

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. PASCUAL CASTRO, DEFENDANT AND APPELLANT.

G.R. No. L-6407. July 29, 1954

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Apolonio Bustos, the complainant, was the head teacher of the barrio school of San Jose, Macabebe, Pampanga, and Pascual Castro, the accused, a teacher in said school. In the morning of January 19, 1952, while the complainant was on his way to the barrio chapel to hear mass he met a group of persons including the accused. The complainant invited the accused to hear mass but instead of accepting his invitation a discussion ensued in the course of which the accused gave the complainant a fist blow on the face causing him injuries which required medical attendance for a period of five days.

On April 14, 1952, a complaint for slight physical injuries was lodged by the complainant against the accused in the Justice of the Peace Court of Macabebe, Pampanga. After trial, the accused was found guilty as charged and sentenced to suffer fifteen days of *arresto menor* and to pay the costs. From this decision, the accused appealed to the Court of First Instance where he pleaded not guilty. Before trial on the merits, but after he had entered his plea, the accused moved to dismiss the charge on the ground that the crime had already prescribed. This plea was ignored, and after the presentation of evidence, the court rendered judgment reiterating the same penalty imposed upon the accused by the inferior court. Hence, this appeal.

The only issue to be determined is whether the lower court erred in not dismissing the information on the ground that the offense charged had already prescribed.

It appears that the incident which gave rise to the injuries now complained of occurred on January 19, 1952 while the corresponding criminal complaint was filed before the justice of the peace court on April 14, 1952, or after the period of two months had elapsed. And considering that a light offense prescribes in two months (article 90, Revised Penal Code), it is now contended that the crime had already prescribed and as such it cannot serve as basis of criminal prosecution.

The Solicitor General does not agree with this contention. He claims that, since the accused failed to move to quash before pleading, he must be deemed to have waived this defense under rule 113, section 10, of the Rules of Court.

The rule thus invoked in effect provides that if the accused does not move to quash the information before he pleads thereto, "he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense, or the court is without jurisdiction of the same." And one of the grounds on which a motion to quash may be predicated is that the criminal action or liability has been extinguished. (Section 2, paragraph f, rule 113.) On the other hand, the law provides that the criminal liability may be extinguished by prescription of the crime. (Article 89, Revised Penal Code).

The question that now arises is: Does the failure of the accused to move to quash before pleading constitute a waiver to raise the question of prescription at a later stage of the case?

A case in point is *People vs. Moran*, 44 Phil., 387. In that case, the accused was charged with a violation of the election law. He was found guilty and convicted and the judgment was affirmed, with slight modification, by the Supreme Court. Pending reconsideration of the decision, the accused moved to dismiss the case setting up the plea of prescription. After the Attorney General was given an opportunity to answer the motion, and the parties had submitted memoranda in support of their respective contentions, the court ruled that the crime had already prescribed holding that this defense can not be deemed waived even if the case had been decided by the lower court and was pending appeal in the Supreme Court. The philosophy behind this ruling was aptly stated as follows: "Although the general rule is that the defense of prescription is not available unless expressly set up in the lower court, as in that case it is presumed to have been waived and cannot be taken advantage of thereafter, yet this rule is not always of absolute application in criminal cases, such as that in which prescription of the crime is expressly provided by law, for the State not having then the right to prosecute, or continue prosecuting, nor to punish, or continue punishing, the offense, or to continue holding the defendant subject to its action through the imposition of the penalty, the court must so declare." And elaborating on this proposition, the Court went on to state as follows:

"As prescription of the crime is the loss by the State of the right to prosecute and punish the same, it is absolutely indisputable that from the moment the State has lost or waived such right, the defendant may, at any stage of the proceeding, demand and ask that the same be finally dismissed and he be acquitted from the complaint, and such petition is proper and effective even if the court taking cognizance of the case has already rendered judgment and said judgment is merely in suspense, pending the resolution of a motion for a reconsideration and new trial, and this is the more so since in such a case there is not yet any final and irrevocable judgment."

