

**MIGUEL CRISTOBAL, PETITIONER, VS. ALEJO LABRADOR BT AL.,
RESPONDENTS.***G.R. No. 47941. December 07, 1940*

Ponente: LAUREL, J.

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This is a petition for a writ of certiorari to review the decision of the Court of First Instance of Rizal in its election case No. 7890, rendered on November 28, 1940, sustaining the right of Teofilo C. Santos to remain in the list of registered voters in precinct No. 11 of the municipality of Malabon, Province of Rizal.

The antecedents which form the factual background of this election controversy are briefly narrated as follows:

On March 15, 1930, the Court of First Instance of Rizal found Teofilo C. Santos, respondent herein, guilty of the crime of estafa and sentenced him to six months of *arresto mayor* and the accessories provided by law, to return to the offended parties, Toribio Alarcon and Emilio Raymundo, the amounts P375 and P125, respectively, with subsidiary imprisonment in case of insolvency, and to pay the costs. On appeal, this court, on December 20, 1930, confirmed the judgment of conviction. Accordingly, he was confined in the provincial jail of Pasig, Rizal, from March 14, 1932 to August 18, 1932 and paid the corresponding costs of trial. As to his civil liability consisting in the return of the two amounts aforesaid, the same was condoned by the complainants. Notwithstanding his conviction, Teofilo C. Santos continued to be a registered elector in the municipality of Malabon, Rizal, and was, for the period comprised between 1934 and 1937, seated as the municipal president of that municipality. On August 22, 1938, Commonwealth Act No. 357, otherwise known as the Election Code, was approved by the National Assembly, section. 94, paragraph (b) of which disqualifies the respondent from voting for having been "declared by final judgment guilty of any crime against property." In view of this provision, the respondent forthwith applied to His Excellency, the President, for an absolute pardon, his petition bearing date of August 15, 1939. Upon the favorable recommendation of the Secretary of Justice, the Chief Executive, on December 24, 1939, granted the said petition, restoring the respondent to his "full civil and political rights, except that with respect to the right to hold public office or employment, he will be eligible for appointment only to positions which are clerical or manual in nature and involving no money or property responsibility."

On November 16, 1940, the herein petitioner, Miguel Cristobal, filed a petition for the exclusion of the name of Teofilo C. Santos from the list of voters in precinct No. 11 of Malabon, Rizal, on the ground that the latter is disqualified under paragraph (6) of section 94 of Commonwealth Act No. 357. After hearing, the court below rendered its decision on November 28, 1940, the dispositive portion of which reads as follows:

"Without going further into a discussion of all the other minor points and questions raised by the petitioner, the court declares that the pardon extended in favor of the respondent on December 24, 1939, has had the effect of excluding the respondent from the disqualification created by section 94, subsection (b) of the New Election Code. The petition for exclusion of the respondent Teofilo C. Santos should be, as it hereby is, denied. Let there be no costs."

Petitioner Cristobal has filed the present petition for certiorari in which he impugns the decision of the court below on the several grounds stated in the petition.

It is the contention of the petitioner that the pardon granted by His Excellency, the President of the Philippines, to the respondent, Teofilo C. Santos, did not restore the said respondent to the full enjoyment of his political rights, because (a) the pardoning power of the Chief Executive does not apply to legislative prohibitions; (b) the pardoning power here would amount to an unlawful exercise by the Chief Executive of a legislative function; and (c) the respondent having served his sentence and all the accessory penalties imposed by law, there was nothing to pardon. All these propositions involve an inquiry into the primary question of the nature and extent of the pardoning power vested in the Chief Executive of the Nation by the Constitution. Paragraph 6 of section 11 of Article VII of our Constitution, provides:

"(6) The President shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose. He shall have the power to grant amnesty with the concurrence of the National Assembly."

