THE EFFECT OF THE SUSPENSION OF HABEAS CORPUS ON THE RIGHT TO BAIL IN CASES OF REBELLION, INSURRECTION AND SEDITION

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On October 22, 1950, the President of the Philippines issued Proclamation No. 210, suspending the privileges of the writ of habeas corpus in order to enable the executive department, as a precautionary measure, to detain without interference persons suspected of being engaged in rebellious, seditious and other subversive acts. The suspension of the writ elicited varied reactions among the Filipino people. Some believed that the President acted properly, while others maintained that there was no necessity for such a drastic move.

There is no doubt, however, that the action of the President is within the constitutional power expressly vested upon him. The Constitution of the Philippines provides that in case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.[1] His motive in proclaiming the suspension of the writ cannot be questioned; it is a settled rule that the findings upon which he bases his order are conclusive and final, and cannot be inquired into even by the courts.[2] The propriety or impropriety of his conduct is for posterity to judge.

Subsequent to October 22, 1950, a number of persons were arrested and detained by the executive department on suspicion of being directly or indirectly engaged in an armed conspiracy to overthrow the constituted government of the Philippines. These suspects are confined in army stockades waiting for indictment before the civil courts. The legality or illegality of their detention cannot be inquired into because of the suspension of the writ which is the only means by which such inquiry can be conducted. Upon the filing of charges against them, however, they invoked the constitutional guaranty of the right to bail[3] to secure their temporary liberty. Hence a serious legal question arose, unparalleled in Philippine jurisprudence, namely, whether or not persons arrested and detained by the executive department on charges of rebellion, insurrection, or sedition could be bailed in spite of the suspension of the writ of habeas corpus as to those offenses.

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[1] Sec. 10, par. 2, Art. VII, Constitution of the Philippines.

[2] *Barcelon vs. Baker*, 5 Phil. 87.

[3] Sec. 1, par. 16, Art. III, Constitution of the Philippines.

NATURE AND SCOPE OF BAIL

The Rules of Court define bail as the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance.[4] The condition of the bail is that the defendant shall answer the complaint or information in the court in which it is filed or to which it may be transferred for trial, and after conviction, if the case is appealed to the Court of First Instance, upon application supported by an undertaking or bail, that he will surrender himself in execution of such judgment as the appellate court may render, or that, in case the cause is to be tried anew or remanded for a new trial, he will appear in the court to which it may be remanded and submit himself to the orders and processes thereof.[5] When the obligation of bail is assumed, the sureties become in law the jailers of their principal. Their custody of him is considered to be the continuance of the original imprisonment, and though they cannot in fact confine him, they are subrogated to all the other rights and means which the government possesses to make their control of him effective.[6]

It is clear from the foregoing that the twofold purpose of bail are: First, to allow provisional liberty to the accused, and second, to insure his presence whenever that is required by the court.

The power to admit bail is a judicial power,[7] it being a necessary incident to the right to hear and determine a cause.[8] It cannot be exercised by ministerial officers, nor can it be delegated.[9] However, a ministerial officer may be allowed to approve and accept bail, after it has been allowed and fixed by the court, as that is a ministerial act.

RIGHT TO BE RELEASED ON BAIL

At common law

At common law, there is no absolute right to be released on bail.[10] But it may be granted in any case in the discretion of the court subject to certain well defined and established rules. The court of the King's Bench has an unlimited power of admitting to bail for all offenses, including murder and treason, but the accused cannot

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[4] Section 1, Rule 110.
[5] Section 2, Rule 110.
[6] *U.S. vs. Addison*, 27 Phil. 563; *U.S. vs. Sunico*, 40 Phil. 826.
[7] CLARKE, W. M. L., HANDBOOK OF CRIMINAL PROCEDURE, p. 84.
[8] FERRIS, EXTRAORDINARY LEGAL REMEDIES, p. 90.
[9] *Gregory vs. State*, 94 Ind. 384.
[10] Clarke, *op. cit.*, p. 86.

