

CHIN AH FOO (ALIAS CHAN FOO WOO) AND YEE SHEE (ALIAS YEE SUI YENG), WIDOW OF CHIN AH KIM, PETITIONERS, VS. PEDRO CONCEPCION, JUDGE OF FIRST INSTANCE OF MANILA, AND LEE VOO, RESP...*G. R. No. 33281. March 31, 1930*

Ponente: MALCOLM, J.

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The question for decision in this certiorari proceeding concerns the power of a Judge of First Instance, who has in effect acquitted a man charged with murder on the plea of insanity, and who has ordered the confinement of the insane person in an asylum, subsequently to permit the insane person to leave the asylum without the acquiescence of the Director of Health. Otherwise stated, the factor determinative of the question has to do with the effect, if any, of section 1048 of the Administrative Code on article 8 of the Penal Code.

On November 15, 1927, one Chan Sam (alias Chin Ah Woo), was charged in the Court of First Instance of Manila with the murder of Chin Ah Kim. Thereafter, the trial judge rendered judgment declaring the accused not responsible for the crime, and dismissing the case, but requiring the reclusion of the accused for treatment in San Lazaro Hospital, in accordance with article 8 of the Penal Code, with tile admonition that the accused be not permitted to leave the said institution without first obtaining the permission of the court. In compliance with this order, Chan Sam was confined for approximately two years in San Lazaro Hospital. During this period, efforts to obtain his release were made induced by the desire of his wife and father-in-law to have him proceed to Hongkong. Opposition to the allowance of the motions came from the wife and children of the murdered man, who contended that Chan Sam was still insane, and that he had made threats that if he ever obtained his liberty he would kill the wife and the children of the deceased and probably other members of his own family who were living in Hongkong. These various legal proceedings culminated in Doctors Domingo and De los Angeles being delegated to examine and certify the mental condition of Chan Sam, which they did. After this report had been submitted, counsel for the oppositors challenged the jurisdiction of the court. However, the respondent judge sustained the court's right to make an order in the premises and allowed Chan Sam to leave the San Lazaro Hospital to be turned over to the attorney-in-fact of his wife so that he might be taken to Hongkong to join his wife in that city.

Article 8 of the Penal Code, pursuant to which the trial judge purported to act in issuing his order of release, provides that among those exempt from criminal liability are:

"1. An imbecile or lunatic, unless the latter has acted during the lucid interval.

"When the imbecile or lunatic has committed an act which the law defines as a grave felony, the court shall order his confinement in one of the asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court."

Section 1048 of the Administrative Code, which, it is argued, has superseded or supplemented article 8 of the Penal Code, provides as to the discharge of a patient from custody from a hospital for the insane the following:

"When in the opinion of the Director of Health any patient in any Government hospital or other place for the insane is temporarily or permanently cured, or may be released without danger, he may discharge such patient, and shall notify the Judge of the Court of First Instance who ordered the commitment, in case the patient is confined by order of the court."

An examination of article 8, paragraph 1, of the Penal Code discloses that the permission of the court who orders the, confinement of one accused of a grave felony in an insane asylum is a prerequisite for obtaining release from the institution. The respondent judge has based his action in this case on this provision of the law. On the other hand, section 1048 of the Administrative Code grants to the Director of Health authority to say when a patient may be discharged from an insane asylum. There is no pretense that the Director of Health has exercised his Authority in this case, or that the head of the Philippine Health Service has been asked to express his opinion.

Contrasting the two provisions of Philippine law which have been mentioned, it is self-evident that for section 1048 of the Administrative Code to prevail exclusively it would be necessary to find an implied repeal of a portion of article 8 of the Penal Code. But it is a well-known rule of statutory construction that when there is no express repeal none is presumed to be intended. The most reasonable supposition is that when the Legislature placed the provision, from which section 1048 of the Administrative Code was derived, on the statute books, it did so without any consideration as to the effect of the new law on article 8 of the Penal Code. It is likewise a canon of statutory construction that when two portions of the law can be construed so that both can stand together, this should be done. In this respect, we believe that the authority of the courts can be sustained in cases where the courts take action, while the authority of the Director of Health can be sustained in other cases not falling within the jurisdiction of the courts. This latter construction is reinforced by that portion of section 1048 of the Administrative Code which requires the Director of Health to notify the Judge of First Instance who ordered the commitment, in case the patient is confined by order of the court.

In 1916, the Director of Health raised this same question. He then took the view that section 7 of Act No. 2122, now incorporated in the Administrative Code as section 1048, applied to all cases of confinement of persons adjudged to be insane in any Government hospital or other places for the insane, and that the entire discretion as to the sanity of any patient whatever was vested by this section exclusively in the Director of Health. The Attorney-General, who at that time was Honorable Ramon Avancena, ruled against the Director of Health, saying that "the Legislature could not have intended to vest in the Director of Health the power to release, without proper judicial authority, any person confined by order of the court in an asylum pursuant to the provisions of article 8 of the Penal Code."