It should be observed that there are two limitations upon the exercise of this constitutional prerogative by the Chief Executive, namely: (a) that the power be exercised after conviction; and (6) that such power does not extend to cases of impeachment. Subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by legislative action. It must remain where the sovereign authority has placed it and must be exercised by the highest authority to whom it is entrusted. An absolute pardon not only blots out the crime committed, but removes all disabilities resulting from the conviction. In the present case, the disability is the result of conviction without which there would be no basis for disqualification from voting. Imprisonment is not the only punishment which the law imposes upon those who violate its command. There are accessory and resultant disabilities, and the pardoning power likewise extends to such disabilities. When granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction. In the present case, while the pardon extended to respondent Santos is conditional in the sense that "he will be eligible for appointment only to positions which are clerical or manual in nature involving no money or property responsibility," it is absolute insofar as it "restores the respondent to full civil and political rights." (Pardon, Exhibit 1, extended December 24, 1939.) While there are cases in the United States which hold that the pardoning power does not restore the privilege of voting, this is because, as stated by the learned judge below, in the United States the right of suffrage is a matter exclusively in the hands of the State and not in the hands of the Federal Government (Decision, page 9). Even then, there are cases to the contrary (*Jones v. Board of Registrars*, 56 Miss. 766; *Hildreth v. Heath*, 111 App. 82). Upon the other hand, the suggestion that the disqualification imposed in paragraph (6) of section 94 of Commonwealth Act No. 357, does not fall within the purview of the pardoning power of the Chief Executive, would lead to the impairment of the pardoning power of the Chief Executive, not contemplated in the Constitution, and would lead furthermore to the result that there would be no way of restoring the political privilege in a case of this nature except through legislative action.

The petition for certiorari is denied, with costs against the petitioner. So ordered.

Avancena, C.J., Imperial, and Diaz, JJ., concur.

DISIDENTE

HORRILLEN, M.,

Miguel Cristobal, el recurrente en este asunto, presents en el Juzgado de Primera Instancia de Rizal un escrito el

16 de noviembre de 1940, en el que pedia que Teofilo C. Santos fuese excluido del censo electoral del municipio de Malabon, por el fundamento de que bajo las disposiciones del Codigo Electoral, en su articulo 94, inciso (6), estaba incapacitado para votar como elector. Previos los procedimientos legales, vífse el asunto, y luego de haber ambas partes presentado todas las pruebas, tanto orales como documentales, el recurrido Juez, Honorable Alejo Labrador, fallo el asunto el 28 de dicho mes, denegando la solicitud. El recurrente, con fecha 28 de noviembre de 1940, presents este recurso contra el mencionado Juez, Honorable Alejo Labrador. Dada cuenta por el Sr. Escribano de la presentacdn del recurso al Tribunal, 6ste lo sobresey6 por falta de meritos. Con fecha 3 de diciembre de 1940, el recurrente registro un escrito en el que solicitaba la reconsideraci6n de la resolucio del Tribunal, denegando el recurso. Estimada la petici6n, serialise a vista la causa para el dia 6 de diciembre de 1940, a las nueve de la maiiana. Las partes comparecieron e informaron sobre sus respectivas alegaciones.

No existe controversia alguna sobre los hechos. Se admite por el recurrido Te6filo C. Santos que el 21 de junio de 1929, se presents contra el una querella por estafa por el Fiscal Provincial de Rizal; que, despues de un debido proceso de ley, fue convicto de dicho delito por el Juzgado de Primera Instancia de la referida Provincia de Rizal, y condenado a la pena de seis meses de arresto mayor y a restituir a los ofendidos en la causa: a Toribio Alarc6n la cantidad de P375 y a Emilio Raymundo la suma de P125, con la prisidn subsidiaria en caso de insolvencia. Contra aquella sentencia el recurrido Te6filo C. Santos interpuso apelaci6n para ante este Tribunal Supremo, el cua], en su sentencia, promulgada el 20 de diciembre de 1930, confirmo en todas sus partes la apelada; que el repetido Te6filo C. Santos extingui6 toda la pena que se le impuso, pena que llevaba consigo la accesorio de la suspension del ejercicio del sufragio por todo el tiempo de la condena; y que salid de la carcel el dia 18 de agosto de 1932.

