

JOSE BACTOSO, PETITIONER AND APPELLEE, VS. PROVINCIAL GOVERNOR OF CEBU, RESPONDENT AND APPELLANT.*G.R. No. 24046. September 25, 1925*

Ponente: VILLAMOR, J.

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This appeal is for the reversal of the judgment of the Court of First Instance of Cebu entered in a habeas corpus proceeding, ordering the immediate release of the petitioner Jose Bactoso on the ground that a justice of the peace has no power to commit children accused before them to a reformatory for confinement therein until they reach majority.

In or about the month of February, 1925, Jose Bactoso took away a bottle of "tanzan" and a can of condensed milk worth P0.70 from a store established in the City of Cebu, and for this act he was tried in the justice of the peace court of Cebu. The justice of the peace found him guilty, and as he was a recidivist, he imposed upon him the penalty of four months of *arresto mayor*. But having found that the accused was under 18 years of age, the justice of the peace of Cebu suspended the effects of the judgment rendered, and, in accordance with Act No. 3203 enacted December 3, 1924, ordered the confinement of the defendant in the reformatory of Lolomboy until he should have attained majority. Then a habeas corpus proceeding was commenced against the provincial governor of Cebu as provincial jailor, on behalf of Jose Bactoso, the petition alleging that the petitioner Jose Bactoso was unlawfully detained and deprived of his liberty by the provincial jailor of Cebu in that the justice of the peace of Cebu had no power to impose upon the petitioner, who was under 14 years of age, a penalty exceeding six months of imprisonment or a fine of more than P200; and therefore his order dated February 26, 1925, was void, which directed that the petitioner Jose Bactoso be committed to the government institution known as Industrial School established in Manila, formerly named reformatory, to stay therein until said minor should have attained majority, when he shall be released.

The provincial fiscal of Cebu appeared in behalf of the provincial governor, and, among other things, alleged that the respondent provincial governor of Cebu had the petitioner Jose Bactoso under his custody by virtue of the judgment rendered against him by the justice of the peace court of the City of Cebu, which judgment was then final; and further that he had said petitioner under his control, waiting for the order of the aforesaid justice of the peace court of the City of Cebu, in accordance with final orders rendered in the attached proceeding marked Exhibit A, and was ready to commit the person of said minor to the reformatory of the Islands in accordance with the judgment and order entered in said proceeding; that section 3 of Act No. 3203 provided the confinement in the reformatory of a convict minor, not as an additional penalty, but as a reformatory measure, for the social improvement and betterment of the character of the said minor, said section being entirely constitutional and in accordance with the legislation in force in the United States on delinquent children; that the petition presented on behalf of the herein petitioner Jose Bactoso could not be entertained: (a) Because in a habeas corpus proceeding a final judgment rendered by a competent court and with due process of law could not be reviewed for the purpose of annulling or amending said judgment, and (b) because Act No. 3203 was entirely constitutional.

The petition was tried, both parties having been heard. There is no dispute as to the facts. The only legal question submitted to the court for decision is whether or not the judgment of the justice of the peace of Cebu is valid, ordering the confinement of the petitioner in a reform institution. The trial court held that under the organic law the power of a justice of the peace to deprive any person of his liberty was limited to penalties not exceeding six months' imprisonment or P200 fine or both; and after analyzing section 3 of Act No. 3203, it further held that the justice of the peace had no power to commit children accused before him to a reformatory for confinement until they should have attained majority. Consequently, the lower court granted the petition of habeas corpus and ordered the petitioner immediately to be released.

From this order counsel for the provincial governor of Cebu has appealed.

The fundamental question raised in this case is as to the validity or nullity of Act No. 3203 of the Philippine Legislature. This Act was enacted December 3, 1924. It is entitled: "An Act relating to the care and custody of neglected and delinquent children; providing probation officers therefor; imposing penalties for violations of its provisions and for other purposes," or, as more expressly stated in the explanatory note, it is an Act the object of which is to remedy the present unsatisfactory conditions of juvenile offenders in the Philippines, wherein it is observed that some of these youths are confined together with adult and criminal prisoners. So the Legislature deemed it fit to pass this Act as a necessary measure for the better care of these juvenile offenders, providing that they be considered not as common criminals, but as children lacking help, encouragement and guidance in the normal development.

The general tendency of criminology in the United States is to establish special courts to try cases of indigent, neglected and delinquent children. These courts have special jurisdiction of a paternal nature over delinquent and neglected children. They are not criminal courts, their practice and procedure not being governed by the rules applicable to proceedings strictly criminal, but rather by those applicable in civil cases. They are special courts, statutory tribunals: that is, they are created by statute, evidencing the tendency of modern legislation to exercise the function of the state, as *parens patriæ*, to protect infants in want of paternal care. Within constitutional limitations the legislature has power to create or establish such courts, and to confer upon them jurisdiction, powers and duties which do not conflict with organic provisions; and generally, in states where such courts exist, they have jurisdiction over matters relating to the control and custody of infants. In some jurisdictions, the juvenile court is not an independent tribunal, but is a part of other established courts, and, within constitutional limitations the legislature has power to designate other courts already established, or parts thereof, to sit as juvenile courts. (31 C. J., p. 989.)

