

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS. JUAN PONCE ENRILE, PETITIONER, VS. JUDGE JAIME SALAZAR (PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY*G.R. No. 92163. June 05, 1990*

Ponente: NARVASA, J.

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Thirty-four years after it wrote history into our criminal jurisprudence, *People vs. Hernandez*[1] once more takes center stage as the focus of a confrontation at law that would re-examine, if not the validity of its doctrine, the limits of its applicability. To be sure, the intervening period saw a number of similar cases[2] that took issue with the ruling -- all with a marked lack of success -- but none, it would seem, where season and circumstance had more effectively conspired to attract wide public attention and excite impassioned debate, even among laymen; none, certainly, which has seen quite the kind and range of arguments that are now brought to bear on the same question.

The facts are not in dispute. In the afternoon of February 27, 1990, Senate Minority Floor Leader Juan Ponce Enrile was arrested by law enforcement officers led by Director Alfredo Lim of the National Bureau of Investigation on the strength of a warrant issued by Hon. Jaime Salazar of the Regional Trial Court of Quezon City Branch 103, in Criminal Case No. 90-10941. The warrant had issued on an information signed and earlier that day filed by a panel of prosecutors composed of Senior State Prosecutor Aurelio C. Trampe, State Prosecutor Ferdinand R. Abesamis and Assistant City Prosecutor Eulogio Mananquil, Jr., charging Senator Enrile, the spouses Rebecca and Erlinda Panlilio, and Gregorio Honasan with the crime of rebellion with murder and multiple frustrated murder allegedly committed during the period of the failed coup attempt from November 29 to December 10, 1990. Senator Enrile was taken to and held overnight at the NBI headquarters on Taft Avenue, Manila, without bail, none having been recommended in the information and none fixed in the arrest warrant. The following morning, February 28, 1990, he was brought to Camp Tomas Karingal in Quezon City where he was given over to the custody of the Superintendent of the Northern Police District, Brig. Gen. Edgardo Dula Torres.[3]

On the same date of February 28, 1990, Senator Enrile, through counsel, filed the petition for habeas corpus herein (which was followed by a supplemental petition filed on March 2, 1990), alleging that he was deprived of his constitutional rights in being, or having been:

- (a) held to answer for a criminal offense which does not exist in the statute books;
- (b) charged with a criminal offense in an information for which no complaint was initially filed or preliminary investigation was conducted, hence was denied due process;
- (c) denied his right to bail; and

(d) arrested and detained on the strength of a warrant issued without the judge who issued it first having personally determined the existence of probable cause.[4]

The Court issued the writ prayed for, returnable March 5, 1990 and set the plea for hearing on March 6, 1990.[5] On March 5, 1990, the Solicitor General filed a consolidated return[6] for the respondents in this case and in G.R. No. 92164,[7] which had been contemporaneously but separately filed by two of Senator Enrile's co-accused, the spouses Rebecca and Erlinda Panlilio, and raised similar questions. Said return urged that the petitioners' case does not fall within the Hernandez ruling because -- and this is putting it very simply -- the information in Hernandez charged murders and other common crimes committed as a necessary means for the commission of rebellion, whereas the information against Sen. Enrile et al. charged murder and frustrated murder committed on the occasion, but not in furtherance, of rebellion. Stated otherwise, the Solicitor General would distinguish between the complex crime ("delito complejo") arising from an offense being a necessary means for committing another, which is referred to in the second clause of Article 48, Revised Penal Code, and is the subject of the Hernandez ruling, and the compound crime ("delito compuesto") arising from a single act constituting two or more grave or less grave offenses referred to in the first clause of the same paragraph, with which Hernandez was not concerned and to which, therefore, it should not apply.

The parties were heard in oral argument, as scheduled, on March 6, 1990, after which the Court issued its Resolution of the same date[8] granting Senator Enrile and the Panlilio Spouses provisional liberty conditioned upon their filing, within 24 hours from notice, cash or surety bonds of P100,000.00 (for Senator Enrile) and P200,000.00 (for the Panlilios), respectively. The Resolution stated that it was issued without prejudice to a more extended resolution on the matter of the provisional liberty of the petitioners and stressed that it was not passing upon the legal issues raised in both cases. Four Members of the Court[9] voted against granting bail to Senator Enrile, and two[10] against granting bail to the Panlilios.

The Court now addresses those issues insofar as they are raised and litigated in Senator Enrile's petition, G.R. No. 92163.

