

PIO DURAN, PETITIONER, VS. SALVADOR ABAD SANTOS, JUDGE OF PEOPLE'S COURT, RESPONDENT.

G.R. No. L-99. November 16, 1945

Ponente: JARANILLA, ACTING C.J.

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JARANILLA, ACTING C.J.:

This certiorari proceeding was instituted by petitioner Pio Duran against respondent Honorable Salvador Abad Santos, Judge of the People's Court, praying that the order of said respondent judge of October 12 and October 15, 1945, denying him bail be set aside and that he be allowed to put up a bail not to exceed P20,000 for his provisional release.

The pertinent allegations of the petitions are:

That the petitioner is a Filipino political prisoner under the custody of the Director of Prisons in the New Bilibid Prison, Muntinlupa, Rizal, for not less than three months without any information having filed against him;

That the petitioner filed a petition in the People's Court for his release on bail and that the Solicitor General recommended that the petitioner be provisionally released on P35,000 bail ;

That after hearing the statements of Special Prosecutor V. D. Carpio, in representation of the Solicitor General, and Atty. Marciano Almario, counsel for the petitioner, which statements are contained in Appendix B of the petition, the said respondent judge denied the petition for bail on October 12, 1945, and refused to reconsider it by his order issued on October 15, 1945; and

That the denial of said petition is a flagrant violation of the Constitution of the Philippines and of section 19 of Commonwealth Act No. 682, and that the respondent has committed a great abuse of discretion for which petitioner has no other plain speedy and adequate remedy in the ordinary course of law.

The respondent judge, in answer to the petition, denies abuse of discretion and alleges that the reason for the denial of the petition for the release of the petitioner on bail was set forth in his order of October 15, 1945, which reads as follows:

"The detainee's adherence to the enemy as manifested by his utterances and activities during the Japanese domination especially as Executive General of the Makapili; as Director of General Affairs of the Kalibapi; as Vice-Minister of State for Home Affairs; as member of the Council of State; as member of the National Assembly under the Japanese-sponsored Philippine Republic and as President of the New Leaders Association—historical facts of contemporary history and of public knowledge which the petitioner cannot deny— makes the case against him quite serious and may necessitate the imposition of the capital punishment."

The evidence against the petitioner, according to said Appendix E of the petition, consists of documentary proofs received by the Office of Special Prosecutors from the Counter Intelligence Corps (CIC), which documentary evidence is considered confidential, having been received with that injunction from the military authorities, and so the special prosecutor who appeared at the hearing in the court below manifested that he was not free to divulge

the contents thereof. The special prosecutor, however, mentioned in his statements before the People's Court certain facts which are stated by the respondent judge in his answer to the petition.

It appears that the petitioner was originally detained by the United States Army, which had investigated the acts of said petitioner and gathered the corresponding evidence; and that after the hostilities were ended, with the formal acceptance by Japan of the terms of the Allies, the said petitioner and the evidence gathered against him were turned over to the Commonwealth Government and the Office of Special Prosecutors for such action as may be warranted. The said petitioner was detained by the military authorities from July 4 to September 26, 1945, when he was turned over to the Commonwealth Government, as may be gleaned from Appendix A filed by him in this case. As a military political prisoner, he could not be bailed out. Now he invokes the provisions of Commonwealth Act No. 682, creating the People's Court and the Office of Special Prosecutors, and specifically section 19 of said Act, as said section reads partly as follows:

"* * * Provided, however, That existing provisions of law to the contrary notwithstanding, the aforesaid political prisoners may, in the discretion of the People's Court, after due notice to the Office of Special Prosecutors and hearing, be released on bail, even prior to the presentation of the corresponding information, unless the Court finds that there is strong evidence of the commission of a capital offense * * *."

As may be seen the above express provision of law, the release of a detainee on bail, "even prior to the presentation of the corresponding¹ information," is purely discretionary on the People's Court. The only exception to it is when "the Court finds that there is strong evidence of the commission of a capital offense," in which case no bail whatever can be granted, as the provision appears mandatory. In other words, aside from that, the People's Court has the absolute discretion to grant bail or not. Having invoked the clear provision of said section 19 of Act No. 682 for his temporary release on bail, the petitioner cannot attack it as being illegal or unconstitutional. And it appearing that his case is covered by said exception of the law, it must be held that he cannot be admitted to bail. But even if we should concede counsel's contention, for the sake of argument, that the People's Court has not been given that discretion to deny bail to the petitioner, still the conclusion of the respondent judge is not unfounded for the following reasons:

First, the special prosecutor stated that the information to be filed in the case would be for treason, which is "the highest of all crimes" (In re Charge to Grand Jury, 80 F. Cas., No. 18, 269; 2 Curt., 530; U. S. vs. Lagnason, 3 P. R. A. 247; 3 Phil., 472, U. S. vs. Abad, 1 Phil., 437), penalized with capital punishment under article 114 of the Revised Penal Code; and

Secondly, the recital by the special prosecutor of the supposed acts committed by the petitioner and. referred to by the respondent judge in his order of October 15, 1945, above quoted, which acts were not rebutted by counsel for the petitioner at the hearing on the petition for bail, supports the conclusion and ruling of the People's Court.

It is true that during the oral argument in this case counsel for the petitioner denied the imputation that the petitioner was the Executive General of the "Makapili," but he openly admitted that at the hearing before the People's Court he did not make any effort to deny or disprove the said imputation or the others appearing in Appendix E of the petition. In view thereof, how can we expect the People's Court not to take into consideration what had been stated then, appearing in said Appendix E?

Counsel's contention that the special prosecutor should have presented evidence to prove that there was strong evidence of the commission of a capital offense before the People's Court could deny bail in this case was substantially complied with, although the information charging the commission of the crime of treason had not as yet been filed. We are of the opinion and so hold that the hearing set and held for the purpose (see Appendix E) was amply sufficient for the People's Court to be informed and to determine whether there was strong evidence of

the commission of a capital offense. The special prosecutor clearly informed the People's Court in the presence of the adverse counsel, in part, as follows:

"* * * I understand strict assurance has been made that all witnesses required to make a testimony will be considered secret, and that their statements will be held strictly confidential and if we have to answer that question now as propounded by the Court, as I have said, I would be violating the injunction given to us to consider those documents as confidential. I may venture, however, to explain by stating several facts which we believe are so well known not only by the Court or by the Office of the Special Prosecutors but by the people as a whole, which no one can deny, not even the detained petitioner or anyone else, and those facts are as follows: That the petitioner herein was a member of the Council of State during the Japanese occupation. He was the Director of General Affairs of the Kalibapi. He was elected member of the National Assembly under the puppet Kepublic. He was Vice-Minister of State for Home Affairs. He was the Executive General of the Makapili. Lastly, he became President of the New Leaders Association. These facts, I repeat, are things which I venture to say neither the petitioner nor anyone else can dare deny and, therefore, I feel free to divulge without any violation of trust or confidence. Furthermore, I can state with assuredness that among the articles of association of the Malapili, of which the petitioner was the Executive General, it is stated: To fight the common enemies side by side with other Asians on any front in the present war.' Another: 'To collaborate unreservedly and unstintedly with the Imperial Japanese Army and Navy in the Philippines in such ways and means as may, in the joint judgment of the Imperial Japanese forces and the association (association meaning Makapili) be deemed necessary and fruitful.'

"The case of the petitioner herein by reason of his prominence in social, political and court circles is such that this case has assumed pre-eminence and interest of tremendous proportion not only in this country but perhaps even in the United States—all by reason of known associations, connections and statements made by the detained petitioner publicly and privately in his advocacy of the Greater East Asia Co-Prosperity Sphere and his advocacy of Japan as the leading nation in the Orient in the proposed Asiatic Monroeism on which he had been working for so many years before and during the war, and I take it for granted even now. And no one can dispute the facts that in his advocacy of this program aforesaid the petitioner has made statements, as follows: 'The flight, of MacArthur once again shows that the White men's interest in East Asia is mercenary and imperialistic. He comes to exploit the people and the natural resources, fill his pockets with as much wealth as can be obtained irrespective of the means, and later return to his own native land to spend the declining years of his life in comfortable indolence. He cares not for the defense of any of the colonies he may have acquired. At first sign of danger he packs his bag and baggage and runs away, leaving the native inhabitants to whatever fate awaits them.' This appears in an article written by the detained petitioner in the Tribune of March 22, 1942.

