Recent Cases

Briefed by
MARIANO AMPIL, JR.

HABEAS CORPUS—INDEBTEDNESS NOT A BAR TO BASIC FREEDOM OF LOCOMOTION.

Petitioner, an orphan and illiterate was brought to Manila from Capiz for possible employment as a servant by respondents, operators of an employment agency. Subsequently, petitioner manifested her desire to leave the agency and go with a visiting cousin but was prevented by respondents who demanded that she first reimburse the transportation and maintenance expenses defrayed by them before she could go. Though no physical force was used, respondents by sheer mental and social superiority, exerted moral compulsion strong enough to have effectively prevented her from leaving. Hence, this petition for a writ of habeas corpus which was immediately granted. (Caunca v. Salazar & de Justo, G.R. No. L-2690, January 1, 1949.)

There is no question that petitioner is restrained of her personal liberty and not free to go with her cousin at her will. The fact that no physical force has been exerted to keep her does not make less real the deprivation of her personal freedom. Freedom may be lost due to external moral compulsion, to founded or groundless fear, erroneous belief in the existence of an imaginary power—of an impostor to cause harm if not blindly obeyed, to any other psychological element that may curtail the mental faculty of choice or the unhampered exercise of the will.

On the hypothesis that petitioner is really indebted, such is not a valid reason for respondents to obstruct, impede or interfere with her desire to leave. Such indebtedness may be multiplied by thousands or millions but would not in any way subtract an iota from the fundamental right to have a free choice of abode. The fact that power to control said freedom may be an effective means of avoiding monetary losses to the agency is no reason for jeopardizing a fundamental human right. The fortunes of business can not be controlled by controlling a fundamental human freedom. Human dignity is not a merchandise appropriate for commercial barters or business bargains. Fundamental freedoms are beyond the province of commerce or any other business enterprise.

ELECTION LAW—PROVISO ON PREPARATION OF BALLOT IS OF MANDATORY CHARACTER.

Protestant-appellant brought this appeal from a decision of the Court of First Instance dismissing his election protest and adjudging protestee as mayor-elect by a majority of seven. Appellant's brief assigned as error the lower court's discrediting the 59 ballots where his name

appeared written not on the space for mayor but on those corresponding to vice-mayor, provincial board member, and councilor and which, it considered, were sufficient to change the result. The Supreme Court, by a vote of 6 to 2, affirmed the appealed decision voiding the aforementioned ballots on the ground of non-complaince with the mandatory provision of Section 135 of the Revised Election Code (Pimentel v. Festejo, G.R. No. L-2327, January 11, 1949).

Appellant's contention is premised on the theory that his name was only misplaced in the ballots in question but that the intention of the voters to elect him as mayor can be gathered from the fact that in the order of sequence of the candidates for the several positions mentioned in each ballot, his name would appear to be written in the space for mayor if the names of the candidates for governor, member of provincial board, mayor and councilor have not been also misplaced one or two lines above or below the correct space. Appellant's theory is untenable. The majority of election inspectors in the municipality belonged to the appellant's political party and, therefore, had the control in the decisions of the board of inspectors. Their not counting the ballots in question shows that said majority inspectors had not found upon the face of the ballots themselves that the voters voted for appellant as mayor.

The Constitution has reserved the right to exercise suffrage to citizens of legal age who "are able to read and write." (Section 1, Article V.) Section 135 of the Revised Election Code provides that the voter shall fill his ballot "by writing in the proper space for each office the name of the person for whom...he desires to vote." The last provision is couched in a language the mandatory character of which can not be questioned. Therefore, for any ballot to be counted for a candidate for mayor, it is indispensable that his name be written by the voter in the proper space for mayor, which word is clearly printed in the ballot and can not be mistaken by a person who, as provided for by the Constitution, is able to read. A man can be counted for an office only when his name is written within the space indicated upon the ballot for the vote for such office. (Lucero v. de Guzman, 45 Phil. 852). It is impossible to count a ballot as vote for a candidate for mayor, when his name is clearly written in the space reserved for another office (Aviado v. Talens, 52 Phil. 665; Villaviray v. Alvarez, 61 Phil. 42).

