

LORETO BARRIOQUINTO AND NORBERTO JIMENEZ, PETITIONERS, VS. ENRIQUE A. FERNANDEZ, ANTONIO BELMONTE AND FELICISIMO OCAMPO, AS COMMISSIONERS OF THE FOURTEENTH GUERRILLA AMNESTY COMM...

G.R. No. L-1278. January 21, 1949

Ponente: FERIA, J.

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FERIA, J.:

This is a special action of mandamus instituted by the petitioners against the respondents who composed the 14th Guerilla Amnesty Commission, to compel the latter to act and decide whether or not the petitioners are entitled to the benefits of amnesty.

Petitioners Norberto Jimenez and Loreto Barrioquinto were charged with the crime of murder. As the latter had not yet been arrested the case proceeded against the former, and after trial the court of first Instance of Zamboanga sentenced Jimenez to life imprisonment. Before the period for perfecting an appeal had expired, the defendant Jimenez became aware of the Proclamation No. 8, dated September 7, 1946, which grants amnesty in favor of all persons who may be charged with an act penalized under the Revised Penal code in furtherance of the resistance to the enemy, and committed during the period from December 8, 1941, to the date when each particular area of the Philippines where the offense was actually committed was liberated from enemy control and occupation, and said Jimenez decided to submit his case to the Guerrilla Amnesty Commission presided by the respondents herein, and the other petitioner Loreto Barrioquinto, who had then been already apprehended, did the same.

After a preliminary hearing had started, the Amnesty Commission, presided by the respondents, issued on January 9, 1947, an order returning the cases of the petitioners to the Court of First Instance of Zamboanga, without deciding whether or not they are entitled to the benefits of the said Amnesty Proclamation, on the ground that inasmuch as neither Barrioquinto nor Jimenez have admitted having committed the offense, because Barrioquinto alleged that it was Hipolito Tolention who shot and killed the victim, they cannot invoke the benefits of amnesty.

The Amnesty Proclamation of September 7, 1946, issued by the President with the concurrence of Congress of the Philippines, reads in part as follows:

"WHEREAS, since the inception of the war and until the liberation of the different areas comprising the territory of the Philippines, volunteer armed forces of Filipinos and of other nationalities operated as guerrillas and other patriotic individuals and groups pursued activities in opposition to the forces and agents of the Japanese Empire in the invasion and occupation of the Philippines;

"WHEREAS, members of such forces, in their determined efforts to resist the enemy, and to bring about his ultimate defeat, committed acts penalized under the Revised Penal Code;

"WHEREAS, charges have been presented in the courts against many members of these resistance forces, for

such acts;

"WHEREAS, the fact that such acts were committed in furtherance of the resistance to the enemy is not a valid defense under the laws of the Philippines;

"WHEREAS, the persons so accused should not be regarded as criminals but rather as patriots and heroes who have rendered invaluable services to the nation; and

"WHEREAS, it is desirable that without the least possible delay, these persons be freed from the indignity and the jeopardy to which they are now being subjected;

"NOW, THEREFORE, I, Manuel Roxas, President of the Philippines, in accordance with the provisions of Article VII, section 10, paragraph 6 of the constitution, do hereby declare and proclaim an amnesty in favor of all persons who committed any act penalized under the Revised Penal code in furtherance of the resistance to the enemy or against persons aiding in the war effort of the enemy, and committed during the period from December 8, 1941 to the date when each particular area of the Philippines was actually liberated from the enemy control and occupation. This amnesty shall not apply to crimes against chastity or to acts committed from purely personal motives.

"It is further proclaimed and declared that in order to determine who among those against whom charges may be filed in the future, come within the terms of this amnesty, Guerilla Amnesty Commissions, simultaneously to be established, shall examine the facts and circumstances surrounding each case and, if necessary, conduct summary hearings of witnesses both for the complainant and the accused. These Commissions shall decide each case and, upon finding that it falls within the terms of this proclamation, the Commissions shall so declare and this amnesty shall immediately be effective as to the accused, who shall forthwith be released or discharged."

