

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. SOCORRO C. RAMOS, DEFENDANT-APPELLEE, PHOENIX PUBLISHING HOUSE INC., INTERVENOR.

G.R. No. L-25265. May 09, 1978

Ponente: SANTOS, J.

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SANTOS, J.:

The above-entitled cases--the first an appeal and the second a special civil action--are decided jointly because they raise a common issue--which arose from the prosecution of a common defendant, Socorro C. Ramos, for alleged violations of the copyright law--viz, whether or not the extra day in the leap year, 1964, should be taken into consideration in the computation of the two-year period of prescription provided in Section 24 of the copyright law.

The factual and procedural antecedents follow.

On September 3, 1965, two criminal cases--No. 80006 of the Court of First Instance of Manila, Branch III, and No. 80007 also of the same Court, Branch XIV--identical in every respect, except for the fact that they pertain to different editions of the same textbook, were filed against Socorro C. Ramos, for alleged violations of Act 3134, otherwise known as the Copyright Law, as amended. The information in Criminal Case No. 80007 alleged--

"That on or about July to September, 1963, in the City of Manila and within the jurisdiction of this Honorable Court, the said accused, as the proprietor and general manager of the National Book Store, an enterprise engaged in the business of publishing, selling and distributing books, did then and there, wilfully and illegally sell and distribute spurious and pirated copies of the high school textbook, entitled General Science Today for Philippine Schools, First Year, by Gilman, Van Houten and Cornista, said accused knowing that said book was duly copyrighted by the Phoenix Publishing House, Inc., and was being distributed exclusively by its sister corporation, Alemar's or Sibal and Sons, Inc." [1]

On September 7, 1965, identical motions to quash[2] were filed by accused Ramos on the ground of prescription, alleging therein, inter alia, that:

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"Consequently, the discovery of the alleged offense was made as early as July 17, 1963 and all subsequent knowledge or discoveries of posterior sales and possession of said books by the respondents, including that involved in the police search of September 4, 1963 were only confirmatory of the first. Under Article 91 of the Revised Penal Code and in the light of the afore-quoted ruling announced in the Pangasinan Trans. Co. case, supra; the prescriptive period, therefore, commenced to run on the day after such discovery on July 17, 1963 and, accordingly, the offense has long since prescribed since under the Copyright Law, Act 3134:

'Sec. 24. All actions, suits, or proceedings arising under this Act shall be originally cognizable by the Court of

First Instance of the Philippine Islands and shall prescribe after two years from the time the cause of action arose.'

Assuming arguendo, that the last actual sale should be the starting point of computation, again the offense charged has prescribed, since, as already pointed out, the documented evidence on this point shows that the last sale was made on August 30, 1963."

The prosecution, also in both cases, filed its Opposition to the Motion to Quash[3] raising two issues, to wit:

"1. That the issue of prescription in this case can be resolved only after the presentation of evidence and hence, it is premature to raise that issue before trial.

"2. That, as the violation committed by the defendant was a continuing offense, the two-year prescriptive period may be counted from September 3, 1963, or one day before the search in defendants' premises, which confirmed her possession of spurious and pirated copies of the textbook in question."

The prosecution's theory is that "(T)he crime being a continuing offense, the statute of limitations begins to run from the completion of the last act or series of acts which constitute the offense," and this last act was allegedly committed on September 3, 1963. Therefore, when the information was filed on September 3, 1965, it was filed within the two-year period, albeit the last day of the prescriptive period.

Again, in both cases, the accused filed a "Reply to Opposition to Motion to Quash." [4] She alleged that even assuming that the crime is a continuing offense, the prescriptive period should start from August 30, 1963, the date of the last invoiced sale, and not September 3, 1963, as there was no indubitable proof that she had sold copies of the questioned book on that date. Nonetheless, accused contended that even if the prescriptive period should start from September 3, 1963, as proposed by the prosecution, the two-year period was tolled on September 2, 1965. She pointed out that two years mean a period of 730 days in accordance with Article 13 of the New Civil Code, and 1964, being a leap year consisting of 366 days, the 730th day fell on September 2, 1965. Hence, ". . . when the information was filed on September 3, 1965, the offense, if any, had already prescribed."