In enacting said Act No. 3203 relative to the care of juvenile offenders, the Philippine Legislature did not deem it fit to establish courts for children, but left the cognizance of cases of juvenile offenders to the same courts then in existence, which act in such cases as juvenile courts according to the jurisdiction conferred upon them by the Judiciary Organic Act, that is, section 68 of Act No. 136.

It is said that the law now before us is against the constitutional provision that no person shall be deprived of his liberty without due process of law.

Section 3 of Act No. 3203 provides as follows:

"Sec. 3. Whenever any boy or girl less than eighteen years of age shall be accused in any court of an offense not punishable by life imprisonment or death, the court, before passing sentence of conviction, shall suspend all further proceedings in the case and shall commit such minor to the custody of any of the institutions mentioned in sections one and two of this Act, until said minor shall have reached his majority or for such less period as to the court may seem proper, subject to the conditions provided in section seven hereof, or may

allow him to remain and be cared for elsewhere, under probation and subject to visitation and supervision of a probation officer, as hereinafter provided, whom the court may require to report from time to time on the case: Provided, That the court prior to making the commitment of any minor to any private institution shall take into consideration the religion of the minor and that of his parents or next of kin, and avoid his commitment to any private institution not under the control and supervision of the religious sect or denomination to which such minor or his parents or next of kin belong."

As a precedent of this legal provision in this jurisdiction, may be cited Act No. 1438 enacted by the Philippine Commission on January 11, 1906, section 1 of which is as follows:

"SECTION 1. Whenever any male minor between the ages of eight and sixteen or any female minor between the ages of eight and eighteen shall be found guilty by any court of competent jurisdiction of an offense not punishable by life imprisonment or death, the court, instead of directing the confinement of such minor in any public prison or jail, may, in its discretion, suspend judgment and commit such minor to the custody of any orphan asylum, reform school, charitable society, or society for the prevention of cruelty to children, or to any other charitable or educational institution having for its purpose the care, betterment, reform, or education of minors, until such minor shall have reached his majority or for such less period as to the court may seem proper: Provided, however, That the court prior to making commitment of any minor to any such institution shall take into consideration the religion of the minor and that of his parents or next of kin and shall not commit such minor without the approval of the parents or next of kin to any private institution not under the control and supervision of the religious sect or denomination to which such minor and his parents or next of kin belong."

As may easily be seen, the provisions of both statutes are substantially the same, with the exception of the probation officer newly created by Act No. 3203. Said Act No. 1438 has been applied by the courts until the enactment of the new Act No. 3203, without any question having been raised as to its validity or constitutionality. May be the terms of the old law are clearer than those of the new one; but in our opinion there can be no doubt that both laws provide for the procedure in case a minor is accused of a crime or misdemeanor. If the minor is innocent, Act No. 3203 is, of course, not applicable; but if he proves to be guilty, then the competent court, instead of finding him guilty, shall suspend the judgment and order the confinement of the minor in a reformatory to remain there until he attains majority or for a shorter period, as the court may deem fit, or may direct said minor to stay and be taken care of elsewhere under the supervision of the probation officer. The trouble seems to arise from the words of the law "before passing sentence of conviction, shall suspend all further proceedings." But if it is taken into account that a court cannot pronounce a verdict of guilty without having previously received conclusive incriminatory evidence, it appears that the words "before passing sentence of conviction," mean that after the filing of the complaint against the minor and the introduction of evidence sufficient to support conviction. That is to say that the minor accused of a crime or misdemeanor is submitted to a due process of law, but the competent court, before finding him guilty, must suspend all further proceedings in order to take the measures prescribed by section 3 of Act No. 3203 in question.

The principal ground of the petition for habeas corpus is that a justice of the peace has no jurisdiction to render judgment of imprisonment for more than six months, and so they cannot order the confinement in a reformatory of a juvenile offender for a period exceeding six months. The same question was raised in various courts of the United States in connection with the laws permitting the confinement of a minor in a reformatory.

In the case of *State ex rel. Olson vs. Brown* (16 L. R. A., 691), it was said:

"* * * We do not propose to add to the very many pages which, in the reports and textbooks, have been devoted to the support of the position, now taken almost universally by the courts, that a person committed to the care and custody of a board in charge of an institution of the character of the Minnesota state reform school

is not 'punished,' nor is he 'imprisoned,' in the ordinary meaning of those words. Hence the constitutional provision which regulates and limits the jurisdiction of justices of the peace in criminal matters has no application. We can do no better than to call attention to some of the leading authorities on this subject, and to quote from the case first cited the clear language used therein by the late Chief Justice Ryan: *Milwaukee Industrial School vs. Milwaukee County Suprs.* (40 Wis., 328; 22 Am. Rep., 702) ; *Farnham vs. Pierce* (141 Mass., 203; 2 New Eng. Rep., 225; 55 Am. Rep., 452); *Prescott vs. State* (19 Ohio St., 184) ; *House of Refuge of Cincinnati vs. Ryan* (37 Ohio St., 197) ; *Roth vs. House of Refuge* (31 Md., 329) ; *Ex parte Grouse* (4 Whart., 9) ; *Re Ferrier* (103 111., 367) ; *McLean County vs. Humphreys* (104 111., 378) ; *Tiedeman, Pol. Powers*, chap. 13."