demand bail as a matter of right.[11] To a large extent the facts and circumstances of each particular case regulate the exercise of the discretion of the court.[12] Since the object of the detention or imprisonment of the accused is to secure his appearance to abide the sentence of law, bail could be allowed whenever it is deemed sufficient to insure such appearance, but not otherwise.[13] The matters chiefly considered in that connection are the seriousness of the charge, the nature of the evidence, and the severity of the punishment,[14] and in some instances, the character, means, and standing of the accused.[15] In cases of misdemeanor it is generally, although not always, allowed. Where the offense is a felony punishable by death, bail is scarcely ever allowed, for it is not thought that any pecuniary consideration would weigh against the desire to live.[16] Even when the felony is punishable by death, bail is also generally denied, unless the guilt of the accused is very doubtful.[17] Subsequent judicial decisions, however, established it as a rule that in capital offenses the accused should be admitted to bail whenever, upon examination of the evidence, the presumption of his guilt is not strong.[18] For according to Blackstone "the wisdom of the law is manifest. To allow bail to be taken commonly for such enormous crimes would greatly tend to elude justice; and yet there are cases, although they rarely happen, in which it would be unjust to confine a man in prison though accused even of the greatest offense." [19]

In the United States

In the United States, the common law rule has been greatly changed. Some states have provided in their respective constitutions [20] or by statutes that the accused shall have an absolute right

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[11] *Com. vs. Lemley,* 2 Pittsb. 362, cited in 39 L.R.A. 753.
[12] *Ex parte McNally,* 53 Ala. 495; 25 Am. Rep. 646.
[13] Clarke, *op. cit.,* p. 85.
[14] Ex parte McNally, *supra.*
[15] *Rex vs. Fortier,* 1 Ann. Cas., 10.
[16] *Com. vs. Lemley, supra.*
[17] Clarke, *op. cit.,* p. 86.
[18] *Ex parte Bryant,* 34 Ala. 270.
[19] 4 Blackstone Com. 299; cited in 39 L.R.A. 753.
[20] "All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great. (Alabama Constitution, Art. I, Sec. 17).

"All prisoners shall be bailable by sufficient securities, unless in capital offenses where the proof is evident or the presumption great." (Arkansas Declaration of Rights, Sec. 16).

"Excessive bail shall not be required ,and all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great." (Mississippi Bill of Rights, Sec. 8).

to give bail in all cases except where the punishment may be death, and even in those cases except where the proof is evident or the presumption of his guilt is great. The judge or court no longer has a discretion in other cases as to whether or not he will allow bail. He must allow it in all cases, the only exception being in cases of offenses punishable with death, in which case bail must be denied unless it is shown that the evidence against the accused is not strong or the presumption of his guilt is not great. However, in those states of the Union where there are no constitutional provisions or statutory enactments on the subject, the common law practice is still being closely followed.

In the Philippines

A similar provision which guarantees the right to bail in all cases except in capital offenses is found in our Constitution. It is provided that all persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when the evidence of guilt is strong.[21] A capital offense, according to the Rules of Court,[22] is one which, under the law existing at the time of its commission, and at the time of the application to be admitted to

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"All persons shall be bailable by sufficient sureties, unless for capital offenses, where the proof is evident or the presumption great." (Pennsylvania Declaration of Rights).

"All persons shall be bailable by sufficient sureties, unless for capital offenses, where the proof is evident or the presumption great." (Ohio Constitution, Sec. 12, Art. 8).

"All persons are bailable by sufficient sureties, except for capital offenses when the proof of guilt is evident or the presumption thereof is great." (Oklahoma Constitution, Art. 2, Sec.).

"All persons are bailable by sufficient sureties except for capital offenses when the proof is evident or the presumption great." (Montana Constitution, Art. III, Sec. 19).

"All prisoners shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great." (Texas Constitution, Sec. 9 of the Bill of Rights).

"All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great." (North Dakota Constitution).

"All persons shall be bailable by sufficient sureties, unless for capital offenses where the proof is evident and the presumption great." (California Constitution).

"All persons shall be bailable, unless for capital offenses where the proof shall be evident or the presumpton great." (Iowa Constitution).

"All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great." (Florida Constitution).

"All persons shall be bailable upon sufficient sureties, except for capital offenses where proof is evident or presumption great." (South Dakota Constitution).

[21] Sec. 1, par. 16, Art. III, Constitution of the Philippines.

