

SIMPLICIO PENDON, PETITIONER AND APPELLANT, VS. JULITO DIASNES, RESPONDENT AND APPELLEE.

G.R. No. L-5606. August 28, 1952

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal by the plaintiff in a quo warranto proceeding instituted in the Court of First Instance of Iloilo. The petitioner sought to have the defendant, who had been elected municipal mayor of Dumangas, Iloilo, in the general election of November 13, 1951, declared ineligible to that office by reason of a previous conviction for a criminal offense.

It is admitted that Julito Diasnes, the defendant, was found guilty of estafa and sentenced to one year and one day of imprisonment by the Court of First Instance of Iloilo in 1932, a sentence which was fully extinguished partly in the provincial jail of Iloilo and partly in Bilibid Prison, the prisoner having been released on September 25, 1933. But the defendant alleged that he had been granted absolute pardon by the Governor General sometime in 1934.

Only oral evidence was presented to prove the alleged pardon, as copies of it, as well as the original, were said to have been unavailable, and the question on which the appellant devotes much space in his brief deals with the admissibility and sufficiency of this evidence.

To prove the unavailability of any copy of the pardon, the defendant introduced (1) deposition (Exhibit "6") of Atty. Honorato B. Masakayan, Executive Officer and Secretary of the Board of Pardon and Parole, who declared that all the records of his office had been destroyed in the last war; (2) deposition (Exhibit "7") of Emilio Punzal, Chief of the Records Division of the Office of the President who testified to the same effect with reference to the records of the office; (3) deposition (Exhibit "U") of Jose M. Abrigo, Identification Clerk and Custodian of the Records of the Bureau of Prisons, taken in behalf of the appellant himself, stating that there was no record of the plaintiff's pardon in that bureau but that when pardon was granted after the release of the prisoner copy thereof was not always furnished to the prison authorities; (4) certificate and testimony by the Clerk of Court of Iloilo to the effect that all pre-war records of his office had been destroyed; (5) certificate by the Director of Civil Service stating that there was no record of Diasnes pardon in his office and that some of the records of said office "were lost or destroyed during the last Pacific War." Regarding the original, the defendant testified that it was burned along with his house when the dwelling was set on fire by the Japanese during the occupation.

All these proofs, including the certificates, were admissible in evidence and competent, and constitute sufficient foundation for the introduction of secondary evidence of the nature and contents of the pardon. Such nature and contents were testified to by the defendant and other witnesses who claimed to have seen or helped procure the pardon, and found by the trial court to be as averred in the answer.

These findings are conclusive as far as this court is concerned, the appellant having elevated the case to the Supreme Court for review on the express statement that only questions of law would be raised. What is more, if we are to believe, as the court below believed, that executive clemency was extended to the defendant, the pardon

could not have been other than plenary and absolute, considering the purpose for which it was issued, namely to enable the beneficiary to exercise the right of suffrage.

The other contention is "that the court below erred in not holding that pardon does not remove the incapacity or disqualifications as a voter in matters of convictions of crime against property," (14th assignment of error). This question stemmed from the apparent ambiguity of section 99 of Republic Act No. 180 as amended by Republic Act No. 599, which provides:

"The following persons shall not be qualified to vote:

"(a) Any person who has been sentenced by final judgment to suffer one year or more of imprisonment, such disability not having been removed by plenary pardon.

"(b) Any person who has been declared by final judgment guilty of any crime against property.

"(c) Any person who has violated his allegiance to the Republic of the Philippines.

"(d) Insane, or feeble-minded persons.

"(e) Person who can not prepare their ballots themselves."

The same problem was posed in the case of *Cristobal vs. Labrador*, 71 Phil., 34, arising from substantially the same facts as those in the present case: prior conviction for estafa and pardon after service of the penalty.

In that case this court held that "An absolute pardon not only blots out the crime committed, but removes all disabilities resulting from the conviction," and that, "when granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction." Commenting upon "the suggestion that the disqualification imposed in paragraph (b) of section 94 of Commonwealth Act No. 357 [now paragraph (b) of section 99 of Republic Act No. 180 as amended], does not fall within the purview of the pardoning power of the Chief Executive," the court noted that this "would lead to the impairment of the pardoning power of the Chief Executive, not contemplated in the Constitution, and will lead furthermore to the result that there will be no way of restoring the political privilege in the case of this nature except through legislative action."

The contention in the above-cited case assumed, and the Court seemed to have taken for granted, perhaps for the sake of argument, that paragraph (b) intended to disqualify from voting any person who has been convicted of any crime.

As a matter of fact, that, in our opinion, is not the legislative intent. Actually there is no conflict between paragraphs (a) and (b), and paragraph (b) in no way encroaches upon the pardoning power of the Chief Executive.

Paragraph (b) must be construed in conjunction with paragraph (a). Thus construed, it modifies that part of paragraph (a) which refers to sentences for less than a year and not that which refers to the nature of the crime committed. Paragraph (a) is comprehensive, making no distinction between crimes against property and other classes of crimes. By the terms of this clause (paragraph [a]), all persons convicted of crime of whatever nature and sentenced to one year or more are disqualified to vote. But it makes two exceptions each of which is independent of the other, to wit: (1) when the penalty imposed is less than one year and (2) when pardon is granted. Paragraph (b) qualifies or further limits the first exceptions but not the second. It creates an exception to the exception of paragraph (a) that persons sentenced to less than one year may vote. It is not meant to say that conviction for a crime against property bars the convict from voting irrespective of the penalty and irrespective of whether or not pardon has been granted. Construing paragraphs (a) and (b) together, as stated, they should read thus: Absolute pardon for any crime for which one year of imprisonment or more was meted out restores the prisoner to his political rights. Where the penalty is less than one year, disqualification does not attach, except

when the crime committed is one against property, in which case, the prisoner has to have a pardon, as in the cases provided in paragraph (a), if he is to be allowed to vote. For illustrations: (1) A was prosecuted for physical injuries and condemned to suffer 10 months imprisonment. Though not pardoned, he is not, under paragraph (a), disqualified. (2) B was prosecuted for theft and sentenced to imprisonment for 10 months. Under paragraph (b) he may not vote unless he is pardoned. (3) C was prosecuted and sentenced to four years for physical injuries or estafa. C has to be pardoned if he is to exercise the right of suffrage. This is the class of cases envisaged by paragraph (a); the nature of the crime is immaterial.

Carried to its logical conclusion, the appellant's interpretation of section 99 of Republic Act No. 180 as amended would lead to absurd consequences. Under this interpretation, the right to vote of a person who has been sentenced to one month for stealing one peso is beyond restoration by the Chief Executive, while one who has been found guilty of the most heinous crime in the statute book and sentenced to death could recover his political rights through executive clemency.

But, it would be asked, why should paragraph (b) discriminate against crimes against property? And why should it confine itself to crimes punishable with less than one year imprisonment?

The answer is that major crimes always involve a high degree of moral turpitude. When it comes to lesser crimes, or rather crimes punishable with lighter penalty, the concept is reversed. Petty thefts and petty deceits and embezzlement always involve dishonesty and are reprehensible, while assaults and battery, calumnies, violations of municipal ordinance and traffic regulations, are, more likely than not, the products of violent passion or emotion, negligence or ignorance of law.

It is argued that "had the law intended to extend the effects of plenary pardon to those kinds of persons, the law would have so stated." As has been seen, paragraph (a) is all-embracing and it would be more logical to say that if the Congress had intended to exclude crimes against property from the benefits of a plenary pardon, it would have said so directly and explicitly in the same paragraph.

The appealed judgment of the lower court is, therefore, affirmed with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

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