NOTES

BAIL IN REBELLION CHARGES

I. HERNANDEZ VS. MONTESA, G. R. No. L-4964, OCTOBER 11, 1951.

II. NAVA ET AL. VS. GATMAITAN, G.R. No. L-4855, OCTOBER 11, 1951.

In two separate resolutions on October 11, 1951, the Supreme Court, after voting five (5) to four (4) to grant bail to defendants in rebellion charges, dismissed the above-titled petitions, inasmuch as the required majority of six (6) votes could not be had in accordance with Rule 56, Sec. 2 in connection with Rule 58, Sec. 1 of the Rules of Court. After a rehearing on the petitions, the result remained unchanged.

In favor of the right to bail: Chief Justice Ricardo Paras, Associate Justices Cesar Bengzon, Pedro Tuason, Alex Reyes and Fernando Jugo.

Against the right to bail: Associate Justices Felicisimo Feria, Guillermo Pablo, Sabino Padilla, and Felix Angelo Bautista

III. ANGELES VS. ABAYA, G.R. No. L-5102, OCT. 11, 1951.

In another resolution on October 11, 1951, the Supreme Court resolved by majority vote of six (6) justices to direct the respondent judge to hear the evidence of the prosecution to determine whether it is strong and to act accordingly.

In favor of the presentation of evidence: Chief Justice Ricardo Paras, Associate Justices Cesar Bengzon, Pedro Tuason, Alex Reyes, Fernando Jugo, and Felix Angelo Bautista.

Dissenting, against the order granting bail: Associates Justices Felicisimo Feria, Guillermo Pablo, and Sabino Padilla.

POINTS DISCUSSED:

1. Effect of suspension of writ of *habeas corpus*.
2. Effect of the filing of the information.
3. Effect of the grant of bail upon the security of the state.
4. Statutory construction of par. 14 and 16, Sec. 1, Art. III of the Constitution.

5. Effect of the Judiciary Act of 1948 upon Rule 56, Sec. 2 of the Rules of Court.
6. Complex crime of rebellion with murder, arson, and kidnapping.

1. EFFECT OF SUSPENSION OF WRIT OF HABEAS CORPUS

IN FAVOR OF THE RIGHT TO BAIL:

Chief Justice Paras—

Under par. 16, Sec. 1, Art. III of the Constitution, all persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. The crime of rebellion or insurrection is certainly not a capital offense, because it is penalized only by *prision mayor* and a fine not to exceed 20,000 pesos. The privilege of the writ of *habeas corpus* and the right to bail guaranteed under the Bill of Rights are separate and co-equal. If the intention of the framers of the Constitution was that the suspension of the privilege of the writ of *habeas corpus* carries or implies the suspension of the right to bail, they would have very easily 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 and except when the privilege of the writ of habeas corpus is suspended. As stated in the case of *Ex parte Milligan*, 4 *Wall* 2, 18 *L. ed.* 297, the Constitution limited the suspension to only one great right, leaving the rest to be forever inviolable.

Associate Justice Bengzon—

For one thing the Constitution does not provide that all accused persons shall be bailable except in capital offenses when the evidence of guilt is strong or when the President has suspended the writ of *habeas corpus*.

The proclamation of the Chief Executive did not have the effect of depriving the Courts of their normal powers or jurisdiction. It merely curtailed their privilege to issue the writ of *habeas corpus* at the request or on behalf of prisoners held for rebellion or insurrection. The proclamation did not suspend all the constitutional rights of such prisoners. Only the right to *habeas corpus*. Other remedies remain intact. The petition to go on bail is one of them.

Associate Justice Tuason:—

The intent of the Constitution in authorizing the suspension of the writ of *habeas corpus* is to give the authorities a free hand in dealing with persons bent on the overthrow of the Government. The effects of the suspension are negative, not positive; permissive, not mandatory nor even directory. The Bill of Rights, including the right to bail and the right to a fair trial are un-

affected by the suspension of the writ of *habeas corpus*. (*Ex parte Milligan, ante,* 297)

AGAINST THE RIGHT TO BAIL:

Associate Justice Bautista—

The immediate effect of the suspension of the writ of *habeas corpus* is the limitation of the right of the individual to his liberty and this restraint should continue so long as the proclamation remains pending or until the innocence of the person thus restricted has been declared by the courts.

2. EFFECT OF THE FILING OF THE INFORMATION

IN FAVOR OF THE RIGHT TO BAIL:

Chief Justice Paras—

In passing upon the petition to bail and in granting the same, the court does not inquire into the cause of detention which is plainly under and by virtue of commitments issued by the court upon filing of the information. Therefore, it does not interfere with an act of the Executive, for it cannot be seriously contended that the accused remains under executive detention and is still covered by the suspension of the writ of *habeas corpus,* after the filing of the information. Otherwise, the suspension will operate as a judgment of conviction, violative of the due process clause.