[22] Sec. 5, Rule 110.

bail may be punished by death. Under the Revised Penal Code the capital offenses are: Treason, qualified piracy, parricide, murder, kidnapping and serious illegal detention, and robbery with homicide.[23] In noncapital offenses, the defendant shall be admitted to bail as of right after judgment by the justice of the peace and before conviction by the Court of First Instance.[24] Thereafter, he may, upon application, be bailed in the discretion of the court.[25] Likewise, when the crime charged is punishable with death, the right to be admitted to bail is also discretionary on the court, depending on whether or not the evidence against the accused is strong.[26] But the discretion of the court in such cases has no other reference than the determination of the strength of the evidence against the accused,[27] and once the evidence is examined and reasonable doubt exists as to the culpability of the alleged offender, he should be admitted to bail as a matter of course when an application to that effect is made.

The Supreme Court in *Teehankee vs. Rovira* [28] made it clear that the constitutional guaranty to bail is available not only to persons against whom a complaint or information has already been formally filed but also to persons arrested, detained or otherwise deprived of their liberty. In other words, the filing of a formal complaint or information against a person in the custody of the law is not a condition precedent for the enjoyment of the right to bail. Arrest, detention or restraint by the proper authorities on the ground of an alleged commission of an offense is all that is necessary in order to entitle the suspect to bail.

> "This constitutional mandate refers to all persons, not only to persons against whom complaint or information has already been formally filed. . . . Of course, only those persons who have been either arrested, detained or otherwise deprived of their liberty will ever have occasion to seek the benefits of said provision. But in order that a person can invoke this constitutional precept, it is not necessary that he should wait until a formal complaint or information is filed against him. From the moment he is placed under arrest, detention or restraint by the officers of the law, he can claim this guarantee of the Bill of Rights, and this right he retains unless and until he is charged with a capital offense and evidence of his guilt is strong. Indeed, if, as admitted on all sides, the precept protects those already charged under a formal complaint or information, there seems to be no legal or just reason for denying its benefits to one against

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[23] TAÑADA & FERNANDO, CONSTITUTION OF THE PHILIPPINES ANNO., p. 426.

[24] Sec. 3, Rule 110.

[25] Sec. 4, *ibid.*

[26] *Marcos vs. Judge of Ct. of First Instance,* G.R. No. 46490.

[27] *Teehankee vs. Director of Prisons,* G.R. No. L-278.

[28] 75 Phil. 634. For a comprehensive discussion of the scope of the right to bail, see Navarro, Emiliano R., "Right to Bail," XXVI *Phil. Law Journal* 381.

> whom the proper authorities may even yet conclude that there exists no sufficient evidence of guilt. To place the former in a more favored position than the latter would be, to say the least, anomalous and absurd. If there is a presumption of innocence in favor of one already formally charged with a criminal offense, a fortiori, this presumption should be indulged in favor of one not yet so charged, although already arrested or detained.

BAIL IN REBELLION, INSURRECTION AND SEDITION CASES:

Under normal conditions, there is no doubt that bail is a matter of right before conviction by the Court of First Instance in cases of rebellion, sedition and insurrection as these are not crimes punishable with death. But the suspension of the writ of habeas corpus as to these offenses has created grave doubt as to the right of persons charged with said crimes to be admitted to bail. The problem, more precisely stated, is whether the presidential proclamation suspending the privileges of the writ of habeas corpus for persons detained for rebellion or insurrection has equally suspended their right to bail after the information has been filed against them. There is here involved a major conflict between individual liberty and state security a problem that may not be solved by legal logic alone.

Three judges of the Court of First Instance—two in the City of Manila and one in Iloilo—before whom informations involving the offenses covered by the suspension of the writ of habeas corpus have been filed rendered diverse rulings on the right of the accused to bail. Judge Magno Gatmaitan and Judge Agustin Montesa, in deciding the motions to bail presented before them respectively, ruled that the indictees were not entitled to bail. Judge Gavino Abaya on the other hand, disposing of a similar motion, held that the accused did have a right to be allowed to bail. From the ruling of Judge Abaya, the Government filed a petition for certiorari [29] in the Supreme Court, while similar petitions [30] were filed by the indictees from the respective orders of Judge Gatmaitan and Judge Montesa.

In the Supreme Court, only nine justices were present when the matter was presented for consideration. Five of the justices [31] voted in favor of granting bail while the remaining four [32] were against it. The concurrence of at least six justices is necessary for the pronouncement of a judgment [33] and so the rulings of the respective

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[29] *Angeles vs. Abaya,* G.R. No. L-5102.