The parties oral and written pleas presented the Court with the following options:

- (a) abandon Hernandez and adopt the minority view expressed in the main dissent of Justice Montemayor in said case that rebellion cannot absorb more serious crimes, and that under Article 48 of the Revised Penal Code rebellion may properly be complexed with common offenses, so-called; this option was suggested by the Solicitor General in oral argument although it is not offered in his written pleadings;
- (b) hold Hernandez applicable only to offenses committed in furtherance, or as a necessary means for the commission, of rebellion, but not to acts committed in the course of a rebellion which also constitute "common" crimes of grave or less grave character;
- (c) maintain Hernandez as applying to make rebellion absorb all other offenses committed in its course, whether or not necessary to its commission or in furtherance thereof.

On the first option, eleven (11) Members of the Court voted against abandoning Hernandez. Two (2) Members felt that the doctrine should be re-examined.^{10-A} In the view of the majority, the ruling remains good law, its substantive and logical bases have withstood all subsequent challenges and no new ones are presented here persuasive enough to warrant a complete reversal. This view is reinforced by the fact that not too long ago, the incumbent President, exercising her powers under the 1986 Freedom Constitution, saw fit to repeal, among others, Presidential Decree No. 942 of the former regime which precisely sought to nullify or neutralize Hernandez by enacting a new provision (Art. 142-A) into the Revised Penal Code to the effect that "(w)hen by reason, or on the occasion, of any of the crimes penalized in this Chapter (Chapter I of Title 3, which includes rebellion), acts

which constitute offenses upon which graver penalties are imposed by law are committed, the penalty for the most serious offense in its maximum period shall be imposed upon the offender." [11] In thus acting, the President in effect by legislative fiat reinstated Hernandez as binding doctrine with the effect of law. The Court can do no less than accord it the same recognition, absent any sufficiently powerful reason against so doing.

On the second option, the Court unanimously voted to reject the theory that Hernandez is, or should be, limited in its application to offenses committed as a necessary means for the commission of rebellion and that the ruling should not be interpreted as prohibiting the compelling of rebellion with other common crimes committed on the occasion, but not in furtherance, thereof. While four Members of the Court felt that the proponents' arguments were not entirely devoid of merit, the consensus was that they were not sufficient to overcome what appears to be the real thrust of Hernandez to rule out the complexing of rebellion with any other offense committed in its course under either of the aforecited clauses of Article 48, as is made clear by the following excerpt from the majority opinion in that case:

"There is one other reason -- and a fundamental one at that -- why Article 48 of our Penal Code cannot be applied in the case at bar. If murder were not complexed with rebellion, and the two crimes were punished separately (assuming that this could be done), the following penalties would be imposable upon the movant, namely: (1) for the crime of rebellion, a fine not exceeding P20,000 and prision mayor, in the corresponding period, depending upon the modifying circumstances present, but never exceeding 12 years of prision mayor; and (2) for the crime of murder, reclusion temporal in its maximum period to death, depending upon the modifying circumstances present. In other words, in the absence of aggravating circumstances, the extreme penalty could not be imposed upon him. However, under Article 48 said penalty would have to be meted out to him, even in the absence of a single aggravating circumstance. Thus, said provision, if construed in conformity with the theory of the prosecution, would be unfavorable to the movant.

"Upon the other hand, said Article 48 was enacted for the purpose of favoring the culprit, not of sentencing him to a penalty more severe than that which would be proper if the several acts performed by him were punished separately. In the words of Rodriguez Navarro:

‘La unificacion de penas en los casos de concurso de delitos a que hace referencia este articulo (75 delCodigo de 1932), esta basado francamente en el principio pro reo.’ (II Doctrina Penal del Tribunal Supremo de Espana, p. 2168.)

"We are aware of the fact that this observation refers to Article 71 (later 75) of the Spanish Penal code (the counterpart of our Article 48), as amended in 1908 and then in 1932, reading:

‘Las disposiciones del articulo anterior no son aplicables en el caso de que un solo hecho constituya dos o mas delitos, o cuando el uno de ellos sea medio necesario para cometer el otro.

‘En estos casos solo se impondra la pena correspondiente al delito mas grave en su grado maximo, hasta el limite que represente la suma de las que pudieran imponerse, penando separadamente los delitos.