Associate Justice Bengzon—

Under the suspension of the writ of *habeas corpus,* the Executive erects a fence around those detained for rebellion or insurrection which the Judiciary may not penetrate by the writ of *habeas corpus.* But when the Executive, thru the fiscal, files an information requesting the courts to punish the particular rebel, he takes the prisoner out of the fenced premises and brings him before the Temple of Justice for trial, setting in motion a train of consequences including the principles of criminal procedure, *i.e.,* the right to bail and other rights of the prisoner at bar.

Associate Justice Tuason—

Under the proclamation suspending the writ of *habeas corpus,* all persons detained for investigation by the executive department are under executive control. But if and when formal complaint is presented, the court steps in and the executive steps out. The detention becomes a judicial concern and, henceforward, the accused is entitled to demand all constitutional safeguards and privileges essential to due process. The right to bail and to a fair trial are among those.

AGAINST THE RIGHT TO BAIL:

Associate Justice Padilla—

The arguments that whenever the person detained is turned over to the Judicial Department, executive control ceases and jurisdiction of competent courts attaches and begins, followed by legal process such as the grant of bail and that the power of the court to acquit the accused carries with it the power to grant bail, lose sight of the fact that the suspension of the writ of *habeas corpus* is authorized by the Constitution during abnormal conditions, and that the right to bail may be secured only during normalcy. Therefore, the prosecution of an accused detained under the proclamation does not confer authority upon the court to brush aside the terms of the decree of suspension. To hold otherwise would in effect be goading the agents of the executive department to detain persons indefinitely without filing any charge against them.

Associate Justice Bautista—

By the express terms of the suspension of the writ of *habeas corpus,* a person presently or similarly detained for the crime of rebellion, insurrection, or sedition, and for all other crimes committed in furtherance thereof should remain so detained before or after indictment.

By the very purpose of the proclamation, such person should be under detention during the investigation and, with more reason, after formal charges have been filed, for mere suspicion has materialized into evidence. To grant him bail would destroy the very purpose of the law.

By the very nature of the writ of *habeas corpus,* Rule 102, Sec. 1, Rules of Court extends the scope to all cases of illegal confinement or detention, *i.e.,* not only to discharge from imprisonment but also the right to bail if the offense is bailable. Being the only remedy to test legality of restraint, it logically follows that the proclamation denies him the right to bail.

From the moment the accused is charged, he is not denied due process of law simply because of his confinement under the proclamation. The only limitation is the restriction of freedom. And this is not a relinquishment of a judicial prerogative, for the power has been withheld as a necessary consequence of the suspension of the writ. Therefore, the denial of bail is not a denial of such right which the accused never possessed.

Associate Justice Pablo—

The remedy available to an accused for his provisional liberty on bail is *habeas corpus,* as stated in a long line of American and Philippine decisions. But this remedy is not only directed against the detentions by the Executive but also as a procedural instrument against the courts and even Congress. The proclamation does not distinguish to what kind of detention is the writ suspended. It is applicable, therefore, to the executive as well as the judicial.

The theory that the Executive power can detain persons indefinitely without the necessity of giving an account for such detention but that once the courts assume jurisdiction over the detained they have the right to liberty on bail, encourages the establishment of a dictatorial and autocratic government. For once detained indefinitely, the courts would not have the opportunity to acquit the innocent. This would bring a reign of force and not of law.

Under the present set-up, the detained persons are delivered to the courts of justice so that they can be tried as soon as possible; if they are guilty, they are punished; if they are innocent, they are acquitted. Is this not due process of law?

3. Effect of the Grant of Bail upon the Security of the State

In Favor of the Right to Bail:

Chief Justice Paras—

We are not insensitive to the proposition that the very nature of the crime of rebellion suggests the likelihood that a person accused thereof will jump his bail. The remedy, however, is unfortunately not in the hands of the court. The lawmakers or the framers of the Constitution should have made the offense capital or even unbailable. But if worse comes to worst, to the extent that the security of the state is in fact imperilled, the President is authorized by the Constitution to place the Philippines or any part thereof under martial law.

Associate Justice Bengzon—

As long as the Legislature has not deemed it proper to make rebellion a capital offense, bail must be allowed. One of the surest means to ease the present uprising is the sincere demonstration of the Government's adherence to an impartial application of the principles of the Constitution to all persons whether dissidents or not. The rebels must be given the assurance that the judiciary upholds individual rights and that in case of doubt as to the construction of the Constitution, the courts will favor personal liberty.

Associate Justice Tuason—

The existence of danger does not justify the court to tamper with fundamental rights of the Constitution. If the Bill of Rights would conflict with the security of the state, let the Constitution be amended. The risk of escape in the granting of bail has not been overlooked by the wise framers of the Constitution. But it is a lesser evil than the imprisonment of innocent persons who are presumed innocent by law.

Against the Right to Bail:

Associate Justice Bautista—

When the right of an individual conflicts with the right of security of the state, the individual right must yield. This is a self-evident political shibboleth. If two constitutional provisions conflict, the one which, under the law, is the lesser right must yield. The security of the state being the greater right, the right to bail must yield.