* * *

Montemayor, J., *dissenting*:

A too narrow and strict construction of the election law would result in depriving a great number of qualified voters in participating in the choice of their elective officials. The doctrines in Lucero v. Guzman and Alviado v. Talens have been relaxed and modified in the later cases of Adeser v. Togo, 52 Phil. 856; Mandac v. Samonte, 54 Phil. 706; and Coscoluella v. Gaston, 63 Phil. 41, wherein this Tribunal refusing to be bound by what ap-

pears on the space corresponding to a post in the ballot, considered the ballot as a whole, in its endeavor to ascertain the intention of the voter and to give him a chance to show and voice his choice of the men who are to govern his town, province and city. This in my opinion is the right attitude and mission of the courts as regards elections.

FINALITY OF JUDGMENT—STAY PROPER IF PREMISED ON GROUNDS OF EQUITY.

Respondent-sublessee was ordered ejected by final judgment from his premises after a protracted detainer case initiated by petitioner-lessee which ran the gamut of the Municipal Court, the Court of First Instance, the Court of Appeals, and the Supreme Court. Undaunted, respondent, in order to frustrate the judgment, filed a counteraction to have himself declared the direct lessee with a petition for preliminary injunction to stay the ouster, after the case was remanded to the lower court for execution. This, notwithstanding the categorical denial by the Court of Appeals of a motion for new trial based on the same ground—i.e.—he was already direct lessee by virtue of a contract of lease with the owner. The preliminary injunction was granted, but later lifted upon motion for reconsideration; and respondent was ejected. But not for long. Upon motion for reconsideration, he secured from another judge but from the same court a writ of mandatory injunction which restored him in possession of the premises. That writ is the subject-matter of the present petition for certiorari. The Supreme Court condemned the issuing of the writ as a negation of justice and held that it was an abuse of discretion correctable by certiorari. (Li Kim Tho v. Judge Sanchez & Go Kao, G.R. No. L-2676, January 31, 1949).

It is essential to an effective and efficient administration of justice that once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Constructed as they are to put an end to controversies, courts should frown upon any attempt to prolong litigations.

The stay of execution of a final judgment may be authorized whenever it is necessary to accomplish the ends of justice as, for instance, where there has been a change in the situation of the parties which makes such execution inequitable. But such is not the case here. The filing by respondent of a new action savours of a mere scheme to delay or frustrate the execution of the judgment in question. The issue raised in the new case is something that has already been passed upon by the Court of Appeals in connection with the denial of the respondent's motion for new trial. And it is significant that while respondent claims a lease in his favor has been entered into, nowhere does it appear that owner has given notice to the petitioner of its decision to terminate the lease or made any

demand for him to vacate the premises. As the lease is from month to month and the lessee has not given it up, tacit renewal thereof must be presumed until the lessor gives proper notice to terminate it.

CRIMINAL PROCEDURE— DISCHARGE AS A STATE WITNESS IS NOT AFFECTED BY FUTURE DEVELOPMENTS.

Defendant-appellants were convicted of murder by the Court of First Instance of Manila. One of them, after having been included with the others in the original information was discharged by the court to be used as government witness, upon motion of the fiscal. However, his services as witness were not availed of. Subsequently, a new information was filed for the same murder which again named him as co-defendant. His counsel moved to quash the new information claiming the benefits of Section 11 of Rule 115 (Rules of Court). The motion was denied and he prosecuted this appeal renewing his defense of double-jeopardy. The fiscal opposed his defense on the following grounds: (1) Developments subsequent to his discharge showed him to be the most guilty; (2) that the failure to testify mentioned in Section 11 of Rule 115 comprehends the failure due to the prosecution's omission or refusal to use the discharged accused as witness; (3) that the discharge, to operate as an acquittal, must have taken place after the discharged accused's arraignment and plea of guilty, and after the actual commencement of the trial, which were not so in this case. The Supreme Court found for the appellant declaring that the aforecited propositions are not supported either by law or by reason. (People v. Mendiola et al., G.R. No. L-1642, 1643 & 1644, January 29, 1949).