"Further, the detained petitioner has said: 'We, who have always doubted the sincerity of occidental disinterestedness in Asia, adhere to the theory that it is only through the unified efforts of all Asiatics that the complete emancipation not only of the Philippines but of all Asia may be achieved, that is why we are co-operating solely and wholeheartedly with the Japanese military administration and urge our countrymen to do the same.' That come from a radio speech, reported in the Tribune of May 6, 1942.

"Again, the detained petitioner has stated: 'With the Japanese spirit moving the one hundred million people of Japan, who are solidly behind the prosecution of the Greater East Asia War to a successful end, the Great Empire of Japan cannot be beaten in the current war.' That also came from an article reported in the newspaper, Tribune, July 7, 1942.

"And on January 30, 1945, there appeared an article in the Tribune an item, as follows: 'Lingayen front, Jan. 27.—Makapili members thrust into American lines following the landing of the invaders in the Lingayen gulf shores, it was revealed here. Forming deathdefying squads, these youthful Filipinos stormed into enemy lines with fixed bayonets causing heavy casualties among the Americans.'

"Up to the present time, the Office of Special Prosecutors has not the material time to check up all the evidence submitted to us by the military authorities. There are more than 4,000 such cases in our hands and unless we are given enough time it will be very hard for us to go over this particular case. Eight now, it is our conviction that the evidence against the petitioner is rather convincing. Neither have we formulated the necessary information; but I venture to say that when we file the necessary information to the Court it would not be for a simple crime but for treason. I submit, however, the foregoing facts as above stated to give the Court an idea of the nature of the evidence that will in due time be adduced in support of the information that we will file." (See *Payao vs. Lesaca*, 63 Phil., 210.)

In view of the foregoing, it cannot be stated that the petitioner has been deprived of his liberty without due process of law, because his petition for bail had been set for hearing and he was given an opportunity to be heard when the above circumstances were submitted to the People's Court, where it was made to appear satisfactorily that he was being detained due to highly treasonable activities against the Commonwealth of the Philippines and the United States, which activities would be charged in the information for a capital offense and punishable by death, and that the evidence in the case was strong.

Wherefore, we find and so hold that the petition is without merit and therefore the same is hereby ordered dismissed with costs against the petitioner. So ordered.

Feria, De Joya, and Pablo, JJ., and Buenaventura and Santos, Acting JJ., concur.

CONCURRENTE

DE LA ROSA, Magistrado Interino,

Concurro y voto con la mayoría, en cuanto al resultado.

El Tribunal del Pueblo, al senalar y celebrar vista sobre la solicitud de fianza del recurrente, concedídle, así como al Procurador General, oportunidad de ser oído, y habiendo llegado después a la conclusión de que existen pruebas vehementes sobre la comisión de un delito grave, no infringió la Constitución ni la Ley No. 682 al denegar dicha solicitud.

Lo que se ha hecho en el presente caso, en que el Fiscal informó sobre la naturaleza grave del delito que se imputa y las pruebas con que se cuenta para sostener con eficacia la querrela que en su tiempo sería presentada por el mismo, la relación de las cuales es suficientemente clara para convencer preliminarmente al Tribunal, constituye una vista regular para la sustanciación de la solicitud para la libertad provisional, bajo fianza, de un detenido. No era necesario que el Fiscal presentara todas sus pruebas o que se practicase una investigación previa o preliminar porque en el primer caso hubiera sido tramitar la causa en su fondo y en el segundo el artículo 22 de la Ley No. 682 no lo requiere.

"* * * a preliminary examination and/or investigation shall not be required."

Es solo aparente la desarmonía que se atribuye entre el artículo 19 de la Ley No. 682, en su parte que provee:

"* * * Provided, however, That existing provisions of law to the contrary notwithstanding, the aforesaid political prisoners may, in the discretion of the People's Court, after due notice to the Office of the Special Prosecutors and hearing, be released on bail, even prior to the presentation of the corresponding information, unless the Court finds that there is strong evidence of the commission of a capital offense * * *"

y la section 16 del Artículo III de la Constitution, que preceptua:

"All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong."

La frase "Provided, however, That existing provisions of law to the contrary notwithstanding," de la parte acotada del artículo 19 de la Ley No. 682, explica que solo se refiere a las leyes del Congreso, que el Congreso puede deshacer, sin abarcar las disposiciones constitucionales, que el Congreso no puede invalidar. Además como hay que interpretar esa parte de la Ley No. 682 en su espíritu y sin perder de vista los derechos individuales, resulta una parafrasis del precepto constitucional que de una manera clara reconoce el derecho a la libertad provisional, bajo fianza, cuando la imputation no es por un delito grave, caso en el cual es discrecional para el juez el otorgarlo o no.

Si a la expresada parte de la Ley No. 682 se diese una interpretation literal, el Tribunal del Pueblo tendria, en los casos en que penden cargos por delitos no capitales, la absoluta discretion para conceder o no libertad provisional bajo fianza antes o despues de la presentacion de la correspondiente querella fiscal, ppor lo mismo que en ello no establece distincion alguna. Mas aun: la oracion "even prior to the presentation of the corresponding information," denota que dicha disposicion, si es aplicable antes de la presentacion de la querella, lo es mas despues de su archivo. Las leyes del Commonwealth han ido paralelamente con el progreso humano en cuanto concierne al goce del derecho a la vida y a la libertad, tan preciada la una como la otra. No seria ahora justo atribuir a esta Ley No. 682 un motivo feccionario.

Desmenuzando el texto del expresado precepto constitucional, se halla que la disposicion "all persons shall before conviction be bailable" es amplia y abarca tanto al que acaba de ser detenido como a aquel contra quien ya se ha presentado denuncia o queralla; y, asimismo, la palabra "charged" es lata, porque a ninguna persona se le detiene sin cargo, formulado o no formulado todavia ante los tribunales.

En esto ilustra este precedente:

"B. Right to release on bail—I. At common law. By the common law all offenses, including treason, murder, and other felonies, were bailable before indictment found, although the granting or refusing of each bail in case of capital offense was a matter within the discretion of the court." (6 Corpus Juris, 953.)

DISSENTING

PERPECTO, J.,

The action taken by the majority will surely dampen the enthusiasm, the ecstatic delight, the rapturous exultation with which all the generous spirits the world over received the news of the end of the war on September 2, 1945, not because of the Allied victory in the global struggle, but because the great principles of human freedom, the sublime tenets upon which the worth of each individual, man, woman, and child, is established, the elemental ideas "universally recognized as underlying the basic meaning of mankind's dignity, once again, triumphed against the forces of darkness.

Human liberty suffered a crushing blow. It seems that the struggle for human liberty must be fought all over again.

"With the formal surrender of the Japanese Empire today, September 2, 1945, the long and terrible war is at an end," said President Osmenia in an official message to the Filipino people, adding: "Our effort has been devoted toward the paramount task of winning the war. Today the task is done. We must devote ourselves to the task of winning the peace." (41 Off. Gaz., Sept. 1945, p. 499.) But that peace cannot be won until and unless the fundamental human freedoms for which millions of lives were offered in the recent gory holocaust are firmly secured and guaranteed.

More than two millennia ago the following words were written in the pages of the Book of Books, held the most sacred by the most civilized countries in two hemispheres: "Proclaim liberty throughout all the land unto all the inhabitants thereof: it shall be a jubilee unto you; and ye shall return every man unto his possessions, and ye shall return every man unto his family." (Leviticus, 25:20.)

Are we Christians? Do we believe in the teachings of the Bible? Have we faith in the biblical doctrines which are the most vitalizing essentials of Democracy? How can we "return every man unto his family" if we deprive him of his personal freedom in utter violation of the cardinal mandates of our Constitution, wherein it is solemnly enjoined that "No person shall be deprived of his liberty without due process of law" ? How can we "Proclaim liberty throughout all the land unto all the inhabitants", when we are keeping in bondage one of the citizens of our country in complete disregard of the laws of the land?

