

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FLORENTINO ABILONG, DEFENDANT AND APPELLANT.

G.R. No. L-1960. November 26, 1948

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Florentino Abilong was charged in the Court of First Instance of Manila with evasion of service of sentence under the following information:

"That on or about the 17th. day of September, 1947, in the City of Manila, Philippines, the said accused, being then a convict sentenced and ordered to serve two (2) years, four (4) months and one (1) day of destierro during which he should not enter any place within the radius of 100 kilometers from the City of Manila, by virtue of final judgment rendered by the municipal court on April 5, 1946, in criminal case No. B-4795 for attempted robbery, did then and there wilfully, unlawfully and feloniously evade the service of said sentence by going beyond the limits made against him and commit vagrancy.

"Contrary to law."

Upon arraignment he pleaded guilty and was sentenced to two (2) years, four (4) months and one (1) day of prisión correccional, with the accessory penalties of the law and to pay the costs. He is appealing from that vision with the following assignment of error:

1. The lower court erred in imposing a penalty on the accused under article 157 of the Revised Penal Code, which does not cover evasion of service of "destierro."

Counsel for the appellant contends that a person like the accused evading a sentence of destierro is not criminally liable under the provisions of the Revised Penal Code, particularly article 157 of the said Code for the reason that said article 157 refers only to persons who are imprisoned in a penal institution and completely deprived of their liberty. He bases his contention on the word "imprisonment" used in the English text of said article which in part reads as follows:

"Evasion of service of sentence. —The penalty of prisión 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 by reason of final judgment."

The Solicitor General in his brief says that had the original text of the Revised Penal Code been in the English language, then the theory of the appellant could be upheld. However, it is the Spanish text that is controlling in case of doubt. The Spanish text of article 157 in part reads thus:

"ART. 157. Quebrantamiento de sentencia.—Será castigado con prision correccional en sus grados medio y máximo el sentenciado que quebrantare su condena, fugándose mientras estuviere sufriendo privación de libertad por sentencia firme; * * *."

We agree with the Solicitor General that inasmuch as the Revised Penal Code was originally approved and

enacted in Spanish, the Spanish text governs (*People vs. Manaba*, 58 Phil., 665, 668). It is clear that the word "imprisonment" used in the English text is a wrong or erroneous translation of the phrase "sufriendo privacion de libertad" used in the Spanish text. It is equally clear that although the Solicitor General impliedly admits destierro as not constituting imprisonment, it is a deprivation of liberty, though partial, in the sense that as in the present case, the appellant by his sentence of destierro was deprived of the liberty to enter the City of Manila. This view has been adopted in the case of *People vs. Samonte*, No. 36553 (July 26, 1932; 57 Phil., 968) wherein this Court held, as quoted in the brief of the Solicitor General that "it is clear that a person under sentence of destierro is suffering deprivation of his liberty and escapes from the restrictions of the penalty when he enters the prohibited area." Said ruling in that case was ratified by this Court, though, indirectly in the case of *People vs. Jose de Jesus*, (45 Off. Gaz. Supp. to No. 9, p. 370)[1], where it was held that one evades the service of his sentence of destierro when he enters the prohibited area specified in the judgment of conviction, and he cannot invoke the provisions of the Indeterminate Sentence Law which provides that its provisions do not apply to those who shall have escaped from confinement or evaded sentence.

In conclusion we find and hold that the appellant is guilty of evasion of service of sentence under article 157 of the Revised Penal Code (Spanish text), in that during the period of his sentence of destierro by virtue of final judgment wherein he was prohibited from entering the City of Manila, he entered said City.

Finding no reversible error in the decision appealed from, the same is hereby affirmed with costs against the appellant. So ordered.

Moran, C.J., Parás, Feria, Pablo, Bengzon, and Tuason, JJ., concur.

[1] 80 Phil., 746.

DISSENTING

PERFECTO, J.:

The legal question raised in this case is whether or not appellant, for having violated his judgment of destierro rendered by the Municipal Court of Manila, can be sentenced under article 157 of the Revised Penal Code which reads as follows:

"Evasion of service of sentence.—The penalty of prisión correccional W 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 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 correctional in its maximum period."

Appellant invokes in his favor the negative opinion of author Guillermo Guevara (Revised Penal Code, 1946, p. 322). This negative position is supported by another author, Ambrosio Padilla (Revised Penal Code annotated, p. 474).

The prosecution invokes the decision of this Court in *People vs. De Jesus*, L-1414, [2] promulgated April 16, 1948, but said decision has no application because in said case the legal question involved in the case at bar was not raised. The Supreme Court did not consider the question of interpretation of the wording of article 157. Undoubtedly, there was occasion for considering the question, but the Court nevertheless failed to do so. This

failure to see the question, at the time, is only an evidence that the tribunal is composed of human beings for whom infallibility is beyond reach.

The prosecution maintains that appellant's contention, supported by two authors who have considered the question, although tenable under the English text of article 157, is not so under the Spanish text, which is the one controlling because the Revised Penal Code was originally enacted by the Legislature in Spanish.