The discharge contemplated in the clear text of Section 9 of Rule 115 is the one which can be effected at any stage of the proceedings, from the filing of the information to the time the defense starts to offer any evidence. The words "any time before" imply an indefinite period of time limited only by the time set by a court's jurisdiction and the very nature of things, and that limit is set at the instant of the filing of the information.

Before the discharge is ordered, the prosecution must show and the trial court must ascertain that the five conditions fixed by Section 9 of Rule 115 are complied with. But once the discharge is ordered, any future development showing that any or all of the five conditions have not actually been fulfilled, may not affect the legal consequences of the discharge, as provided by Section 11 of Rule 115. Any witting or unwitting error of the prosecution in asking for the discharge and of the court in granting the petition, no question of jurisdiction being involved, can not deprive the discharged accused of the acquittal provided by Section 11 of Rule 115 and of the constitutional guarantee against double jeopardy.

The exception in the proviso of Section 11 of Rule 115 against the

defendant who "fails to testify against his co-defendant" refers exclusively to a failure attributable to defendant's will or fault. The willingness of the discharged defendant is the only test that should be taken to determine whether or not he fails to testify against his co-defendant and, consequently, whether or not he should be excluded from the benefits of the acquittal provided by Section 11 of Rule 115.

PUBLIC CORPORATIONS — MUNICIPAL ORDINANCES AND RESOLUTIONS.

The municipal council of Luna, La Union, resolved in 1945 to lease through public bidding the fishing privilege in a sector of the municipal waters for one year, extendible "from one to four years." A four-year lease was granted to petitioners. The next year, the same council, now of different composition, after having obtained the provincial board's approval to annul the previous resolution and the petitioners' lease, resolved to offer anew the fishing privilege through public auction at a higher minimal bid and of one-year duration only. Thereupon, petitioners commenced suit to have the last-mentioned resolution voided and the council enjoined from proceeding with the auction. The lower court voided the petitioners' lease on the ground that it was in effect an award of a four-year privilege without the intended benefits of public bidding. Hence, this appeal claiming the unconstitutionality of the second resolution as impairing the obligation of contracts. The Supreme Courts held that the appeal was well-taken and accordingly reversed the trial court's ruling. (Mantanan, et al v. Municipality of Luna, et. al., G.R. No. L-2337, February 26, 1949).

The case hinges on the validity of Resolution No. 37 granting the fishing privilege to the petitioners. Resolution No. 32 (the one authorizing the first auction) was not invalidated by the fact that it was disapproved by the provincial board, since "the only ground upon which a provincial board may declare any municipal resolution x x x invalid is when such resolution x x x is beyond the powers conferred upon the council x x x making the same." (Gabriel v. Prov. Board of Pampanga, 50 Phil. 686, 692), and there is no question that Resolution No. 32 is within the powers granted to municipal councils by the Fishery Law. (Section 67, Act No. 4003 as amended by Com. Act No. 471).

As to the trial judge's assumption that the first resolution did not authorize a lease for more than one year we don't think this assumption is justified by the terms of the resolution. Nowhere does it say that the lease was to be for one year only. On the contrary, it expressly provides that the lease can be extended for a period of from one to four years, thus indicating an intention not to limit the duration of the lease to one year. In accord with that intention, the municipal treasurer, in announcing the public auction,

inserted in the notice a provision that "bids for more than one year but not more than four years can be offered," and the same municipal council which passed the resolution (No. 32) confirmed that intention by entertaining and accepting in its Resolution No. 37 the petitioners' bid for four years. It is a rule repeatedly followed by this Court that "the construction placed upon a law at the time by the officials in charge of enforcing it should be respected." (In re Allen, 2 Phil. 630; Government v. Municipality of Binalonan, 32 Phil. 634; Molina v. Rafferty, 32 Phil. 545; Madrigal v. Rafferty and Concepcion, 38 Phil. 414, Guanio et al. v. Fernandez et al., 55 Phil. 814, 819)

PENALTY — AGGRAVATING CIRCUMSTANCES IN TREASON.