Those of us who have descendants and hope that they will continue living in this land, create families, bear children, and perpetuate our lineage in unending generations, cannot look without grave concern at the pernicious consequences of the legal ideology or lack of ideology which permits the wanton trampling of human liberty, such as this case discloses. We shudder at the thought of the dangers to personal security and freedom which the future holds as a despairing promise of doom to our most cherished ideals and aspirations for the happiness of our loved ones, in whose arteries and veins, when the sorrows and preoccupations and joys of our own life will be eternally silenced within the folds of ceremony, will continue flowing the life-giving streams of our own blood, by which we will attain a kind of immortality in the unconscious working and endeavors for the perpetuation of the species.

"Can the liberties of a nation be thought secure"—asked Jefferson—"when we have removed their only firm basis, a conviction in the mind of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever; that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation is among possible events; that it may become a probable by supernatural interference. The Almighty has no attribute which can take sides with us in such a contest."

That is why he wrote in the Declaration of Independence of the United States these immortal words: "All men are created equal, they are endowed by their Creator with certain unalienable rights; among these are life, liberty and the pursuit of happiness. To secure these rights governments are instituted, deriving their power from the consent of the governed. Whenever any form of government becomes destructive of these ends, it is the right of the people to alter it."

We borrow the following from Senator Elbert D. Thomas:

"Had the social and political significance of Jesus's teachings of the worth of the individual soul borne its fruit in the practice of the Church, the world might long ago have seen a lasting free society. For Jesus, all men were brothers and equally precious in the sight of God, their Father. Jew and Gentile, bond and free, black and white, each was free to work out his own salvation. In the realm of the spirit the early Christian philosophy exalted the individual, giving him freedom to choose and to 'bear testimony.' "

"The torch of freedom has often been lighted; it has been burned brightly for brief periods. The flame has been

often burned low, sometimes flickered, but has never been quite extinguished. Always again it has been raised, here in the cause of religious liberty, there in the cause of political freedom. It remained for the founders of the American Republic to plan a society wherein all phases of freedom, of religion, of speech, and of person, should become a reality. And Thomas Jefferson, as the embodiment of the spirit of Americanism, combining in himself the zeal of all the past apostles of freedom, thus becomes one of the world's great leaders in man's ancient quest. Because he gathered together the aspirations of all the fighters for freedom who had gone before, all phases of liberty were equally important to him. Building upon the foundation laid throughout all past ages, he became America's first world citizen." (Thomas Jefferson, *World Citizen*, p. 142.)

Convinced that the principles of human liberty are imperishable, we write this opinion as an appeal to the sense of justice of the majority.

We must not allow our personal experience during the more than three years of enemy occupation, our own sufferings under the brutal Nippon regime, our feelings towards those who blindly or malignantly collaborated with our oppressors, our prejudices against those who in any way helped the Japanese, to sway our judgment in considering the merits of the case.

All of us have grievances to complain. We, who were fortunate enough to have survived are mourning for the loss of loved ones, near or distant relatives, friends. All of us were witnesses of the most abhorrent acts committed by Japanese myrmidons, spies, tools and agents. The ruins in Manila are constant reminders of a hated recent past. The thousands who lay buried in the debris will not breathe again the breath of life. It is therefore natural that we should feel very strong feelings as a result of the bitter experience. It is natural that many things will be seen by us through the colored prisms of such feelings. On the other hand, we have our sworn duty to do justice with absolute impartiality. The task is not easy. But it is our inescapable duty to do it, no matter what our feelings and prejudices might be. We should not allow the strength of these feelings and prejudices to impede us to be equal to our official functions as judges.

We must keep always in mind that political offenses are sure to arouse popular emotions, sometimes uncontrollable. The mob psychology is very contagious. Justices and judges must guard against the effects of such contagion. That is the reason why Congress, in creating the People's Court, made it collegiate, a measure which it considered necessary to place those accused of political offenses, with the special protection, in the same category as other accused in the matter of the protection of their substantial rights in their trials. The protection is special, but it was devised to make more effective the equal protection of the laws and to avoid discrimination against alleged political offenders.

We may loathe the role petitioner played under the Japanese regime with all the energies of our soul. We might not forget what he did or said with respect to important matters which were of paramount importance to us as Filipinos. But in the discharge of our judicial functions it is our imperative duty to set aside our sympathies and aversions, lest we incur in the same pernicious ideology we detest in the Japanese and those who collaborated with them. Complete detachment from our personal likes and dislikes is an indispensable element if we should administer real justice. Law and justice have no personal feelings. Justice has been represented as a blindfolded lady. Right and wrong have no nationalities, political attachments, or prejudices. We must judge the petition, forgetting who the petitioner is. If the petition is right, it must be granted no matter how we may abhor the petitioner or his acts. If the petition is wrong, it must be denied no matter how we may sympathize with the person or with his lot.

The Constitution of Nazi Germany and the Constitution of Fascist Japan, by express provisions, guarantee the personal freedom of their respective citizens. The guarantees are substantially the same as those written in the Philippine Constitution, only with not so nice and perfect details. If the letter of the German and Japanese

Constitutions is complied with, the personal liberty of their citizens will be substantially secure. But those guarantees in the hands of German and Japanese authorities are just scraps of paper, the same as international treaties and conventions. In such ignoring of constitutional guarantees consists, among others, the radical difference between totalitarianism and democracy, between autocratic governments and regimes of liberty.

During the enemy occupation we never compromised with the Japanese. But now that the beaten enemy has been ousted from our country, are we to adopt their hated procedures of trampling upon the constitutional guarantees for the liberties of our people and citizens? Shall we borrow their ideology? Shall we adopt their way of thinking?

In dealing with this case, we must forget who the petitioner is, and remember only the sanctity of the law, the sacredness of our Constitution. Even the Jew in the middle ages was made by Shakespeare to exclaim: "I crave the law." Shylock says, besides; "If you deny me, file upon your law; There is no force in the decrees of Venice," A human wreck, a derelict, does not, for the reason of his condition, lose his rights under our laws. A supposed criminal is entitled to legal protection. Whatever we might think or feel against the petitioner, whatever our personal prejudices are, it is our duty not to deny him what the law recognizes as due him.

We have, we must have, a government of laws. The equal protection of the laws shall not be denied to anyone, rich or poor, old or young, wise or fool, man or woman, noble or lowly, prince or tatterdemalion, saint or depraved, patriot or traitor, citizen or man without a country.

Whatever imputations can be hurled against the petitioner,—and it seems all that could be made were already stated by the special prosecutor before the court below—we cannot form upon him a concept worse than the world has formed against the German archcriminals, those responsible, among others, of the grisly slaughterhouses of Maidanek, Dachau and Buchenwald, of the attempted mass wiping out of whole racial groups, the crime newly designated as "genocide." But those archcriminals are not being denied the fundamental rights to have a fair trial, to be defended by attorneys, to present their evidence, because the denial of such fundamental rights, universally recognized by the civilized world, will shock the conscience of humanity. Even the repellent General Yamashita, the man most hated by the Filipinos, is well-fed, is provided with all facilities to defend himself, is allowed to cross-examine the witnesses for the prosecution, and will be allowed to testify and offer evidence. Is there any reason for giving petitioner herein a deal worse than those monstrous archcriminals, whose crimes stagger our imagination? The ability to do justice, even to enemies and to persons we hate is precisely one of the inherent virtues of democracy. It is one of its characteristics, making it essentially different from autocracies and dictatorships.

At this moment we cannot refrain from repeating the words the outstanding philosopher-jurist Jhering wrote in his little big book, "The Struggle for Law":

"'I crave the law.' In those four words, the poet has described the relation of law in the subjective, to law in the objective, sense of the term and the meaning of the struggle for law, in a manner better than any philosopher of the law could have done it. These four words change Shylock's claim into a question of the law of Venice. To what mighty, giant dimensions, does not the weak man grow, when he speaks these words: It is no longer the Jew demanding his pound of flesh; it is the law of Venice itself knocking at the door of Justice; for his rights and the law of Venice are one and the same; they both stand or fall together. And when he finally succumbs under the weight of the judge's decision, who wipes out his rights by a shocking piece of pleasantry, when we see him pursued by bitter scorn, bowed, broken, tottering on his way, who can help feeling that in him the law of Venice is humbled; that it is not the Jew, Shylock, who moves painfully away, but the typical figure of the Jew of the middle ages, that pariah of society who cried in vain for justice? His fate is eminently tragic, not because his rights are denied him, but because he, a Jew of the middle ages, has faith in the law—we might say just as if we were a Christian—a faith in the law firm as a rock which nothing can shake, and which the judge himself feels until the catastrophe breaks upon him like a thunderclap, dispels the illusion and teaches him that

he is only the despised medieval Jew to whom justice is done by defrauding him.