Que en la misma fecha, 15 de agosto de 1939, presents una solicitud de indulto a su Excelencia, el Presidente del Commonwealth, en la cual solicitud, ademas de los hechos arriba relatados, exponia que, bajo las disposiciones de la Ley No. 357, en sus articulos 93 y 94, el, Tedfilo C. Santos, estaba descalificado para votar y ser elegido. Su Excelencia, el Presidente, con fecha 24 de diciembre de 1939, le indulto. El decreto de indulto se lee asi:

"MALACAÑAN PALACE
MANILA

"BY THE PRESIDENT OF THE PHILIPPINES

"By virtue of the authority conferred upon me by the Constitution and upon the recommendation of the Honorable, the Secretary of Justice, Teofilo C. Santos, convicted by the Court of First Instance of Rizal of the crime of estafa and sentenced to suffer imprisonment for a term of six months with the accessories of the law and to return to the offended parties Toribio Alarcon, the amount of F375, and to Emilio Raymundo, the amount of P125 or to suffer the corresponding subsidiary imprisonment in case of insolvency and to pay the costs of the proceedings, is hereby restored to full civil and political rights, except that with respect to the rights to hold public office or employment, he wiU be eligible for appointment only to positions which are clerical or manual in nature involving no money or property responsibility.

"Given under my hand at the City of Manila, Philippines, this 24th day of December, in the year of Our Lord, nineteen hundred and thirty-nine, and of the Commonwealth of the Philippines, the fifth.

"(Sgd.) Manuel L. Quezon

"By the President

"(Sgd.) Jorge B. Vargas

"Secretary to the President'

La mayoria de este Tribunal, fundada en el decreto de indulto, opina:

"An absolute pardon not only blots out the crime committed, but removes all disabilities resulting from the conviction. In the present case, the disability is the result of conviction without which there would be no basis for disqualification from voting. Imprisonment is not the only punishment which the law imposes upon those who violate its command. There are accessory and resultant disabilities, and the pardoning power likewise extends to such disabilities. When granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction. In the present case, while the pardon extended to respondent Santos is conditional in the sense that 'he will be eligible for appointment only to positions which are clerical or manual in nature involving no money or property responsibility,' it is absolute insofar as it 'restores the respondent of full civil and political rights.' (Pardon, Exhibit 1, extended December 24, 1939.) While there are cases in the United States which hold that the pardoning power does not restore the privilege of voting, this is because, as stated by the learned judge below, in the United States the right of suffrage is a matter exclusively in the hands of the State and not in the hands of the Federal Government (Decision, page 9). Even then, there are cases to the contrary (Jones v. Board of Registrars, 56 Miss., 766; Hildreth v. Heath, 111. App., 82)

Upon the other hand, the suggestion that the disqualification imposed in paragraph (6) of section 94 of Commonwealth Act No. 357, does not fall within the purview of the pardoning power of the Chief Executive, would lead to the impairment of the pardoning power of the Chief Executive, not contemplated in the Constitution, and would lead furthermore to the result that there would be no way of restoring the political privilege in a case of this nature except through legislative action."

Tales son las conclusiones de la mayoría.

Las nuestras son: 1 Que el decreto de indulto a favor del recurrido Santos no tenia objeto; 2. Que, si bien el indulto remite el castigo impuesto la reo, no tiene la virtud, sin embargo, de borrar la comision del delito por el acusado y su convicci6n; y 3/ Que el inciso (6) del artfculo 94 del C6digo Electoral no es, propiamente hablando, una pena ni una incapacidad resultante de la convicci6n del recurrido.

PRIMERA CONCLUSION

Que el decreto de indulto a favor del recurrido Santos no tenfa objeto.

Seguin hechos admitidos por el mismo recurrido Santos, cuando el fue indultado ya habia extinguido toda su condena y salido de la carcel. Como la suspensi6n del derecho de sufragio, que es una pena accesoria que lleva consigo la de prision impuesta, dura solamente lo que esta dura, el, al cumplirla totalmente, recobr6 tal derecho. No habia por tanto, raz6n para restaurar el privilegio porque ya se habia recobrado.

SEGUNDA CONCLUSION

Que, si bien el indulto remite el castigo impuesto al reo, no tiene la virtud, sin embargo, de borrar la comisi6n del delito y la convicci6n del acusado.