The prosecution filed a Rejoinder[5] in both cases alleging as follow:

"1. That February 28, and 29, 1964, should be regarded as one day only, and consequently, the two-year period commencing on September 3, 1963 would end on September 3, 1965;

"2. That under Act No. 3326, the prescriptive period was interrupted by the filing of the proceedings in the fiscal's office;

"3. That prescription would not lie in this case because the complainant never waived the right to prosecute the defendant."

Accused Ramos, also in both cases, filed an Urgent Motion to Strike the Rejoinder,[6] on the ground that it was filed after the case had been submitted for resolution. She prayed that "in the event that the same should at all be considered and allowed, that the accused be notified thereof and granted reasonable opportunity to file a surrejoinder . . .".

It appears that the Rejoinder was admitted by both trial courts, but a Surrejoinder[7] was filed only in Criminal Case No. 80006. Here, the accused traversed the prosecution's contentions in the Rejoinder, thus:

"1. Under applicable and specific provisions of Philippine law, the two-year period of prescription

commencing on September 3, 1963 ended on September 2, 1965 x x x;

"2. The filing (of) proceedings in the Office of the City Fiscal of Manila did not interrupt the prescriptive period."

In Criminal Case No. 80007, Hon. Jesus De Veyra granted the motion to quash by an order dated October 7, 1965.[8] Pertinent portion of his order reads:

". . . And now to the main issue - whether the crime had prescribed. In the Opposition to the Motion to Quash, the Prosecution, in its insistence on the theory of a continuing crime, admits that the two-year prescriptive period should run from September 3, 1963. This case was filed on September 3, 1965 - one day too late. Article 13, CCP provides that year shall mean a period of 365 days. This has been applied to criminal cases (People v. del Rosario, 51 O.G., 2686). 1964 was a leap year so that when this case was filed, it was filed one day too late.

"The Motion to Quash is, therefore, granted and this case dismissed on the ground that the crime has already prescribed." (Italics supplied.)

The prosecution appealed the above order to this Court on October 15, 1965.[9]

Meanwhile, in Criminal Case No. 80006, the motion to quash was not resolved until December 23, 1965. On this date, Hon. Placido Ramos denied the motion to quash, and set the arraignment of the accused on January 12, 1966, thus --

"Wherefore, finding the information to have been filed well within the statutory period of two years from the date of the last offense committed by the accused the Court denies the motion to quash.

"The arraignment of the accused is hereby set on January 12, 1966 at 8:30 A.M."

The trial court refused to accept the prosecution's view that the prescriptive period should run from September 3, held, instead, that the same should commence on September 4, 1963.

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"The evidence shows that on September 4, 1963, the Manila Police by virtue of a search warrant procured by the offended party, seized, among other articles, 69 copies of General Science Today for Philippine Schools, First Year, by Gilman, Van Houten and Cornista and one copy of the same textbook for Second Year (Exhibit 5). The evidence likewise shows that on September 3, 1963, the National Book Store, run and managed by the accused, sold one said textbook, Exhibit 'D' and Exhibit '2'. The mere possession by the accused on September 4, 1963 of several copies of this textbook which is the textbook alleged to be spurious and pirated, indicates that said accused was distributing or selling said textbook on September 4, 1963 . . . This being the case, it follows of necessity that the period of prescription commenced to run from September 4, 1963 and two years from this date, by excluding the first and including the last, would expire on September 4, 1965 and hence, the action, which was instituted on September 3, 1965 is well within the prescriptive period."

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Furthermore, the trial court ignored the accused's theory on leap year:

"Even if the last sale of said textbook could be considered to have taken place on September 3, 1963, Exhibits 'D' and '2', the Court is also of the opinion that the two-year period would expire September 3, 1965.

"The argument that inasmuch as 1964 is a leap year the two-year period must contain 731 days, as contemplated by Article 13 of the Civil Code of the Philippines, is, in the opinion of the Court, without merits

for this particular legal provision that a year is understood to be of 365 days each is applicable only in determining the number of days a year must legally contain but not for the purpose of ascertaining the period of prescription based on years. In the computation of the period of prescription, a year should be construed as the calendar year comprising the whole period from January 1 to December 31, regardless of the number of days it contains. Consequently, in this particular case, if it is considered that the last sale took place on September 3, 1963, the two-year period, following the rule exclude-the-first-and-include-the-last, will expire on September 3, 1965."