Arraigned for treason, accused pleaded guilty to the charges of having led on three occasions a pro-Japanese sortie and apprehended, tortured and killed guerrilla sympathizers The lower court held that the facts alleged and proven made out a complex crime of treason with murders and imposed the extreme penalty of death. It further opined that the same penalty would obtain viewing the case from the standpoint of the circumstances of treachery, premeditation, superior strength, and cruelty attendant to the killings, qualifying them as murders and aggravating criminal responsibility. (People v. Roble, G.R. No. L-433, March 2, 1949).

The trial Court is in error. The tortures and murders set forth in the information were merged in and formed part of treason. They were the overt acts, which, besides traitorous intention supplied a vital ingredient in the crime.

The circumstances of evident premeditation, superior strength, and treachery may not be taken to aggravate the penalty. Adherence and the giving of aid and comfort to the enemy is in many cases, a long continued process requiring, for the successful consummation of the traitor's purpose fixed, reflective and persistent determination and planning. Treachery is merged in superior strength. The law does not expect the enemy and its adherents to meet their foes only on even terms according to the romantic traditions of chivalry. But the law does abhor inhumanity and the abuse of strength to commit acts unnecessary to the commission of treason. Rapes, wanton robbery for personal gain, and other forms of cruelties are condemned and the perpetration of these will be regarded as aggravating circumstances of ignominy and of deliberately augmenting unnecessary wrongs to the main criminal objectives under paragraphs 17 and 21 of the Revised Penal Code. For the very reason that premeditation, treachery, and superior strength are absorbed in treason characterized by the killings, the killings themselves should be taken into consideration for measuring the degree and gravity of criminal responsibility irrespective of the manner in which they were committed. Were

crime known to law would confer on its perpetrators advantages that are denied simple murders. (People v. Racaza, G.R. No. L-365, January 21, 1949).

MENTAL SANITY—BEHAVIOR DISORDER AS A MITIGATING CIRCUMSTANCE.

Accused on arraignment and with the asssistance of counsel, entered a plea of guilty to the charge of qualified theft. Subsequent to the imposition of sentence, counsel moved for a new trial alleging that defendant was afflicted with "word deafness"—a mental disorder. The motion was denied and the case was appealed. The Supreme Court, relying on the medical report submitted by government alienists found the defendant sane although suffering from mild hallucinations or delusions, finally rejected the motion but modified the penalty in view of the mitigating circumstances. (People v. Amit, G.R. No. L-2060, February 15, 1949).

Medical observations showed that defendant was well-behaved, cooperative, and respectful ... with fairly stable moods and adequate emotional reactions There were no hallucinations or delusions, or reactions suggestive of bizarre trends. She had always been well-oriented in all sphere to date, place and person... in contact with the environment. She has an accurate and well-preserved memory ... a good grasp of common current events... a good insight and judgment.. an alert mind. She was not psychotic nor was she affected with "word deafness".

But she suffers from a mild behavior disorder as a consequence of an illness she had in early life, as evidenced by the development of squinting of the right eye and the somewhat truant behavior. This may be regarded as a mitigating circumstance being "such illness as would diminish the exercise of the will-power of the offender without however depriving him of consciousness of his acts" (Paragraph 9, Article 13, Revised Penal Code) or "any other circumstance of similar nature and analagous to those above mentioned." (Paragraph 10, Articel 13, do).

ORGANIZATION OF GOV'T DIFFERS FROM BIRTH OF CORPORATE PERSONALITY.

Respondents filed this motion for reconsideration to have the court re-examine its decision and rectify what they considered an erroneous construction of the statute involved. The case hinged on whether the city of Dagupan came into existence as a public corporation or political entity upon the approval of its charter (Republic Act No. 170) on June 20, 1947, or upon the organization of the city government and the qualification of its officers on January 1, 1948, as fixed by Executive Order No. 96 (later superseded by Executive Order No. 115) by virtue of section 88 of the charter. The majority of the Supreme Court held that the former municipality became an independent entity by the mere approval of Republic Act No.

170 on the ground that said Act took effect upon its approval on June 20, 1947. (Mejia et. al., v. Balolong et. al. G.R. No. L-1925, January 25, 1949).

