

**ARTEMIO RODRIGUEZ, PETITIONER, VS. DIRECTOR OF PRISONS,
RESPONDENT.***G.R. No. L-35386. September 28, 1972*

Ponente: ANTONIO, J.

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Petitioner, a national prisoner serving sentence by virtue of final judgments in thirteen (13) criminal cases (Nos. 66987, 56340, 57340, 56727, 62895, 59483, 59493, 58603, 61958, 66412, 59127, 63833 and 59128) for estafa by the Court of First Instance of Manila, questions by this petition for habeas corpus his continued detention. The novel theory posed by petitioner is predicated upon his belief that (a) his acquittal on November 24, 1970 in the case of *People vs. Artemio Rodriguez et al* (CA-G. R. No. 09705-CR) by the Court of Appeals "became the law of all the cases" wherein he was convicted, for the reason that his acquittal was based on "the same set of facts and issues involving the same subject matter" as those obtaining in the other cases, and such acquittal being favorable to him should be applied in the same manner as in *Gumabon vs. Director of Prisons* (37 SCRA 420) wherein the provisions of Article 22 of the Revised Penal Code and Article 8 of the New Civil Code, were applied, (b) the gross negligence of his lawyer which prevented his appeal in those thirteen cases, amounted to a denial of due process and as (c) he had already served the maximum penalty imposed upon him, because he is entitled to the "simultaneous service" of all the sentences of imprisonment in the thirteen cases, (invoking Article 70 of the Revised Penal Code) he should now be released. We find no merit in the petition.

1. The case of *Gumabon vs. Director of Prisons* (L-30026, January 30, 1971, 37 SCRA 420) is inapposite. We applied in *Gumabon* the settled rule that only the crime of simple rebellion exists in our legal system, and therefore any penalty imposed upon the person convicted of such offense, in excess of that prescribed by law for such offense, is void only as to the excess, and after serving so much of the valid sentence, the convict can seek his discharge on a writ of habeas corpus. The case therefore involved the application of the principle that there should be a uniform operation of legal norms so that all persons under similar circumstances are accorded the same treatment both in the privileges conferred and the liabilities imposed in compliance with the mandate of the equal protection clause of the constitution.

The case of petitioner presents an entirely different factual and legal setting. We are here concerned not with the application of the uniform operation of legal norms but are now asked by petitioner to apply a uniform findings of fact over cases involving different complainants and diverse factual environments. This is certainly not the teaching of *Gumabon vs. Director of Prisons*. It is also futile for petitioner to invoke the decision of the Court of Appeals in CA-G. R. No. 07515-R as the "law of the case" affecting the thirteen cases wherein he was convicted. Such invocation of a salutary rule would be pointless. The "law of the case" means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the Court.[1] While it may apply to subsequent proceedings in the same case, it cannot apply to a different one. Petitioner's case does not involve the

ap-plication of a legal rule irrevocably established. His acquittal upon a finding that his liability if any, is civil and not criminal in nature in case No. 07515-R, of the Appellate Court has clear reference to evidentiary matters, obviously not obtaining in the other cases.

Likewise the jurisprudential principle of stare decisis (Article 8 New Civil Code) and the retroactivity of penal laws in so far as they favor the accused (Article 22 of the Revised Penal Code) have no relevance in this case which neither involves an application of a decision of this Court applying or construing the law or the constitution nor the retroactive application of a favorable penal legislation.

2. The dismissal of petitioner's appeal after prior notice, in the thirteen criminal cases wherein he was convicted by the Court of First Instance of Manila, for failure of petitioner or his counsel to file the appellant's brief within the period authorized, is not a denial of due process. The right to appeal is not a natural right or a part of due process, except where it is granted by statute, in which case it should be exercised in the manner and in accordance with the provisions of law.[2] In failing to file his brief within the time prescribed, petitioner failed to comply with the statutory requirements. Section 8, of Rule 124 of the Rules of Court specifically provides, that the appellate court may upon motion of the appellee or on its own motion and notice to appellant, dismiss the appeal if the appellant fails to file his brief within the time provided by said Rule, except in case the appellant is represented by an attorney de oficio. Petitioner attributes such failure to the "gross negligence" of his counsel. We have previously ruled that the inexcusable negligence of counsel affects adversely his client.[3] In the case of petitioner, it is not primarily the negligence of his counsel, but his own lethargy and indifference that was responsible for such failure. He should therefore bear the adverse consequence thereof.

3. We find no legal justification for petitioner's insis-tence that he is entitled under Article 70 of the Revised Penal Code to the "simultaneous service" of the various penalties of imprisonment imposed in the thirteen criminal cases. Such a theory is inconsistent with the system of juridical accumulation of penalties provided in par. 4 of Article 70. Under this system the maximum duration of a culprit's confinement shall not exceed three times the most serious of the penalties imposed upon him, but shall not in any case exceed forty years. This rule applies although the penalties were imposed for different crimes or under separate informations or proceedings, because whether the culprit was tried and convicted in one or several proceedings, the reasons for the legal precept are the same, namely, to avoid the absurdity of a man being sentenced to imprisonment for a longer period than his natural life.[4]

It must be noted that Article 70 of the Revised Penal Code, which allow the simultaneous service of two or more penalties "if the nature of the penalties will so permit" is a reproduction of the provisions of Article 88 of the Spanish Penal Code of 1870. Both Viada and Groizard agree that in keeping with the ends of penalty and with the spirit of the provisions of the aforecited Article 88 the penalties which could be served simultaneously with other penalties, are perpetual or temporary absolute disqualification, perpetual or temporary special disqualification, public censure, suspension from public office and other accessory penalties.[5]

WHEREFORE, the petition is hereby denied with costs against petitioner.

Concepcion, C.J., Zaldivar, Castro, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

Fernando, J., reserves his vote.

Makalintal, J., is on official leave.

[1] People vs. Pinuila et al, 103 Phil. 992, 999, 21 C.J.S. 330.

[2] Bello vs. Francisco, 4 SCRA 134, 138, 16 C.J.S. 1191.

[3] Rivera vs. Vda. de Cruz, 26 SCRA 58, 62.

[4] People vs. Garalde, 50 Phil. 823, 828.

[5] Viada, Codigo Penal Reformado de 1870, Tomo II, p. 605, Groizard explained the import thus:

"Cuales son unas y cuales son esas otras penas? El Codigo no lo dice expresamente, pero to da a entender de una manera indirecta. No pueden cumplirse simultaneamente las penas que comprende la escala contenida en la regla 1.a del art. 89, y, por tanto, no hay mas que ver las que aqui faltan y estan incluidas en la general para conocer las que pueden ser sufridas a un mismo tiempo.

"De esta comparacion de escalas resulta:

"Penas que no pueden cumplirse simultaneamente con otras :

"Muerte. - Cadena perpetua. - Cadena temporal. - Reclusion perpetua. - Reclusion temporal. - Presidio mayor. - Prision mayor. - Presidio correctional. - Prision correccional. - Arresto mayor. - Relegacion perpetua. - Relegacion temporal. - Extrañamiento perpetuo. Extrañamiento temporal. - Confinamiento. - Destierro.

"Penas que pueden cumplirse simultaneamente con otras :

"Inhabilitacion absoluta perpetua. - Inhabilitacion absoluta temporal. - Inhabilitacion especial perpetua. - Inhabilitacion especial temporal. - Reprension publica. Suspencion de cargo publico, etc. - Reprension privada. - Multa, caucion. - Degradacion. - Interdiccion civil. - Perdida o comiso de los instrumentos y efectos del delito - Pago de costas". (Groizard, El Codigo Penal, Tomo II, p. 509).

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