2 Phil. 436

[G.R. No. 1448. August 22, 1903]

SIMEON VILLA, PETITIONER, VS. HENRY T. ALLEN, CHIEF PHILIPPINES CONSTABULARY, RESPONDENT.

D E C I S I O N

COOPER, J.:

On the 8th day of August, 1903, an application was made by Jos6 Alejandrino for the vssuance of a writ of habeas corpus in behalf of Simeon Villa directed to Gen. Henry T. Allen, Chief of the Philippines Constabulary. The application was granted by one of the members of this court. The writ was issued on the same day and made returnable on the 11th day of August. The case is now on hearing before this court in the exercise of its original jurisdiction.

It was alleged in the application that Simeon Villa is illegally detained by the Chief of the Philippines Constabulary, under an order issued by the Court of First Instance of the Province of Isabela, on a charge of murder of one Piera, a lieutenant of the Spanish civil guard; that in the same case were accused Dimas Guzman, Isidro Guzman, Ventura Guzman, Jose Guzman, and Cayetano Perez; that said case was tried in said Court of First Instance on January 6, 1902, resulting in the acquittal of Dimas Guzman and Ventura Guzman, and condemning to life imprisonment Jose Guzman and Isidro Guzman; that the said case was appealed to the Supreme Court by the said Jose Guzman and Isidro Guzman, and that this court on the appeal conceded to them the benefits of the amnesty proclamation; that all the facts which related to the applicant and connecting him with the offense were contained in the said case in the Supreme Court, and that the same show that the commission of the act was due to internal political feuds or dissensions between Spaniards and Filipinos; that the applicant was an officer of the revolutionary army, and that Piera was an officer of the Spanish army, and was at the time of his death a prisoner of war within the power of the Filipinos; that there existed no other motive for the act than the

political feuds and dissensions referred to, as was determined in the decision of the Supreme Court in said case of the United States against said Jose and Isidro Guzman; by reason of which £he said Simeon Villa is entitled to the benefits of the amnesty proclamation, and has been pardoned, and that there no longer exists any crime for which lie can be proceeded against, and prays for a writ of habeas corpus, and that the applicant be set at liberty.

The respondent made return to the writ of habeas corpus, stating that he held Simeon Villa in his custody by virtue of an order issued from the Court of First Instance of Isabela Province, P. I., by the Hon. J. H. Blount, judge of said court, a true copy of which warrant is attached to and made a part of the return j that said Simeon Villa was apprehended and arrested in obedience to said warrant or order of arrest, in the city of Manila, on August 6, 1903, and that he is held in custody awaiting opportunity for transportation to llagan, Isabela Province, for trial in compliance, with the requirements of said order; that the applicant has not yet been tried upon such charge.

It was admitted at the hearing, by the Solicitor-General, that the appeal of Jose and Isidro Guzman to the Supreme Court was in a case in which the prisoner was jointly charged with Dimas Guzman, Isidro Guzman, Ventura Guzman, Jose Guzman, and Cayetano Perez, who are the same parties mentioned in the order of arrest, and that the Supreme Court, on the appeal of the case by Jose and Isidro Guzman, granted appellants the benefits of the amnesty proclamation and acquitted them.

It was further agreed that the evidence contained in the record on said appeal might be considered by the court at the hearing of the habeas corpus proceedings.

There is no dispute that the prisoner, Simeon Villa, is held by process issued by the Court of First Instance of Isabela Province, nor that the court had jurisdiction to make the order and issue the process.

Under the provisions of section 528 of the Code of Civil Procedure of 1901 the writ must be disallowed and the prisoner remanded to the custody of the relator, unless an exception is to be made in cases arising under the amnesty proclamation.

The provisions of said section read as follows: “If it appears that the person alleged to be restrained of his liberty is in custody of an officer under process issued by a court or magistrate, or by virtue of a judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order,

the writ shall not be allowed; or if the jurisdiction appear after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order."

It is contended by counsel for the petitioner that the amnesty proclamation completely obliterates the offense, and that there can be no trial after such proclamation; that it has the same effect on the case as if the general law punishing the offense had been repealed or annulled; and that the defendant should be discharged on habeas corpus without the formality of a regular trial under the information.

The inquiry arises as to the effect and operation of the amnesty proclamation. This must be determined by a consideration of the terms of the proclamation itself, and the principles of the common law applicable to amnesty and pardon.