The accused filed a Motion for Reconsideration.[10] Two more pleadings were filed,[11] after which, the trial court finally denied said motion for reconsideration for lack of merit,[12] and reset the arraignment of the accused on February 24, 1966 at 8:30 A.M.

The accused thus filed with this Court this petition for certiorari, mandamus and prohibition,[13] with the following prayer:

"(a) Forthwith issue, upon filing by petitioner of a bond in such amount as this Honorable Court may fix, a Writ of Preliminary Injunction restraining, enjoining and prohibiting respondents from further proceedings in Criminal Case No. 80006 of the Court of First Instance of Manila, Branch III, during the pendency of this action:

(b) After due hearing, to render judgment in favor of petitioner and against respondents - (1) Annulling and setting aside the Orders of the respondent Judge of December 23, 1965 (Annex 'G') denying petitioner's motion to quash, and of January 20, 1966 (Annex 'K') denying petitioner's motion for reconsideration;

(2) Ordering respondent Judge to dismiss Criminal Case No. 80006 aforesaid; and

(3) Making the writ of preliminary injunction hereafter to be issued permanent and final."

This Court, on February 11, 1966, issued a writ of preliminary injunction restraining the trial Court from further proceedings in Criminal Case No. 80006.[14] Also on the same date, the two cases, G.R. No. L-25265 and G.R. No. L-25644, were consolidated.

1. In G.R. No. L-25265, the appeal, then Solicitor General Arturo Alafriz filed a four-page brief dated December 21, 1965[15] wherein he recommended affirmance of the order of Judge De Veyra quashing the information, and the dismissal of the appeal, for the simple reason that "the order appealed from is in accordance with law." Accused, now appellee Ramos, filed a brief dated January 21, 1966[16] reiterating her previous allegations in the lower court.

The Phoenix Publishing House, Inc., the offended party, filed a motion to intervene in this appeal, on the following grounds:

a) That the Solicitor General, instead of prosecuting the appeal, recommended its dismissal.

b) That, to protect its interest, it is necessary that the movant be allowed to intervene and to submit memorandum to sustain its view that the criminal action against the accused had not yet prescribed."[17]

Over the opposition of the accused-appellee, this Court granted the same.[18] Accordingly, the Phoenix Publishing House, Inc. filed its Memorandum[19] wherein it alleged that the trial court erred

I. IN ACTING ON DEFENDANT'S MOTION TO QUASH WITHOUT REQUIRING THE PRESENTATION OF EVIDENCE IN SUPPORT OF THE PLEA OF PRESCRIPTION.

II. IN NOT APPLYING TO THIS CASE THE FOUR-YEAR PRESCRIPTIVE PERIOD PROVIDED FOR IN ACT NO. 3326.

III. IN NOT HOLDING THAT THE PRELIMINARY INVESTIGATION PROCEEDINGS IN THE MANILA CITY FISCAL'S OFFICE AND IN THE DEPARTMENT OF JUSTICE INTERRUPTED PRESCRIPTION.

IV. IN NOT CONSIDERING FEBRUARY 28 AND 29, 1964, AS ONE DAY FOR PURPOSES OF PRESCRIPTION.

Accused-appellee, Ramos, filed a Reply Memorandum[20] refuting intervenor's assignment of errors. Subsequent pleadings[21] focused on whether February 28 and 29 of a leap year should be counted as one day or separate days in computing the period of prescription.

2. In G.R. No. L-25644--the special civil action--the issues raised in the foregoing assignment of errors were relied upon in respondent People's Answer.[22] And, following respondent Judge Ramos' reasoning, it was contended that the period of prescription should start from September 4, 1963, and not September 3, 1963, as originally proposed by the prosecution. Furthermore, as an affirmative defense, it was alleged that the petitioner had no cause of action for certiorari, prohibition and mandamus since Judge Ramos did not commit any grave abuse of discretion in refusing to quash the information. Respondent contended that the "(P)etitioner's remedy is to appeal the judgment of conviction rendered after a trial on the merits." This allegation was opposed by petitioner Ramos;[23] she insisted that she had a cause of action for certiorari, prohibition and mandamus. Respondent People filed a Reply Memorandum[24] disputing petitioner's allegations.

