

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. DEMETRIO B. ENCARNACION, DEFENDANT-APPELLEE.

G.R. No. L-29665. November 28, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order of the Municipal Court of the provincial capital of San Fernando, Pampanga, in its Criminal Case No. 5233, granting a motion by the accused to quash the proceedings on the ground that his criminal liability had become extinguished by prescription, pursuant to Article 90 of the Revised Penal Code.

For ten years this case has lain in the dockets of various courts since the information was filed, without the accused being arraigned. It has shuttled back and forth from the lowest to the highest courts.

The proceedings started on 18 December 1958 with the filing of an information against the accused, Demetrio B. Encarnacion in the Court of First Instance of Pampanga accusing him of the crime of slander by deed under Article 359 of the Revised Penal

Code committed the preceding day, 17 December 1958. The particulars are set forth in the information in terms as follows:

"The undersigned Provincial Fiscal and Special Counsel accused DEMETRIO B. ENCARNACION of the crime of Serious Slander by Deed, defined and the (sic) penalized under Article 359 of the Revised Penal Code, committed as follows:

That on 17 December 1958, in a public place in the Office and in the presence of the Provincial Fiscal and several other persons, municipality of San Fernando, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above named accused DEMETRIO B. ENCARNACION, with deliberate intent to cast dishonor, discredit and contempt against ONE AMANDO M. DIZON, and in serious disregard to the official proceedings then being conducted before the Provincial Fiscal wherein the said AMANDO M. DIZON was testifying in his own behalf in a preliminary investigation of a libel case, and without sufficient provocation on the latter's part, the said accused did then and there willfully, unlawfully and feloniously slap, hit and strike with his hand said AMANDO M. DIZON on the face, as a result of which the latter was exposed to public shame, ridicule and embarrassment.

That in the commission of the crime the following aggravating circumstances were attendant:

- (a) That the same was committed in contempt of or with insult to the Provincial Fiscal of Pampanga, a person in authority;
- (b) That the same was committed in a place where public authorities are engaged in the discharge of their duties;
- (c) That the same was committed with evident premeditation;
- (d) That the same was committed with abuse of superior strength or with the aid of armed persons who insure or

afford impunity;

(e) That the same was committed with treachery, when the complainant did not reasonably expect such act of the accused." (pp. 1-2, rec.)

Pursuant to the above information, the Court of First Instance of Pampanga, assuming jurisdiction over the case, issued the corresponding warrant for the arrest of the accused; fixed the amount of his bail bond and, after the filing of the bond, ordered his provisional release (pages 3,5, 7-22, rec). Jurisdiction vested in the court by virtue of Section 44 (f), Republic Act No. 296, conferring like courts with authority over "all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more that two hundred pesos." Serious slander by deed, .the crime charged in the information, is penalized by *arresto mayor* in its maximum period to *prision correccional* in its minimum period, i.e., from 4 months and 1 day to 2 years and 4 months and by a fine from P200 to P1,000 (Article 359, Revised Penal Code).

By order of 10 June 1959, arraignment of the accused was set on 8 August 1959 (page 24, rec).

On 1 August 1959, Republic Act No. 296, known as the Judiciary Act of 1948, was amended by Republic Act No. 2613 that gave concurrent jurisdiction over the offense of slander by deed to justices of the peace in provincial capitals and to Courts of First Instance, thus:

"Justices of the peace in the capitals of provinces and judges of Municipal Courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within the province in which the penalty provided by law does not exceed *prision correccional* or imprisonment for not more than six years or fine not exceeding three thousand pesos or both, and in the absence of the district judge, shall have like jurisdiction within the province as the Court of First Instance to hear application for bail. (Italics supplied)"

On 6 August 1959, the accused Demetrio Encarnacion filed a motion to quash alleging that the facts charged do not constitute an offense and that the Court of First Instance had no jurisdiction over the offense, it appearing that the offense charged is not serious in nature but only the lighter kind punishable with *arresto menor* or fine not exceeding P200.00, citing Section 87 (b) of R.A. No. 296, as amended (pages 32, 35, rec). Said motion to quash further quoted news report of the incident in question, thus:

"The slapping incident arose when Dizon allegedly hurled invectives at Encarnacion at the height of an argument in the presence of Kayanan and his assistant fiscals, Victoriano Nalus, Eliodoro Guinto and Antonio Fausto. Encarnacion allegedly resenting Dizon's words, struck the latter once on the face with his open palm." (page 33, rec.)