En Corpus Juris hallamos lo siguiente:

"Section 32. B. Operation—11. In General.—When a full and absolute pardon is granted, it exempts the individual upon whom it is bestowed from the punishment which the law inflicts for the crime which he has committed. The crime is forgiven and remitted, and the individual is relieved from all of its legal consequences. The effect of a full pardon is to make the offender a new man. While a pardon has generally been regarded as blotting out the existence of guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense, it does not so operate for all purposes, and as the very essence of a pardon is forgiveness or remission of penalty, a pardon implies guilt; it does not obliterate the fact of the commission of the crime and the conviction thereof; it does not wash out the moral stain; as has been tersely said, it involves forgiveness and not forgetfulness."

En State of Washington v. Linda Burfield Hazzard, 47 A. L. R., pp. 540-541, el Tribunal Supremo de Washington dijo:

"Pardons may relieve from the disability of fines and forfeitures attendant upon a conviction, but they cannot erase the stain of bad character, which has been definitely fixed. (State v. Serfling, 131 Wash. 605, 230 Pac. 847.)

"In Baldi v. Gilchrist, 204 App. Div. 425, 198 N. Y. Supp. 493, a pardoned felon was denied a license to operate a taxicab upon the ground that his previous conviction of crime established a bad character. The Supreme Court said:

"Respondent contends that, because he was pardoned by the Governor, no further consequences should follow his conviction of crime. But the executive act did not obliterate the fact of the conviction. As was said in Roberts v. State, 160 N. Y. 217, 54 N. E. 678, 15 Am. Crim. Rep. 561:

"It is manifest that the appellant's pardon and restoration to the rights of citizenship had no retroactive effect upon the judgment of conviction which remains unreversed and has not been set aside. We think the effect of a pardon is to relieve the offender of all unenforced penalties annexed to the conviction, but what the party convicted has already endured, or paid, the pardon does not restore. When it takes effect, it puts an end to any further infliction of punishment, but has no operation upon the portion of the sentence already executed. A pardon proceeds not upon the theory of innocence, but implies guilt!

"In People ex rel. Deneen v. Gilmore, 214 111. 569, 69 L. R. A. 701, 73 N. E. 737, it was held that a pardon issued to an attorney after conviction and sentence did not efface the moral turpitude established by conviction; the court saying: 'The crime of which the respondent was convicted and imprisoned in the penitentiary of the state of Missouri was an infamous offense, which involved not only moral turpitude, but also the lack of professional integrity. The conviction of that crime had the effect to degrade him, and to establish that he was of bad moral character as a man and as a lawyer. The pardon granted him by the then acting Governor of the state of Missouri did not efface the moral turpitude and want of professional honesty involved in the crime, nor obliterate the stain upon his moral character.'

"In Re Spenser, 5 Sawy. 195, Fed. Cas. No. 13234, the court was called upon to decide whether a pardon obliterated and wiped out the fact of conviction of crime, so that it could not be urged against an applicant for citizenship. It was there said:

"The offender is purged of his guilt, and thenceforth he is an innocent man; but the past is not obliterated nor the fact that he had committed the crime wiped out.

"Apply these principles to this case. By the commission of the crime the applicant was guilty of misbehavior, within the meaning of the statute, during his residence in the United States. The pardon has absolved him from the guilt of the act, and relieved him from the legal disabilities consequent thereupon. But it has not done away with the fact of his conviction. It does not operate retrospectively. The answer to the question: Has he behaved as a man of good moral character ? must still be in the negative; for the fact remains, notwithstanding the pardon, that the applicant was guilty of the crime of perjury—did behave otherwise than as a man of good moral character." (Las cursivas son nuestras.)

En State v. Grant, 133 Atl. Rep., pag. 791, se declaró:

"A pardon is not presumed to be granted on the ground of innocence or total reformation. * * * It removes the disability, but does not change the common-law principle that the conviction of an infamous offense is evidence of bad character for truth." (Las cursivas son nuestra"§.)

En la decisión promulgada el 19 de febrero de 1917, en el caso de People v. McIntyre, 163 N. Y. S. 528-529, se dijo:

"that the Governor may grant a pardon which shall relieve from a judgment of habitual criminality, but upon subsequent conviction for felony of a person so pardoned, a judgment of habitual criminality may again be pronounced, a pardon, while relieving from the penalty of an offense, does not change the fact that the one pardoned had been convicted, and in a prosecution for a subsequent offense the offense of which he was pardoned may be shown to establish his habitual criminality." (Las cursivas son nuestras.)