"The picture of Shylock conjures up another before my mind, the no less historical than poetical one of Michel Kohlhaas, which Heinrich von Kleist has described in his novel of that name with all the fascination of truth. Shylock retires from the scene entirely broken down by grief; his strength is gone and he bows without resistance to the decision of the judge. Not so Michel Kohlhaas. After every means to obtain his rights, which have been most grievously violated, has been exhausted; after an act of sinful cabinet—justice has closed the way of redress to him, and Justice herself in all her representatives, even to the highest, has sided with injustice, a feeling of infinite woe overpowers him at the contemplation of the outrage that has been done him and he exclaims: 'Better be a dog, if I am to be trampled under foot, than a man'; and he says: 'The man who refuses me the protection of the law relegates me to the condition of the savage of the forest, and puts a club in my hand to defend myself with.' He snatches the soiled sword out of the hand of such venal Justice and brandishes it in a manner that spreads consternation far and wide through the country, causes the State to shake to its very foundations and the prince to tremble on his throne. It is not, however, the savage feeling of vengeance that animates him; he does not turn murderer and brigand, like Karl Moor, who wishes 'to make the cry of revolt resound through all nature to lead into the fight against the race of hyenas, air, earth and sea,' whose wounded feeling of justice causes him to declare war against all humanity; but it is a moral idea which urges him forward, the idea that 'it is his duty to the entire world to consecrate all his strength to the obtaining of satisfaction and to the guarding of his fellow-citizens against similar injustice.' To this idea he sacrifices everything, his family's happiness, the honor of his name, all his earthly possessions, his blood, and his life; and he carries on no aimless war of extermination, for he directs it only against the guilty one, and against all those who make common cause with him. At last, when the hope of obtaining justice dawns upon him, he voluntarily lays down his arms; but, as if chosen to illustrate by example to what depth of ignominy the disregard of law and dishonor could descend at that time, the safe conduct given him, and the amnesty are violated, and he ends his life on the place of execution. However, before his life is taken from him justice is done him, and the thought that he has not fought in vain, that he has restored respect for the law and preserved his dignity as a human being, makes him smile at the horrors of death; and, reconciled with himself, the world, and God, he gladly and resolutely follows the executioner. What reflections does not this legal drama suggest: Here is an honest and good man, filled with love for his family, with a simple, religious disposition, who becomes an Attila and destroys with fire and sword the cities in which his enemy has taken refuge. And how is this transformation effected? By the very quality which lifts him morally high above all his enemies who finally triumph over him; by his high esteem for the law, his faith in its sacredness, the energy of his genuine, healthy feeling of legal right. The tragedy of his fate lies in this that his ruin was brought about by the superiority and nobility of his nature, his lofty feeling of legal right, and his heroic devotion to the idea of law, which made him oblivious to all else and ready to sacrifice everything for it, in contact with the miserable world of the time in which the arrogance of the great and powerful was equaled only by the venality and cowardice of the judges. The crimes which he committed fall much more heavily on the prince, his functionaries and his judges who forced him out of the way of the law into the way of lawlessness. For no wrong which man has to endure, no matter how grievous, can at all compare, at least in the eyes of ingenuous moral feeling, with that which the authority established by God commits when it itself violates the law. Judicial murder is the deadly sin of the law. The guardian and sentinel of the law is changed into its murderer; the physician poisons his patient; the guardian strangles his ward. In ancient Rome, the corrupt judge was punished with death. For the justice which has violated the law there is no accuser as terrible as the sombre, reproachful form of the criminal made a criminal by his wounded feeling of legal right—it is its own bloody shadow. The victim of corrupt and partial justice is driven almost violently out of the way of the law; he becomes the avenger of his own wrong, the executor of his own rights, and it not infrequently happens that, overshooting the mark, he becomes the sworn enemy, of society, a robber and a murderer. If, like Michel Kohlhaas, his nature be noble and moral, it may guard him satisfaction. Here the struggle for law becomes a criminal, and by suffering the penalty of his crime, a martyr to his feeling of legal right. It is said that the blood of martyrs does not flow in vain and the saying may have been true of him. It may be that his warning shadow

sufficed for a long'time to make the legal oppression of which he was the victim an impossibility.

"In conjuring up this shadow, I have desired to show by a striking example how far the very man whose sentiment of legal right is strongest and most ideal may go astray when the imperfection of legal institutions refuses him satisfaction. Here the struggle for law becomes a struggle against the law. The feeling of legal right, left in the lurch by the power which should protect it, itself abandons the ground of the law and endeavors, by helping itself, to obtain what ignorance, bad will, or impotence refuses it. And it is not only a few very strong and violent characters, in which the national feeling of legal right raises its protest against such a condition of things, but this protest is sometimes repeated by the whole population under certain forms, which, according to their object or to the manner in which the whole people or a definite class look upon them or apply them, may be considered as popular substitutes for, and accessories to, the institutions of the state."

I. ELEMENTAL PRINCIPLES OF LAW ON PERSONAL LIBERTY

Before proceeding further, we must be allowed to remember some of the elemental principles of law on personal liberty.

The right of personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct without imprisonment or restraint, unless by due course of law. (1 Bl. Com., 135; Butchers' Union, etc., Co. vs. Crescent City, etc., Co., Ill U. S. 746; 28 Law. ed., 585; In Matter of Jacobs, 98 N. Y., 98.)

This right is a natural one such as has ever been the birthright of every freeman, even in thoe ages before civilization had exercised its softening influence upon man's passions, and is now guarded with jealous care by that inexorable mistress, "the law of the land." (The Trustees of Dartmouth College vs. Woodward, 4 Wheat. [U. S.], 518; 4 Law. ed., 629.)

Due process of law means that whatever the legal proceeding may be, it must be enforced by public authority, whether sanctioned by age or custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves the principles of liberty and justice. (Hurtado vs. California, 110 U. S., 516; 28 Law. ed., 232; Roowan vs. State 30 Wis., 129; King vs. Berchet, 1 Show. [Eng. K. B.], 106; R. vs. Ingham, 5 B. & S. (Eng. Q. B.), 257; Westervelt vs. Gregg, 12 N. Y., 202; Bank of Columbia vs. Ikely, 4 Wheat. [U. S.], 235; 4 Law. ed., 559; Brown vs. Levee Commissioners, 50 Miss., 468; Davidson vs. New Orleans, 96 U. S., 97; 24 Law. ed., 616.) It means that neither life, liberty, nor property can be taken, nor the enjoyment thereof impaired, except in the course of the regular administration of the law in the established tribunals. (Ex parte Virginia, 100 U. S., 866; 65 Law. ed., 686.)

Therefore an arrest without a warrant, where one is required by law, is not due process of law. (Muscove vs. Com., 86 Va., 443; 10 S. E., 534; State vs. James, 78 N. C., 455; Trustees vs. Schroeder, 58 111., 353.) But if there is likely to be a failure of justice for want of a magistrate to issue a warrant, an officer may arrest without a warrant. (Dixon vs. State, 12 Ga. App., 17; 76 S. E., 794; Waters vs. Walkover Shoe Co.,—Ga.—; 82 S. E., 537.) And an arrest without a warrant, where one is necessary, may be waived by the defendant pleading guilty to the complaint contained in a subsequently issued warrant. (People vs. Lowerie, 163 Mich., 514; 128 N. W., 741.)

Where a warrant is required by existing laws, an authority to arrest without a warrant cannot be implied from a general grant to a municipality of power to arrest. (Gunderson vs. Struebing, 125 Wis., 173; 104 N. W., 149.)