The motion prayed that the arraignment scheduled for 8 August 1959 be cancelled or suspended, until ordered otherwise (page 36, rec).

On 17 August 1959, the Court of First Instance, through Judge Pasicolan, remanded the case to the Justice of the Peace of San Fernando, Pampanga, for resolution of the motion to quash, trial and judgment (page 40, rec). The complainant filed an Opposition to Motion to Quash (pages 42-46, rec). For one reason or another, at the instance of the accused, hearing on the Motion to Quash was deferred, or suspended, or postponed (pages 47, 53, 68-69, rec).

On 28 December 1959, the motion to quash was denied by the Justice of the Peace Court and calendared the arraignment at a convenient date (pages 100-115, rec).

Once the case was at the inferior court and before the arraignment on 15 March 1960, as previously set (page 116, rec), the accused-appellee again contested the court's jurisdiction. This time he pointed to the Court of First Instance as the proper court, having acquired jurisdiction first and so acquired the same to the exclusion of others

with concurrent jurisdiction, particularly the Justice of the Peace (pages 130-131, rec), where the case had been brought upon a previous incident at the Court of First Instance inspired by the accused on his first motion to quash. The new motion was denied by the Justice of the Peace Court in an order dated 12 March 1960 (pages 135-137, rec).

From this order, an action for certiorari, docketed as G.R. No. L-16883, was commenced before the Supreme Court where on 27 March 1961 it was ruled (1 SCRA 861) that the Court of First Instance and Justice of the Peace had concurrent original jurisdiction by virtue of Republic Act No. 2613, amending Section 87 of Republic Act No. 296, the Judiciary Act of 1948, removing the power of assignment of the former over justices of the peace in provincial capitals, so that the court acquiring jurisdiction first does so to the exclusion of the other (here said Court of First Instance, to the exclusion of said Justice of the Peace); accordingly, as the assignment was made after the amendment, the former had jurisdiction, and the case was again ordered remanded to the Court of First Instance where it originally started (pages 143-151", rec).

On 15 May 1961, pursuant to the ruling of the Supreme Court, the record of the case was returned by the Justice of the Peace to the Court of First Instance for further proceedings (page 142, rec).

On 12 July 1961, another motion to quash (third) was filed by accused-appellee at the Court of First Instance alleging that the crime has already prescribed (pages 169-173, rec).

On 7 September 1961, this motion to quash was denied, and after the denial of a motion for reconsideration action for certiorari, mandamus and prohibition was commenced and, on 2 November 1961, given due course before the Court of Appeals in CA-G. R. No. 30107 (pages 217-219, 220, 230, 235, 237, 247, rec). Prescription was the ground relied upon, the allegation being that the prescriptive period resumed running because the proceedings was terminated without the accused being convicted or acquitted and that it was unjustifiably stopped, for reasons not imputable to him, when it was remanded from the Court of First Instance to the Justice of the Peace, then to the Supreme Court and then back to the Court of First Instance (pages 172, 247, rec).

The incident at the Court of Appeals (CA-G. R. No. 30107) caused the cancellation of the hearing for arraignment at the Court of First Instance of Pampanga set for 13 January 1962 (pages 265, 269, rec). The Court of Appeals, however, did not sustain herein accused's claim of prescription (pages 270-279, rec), holding instead, in a decision of 8 June 1964, that a void order of remand has no effect and that the case remained pending with the court ordering the remand, i.e., the Court of First Instance. In dismissing the petition filed by accused Demetrio Encarnacion, the Court of Appeals ruled:

" A la verdad, una orden de transmission (remand) nula, no tiene eficacia; la causa permanece pendiente en el Juzgado que la transmitio y el Juzgado la recibio no ha adquirido jurisdiction sobre la misma."

An attempt at the Supreme Court to secure a review of the Court of Appeals decision resulted in a dismissal of the petition for lack of merit, according to a Supreme Court resolution of 21 July 1964 (page 280, rec). Accordingly, the entry of judgment of the Court of Appeals decision was made on 8 July 1964 certifying to its finality (page 295, rec).