[30] *Jose M. Nava, et al. vs. Magno Gatmaitan,* G.R. No. L-4855; *Amado V. Hernandez vs. Agustin Montesa,* G.R. No. L-4964.

[31] C. J. Paras, JJ. Tuason, Jugo, Reyes and Bengzon.

[32] JJ. Bautista, Padilla, Pablo and Feria.

[33] Section 9, Republic Act No. 296.

judges were left undisturbed. Consequently, it is now within the sole discretion of the lower court to allow or deny bail to persons accused of the offenses covered by Proclamation No. 210.

There are two predominant views expressed in the opinions given by the justices. One maintains that the right to bail has been impliedly suspended with the suspension of the writ of habeas corpus; while the other holds that it has not, for the right to bail is expressly guaranteed by the Constitution. The former is the opinion of Justice Bautista, which is shared by Justices Padilla, Pablo and Feria. The latter view was espoused by Justice Tuason and shared by Justices Bengzon, Jugo, Reyes and Chief Justice Paras. Both views are ably and persuasively expounded. For purposes of this discussion, we shall consider only the opinions of Justice Tuason and Justice Bautista as representative of the two opposing theories.

The stand taken by Justice Tuason and the others who refused to admit that the right to bail had been impliedly suspended together with the writ of habeas corpus is explained in the following paragraphs:

> "All persons detained for investigation by the executive department are under executive control. It is here where the Constitution tells the courts to keep their hands off, unless the cause of the detention be for an offense other than rebellion or insurrection, which is another matter.
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> "By the same token, if and when formal complaint is presented, the court steps in and the executive steps out. The detention ceases to be an executive and becomes a judicial concern. Thereupon the corresponding court assumes its role and the judicial process takes its course to the exclusion of the executive or the legislative departments. Henceforward, the accused is entitled to demand all the constitutional safeguards and privileges essential to due process. The Constitution does not say that he shall be tried otherwise than by the course of the common law. . . . The Bill of Rights, including the right to bail and the right to fair trial, are unaffected by the suspension of the writ of habeas corpus. The Constitution suspended one great right, and left the rest to remain forever inviolable. . . ."

He pointed out that "any argument in support of the contention that the suspension of the writ of habeas corpus carries with it the suspension of the right to bail is, and has to be, based on inferences" because "the Constitution will be searched in vain for any provision that abridges the right to bail." According to him "the curtailment of the right to bail is not a normal, legal, or logical outcome of the suspension of the writ." He explained that—

> "The intent of the Constitution in authorizing the suspension of the writ of habeas corpus is no other than to give the authorities a free hand in dealing with persons bent on overthrowing the Government. The effects of the suspension are negative, not positive permissive, not manda-

> tory nor even directory. By the suspension, arrest and detention beyond the period allowed under normal circumstances are tolerated or legalized. The constitution is not in the least concerned with the disposition of persons accused of rebellion or insurrection, whether how long they should be kept in confinement, or whether they should be set at large. In the nature of the governmental set-up under the Constitution, their immediate fate is left to the discretion, within reasonable and legal limits, of the proper department."

He maintained that "if the purpose of the Constitution was to suspend the right to bail of persons accused of rebellion or insurrection, it was easy to have accomplished it by the use of direct words." To him "Section 1, paragraphs 14 and 16, Title III, and Section 10, paragraph 2, Article VII, of the Constitution are clear and specific, requiring no construction." But assuming that a resort to construction was necessary, "the provision which secures the right to bail ought to prevail," because, "this inestimable right, sanctified by tradition and ratified by express mandate of the Constitution, cannot be abrogated by implications, much less forced implications drawn from faulty premises." And should there be any inconsistency between the said clauses of the Constitution, "that which would impair the right to bail should give way."

If paragraph 16 meant anything at all, it could only mean that "bail is a matter of right which no court or judge could properly refuse in all cases beyond the exceptions specified in the Constitution." And this case was not among those exceptions since the offenses charged was not capital.

> "Rebellion is punishable by *prision mayor* and persons accused of this crime are of right entitled to bail. The inclusion of murders, arsons, and kidnappings in the information must be regarded as aggravating circumstances, as in treason, and would not authorize the imposition of a penalty higher than the maximum provided for rebellion. Separate charges for murder, arson, and kidnapping ought to be instituted if the defendants are to be punished for these offenses. Murder, arson, or kidnapping is not an essential element of the definition of rebellion. There is no such creature known to law as the complex crime of rebellion or insurrection with murder, etc."