The ruling above adverted to squarely applies to the present case. Here, the rule provides that the plea of prescription should be set up before arraignment, or before the accused pleads to the charge, as otherwise the defense would be deemed waived; but, as was well said in the *Moran* case, this rule is not of absolute application, especially when it conflicts with a substantive provision of the law, such as that which refers to prescription of crimes. Since, under the Constitution, the Supreme Court has only the power to promulgate rules concerning pleadings, practice and procedure, and the admission to the practice of law, and cannot cover substantive rights (section 13, article VIII, of the Constitution), the rule we are considering cannot be interpreted or given such scope or extent that would come into conflict or defeat an express provision of our substantive law. One of such provisions is article 89 of the Revised Penal Code which provides that the prescription of crime has the effect of totally extinguishing the criminal liability. And so we hold that the ruling laid down in the *Moran* case still holds good even if it were laid down before the adoption of the present Rules of Court.

The learned dissenter opines that the *Moran* case has already lost its validity because at the time it was decided there was no rule prescribing waiver of prescription and, besides, this question was not raised and could not have been raised because the law was enacted only when the case was already pending in the Supreme Court. In other words, the learned dissenter is of the opinion that the *Moran* case cannot be invoked as authority because the question of waiver was not specially raised therein unlike the present case.

We cannot agree to this appraisal of the *Moran* case for precisely the ruling laid down therein was predicated upon the theory that the defense of prescription, even if not set up in its proper time, is not deemed waived it being an exception to the general rule. Thus, it was there said that, "Although the general rule is that the defense of prescription is not available unless expressly set up in the lower court, as in that case it is presumed to have been

waived and cannot be taken advantage of thereafter, yet this rule is not always of absolute application in criminal cases * * *."

It is true that the doctrine in the Moran case was not adhered to in the case of Santos vs. Supt. of the Phil. Training School for Girls, 55 Phil., 345, but that was because the plea of prescription was raised in a petition for a writ of habeas corpus. It has been held that such plea is not available "on an application for a writ of habeas corpus (16 C. J. 416), for the reason that "All questions which may arise in the orderly course of a criminal prosecution are to be determined by the court to whose jurisdiction the defendant has been subjected by the law, and the fact that a defendant has a good and sufficient defense to a criminal charge on which he is held will not entitle him to his discharge on habeas corpus." (12 R. C. L. 1206.) [1] (*Italics supplied*). The Santos case did not nullify our ruling in the Moran case.

An attempt was made to maintain the case by showing that as a result of the incident in question a criminal complaint for attempted homicide was filed against the accused prior to the charge of slight physical injuries which was dismissed without prejudice and must have had the effect' of interrupting the period of prescription; but this attempt cannot be given serious consideration it appearing that the date when the criminal complaint for attempted homicide was filed, does not appear in the record. The only data we have on hand is that the complaint was dismissed on March 27, 1952. The failure of the Government to furnish us sufficient data prevents us from concluding that the prescription period has not yet elapsed since the charge for attempted homicide may have been filed after March 20, 1952 and dismissed on March 27. Under the facts presently obtaining the only alternative is to dismiss the case as prayed for by the defense.

Wherefore, the judgment appealed from is reversed, and the case is dismissed, with cost de oficio.

Paras, C. J., Pablo, Padilla, Jugo, Labrador and Concepcion, JJ., concur.

Reyes, A.J., concurs in the result.

[1] These authorities are quoted by the ponente in the Santos case (55 Phil., 345).

DISSENTING

BENGZON, J.:

Without saying so, the decision strikes down Rule 113 sections 2(f) and 10 of the Rules of Court providing that if the defendant does not, before pleading, move to quash on the ground that the criminal action or liability has been extinguished "he shall be taken to have waived" such defense. The Court confesses, sotto voce, that it exceeded its constitutional powers in promulgating such rule or its pertinent portion, because it takes away a substantial right.