The coming into existence of a juridical entity, and the organization of the government thereof and appointment or election of its officers are not one and the same thing. Otherwise, it would not have been necessary to provide as a legal fiction that a new municipality "shall come into existence as a separate corporate body upon the qualification of the president, vice-president, and a majority of the councilors, unless some other time be fixed-by law." (Sec. 2168 Administrative Code). And the law could not fix some other time different from the organization of its government or appointment and qualification of its officers.

A juridical institution or entity can not act as such, but it may exist, before the officers provided by law to represent and act in its behalf or representation have been appointed or elected. A municipal corporation exists from the moment the law creating it becomes in force or effective, but it can not act as such, before the muncipial officers have been elected or appointed and have qualified. The conversion of the municipality into a city by Act No. 170 did not make ipso facto the acts of the elected officers of the said municipality acts of the city, because the latter can only act as a city through the city officers designated by law after they have been appointed or elected and have qualified. In the meantime or during the period of transition the municiplaity had to act or function temporarily as such, otherwise there would be chaos or no government at all within the boundaries of the territory.

The case of the City of Dansalan is different from the case at bar, The City of Dansalan was created directly by Act No. 170 which provides in its section 2 that the city is thereby created while Act No. 592 only provides for the charter of the City of Dansalan, which would come into existence only upon the organization of the city government with the appointment of its officers by the President.

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Ozaeta, J., *dissenting*:

Since the powers and prerogatives of a municipal corporation can only be exercised by its officers and agents, then the corporation cannot be said to have come to life until said officers and agents have been appointed or elected and have qualified. It is futile to distinguish between the "organization of the city of Dagupan" and the "organization of the city government of Dagupan," as if a city could be organized without organizing its government. A city is only a mere geographical expression ... until two indispensable steps are taken: (1) It must be created by law, (2) Its government must be organized according to that law.

CITIZENSHIP — PRIVILEGE UNDER SUBSECTION 2 (ART. IV, CONST.) IS TRANSMISSIVE.

On the allegation that petitioner is an alien, respondents sought to cancel the registration certificates of his vessels and rescind the deeds of sale thereto. Petitioner, claiming that his Chinese father, by virtue of an election to public office before the adoption of the Constitution, became a Filipino citizen under Section 1, Subsection 2 (Article IV, Constitution) and he being a minor on November 15, 1935, therefore followed his father's citizenship under Subsection 3 (Art. IV), resisted the acts and brought this petition for a writ of prohibition. The Supreme Court held that the entire case hinged on whether or not Petitioner is a Filipino citizen and held that he is one. (Chiongbian v. Collector of Customs et. al., G.R. No. L-2007, January 31, 1949).

The respondents contended that the privilege of citizenship granted by Subsection 2 (Art. IV) is strictly personal and does not extend to the children of the grantee, adducing in support thereof two propositions: (1) That this subsection was adopted merely to grant Filipino citizenship to Delegate Caram and thus obviate the possibility of an alien signing the Constitution as one of its farmers, (2) That the original draft of said subsection contained the phrase—"and their descendants"—which was deleted from the final draft thus showing that this privilege of citizenship was intended to be strictly personal to the grantee and did not extend to his descendants. The answer of the Court follows:

With regard to the first argument, it may be said that the members of the Constitutional Convention could not have dedicated a provision of our Constitution merely for the benefit of one person without considering that it could also affect others. When they adopted subsection 2, they permitted, if not willed, that said provision should function to the full extent of its substance and its terms, not by itself alone, but in conjunction with all other provisions of that great document. They adopted said provision fully cognizant of the transmissive essence of citizenship as provided in subsection 3.

The second argument is similarly untenable. The mere deletion of the phrase—"and their descendants"—is not determinative of any conclusion. It could have been done because the learned framers of our Constitution considered it superfluous, knowing full well that the meaning of such a phrase was adequately covered by subsection 3. Deletions in the preliminary drafts of the Convention are, at best, negative guides, which can not prevail over the positive provisions of the finally adopted Constitution.

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