

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. EUSTAQUIO JOSON ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-22366. October 07, 1924

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is a criminal action. The complaint charges that the defendants violated the Election Law. The complaint was dismissed upon motion of the defendants. The Attorney-General appealed for the Government.

The only question presented by this appeal is whether or not the action is barred by prescription.

The complaint was presented in the Court of First Instance of the Province of Albay on the 28th day of April, 1923. It charged that the defendants had violated the provisions of section 60 of Act No. 3030. The complaint alleged:

"That during the period between the first to the sixth of June, 1922, but specially on the 6th of June aforesaid, early in the morning and during said 6th day of June, and on the occasion of the general elections which were being held on said day in the municipalities of Virac and Bato, Province of Albay, Philippine Islands, the above-named accused, conspiring for the purpose, did willfully and intentionally write, prepare and cause to be written, distributed, published, divulged and posted in different public places within the municipalities of Virac and Bato several posters and bills reading as follows: 'Senores Electores: Guiromdoma nindo an mgña casaquitan na tinitios ta. Barato an bandala huli que Vera: mahal an bagas huli qui Pedro Martinez,' which in English means: (Voters, bear in mind our sufferings, hemp is cheap, due to Vera, and rice is dear, due to Martinez), and is calculated to belittle and defeat Jose O. Vera, Provincial Governor and candidate for reelection, and Pedro Martinez, Representative for the Second District and also candidate for reelection, with reference to Administrative Order No. 13 of the Bureau of Agriculture, which the defendants have persistently and publicly been attributing to Governor Vera, as author of the measure, and to the raising of the price of rice by the Fifth Philippine Legislature in its last period of sessions which the same 'defendants have been attributing publicly to Representative Martinez, without in one or the other case stating their names or that of any other person, with their domicile or residence, at the bottom of said bills. And all the above criminal acts were committed by the accused, within their conspiracy and in pursuance and furtherance of a general plan of election campaign in all the municipalities of the subprovince of Catanduanes.

"Contrary to law."

On the date of the presentation of the complaint (April 28, 1923), the Honorable M. Rosauro, judge, issued the following order:

"The attached information having been presented, the same is hereby admitted and it is ordered that the clerk issue the proper warrant of arrest against the defendants Eustaquio Joson, Florencio Tacorda, Vicente Bagadiong, and

Pedro Tapar, and for their provisional release they will be admitted to bail by giving a bond of P500 each." In accordance with the foregoing order on the same date (April 28, 1923), an "order of arrest" was issued, signed by said judge. On the same date (April 28, 1923), and without having been actually arrested under said order of arrest, all of the defendants appeared in court and gave "bail bonds" for their liberty, which bonds were duly approved by the Honorable M. Rosauro. Each of said bonds obligated each of said defendants "to appear and answer the charge above-mentioned (the complaint) in whatever court it may be tried, and will at all times hold themselves amenable to the orders and processes of the court and, if convicted, will appear for judgment and render themselves to the execution thereof."

Nothing further seems to have occurred in the prosecution of said action until the 22d day of January, 1924, when the cause was set down for trial on the 6th day of March, 1924, at 8 o'clock a. m. Notices of the assignment of said cause for trial were duly served upon the defendants by the sheriff, some of them on the 10th day of February, 1924, and the others on the 5th day of March, 1924.

On the 5th day of March, 1924, the cause was transferred from the 6th day of March, upon petition of the provincial fiscal, to a later date to be fixed by the court. On the 11th day of March, 1924, the cause was reassigned for trial on the 20th day of March, 1924. On the 20th day of March, 1924, and at the time set for the trial of said cause, the defendants appeared and presented a motion to dismiss the action. Said motion was based upon the following grounds:

