

ADELAIDA TANEGA, PETITIONER, VS. HON. HONORATO B. MASAKAYAN, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH V, AND THE CHIEF OF POLICE OF QUEZON CITY, ...

G.R. No. L-27191. February 28, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Pressed upon us in this, an original petition for certiorari and prohibition, is the problem of when prescription of penalty should start to run. The controlling facts are:

Convicted of slander by the City Court of Quezon City, petitioner appealed. Found guilty once again by the Court of First Instance,[1] she was sentenced to 20 days of *arresto menor*, to indemnify the of-fended party, Pilar B. Julio, in the sum of P100.00, with the corres-ponding subsidiary imprisonment, and to pay the costs. The Court of Appeals affirmed.[2] We declined to review on certiorari.[3]

Back to the Court of First Instance of Quezon City, said court, on January 11, 1965, directed that execution of the sentence be set for January 27, 1965. On petitioner's motion, execution was deferred to February 12, 1965, at 8:30 a.m. At the appointed day and hour, petitioner failed to show up. This prompted the respondent judge, on February 15, 1965, to issue a warrant for her arrest, and on March 23, 1965, an alias warrant of arrest. Petitioner was never arrested.

Then, on December 10, 1966, petitioner, by counsel, moved to quash the warrants of arrest of February 15, 1965 and March 23, 1965. Peti-tioner's ground: Penalty has prescribed.

On December 19, 1966, the respondent judge ruled that "the penalty imposed upon the accused has to be served", rejected the plea of prescrip-tion of penalty and, instead, directed the issuance of another alias warrant of arrest. Hence, the present petition.

Arresto menor and a fine of P100.00 constitute a light penalty.[4] By Article 92 of the Revised Penal Code, light penalties "imposed by final sentence" prescribe in one year. The period of prescription of penalties - so the succeeding Article 93 provides - "shall commence to run from the date when the culprit should evade the service of his sentence".[5]

What then is the concept of evasion of service of sentence? Article 157 of the Revised Penal Code furnishes the ready answer. Says Article 157:

"ART. 157. Evasion of service of sentence. - The penalty of prision correccional in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by escaping during the term of his imprisonment[6] by reason of final judgment. However, if such evasion or escape shall have taken place by means of unlawful entry, by breaking doors, windows, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees

of the penal institution, the penalty shall be prison correccional in its maximum period."

Elements of evasion of service of sentence are: (1) the offender is a convict by final judgment; (2) he "is serving his sentence which consists in deprivation of liberty" and (3) he evades service of sentence by escaping during the term of his sentence.[7] This must be so. For, by the express terms of the statute, a convict evades "service of his sentence", by "escaping during the term of his imprisonment by reason of final judgment." That escape should take place while serving sentence, is emphasized by the provisions of the second sentence of Article 157 which provides for a higher penalty if such "evasion or escape shall have taken place by means of unlawful entry, by breaking doors, windows, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution, x x x"[8] Indeed, evasion of sentence is but another expression of the term "jail breaking".[9]

A dig into legal history confirms the views just expressed. The Penal Code of Spain of 1870 in its Article 134 - from whence Articles 92 and 93 of the present Revised Penal Code originated - reads:

"Las penas impuestas por sentencia firme prescriben:

Las de muerte y cadena perpetua, a los veinte

x x x

Las leves, al año.

El tiempo de esta prescripcion comenzara a correr desde el dia en que se notifique personalmente al reo la sen-tencia firme, o desde el quebrantamiento de la condena, si hubiera esta comenzado a cumplirse. x x x"

Note that in the present Article 93 the words "desde el dia en que se notifique personalmente al reo la sentencia firme", written in the old code, were deleted. The omission is significant. What remains reproduced in Article 93 of the Revised Penal Code is solely "quebrantamiento de la condena". And, "quebrantamiento" or "evasion" means escape.[10] Reason dictates that one can escape only after he has started service of sentence.

Even under the old law, Viada emphasizes, where the penalty consists of imprisonment, prescription shall only begin to run when he escapes from confinement. Says Viada:

"El tiempo de la prescripcion empieza a contarse desde el dia en que ha tenido lugar la notificacion personal de la sentencia firme al reo: el Codigo de 1850 no expresaba que la notificacion hubiese de ser personal, pues en su art. 126 se consigna que el termino de la prescripcion se cuenta desde que se notifique la sentencia, causa de la ejecutoria en que se imponga la pena respect-iva. Luego ausente el reo, ya no podra prescribir hoy la pena, pues que la notificacion personal no puede ser sup-lida por la notificacion hecha en estrados. Dada la imprescindible necesidad del requisito de la notificacion personal, es obvio que en las penal que consisten en privacion de libertad solo podra existir la prescripcion quebrantando el reo la condena, pues que si no se hallare ya preso pre-ventivamente, debera siempre procederse a su encerramiento en el acto de serle notificada personalmente la sentencia."[11]

We, therefore, rule that for prescription of penalty of imprisonment imposed by final sentence to commence to run, the culprit should escape during the term of such imprisonment.

Adverting to the facts, we have here the case of a convict who -sentenced to imprisonment by final judgment - was thereafter never placed in confinement. Prescription of penalty, then, does not run in her favor.

For the reasons given, the Court resolved to dismiss the petition for certiorari and prohibition. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Regala, Makalintal, Bengzon, Zaldivar, and Castro, JJ., concur.

[1] Criminal Case Q-3955 of the Court of First Instance of Rizal, Branch V, Quezon City, entitled "People of the Philippines, plaintiff, vs. Adelaida Tanega, accused".

[2] C.A.-G.R. No. 0147-CR, decided on May 20, 1964.

[3] Docketed as G.R. No. L-23429. Certiorari denied on October 22, 1964.

[4] Article 9, Revised Penal Code.

[5] Emphasis supplied.

[6] The phrase "during the term of his imprisonment" is an inaccurate translation of the Spanish text "sufriendo privacion de libertad", which is controlling. The Spanish text of Article 157, in part, reads: "ART. 157. Quebrantamiento de sentencia. - Sera castigado con prision correccional en sus grados medio y maximo el sentenciado que quebrantare su condena, fugandose mientras estuviere sufriendo privacion de libertad por sentencia firme; * * *" People vs. Abilong, 82 Phil. 172, 174.

[7] Reyes, Revised Penal Code, 1956 ed., Vol. II, p. 115. See also: Padilla, Revised Penal Code, 1965 ed., Vol. II, p. 234.

[8] See also Article 158, paragraph 1, which reads: "ART. 158. Evasion of service of sentence on the occasion of disorders, conflagrations, earthquakes, or other calamities. - A convict who shall evade the service of his sentence, by leaving the penal institution where he shall have been confined, on the occasion of disorder resulting from a conflagration, earthquake, explosion, or similar catastrophe, or during a mutiny in which he has not participated, shall suffer an increase of one-fifth of the time still remaining to be served under the original sentence, which in no case shall exceed six months, if he shall fail to give himself up to the authorities within forty-eight hours following the issuance of a proclamation by the Chief Executive announcing the passing away of such calamity." Emphasis supplied.

[9] Alvarez vs. Director of Prisons (on motion for reconsideration), 80 Phil. 43, 50.

[10] See Webster's International Dictionary, 3rd ed., p. 787.

[11] Viada,Codigo Penal, 5th ed., Vol. p. 76; underscoring from Luego ours.

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