Willingness to admit error is always praiseworthy; but when such acknowledgment is due to a short-sighted view of jurisdictional posts and boundaries, regrets are surely in order.

For the record I must state, it was not my privilege to take part in the preparation and promulgation of the Rules of Court of 1940. None the less it is my duty, as a member of the Court now, to exert efforts exploring the nature and extent of Rule 113, with a view to upholding it if legally possible, preserving intact the Court's regulatory powers under the Constitution. On this subject, to give in easily enhances no judicial virtue.

Following *P. vs. Moran* (1923), the majority brushes aside Rule 113 and declares that prescription may be asserted by the accused for the first time, even after pleading and even on appeal; but the fundamental facts must

be borne in mind that Moran was tried for violation of the Election Law, at a time when no period of prescription for such offenses existed[1]; that during the pendency of his appeal the law was amended, and for the first time a prescription period was fixed, and that he immediately invoked it. The Court had to agree that Moran made no waiver, because he could not have waived something (prescription) that did not exist when he was tried in the court below.[2]

True, there were dicta regarding non-waivability of the defense of prescription, in view of its nature. But in the year 1923 Rule 113 sections 2(f) and 10 had not yet been adopted.[3] Obviously in the absence of positive legal rules, the Court could then (1923) and did expound, abstract principles of criminal law about waiver of prescription. Now that the Rules of Court (1940) provide otherwise expressly, the philosophical observations in *People vs. Moran* have lost their validity. If necessary it should be declared that the Rules modified pro tanto the theories described in that case. In fact those theories were limited—if not overruled—in *Santos vs. Superintendent*, 55 Phil., 345, wherein Virginia Santos having been finally convicted of violation of ordinance, filed habeas corpus proceedings, alleging the offense had prescribed. Revoking the lower court that upheld prescription, we said prescription may be, and was waived through failure to allege it on time:

"In granting the writ, the lower court relied upon the ruling by this court in *People vs. Moran* (44 Phil., 387), which was; an ordinary criminal case and not an habeas corpus proceedings and where the prescription of the violation of the Election Law was only alleged after the whole proceedings were over, because only then had the Legislature passed a law to that effect. In that case there was no waiver of that defense for the simple reason that there was no prescription. If the plea of prescription will not be admitted by the court in habeas corpus proceedings, it is precisely for the reason that it is deemed to have been waived. * * *

That the defense of prescription must be alleged during the proceedings in prosecution of the offense alleged to have prescribed, is a doctrine recognized by this court in *United States vs. Serapio* (23 Phil., 584) where the principle is supported by citations of *Aldeguez vs. Hoskyn* (2 Phil., 500), *Domingo vs. Osorio* (7 Phil., 405), *Maxilom vs. Tabotabo* (9 Phil., 390), *Harty vs. Luna* (13 Phil., 31) and *Sunico vs. Ramirez* (14 Phil., 500)." (55 Phil., 345).

We held, expressly in the above case that the defense of prescription is waived if not alleged during the proceedings, notwithstanding "the State has lost" the right to punish. By the Rules we made it clear afterwards that it must be alleged before pleading; otherwise it is waived. This decision now confesses we had no power so to direct. Did we also exceed our power in the many cases upholding waiver of prescription? (*U. S. vs. Serapio* etc. *supra*.)

In a few words this decision reaches the conclusion that prescription being a substantial right, it is beyond this court's power to regulate and debar.

Such a broad statement, sweeps away repeated practices, specially in civil cases. However I will answer it as follows: substantial rights may be lost—and have been lost—through failure to comply with rules of procedure or through the neglect duly to set them up.[4]

Again the privilege against double jeopardy is a constitutional right even more substantial; but according to our Rules it is waived if not seasonably pleaded. And we said so in repeated decisions listed in the footnote,[5] wherein we declined to philosophize (along the lines of the *Moran* dicta), that as the first jeopardy meant "the loss by the State of its right to prosecute and punish" the accused again, "it is absolutely indisputable that from the moment the state has lost or waived such right, the defendant may at any stage of the proceedings demand and ask that the same be finally dismissed" because "the State not having then the right to prosecute" a second time "or to continue holding the defendant subject to its action thru the imposition of the penalty, the court must so declare."

