

FIRST DIVISION

[G.R. No. L-442. May 23, 1946.]

JOSE CARAOS, *petitioner*, vs. **IÑIGO S. DAZA**, Judge of First instance of Batangas, **JOSE A. ALANO**, Provincial Fiscal of Batangas, and **THE DIRECTOR OF PRISONS**, *respondents*.

DECISION

DE JOYA, J :

This is a case of certiorari and habeas corpus in which the petition was filed originally in this court.

Petitioner Jose Caraos alleges in his petition that on January 6, 1944, he, with his two brothers, Ramon Caraos and Emilio Caraos, were prosecuted for the crime of homicide in criminal case No. 374, entitled People vs. Jose Caraos, in the Court of First Instance of Batangas; that after due trial, on May 3, 1944, said court rendered its judgment convicting herein petitioner of said crime and sentenced him to suffer a term of imprisonment, ranging from six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, to identify the heirs of the deceased Leoncio Ylagan in the sum of P2,000, and to pay one-third of the cost; while his said two brothers were acquitted of the crime charged; that petitioner did not appeal from said decision, and on May 3, 1944, he commenced serving his sentence in the provincial jail of Batangas; that on November 9, 1944, he was released from said provincial jail "by order of the Provincial Governor of Batangas pursuant to a pardon issued by the authority concerned on those days of Japanese military occupation", that by virtue of a complaint filed by Estrella Punzalan Vda. de Ylagan, wife of the deceased Leoncio Ylagan, victim in said homicide case, with the Department of Justice, after liberation, the respondent Jose A. Alano, provincial fiscal of Batangas, conducted an investigation, on February 8, 1946, to determine the facts and circumstances of the release of herein petitioner from the provincial jail of Batangas, taking the testimony of Antonio Casanova, chief of police of Taal, Batangas, Estrella Punzalan Vda. de Ylagan, Marcelino K. Medina, provincial warden of Batangas, from June, 1942 to December, 1944, Maximo M. Malvar, provincial governor of Batangas, during the Japanese occupation, and petitioner Jose Caraos himself; that on March 6, 1946, said Estrella Punzalan Vda. de Ylagan filed an ex parte motion in the Court of First Instance of Batangas, requesting the issuance of a warrant for the arrest of herein petitioner to continue serving the unexpired portion of the penalty imposed upon him; and that on the same day, March 6, 1946, respondent Judge Iñigo S. Daza ordered the issuance of an order of commitment for the incarceration of petitioner Jose Caraos, and at the same time ordered his arrest for that purpose. The following day, March 7, 1946, the respondent Judge ordered the confinement of herein petitioner in the provincial jail of Batangas. Jose Caraos filed a petition for the reconsideration of said order dated March 6, 1946, which was denied on March 26, 1946.

To the petition for certiorari and habeas corpus, filed in this Court, where attached a copy of the docket entries in said criminal case No. 374, as Annex A; the

transcript of the testimony of the witnesses that testified in the investigation conducted by the respondent provincial fiscal of Batangas, as Annex B; copy of said *ex parte* motion filed on March 6, 1946, by Estrella Punzalan Vda. de Ylagan, as Annex C; copy of said order issued by respondent Judge Iñigo S. Daza, on March 6, 1946, as Annexed D; copy of the order, dated March 7, 1946, issued by said respondent Judge, for the confinement in the provincial jail of Batangas of the person of petitioner Jose Caraos, as Annex E; and copy of the order, dated March 26, 1946, issued by said respondent Judge, denying Jose Caraos' petition for reconsideration of said order, as Annex F.