Relating to the higher crimes, due process of law is said to denote a lawful indictment or presentment of good and lawful men, (Coke, 2d Insti., 50; affirmed in Jones vs. Robbins, 8 Gray [Mass.], 329, in which see dissenting opinion by Justice Merrick; disaffirmed in Hurtado vs. California, supra cit., in which see dissenting opinion by

Justice Harlan. See also *Taylor vs. Porter*, 4 Hill [N. Y.], 140; *Hoke vs. Henderson*, 4 Dev. [N. C.], 1; *Jones vs. Perrey*, 10 Yerger [Tenn.], 59; 3 Story on Const. U. S., 661; 2 Kent's Com., 13; *Saco vs. Wentworth*, 37 Me., 172; *Emerick vs. Harris*, 1 Binn. [Pa.], 416; *Murphy vs. People*, 2 Cow. [N. Y.] 815; *Jackson vs. Wood*, 2 Conn., 819; *Beers vs. Beers*, 4 Conn., 535) and a public trial, before a court of competent jurisdiction. Therefore, where the court at the trial of one charged with murder, directed an officer to stand at the door of the court-room "and see that the room is not overcrowded, but that all respectable citizens be admitted, and have an opportunity to get in when they shall apply," it was held that the right of the accused to a public trial, guaranteed to him by the constitution, had been violated. (*People vs. Murray*, 89 Mich., 276; 50 N. W., 995.)

The government has the right to control its subjects up to that point where society is safe, but it has no right to go beyond the point of safety. (Position of Ferrier, 103 111., 373.) Any law which restrains a man from doing mischief to his fellow-man increases the personal liberty of mankind, but every wanton and causeless restraint of the will of the subject is a degree of tyranny. (1 Bl. Com. 126.)

It is one of the most commendable features of our republican form of government that our laws are equal, just, and impartial, and that the humblest member of society has rights and remedies for the infraction of those rights, that are not exceeded by the rights or remedies of any other man, no matter how high his station. No officer of the law can, with impunity, set those rights at defiance. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

It is, therefore, removed from the whim of ignorance of any magistrate to issue, or of any person to serve any legal process whatever unless the provisions of law be strictly followed; and any restraint of a person, except by due process of law, amounts to a false imprisonment, for which both magistrate and officer may be liable in damages to the person deprived of his liberty, and the imprisonment may also be made the subject of a criminal prosecution. (*Fisher vs. McGirr*, 1 Gray [Mass.], 45; *Stetson vs. Packer*, 7 Cush [Mass.], 564; *Stephens vs. Wilkins*, 6 Pa. St., 260; *Emery vs. Hapgood*, 7 Gray [Mass.], 55; *Rafferty vs. People*, 69 111., 11; *Gurney vs. Tufts*, 37 Me., 130; *Wise vs. Withers*, 3 Cranch [U. S.], 337; 2 Law. ed., 559; *Entick vs. Carrington*, 2 Wils. [Eng. C. P.], 275; *Groome vs. Forrester*, 5 M. & S. [Eng. K. B.], 314; *Allen vs. Gray*, 11 Conn., 95.)

A magistrate who illegally issues a warrant without a sworn complaint is liable for trespass on an arrest made on such warrant, and he cannot justify by showing that he had a reasonable suspicion that an offense had been committed. (*McGuhmess vs. Da Foe*, 3 G. C. C. [Can.], 139; *Campbell vs. Welsh*, 18 C. C. C. [Can.], 316; *Papillo vs. R.*, 20 C. C. C. [Can.], 329.)

II. THE FACTS IN THIS CASE

With the above legal axioms in mind, let us consider the facts in this case.

Petitioner alleges that he is a Filipino political prisoner detained in the New Bilibid Prison in Muntinlupa, under the custody of the Director of Prison; that on October 4, 1945, he filed with the People's Court a petition for a Writ of habeas corpus, with allegations and prayer for provisional release on bond, in case his absolute freedom cannot be, for some reason, granted; that on October 5, 1945, he withdrew said petition for a writ of habeas corpus in order to stand solely on his allegations and petition for provisional release on bond; that on October 6, the Solicitor General submitted a recommendation to the People's Court to allow petitioner to be released provisionally on a bail of P35,000, "on the strength of the evidence" in his possession; that respondent Judge issued an order setting the case for hearing on October 8, requiring the Solicitor General to appear at said hearing "for the purpose of giving such information to the Court as may enable it to determine whether the case is bailable or not and, if bailable, what amount should be required; that at the hearing Special Prosecutor V. D. Carpio, representing the Solicitor General, manifested that he refused to reveal their evidence, adding that they cannot

certify to the degree of truthfulness of said evidence for the reason that they have not been able to check them up, but then recited a series of charges against the petitioner, which according to him, were of public knowledge; that petitioner filed a memorandum citing the doctrine established by the Supreme Court in the case of *People vs. Marcos* (G. R. No. 46490); that on October 12, respondent Judge issued an order denying the petition for provisional release on bail, without stating any reason in support thereof; that immediately upon receipt of said order, petitioner filed a motion for reconsideration based on three grounds, namely: (a) that the Solicitor General recommended that petition be granted upon a bail of P35,000; (b) that the Solicitor General did not reveal any evidence against the petitioner; (c) that refusal to disclose such evidence entitled petitioner to bail; and that on October 15 the motion for reconsideration was denied.

In the order of denial respondent judge stated the following grounds:

"The detainee's adherence to the enemy as manifested by his utterances and activities during the Japanese domination, specially as Executive General of the Makapili; as Director of General Affairs of the Kalibapi; as Vice-Minister of State for Home Affairs; as member of the Council of State; as member of the National Assembly under the Japanese sponsored Philippine Republic, and as President of the New Leaders' Association—historical facts of contemporary history and of public knowledge which the petitioner cannot deny—makes the case against him quite serious and may necessitate the imposition of the capital punishment."

It is contended by petitioner that the action of the respondent is a deliberate transgression of the fundamental law of the land, invoking for said purpose the following:

"All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required." (Art. III, sec. No. 16, Constitution of the Philippines.)

Petitioner invokes, too, the provision of section 19 of Commonwealth Act No. 682, creating the People's Court, wherein it is provided that "existing provisions of law to the contrary notwithstanding, the aforesaid political prisoners may, in the discretion of the People's Court, after due notice to the Office of Special Prosecutors and hearing, be released on bail, even prior to the presentation of the corresponding information, unless the Court finds that there is strong evidence of the commission of a capital offense."

It is also alleged by petitioner that he is being detained for no less than three months and no information has been filed against him so far.

In the petition it is prayed that the orders of the respondent Judge of October 12 and October 15, be annulled, and respondent be directed to enter a new order granting the petition for the provisional release of petitioner on bail not to exceed P20,000.

III. PETITIONER IS DETAINED WITHOUT DUE PROCESS OF LAW

The recital of the undisputed facts of this case shows conclusively to any unscleroid brains that petitioner is actually being deprived of his liberty without due process of law.

It appears that petitioner surrendered to the American forces on July 4, 1945, and remained as prisoner of war of said forces until he was delivered on September 26, 1945, to the Government of the Commonwealth of the Philippines.

There is absolutely no showing of any official order issued by any authority of the Commonwealth Government by which petitioner should be detained or restrained of his personal liberty. There is absolutely no law which authorizes his detention. There is not any lawful act from the executive department which decrees the deprivation

of petitioner's liberty. There is absolutely no judicial decision, resolution, order, or decree issued by a competent tribunal ordering the detention of petitioner.

Process is a writ, warrant, subpoeena, or other formal writing issued by authority of law; also the means of accomplishing an end, including judicial proceedings. (3 Bl. Com., 279; Gollobitsch vs. Rainbow, 84 Iowa, 567.) The word "process" is also used as a general term to cover all the written means of compelling a defendant to appear in court.

Under the circumstances, we are of opinion that petitioner enjoys the absolute constitutional right to be restored to his personal freedom.

The Philippine Constitution provides:

"No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." (Art. III, sec. 1, No. 1, Constitution of the Philippines.)

Petitioner is deprived of his liberty without due process of law, without any legal process at all.

We have already stated our stand on this question in our two opinions in the case of Raquiza vs. Bradford (G. R. No. L-44, p. 76, ante), and in the case of Reyes vs. Crisologo (G. R. No. L-54, p. 236, ante).

In the first case, petitioners Raquiza et al., were under the custody of the American armed forces exactly in the same situation as petitioner herein was before his transfer to the Commonwealth Government.

Raquiza et al., were political prisoners detained without any process of law, and we voted that they were entitled to their personal freedom and for the issuance of the writ of habeas corpus they prayed for.