The proclamation is, by its express terms, both one of pardon and amnesty. It extends to the offenses of treason or sedition, and all offenses political in their character, or which grew out of internal political feuds or dissensions between Filipinos and Spaniards or the Spanish authorities, or which resulted from internal political feuds or dissensions among the Filipinos themselves during either of the insurrections referred to in the proclamation.

Amnesty commonly denotes the "general pardon to rebels for their treason and other high political offenses, or the forgiveness which one sovereign grants to the subjects of another, who have offended by some breach of the law of nations." (1 Bish. Cr. L., sec. 898.)

The term "amnesty" belongs to international law, and is applied to rebellions which by their magnitude are properly within international law, but has no technical meaning in the common law. It is a synonym of oblivion, which in the English law is the synonym of pardon. (Bouvier, "Amnesty.")

In so far as the proclamation extends to the offenses of treason and sedition, it may be regarded as an amnesty.

But as to those4 offenses which have arisen out of internal political feuds and dissensions among the Filipinos themselves, such as the ordinary crimes of murder, robbery, arson, etc., the proclamation must be regarded in the nature of a pardon.

A pardon may be general, applying to all persons falling within a certain category, or it may be conceded to a single individual for an ordinary crime, in which latter case it is a special

pardon, and is evidenced by a writing, the acceptance of which is necessary in order that it may become effectual.

Where the pardoning power is vested in the legislature and is exercised by legislative grant, and is in the nature of a general amnesty for strictly political offenses, it has been considered in the nature of a public law, thus having the same effect on the case as if the general law punishing the offense had been repealed or annulled. (United States *vs.* Wilson, 7 Peters, 163.)

It will not be necessary in this case to determine whether the defendant could be discharged on habeas corpus had he been charged in the information with treason or sedition.

It is true that the proclamation as a public act would be judicially noticed by the court; but the information charges the petitioner with murder, and it can not be contended that the court can take judicial notice that the murder charged against the defendant grew out of political feuds and dissensions between Filipinos and Spaniards, or between Filipinos themselves. Where it becomes necessary to make such inquiry, the benefits of the proclamation must be obtained through the agency of the courts, in the regular course of the judicial proceeding by the ordinary method of trial.

At the English common law, where the pardon is obtained before issue joined, it must be pleaded as other matters in confession and avoidance, under the particular jurisdiction. If after the issue joined, the pardon should be brought to the attention of the court in some manner suitable to the advanced stage of the proceedings. After conviction and before sentence, it was generally made in response to the question whether the accused had anything to say why sentence should not be pronounced; and when the case is on appeal, the pardon may be properly called to the attention of the appellate court either by the suggestion of the State’s attorney that the defendant has been pardoned or by application of the person pardoned. (15 Enc. P. and P., 449.)

At the ancient common law, pardon after conviction and sentence made it necessary to plead the pardon by suing out a writ of habeas corpus before a discharge could be secured. In America the practice is for the warden or keeper of the prison to discharge the prisoner upon presentation of a pardon. It would not be proper for the warden of the prison to attempt to determine the question as to whether the prisoner was entitled to discharge under the proclamation in question. Nor would it be proper for a court on habeas corpus to discharge him.

For it is expressly provided in the proclamation that the pardon does not include such persons as have been heretofore finally convicted of the crimes of murder, rape, arson, or robbery, "but special application may be made to the proper authority for pardon of any person belonging to the exempted classes, and such clemency as is consistent with humanity and justice will be liberally extended." (Proclamation of the President, July 4, 1902.)

If the defendant wishes to avail himself of the benefits of the amnesty proclamation, it will be necessary for him to plead this defense, and the evidence must disclose in this particular case that he is entitled to its benefits. It will not be sufficient to rely upon the decision of this court in the case of Jose and Isidro Guzman, in which the benefits of the amnesty proclamation were conceded to appellants. The defendant Villa did not participate in that trial and was not bound by the proceedings of the Court of First Instance therein], nor would the Government be bound by the judgment in that case. As to him the case must be tried *de novo*.

We think it is perfectly clear, from what has been said, that such trial should not take place before this court on a writ of habeas corpus.

The prisoner must be remanded to the custody of the relator and transported, at the earliest opportunity, to Ilagan, Isabela Province, in compliance with the requirements of the, order of arrest issued by the Court of First Instance, and there held for trial upon the charge against him for the murder of Piera.

It is so ordered and directed.

The costs of this proceeding are adjudged against Jose Alejandrino, the applicant for the writ of habeas corpus.