We are, thus, faced with conflicting orders of two different Branches of the Court of First Instance of Manila--one holding that the crime has prescribed; the other that it has not.

1. Now to resolve the preliminary issues:

a. On the propriety of the special civil action for certiorari and prohibition.

We find for petitioner. As We had occasion to hold in *Quizon vs. Baltazar*, 76 SCRA 559:

"As to the contention of respondents that the denial of a motion to quash is not a ground for certiorari and prohibition, suffice it to state that to allow an accused to undergo the ordeals of trial and conviction when the information or complaint against him is patently defective or the offense charged therein has been indisputably shown to have already prescribed is unfair and unjust for which reason, procedurally, the ordinary remedy of appeal cannot be plain and adequate."

As to mandamus, We are inclined to agree with respondent's allegation that "petitioner has no cause of action for mandamus which is a writ intended to control the exercise of a purely ministerial function. To quash an information is not a ministerial function." [25] However, mandamus as a remedy is a superfluity here, considering that petitioner can obtain full relief thru certiorari and prohibition.

b. On the applicability of the four-year prescriptive period provided in Act No. 3326.[26]

The same is not applicable. Said Act provides:

"Section 1. Violations penalized by special acts shall unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) (b) after four years for those punished by imprisonment for more than one month, but less than two years;" (Italics supplied.)

Act No. 3326 applies only if the special act does not provide for its own prescriptive period. It has no application here, where the Copyright Law provides for its own prescriptive period, viz:

"Section 24. All actions, suits, or proceedings arising under this Act shall be originally cognizable by the Courts of First Instance of the Philippines and shall prescribe after two years from the time the cause of action arose."

2. Now on the main issue of prescription. The question to be resolved is the proper computation of the two-year period of prescription from September 3, 1963. Resolution of this issue hinges, in turn, on whether February 28 and 29 of a leap year, 1964, should be counted as one day, as proposed by the prosecution; or as separate days, as alleged by the defense.

This issue which was in 1965 still undetermined is now a settled matter. It was held in 1969 in *Namarco vs. Tuazon*[27] that February 28 and 29 of a leap year should be counted as separate days in computing periods of prescription. Thus, this Court, speaking thru former Chief Justice Roberto Concepcion, held that where the prescriptive period was supposed to commence on December 21, 1955, the filing of the action on December 21, 1965, was done after the ten-year period has lapsed - since 1960 and 1964 were both leap years and the case was thus filed two (2) days too late. Since this case was filed on September 3, 1965, it was filed one day too late; considering that the 730th day fell on September 2, 1965 - the year 1964 being a leap year.

In explaining the rationale for its holding, the Court took pains to trace the antecedent decisional and statutory bases for its conclusion, thus -

"Prior to the approval of the Civil Code of Spain, the Supreme Court thereof held, on March 30, 1887, that, when the law spoke of months, it meant a 'natural' month or 'solar' month, in the absence of express provision to the contrary. Such provision was incorporated into the Civil Code of Spain, subsequently promulgated. Hence, the same Supreme Court declared that, pursuant to Article 7 of said Code, 'whenever months are referred to in the law, it shall be understood that months are of 30 days,' not the 'natural', 'solar' or 'calendar' months, unless they are 'designated by name,' in which case, 'they shall be computed by the actual number of days they have.' This concept was, later, modified in the Philippines, by Section 13 of the Revised Administrative Code, pursuant to which 'month shall be understood to refer to a calendar month.' With the approval of the Civil Code of the Philippines (RA 386) we have reverted to the provisions of the Spanish Civil Code in accordance with which a month is to be considered as the regular 30-month and not the solar or civil month with the particularity that, whereas the Spanish Civil Code merely mentioned 'months, days or nights,' ours has added thereto the term 'years' and explicitly ordains in Article 13 that it shall be understood that years are of three hundred sixty-five days." [28]