The theory of the respondents, supported by the dissenting opinion, is predicated on a wrong conception of the nature or character of an amnesty. Amnesty must be distinguished from pardon.

Pardon is granted by the Chief Executive and as such it is a private act which must be pleaded and proved by the person pardoned, because the courts take no notice thereof; while amnesty by Proclamation of the Chief Executive with the concurrence of Congress, and it is a public act of which the courts should take judicial notice. Pardon is granted to one after conviction; while amnesty is granted to classes of persons or communities who may be guilty of political offenses, generally before or after the institution of the criminal prosecution and sometimes after conviction. Pardon looks forward and relieves the offender from the consequences of an offense of which he has been convicted, that is, it abolishes or forgives the punishment, and for that reason it does "not work the restoration of the rights to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon," and it "in no case exempts the culprit from the payment of the civil indemnity imposed upon him by the sentence" (article 36, Revised Penal Code). While amnesty looks backward and abolishes and puts into oblivion the offense with which he is charged that the person released by amnesty stands before the law precisely as though he had committed no offense. (Section 10[6], Article VII, Philippine Constitution; *State vs. Blalock*, 61 N. C., 242, 247; *In re Briggs*, 135 N. C., 118; 47 S. E., 403; *Ex parte Law*, 35 Ga., 285, 296; *State ex rel Anheuser-Busch brewing Ass'n. vs. Eby*, 170 Mo., 497; 71 S. W., 52, 61; *Burdick vs. United States*, N.y., 35 S. Ct., 267; 271; 236 U.S., 79; 59 Law. ed., 476)

In view of the foregoing, we are of the opinion and so hold that, in order to entitle a person to the benefits of the amnesty proclamation of September 7, 1946, it is not necessary that he should, as a condition precedent or sine qua non, admit having committed the criminal act of offense with which he is charged, and allege the amnesty as a defense; it is sufficient that the evidence, either of the complainant or the accused, shows that the offense committed comes within the terms of said Amnesty Proclamation. Hence, it is not correct to say that "invocation

of the benefits of amnesty is in the nature of a plea of confession and avoidance." Although the accused does not confess the imputation against him, he may be declared by the court or the Amnesty Commissions entitled to the benefits of the amnesty. For, whether or not he admits or confesses having committed the offense with which he is charged, the Commissions should, if necessary or requested by the interested party, conduct summary hearing of the witnesses both for the complainants and the accused on whether he has committed the offense in furtherance of the resistance to the enemy, or against persons aiding in the war efforts of the enemy, and decide whether he is entitled to the benefits of amnesty and to be "regarded as a patriot or hero who have rendered invaluable services to the nation," or not, in accordance with the terms of the Amnesty Proclamation. Since the Amnesty Proclamation is a public act, the courts as well as the Amnesty Commissions created thereby should take notice of the terms of said Proclamation and apply the benefits granted therein to cases coming within their province or jurisdiction, whether pleaded or claimed by the person charged with such offenses or not, if the evidence presented shows that the accused is entitled to said benefits.

The right to the benefits of amnesty, once established by the evidence presented, either by the complainant or prosecution, or by the defense, can not be waived, because it is of public interest that a person who is regarded by the Amnesty Proclamation, which has the force of a law, not only as innocent, for he stands in the eyes of the law as if he had never committed any punishable offense because of the amnesty, but as a patriot or hero, can not be punished as a criminal. Just as the courts of justice can not convict a person who, according to the evidence, has committed an act not punishable by law, although he confesses being guilty thereof, so also and a fortiori they can not convict a person considered by law not a criminal, but a patriot and hero, for having rendered invaluable services to the nation in committing such an act.

