101 Phil. 57

[G. R. No. L-9892. April 16, 1957]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. FRANCISCO BASALO, DEFENDANT AND APPELLEE.

D E C I S I O N

MONTEMAYOR, J.:

The Government, through the Provincial Fiscal of Bataan, is appealing the order of the trial court of August 30, 1955, dismissing the case against the defendant-appellee Francisco Basalo for alleged violation of Article 319 of the Revised Penal Code, on the ground of prescription.

In Criminal Case No. 4681 of the Court of First Instance of Bataan, Francisco Basalo was charged with "having unlawfully and fraudulently sold and disposed of eighty cavans of palay, he had mortgaged to the Philippine National Bank, without the knowledge and consent of the mortgagee, to the damage and prejudice of the said bank in the sum of at least P280. Upon arraignment, the accused interposed the defense of prescription on the ground that more than-five years had elapsed from the time the offense was allegedly committed to the filing of the information on June 5, 1953. Answering the defense of prescription, the prosecution claimed that the Bank discovered the offense 6nly in the year 1953.

The trial court ruling on the defense of prescription held that according to the terms of the chattel mortgage contract between the Bank and the defendant, Basalo, a copy of which was attached to the complaint, on the standing crop for the agricultural year 1947-1948 planted by the. defendant sometime before July 14, 1947, when the mortgage was executed, he was given a loan of P320.00, which was due and demandable ten months from said date; that the contract gave the mortgagee or his lawful representative the power of attorney to store the mortgaged crop or the product into which the same may Tae converted; and considering these circumstances, the Bank could not well claim that it discovered the

commission of. the offense only in 1953; that (we quote part of the appealed order).

> "The crime of fraudulent disposal of the mortgaged crops could have "been discovered by the mortgagee ten (10) months after the execution of the contract or, at the vexy least, sometime in September, 1947 when the crops which were standing on July 14, 1947 would have been harvested. For the Philippine National Bank mow to argue that it discovered only the crime in 1%3 is an admission of negligence "which should not exempt it from the consequence of the operation of the law, The Court is of the opinion, therefore, that the Philippine National Bank should have discovered the fraudulent disposal of the standing crops or the products into which they were converted sometime in September, 1947 and consequently the 'information' filed by it on June 5, 1953 was filed beyond the five-year period provided for by Article 90 of the Sevised Penal Code."

Disposing of the contention of the prosecution that the alternative penalty of a fine attached to a violation of the ¦chattel mortgage law embodied in Article 319 of the Revised Penal Code, should be made the basis for determining the period of prescription, the lower court ruled as follows:

> "As regards the. contention, of- the- prosecution that since the alternative penalty of a fine is triple the amount loaned and this. "triple fine should be the basis of determining the penalty, the Court has pointed out in' the Salazar case (Criminal Case No. 4677) that, in case of triple fine which would reach more than F900 in ¦this case, the maximum of the imprisonment in case of insolvency should not exceed six (6) months. So that even. if the penalty of fine is taken independently of the alternative penalty of arreslo mayor, our Legislature has the intention of limiting subsidiary imprisonment in case of insolvency to six (6) months (Article ¦39 "of the Revised Penal Code) which in this case would be equivalent to arrexto mayor. The period of prescription, therefore, of a fine even if it is imposed as a principal penalty or accessory penalty should be five (5) years and in this case the period has already elapsed." (Brief for the Appellant, p. 14-15.)

With the view we take of the legal aspect of the ease,. we deem it unnecessary to discuss

and rule upon the question of whether the commission of the offense was actually discovered in the year 1953, as claimed by the prosecution, or that it should have been discovered in 1947, if the Bank had not been negligent, for the reason that we are inclined to agree with the prosecution that on the basis of the alternative penalty of fine attached to the offense, the period of prescription applicable is ten years, instead of five years.

Article 819 of the Revised Penal Code, under the titte "Chattel Mortgage", provides:

> "Art. 319. Removal, sale or pledge of mortgaged properly.—The. penalty of arresto mayor or a fine amounting to twice the value of the property shall be imposed upon:
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> * * * * * * * * *
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> 2. Any mortgagor who shall sell or pledge personal property alreadv pledged, or any part thereof, under the terms of the Chattel Mortgage Law, without the consent of the mortgagee written on the back of the mortgage and noted on the record thereof in. the office of the register of deeds of the province where sudi property is located."

The value of the property mortgaged in this case is P320. Double that amount would be P640. Under Article 319, above reproduced, the penalty for the offense is *arresto mayor* or a fine double the value of the property involved. In other words, the fine is an alternative penalty. The question now to determine is, when does an offense penalized with an alternative penalty of a fine of P640 prescribe?

The trial court, to decide this point, converted the fine into a subsidiary imprisonment, of *six months*, under the terms of Article 39, No. 2, of the Revised Penal Code to the effect that when the principal penalty be only a fine, the subsidiary imprisonment shall not exceed six months if the culprit shall have been prosecuted for a grave or less grave felony, and held that since the said six months would be equivalent to arresto mayor, then under Article 90, Paragraph 3, of the Revised Penal Code, which reads:

> "ART. 90. *Prescription of crimes.*— * * *.
>
> Those punishable by a correctional penalty shall prescribe in ten years; with the

> exception of those punishable by arresto 'mayor, which shall prescribe in five year . * * *," (Italics ours.)

the offense prescribed in five years.

The Solicitor General in his brief disagrees with this ruling of the lower court and contends that said ruling was erroneous. He cites Article 26 of the Revised Penal Code, which reads:

> "Art 26. *Fine—When afflictive, correctional, or light penalty.*— A fine, whether imposed as a single or as an alternative penalty, :shall be considered an afflictive penalty, if it exceeds 6,000 pesos; a correctional penalty, if it does not exceed 6,000 pesos but is not less than 200 pesos; and a light penalty, if it be less than 200 pesos."

and contends that the fine of P640 comes under the category of a correctional penalty, and that under Article 9, Paragraph 3, already reproduced, the offense herein charged prescribes in ten years, instead of five years. We agree with the Solicitor General that there is no legal justification for converting or reducing the fine of P640.00 into a prison term in case of insolvency. Article 26 of the Revised Penal Code expressly states that the fine, whether imposed as a single or an alternative penalty, should be considered afflictive, correctional, or light penalty, depending on the amoutn of said fine. True, the offense under Article 319 in so far as it is penalized with *arresto mayor* prescribes in five years. At the same time, the fine equivalent to double the amount of the property involved, may also be imposed as a penalty, and when said imposable penalty is either correctional or afflictive, it should be made the basis for determining the period of prescription.

In conclusion, we hold that to determine the preseriptibility of an offense penalized with a fine, whether imposed as a single or as an alternative penalty, such fine should not be reduced or converted into a prison term, but rather it should be considered as such fine under Article 26 of the Revised Penal Code; and that for purposes of prescription of the offense, denned and penalized in Article 319 of the Revised Penal Code, the fine imposabie therein if correctional or afflictive under the terms of Article 26, same Code, should be made the basis rather than that of *arresto mayor*, also imposabie in said Article 319.

In view of the foregoing, the appealed order is hereby set aside and the ease is remanded to the trial court for further proceedings.

Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador,. Conception, Reyes, J. B. L., Endencia, and *Felix, JJ.*, concur.

Date created: October 13, 2014