‘Cuando la pena asi computada exceda de este limite, se sancionaran los delitos por separado.’ (Rodriguez Navarro, Doctrina Penal del Tribunal Supremo, Vol. II, p. 2163)

and that our Article 48 does not contain the qualification inserted in said amendment, restricting the imposition of the penalty for the graver offense in its maximum period to the case when it does not exceed the sum total of the penalties imposable if the acts charged were dealt with separately. The absence of said limitation in our Penal Code does not, to our mind, affect substantially the spirit of said Article 48. Indeed, if one act constitutes two or more offenses, there can be no reason to inflict a punishment graver than that prescribed for each one of said offenses put together. In directing that the penalty for the graver offense be, in such case, imposed in its maximum period, Article 48 could have had no other purpose than to prescribe a penalty lower than the

aggregate of the penalties for each offense, if imposed separately. The reason for this benevolent spirit of Article 48 is readily discernible. When two or more crimes are the result of a single act, the offender is deemed less perverse than when he commits said crimes thru separate and distinct acts. Instead of sentencing him for each crime independently from the other, he must suffer the maximum of the penalty for the more serious one, on the assumption that it is less grave than the sum total of the separate penalties for each offense.”[12]

The rejection of both options shapes and determines the primary ruling of the Court, which is that Hernandez remains binding doctrine operating to prohibit the complexing of rebellion with any other offense committed on the occasion thereof, either as a means necessary to its commission or as an unintended effect of an activity that constitutes rebellion.

This, however, does not write *finis* to the case. Petitioner's guilt or innocence is not here inquired into, much less adjudged. That is for the trial court to do at the proper time. The Court's ruling merely provides a take-off point for the disposition of other questions relevant to the petitioner's complaints about the denial of his rights and to the propriety of the recourse he has taken.

The Court rules further (by a vote of 11 to 3) that the information filed against the petitioner does in fact charge an offense. Disregarding the objectionable phrasing that would complex rebellion with murder and multiple frustrated murder, that indictment is to be read as charging simple rebellion. Thus, in Hernandez, the Court said:

"In conclusion, we hold that, under the allegations of the amended information against defendant-appellant Amado V. Hernandez, the murders, arsons and robberies described therein are mere ingredients of the crime of rebellion allegedly committed by said defendants, as means "necessary" (4) for the perpetration of said offense of rebellion; that the crime charged in the aforementioned amended information is, therefore, simple rebellion, not the complex crime of rebellion with multiple murder, arsons and robberies; that the maximum penalty imposable under such charge cannot exceed twelve (12) years of prision mayor and a fine of P2H, HHH; and that, in conformity with the policy of this court in dealing with accused persons amenable to a similar punishment, said defendant may be allowed bail.”[13]

The plaint of petitioner's counsel that he is charged with a crime that does not exist in the statute books, while technically correct so far as the Court has ruled that rebellion may not be complexed with other offenses committed on the occasion thereof, must therefore be dismissed as a mere flight of rhetoric. Read in the context of Hernandez, the information does indeed charge the petitioner with a crime defined and punished by the Revised Penal Code: simple rebellion.

Was the petitioner charged without a complaint having been initially filed and/or preliminary investigation conducted? The record shows otherwise, that a complaint against petitioner for simple rebellion was filed by the Director of the National Bureau of Investigation, and that on the strength of said complaint a preliminary investigation was conducted by the respondent prosecutors, culminating in the filing of the questioned information.[14] There is nothing inherently irregular or contrary to law in filing against a respondent an indictment for an offense different from what is charged in the initiatory complaint, if warranted by the evidence developed during the preliminary investigation.

It is also contended that the respondent Judge issued the warrant for petitioner's arrest without first personally determining the existence of probable cause by examining under oath or affirmation the complainant and his witnesses, in violation of Art. III, sec. 2, of the Constitution.[15] This Court has already ruled, however, that it is not the unavoidable duty of the judge to make such a personal examination, it being sufficient that he follows established procedure by personally evaluating the report and the supporting documents submitted by the prosecutor.[16] Petitioner claims that the warrant of arrest issued barely one hour and twenty minutes after the case was raffled off to the respondent Judge, which hardly gave the latter sufficient time to personally go over the

voluminous records of the preliminary investigation.[17] Merely because said respondent had what some might consider only a relatively brief period within which to comply with that duty, gives no reason to assume that he had not, or could not have, so complied; nor does that single circumstance suffice to overcome the legal presumption that official duty has been regularly performed.

Petitioner finally claims that he was denied the right to bail. In the light of the Court's reaffirmation of *Hernandez* as applicable to petitioner's case, and of the logical and necessary corollary that the information against him should be considered as charging only the crime of simple rebellion, which is bailable before conviction, that must now be accepted as a correct proposition. But the question remains: Given the facts from which this case arose, was a petition for habeas corpus in this Court the appropriate vehicle for asserting a right to bail or vindicating its denial?