While it is true that the evidence must show that the offense charged was not against chastity and was committed in furtherance of the resistance against the enemy, for otherwise, it is to be naturally presumed that it has been committed for purely personal motive, it is nonetheless true that though the motive as a mental impulse is a state of mind or subjective, it need not be testified to by the defendant himself at his arraignment or hearing of the case. Generally the motive for the commission of an offense is established by the testimony of witnesses on the acts or statements of the accused before or immediately after the commission of the offense, deeds or words that may express it or from which his motive or reason for committing it may be inferred. The statement or testimony of a defendant at the time of arraignment or the hearing of the case about said motive, can not generally be considered and relied on, specially if there is evidence to the contrary, as the true expression of the reason or motive he had at the time of committing the offense. Because such statement or testimony may be an afterthought or colored by the interest he may have to suit his defense or the purpose for which he intends to achieve with such declaration. Hence it does not stand to reason and logic to say, as the dissenting opinion avers, that unless the defendant admits at the investigation or hearing having committed the offense with which he is charged, and states that he did it in furtherance of the resistance to the enemy, and not for purely personal motive, it is impossible for the court or Commission to verify the motive for the commission of the offense, because only the accused could explain his belief and intention or the motive of committing the offense.

There is no necessity for an accused to admit his responsibility for the commission of a criminal act before a court or Amnesty Commission may investigate and extend or not to him the benefits of amnesty. The fact that he pleads not guilty or that he has not committed the act with which he is does not necessarily prove that he is not guilty thereof. Notwithstanding his denial, the evidence for the prosecution or complainant may show the contrary, as it is generally the case in criminal proceedings, and what should in such a case be determined is whether or not the offense committed is of political character. The plea of not having committed the offense made by an accused simply means that he can not be convicted of the offense charged because he is not guilty thereof, and, even if the evidence would show that he is, because he has committed it in furtherance of the resistance to the enemy or

against persons aiding in the war efforts of the enemy, and not for purely political motives.

According to Administrative order No. 11 of October 2, 1946, creating the Amnesty Commissions, issued by the President of the Philippines, cases pending in the Courts of First Instance of the province in which the accused claims the benefits of Amnesty Proclamation, and cases already decided by said courts but not yet elevated on appeal to the appellate courts, shall be passed upon and decided by the respective Amnesty Commission, and cases pending appeal shall be passed upon by the Seventh Amnesty commission. Under the theory of the respondents and the writer of the dissenting opinion, the Commissions should refuse to comply with the directive of said Administrative Order, because in almost all cases pending in the Court of First Instance, and all those pending appeal from the sentence of said courts, the defendants must not have pleaded guilty or admitted having committed the offense charged, for, otherwise, they would not or could not have appealed from the judgment of the Courts of First Instance. To hold that an Amnesty Commission should not proceed to the investigation and act and decide whether the offense with which an accused was charged comes within the Amnesty Proclamation if he does not admit or confess having committed it, would be to defeat the purpose for which the Amnesty Proclamation was issued and the Amnesty Commissions were established. If the courts have to proceed to the trial or hearing of a case and decide whether the offense committed by the defendant comes within the terms of the Amnesty Proclamation although the defendant has pleaded not guilty, there is no reason why the Amnesty Commissions can not do so. Where a defendant to admit or confess having committed the offense or being responsible therefor before he can invoke the benefit of amnesty, as there is no law which makes such admission or confession not admissible as evidence against him in the courts of justice in case the Amnesty Commission finds that the offense does not come within the terms of the Amnesty Proclamation, nobody or few would take the risk of submitting their case to said Commissions.

Besides, in the present case, the allegation of Loreto Barrioquinto that the offended party or victim was shot and killed by Agapito Hipolito, does not necessarily bar the respondents from finding, after the summary hearing of the witnesses for the complainants and the accused, directed in the said Amnesty Proclamation and Administrative Order No. 11, that the petitioners are responsible for the killing of the victim, either as principals by cooperation, inducement or conspiracy, or as accessories before as well as after the fact, but that they are entitled to the benefits of amnesty, because they were members of the same group of guerrilleros who killed the victim in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy.

