

EN BANC

[G.R. Nos. 132875-76, February 03, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO G. JALOSJOS, ACCUSED-APPELLANT.

R E S O L U T I O N

YNARES-SANTIAGO, J.:

The accused-appellant, Romeo G. Jalosjos is a full-fledged member of Congress who is now confined at the national penitentiary while his conviction for statutory rape on two counts and acts of lasciviousness on six counts^[1] is pending appeal. The accused-appellant filed this motion asking that he be allowed to fully discharge the duties of a Congressman, including attendance at legislative sessions and committee meetings despite his having been convicted in the first instance of a non-bailable offense.

The issue raised is one of first impression.

Does membership in Congress exempt an accused from statutes and rules which apply to validly incarcerated persons in general? In answering the query, we are called upon to balance relevant and conflicting factors in the judicial interpretation of legislative privilege in the context of penal law.

The accused-appellant's "Motion To Be Allowed To Discharge Mandate As Member of House of Representatives" was filed on the grounds that –

1. Accused-appellant's reelection being an expression of popular will cannot be rendered inutile by any ruling, giving priority to any right or interest – not even the police power of the State.
2. To deprive the electorate of their elected representative amounts to taxation without representation.
3. To bar accused-appellant from performing his duties amounts to his suspension/removal and mocks the renewed mandate entrusted to him by the people.
4. The electorate of the First District of Zamboanga del Norte wants their voice to be heard.
5. A precedent-setting U.S. ruling allowed a detained lawmaker to attend sessions of the U.S. Congress.
6. The House treats accused-appellant as a *bona fide* member thereof and urges a co-equal branch of government to respect its mandate.

7. The concept of temporary detention does not necessarily curtail the duty of accused-appellant to discharge his mandate.
8. Accused-appellant has always complied with the conditions/restrictions when allowed to leave jail.

The primary argument of the movant is the "mandate of sovereign will." He states that the sovereign electorate of the First District of Zamboanga del Norte chose him as their representative in Congress. Having been re-elected by his constituents, he has the duty to perform the functions of a Congressman. He calls this a covenant with his constituents made possible by the intervention of the State. He adds that it cannot be defeated by insuperable procedural restraints arising from pending criminal cases.

True, election is the expression of the sovereign power of the people. In the exercise of suffrage, a free people expects to achieve the continuity of government and the perpetuation of its benefits. However, in spite of its importance, the privileges and rights arising from having been elected may be enlarged or restricted by law. Our first task is to ascertain the applicable law.

We start with the incontestable proposition that all top officials of Government—executive, legislative, and judicial are subject to the majesty of law. There is an unfortunate misimpression in the public mind that election or appointment to high government office, by itself, frees the official from the common restraints of general law. Privilege has to be granted by law, not inferred from the duties of a position. In fact, the higher the rank, the greater is the requirement of obedience rather than exemption.

The immunity from arrest or detention of Senators and members of the House of Representatives, the latter customarily addressed as Congressmen, arises from a provision of the Constitution. The history of the provision shows that the privilege has always been granted in a restrictive sense. The provision granting an exemption as a special privilege cannot be extended beyond the ordinary meaning of its terms. It may not be extended by intendment, implication or equitable considerations.

The 1935 Constitution provided in its Article VI on the Legislative Department:

Sec. 15. The Senators and Members of the House of Representatives shall in all cases except treason, felony, and breach of the peace be privileged from arrest during their attendance at the sessions of Congress, and in going to and returning from the same; xxx.

Because of the broad coverage of felony and breach of the peace, the exemption applied only to civil arrests. A congressman like the accused-appellant, convicted under Title Eleven of the Revised Penal Code could not claim parliamentary immunity from arrest. He was subject to the same general laws governing all persons still to be tried or whose convictions were pending appeal.

The 1973 Constitution broadened the privilege of immunity as follows:

Article VIII, Sec. 9. A Member of the Batasang Pambansa shall, in all offenses punishable by not more than six years imprisonment, be

privileged from arrest during his attendance at its sessions and in going to and returning from the same.

For offenses punishable by more than six years imprisonment, there was no immunity from arrest. The restrictive interpretation of immunity and the intent to confine it within carefully defined parameters is illustrated by the concluding portion of the provision, to wit:

xxx but the Batasang Pambansa shall surrender the member involved to the custody of the law within twenty four hours after its adjournment for a recess or for its next session, otherwise such privilege shall cease upon its failure to do so.

The present Constitution adheres to the same restrictive rule minus the obligation of Congress to surrender the subject Congressman to the custody of the law. The requirement that he should be attending sessions or committee meetings has also been removed. For relatively minor offenses, it is enough that Congress is in session.

The accused-appellant argues that a member of Congress' function to attend sessions is underscored by Section 16 (2), Article VI of the Constitution which states that—

(2) A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner, and under such penalties, as such House may provide.

However, the accused-appellant has not given any reason why he should be exempted from the operation of Section 11, Article VI of the Constitution. The members of Congress cannot compel absent members to attend sessions if the reason for the absence is a legitimate one. The confinement of a Congressman charged with a crime punishable by imprisonment of more than six months is not merely authorized by law, it has constitutional foundations.