The criminal case before the respondent Judge was the normal venue for invoking the petitioner's right to have provisional liberty pending trial and judgment. The original jurisdiction to grant or deny bail rested with said respondent. The correct course was for petitioner to invoke that jurisdiction by filing a petition to be admitted to bail, claiming a right to bail per se or by reason of the weakness of the evidence against him. Only after that remedy was denied by the trial court should the review jurisdiction of this Court have been invoked, and even then, not without first applying to the Court of Appeals if appropriate relief was also available there.

Even acceptance of petitioner's premise that going by the *Hernandez* ruling, the information charges a non-existent crime or, contrarily, theorizing on the same basis that it charges more than one offense, would not excuse or justify his improper choice of remedies. Under either hypothesis, the obvious recourse would have been a motion to quash brought in the criminal action before the respondent Judge.[18]

There thus seems to be no question that all the grounds upon which petitioner has founded the present petition, whether these went into the substance of what is charged in the information or imputed error or omission on the part of the prosecuting panel or of the respondent Judge in dealing with the charges against him, were originally justiciable in the criminal case before said Judge and should have been brought up there instead of directly to this Court.

There was and is no reason to assume that the resolution of any of these questions was beyond the ability or competence of the respondent Judge -- indeed such an assumption would be demeaning and less than fair to our trial courts; none whatever to hold them to be of such complexity or transcendental importance as to disqualify every court, except this Court, from deciding them; none, in short that would justify by-passing established judicial processes designed to orderly move litigation through the hierarchy of our courts. Parenthetically, this is the reason behind the vote of four Members of the Court against the grant of bail to petitioner: the view that the trial court should not thus be precipitately ousted of its original jurisdiction to grant or deny bail and, if it erred in that matter, denied an opportunity to correct its error. It makes no difference that the respondent Judge here issued a warrant of arrest fixing no bail. Immemorial practice sanctions simply following the prosecutor's recommendation regarding bail, though it may be perceived as the better course for the judge *motu proprio* to set a bail hearing where a capital offense is charged.[19] It is, in any event, incumbent on the accused as to whom no bail has been recommended or fixed to claim the right to a bail hearing and thereby put to proof the strength or weakness of the evidence against him.

It is apropos to point out that the present petition has triggered a rush to this Court of other parties in a similar situation, all apparently taking their cue from it, distrustful or contemptuous of the efficacy of seeking recourse in the regular manner just outlined. The proliferation of such pleas has only contributed to the delay that the petitioner may have hoped to avoid by coming directly to this Court.

Not only because popular interest seems focused on the outcome of the present petition, but also because to wash the Court's hands off it on jurisdictional grounds would only compound the delay that it has already gone through, the Court now decides the same on the merits. But in so doing, the Court cannot express too strongly the view that said petition interdicted the ordered and orderly progression of proceedings that should have started with the trial court and reached this Court only if the relief applied for was denied by the former and, in a proper case, by the Court of Appeals on review.

Let it be made very clear that hereafter the Court will no longer countenance, but will give short shrift to, pleas like the present, that clearly short-circuit the judicial process and burden it with the resolution of issues properly within the original competence of the lower courts.

What has thus far been stated is equally applicable to and decisive of the petition of the Panlilio spouses (G.R. No. 92164) which is virtually identical to that of petitioner Enrile in factual milieu and is therefore determinable on the same principles already set forth. Said spouses have uncontestedly pleaded^[20] that warrants of arrest issued against them as co-accused of petitioner Enrile in Criminal Case No. 90-10941, that when they appeared before NBI Director Alfredo Lim in the afternoon of March 1, 1990, they were taken into custody and detained without bail on the strength of said warrants in violation -- they claim -- of their constitutional rights.

It may be that in the light of contemporary events, the act of rebellion has lost that quintessentially quixotic quality that justifies the relative leniency with which it is regarded and punished by law, that present-day rebels are less impelled by love of country than by lust for power and have become no better than mere terrorists to whom nothing, not even the sanctity of human life, is allowed to stand in the way of their ambitions. Nothing so underscores this aberration as the rash of seemingly senseless killings, bombings, kidnappings and assorted mayhem so much in the news these days, as often perpetrated against innocent civilians as against the military, but by and large attributable to, or even claimed by so-called rebels to be part of, an ongoing rebellion.