Wherefore, the respondents are hereby ordered to immediately proceed to hear and decide the applications for amnesty of petitioners Barrioquinto and Jimenez, unless the courts have in the meantime already decided, expressly and finally, the question whether or not they are entitled to the benefits of the Amnesty Proclamation No. 8 of September 7, 1946. So ordered.

Moran, C.J., Paras, Bengzon, and Briones, JJ., concur.

CONCURRING

PERFECTO, J.:

An information for the crime of murder was filed against petitioners with the Court of First Instance of Zamboanga. Because Barrioquinto was then at large, the information was dismissed and a separate criminal case was instituted against him. Jimenez was tried with other accused and sentenced to life imprisonment. Within the time for appeal, Jimenez became aware of Proclamation No. 8, dated September 7, 1946, granting amnesty to all

persons who have committed offenses on furtherance of the resistance against the Japanese, and decided to submit his case to the 14th Guerrilla Amnesty Commisison. Barrioqinto, having been apprehended, did the same.

After the preliminary hearing had started, the Commission issued on January 9, 1947, an order for the return of the cases of petitioners to the Court of First Instance of Zamboanga, without deciding whether or not they are entitled to amnesty, because Barrioqinto stated in his testimony that it was Hipolito Tolentino who fired at and killed the offended party. The Commission issued the order upon the thesis that, for any person to invoke the benefits of the Amnesty Proclamation, it is required that he should first admit having committed the offensive act for which he is prosecuted.

The text of the Amnesty Proclamation fails to support the thesis. To entitle a person to have his case heard and decided by a Guerrilla Amnesty Commission only the following elements are essential: First, that he is charged or may be charged with an offense penalized under the Revised Penal Code, except those against chastity or for purely personal motives; second, that he committed the, offense in furtherance of the resistance of the enemy; and third, that it was committed during the period from December 8, 1941, to the date when the area where the offense was committed was actually liberated from enemy control and occupation.

If these three elements are present in a case brought before a Guerrilla Amnesty Commission, the latter cannot refuse to hear and decide it under the proclamation. There is nothing in the proclamation to even hint that the applicant for amnesty must first admit having executed the acts constituting the offense with which he is charged or may be charged.

Upon the facts in this case, petitioners are entitled to have their applications for amnesty heard and decided by respondent 14th Guerrilla Amnesty Commission.

With the revocation of its order of January 9, 1947, respondent 14th Guerrilla Amnesty Commission is ordered to immediately proceed to hear and decide the applications for amnesty of petitioners Barrioqinto and Jimenez.

DISSENTING

TUASON, J.:

I am unable to agree with the decision of the Court and shall briefly state my reasons.

The decision proceeds on the assumption that the Guerrilla Amnesty Commission refused to hear and decide the application for amnesty of the present petitioners. I think this is a mistake. There were examinations of records, hearing and decisions.

The pleadings and annexes show that hearing was held on the 9th of January, 1947 in which the two petitioners and their counsel were present, and one of them, Barrioqinto, testified, and that it was after that hearing, on the same date, that the Commission denied their petition in a written order and directed the clerk to return the "expedientes" to the Court of First Instance of Zamboanga for its final action.

It is apparent from this order that the Commission acted in the manner contemplated by Proclamation No. 8 of the President. The return of the papers to the court merely follows the procedure provided in the proclamation, which stipulates "that any case now pending or which may be filed in the future which a Guerrilla Amnesty Commission decides as not within the terms of the amnesty shall proceed in accordance with the usual legal procedures in the courts without regard to this proclamation."

The proclamation does not prescribe any specific mode of hearing. That the commission shall examine the facts

and circumstances surrounding each case is all that is provided for. In its discretion, the commission may, if it deems necessary, hear the witnesses both for the complainant and the accused. This hearing does not have to be formal; it may be summary, according to the proclamation. This privilege, discretionary with the Commission, was afforded the accused as far as the nature of their defense permitted.