There is no quarrel, therefore, that under the above-quoted English text, the appellant is entitled to acquittal. The question now is whether or not the Spanish text conveys a thing different from that which can be read in the English text. The Spanish text reads as follows:

"ART. 157. Quebrantamiento de sentencia.—Será castigado con prisión correccional en sus grados medio y máximo el sentenciado que quebrantare su condena, fugándose mientras estuviere sufriendo privación de libertad por sentencia firme; pero si la evasión o fuga se hubiere llevado a efecto con escalamiento, fractura de puertas, ventanas, verjas, paredes, techos o suelos, o empleando ganzuas, llaves falsas, disfraz, engaño, violencia o intimidación, o poniéndose de acuerdo con otros sentenciados o dependientes del establecimiento donde a hallare recluso la pena será prisión correccional en su grado máximo."

The question boils down to the words "fugándose mientras estuviere sufriendo privación de libertad por sentencia firme," which are translated into English "by escaping during the term of his imprisonment by reason of final judgment." The prosecution contends that the words "privación de libertad" in the Spanish text is not the same as the word "imprisonment" in the English text, and that while "imprisonment" cannot include destierro, "privación de libertad" may include it.

The reason is, however, the result of a partial point of view, because it obliterates the grammatical, logical, ideological function of the words "fugándose" and "by escaping" in the Spanish and English texts, respectively. There should not be any question that, whatever meaning we may want to give to the words "privación de libertad," it has to be conditioned by the verb "fugándose," (by escaping). "Privación de libertad" cannot be considered independently of "fugándose."

There seems to be no question that the Spanish "fugándose" is correctly translated into the English "by escaping." Now, is there any sense in escaping from destierro or banishment, where there is no enclosure binding the hypothetical fugitive? "Fugándose" is one of the forms of the Spanish verb "fugar," to escape. The specific idea of "evasion" or "escape" is reiterated by the use of said words after the semi-colon in the Spanish text and after the first period in the English text. Either the verb "to escape" or the substantive noun "escape" essentially presupposes some kind of imprisonment or confinement, except figuratively, and Article 157 does not talk in metaphors or parables.

"To escape" means "to get away, as by flight or other conscious effort; to break away, get free, or get clear, from or out of detention, danger, discomfort, or the like; as to escape from prison. To issue from confinement or enclosure of any sort; as gas escapes from the mains." (Webster's New International Dictionary.)

"Escape" means "act of escaping, or fact of having escaped; evasion of or deliverance from injury or any evil; also the means of escape. The unlawful departure of a prisoner from the limits of his custody. When the prisoner gets out of prison and unlawfully regains his liberty, it is an actual escape." (Webster's New International Dictionary.)

"Evasion" means "escape." (Webster's New International Dictionary.)

The "destierro" imposed on appellant banished him from Manila alone, and he was free to stay in all the remaining parts of the country, and to go and stay in any part of the globe outside the country. With freedom to move all over the world, it is farfetched to allege that he is in any confinement from which he could escape.

The words "privación de libertad" have been correctly translated into the English "imprisonment," which gives the idea exactly conveyed by "privación de libertad" in the Spanish text. Undoubtedly, the drafters of the latter could have had used a more precise Spanish word, but the literary error cannot be taken as a pretext to give to the less precise words a broader meaning than is usually given to them.

"Privación de libertad," literally meaning "deprivation of liberty or freedom," has always been used by jurist using the Spanish language to mean "imprisonment." They have never given them the unbounded philosophical scope that would lead to irretrievable absurdities.

Under that unlimited scope, no single individual in the more than two billion inhabitants of the world can be considered free, as the freest citizen of the freest country is subject to many limitations or deprivations of liberty. Under the prosecution's theory, should an accused, sentenced to pay a fine of one peso, evade the payment of it, because the fine deprives him of liberty to dispose of his one peso, he will be liable to be punished under article 157 of the Revised Penal Code to imprisonment of from more than two years to six years. The iniquity and cruelty of such situation are too glaring and violent to be entertained for a moment under our constitutional framework.

There is no gainsaying the proposition that to allow the violation of a sentence of destierro without punishment is undesirable, but even without applying article 157 of the Revised Penal Code, the act of the appellant cannot remain unpunished, because his violation of the sentence of destierro may be punished as contempt of court, for which imprisonment-up to six months is provided.

It is deplorable that article 157 should not provide for a situation presented in this case, but the gap cannot be filled by this Court without encroaching upon the legislative powers of Congress.

Perhaps it is better that evasions of sentence be punished, as provided by the old Penal Code, by an increase in the evaded penalty. This will be more reasonable than the penalties provided by article 157, which appear to be disproportionate and arbitrary, because they place on equal footing the evader of a sentence of one day of imprisonment and a life-terminer, one who commits an insignificant offense and one who perpetrates the most heinous crime. At any rate, this is a problem for Congress to solve.

The appealed decision should be set aside.

BRIONES, J.:

I concur in the foregoing dissenting opinion, because evidently the word "fugándose" in the Spanish text refers to imprisonment, not to destierro.

Judgment affirmed.

[2] 80 Phil., 746.

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