Answering the argument that the security of the State would be jeopardized by the release of the defendants on bail, he expressed the view, perhaps a too rigid one, "that the existence of danger is never a justification for courts to tamper with fundamental rights expressly granted by the Constitution." For—

> "These rights are immutable, inflexible, yielding to no pressure of convenience, expediency, or the so-called 'judicial statesmanship.' The Legislature itself cannot infringe them, and no court conscious of its responsibilities and limitations would do so. If the Bill of Rights are incom-

patible with stable government and a menace to the Nation, let the Constitution be amended, or abolished. It is trite to say that, while the Constitution stands, the courts of justice as the repository of civil liberty are bound to protect and maintain undiluted individual rights."

Admitting the risk attendant to the admission of the accused to bail, he pointed out that the possibility that the accused might jump their bail should not weigh against the evil of keeping in jail persons who may be and are presumed by law innocent. After citing a part of the decision rendered by Mr. Justice Robert H. Jackson, of the United States Supreme Court in a case involving an application for bail of ten communists who had been convicted by a lower court of advocacy of violent overthrow of the United States Government, and which decision granted to said ten communists the right to bail, Justice Tuason concluded:

"Let us bear in mind that in the case just cited, the prisoners had already been found guilty and sentenced, and their right to bail lay within the courts' discretion. In the cases at bar the accused have not yet been tried and so, unless we accept the thesis that the right to bail has been suspended, bail is obligatory.

"There is no denying that risk is present in every case of granting liberty on bail. The wise men who framed the Constitution did not overlook the possibility of escape; it was and is a matter of common knowledge and occurrence. But the possible escape of the accused was considered a lesser evil than the imprisonment of persons who may be innocent, and are presumed innocent by law.

"As a measure of expediency, denial of bail in the instant case would not do away with the feared danger that the defendants might resume their nefarious activities. Temporary liberty on bail is not as perilous to public peace and order as complete freedom. The defendants' acquittal, which is by no means a remote probability, would leave the door wide open to the dreaded consequences. The point is, if the Government could afford the risk involved in acquittal, it could the risk that goes with conditional liberty during the short period that it takes to dispose of these cases."

The opposite view, i.e., the "implied suspension theory," is explained in the opinion of Justice Felix Angelo Bautista. According to him, "when the right of the individual conflicts with the security of the State, the latter should be held paramount." Three "fundamental" reasons were advanced by him in support of the stand that bail should be denied, namely, (1) the express terms of the Proclamation; (2) the purpose of the Proclamation; and (3) the nature of the writ of habeas corpus.

In discussing the first reason, he cited the concluding paragraph of the Presidential Proclamation which recites that the privilege of the writ of habeas corpus shall be suspended "for the persons presently detained for the crimes of sedition, insurrection, or rebellion,

and all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith." In construing this part of the Proclamation, he maintained that it covers both a person detained for purposes of investigation as well as a person in custody or deprived of his liberty after he is actually indicted, because, "a person detained for purposes of investigation is no different from one detained after his arrest resulting from his indictment," since, as he claimed, "where the law does not distinguish, we ought not to distinguish."

As to the second reason, Justice Bautista said:

> "As we have already adverted to, the paramount purpose behind the issuance of the Proclamation is to protect and safeguard public safety or national security or 'to insure the peace and security of the population and to maintain the authority of the Government.' This is the compelling objective of the Proclamation. The reasons and motives that have compelled the President to issue it are well narrated therein all pointing in bold relief to the necessity of placing the persons affected under restraint to prevent them from strengthening the forces of rebellion and increasing the danger to national security. If there is justification for their confinement while they are under investigation for the purpose of determining their participation or complicity in the acts for which they are held under suspicion, there is indeed more cogent and plausible reason, if not more to keep them behind bars after they are indicted and turned over to the courts for the corresponding prosecution. Before they are indicted and formally charged, the right to hold them is merely predicated on suspicion or at best on circumstantial evidence of doubtful probative value. But after formal charges are filed against them, the suspicion becomes strengthened and the evidence reinforced and secure. The military authorities could hold them in confinement indefinitely if they so prefer, but they chose to turn them over to the courts not merely to give them an opportunity to prove their innocence but as a proof of their abiding faith in the processes of democracy. To release them on bail after their indictment would be to defeat the very purpose of the Proclamation because its logical result would be to give freedom to those who, if before were mere suspects, now are a real menace because the evidence against them is stronger and more compelling. We are not prepared to adopt an interpretation that would give such absurd and inconsistent result."