It is enough to give anyone pause -- and the Court is no exception -- that not even the crowded streets of our capital City seem safe from such unsettling violence that is disruptive of the public peace and stymies every effort at national economic recovery. There is an apparent need to restructure the law on rebellion, either to raise the penalty therefor or to clearly define and delimit the other offenses to be considered at absorbed thereby, so that it cannot be conveniently utilized as the umbrella for every sort of illegal activity undertaken in its name. The Court has no power to effect such change, for can only interpret the law as it stands at any given time, and what is needed lies beyond interpretation. Hopefully, Congress will perceive the need for promptly seizing the initiative in this matter, which is properly within its province.

WHEREFORE, the Court reiterates that based on the doctrine enunciated in *People vs. Hernandez*, the questioned information filed against petitioners Juan Ponce Enrile and the spouses Rebecca and Erlinda Panlilio must be read as charging simple rebellion only, hence said petitioners are entitled to bail, before final conviction, as a matter of right. The Court's earlier grant of bail to petitioners being merely provisional in character, the proceedings in both cases are ordered REMANDED to the respondent Judge to fix the amount of bail to be posted by the petitioners. Once bail is fixed by said respondent for any of the petitioners, the corresponding bail bond filed with this Court shall become *functus officio*. No pronouncement as to costs.

SO ORDERED.

Cruz, Paras, Gancayco, and Regalado, JJ., concur.

Fernan, C.J., see separate dissenting and concurring opinion.

Melencio-Herrera and Feliciano, JJ., see separate opinion.

Gutierrez, Jr., J., see concurring opinion.

Padilla, J., see dissenting opinion.

Bidin, J., see concurring and dissenting opinion.

Sarmiento, J., see concurring and dissenting in part.

Cortes and Grino-Aquino, J., on leave.

Medialdea, J., concurring in G.R. No. 92164; no part in G.R. No. 92163.

[1] 99 Phil. 515 (1956)

[2] *People vs. Lava*, 28 SCRA 72 (1956); *People vs. Geronimo*, 100 Phil. 90 (1956); *People vs. Romagosa*, 103 Phil. 20 (1958); and *People vs. Rodriguez*, 107 Phil. 659 (1960)

[3] Rollo, G.R. No. 92163, pp. 32-34

[4] Rollo, G.R. No. 92163, pp. 34 et seq.

[5] Rollo, G.R. No. 92163, p. 26

[6] Rollo, G.R. No. 92163, pp. 305-359

[7] Originally a petition for certiorari and prohibition which the Court, upon motion of the petitioners, resolved to treat as a petition for habeas corpus; Rollo, G.R. No. 92164, pp. 128-129

[8] Rollo, G.R. No. 92163, pp. 407-411

[9] Fernan, C.J., and Narvasa, Cortes and Grino-Aquino, JJ.

[10] Fernan, C.J. and Narvasa, J.

10-A Two Members are on leave.

[11] Executive Order No. 187 issued June 5, 1987

[12] *People vs. Hernandez*, supra at 541-543

[13] Id. at 551

[14] Rollo, G.R. No. 92163, pp. 78-79 and 73-76

[15] supra, footnote 4

[16] *Soliven vs. Makasiar*, 167 SCRA 394

[17] Rollo, G.R. No. 92163, pp. 46-47

[18] Sec. 2, Rule 117, Rules of Court

[19] *Ocampo vs. Bernabe*, 77 Phil. 55

[20] Rollo, G.R. No. 92164, pp. 124-125

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CONCURRING OPINION

FELICIANO, J.:

I concur in the result reached by the majority of the Court.

I believe that there are certain aspects of the Hernandez doctrine that, as an abstract question of law, could stand re-examination or clarification. I have in mind in particular matters such as the correct or appropriate relationship between Article 134 and Article 135 of the Revised Penal Code. This is a matter which relates to the legal concept of rebellion in our legal system. If one examines the actual terms of Article 134 (entitled: "Rebellion or Insurrection -- How Committed"), it would appear that this Article specifies both the overt acts and the criminal purpose which, when put together, would constitute the offense of rebellion. Thus, Article 134 states that "the crime of rebellion is committed by rising publicly and taking arms against the Government --" (i.e., the overt acts comprising rebellion), "for the purpose of (i.e., the specific criminal intent or political objective) removing from the allegiance to said government or its laws the territory of the Republic of the Philippines or any part thereof, or any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of their powers or prerogatives." At the same time, Article 135 (entitled: "Penalty for Rebellion or Insurrection.") sets out a listing of acts or particular measures which appear to fall under the rubric of rebellion or insurrection: "engaging in war against the forces of the Government, destroying property or committing serious violence, exacting contributions or diverting public funds from the lawful purpose for which they have been appropriated." Are these modalities of rebellion generally? Or are they particular modes by which those "who promote [], maintain [] or head [] a rebellion or insurrection" commit rebellion, or particular modes of participation in a rebellion by public officers or employees? Clearly, the scope of the legal concept of rebellion relates to the distinction between, on the one hand, the indispensable acts or ingredients of the crime of rebellion under the Revised Penal Code and, on the other hand, differing optional modes of seeking to carry out the political or social objective of the rebellion or insurrection.