On May 2, 1946, on behalf of the respondents, the provincial fiscal of Batangas filed an answer to said petition for certiorari and habeas corpus, expressly admitting the allegations made in said petition, except those contained in paragraphs 4, 5, 12, 13, 14, 15, and 17, to the effect that herein petitioner had been released on November 9, 1944, pursuant to pardon granted or executive clemency extended to him by the proper authorities; that the orders issued by the respondent judge for his arrest and confinement are illegal and null and void; and that he is now being illegally detained, all of which were expressly denied. As special defenses, respondents allege (1) that the respondent judge has jurisdiction to issue the order of arrest and confinement of the petitioner, for the service of the unexpired portion of his sentence; (2) that the petitioner's release from the Batangas provincial jail, where he was temporarily confined as an insular prisoner, was ordered in a state of emergency to provide for his safety; (3) that normal conditions having returned, it is but just and legal that he should be rearrested and ordered to serve the unexpired portion of his sentence; (4) that the respondent Judge had a perfect right to issue the order complained of, in the exercise of his inherent powers, to compel obedience to the judgment rendered by the court and to control the conduct of its ministerial officers; (5) that there was no pardon granted or executive clemency extended to the petitioner, at the time he was released from jail, in November or December, 1944.

On May 13, 1946, on behalf of the respondent Director of Prisons, the Solicitor General filed an answer, alleging that petitioner Jose Caraos has been confined in the New Bilibid Prison, since April 8, 1946, by virtue of a *mittimus* issued by the Court of First Instance of Batangas, having been convicted of the crime of homicide, on May 3, 1944, and sentenced to six (6) years and one (1) day of *prision mayor* to twelve (12) years and one (1) day of *reclusion temporal*; that said respondent Director of Prisons has no knowledge or information of any valid pardon granted by competent authority to said petitioner so as to entitle him to be released from custody; that the pardon alleged in the petition was illegal, null and void, and that herein petitioners is, therefore, subject to imprisonment for the unexpired portion of his sentence.

It is an undisputed fact that on May 3, 1944, herein petitioner was found guilty of the crime of homicide, committed on the person of one Leoncio Ylagan, and sentenced by the Court of First Instance of Batangas to an indeterminate penalty ranging from six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, and to indemnify the heirs of the deceased in the sum of P2,000, and to pay one-third of the costs; and that herein petitioner did not appeal from said decision, and he commenced serving said sentence from May 3, 1944. It is also admitted that herein petitioner was released from the provincial jail of Batangas, where he was confined temporarily, as an insular prisoner, in November or December, 1944.

Petitioner alleges that he was released "by order of the Provincial Governor of Batangas, pursuant to a pardon issued by the *authority concerned on those days of Japanese military occupation.*" Such is the vague and ambiguous language used by the petitioner in the petition for certiorari and habeas corpus filed in this Court. And the only question to be determined in this case is whether such pardon or executive clemency had really been extended to herein petitioner by the proper authorities, in November or December, 1944.

According to the testimony given by petitioner Jose Caraos, in the investigation conducted by the respondent provincial fiscal, on February 8, 1946, certain relatives and friends of his, upon whom he depended to work for his release or pardon, approached the provincial governor of Batangas to intercede, on his behalf, for his release or pardon; that one week before he was actually released by the provincial warden, he had heard that he was going to be released or pardoned, and that before his release on November 9, 1944, there had been bombing and strafing in the vicinity of the provincial capitol of Batangas, where the provincial jail was located; and that he received his release papers, but lost them.

Marcelino K. Medina, provincial warden of Batangas at the time, stated that by order of the provincial governor all the prisoners were released in December, 1944, on account of continuous bombing, but that he could not remember whether herein petitioner Jose Caraos was included among them; and that certain other prisoners had been released prior to December, 1944, by executive clemency, but whether herein petitioner was included among them, he could not remember.

Maximo M. Malvar, provincial governor of Batangas at the time, testified that he ordered the release of all prisoners in December, 1944, on account of continuous bombing and scarcity of food; and that others had been released pursuant to executive clemency prior thereto, but he could not remember whether herein petitioner was included among them.

Estrella Punzalan Vda. de Ylagan testified that after herein petitioner Jose Caraos had been sentenced in May, 1944, she saw him in Taal, Batangas, in the early part of December, 1944, although in her ex parte motion, dated March 6, 1946, she stated that herein petitioner was released on November 9, 1944, due to continuous bombing and scarcity of food.

The statement made by Estrella Punzalan Vda. de Ylagan, in her motion dated March 6, 1946, to the effect that herein petitioner was released on November 9, 1944, must have been influenced and induced by the declaration made by said petitioner that he had been released on November 9, 1944, when he testified before the respondent provincial fiscal, on February 8, 1946.

