery," "a self-confessed culprit," and "a man with at least two convictions for acts not very different from those charged in [the] information." But if he has thus been described it was on the basis of evidence wrung from his lips. If he was ultimately found guilty of the charge against him it was because of evidence which he was forced to give. In truth he was made the "star witness for the prosecution" against himself.

But neither torture nor an oath nor the threat of punishment such as imprisonment for contempt can be used to compel him to provide the evidence to convict himself. No matter how evil he is, he is still a human being.

The fact that the judgment of conviction became final with the dismissal of the appeal to the Court of Appeals for failure of the petitioner's former counsel to file a brief,[15] is of no moment. That judgment is void, and it is precisely the abiding concern of the writ of habeas corpus to provide redress for unconstitutional and wrongful convictions. Vindication of due process, it has been well said, is precisely the historic office of the Great Writ.[16]

In many respects, this case is similar to that of *Fay v. Noia*.^[17] Noia was convicted of murder in 1942 with Santo Caminito and Frank Bonino in the County Court of Kings County, New York, in the killing of one Hemmeroff during the commission of a robbery. The sole evidence against each defendant was his signed confession. Caminito and Bonino, but not Noia, appealed their convictions to the Appellate Division of the New York Supreme Court. These appeals were unsuccessful but subsequent legal proceedings resulted in the releases of Caminito and Bonino upon findings that their confessions had been coerced and their conviction therefore procured in violation of the Fourteenth Amendment. Although Noia's confession was found to have been coerced, the United States District Court for the Southern District of New York held that, because of Noia's failure to appeal, he must be denied relief in view of the provision of 28 U.S.C. Sec. behalf of a person in custody pursuant

to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State. ..." The Court of Appeals for the Second Circuit reversed the judgment of the District Court and ordered Noia's conviction set aside, with direction to discharge him from custody unless given a new trial forthwith. From that judgment the State appealed.

As the Supreme Court of the United States phrased the issue, the "narrow question is whether the respondent Noia may be granted federal habeas corpus relief from imprisonment under a New York conviction now admitted by the State to rest upon a confession obtained from him in violation of the Fourteenth Amendment, after he was denied state post-conviction relief because the coerced confession claim had been decided against him at the trial and Noia had allowed the time for a direct appeal to lapse without seeking review by a state appellate court."

In affirming the judgment of the Court of Appeals, the United States Supreme Court, through Mr. Justice Brennan, spoke in enduring language that may well apply to the case of Roger Chavez. Said the Court:

"Today as always few indeed is the number of State prisoners who eventually win their freedom by means of federal habeas corpus. Those few who are ultimately successful are persons whom society has grievously wronged and for whom belated liberation is little enough compensation. Surely no fairminded person will contend that those who have been deprived of their liberty without due process of law ought nevertheless to languish in prison. Noia, no less than his co-defendants Caminito and Bonino, is conceded to have been the victim of unconstitutional state action. Noia's case stands on its own; but surely no just and humane legal system can tolerate a result whereby a Caminito and a Bonino are at liberty because their confessions were found to have been coerced yet Noia, whose confession was also coerced, remains in jail for life. For such anomalies, such affronts to the conscience of a civilized society, habeas corpus is predestined by its historical role in the struggle for personal liberty to be the ultimate remedy. If the States withhold effective remedy, the federal courts have the power and the duty to provide it. Habeas Corpus is one of the precious heritages of Anglo-American civilization. We do no more today than confirm its continuing efficacy."

A fitting conclusion of this separate opinion may perhaps be found in two memorable admonitions from Marjorie G. Fribourg and Justice William O. Douglas.

Mrs. Fribourg, in her inimitable phrase, warns us that —

"... Time has taught its age-old lesson. Well-meaning people burnt witches. Well-meaning prosecutors have convicted the innocent. Well-meaning objectives espoused by those not grounded in history can lure as from protecting our heritage of equal justice under the law. They can entice us, faster than we like to believe, into endangering our liberties." [18]

And these are the unforgettable words of Justice Douglas:

"The challenged to our liberties comes frequently not from those who consciously seek to destroy our system of government, but from men of goodwill—good men who allow their proper concerns to blind them to the fact that what they propose to accomplish involves an impairment of liberty.

"The motives of these men are often commendable. What we must remember, however, is that preservation of liberties does not depend on motives. A suppression of liberty has the same effect whether the suppressor be a reformer or an outlaw. The only protection against misguided zeal is constant alertness to infractions of guarantees of liberty contained in our Constitution. Each surrender of liberty to the demands of the moment makes easier another, larger surrender. The battle over the Bill of Rights is a never ending one.

"The liberties of any person are the liberties of all of us.

In short, the liberties of none are safe unless the liberties of all are protected.

"But even if we should sense no danger to our own liberties, even if we feel secure because we belong to a

group that is important and respected, we must recognize that our Bill of Rights is a code of fair play for the less fortunate that we in all honor and good conscience must observe.[19]

[1] Pub. Laws Ixiii, Ixvi (1900).

[2] See *United States v. Navarro*, 3 Phil. 143 (1904). In his majority opinion, Mr. Justice McDonough said that under the Spanish system of criminal procedure the privilege against self-incrimination was unavailing, a point seriously disputed in the dissenting opinion of Mr. Justice Mapa. Are both Justices half right and half wrong? Is it more accurate to say that while the Spanish system allowed no more than a comment on the failure of the accused to testify, no unfavorable inference being drawn therefrom (as Justice Mapa said at p. 161), in practice the accused was actually denied the privilege against self-incrimination (as Justice McDonough said at p. 152)? See, e.g., T. Agoncillo & O. Alfonso, *A Short History of the Filipino People*, 103-132 (1961).

[3] Act of July 1, 1902, sec. 5 par. 3, 1 Pub. Laws 1056; Jones Act of August 29 1916, sec. 3, par. 3, 12 Pub. Laws 237; Act of March 24, 1934, ch. 84 48 Stat 456-see also General Orders 58, sec. 15(4), 1 Pub Laws 1082 (1900).

[4] *Beltran v. Samson*, 53 Phil. 570 (1929) (preliminary investigation; respondent required to give a specimen of his handwriting); *Bermudez v. Castillo*, 64 Phil 483 (1937) (administrative investigation; person required to copy certain letters to establish her authorship of the letters).

[5] L-19052, Dec. 29, 1962.

[6] E.g., 4 M. Moran, *Comments on the Rules of Court* 160 (6th Ed., 1963).

[7] 10 Laws & Res. 345 (1955).

[8] O.W. Holmes, *Law and the Court*, in *Speeches* 98, 99 (1913).

[9] E. Griswold, *The Fifth Amendment Today* 3 (1955).

[10] T. Agoncillo & O. Alfonso, *op. cit. supra* note 2, at 156.

[11] Phil. Const, art. III, sec. 1(18).

[12] *Ullmann v. United States*, 356 U.S. 422 (1956).

[13] *Op. cit. supra* note 9, at 7.

[14] *Malloy v. Hogan*, 378 U.S. 1 (1964); accord, *Murphy v. Waterfront Comm'n*, 378 U.S. 52 (1964).

[15] Resolutions of May 14, 1968 and June 21, 1968, CA-G.R. 06776-CR.

[16] *Fay v. Noia*, 372 U.S. 391 (1963).

[17] *Id.* For an account of a convict who served twenty-two years in prison before finally being released on habeas corpus on a finding that he was denied due process, see *Marino v. Ragen*, 332 U.S. 651 (1947).

[18] *The Bill of Rights* (1967), p. 233.

[19] *A Living Bill of Rights* (1961), pp. 61, 62, 64.

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