In at least two cases, *United States vs. Guendia* ([1917], 37 Phil., 337), and *People vs. Bascos* ([1922], 44 Phil, 204), this court has relied on article 8, paragraph 1, of the Penal Code. The judgments in the cited cases concluded with this order: "The defendant shall be kept in confinement in the San Lazaro Hospital, or such other hospital for the insane as the Director of Health may direct, and shall not be permitted to depart therefrom without the prior approval of the Court of First Instance of the Province of Ilodlo (Pangasinan)."

Due to differences in statutory provisions, the American authorities on the question are not very helpful. However, one case has been found where the facts were practically identical with¹ the ones before us, where the law is much the same as Philippine law, and where the procedure which should be followed was outlined by the Supreme Court of the State of Washington. We refer to the case of *State vs. Snell* ([1908], 49 Wash., 177). In the decision in the cited case, the court, speaking through Justice Rudkin, said:

"On the 7th day of July, 1906, the relator, Chester Thompson, killed George Meade Emory in the City of Seattle, and by reason thereof was informed against in the superior court of King county for the crime of murder. A plea of not guilty was interposed, and the place of trial was changed to the superior court of Pierce county. The relator was tried in the latter court before the respondent as presiding judge, and the jury returned a verdict of not guilty by reason of insanity. On the, 3d day of May, 1907, the respondent entered an order reciting that the relator was then insane; that he had been acquitted of the crime of murder by reason of insanity; that his discharge or going at large would be manifestly dangerous to the peace and safety of the community; and committed him to the county jail of Pierce county. It was further ordered that, on the 12th day of June, 1907, the relator should be taken from the county jail of Pierce county and transferred to the state penitentiary at Walla Walla, to be there confined in the ward set apart for the confinement, custody, and keeping of the criminal insane until the further order of the court and until discharged therefrom by due process of law. The relator was committed to the county jail and thereafter transferred to the insane ward of the penitentiary in obedience to this order, and is now confined in the latter institution. On the 19th day of February, 1908, he applied to the physician in charge of the criminal insane at the state penitentiary for an examination of his mental condition and fitness to be at large, as provided in section 6 of the act of February 21, 1907, entitled, 'An act relating to the criminal insane, their trial, commitment, and custody.' Laws of 1907, page 33, After such examination, the physician certified to the warden of the penitentiary that he had reasonable cause to believe that the relator had become sane since his commitment, and was a safe person to be at large. The warden thereupon granted the relator permission to present a petition to the court that committed him, setting up the facts leading to his commitment, and that he had become sane and mentally responsible, and in such condition that he is a safe person to be at large, and praying for his discharge from custody. A petition in due form was thereupon presented to the respondent judge, after service thereof upon the prosecuting attorney of Pierce county, but the respondent refused to set the matter down for hearing or to entertain jurisdiction of the proceeding, * * *. Application was thereupon made to this court for a writ of mandamus, requiring the respondent to set the petition down for hearing, and the case is now before us on the return to the alternative writ.

* * * * *

"We are of opinion, therefore, that the procedure adopted by the relator is in conformity with the law, and the writ will issue as prayed."

The foregoing is our understanding of the law on the subject. The following represents our deductions and conclusions. Article 8 of the Penal Code has not been impliedly repealed by section 1048 of the Administrative Code. Article 8 of the Penal Code and section 1048 of the Administrative Code can be construed so that both can stand together. Considering article 8 of the Penal Code as in force and construing this article and section 1048 of the Administrative Code, we think that the Attorney-General was right in expressing the opinion that the Director of Health was without power to release, without proper judicial authority, any person confined by order of the court in an asylum pursuant to the provisions of article 8 of the Penal Code. We think also that the converse proposition is equally tenable, and is that any person confined by order of the court in an asylum in accordance with article 8 of the Penal Code cannot be discharged from custody in an insane asylum until the views of the Director of Health have been ascertained as to whether or not the person is temporarily or permanently cured or may be released without danger. In other words, the powers of the courts and of the Director of Health are complementary each with the other. As a practical observation, it may further be said that it is well to adopt all reasonable precautions to ascertain if a person confined in an asylum as insane should be permitted to leave the asylum, and this can best be accomplished through the joint efforts of the courts and the Director of Health in proper cases.

Various defenses were interposed by the respondents to the petition, but we have not been impressed with any of them except the ones which go to the merits. After thorough discussion, our view is that while the respondent

Judge acted patiently and cautiously in the matters which came before him, yet he exceeded his authority when he issued his orders of December 26, 1929, and March 17, 1930, without first having before him the opinion of the Director of Health.

The writ prayed for will issue and the temporary restraining order will be made permanent, without costs.

Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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