In the opinion of the Court, there is no sufficient evidence to establish the fact that on November 9, 1944, herein petitioner was released from the provincial jail of Batangas, pursuant to a pardon granted or executive clemency extended to him by competent authority.

Under the law, the only authority that could have granted pardon or executive clemency to herein petitioner, during Japanese occupation, was the President of the so-called Philippine Republic, or the Commander in Chief of the Japanese imperial forces. (*Sameth vs. Director of Prisons*, p. 613, *ante*). But no competent or satisfactory evidence has been presented to show that such pardon had been granted. The order issued for his arrest was, therefore, legal and proper. (*People vs. Ponce de Leon*, 56

Phil., 386, 391.)

If herein petitioner had really been pardoned either by the Commander in Chief of the Japanese imperial forces or by the President of the so-called Philippine Republic, on November 9, 1944, he should have presented certified copies of his petition for pardon and the alleged pardon extended to him. There must be records of such official acts, if they had really taken place; and herein petitioner has failed to present any, coming either from the Insular Government or the provincial government of Batangas.

In a similar case, an unsigned and uncertified copy claimed to have been furnished to the clerk of court or the chief of constabulary of an alleged pardon was not considered competent evidence to establish the fact that pardon had really been granted to the accused. (*United States vs. Zapanta and Lampano*, 33 Phil., 567.)

When in the petition for certiorari and habeas corpus filed in this case, the petitioner alleged that he had been released "by order of the Provincial Governor of Batangas pursuant to a pardon issued by the authority concerned on those days of Japanese military occupation," he himself unwittingly revealed that no pardon had been legally granted by competent authorities; and that if petitioner had been pardoned at all, it must have been extended to him by the provincial governor of Batangas, who had absolutely no right or authority to extend to him executive clemency. In case of an invalid pardon, the original sentence imposed upon the prisoner must be carried out. (*Cabantag vs. Wolfe*, 6 Phil., 273.)

The other possible and logical conclusion is that herein petitioner was among the prisoners whose mass release was ordered by the provincial governor of Batangas, sometime in December, 1944, for their own safety and protection, due to the continuous bombing and strafing of the vicinity in which the provincial jail was located, by the American Air Force, and the scarcity of food; in which was it was his duty to surrender himself upon the restoration of normalcy.

If the contention of the petitioner were true, his relatives and friends, who had allegedly helped to secure his pardon, and who must have been known to him, should have been presented as witnesses to testify to that effect, at the investigation conducted by the provincial fiscal. Failure on his part to present their testimony, unfortunately for him, gives rise to the presumption that there were no such witnesses; and that if there were any, their testimony would be adverse and unfavorable to the pretension of the prisoner. (*United States vs. Sarikala*, 37 Phil., 486; *Ahern vs. Julian*, 39 Phil., 607; *Ramos vs. Ramos*, 45 Phil., 362.)

Furthermore, no special reason has been advanced why herein petitioner should have been pardoned; and strange to say, in his testimony given before the respondent provincial fiscal, he failed to disclose the nature of the release papers he claimed to have received, and the authority by which they had been allegedly issued.

Inasmuch as herein petitioner has not surrendered to the proper authorities, after liberation, his condition is analogous to that of a prisoner, who has escaped from the penitentiary establishment. Under such circumstances, it was not only the right but the imperative duty of the courts, in the exercise of their inherent powers (Rule 124, Section 5, Rules of Court), concurrently with the Chief Executive (Rev. Adm. Code, section 64 [1]), to order his arrest, so that he might serve the unexpired portion of his sentence; and the corresponding warrant of arrest was needed by the agents of the authorities for their own protection.

In view of the foregoing, it is evident that herein petitioner Jose Caraos has utterly

failed to establish, by competent and satisfactory evidence, that he had been pardoned by the proper authorities, and released from the provincial jail of Batangas, by virtue thereof, on or about November 9, 1944; and he must, therefore, continue under confinement to serve the unexpired portion of the sentence imposed upon him; and, consequently, his petition for certiorari and habeas corpus must be denied and dismissed, with costs. So ordered.

Moran, C.J., Feria, and Pablo, JJ., concur.