With respect to the opinion of some members of the Court that Article 13 of the Civil Code is unrealistic, the Court adverted to the proper remedy thus -

"Although some justices of the Supreme Court are inclined to think that Article 13 of the Civil Code defining 'years' to mean 365 days is not realistic, the remedy is not judicial legislation. If public interest demands a reversion to the policy embodied in the Revised Administrative Code, this may be done through legislative process, not by judicial decree." [29]

Finally, there is no merit in the allegation that the reckoning of the prescriptive period should start from September 4, 1963. This was the date when the police authorities discovered several pirated books in accused's store. But the accused was charged, in both Criminal Cases Nos. 80006 and 80007, with having allegedly sold and distributed spurious and pirated copies of the textbook in question, not of illegal possession of the same. The prosecution's claim that the preliminary investigation proceedings in the Manila City Fiscal's Office and in the Prosecution Division of the Department of Justice interrupted the running of the prescriptive period, is also without merit. We held in *People vs. Tayco*[30] that the running of the period of prescription is interrupted not by the act of the offended party in reporting the offense to the fiscal, but by the filing of the complaint or information in court.

WHEREFORE, the order dated October 7, 1965 of the Court of First Instance of Manila, Branch XIV in Criminal Case No. 80007 dismissing the case on the ground of prescription, is AFFIRMED. The order dated December 23, 1965 of the same Court, Branch III, in Criminal Case No. 80006, is REVERSED and SET ASIDE, and the case is DISMISSED, on the ground that the crime charged therein had already prescribed. Without pronouncement as to costs.

SO ORDERED.

Barredo, (Acting Chairman), Antonio, and Concepcion, Jr., JJ., concur.

Fernando and Aquino, JJ., did not take part.

Guerrero, J., was designated to sit in the Second Division.

[1] Rollo, G.R. No. L-25265, p. 2. In G.R. No. L-25644, the subject matter of the alleged violation of copyright was the Second Year edition of the same textbook. See Record on Appeal (R.A.), Petition, Annex "A", p. 27.

[2] Record, G.R. No. L-25265, p. 3; R.A. Petition, Annex "B", p. 30.

[3] Id., p. 28; Annex "C", p. 43.

[4] Id., p. 37; Annex "D", p. 57.

[5] Id., p. 43; Annex "E", p. 67.

[6] Id., p. 49. No copy of the Urgent Motion to Strike appears in the R.A. G.R. No. L-25644, although petitioner alleged that she filed it. See Petition, par. 11, p. 9.

[7] R.A., Petition, Annex "F", p. 73.

[8] Record, G.R. No. L-25265, p. 55.

[9] G.R. No. L-25265.

[10] Id., Annex "H", p. 88.

[11] Opposition to Motion for Reconsideration dated January 14, 1966, and Reply, dated January 18, 1966.

[12] R.A., Petition, Annex "K", p. 124.

[13] G.R. No. L-25644.

[14] Id., p. 11.

[15] Rollo, p. 8.

[16] Id., p. 34.

[17] Id., p. 11, pars. 3 and 5, of the Motion for Intervention.

[18] Id., pp. 19 and 31.

[19] Id., p. 44.

[20] Id., p. 45.

[21] Id., Intervenor's Supplementary Argument, p. 46; Refutation of Intervenor's Supplementary Argument, p. 47;

Intervenor's Additional Supplementary Argument, p. 52; and Manifestation on Intervenor's Additional Supplementary Argument and Motion for Consideration of Appellee's Counter Argument.

[22] R.A., p. 13.

[23] Id., p. 35.

[24] Id., p. 47.

[25] Id., p. 25.

[26] Titled "Prescription of Violation of Special Laws and Municipal Ordinances."

[27] G.R. No. L-29131, August 27, 1969, 29 SCRA 70.

[28] Idem., at p. 70 (Syllabus).

[29] Idem.

[30] 73 Phil. 509; also cited in Aquino, Ramon C., The Revised Penal Code, Vol. I, 1976 Ed., p. 702.

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