

RAFAEL YAPDIANGCO, PETITIONER-APPELLANT, VS. THE HON. CONCEPCION B. BUENCAMINO AND HON. JUSTINIANO CORTEZ, RESPONDENTS-APPELLEES.

G.R. No. L-28841. June 24, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

If the last day in the period of prescription of a felony falls on a Sunday or legal holiday, may the information be filed on the next working day?

Stated otherwise, the Issue in this appeal from a decision of the Court of First Instance of Rizal, Branch IX at Quezon City is whether or not a Sunday or a legal holiday is a legal efficient cause which interrupts the prescription of an offense.

On February 1, 1965, the City Fiscal of Quezon City filed before the City Court an information for slight physical injuries allegedly committed by the petitioner-appellant on December 2, 1964 against Mr. Ang Cho Ching.

On September 10, 1965, the petitioner-appellant moved to quash the criminal prosecution on the ground that the information having been filed on the sixty first day following the commission of the offense, the sixty days prescriptive period had lapsed.

On September 14, 1965, the City Court of Quezon City denied the motion to quash stating that the 60th day fell on a Sunday and considering the rule that when the last day for the filing of a pleading falls on a Sunday, the same may be filed on the next succeeding business day, the action had not prescribed.

After a motion for reconsideration was denied by the City Court, the petitioner-appellant filed a petition for certiorari and mandamus with preliminary injunction before the Court of First Instance of Rizal.

On July 11, 1966, the Court of First Instance of Rizal dismissed the petition. A motion for reconsideration was subsequently denied. Hence, this appeal.

The petitioner-appellant raised the following assignments of errors:

FIRST ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN FINDING THAT SUNDAY IS A LEGAL EFFICIENT CAUSE TO INTERRUPT PRESCRIPTION OF AN OFFENSE.

SECOND ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN FINDING THAT THE PERIOD FIXED BY LAW WITHIN WHICH TO COMMENCE CRIMINAL PROSECUTION MAY LEGALLY BE EXTENDED WITH THE INTERVENTION OF A SUNDAY OR LEGAL HOLIDAY.

THIRD ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN DENYING THE PETITION FOR MANDAMUS AND PRELIMINARY INJUNCTION.

Under Article 90 of the Revised Penal Code, light offenses prescribe in two months. Article 13 of the Civil Code provides that when the law speaks of months, it shall be understood that months are of thirty days each.

Article 91 of the Revised Penal Code reads:

"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.

"The term of prescription shall not run when the offender is absent from the Philippine Archipelago."

In support of his three assignments of errors which he discusses jointly, the petitioner-appellant argues:

.....

"b) the fact that the 60th day was a Sunday did not interrupt nor stop the running of the prescriptive period, for

i) as a matter of statutory articulation a Sunday or holiday is not recognized as legally efficient cause to interrupt prescription;

ii) under the principle of *inclusio unius exclusio alterius*, the single exception of offender's absence specified in Article 91 of the Revised Penal Code excludes any other cause sufficient to interrupt prescription;

"iii) under the specific and controlling jurisprudence of the cases that the last day of prescriptive period is a Sunday or a holiday does not interrupt prescription.

"15 AM. Jur., Section 346, page 34:

"The statute of limitations run from the time the offense is committed until the prosecution is commenced. . . ."

"Ibid., Section 357, page 37:

"The running of the statute of limitation can be prevented only by the means or for the reasons specified therein"

"Ibid., Section 342, page 32:

"Statutes of limitations in criminal cases differ from those in civil cases. In civil cases they are statutes of repose, while in criminal cases they create a bar to the prosecution. . . ."

"22 C.J.S., Section 228 (1), 596-597:

"As a general rule, exceptions will not be implied to the statutes of limitations of criminal offenses, and hence, in criminal prosecutions unless the statute of limitations contains an exception or condition that will toll its operation, the running of the statute is not interrupted, save only by indictment or other sufficient procedure commencing the prosecution of the offense. After the statute has commenced to run it will not be interrupted by the happening of any subsequent event or disability"

"45 Century Digest, Time, Section 41:

"When an action would be barred on Sunday, that day must be excluded from the count and the action brought on the Saturday preceding, to save the bar. (*Allen vs. Elliot*, 67 Ala. 432.)"