Associate Justice Pablo—

The purpose of the proclamation is to scuttle the destructive wave of rebellion or insurrection. If those detained are set free, they could repeat their depredations and redouble their work of destruction. Their release by bail would endanger the security of the state. The person detained for the rebellion or insurrection and released by the Executive power is as dangerous as an accused charged of the same crime and released by Judicial power.

If the reason for the suspension of the writ of *habeas corpus* is to suppress rebellion or insurrection, is it not inconsistent to grant provisional liberty to those accused of the same crime?

4. Statutory Construction of Par. 14 and 16, Sec. 1, Art. III of the Constitution

In favor of the Right to Bail:

Chief Justice Paras—

If it be contended that the suspension of the privilege of the writ of *habeas corpus* (par. 14, sec. 1, art. 3) includes the suspension of the distinct right to bail (par. 16, sec. 1, art. 3) or to be provisionally at liberty, it would *a fortiori* imply the suspension of all his other rights (even the right to be tried by a court) that may win for him ultimate acquittal and, hence, absolute freedom. The latter result is not insisted upon for being patently untenable.

Associate Justice Bengzon—

There are two schools of thought: one maintains that the right to bail has been impliedly suspended with the suspension of the writ of *habeas corpus;* whereas the other asserts that the right to bail is expressly guaranteed in the Constitution, not only as an individual privilege but also as a judicial prerogative. Express guarantee versus implied derogation. Considering that repeals by implication are never favored, the choice offers no doubt; the desired advantage to the prosecution should not outbalance the right of the prisoner nor the powers of the court.

Associate Justice Tuason—

In the rule of strict construction, generally applied to statutes in derogation of natural individual rights, the provision which secures the right to bail must prevail. If the purpose were otherwise, it would have been easy to have accomplished it by the use of direct words.

AGAINST THE RIGHT TO BAIL:

Associate Justice Padilla—

Par. 14, sec. 1, art. 3 of the Constitution as well as par. 16 of the same section and article and the provision against excessive bail may be invoked and applied only during normal times, taking into account the import of par. 14. They cannot be applied when abnormal conditions prevail. So that if the writ of *habeas corpus* is suspended, a person detained on the ground of invasion, insurrection or rebellion cannot be granted such writ. That being the case, there would be no cogent reason for the court to act otherwise if the person detained has been indicted for rebellion or insurrection.

Associate Justice Bautista—

Section 1 (14) of Art. III of the Constitution refers to specific cases of invasion, insurrection or rebellion whereas par. 16 of the same section refers to all offenses except those involving capital punisment and is, therefore, general in nature. In construing these provisions, if in conflict, the specific should be given effect and treated as an exception to the general (16 C.J.S. 65, 66). Therefore, the suspension of the writ should be treated as an exception to the general clause of the right to bail.

Constitutional provisions must be so construed that each harmonizes with the others and the instrument as a whole. The presumption is that each clause has been inserted for some useful purpose. Courts should avoid a construction which would render any portion meaningless. Therefore, to grant the right to bail would render ineffective and nugatory the suspension of the writ of habeas corpus. That is an unreasonable interpretation.

5. EFFECT OF THE JUDICIARY ACT OF 1948 UPON RULE 56, SEC. 2 OF THE RULES OF COURT

Associate Justice Feria:

I dissent from the resolutions dismissing the petitions in these cases under Sec. 2, Rule 56 on the ground that after a rehearing thereof the necessary majority of six votes cannot be had for the pronouncement of a judgment or decision.

The approval of the Judiciary Act of 1948 raising the number of justices from seven (7) to eleven (11) in the Supreme Court made obsolete Sec. 2, Rule 56 as well as Sec. 12, Rule 120 of the Rules of Court in view of the fact that there will always be

eleven (11) justices qualified to act and present, by designating the necessary number of justices of the Court of Appeals or District judges by the Chief Executive upon the recommendation of the Chief Justice of the Supreme Court, if necessary in any given case, until a judgment is had.

Therefore, Sec. 2, Rule 56 cannot be applied in the present case because no recommendation has been made for the necessary majority of six (6) justices, for there is one vacancy in this Court and Justice Montemayor is absent.

6. COMPLEX CRIME OF REBELLION WITH MURDER, ARSON, AND KIDNAPPING

Associate Justice Tuason:

The inclusion of murders, arsons, and kidnapping 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 should be instituted. Murder, arson, or kidnapping is not an essential element of the definition or rebellion. There is no such creature known to law as the complex crime of rebellion with murder, etc. ANGELES V. ABAYA, supra.

IN FAVOR OF THE PRESENTATION OF EVIDENCE:

Associate Justice Bautista—

The respondent judge has disregarded a matter of procedure. The order of Sept. 12, 1951 granting bail was not yet final when the request to present evidence was made and estoppel does not operate against the law and the Constitution. Furthermore, the information charges a capital offense. Considering, therefore, the circumstances that had occured in regarding bail, the denial of the request to present evidence was committed in abuse of discretion.

Federico Moreno