THE EPIC LEGAL STRUGGLE OF HERNANDEZ FOR BAIL

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IN the annals of the courts of the Philippines, no legal struggle for bail can equal that of Amado V. Hernandez, in the amount of combined legal efforts expended by recognized authorities on constitutional law and criminal law; and the length of time (almost six years) it took, before he won his provisional liberty.

Lawyers of recognized professional stature, specifically, Senators Jose P. Laurel and Lorenzo M. Tañada, Professors Enrique Fernando, Manuel O. Chan, Claudio Teehankee, and Antonio Barredo, constituted the group that headed the defense panel of several other lawyers.

The defense panel fought under phenomenally adverse circumstances, because it was up against an administration which subordinated individual civil liberties guaranteed by the Constitution to general principles and abstract considerations of the security of the state; because the members thereof happen to belong to political parties that tenaciously fought the abuses of the past administration; because the right of the individual to the privileges of the writ of habeas corpus was suspended then; because of the marked official prejudice against citizens who freely and courageously expressed their condemnation of the abuses of the administration; and because of the general apprehension over the possible victory of the rebels, which developed from the sporadic successes of the rebels against the more numerous and better-equipped forces of the government, infecting the minds of the people, perhaps subconsciously, to which contamination only a few judges were immune.

The fight of Hernandez for his provisional liberty started on the day that he was "invited" to Camp Murphy by the military authorities. In the legal struggles that followed, the basic argument relied upon by the defense panel to sustain the right of Hernandez to bail was that the suspension of the right to the privilege of the writ of habeas corpus did not suspend the constitutional right of the accused to bail.

* LL.B., U.M., 1929; President, Civil Liberties Union, 1939-41.

The lower court, which was not altogether free from apprehension, brushed aside the validity of this theory and Hernandez was denied bail. The case[1] was elevated to the Supreme Court. In a vote of five (5) affirmative and four (4) negative, the correctness of the aforementioned theory of the defense panel was upheld. However, the decision could not be enforced, because of its failure to satisfy the technical requirement of the Constitution, which calls for a two-third affirmative vote of the Supreme Court on questions involving the interpretation of the provisions of the Constitution. Hernandez had to stay confined for almost six years, a victim of the tyranny of a technicality, born of number.

Subsequent to his conviction by the trial court, several petitions for bail were denied by the Supreme Court. These reverses did not discourage the defense panel. Sometime in December, 1955, it renewed its petition for the release of Hernandez on bail, with the presentation of the following new logical arguments:

1. That soldiers killed by the forces of the rebels in their armed clashes, encounters, or sorties, with the forces of the government, or in ambushing them, are "combat casualties" and not murdered persons;
2. That civilians killed by the rebels during the rebellious movement, or resulting from the armed clashes between the rebels and the forces of the government are "civilian casualties" and not murdered persons;
3. That the taking of property, provisions, supplies, and other articles, by the rebels with the use of force is inherent in a rebellious movement and falls within the meaning of the term "foraging" and cannot be correctly qualified as robbery;
4. That the burning of private or public property by the rebels in the prosecution of the rebellious movement is an act designed to create chaos and confusion and cannot be embraced within the meaning of the crime of arson as the said crime is defined in the Penal Code; and
5. That the Court of First Instance of Manila is without jurisdiction to try the accused for the alleged murder of the soldiers and civilians by the rebels committed outside the City of Manila, consequently, he could be tried for rebellion only, the commission of which crime entitles the accused to the constitutional right to bail.

The aforementioned arguments were supplemented in April, 1956, with the legal argument that the provisions of article 135 of the Revised Penal

[1] Hernandez v. Montesa, G.R. No. L-4964, Oct. 11, 1951.