The difficulty that is at once raised by any effort to examine once more even the above threshold questions is that the results of such re-examination may well be that acts which under the Hernandez doctrine are absorbed into rebellion, may be characterized as separate or discrete offenses which, as a matter of law, can either be prosecuted separately from rebellion or prosecuted under the provisions of Article 48 of the Revised Penal Code, which (both Clause 1 and Clause 2 thereof) clearly envisage the existence of at least two (2) distinct offenses. To reach such a conclusion in the case at bar, would, as far as I can see, result in colliding with the fundamental non-retroactivity principle (Article 4, Civil Code; Article 22, Revised Penal Code; both in relation to Article 8, Civil Code).

The non-retroactivity rule applies to statutes principally. But, statutes do not exist in the abstract but rather bear upon the lives of people with the specific form given them by judicial decisions interpreting their norms. Judicial decisions construing statutory norms give specific shape and content to such norms. In time, the statutory norms become encrusted with the glosses placed upon them by the courts and the glosses become integral with the norms (Cf. *Caltex v. Palomar*, 18 SCRA 247 [1966]). Thus, while in legal theory, judicial interpretation of a statute becomes part of the law as of the date that the law was originally enacted, I believe this theory is not to be applied rigorously where a new judicial doctrine is announced, in particular one overruling a previous existing doctrine of long standing (here, 36 years) and most specially not where the statute construed is criminal in nature and the new doctrine is more onerous for the accused than the pre-existing one (*People v. Jabinal*, 55 SCRA 607 [1974]; *People v. Licera*, 65 SCRA 270 [1975]; *Gumabon v. Director of Prisons*, 37 SCRA 420 [1971]). Moreover, the non-retro-activity rule whether in respect of legislative acts or judicial decisions has constitutional implications.

The prevailing rule in the United States is that a judicial decision that retroactively renders an act criminal or enhances the severity of the penalty prescribed for an offense, is vulnerable to constitutional challenge based upon the rule against ex post facto laws and the due process clause (*Bouie v. City of Columbia*, 378 US 347, 12 L. Ed. 2d 894 [1964]; *Marks v. U.S.*, 43 US 188, 51 L. Ed. 2d 260 [1977]; *Devine v. New Mexico Department of Corrections*, 866 F. 2d 339 [1989]).

It is urged by the Solicitor General that the non-retroactivity principle does not present any real problem for the reason that the *Hernandez* doctrine was based upon Article 48, second clause, of the Revised Penal Code and not upon the first clause thereof, while it is precisely the first clause of Article 48 that the Government here invokes. It is, however, open to serious doubt whether *Hernandez* can reasonably be so simply and sharply characterized. And assuming the *Hernandez* could be so characterized, subsequent cases refer to the *Hernandez* doctrine in terms which do not distinguish clearly between the first clause and the second clause of Article 48 (e.g., *People v. Geronimo*, 100 Phil. 90 [1956]; *People v. Rodriguez*, 107 Phil. 659 [1960]). Thus, it appears to me that the critical question would be whether a man of ordinary intelligence would have necessarily read or understood the *Hernandez* doctrine as referring exclusively to Article 48, second clause. Put in slightly different terms, the important question would be whether the new doctrine here proposed by the Government could fairly have been derived by a man of average intelligence (or counsel of average competence in the law) from an examination of Articles 134 and 135 of the Revised Penal Code as interpreted by the Court in the *Hernandez* and subsequent cases. To formulate the question in these terms would almost be to compel a negative answer, especially in view of the conclusions reached by the Court and its several Members today.

Finally, there appears to be no question that the new doctrine that the Government would have us discover for the first time since the promulgation of the Revised Penal Code in 1932, would be more onerous for the respondent accused than the simple application of the *Hernandez* doctrine that murders which have been committed on the occasion of and in furtherance of the crime of rebellion must be deemed absorbed in the offense of simple rebellion.

I agree therefore that the information in this case must be viewed as charging only the crime of simple rebellion.