Arellano, C. J., Mapa and *McDonough, JJ.,* concur.

Willard, J., concurs in the result.

DISSENTING

TORRES, J.:

The attorney for the; petitioner Simeon Villa has asked that an order of habeas corpus issue for the purpose of obtaining Villa's liberty, upon the ground that he is at present confined by the police by virtue of a warrant issued by the, Court of First Instance of Isabela de Cagayan, upon an information tiled against the petitioner and others for murder.

The records of ihis court, now on file in the clerk's office, show that by order of Villa, at that time a major commanding the revolutionary forces occupying the district of Isabela, the Peninsular Spaniard, Salvador Piera, a lieutenant in the Spanish army, was in 1898 taken from Aparri, where hi1 was held as a prisoner, to Ilagan, the capital of that district, and, according to the complaint, at the instigation of Dimas Guzman, owing to the hatred and resentment entertained by him and certain members of Iiis family against. Piera, the latter was illtreated and hung up and allowed to fall to the ground several times, until he finally died, his body being subsequently buried.

The case was prosecuted in the absence of Simeon Villa, and at the instance of the other defendants, Isidoro and Jose Guzman, they were declared4 to be included in the amnesty of July 4, 1902, and, after taking the oath prescribed in the, amnesty proclamation, they were set at liberty and the case dismissed by an order of this court dated December 31 of the same year.

It appears that the warrant of arrest upon which the police held the petitioner Villa was issued on October 10, 1901, at the time the said cause for murder was instituted. It also appears that upon this warrant the Guzmans, the other defendants, were arrested long ago. They having been found entitled to the benefits of the amnesty proclamation and the case having been dismissed, in accordance with the ordinary principles of procedure, the warrant of arrest should be regarded as having lapsed, it having been issued a year before the amnesty and the dismissal of the cause.

On this account it may be logically held that, by virtue of the amnesty proclamation and the decision of this court declaring the two defendants convicted in the court below to be entitled to its benefits, the said crime of murder no longer exists, and in consequence the former information can not now be in existence or presented again by the prosecuting attorney, nor, consequently, can the case be continued against Simeon Villa, who was at that time absent. The amnesty proclamation operates objectively with respect to the crime, and by virtue thereof the latter should be regarded as wiped out, pardoned, and forgotten. It is in this that an amnesty is distinguished from an ordinary pardon, which is more of a subjective character and solely affects the person pardoned, and is granted upon the

supposition of the actual existence of the crime.

A pardon is very different in its character and effect from an amnesty, which is much more favorable in every respect to those benefited thereby. The effects and legal consequences of an amnesty are entirely distinct from and can not be legally confused with those of a pardon.

From the foregoing it necessarily follows that there is no legal ground for the detention of Villa, inasmuch as he is at the present time deprived of his liberty upon a warrant issued for a crime which, by means of the amnesty, the sovereign power lias seen fit to declare blotted out, pardoned, and forgotten; and therefore the warrant is no longer of effect, nor can it be executed as an incident to a prosecution which can no longer be continued or revived, as would ordinarily be the case with respect to crimes not included within the amnesty, or with respect to absent criminals rearrested.

It can not be held that the Court of First Instance of Isabela has jurisdiction to determine the right of Major Villa to release, because when there is no crime in existence, as in the present case, no question of jurisdiction can be raised. Such a question can only be presented when there is a crime in existence susceptible of prosecution and punishment. Without the actual existence of some punishable act it is impossible to conceive of the existence of a criminal prosecution.

Upon these grounds it is self-evident that the petitioner should be released on the writ of habeas corpus, without the necessity of remanding him to the Court of First Instance. In my opinion this court has ample authority to grant the relief prayed for, and there is no legal reason why the petitioner should be obliged to set up the defense of the amnesty in the extinguished action, the record of which is now in the Court of First Instance and which, for the reasons already stated, can not be revived either by the court on its own motion or by the prosecuting attorney.

For the reasons set forth and upon the ground that the crime with which Simeon Villa is charged is included in tin1 amnesty proclamation, as held by this court in its decision of October 10, 1902, in the case of the United States vs. Isidro Guzman et al., I am of the opinion that, after taking the oath required by the amnesty proclamation, the petitioner, Simeon Villa, should be set at liberty and that this decision should be communicated to the judge of First Instance of Isabela, and to the Attorney-General, to the end that an entry of the result of this proceeding be made in the record of the case referred to.

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