Code impose the maximum penalty of 12 years only for rebellion on persons found guilty of the following acts:

1. Those who promote, maintain, or head a rebellion or insurrection; or
2. Those who engage in war against the forces of the government; or
3. Those who, while holding any public office or employment, take part in the rebellion; or
4. Those who destroy property; or
5. Those who commit serious violence; or
6. Those who exact contributions; or
7. Those who divert public funds from the lawful purpose for which they have been appropriated; and
8. Those who are merely participating or merely executing the commands of others in rebellion. (*Prision mayor* in its minimum degree.)

The argument of the law which penalizes the aforementioned acts as simple rebellion, was advanced by the defense panel for the first time in 1956, to supplement the other arguments already advanced sustaining their theory that the crime of rebellion, complexed with murder, robbery, and arson, is not defined in the Revised Penal Code.

The resolution of the Supreme Court on the petition for bail of Hernandez is geared on the argument of the provisions of article 135 of the Revised Penal Code, although, in disposing of the case, it was careful in confining its resolution in the classification of the crime alleged in the information, in the following manner:

> 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 defendant, as means "necessary" for the perpetration of said offense of rebellion; that the crime charged in the aforementioned amended information, is, therefore, simple 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 ₱20,000; 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.[2]

Through oversight, many of those who read the aforementioned resolution, not excepting the Solicitor General, were not able to grasp the actual scope of the resolution, and were of the impression that the Supreme Court has ruled that the crime of rebellion, complexed with murder, robbery and arson is not defined in the Revised Penal Code.

[2] People v. Hernandez, 52 O.G. 5506, 5531-32 (1956).

It was only in the case of *People v. Geronimo*,[3] that the Supreme Court, with a vote of 7 to 3, in deciding the case on its merits, definitely laid down the ruling that the crime of rebellion, complexed with murder, robbery and arson, is not defined in the Revised Penal Code, holding that article 48 of the said Code is not applicable.

The ruling in the *Hernandez* case has automatically operated to reduce the penalties of life imprisonment, and of death, imposed by the lower court on the members of the Communist Politburo, to a maximum of twelve years. This is so, because the information filed against them is of the same stereotyped pattern as that filed against Hernandez, which alleges that the other common personal crimes of which they were charged were committed by the accused in the furtherance of the rebellious movement, and as a necessary means to commit the crime of rebellion.

A feeling of general apprehension arose over the effects of the decision of the Supreme Court, generated by the fear that the provisional liberty of those accused, and those convicted by the lower court, might precipitate this country into the danger of a resurgence of increased military activities on the part of the rebels, through the speculated re-vitalization of their leadership; the danger of those who will be released rejoining their comrades in the fastnesses of the mountains; and the effectual prosecution of what the Army qualifies as the legal and parliamentary struggle.

This feeling of apprehension was shared by top officers of the Armed Forces of the Philippines, which found expression in the abortive threat of some top officers of the Army to resign; and in the use of the said argument by the Solicitor General, which he expressed before the Supreme Court, in the press, and over the radio, to sustain his theory on the subject that was opposed to that adopted by the Supreme Court.

But even after the emotional expression of certain top men of the administration of their fear of the possible danger to the security of the state that the provisional liberty of those accused, or convicted by the lower court, for the crime of rebellion, complexed with murder, robbery, and arson, might bring about, the said court did not only not falter, but it subsequently decided, once and for all, the controversial legal question, which took it an exceptionally exhaustive research and consideration (about six years), when it subsequently promulgated its decision in the *Geronimo* case, stating categorically that the crime of rebellion, complexed with murder, robbery, and arson, is not defined in the Revised Penal Code.

That decision was the unequivocal and firm reply of the Supreme Court to those who assailed the wisdom of its decision, including the Solicitor General, who relied on the argument of general principles and abstract considerations of the security of the state.