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DISSENTING AND CONCURRING OPINION

FERNAN, C.J.:

I am constrained to write this separate opinion on what seems to be a rigid adherence to the 1956 ruling of the Court. The numerous challenges to the doctrine enunciated in the case of *People vs. Hernandez*, 99 Phil. 515 (1956) should at once demonstrate the need to redefine the applicability of said doctrine so as to make it conformable with accepted and well-settled principles of criminal law and jurisprudence.

To my mind, the *Hernandez* doctrine should not be interpreted as an all-embracing authority for the rule that all common crimes committed on the occasion, or in furtherance of, or in connection with, rebellion are absorbed by the latter. To that extent, I cannot go along with the view of the majority in the instant case that "*Hernandez* remains binding doctrine operating to prohibit the complexing of rebellion with any other offense committed on

the occasion thereof, either as a means necessary to its commission or as an unintended effect of an activity that constitutes rebellion" (p. 9, Decision).

The Hernandez doctrine has served the purpose for which it was applied by the Court in 1956 during the communist-inspired rebellion of the Huks. The changes in our society in the span of 34 years since then have far-reaching effects on the all-embracing applicability of the doctrine considering the emergence of alternative modes of seizing the powers of the duly-constituted Government not contemplated in Articles 134 and 135 of the Re-vised Penal Code and their consequent effects on the lives of our people. The doctrine was good law then, but I believe that there is a certain aspect of the Hernandez doctrine that needs clarification.

With all due respect to the views of my brethren in the Court, I believe that the Court, in the instant case, should have further considered the distinction between acts or offenses which are indispensable in the commission of rebellion, on the one hand, and those acts or offenses that are merely necessary but not indispensable in the commission of rebellion, on the other. The majority of the Court is correct in adopting, albeit impliedly, the view in Hernandez case that when an offense perpetrated as a necessary means of committing another, which is an element of the latter, the resulting interlocking crimes should be considered as only one simple offense and must be deemed outside the operation of the complex crime provision (Article 48) of the Revised Penal Code. As in the case of Hernandez, the Court, however, failed in the instant case to distinguish what is indispensable from what is merely necessary in the commission of an offense, resulting thus in the rule that common crimes like murder, arson, robbery, etc. committed in the course or on the occasion of rebellion are absorbed or included in the latter as elements thereof.

The relevance of the distinction is significant, more particularly, if applied to contemporaneous events happening in our country today. Theoretically, a crime which is indispensable in the commission of another must necessarily be an element of the latter; but a crime that is merely necessary but not indispensable in the commission of another is not an element of the latter, and if and when actually committed, brings the interlocking crimes within the operation of the complex crime provision (Art. 48) of the Revised Penal Code. With that distinction, common crimes committed against Government forces and property in the course of rebellion are properly considered indispensable overt acts of rebellion and are logically absorbed in it as virtual ingredients or elements thereof, but common crimes committed against the civilian population in the course or on the occasion of rebellion and in furtherance thereof, may be necessary but not indispensable in committing the latter, and may, therefore, not be considered as elements of the said crime of rebellion. To illustrate, the deaths occurring during armed confrontation or clashes between government forces and the rebels are absorbed in the rebellion, as would be those resulting from the bombing of military camps and installations, as these acts are indispensable in carrying out the rebellion. But deliberately shooting down an unarmed innocent civilian to instill fear or create chaos among the people, although done in the furtherance of the rebellion, should not be absorbed in the crime of rebellion as the felonious act is merely necessary, but not indispensable. In the latter case, Article 48 of the Revised Penal Code should apply.

The occurrence of a coup d'etat in our country as a mode of seizing the powers of the duly-constituted government by staging surprise attacks or occupying centers of powers, of which this Court should take judicial notice, has introduced a new dimension to the interpretation of the provisions on rebellion and insurrection in the Revised Penal Code. Generally, as a mode of seizing the powers of the duly-constituted government, it falls within the contemplation of rebellion under the Revised Penal Code, but, strictly construed, a coup d'etat per se is a class by itself. The manner of its execution and the extent and magnitude of its effects on the lives of the people distinguish a coup d'etat from the traditional definition and modes of commission attached by the Revised Penal Code to the crime of rebellion as applied by the Court to the communist-inspired rebellion of the 1950's. A coup

d'etat may be executed successfully without its perpetrators resorting to the commission of other serious crimes such as murder, arson, kidnapping, robbery, etc. because of the element of surprise and the precise timing of its execution. In extreme cases where murder, arson, robbery, and other common crimes are committed on the occasion of a coup d'etat, the distinction referred to above on what is necessary and what is indispensable in the commission of the coup d'etat should be painstakingly considered as the Court should have done in the case of herein petitioners.