In said case, a majority of this Court voted for the denial of the petition upon the assumption that this Court has no jurisdiction, to issue the writ when petitioners were under the custody of the United States Army, stationed in the Philippines, and assuming that war has not ended yet, probably without knowledge of the official message issued to the Filipino people by President Sergio Osmeña on September 2, 1945, wherein the Chief Magistrate of the nation announced the end of war as of said day.

Circumstances have changed.

Petitioner is not now under the custody of the American Army. He is under the custody of the Philippine Government. He is under the custody of civil Filipino officials. War has ended according to the official declaration of the Chief Executive of the Philippines. Therefore, the claim for restoration of liberty is still stronger in regards to the herein petitioner.

It is true that petitioner filed a petition for a writ of habeas corpus with the understanding that, if said petition is denied, he prayed to be allowed to enjoy provisional liberty on bail. It is true also that he changed Ms alternative petition to stand only on the petition to be allowed to be free on bail. It is also true, however, that the constitutional right to personal freedom cannot be waived. And it is also true that the Rules of Court are not so particular about procedure technicality in habeas corpus cases. Section 9 of Rule provides:

"SEC. 9 Defect of form.—No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appears therefrom in whose custody or under whose restraint the party imprisoned or restrained is held and the court or judge before whom he is to be brought"

We believe, therefore, that, under the circumstances, the petition might be considered substantially as one for habeas corpus, and we are duty bound to grant it.

IV. PETITIONER HAS AN ABSOLUTE RIGHT TO HIS LIBERTY, MUCH MORE ON BAIL

There being no legal process which justifies the restraining of liberty of petitioner, the latter has an absolute right to be set at liberty without any condition. Petitioner erred in withdrawing in the court below his petition for habeas corpus, instead of pressing that the same be acted upon.

If petitioner is entitled to be free without any condition, without the duty of putting up any bail, there is more reason for granting his petition to be given his freedom when he offers to accept the condition of putting up a bail, and respondent judge committed, not only an error of law, but also a grave injustice in denying the petition of petitioner to be released on bail.

Petitioner filed his petition for a writ of habeas corpus on October 4, 1945, praying to be discharged from further custody and imprisonment or, at least, be granted provisional liberty on a reasonable bond not to exceed P10,000.

On October 5, petitioner withdrew his petition for a writ of habeas corpus "for personal reasons which need not be expressed," standing on his alternative petition for provisional release on bond, and prayed that the Solicitor General be requested to make his comment and recommendation on said alternative petition for provisional release.

On October 6, the Solicitor General, represented by Special Prosecutor Macario M. Peralta, filed a recommendation stating "that on the strength of the evidence on record, the reasonable bail recommended for the provisional release of petitioner is P35,000."

On the same date, October 6, Judge R. Nepomuceno, of the People's Court, upon receiving the favorable recommendation of the Solicitor General, set the petition for provisional release on bail for hearing on October 8, and required the Solicitor General "to appear at the hearing for the purpose of giving such information to the court as may enable it to determine whether the case is bailable or not and, if bailable, what amount should be required."

At the hearing no evidence has been presented because, as Special Prosecutor Carpio said, "the office has not the material time to check up all the evidence submitted to us by the military authorities," and neither have we formulated the necessary information," and that "the evidence is such confidential in nature that we are not in a position to divulge it at this time."

The information was given, among others, after Judge Nepomuceno asked: "What evidence does the Solicitor General have with respect to the prisoner which will enable this court to determine whether the offense for which he is held in custody is bailable or not?"

The papers in connection with the case have been received from the military authorities and, as Special Prosecutor Carpio said, "We have had no chance to check up all those documents or to verify the truthfulness of the statements therein made to enable us to say the degree of the truth or veracity of the facts therein contained."

After said hearing, petitioner's counsel submitted a memorandum, invoking the doctrine laid down by this Supreme Court in the case of Marcos (G. R. No. 46490) wherein it was stated that the petition for provisional release must be set for hearing in which the prosecution should present its evidence, the same as the defense, to enable the court to determine if the offense is bailable or not.

On October 12, respondent Judge Salvador Abad Santos issued the order of denial worded as follows: "After due hearing of the petition for provisional release on bail of the political prisoner, Pio Duran, the court has arrived at the conclusion that the petition should be, as it is hereby, denied."

Immediately, on the said day, petitioner's counsel filed a motion for reconsideration, which was denied in the order issued on October 15.

No information or formal charges having been filed against petitioner, there is absolutely no legal process to justify his detention. But on the hypothesis that a legal fiction can be accepted to the effect that such information or formal charges for the crime of treason (the one mentioned by Special Prosecutor Carpio), may be taken as filed, though not a scintilla of evidence has been presented, the case stands on all fours with the Marcos case, wherein the accused was granted provisional release on bail, because the prosecution, like what Special Prosecutor Carpio did, refused to divulge the evidence against the accused.

In the light of the doctrine established in the Marcos case, the court had no other alternative than to grant the provisional release on bail.

The position of the petitioner became still stronger if we take into consideration the fact that the Solicitor General, not only did not oppose the petition, but expressly agreed to it, recommending that the reasonable bail "for the provisional release of petitioner is P35,000."

V. SECTION 19 OF COMMONWEALTH ACT NO. 682

Now let us see if section 19 of Commonwealth Act No. 682, creating the People's Court, may in any way justify the action of respondent judge.

There are three parts in said section—the principal provision and two provisos. The principal provision commands the Office of Special Prosecutors to receive all records, documents, exhibits and such other things as the Government of the United States may have turned over in connection with and/or affecting political prisoners, examine them "and take, as speedily as possible, such action as may be proper."

The second proviso suspends for a period of six months the provisions of article 125 of the Revised Penal Code, "insofar as the aforesaid political prisoners are concerned, in the interest of public security." It must be remembered that before the enactment of Commonwealth Act No. 682, said article has been suspended by executive order for a period of thirty days.

The text of the first proviso is as follows:

"That existing provisions of law to the contrary notwithstanding, the aforesaid political prisoners may, in the discretion of the People's Court, after due notice to the Office of Special Prosecutors and hearing, be released on bail, even prior to the presentation of the corresponding information, unless the court finds that there is strong evidence of the commission of a capital offense."

The provision authorizes that the political prisoners in question "may be released on bail, even prior to the presentation of the corresponding information," and this may be done "existing provisions of law to the contrary notwithstanding."

No one has been able to point out what and which are the alluded "existing provisions of law to the contrary notwithstanding." But it seems that Congress inserted this sentence as a saving measure, in order to avoid any possible loophole. Considering the fact that the law was enacted in a special legislative session, when not enough time for research was available, and the urgency of the measure, in view of the impending transfer by the U. S. Army of about 4,000 political prisoners to the Commonwealth Government, not being sure whether there is any provision of law which may prohibit the release on bail of a detained political prisoner, "even prior to the presentation of the corresponding information," the authors of the bill deemed it wise to insert this sentence just in case, so as to avoid by lack of foresight the defeat of the legislative main purpose, that is, to permit said political

prisoners to be released on bail "even prior to the presentation of the corresponding information, unless the court finds that there is strong evidence of the commission of a capital offense."

The proviso grants the People's Court discretion. But, discretion in what? We must assume that the discretion granted must be construed in the sense that the same may be exercised in cases wherein it was not heretofore granted by law. And it is reasonable to assume that the discretion granted is to the effect that the People's Court may exercise jurisdiction to order the release on bail of political prisoners "even prior to the presentation of the corresponding information." It is so, because before the presentation of said information, Congress believed that the court had no jurisdiction to act upon a petition for release on bail.

The word "discretion" as used in section 19 of Commonwealth Act No. 682 cannot be construed in the sense that the People's Court may not order the release on bail of a political prisoner, once it exercises jurisdiction on a petition to said effect.

"Unless the Court finds that there is strong evidence of the commission of a capital offense," it has no power to deny a petition for release on bail, because

"All persons shall, before conviction, be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong." (Sec. 1: 15, Art. III, Constitution of the Philippines.)

Congress could not have intended to defeat or to violate this specific and imperative mandate of the Constitution. It is one of the principles of legal hermeneutics that the legislative intent must be construed not to violate any constitutional provisions, unless it is impossible to give an interpretation different from the law as worded.

The "discretion" granted by Congress is only to take or not to take cognizance of a petition for "release on bail, even prior to the presentation of the corresponding information." If the People's Court refuses to take cognizance of such a petition, the prisoner has always open the doors to file a petition for a writ of habeas corpus, the privilege not having been suspended.