Since the release of Hernandez on July 18, 1956, and even before that

[3] G.R. No. L-8936, Oct. 23, 1956.

date, quite a number of detained prisoners charged with the crime of rebellion, complexed with murder, robbery, and arson, have been released on bail. It is their uniform conduct of neither returning to the mountains to rejoin their former comrades, nor committing acts that are calculated to disturb the peace and order, in contrast to the fear entertained by those who discount the wisdom of the decision of the Supreme Court, that now operates to effectively destroy the argument that their release might endanger peace and order, and the security of the state. It stands out as the crowning justification of the firm and wise decision of the highest tribunal of the land, against a background of unjust attacks levelled against it by those who failed to take into account the fundamental principle reiterated by the said Court, in disposing of the petition of Hernandez for bail, on the role of the judicial department of a republican form of government, like ours, expressed in the following classical manner:

> The role of the judicial department under the Constitution is, however, clear—to settle justiceable controversies by the application of the law. And the latter must be enforced as it is—with all its flaws and defects, not affecting its validity—not as the judges would have it. In other words, the courts must apply the policy of the State as set forth in its laws, regardless of the wisdom thereof.[4]

Thus, the Supreme Court has maintained its equanimity amidst what may be considered an atmosphere loaded with emotional apprehension resulting from the inordinate fear expressed by a number of those charged with the suppression of the rebellion, and by those who were entrusted with the prosecution of the rebels, over the possibility of a resurgence of increased military operations on the part of the rebels, or the disturbance of peace and order.

The wisdom of the Supreme Court, translated in its equanimity and firmness amidst such an atmosphere of emotional apprehension, which, in some unfortunate instances, was expressed in a rather unkind, if not vitriolic manner, appropriately recalls to us the corresponding philosophy embodied in the opening lines of Kipling's poem, entitled "IF", which are quoted hereunder:

> "If you can keep your head when all about you
> Are losing theirs and blaming it on you,
>
> . . . .
>
> Yours is the Earth and everything that's in it,
> And — which is more — you'll be a Man, my son!"

However, there were those who were unperturbed by the gloomy picture painted by the prophets of disaster, and who entertained a feeling of human understanding, from the optimistic point of view. They were capable of

[4] People v. Hernandez, 52 O.G. 5506, 5529 (1956).

appreciating the wisdom of the resolution of the Supreme Court, on the argument that the said action, besides being what the law and the sound exercise of discretion demanded, might operate to facilitate the collapse of the rebellion, which many years of expensive and bitter bloody struggle could not bring about.

But far more significant than the provisional freedom of Hernandez, or for that matter, of any other individual, our Supreme Court, in disposing of the said case has definitely placed individual freedom over and above the argument of mere general principles and abstract considerations of public safety, which is expressed in the following manner:

> ...Furthermore, individual freedom is too basic, too transcendental and vital in a republican state, like ours, to be denied upon mere general principles and abstract considerations of public safety.[5]

On the argument of the security of the state being jeopardized by the release of the defendants on bail, Justice Pedro Tuason, who is now Secretary of Justice, in his dissenting opinion in the case of *Angeles v. Abaya*,[6] has given expression to the importance of civil liberty in its relation to the argument of the security of the state, in the following vein:

> To the plea that the security of the State would be jeopardized by the release of the defendants on bail, the answer is that the existence of danger is never a justification for the courts to tamper with the fundamental rights expressly granted by the Constitution. These rights are immutable, inflexible, yielding to no pressure of convenience, expediency or the so called "judicial statesmanship." If the Bill of Rights are incompatible with stable government and a menace to the Nation, let the Constitution be amended and 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.

In the course of his dissertation on the subject of civil liberty, in the said case, he quoted the ruling of Justice Robert H. Jackson of the United States Supreme Court, in *Williamson v. United States*,[7] which ruling was directed to be read by the Chief Justice of our Supreme Court during the oral argument of the petition of the co-defendants of Hernandez, after the Solicitor General painted a picture of what those who may be released on bail might do to disturb peace and order; and the possibility of their joining the rebels in the mountains, or their recourse to the legal and parliamentary strategy. The pertinent portions of the ruling of Justice Jackson are quoted hereunder:

> But the right of every American to equal treatment before the law is wrapped up in the same constitutional bundle with those of these Communists. If in

[5] *Id.* at 5532.
[6] G.R. No. L-5102, Oct. 11, 1951.
[7] 97 L. Ed. 1379 (1950).

anger or disgust with these defendants we throw out the bundle, we also cast aside protection for the liberties of more worthy critics who may be in opposition to the government of some future day.