His discussion of the third reason, namely, the nature of the writ of habeas corpus, follows:

> "Considering the very nature of the writ of habeas corpus in the light of law and precedents, the same conclusion can be reached. The law and precedents on the matter reveal to us that the writ is the only remedy open to a person held in confinement regardless of its nature. Section 1 of Rule 102, speaking of the scope of that writ, provides that it 'shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty.' It refers to all cases of confinement, whether before indictment or thereafter. It does not make any distinction. Precedents available here and elsewhere point to the same conclusion.

> They are all agreed that if a person is deprived of his liberty, his only remedy is to invoke that writ whether in the form of mandamus or certiorari. . . . It has also been held that this privilege is not only the right to be discharged from imprisonment, but also the right to give bail if the offense is bailable, and if not bailable, the right to a speedy trial and without arbitrary delay. . . . It is, therefore, an all-embracing remedy the purpose of which is to test the legality of restraint irrespective of its nature. If this is the only remedy available to one deprived of his liberty it logically follows that the Proclamation denies him the right to bail.

After considering the arguments, pro and con, advanced by the two jurists, the choice seems difficult. Which road must we follow? That toward the direction of individual liberty or that toward state security? Or must we establish a new middle road to avoid and escape the difficulties posed by the first two? The answers to these questions, of course, ultimately rest upon the judicial department of our government.

For the present, however, it seems that the opinion expressed by Justice Tuason is the correct one. It seems contrary to reason to admit that the suspension of the writ of habeas corpus has, by necessary implication, carried with it the temporary abrogation of the right to bail since these two fundamental rights are guaranteed by two separate provisions of the Bill of Rights.[34] There is no expressed, much less an implied, suggestion that paragraph 16 of section 1, of Article III is dependent or subordinate to paragraph 14 of section 1 of the same article of the Constitution. They stand distinctly and independently from each other. In the words of Justice Davies in Ex parte Milligan [35] where he referred to the constitutional safeguards embodied in the United States Constitution and which are similar to our own—"not one of these safeguards can the President or Congress or the Judiciary disturb, except the one concerning the writ of habeas corpus." [36]

It may be admitted that following the theory of Justice Tuason might eventually result in defeating the purpose of the suspension of the writ of habeas corpus. But it is undeniable that the right

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[34] Paragraph 14, Article III, Constitution of the Philippines provides: "The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist.."

Paragraph 16, ibid, "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required."

[35] 71 U.S. 281.

[36] *Ex Parte Milligan,* 71 U.S. 297.

which he has ably defended is guaranteed by the Constitution and as long as that great instrument exists, its provisions safeguarding individual liberty must be strictly followed unless the sovereign people has seen fit to abrogate the guarantees of the Bill of Rights by proper constitutional amendments. The right to bail before conviction is absolute except only in cases of capital offenses where the evidence of guilt is strong. Rebellion or insurrection,[37] and sedition [38] being non-capital offenses, persons charged with such crimes are of right entitled to bail. But even on the assumption that such offenses are punishable with death owing to the other crimes committed in connection with such rebellion or insurrection or sedition, still the accused are entitled to bail, subject to the court's discretion, if the state prosecutors do not present strong evidence sufficient to warrant the denial of that right to the accused. The ruling in *Teehankee vs. Rovira* (*supra*) that from the moment a person is placed under arrest, detention or restraint by the officers of the law, he can claim the right to bail, and that this right he retains unless and until he is charged with a capital offense and evidence of his guilt is strong, should not be overlooked. A formal complaint is not even necessary for the right to be asserted and demanded. But Justice Tuason willingly conceded that while the Executive Department, in the cases covered by the Executive Proclamation No. 210, has not filed any formal complaint or information, the Judicial Department cannot intercede on behalf of these detained persons to allow their provisional release by means of bail. The Judicial Department can only act upon the matter once an information or complaint has been formally filed. In the event that the bail issue is again presented before the Supreme Court and the theory of Justce Tuason is followed by said court, it will mean a modification of the decisional rule laid down in the *Teehankee vs. Rovira* case insofar as the cases covered by the suspension of the writ of habeas corpus are concerned and only during the existence of such suspension.