I get the inference from an examination of the orders of the commission that the latter went over the record of each defendant's criminal case. These records are, without doubt, the "expedientes" which the commission ordered sent back to the court. The commission, we are to presume, read the exhaustive and well-reasoned decision of the court against Jimenez and the evidence for and against him on which that decision is based. The fact that Jimenez and his witnesses had already given his evidence at length, may well account for the failure or refusal of the commission to hear him and his witnesses further. Only Barrioquinto, whose case had not yet been tried in the Court of First Instance because he had escaped, was heard by the commission. The record of that hearing consists of 33 written pages.

As to the determination of the pretended right of the defendants to the benefits of amnesty, the two orders of the commission are decisions on the merits, definite and final as far as the commission is concerned. The fact that the defendants denied having committed the crime imputed to them was cited by the commission as ground for its decision to turn down their application. That circumstance was not given as ground for refusal to act. Moreover, in the second order, a lengthy order dictated on the motion for reconsideration by Jimenez, additional reasons are stated.

The Commission has thus amply performed the duties required of it by the amnesty proclamation in both the matters of investigating and deciding. The Commission heard one accused and examined the evidence introduced and the decision rendered against the other. With the reasoning by which the commission reached its decision, or with the result of its decision, it is not within the province of the court to concern itself.

The Amnesty commissions are executive instrumentalities acting for and in behalf of the President. They are not courts; they are not performing judicial functions, and this Court has no appellate jurisdiction over their actions, orders or decisions.

Mandamus is ordinarily a remedy for official inaction. (*Guanio v. Fernandez*, 55 Phil. 814) The Court can order the Commission to act but it can not tell the Commission how to act. How or for whom a case should be decided is a matter of judgment which courts have no jurisdiction to control or review, And so is the sufficiency or insufficiency of evidence. The writ of mandamus will not issue to control or review the exercise of discretion of a public officer where the law imposes upon a public officer the right and the duty to exercise judgment. In reference to any matter in which he is required to act, it is his judgment that is to be exercised and not that of the court. (*Blanco v. Board of Medical Examiners*, 46 Phil. 190.)

In the view I take of the case, it is unnecessary to discuss the court's premise that "there is nothing in the proclamation to even hint that the applicant for amnesty must first admit having executed the acts constituting the offense with which he is charged or may be charged." Nevertheless, I don't think the commission was wrong in its theory.

Amnesty presupposes the commission of a crime. When an accused says that he has not committed a crime he cannot have any use for amnesty. It is also self-evident that where the amnesty proclamation imposes certain conditions, as in this case, it is incumbent upon the accused to prove the existence of those conditions. A petition for amnesty is in the nature of a plea of confession and avoidance. The pleader has to confess the allegations against him before he is allowed to set out such facts as, if true, would defeat the action. It is a rank inconsistency for one to justify an act, or seek forgiveness for an act of which according to him, he is not responsible. It is

impossible for a court or commission to verify the presence of the essential conditions which should entitle the applicants to exemption from punishment, when the accused and his witnesses say that he did not commit a crime. In the nature of things, only the accused and his witnesses could prove that the victim collaborated with the enemy; that the killing was perpetrated in furtherance of the resistance movements; that no personal motive intervened in the commission of the murder, etc., etc. These or some of these, are matters of belief and intention which only the accused and his witnesses could explain.

As a matter of procedure, certiorari or mandamus, whatever the present proceeding may be, does not lie because there is another plain, speedy and adequate remedy at law. The decision of the commission has not closed the avenue for the petitioners to invoke the provisions of the amnesty proclamation before the courts. I invite attention to the provision of the proclamation which I have quoted. In the case of Jimenez, he could ask for a new trial, as he in effect would have the commission grant him; and in the case of Barrioquinto, he could set up the proclamation in his plea when his trial comes up.

PABLO, M.:

Concurro con esta disidencia.

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