"The commitment of infants to industrial schools, reformatories, or houses of refuge by a judge or justice without a jury trial is not in violation of the constitutional provisions relating to trial by jury. Such institutions are not prisons, and the proceeding is not a criminal prosecution. The object of the commitment is not punishment but the reformation and education of the infant, and is based upon the power of the state to act as *parens patriæ* where the parent or natural guardian is unable, unwilling, or an improper person to do so." (24 Cyc., p. 147.)

"* * * While the various statutes (relating to houses of correction, house of refuge, industrial schools, reform schools, and similar bodies) differ in detail, their general tenor is to confer jurisdiction on courts and various public officials to commit juvenile offenders, incorrigibles and indigents to the care of these institutions until they reach majority, unless sooner discharged by the board of managers thereof. The validity of such laws has been assailed on various grounds. They have been stigmatized as imposing a penalty for poverty, and as arbitrary invasions of the relation of parent and child. Their constitutionality has also been challenged as inflicting cruel and unusual punishment, and as depriving the child of its liberty without due process of law. On one or more of these grounds commitments under them have been held invalid and the child released on habeas corpus. The majority of cases, however, uphold the validity of such statutes as salutary police measures looking to the protection and welfare of the child, to prevent it from growing up without education and in circumstances exposing it to idleness or dissipation. * * * " (13 R. C. L., 958.)

Taking into account the rule well settled of constitutional law that every law is presumed constitutional, and the courts must not hold a law unconstitutional unless it is clearly so, and if there is any doubt, the will expressed by the legislature must be maintained, we hold that Act No. 3203 of the Philippine Legislature is valid, and that the competent court to take cognizance of a proceeding against a minor charged with a crime not punishable by life imprisonment or death, before finding him guilty, must order the custody of said minor in an industrial school until he becomes of age, or for a shorter period, as the court may deem fit. Therefore, the judgment appealed from is reversed and the writ of habeas corpus applied for by the petitioner Jose Bactoso is hereby denied, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Malcolm, Romualdez, and Villa-Real, JJ., concur.

CONCURRING IN THE RESULT

OSTRAND, J.:

I concur in the result of the majority opinion upon the ground that section 3 of Act No. 3203 is unconstitutional and that therefore section 1 of Act No. 1438 is still in full force and effect. The proceedings had in the court of the justice of the peace of Cebu and which gave rise to the present action, were in complete accord with said section 1 and the commitment of the herein petitioner to the Lolomboy reformatory was therefore legal.

That section 3 of Act No. 3203 is unconstitutional seems clear to me. By its terms all that is necessary in order to send a child to a reformatory is that it be accused before some court of a crime carrying a penalty less than life imprisonment or death. No evidence is required and no appeal provided for. As far as the language of the statute goes any justice of the peace can forthwith commit a boy to the reformatory upon the mere presentation of an accusation of a crime. That is not due process of law. It is only by reading into the statute provisions which are not there that its validity can be sustained. That is what the court has done in this case.

DISSENTING

STREET, J., with whom concurs JOHNS, J.:

It is my opinion that the involuntary reclusion of a minor in an "industrial school," as contemplated in Act No. 3203 (or for that matter in such an institution as is contemplated in Act No. 1438), is imprisonment within the meaning of the statute limiting the criminal jurisdiction of the justice of the peace to cases in which the duration of the penalty of imprisonment does not exceed six months. It follows that the judgment entered in the court of the justice of the peace of Cebu, ordering the detention of Jose Bactoso, a boy of 14 or 15 years, in the institution at Lolomboy, in the Province of Bulacan, until he reaches his majority was beyond the jurisdiction of that court.

It is true that in section 3 of Act No. 3203 it is said that whenever a boy or girl less than 18 years of age shall be accused "in any court" of an offence not punishable by life imprisonment or death, the court shall proceed in the manner therein provided. The use of the general expression "in any court," does not in my opinion evince an intention on the part of the Legislature to modify the statute relating to the jurisdiction of justices of the peace, and we should interpret the expression to mean in any court of competent jurisdiction. The correct practice under Act No. 3203 would require the justice of the peace, upon ascertaining that the person before him is a minor and subject to the provisions of Act No. 3203, to certify the case to the Court of First Instance, as a competent tribunal to deal with the accused.

I am aware that decisions can be cited from American courts holding that the confinement of a minor in a reformatory institution is not imprisonment; but the treatment of the whole subject of the delinquency of minors is new even in that country, and in many States special tribunals have been created to handle the cases of juvenile offenders. To allow justices of the peace to exercise absolute freedom in consigning minors to institutions with the conditions of which they are entirely unfamiliar must have been quite remote from the mind of our Legislature.

I agree with the court that section 3 of Act No. 3203 is not fairly subject to criticism as constituting a denial of due process of law.

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