"Where the year in which to begin an action expires on Sunday, the action must be begun on the preceding day. (William vs. Lane, 87 Wis. 152, 58 NW 77.)"

"iv) under the pervasive criminal law principle of liberal construction of penal statutes in favor of the accused the conclusion is evident that the exception clause to the prescriptive rule in Article 91 of the Revised Penal Code should not be unduly stretched and strained to include exceptions not specified nor as much as intimated in the statute.

"U.S. vs. Abad Santos, 36 Phil. 243:

"Criminal statutes are to be strictly construed; no persons should be brought within the terms who is not clearly within them nor should any act be pronounced criminal when it is not made so."

"v) extinctive or acquisitive prescription is not similar to reglementary periods provided in the Rules of Court or in any other statutes, hence, may not be extended under the 'next business day theory'. Thus, it cannot be said under our system that a party has a right to move, and the court the corresponding authority to grant an extension of a period of prescription."

As against these arguments of the petitioner-appellant, the respondents cite the following provision of the Revised Administrative Code to sustain their side:

"SEC. 31. Pretermission of holiday.— Where the day, or the last day, for doing any act required or permitted by law falls on a holiday, the act may be done on the next succeeding business day."

The law requires or permits the filing of the information within two months or sixty days from the date the crime was discovered by the offended party. Since the 60th day or last day for the filing of the information in this case fell on a holiday, according to the respondents-appellees the law should allow the filing of charges to be done on the next succeeding business day.

If we follow the ordinary rule of time computation, based on the common law, which, in construing statutes of limitations excludes the first day and includes the last day unless the last day is dies non in which event the following day is included, the stand of the respondents-appellees would be correct.

As pointed out by the respondents-appellees, Section 1, Rule 28 of the former Rules of Court provided:

.....

"How to compute time.— In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the time shall run until the end of the next day which is neither a Sunday nor a holiday."

After carefully considering all the foregoing, we find the arguments of the petitioners-appellants meritorious. We are not dealing in this case with a simple rule on when a pleading may be filed.

The case at hand does not involve the simple issue of when to do an act. It deals with the prescription of a criminal action. Under unquestioned authorities, the question to be resolved is when the State is deemed to have lost or waived its right to prosecute an act prohibited and punished by law. (People v. Moran, 44 Phil. 387, 406-7; People v. Parel, 44 Phil. 437, 445; People v. Montenegro, 68 Phil. 659). Wharton, in his work on Criminal Pleading and Practice, quoted in People v. Moran has this to say about the nature of the statute of limitations in criminal actions:

"We should at first observe that a mistake is sometimes made in applying to statutes of limitation in criminal

suits the construction that has been given to statutes of limitation in civil suits. The two classes of statutes, however, are essentially different. In civil suits the statute is interposed by the legislature as an impartial arbiter between two contending parties. In the construction of the statute, therefore, there is no intendment to be made in favor of either party. Neither grants the right to the other; there is therefore no grantor against whom the ordinary presumptions of construction are to be made. But it is otherwise when a statute of limitation is granted by the State. Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs and innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt. Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt and that statutes enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained." (44 Phil. 405-406; italics supplied).

The rules contained in Section 31 of the Revised Administrative Code and Section 1, Rule 28 of the Old Rules of Court deal with the computation of time allowed to do a particular act, such as, the filing of tax returns on or before a definite date, filing an answer to a complaint, taking an appeal, etc. They do not apply to lengthen the period fixed by the State for it to prosecute those who committed a crime against it. The waiver or loss of the right to prosecute such offenders is automatic and by operation of law. Where the sixtieth and last day to file an information falls on a Sunday or legal holiday, the sixty-day period cannot be extended up to the next working day. Prescription has automatically set in. The remedy is for the fiscal or prosecution to file the information on the last working day before the criminal offense prescribes.

WHEREFORE, the petition for certiorari and mandamus is granted. The questioned order of the respondent court is SET ASIDE. The motion to quash is GRANTED and the information before the city court is DISMISSED.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana and Vasquez, JJ., concur.

Relova, J., I dissent. Sec. 31 of the Revised Administrative Code provides that "where the day, or the last day, for doing an act required or permitted by law falls on holiday, the act may be done on the next succeeding business day." In the case at bar, since the last day within which to file the complaint or information in court fell on a Sunday, the filing thereof may be done on the next succeeding business day.

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