Accused-appellant's reliance on the ruling in *Aguinaldo v. Santos*^[2], which states, *inter alia*, that –

The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When a people have elected a man to office, it must be assumed that they did this with the knowledge of his life and character, and that they disregarded or forgave his fault or misconduct, if he had been guilty of any. It is not for the Court, by reason of such fault or misconduct, to practically overrule the will of the people.

will not extricate him from his predicament. It can be readily seen in the above-quoted ruling that the *Aguinaldo* case involves the administrative removal of a public officer for acts done *prior* to his present term of office. It does not apply to imprisonment arising from the enforcement of criminal law. Moreover, in the same way that preventive suspension is not removal, confinement pending appeal is not removal. He remains a congressman unless expelled by Congress or, otherwise,

disqualified.

One rationale behind confinement, whether pending appeal or after final conviction, is public self-defense. Society must protect itself. It also serves as an example and warning to others.

A person charged with crime is taken into custody for purposes of the administration of justice. As stated in *United States v. Gustilo*,^[3] it is the injury to the public which State action in criminal law seeks to redress. It is not the injury to the complainant. After conviction in the Regional Trial Court, the accused may be denied bail and thus subjected to incarceration if there is risk of his absconding.^[4]

The accused-appellant states that the plea of the electorate which voted him into office cannot be supplanted by unfounded fears that he might escape eventual punishment if permitted to perform congressional duties outside his regular place of confinement.

It will be recalled that when a warrant for accused-appellant's arrest was issued, he fled and evaded capture despite a call from his colleagues in the House of Representatives for him to attend the sessions and to surrender voluntarily to the authorities. Ironically, it is now the same body whose call he initially spurned which accused-appellant is invoking to justify his present motion. This can not be countenanced because, to reiterate, aside from its being contrary to well-defined Constitutional restraints, it would be a mockery of the aims of the State's penal system.

Accused-appellant argues that on several occasions, the Regional Trial Court of Makati granted several motions to temporarily leave his cell at the Makati City Jail, for official or medical reasons, to wit:

- a) to attend hearings of the House Committee on Ethics held at the Batasan Complex, Quezon City, on the issue of whether to expel/suspend him from the House of Representatives;
- b) to undergo dental examination and treatment at the clinic of his dentist in Makati City;
- c) to undergo a thorough medical check-up at the Makati Medical Center, Makati City;
- d) to register as a voter at his hometown in Dapitan City. In this case, accused-appellant commuted by chartered plane and private vehicle.

He also calls attention to various instances, after his transfer at the New Bilibid Prison in Muntinlupa City, when he was likewise allowed/permitted to leave the prison premises, to wit:

- a) to join "living-out" prisoners on "work-volunteer program" for the purpose of 1) establishing a mahogany seedling bank and 2) planting mahogany trees, at the NBP reservation. For this purpose, he was assigned one guard and allowed to use his own vehicle and driver in going to and from the project area

and his place of confinement.

- b) to continue with his dental treatment at the clinic of his dentist in Makati City.
- c) to be confined at the Makati Medical Center in Makati City for his heart condition.

There is no showing that the above privileges are peculiar to him or to a member of Congress. Emergency or compelling temporary leaves from imprisonment are allowed to all prisoners, at the discretion of the authorities or upon court orders.

What the accused-appellant seeks is not of an emergency nature. Allowing accused-appellant to attend congressional sessions and committee meetings for five (5) days or more in a week will virtually make him a free man with all the privileges appurtenant to his position. Such an aberrant situation not only elevates accused-appellant's status to that of a special class, it also would be a mockery of the purposes of the correction system. Of particular relevance in this regard are the following observations of the Court in *Martinez v. Morfe*:^[5]

The above conclusion reached by this Court is bolstered and fortified by policy considerations. There is, to be sure, a full recognition of the necessity to have members of Congress, and likewise delegates to the Constitutional Convention, entitled to the utmost freedom to enable them to discharge their vital responsibilities, bowing to no other force except the dictates of their conscience. Necessarily the utmost latitude in free speech should be accorded them. When it comes to freedom from arrest, however, it would amount to the creation of a privileged class, without justification in reason, if notwithstanding their liability for a criminal offense, they would be considered immune during their attendance in Congress and in going to and returning from the same. There is likely to be no dissent from the proposition that a legislator or a delegate can perform his functions efficiently and well, without the need for any transgression of the criminal law. Should such an unfortunate event come to pass, he is to be treated like any other citizen considering that there is a strong public interest in seeing to it that crime should not go unpunished. To the fear that may be expressed that the prosecuting arm of the government might unjustly go after legislators belonging to the minority, it suffices to answer that precisely all the safeguards thrown around an accused by the Constitution, solicitous of the rights of an individual, would constitute an obstacle to such an attempt at abuse of power. The presumption of course is that the judiciary would remain independent. It is trite to say that in each and every manifestation of judicial endeavor, such a virtue is of the essence.

The accused-appellant avers that his constituents in the First District of Zamboanga del Norte want their voices to be heard and that since he is treated as *bona fide* member of the House of Representatives, the latter urges a co-equal branch of government to respect his mandate. He also claims that the concept of temporary detention does not necessarily curtail his duty to discharge his mandate and that he has always complied with the conditions/restrictions when he is allowed to leave jail.

We remain unpersuaded.