

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. DALMACIO SALAZAR, DEFENDANT AND APPELLEE.

G.R. No. L-8570. March 23, 1956

Ponente: BENGZON, J.

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BENGZON, J.:

The fiscal of Bataan has appealed from the order of the court of first instance of that province dismissing the information, dated July 28, 1953, that charged Dalmacio Salazar with a violation of article 319 of the Revised Penal Code, because

"in or about the periods comprised between July 16, 1957 to February, 1948 * * * the herein defendant Dalmacio Salazar, having mortgaged 75 cavanos of palay under the terms of the Chattel Bank, did then and there wilfully, unlawfully and fraudulently, sell and dispose of the said property without the knowledge and consent of the Bataan Agency, Philippine National Bank, to the damage and prejudice of the said bank in the sum of P262.50 Philippine Currency."

According to said court, since the crime must have been discovered prior to February 1948, more than five years had elapsed and therefore the crime had prescribed. The applicable provisions of the Revised Penal Code are the following:

"ART. 319. Removal, sale or pledge of mortgaged of property.— The penalty of arresto mayor or a fine amounting to twice the value of the property shall be imposed upon: * * *

"2. Any mortgagor who shall sell or pledge personal property already pledged, or any part thereof, under the terms of the Chattel Mortgage Law, without the consent of the mortgagee * * *"

"Art. 90. Prescription of crimes.—* * * Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor which shall prescribe in five years." * * *

."Art. 26. Fine—When afflictive, correctional or light penalty,— A fine, whether imposed as a single or as an alternative penalty shall be considered an afflictive penalty, if it exceeds 6,000 pesos; a correctional penalty, if it does not exceed 6,000 pesos but is not less than 200 pesos; and a light penalty, if it be less than 200 pesos."

"ART. 39. Subsidiary penalty.—If the convict has no property with which to meet the * * * (fine) he shall be subject to a subsidiary personal liability at the rate of one day for each 2 pesos and 50 centavos, subject to the following rules: * * *

"2. 'When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months * * *"

His Honor explained that five years was the prescriptive period, inasmuch as the offense was punishable with arresto mayor. Reminded, on a motion to reconsider, that the penalty could be a fine of P525 (twice the amount of P262.50) he declined to change his order pointing out that, anyway, the subsidiary imprisonment for such fine, could not exceed six months (Article 39 Revised Penal Code).

The Government's appeal rests on two propositions: (a) the offense prescribed in ten years because the fine could be P525, which is a correctional penalty, under articles 90 and 26; (b) granting *arguendo* that the period was five years, such period began only from the discovery of defendant's misdeed, which occurred in January 1953 as the prosecution offered to prove in the court below.

We find the first proposition to be in accordance with law and it is unnecessary to consider the second. The accused could have been ordered to pay a fine of P525, which is a correctional penalty. Therefore, as the offense was punished with a correctional penalty, it prescribed in ten years. That his subsidiary imprisonment could not exceed six months is immaterial.^[1] The rule on prescription (as to fines) did not refer to subsidiary imprisonment. It took into account the nature of the penalty: afflictive, correctional, and light. *Arresto mayor* was one exception. Subsidiary imprisonment, is not *arresto mayor*, and there is no reason to classify it as such, considering especially that exceptions are restrictively applied.

To adopt the lower court's viewpoint would mean that the heaviest fine, even exceeding P6,000, is never "afflictive," because the subsidiary imprisonment could not go beyond six months. That would be rewriting and amending article 26 of the Revised Penal Code.

The appealed order is reversed, and the case remanded for further proceedings. So ordered.

Parás, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

[1] Cf. *People vs. Caldito*, 40 Off. Gaz. 552.

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