- "1. That the information presented in this case was filed on or about April 28, 1923.
- "2. That the defendants were never arrested nor arraigned as to said information up to this time.
- "3. That while a warrant of arrest appears in the record, yet on no date or occasion were the defendants notified of said order, and it appears that up to this time no action was taken thereon and it was not enforced.
- "4. That since the aforesaid information was presented and up to this date, no step was taken by the prosecution to notify or inform the accused thereof, nor to have the proper preliminary investigation held, and it appears that up to this time no preliminary investigation of the case has in fact been made, notwithstanding the lapse of the considerable period of almost exactly eleven months.
- "5. That it appears from the foregoing facts that this court has not acquired jurisdiction over the person of the accused nor to try them.
- "6. That the acts imputed to the accused, according to the information itself, are alleged to have been committed on or about June 6, 1922, and yet and without any explanation therefor being given, more than 10 months were let elapse without filing said information.
- "7. That in view of the facts and irregularities above set forth, the filing of the aforesaid information does not constitute the commencement of any valid or legal criminal action, nor interrupt the period for the prescription of the offense with which the accused are charged, and said offense has in fact prescribed."

Notwithstanding the opposition of the provincial fiscal to said motion to dismiss, the Honorable Pablo Borbon, judge, after a consideration of the arguments pro and con upon said motion, granted the same upon the specific grounds that the defendants had not been arrested; that the action had not been prosecuted, and that the same was then barred by prescription. From that judgment the Attorney-General appealed to this court, and now alleges that the lower court committed the following errors: (a) In holding that the running of the statute of limitation was not interrupted; (b) in holding that the offense with which the defendants were charged had prescribed; and (c) in dismissing the information.

Section 71 of Act No. 3030 (the Election Law) provides that "Offenses resulting from violations of this Act shall prescribe one year after their commission." The complaint charges that the crime with which the defendants were charged was committed from the 1st to the 6th day of June, 1922. The complaint was presented on the 28th day of April, 1923. The complaint was presented, therefore, within the year following the commission of the crime. If the presentation of a complaint has the effect of interrupting the period of prescription, then the present action was not barred at the time the complaint was presented.

The lower court argued, however, that inasmuch as the defendants had not been arrested, that the action had not been prosecuted within the period prescribed by the law and that the action was barred. No rule of law relating to the prescription of actions is better settled than that the commencement of an action interrupts the running of the prescriptive period. But, was the action commenced by the presentation of the complaint? By reference to said Act No. 3030, with special reference to section 71, it will be noted that the Act does not define what shall amount to the commencement of a criminal action. The lower court relied upon the provisions of the Penal Code. We are of the opinion, however, that Act No. 3030 being a special law, that the provisions of the Penal Code do not apply. We are left therefore, so far as the law is concerned, without a definition of what constitutes the commencement of an action in criminal cases.

By reference, however, to section 46 of Act No. 190, we may find something which will assist us in solving that question by analogy. While section 389 of Act No. 190 provides that the commencement of an action shall date from the filing of the complaint and the service of the same, yet for the purpose of interrupting the statute of prescription or limitations, section 46 of said Act provides that "An action shall be deemed commenced within the meaning of this chapter (prescription), as to each defendant, at the date of the filing of the complaint in court * * *."

In the absence of a definition in Act No. 3030 or any other acts of the Legislature, defining what shall constitute the commencement of a criminal action, we are inclined to follow the provisions of section 46 of Act No. 190, and to hold that the word "action" as used in said section 46 applies to both criminal and civil actions. In accordance therefore with that section, we are forced to decide that the filing of the complaint in the present action on the 28th day of April, 1923, had the effect of interrupting the running of the prescriptive period mentioned in section 71 of Act No. 3030, and that the actual arrest of the defendants was not necessary to interrupt the running of the period of prescription or limitation. Moreover, it may be added that when the defendants voluntarily appeared after the complaint was presented against them and gave bonds for their appearance at any time they may be called, no arrest is necessary. Voluntary appearance relieves the necessity of an actual arrest.

The record contains no explanation why the prosecution of the present case was delayed from the 28th of April, 1923, to the 20th of March, 1924. Such delay should not be permitted.

In view of all of the foregoing, our conclusions are: That the presentation of the complaint within the year of prescription interrupted the running of the prescriptive period and the action was not barred by prescription; that the lower court committed the errors complained of by the Attorney-General; that the cause was improperly dismissed, and it is hereby ordered and decreed that the record should be returned to the court whence it came, with direction that the prosecution proceeds as speedily as possible. And without any finding as to costs, it is so ordered.

Street, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

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