En *United States v. Swift*, 186 Fed. Rep., p. 1003, hallamos lo que sigue:

"8. Pardon (Sec. 1)—Nature of 'Pardon—'Amnesty'. A 'pardon' or 'amnesty' secures against the consequences of one's acts, and not against the acts of themselves. It involves forgiveness; not forgetfulness."

Tenemos, pues, que la infamia que el delito imprime en el reo, no puede ser borrada por el indulto. No hay en las fuentes de la piedad cristiana mas acendrada, aguas suficientes que puedan lavarla.

TERCERA CONCLUSION

Que el inciso (b) del artículo 94 del Código Electoral no es, propiamente hablando, una pena ni una incapacidad (disability) resultante de la convicción del recurrido.

El Poder Legislativo, al incorporar en el Código Electoral el inciso (b) del artículo 94 del mismo cuerpo legal, no tuvo en cuenta, o mas claramente, no se referia de un modo singular al recurrido Santos. Dicho inciso es una disposicion general que el Estado, haciendo uso de sus poderes de policia, mediante el poder correspondiente del mismo, el legislativo, ha dictado, como medida de prevision y proteccion contra los que, por su torpeza moral probada, puedan adulterar la pureza del sufragio, unica fuente del poder en las Democracias.

En *Hawker v. New York* 170 U. S., 189), el acusado era tin medico que habla sido convicto del delito de aborto y sentenciado a diez afios de prision en el ano 1878. Habiendo ejercido la medicina despues de extinguir su condena, a pesar de la prohibicion de una ley de la Legislatura de Nueva York, promulgada el 9 de mayo de 1893, relativa a la salud publica, y que se lee asi:

"any person who, * * * after conviction of a felony, shall attempt to practice medicine, or shall so practice, * * * shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than two hundred and fifty dollars, or imprisonment for six months for the first offense, and on conviction of any subsequent offense, by a fine of not more than five hundred dollars, or imprisonment for not less than one year, or by both fine and imprisonment."

dicho acusado fue procesado en abril de 1896 por infraccion de la citada ley. Habiendo sido convicto, apeló de la sentencia para ante el Tribunal de Apelaciones del Estado de Nueva York, el cual confirmó el fallo del tribunal de origen. Entonces presents un writ of errors en el Tribunal Supremo de los Estados Unidos, que confirmó, a su vez, el fallo apelado, y en su sentencia, entre otras cosas, dijo:

"Doubtless, one who has violated the criminal law may thereafter reform and become in fact possessed of a good moral character. But the legislature has power in cases of this kind to make a rule of universal application, and no inquiry is permissible back of the rule to ascertain whether the fact of which the rule is made the absolute test does or does not exist. Illustrations of this are abundant. At common law one convicted of crime was incompetent as a witness, and this rule was in no manner affected by the lapse of time since the commission of the offense and could not be set aside by proof of a complete reformation. So in many States a convict is debarred the privileges of an elector, and an act so debarring was held applicable to one convicted before its passage. (*Washington v. State*, 75 Alabama, 582.)" (Supra, 197.)

Parece, dicho sea con el mas profundo respeto que merece la mayoria, que esta ha dado una interpretacion equivocada a la palabra "disability" resultante de la conviccion (coiviction). Conviccion, si nuestro juicio, es la

declaration de la culpabilidad de un reo, hecha por el Tribunal.