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[37] Article 135, Revised Penal Code: Penalty for Rebellion or Insurrection—"Any person who promotes, maintains, or heads a rebellion or insurrection, or who, while holding any public office or employment takes part therein, 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, shall suffer the penalty of *prision mayor* (from 6 years and 1 day to 12 years) and a fine not to exceed 20,000 pesos."

[38] Article 140, Revised Penal Code: Penalty for Sedition.—"The leader of a sedition shall suffer the penalty of *prision mayor* in its minimum period (6 years, 1 day to 6 years, 8 months) and a fine not exceeding 10,000 pesos."

"Other persons participating therein shall suffer the penalty of *prision correccional* in its maximum period (4 years, 2 months, 1 day to 6 years) and a fine not exceeding 2,000 pesos."

Assuming that the indictees are legally entitled to bail, may their right be enforced? Will mandamus lie against the President and his subordinates in the event that the Executive Branch of the government refuses to release said accused after they were ordered to be released by means of bail?

In the United States, there seems to be a conflict of authority as to whether mandamus will lie against the Chief Executives of the various states of the American Union.[39] But in the Philippines, the view is that the judicial department would not interfere by mandamus or otherwise for the purpose of controlling or directing the action of the officials of a coordinate department of the Government [40] and consequently mandamus will not issue against the President of the Republic of the Philippines to control the performance of the duties which properly pertain to his department.[41]

But although the writ of mandamus will not issue against the Chief Executive for the purpose of releasing the indictees on bail, yet his subordinates may properly be mandamused because, in the words of Justice Laurel, 'the relative immunity of the Chief Executive from judicial interference is not in the nature of a sovereign passport for all the subordinate officials and employees of the Executive Department to the extent that at the mere invocation of the authority that it purports the jurisdiction of this court (referring to the Supreme Court) to inquire into the validity or legality of an executive order is necessarily abated or suspended.' [42] Of course, it may be argued that even if mandamus will issue against the officers detaining the accused, the courts are without machinery or power to enforce their process, because their process can be enforced only with the assistance of the officers of the executive department.[43] But the courts may resort to contempt proceedings to punish the disobedient officials. This is inherent in the very nature of our system of government which recognizes the principle of checks and balances among the several departments.

And even assuming that the officials concerned in the Executive Department should be so stubborn as to prefer punishment by contempt rather than releasing the indictees, and for that reason the latter cannot be set at liberty because the writ of habeas corpus cannot be availed to take the indictees out of jail, still there is a greater force—the "ultimate tribunal of the public judgment"—be-

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[39] *Rice v. Draper,* 32 LRA (N.S.) 355 (For conflicting views see 6 LRA 750.)
[40] *Severino v. Governor-General,* 16 Phil. 366.
[41] *Abueva v. Wood,* 45 Phil. 612.
[42] *Planas v. Gil,* 67 Phil. 62.
[43] *Abueva v. Wood, supra.*

fore whom every official of the government accounts for his individual conduct, in the performance of his official duties.

Suppose the leaders of the "Huk" movement were arrested, should they also be released on bail and, therefore, giving them another opportunity to defy the constituted authorities and to endanger the lives and property of the people and the security of the State? Justice Tuason, it seems to me, has given the answer to this question. According to him there is no such creature as a complex crime of rebellion, sedition, or insurrection with murder, arson and kidnapping. He pointed out that separate charges for murder, arson and kidnapping ought to be instituted if the defendants are to be punished for these offenses. Inasmuch as these offenses are not essential elements of the definition of rebellion, sedition and insurrection, as the case may be, their inclusion in the information for the last-named offenses must be regarded as mere aggravating circumstances which only warrant the imposition of a penalty higher than the maximum provided for rebellion, etc. If such separate information is filed, then the accused would fall under the exception of Paragraph 16 of Section 1 of Article III of the Constitution, in which case the right to bail is not an absolute right but a matter of discretion to the court, subject to the presentation of evidence by the State sufficiently strong to create a high degree of presumption as to the guilt of the accused to warrant the denial of bail.