In granting such discretion, undoubtedly Congress has in mind that if the political prisoners in question are not allowed to be released on bail, they might press the courts with hundreds or thousands of petitions for writs of habeas corpus.

Of course, even in cases of capital offenses, the courts are empowered to allow the accused to be bailed, although in such cases, the accused cannot invoke any constitutional right when the evidence is strong. (People vs. Banez, G. R. No. L-26 and People vs. Samano, G. R. No. L-27, 41 Off. Gaz., 888.)

VI. THE MAJORITY INTERPRETATION

"As a military political prisoner—so the majority opinion runs—he (the petitioner) could not be bailed out," a statement which will look in vain for a legal support, especially in peace time.

Then coming to construe the provision of section 19 of Commonwealth Act No. 682, the majority opinion declares that the power to grant release on bail is purely discretionary on the court. The very words used are scilicet: "As may be seen from the above express provision of law, the release of a detainee on bail, 'even prior to the presentation of the corresponding information,' is purely discretionary on the People's Court. The only exception to it is when 'the Court finds that there is strong evidence of the commission of a capital offense', in which case no bail whatever can be granted, at the provision appears mandatory. In other words, aside from that, the People's Court has the absolute discretion to grant bail or not."

The wording of section 19, which unfortunately is not a model of legislative perspicuity, may apparently justify

the interpretation of the majority. But in view of the provisions of the Constitution, as far as possible, we must avoid reading in the lay a legislative intention violative of specific constitutional mandate, such as the one making it imperative to allow all persons to be bailed before final conviction, except when charged with capital offense and the evidence of guilt is strong.

If the interpretation of the majority is correct, then we must be compelled to declare section 19 of Commonwealth Act No. 682 unconstitutional, where it gives the People's Court absolute discretionary power to grant or to deny the petition of a prisoner to be released on bail, a power so unlimited that it cannot fail to remind us of the abhorrent absolution of a judicial dictatorship.

When a prisoner or a detainee is charge with offenses other than capital, before final conviction, he is entitled to be bailed by sufficient surities, and no court has power nor authority to exercise discretion whether to grant or to deny the release, because to deny it is tantamount to an abusive dereliction of duty, to trampling one of the fundamental rights held sacred by our people, to reducing our Constitution to a mere scrap of paper.

The Constitution grants discretion to deny a petition for release on bail only in cases wherein the accused are charged with capital offenses and the evidence of guilt is strong. But a court is empowered to grant or to deny the petition for release in accordance with the doctrine we have already stated in our opinion in the cases of *People vs. Banez* (G. K. No. L-26), and *People vs. Samano* (G. R. No. L-27, 41 Off. Gaz., 888).

VII. APPLICATION OF THE BAIL CLAUSE OF THE CONSTITUTION TO CASES WHEREIN NO INFORMATION HAS BEEN FILED

Evidently the majority assumes the position that, because the corresponding information for a criminal offense has not as yet been filed against the petitioner, the bail clause of the Constitution which provides that "all persons shall, before conviction, be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong," is not applicable to the present case, excluding petitioner from the constitutional description of "all persons."

It interprets the words "all persons" used by the Constitution as meaning "not all persons." It is based on the false assumption that where the drafters of our Constitution wrote the word "all," in fact, they wrote "not all," that is, the very opposite of the simple meaning, universally understood, of the word "all."

The Constitution provides that "all persons shall, before conviction, be bailable," but the majority opines that this provision cannot be invoked in this case for the reason. that the corresponding information has not as yet been filed against the petitioner.

Why? Is it because the information has not yet been filed, petitioner ceased to be included within the words "all, persons"? Are individuals against whom no information for any offense has been filed not "persons"? Since when. have those against whom no information for a criminal offense has been filed ceased to be "persons"? Since when can the word "person" only be applied to accused in an information? What about us, the remaining 18 million. Filipinos?

The untenability of the majority's proposition becomes self-evident by the absurd consequences to which it immediately and necessarily leads.

Where in the Constitution is written "all persons", unless we are unable to read, we must read simply "all; persons." And when petitioner filed the petition in this, case, and we accepted it and gave it due course, ordered respondent judge to answer it, allowed both parties to argue this case in a public hearing, it is presumed that we took for granted that petitioner is endowed with the essential attributes and qualities of a person. This Supreme

Court is not supposed to accept and entertain any petition coining from any being not a person, as, anyhow, the act of filing a petition before this Court can exclusively be performed by a person.

A petitioner is a person, whether an information has been filed against him or not as yet; he is included among the "all persons" to whom the Constitution grants the fundamental right to be bailed before final conviction for an offense.

The majority's theory of exempting from the words have those against whom no information for a criminal "all persons" all those against whom no information for an offense has as yet been filed leads to the additional absurdity of placing persons, against whom no information has been filed, in a more precarious and disadvantageous position than persons against whom an information has been filed. The majority's theory leads to the absurdity of denying person against whom no information for a criminal offense has been filed the right to enjoy freedom, which is reorganized and enjoyed by those who are accused. We cannot pass the following statement in the majority opinion unchallenged: "Having invoked the clear provision of section 19 of Act No. 682 for his temporary release on bail, the petitioner cannot, therefore, attack it as being illegal or unconstitutional."

The proposition is begging the question.

Petitioner interpretes section 19 of Commonwealth Act No. 682, and then wants the Supreme Court to interpret it, as in consonance with the bail clause of the Constitution, and, interpreted in that way, there is no person for the petitioner to attack its constitutionality.

But the majority opinion gives said section a construction which decidedly places it in a headlong conflict with the bail clause of the Constitution. If this is the case, we do not understand how petitioner, or any other else, can be precluded from impugning the validity of such section on constitutional grounds.

Petitioner invokes said section 19 on the assumption that it is to be interpreted as not running counter to any constitutional mandate.

Being otherwise construed, he is entitled to attack the correctness of such interpretation and, failing in that endeavor, it is his right and, more than right, his civic duty to denounce a legal provision which violates the fundamental law of the land and try all he can to have it invalidated.

VIII. NO MATTER WHAT THE MAJORITY SAY, THERE IS AN ESSENTIAL DIFFERENCE BETWEEN MEKJE STATEMENT OR RECITAL OF SUPPOSED ACTS AND EVIDENCE.

In the majority opinion there appears a deplorable confusion, by elevating the mere statements made by Special Prosecutor Carpio before the People's Court to the rank and category of an evidence.

In the majority opinion we read:

"Counsel's contention that the special prosecutor should have presented evidence to prove that there was strong evidence of the commission of a capital offense before the People's Court could deny bail in this case was substantially complied with, although the information charging the commission of the crime of treason had not as yet been filed. We are of the opinion and so hold that the hearing set and held for the purpose (see Appendix E) was amply sufficient for the People's Court to be informed and to determine whether there was a strong evidence of the commission of a capital offense. The special prosecutor clearly informed the People's Court in the presence of the adverse counsel, in part, as follows:" (Here follows quotations of long statements made by special prosecutor as appearing in Appendix E.)

By the foregoing statement, the majority wipes out completely all laws, decisions, rules, resolutions, and

jurisprudence about evidence, its concept and its indispensable and important role in court proceeding and in the administration of justice.

Section 1 of Judicial Rule 123, as promulgated by this very Supreme Court, provides:

"Evidence defined.—Evidence is the means, sanctioned by this rule, of ascertaining' in a judicial proceeding the truth respecting a matter of fact."

There are 100 sections in Judicial Rule 123, but there is nothing in those 100 sections authorizing the proposition of the majority to the effect that the statements made by the special prosecutor before the People's Court can take the place of an evidence.

Soon we will be ten and one score years since we were authorized to practice law as a profession. In our long experience with law we never had the chance of seeing confused a mere statement with an evidence.

It seems that from the promulgation of the decision in this case our concepts about a mere statement and an evidence will undergo a radical revision. Our courts of justice and the bar will have to face the perplexing situation which the revision will create. Law textbooks and even dictionaries must have to be revised too. We are afraid, notwithstanding, that the future will appear dark and hopeless. If mere statements are considered evidence, we are afraid the administration of justice will suffer a complete frustration. We tried to see light in the confusion between mere statements and evidence, but we can not glean even the flickering flashes of a firefly in the gloom and darkness of the future juridical night.