Back to the Court of First Instance, the case against the accused-appellee was reset for arraignment on 5 September 1964 (page 281, rec). Again, accused Demetrio Encarnacion filed a motion to dismiss—the fourth attempt—on 4 September 1964, this time alleging that on 22 June 1963 Republic Act No. 3828 amended Section 87 of the Judiciary Act (pages 284-285, rec). The amendment relied on provided for the criminal jurisdiction of justice of the peace courts, thus:

"(c) Except violations of election laws, all other offenses in which the penalty provided by law is imprisonment

for not more than three years, or a fine of not more than three thousand pesos, or both such fine and imprisonment."

The accused contended that the amendment "conferred original and exclusive jurisdiction on said offense over the Justice of the Peace" (pages 285-286, rec). The Court of First Instance, in an order dated 29 October 1964, denied said motion but ordered the records forwarded to the Justice of the Peace, now called the Municipal Court (Sec R. A. 3828), of San Fernando due to a change of venue, it appearing to Judge Pasicolan that there is no provision "for dismissal on the ground of lack of jurisdiction." (page 331, rec.)

After the Court of First Instance denied the motion for reconsideration, the motion to quash (the fifth) was renewed before the Municipal Court on 4 January 1965 (pages 335, 339, 345, rec). Still bearing its number at the Court of First Instance, which was Criminal Case No. 3477, the case was, at the Municipal Court, set for hearing on 8 January 1965 (page 341, rec).

On 8 January 1965, the Municipal Court held in abeyance the hearing of said motion to quash because the prosecution wanted time to contest the order of 29 October 1964, but it was with the understanding that if no legal steps shall have been taken within 30 days the docketing would be automatically made by the clerk of court of said Municipal Court (page 351, rec).

Meanwhile, On 14 January 1965, plaintiff-appellant filed a motion for reconsideration and recall, together with a brief memorandum, before the Court of First Instance, seeking the reconsideration of said order of 29 October 1964 and that said records, which was already forwarded, be recalled and tried on the merits before said Court of First Instance (pages 443, 445, rec, in relation to page 331).

On 31 March 1965, after Reply was filed, the Court of First Instance denied said motion for reconsideration and recall (pages 454, 462, rec).

On 28 September 1965, the Municipal Court denied the latest motion to quash dated 24 December 1964, and ordered that the arraignment be calendared, the docketing of the case in that court having been done on 6 August 1965 (pages 345, 365, 440 rec). The arraignment was set for 22 November 1965 (pages 368-369, rec).

On 20 November 1965, accused filed a motion praying for the arraignment to be held in abeyance preparatory to elevating on appeal the denial of the latest motion to quash (page 369, rec). By order of 22 November 1965, the arraignment was postponed to 12 January 1966 to allow counsel time to file any pleading he may deem fit (page 372, rec).

On 12 January 1966, another motion to quash—the sixth—was filed with said Municipal Court, alleging that the criminal action or liability has already been extinguished considering that no information was filed with said Municipal Court since the enactment of Republic Act No. 3828 on 22 June 1963. The accused reiterated his theory that the amendment vested the Municipal Court with original and exclusive jurisdiction over the offense; and even if the information filed With the Court of First Instance was considered as the same information filed with said Municipal Court since 22 June 1963, yet considering that the same was docketed only on 6 August 1965 with the said Municipal Court, the action has prescribed (pages 375-376, rec).

By agreement, arraignment was postponed to 28 January 1966 (page 379, rec). After opposition and reply to opposition were filed, the Municipal Court denied, in an Order of 4 February 1966, said motion to quash and calendared the arraignment to a convenient date (pages 380, 383, 391-395, rec). The arraignment was set for 31 March 1966 by order of 8 February 1966 (page 396, rec.) On the same day, 8 February 1966, new counsel for the accused requested to be granted 15 days within which to present argument to sustain the motion to quash (page 398, rec). It was, however, only on 29 March 1966 that a motion for reconsideration was filed (pages 399, 404,

rec). Followed the Opposition thereto and a Reply (pages 418, 433, rec): whereupon, on 21 June 1966, the Municipal Court, acting on the motion for reconsideration, reversed itself, sustained accused-appellee's motion to quash, and dismissed the case on the ground of prescription, thus:

"FOR THE FOREGOING CONSIDERATIONS AND REASONS, the motion for reconsideration is hereby granted and the motion to quash, dated 11 January 1966, on the ground of prescription of the criminal action or liability (Rule 117, Sec. 2 (f) of the Rules of Court, which was denied, is now sustained and the present case is hereby dismissed with costs de oficio." (Order 21 June 1966, page 442, rec.)