I concur in the result insofar as the other issues are resolved by the Court but I take exception to the vote of the majority on the broad application of the Hernandez doctrine.

Enrile vs Salazar : 92163 : June 5, 1990 : J. Melencio-Herrera : En Banc : Separate Opinion Normal Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

SEPARATE OPINION

MELENCIO-HERRERA, J.:

I join my colleagues in holding that the Hernandez doctrine, which has been with us for the past three decades, remains good law and, thus, should remain undisturbed despite periodic challenges to it that, ironically, have only served to strengthen its pronouncements.

I take exception to the view, however, that habeas corpus was not the proper remedy.

Had the Information filed below charged merely the simple crime of Rebellion, that proposition could have been plausible. But that Information charged Rebellion complexed with Murder and Multiple Frustrated Murder, a crime which does not exist in our statute books. The charge was obviously intended to make the penalty for the most serious offense in its maximum period imposable upon the offender pursuant to Article 48 of the Revised Penal Code. Thus, no bail was recommended in the Information nor was any prescribed in the Warrant of Arrest issued by the Trial Court.

Under the attendant circumstances, therefore, to have filed a Motion to Quash before the lower Court would not have brought about the speedy relief from unlawful restraint that petitioner was seeking. During the pendency of said Motion before the lower Court, petitioner could have continued to languish in detention. Besides, the Writ of Habeas Corpus may still issue even if another remedy, which is less effective, may be availed of (*Chavez vs. Court of Appeals*, 24 SCRA 663).

It is true that habeas corpus would ordinarily not lie when a person is under custody by virtue of a process issued by a Court. The Court, however, must have jurisdiction to issue the process. In this case, the Court below must be deemed to have been ousted of jurisdiction when it illegally curtailed petitioner's liberty. Habeas corpus is thus available.

The writ of habeas corpus is available to relieve persons from unlawful restraint. But where the detention or confinement is the result of a process issued by the court or judge or by virtue of a judgment or sentence, the writ ordinarily cannot be availed of. It may still be invoked though if the process, judgment or sentence proceeded from a court or tribunal the jurisdiction of which may be assailed. Even if it had authority to act at the outset, it is now the prevailing doctrine that a deprivation of constitutional right, if shown to exist, would

oust it of jurisdiction. In such a case, habeas corpus could be relied upon to regain one's liberty (*Celeste vs. People*, 31 SCRA 391) [underlining ours].

The Petition for habeas corpus was precisely premised on the violation of petitioner's constitutional right to bail inasmuch as rebellion, under the present state of the law, is a bailable offense and the crime for which petitioner stands accused of and for which he was denied bail is non-existent in law.

While litigants should, as a rule, ascend the steps of the judicial ladder, nothing should stop this Court from taking cognizance of petitions brought before it raising urgent constitutional issues, any procedural flaw notwithstanding.

The rules on habeas corpus are to be liberally construed (*Ganaway v. Quilen*, 42 Phil. 805), the writ of habeas corpus being 'the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. The scope and flexibility of the writ – its capacity to reach all manner of illegal detention – its ability to cut through barriers of form and procedural mazes – have always been emphasized and jealously guarded by courts and lawmakers (*Gumabon v. Director of Bureau of Prisons*, 37 SCRA 420) [underlining ours].

The proliferation of cases in this Court, which followed in the wake of this Petition, was brought about by the insistence of the prosecution to charge the crime of Rebellion complexed with other common offenses notwithstanding the fact that this Court had not yet ruled on the validity of that charge and had granted provisional liberty to petitioner.

If, indeed, it is desired to make the crime of Rebellion a capital offense (now punishable by reclusion perpetua), the remedy lies in legislation. But Article 142-A[1] of the Revised Penal Code, along with P.D. No. 942, were repealed, for being "repressive," by EO No. 187 on 5 June 1987. EO 187 further explicitly provided that Article 134 (and others enumerated) of the Revised Penal Code was "restored to its full force and effect as it existed before said amendatory decrees." Having been so repealed, this Court is bereft of power to legislate into existence, under the guise of re-examining a settled doctrine, a "creature unknown in law" - the complex crime of Rebellion with Murder.

The remand of the case to the lower Court for further proceedings is in order. The Writ of Habeas Corpus has served its purpose.

[1] "ART. 142-A. Cases where other offenses are committed. - When by reason or on the occasion of any of the crimes penalized in this Chapter, acts which constitute offenses upon which graver penalties are imposed by law are committed, the penalty for the most serious offense in its maximum period shall be imposed upon the offender."

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