

**RICARDO PARULAN, PETITIONER, VS. DIRECTOR OF PRISONS,
RESPONDENT.***G.R. No. L-28519. February 17, 1968*

Ponente: ANGELES, J.

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On petition for a writ of habeas corpus, filed by Ricardo Parulan, directed to the Director of the Bureau of Prisons, praying that the latter be ordered "to release immediately and without delay the body of the petitioner from unlawful and illegal confinement", anchoring the relief prayed for on certain allegations in the petition, to the effect that petitioner's confinement in the state penitentiary at Muntinglupa, Rizal, under the administrative and super-visory control of the respondent Director of Prisons, is illegal, for the reason that the sentence of conviction impose upon said petitioner for the crime of evasion of service of sen-tence, penalized under Article 157 of the Revised Penal Code, was rendered by a court without juris-diction over his person and of the offense with which he was charged.

It appears that the petitioner as alleged in the petition, was confined in the state peniten-tiary at Muntinglupa, Rizal, serving a sentence of life imprisonment which, however, was commuted to twenty (20) years by the President of the Philip-pines. In October, 1964, he was transferred to the military barracks of Fort Bonifacio (formerly Fort Wm. McKinley) situated at Makati, Rizal, under the custody of the Stockade Officer of the said military barracks. In that month of October, 1964, while still serving his prison term as aforesaid, he effected his escape from his confinement. Peti-tioner was recaptured in the City of Manila. Pro-secuted for the crime of evasion of service of sen-tence, penalized under Article 157 of the Revised Penal Code, before the Court of First Instance of Manila, after due trial, petitioner was found guilty of the offense charged and sentenced accordingly with the impossable penalty prescribed by law, on August 3, 1966.

Assuming the correctness of the facts as alleged in the petition, and on the basis thereof, we shall proceed to discuss the merits of the case regarding the validity and legality of the decision sentencing the petitioner to a prison term for the crime of evasion of sentence.

Settled is the rule that for deprivation of any fundamental or constitutional rights, lack of jurisdiction of the court to impose the sentence, or excessive penalty affords grounds for relief by habeas corpus.

The issue, therefore, as posed in the peti-tion is: Was the Court of First Instance of Manila with jurisdiction to try and decide case and to impose the sentence upon the petitioner, for, the offense with which he was charged - evasion of service of sentence?

Section 14, Rule 110 of the Revised Rules of Court provides:

"Place where action is to be instituted. - (a) In all criminal prosecutions the act-ion shall be instituted and tried in the court of the municipality or province where the offense was committed or any of the essential ingre-dients thereof took place."

There are crimes which are called transitory or continuing offenses because some acts material and essential to the crime occur in one province and some in another, in which case, the rule is settled that the court of either province where any of the essential ingredients of the crime took place has jurisdiction to try the case.[1] As Go-mez Orbaneja opines -

Que habiendo en el delito continuado tantos resultados como hechos independientes en sentido natural, el principio del resultado no basta para fijar el *forum delicti commisi*, y ha de aceptarse que el delicto se comete en cualquiera de los lugares donde se produzca uno de esos plurales resultados."[2]

There are, however, crimes which although all the elements thereof for its consummation may have occurred in a single place, yet by reason of the nature of the offense committed, the violation of the law is deemed to be continuing. Of the first class, the crime of estafa or malversation,[3] and abduction,[4] may be mentioned; and as belonging to the second class are the crimes of kidnapping and illegal detention where the deprivation of liberty is persistent and continuing from one place to another,[5] and libel where the libelous matter is published or circulated from one province to another.[6] To this latter class may also be included the crime of evasion of service of sentence, when the prisoner in his attempt to evade the service of the sentence imposed upon him by the courts and thus defeat the purpose of the law, moves from one place to another; for, in this case, the act of the escaped prisoner is a continuous or series of acts set on foot by a single impulse and operated by an uninterminant force, however long it may be. It may not be validly said that after the convict shall have escaped from the place of his confinement the crime is fully consummated, for, as long as he continues to evade the service of his sentence, he is deemed to continue committing the crime, and may be arrested without warrant, at any place where he may be found. Rule 113 of the Revised Rules of Court may be invoked in support of this conclusion, for, under section 6[c] thereof, one of the instances when a person may be validly arrested without a warrant is where he has escaped from confinement.[7] Undoubtedly, this right of arrest without a warrant is founded on the principle that at the time of the arrest, the escapee is in the continuous act of committing a crime - evading the service of his sentence.

WHEREFORE, the writ is denied. Without costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.

[1] U.S. v. Santiago, 27 Phil. 408; U.S. v. Cardell, 23 Phil. 207.

[2] VI-Nueva Enciclopedia Juridica por F Seix Editor, p. 463.

[3] U.S. v. Santiago, *supra*.

[4] People v. Bernabe, 23 Phil. 154.

[5] U.S. v. Laureaga, 2 Phil. 71; People v. Parulan, L-2025, April 25, 1951.

[6] Art. 360, par. 3, as amended by Rep. Act 1289; People v. Borja, 43 Phil. 618.

[7] Salonga v. Holland, 76 Phil. 412.

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