Although implicitly maintaining that the bail clause of the Constitution is not applicable to petitioner's case, we cannot fail to perceive in the majority opinion a weak attempt to show in some way that petitioner is charged with a capital offense and the evidence of guilt is strong and, therefore, respondent judge had not violated the bail clause of the Constitution.

But the attempt appears futile if we pause for a while to analyze the line of reasoning followed in the majority opinion.

It runs as follows: "But even if we should concede counsel's contention, for the sake of argument, that the People's Court has not been given that discretion to deny bail to the petitioner, still the conclusion of the respondent judge is not unfounded," because "First, the special prosecutor stated that the information to be filed in the case would be for treason," and "Secondly, the recital by the special prosecutor of the supposed acts committed by the petitioner * * * supports the conclusion and ruling of the People's Court."

The Constitution provides that: "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong." (Art. III, sec. 1, No. 16, Constitution of the Philippines.)

From the foregoing, it can be readily seen that, by the very words of the majority, none of the two essential elements required by the Constitution to concur in cases where denial of bail is permissible exists in the present case.

The first element is that petitioner must be "charged with capital offense," and according to what we read in the majority's opinion, no charge has as yet been filed, because the special prosecutor stated that the information is yet "to be filed in the case."

The second constitutional element is "when evidence of guilt is strong." In the present case, not an iota of evidence has been presented to that effect. Nobody will seriously attempt to elevate to the category of evidence the "recital by the special prosecutor of the supposed acts committed by the petitioner." Otherwise, the rights of

all citizens, including the fundamental ones—life, liberty, property, honor—will be placed at the mercy of any special prosecutor.

Huge amounts of property and accumulated riches and treasures were destroyed, millions of lives were sacrificed, untold sufferings were endured by the remaining hundreds of millions of souls to free the earth from the scourge of tyranny of Mussolini, Hitler, the Nippon warlords, and other dictators and despots. No greater tragedy can be inflicted on our people if the tyranny of the archcriminals is to be replaced by that of the special prosecutors, whose mere "recital" of supposed acts is evidence enough to prove the guilt of any person, making said "recital" as powerful as a dreaded imperial ukase.

IX. THE DENIAL OF THE PETITION IS VIOLATIVE OF THE INTERNATIONAL GUARANTEES CONTAINED IN THE CHARTER OF THE UNITED NATIONS.

Liberty is one of the fundamental human freedoms guaranteed, not only in the Constitution of the Philippines, but also in the Charter of the United Nations, which is in full force in our country.

The denial of the petition is, therefore, violative of the principles enunciated in said charter, a veritable International Constitution by which the United Nations, one of them the Philippines, became organized virtually as a social unit under the jurisdiction of a General Assembly and a Security Council as a kind of world governmental organisms.

We quote from the Charter of the United Nations:

"CHARTER OF THE UNITED NATIONS

"WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

"to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind,

and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

"HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH

"THESE AIMS

"Accordingly our respective Governments, through representatives assembled in the City of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

"Article 1

* * * * *

"3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

"4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

"Article 13

"1. The General Assembly shall initiate studies and make recommendations for the purpose of:

"b. promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

"Article 55

"With a view to the creation of condition of stability and wellbeing which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

* * * * *

"c. universal respect for, and observation of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

The present controversy is part of the test mentioned by President Osmeña when, on the occasion of the 38th anniversary of the First Philippine Assembly, on October 16, 1945, that statesman said: "As we face the future amid the dire aftermath of a bitterly destructive war, the world is again watching the Philippines for we face the greatest test in all our history—whether this nation, conceived in self-respect and dedicated to the principles of freedom, democracy and the right of the common man, can rise out of the ashes and build a land of promise for all." (Off. Gaz., October, 1945, p. 532.)

Upon signing Commonwealth Act No. 682 on September 25, 1945, the President said: "we can assure the Filipino people and the whole world that all who are accused of collaboration with the enemy will be tried by the processes of law and justice, which are firmly established here as they are elsewhere in the civilized world." (Off. Gaz., October, pp. 690, 691.) We are afraid we are not doing our part in the assurance when petitioner is denied the equal protection of the laws, and is deprived of his liberty without due process of law, and is not released even on bail, a condition he is willing to fulfill, although not required under the Constitution.

Those of us who believed in the great principles of freedom as indispensable element of human happiness, pinned their hopes for a better world on the victory of the forces of light, the standard bearers of democracy, the champions of individual and collective liberties. The final victory was, after the most tremendous exertions known to humanity, conclusively won on September 2, 1945. The meaning and validity of those principles are now under test in the present case. The test is taking place not less than in the highest tribunal of one of the proud nations which contributed to victory with the heroism, gallantry, and martyrdom of uncounted thousands of her sons and daughters. Bataan became a new symbol of liberty which fired the imagination, not only of millions of Filipinos, as Balintawak did half a century ago, not only of our blood relatives such as Indonesians and other Malayan peoples scattered in the Indian and Pacific oceans, but of hundreds of millions of liberty-loving souls all over the world. If few cowards and mercenaries humbled themselves to lick the boots of the insolent enemy, in temporary ascendancy, to advance with the betrayal their personal fortunes, innumerable rivals of Bonifacio and Luna, of Jacinto and Del Pilar, filled with their unsung gestes mountains and valleys, keeping in wonder comrades in arms abroad, and, headed by Chief Justice Abad Santos, many thousands of Filipino Martyrs faced death with the divine serenity of those who have faith in the Ideal. Are our hopes to shrivel and fade sooner than the tender petals of a beautiful orchid? Is our unbounded faith in the blissful promises of liberty to be shaken so soon by disappointment? Are the principles for which we fought with other democracies like multi-colored butterflies,

flying beauties while out of our reach and dirty shreds of dead matter in the hands of a boy? Are they just deceitful dreams, mirages and Illusions?

It is the duty of all of us to keep burning the torch of liberty, collective and individual. The role of leadership our people assumed in the fight for democracy in this region of the globe has placed on our shoulders the burden of a great national and international responsibility. The whole world is watching today the gallant fight for independence of Nesiots, our brethren of Java who have followed with envious eyes our unremitting fight for the same ideal, initiated in the latter part of the last century, and our gigantic strides towards the full attainment of our national aspirations. But, besides national dignity, the real content of independence are the civil liberties of the individual persons. At the bottom of national freedom are the individual freedoms. We blazed the trail of oriental freedoms. After us, under the perspicacious leadership of Gandhi, India has been fighting for its liberation for three decades. Now our kinsmen in Java challenge boldly Dutch imperialism. We hope that eventually all the Malayan race shall be freed from bondage and shall regain its position of dignity among other races. For God's sake, Jet us not recede nor retrace the steps already taken to make personal freedom, which is the basis of all freedoms, bloom in the glory of reality and ripen with the fullness of its magnificent meaning.

X. CONCLUSIONS

Our conclusions are:

- Petitioner is actually deprived of liberty without due process of law, in flagrant violation of the Bill of Rights of the Philippine Constitution, no charges having been filed against him for any offense.
- His detention is not authorized by any government office or officer with legal power to order it.
- Petitioner is, therefore, entitled as a matter of absolute constitutional right to immediate unconditional release.
- Having manifested his willingness to put bail for his release, the more reason there is for granting his petition.
- Under the provisions of section 19 of Commonwealth Act No. 682, the People's Court has no discretion to deny a petition for release on bail, unless petitioner is charged with a capital offense and the evidence of guilt is strong.
- The People's Court cannot decide whether the evidence is strong in a case of capital offense, unless said evidence is presented.
- Mere statements of a prosecutor are not enough. Mere statements are not evidence according to the Rales of Court. Statements are not to be confused with evidence.
- Not a scintilla of evidence having been presented against the petitioner, the prosecutor refusing to disclose any evidence, the People's Court was in duty bound to grant the petition for release on bail, if the doctrines established by the Supreme Court in the Marcos, Banes and Sarnano cases, are to be followed.
- To construe section 19 of Commonwealth Act No. 682 as granting the People's Court full discretion to deny a petition for release on bail is to make it unconstitutional.
- The denial of the petition is violative of the fundamental rights guaranteed, not only by the Constitution of the Philippines, but also by the Charter of the United Nations, which is now in full force in this country.

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