On 8 July 1966, plaintiff-appellant sought the reconsideration of the above-quoted order, but the same was denied on 26 September 1966 (pages 465, 489, rec). The prosecution then perfected its appeal to this Court (Judiciary Act, as amended by Republic Act No. 3828, last paragraph).

The offense of slander by deed prescribes in six months (Article 90, Revised Penal Code), computed according to the following rules (Article 91, Revised Penal Code):

"ART. 91. Computation of prescription of offenses.— The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him."

Both the court below and the accused-appellee maintain that the period of prescription was initially interrupted by the filing of the proper information in the Court of First Instance on 18 December 1958, and by the pendency of the case after that date, but that it began to run again from and after the order of the Court of First Instance under date of 29 October 1964, because said order, in forwarding the records of the case to the Municipal Court of San Fernando, allegedly terminated the proceedings in the Court of First Instance without either acquittal or conviction. And that as the case was only docketed in the Municipal Court on 6 August 1965, more than six months after the order of remand, the state thereafter could no longer prosecute because prescription already set in.

We find this reasoning untenable. The Court of First Instance had acquired jurisdiction under Section 44 (f) of the Judiciary Act from the filing of the information in that court in 1958. Thereafter, it never lost such jurisdiction: for it has been settled by a long line of uniform decisions^[1] that neither Republic Act 2613 nor Republic Act 3828 operated to divest the Courts of First Instance of their criminal jurisdiction validly acquired under the law existing when the information was filed prior to said Republic Acts, the latter only conferring on municipal or city courts concurrent jurisdiction over cases punishable with prison correccional, i. e., imprisonment not over six (6) years, or fine not exceeding six thousand pesos, or both.

Being continuously vested by law with jurisdiction over appellee's case, the Court of First Instance of Pampanga could not transfer it to the Municipal Court of San Fernando, for that would amount to a refusal to perform its legal duty to take cognizance of a case properly belonging to it. As a result, the order of Judge Pasicolan of 29 October 1964 remanding the case to the Municipal Court aforesaid was absolutely illegal and void, and did not terminate the case pending in the Court of First Instance. Such was precisely the stand of herein accused Encarnacion with respect to Judge Pasicolan's first order of remand to the Municipal Court in 1959; and his position was then upheld by this Court in 1 SCRA 861 (Encarnacion vs. Pasicolan). The proceedings in the Court of First Instance not having terminated, the prescription did not run anew.

That the case was not docketed in the Municipal Court until August, 1965 becomes thus immaterial, for the fact is that the case should not have been docketed at all in the inferior court.

Can it be validly argued that even if the case was not terminated in the Court of First Instance, still the proceedings were "unjustifiably stopped for any reason not imputable to the accused" since 1964? We think not. Whatever hiatus developed in these proceedings in 1964 and thereafter was certainly imputable to this accused. He had every reason to know that the municipal court could not acquire jurisdiction over his case as a result of Republic Acts Nos. 2613 and 3828. He had so maintained in 1959; he knew that, at his own instance, the Supreme Court so ruled and issued a writ of certiorari vacating the first remand. Yet he remained inactive after the second remand, and took no steps to assail it. In fact, disregarding his former stand, the accused even objected to the prosecution's motion of 13 January 1965 to recall the second order of remand, and, as a result, the recall was denied.

To sustain now the stand of this accused that his criminal liability has already prescribed, or to allow him to wail that his right to speedy trial has been violated, is to inexcusably close our eyes to the realities and history of this case: that for seven years the accused-appellee has dragged the case from court to court through six motions to quash and incessant appeals and deferments, without allowing it to come to an arraignment. There must be an end to such delaying tactics and technicalities, and it is devoutly wished that—in vulgar parlance—"this is it."

IN VIEW OF THE FOREGOING, the appealed order of the Municipal Court of San Fernando, Pampanga, is reversed and set aside, and said Court is hereby declared without jurisdiction over the case. The records are ordered remanded to the Court of First Instance of Pampanga, with instructions to proceed to the arraignment, trial and disposition of the case with all possible promptness and dispatch. Costs against appellee, Demetrio Encarnacion.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando and Teehankee, JJ., concur.

[1] From *Natividad vs. Robles*, 87 Phil. 834 (1950), through *Esperat vs. Avila* (1967), 20 SCRA 596, down to *People vs. Tapayan*, L-26885, November, 1969.

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