If, however, I were to be wrong on all of these abstract or theoretical matters of principle, there is a very practical aspect of this application which must not be overlooked or underestimated—that is the disastrous effect on the reputation of American justice if I should now send these men to jail and the full Court later decide that their conviction is invalid. All experience with litigation teaches that the existence of a substantial question about a conviction implies a more than negligible risk of reversal. Indeed this experience lies back of our rule permitting and practice of allowing bail where such questions exist, to avoid the hazard of unjustifiable imprisoning persons with consequent reproach to our system of justice. If that is prudent judicial practice in the ordinary case, how much more important to avoid every chance of handing to the Communist world such an ideological weapon as it would have if this country should imprison this handful of Communist leaders on a conviction that our own highest Court would confess to be illegal. Risks, of course, are involved in either granting or refusing bail. I am not naive enough to underestimate the troublemaking propensities of the defendants. But, with the Department of Justice alert to the dangers, the worst they can accomplish in the short time it will take to end the litigation is preferable to the possibility of national embarrassment from a celebrated case of unjustified imprisonment of Communist leaders. Under no circumstances must we permit their symbolization of an evil force in the world to be hallowed and glorified by any semblance of martyrdom. The way to avoid that risk is not to jail these men until it is finally decided that they should stay jailed.

Congress refused to be pressurized by the emotional condemnatory prejudice against those who were justly judged by the highest tribunal of the land, and those who are standing trial and, therefore, expectant of the corresponding treatment. It was adamant in its refusal to change the policy of the present law on rebellion, as defined and applied by the Supreme Court. No better argument could be advanced to emphasize the correctness of the decision of the Supreme Court than this admirable fortitude of the representatives of the people, in spite of the fact that the rebellion remains unsuppressed.

The events that have already transpired, and those that are fast developing, all point to the wisdom of the decision of the Supreme Court, not only from the point of law, but from its practical effects on the psychology of the rebels, as reflected by the peaceful conduct of those who now enjoy their provisional liberty, and the propensity of the rebels to surrender.

With this decision of the Supreme Court, those rebels who were unwittingly drawn into the rebellion, most of whom might have been misguided only, may be attracted to give up, because of the definition of the crime which they have committed as simple rebellion; the recognition of the political motivation, as distinguished from the perversion which qualifies the commission of common personal crimes; and the reasonable penalty provided by law and applied by the Supreme Court.

As political offenders, the rebels fought for what they believed to be a legitimate cause, but lost; therefore, they have no reason to be ashamed of in their association with their own countrymen, after they have expiated their offense through the service of the corresponding penalty.

Rebels always have a cause which attracted them in its prosecution, in the splurge of a feeling of patriotism, or of a sense of oppression, fancied or real, which they prosecuted by staking their lives and their fortunes. *It is for this reason that rebels are criminals only if they fail; otherwise, they are patriots.*

Sooner or later, the misguided rebels will realize, from the manner they have been treated under our democratic system, that our way of life is indeed better than that of the communist system because, like any other individual, God has given them an intellect which enables them to distinguish between what is right and what is wrong, and human emotions which capacitate them to react to their mental processes.

It is believed that the understanding manner in which they have been treated under our democratic system cannot fail to enlighten them. Now that the rebellion cannot succeed, that discouraging factor will aid them to choose wisely between the two political ideologies, with the argument of our Christian heritage which is ingrained in our souls, as against atheistic Communism, contributing in their final choice, in favor of democracy.