Ahora bien, cuales son las incapacidades resultantes de tal declaration de culpabilidad? Estas las senala la ley. En el caso presente, la incapacidad (disability) consistia en la pena que se le impuso al recurrido Santos; pena que era la de arresto mayor con la accesoria de suspension del derecho de sufragio por el tiempo que dura aquella. La suspension del derecho de sufragio, habiendo el reo extinguido toda su condena, se ha levantado completamente. No habia ya, entonces, ninguna incapacidad (disability) para el, ni civil ni politica, porque sus incapacidades (disabilities) resultantes de su convicci6n habian desaparecido despues de la extinciOn dc su condena. No existia, al tiempo de cumplir esta, ninguna otra ley que le privara del derecho de sufragio, porque elCodigo Electoral, ya mencionado, no se habia aun promulgado. El inciso (b) del articulo 94 del referido COdigo Electoral, que dice: "Todo el que haya sido declarado mediante sentencia firme culpable de un delito contra la propiedad" es—como llevamos dicho—una medida de previsi6n y protection que el Estado, por medio de sus correspondientes organismos, tiene derecho a distar en el ejercicio de sus poderes de policia. Tal inciso tiene su base no precisamente en el delito cometido, sino en lo que este delito ha revelado, cual es el fondo moral del recurrido que, como se habra visto en el curso de esta disidencia, no se ha borrado con el indulto. La transformation de ese fondo moral es obra propia del individuo mismo, mediante una firme voluntad y resuelta determination de regenerarse.

La mayoria declara, aunque no lo hace de una manera categdrica, que el inciso (6) del articulo 94 delCodigo Electoral restringe el poder constitucional del Ejecutivo de indultar. Lo que viene a decir que el mencionado inciso (b) del articulo 94 delCodigo Electoral rine con la Constituci6n. A nosotros no nos parece asi; y, tal ha sido la intenci6n de la mayoria, debi6 haberlo declarado de un modo directo y categ6rico. Pero, ^esta, verdaderamente, en pugna el repetido inciso (b) con la Constituci6n ? Opinamos que no. Por el contrario, sostenemos que tal inciso no rine con nuestra ley fundamental. Decimos mas: esta dentro de las facultades del Poder Legislativo el dictarlo. El Titulo V, Articulo 1, de dicho documento dice asi:

"TITULO V.—SUFRAGIO

"ARTICULO 1. Podra ejercitar el sufragio todo ciudadano filipino que tenga veintiun anos de edad o mas, sepa leer y escribir, haya residido en Filipinas un ano y seis meses, por lo menos, en el municipio en que se proponga votar antes de la fecha de la elecci6n, y que de otro modo no este incapacitado por la ley. La Asamblea Nacional otorgara, sin embargo, a la mujer el derecho de sufragio, siempre que, en un plebiscite que se convocara al efecto, dentro de dos anos despues de adoptada esta Constitucion, trescientas mil mujeres cuando menos, que poseyeren las necesarias calificaciones, voten afirmativamente sobre la cuestion."

Es indiscutible, por tanto, bajo este precepto constitucional, que la facultad de determinar y fijar las descaliicaciones de un elector radica exclusivamente en el Poder Legislativo. Podria ocurrir que este Poder, en el ejercicio de sus facultades constitucionales, incurriera en alguna injusticia o en algun error, pero tal injusticia o error solamente podrian curarse, como ya hemos dicho, por el mismo Poder Legislativo o por el Poder Judicial, esto es, enmendandose o derogandose la ley por aquel, o declarandola nula este.

Por consecuencia, el inciso (b) del articulo 94, delCodigo Electoral no rine con la Constituci6n; concuerda con ella. Tambien nos parece erronea la interpretacion dada por la mayoria al decreto de indulto, en el sentido de que, segun ella, el indulto es absolute. La parte del indulto pertinente al caso dice: "* * * is hereby restored to full civil and political rights, except that with respect to the right to hold public office or employment, he will be eligible for appointment only to positions which are clerical or manual in nature involving no money or property responsibility." La excepcion de "That with respect to the right to hold public office or employment, he will be eligible for appointment only—to positions which are clerical or manual in nature, involving no money or property

responsibility" hace del indulto, no absoluto sino condicional.

Y por ultimo, es preciso hacer notar que las decisiones en las causas de Jones v. Board of Registrars (56 Miss., 766) y Hildreth v. Heath (111. App. 82), en que se funda la mayoria, fueron dictadas en abril de 1879 y en abril de 1878, respectivamente, y estan en pugna—asi nos parece— con la citada por nosotros recaida en el asunto de State of Washington v. Linda Burfield Hazzard (47 9. L. R. pp. 540-541) supra, decisi6n que fue promulgada el 12 de julio de 1926.

Writ denied.

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