In those cases we also refused to consider that a constitutional right—more than merely substantive— should not be taken away by operation of court decisions, or the Rules.

It is undeniable that the matter of formulating defense to define issues, and the proofs allowable is procedural in nature, a matter of pleading and practice. That is exactly the scope of sees. 2(f) and 10 Rule 113. They warn the defendant in advance: if you do not allege prescription, before pleading, it will not be deemed an issue, and it cannot be proved. If he makes no allegations, he renounces the defense. The Rules do not take it away. For all we know, the accused may have reasons to want acquittal on the merits, not on a plea of prescription.

It might be asserted that prescription needs no proof, because the information fixes the date of the crime's commission, and prescription may be counted up to the date of filing of such information, which date the court knows. The assertion forgets that prescription begins to run, not necessarily from the crime's commission, but "from the day on which the crime is discovered by the offended party, the authorities or their agents". (Article 31 Revised Penal Code).

The learned ponente will reply of course, that in this case the physical injuries had to be known on the same day they were inflicted, and that prescription began immediately. Correct. But we are writing doctrines for all cases. In malversation, forgery, bribery and other offenses the crime is not usually known on the same day it is committed. Evidence of that day is, therefore needed, upon proper allegations. Herein lies the *raison d'être* of the rule in question.

Yet I will meet the issue even on this particular ground. This crime, the decision states was known on the same day, Jan. 19, 1952; and as the information is dated April 14, 1952; i. e. more than two months later, therefore prescription and acquittal. With all due respect, there seems to be a jump to conclusions. The period might have been "interrupted" by the filing of a complaint or by defendant's escape to foreign countries, as expressly provided in Article 90 Revised Penal Code. In fact the justice of the peace, and the court of first instance, say a criminal complaint for attempted homicide had previously been filed which was subsequently dismissed without prejudice. However, despite such information, the majority decision gives the point no serious consideration "it appearing that the date when the criminal complaint for attempted homicide was filed does not appear in the record", the Government having failed "to furnish us sufficient data". To be sure, the Fiscal service will be surprised to infer what is left unsaid: "because it is the duty of the prosecution to prove that the crime has not prescribed, even of the accused does not raise the point".

If the ponente should insist that the accused here invoked prescription, my answer would be: the allegation was late, and according to Rule 113, prescription was waived.

His reply should then be: but the prosecution ought to have known that Rule 113 was a nullity because it was beyond this Court's power, and there was no waiver.

No rejoinder is necessary . . . Need it be stressed that the prosecution had a right to rely on the Rule promulgated by the highest court of the land? Could it presume to know better?

And this leads to the inequitable result of the majority's position: Having acted according to Rule 113 and disregarded prescription, the State is left "holding the bag" when we strike such Rule down. Fairness, I submit, requires that the prosecution should at least be allowed, to prove the interruption of the period which it asserts.

Or do we advise litigants to stick to the Rules at their own peril?

Montemayor, J., concurs:

[1] Santos vs. Superintendent of the Philippine Training School for Girls, 55 Phil., 345.

[2] "Santos vs. Superintendent of the Philippine Training School for Girls, 55 Phil., 345.

[3] "Section 2(f) is a new provision, and section 10 was taken from the American Law Institute.

[4] Examples. Sued on a forged promissory note transcribed in the complaint, the defendant fails to deny specifically under oath. Result, he cannot prove forgery—he loses money.

Sued on a promissory note which he has already paid, defendant fails to allege payment as defense. Result, he pays again.

A counterclaim not set up is barred. (Rule 10, sec. 6).

Discharge in bankruptcy, if not pleaded, is waived, (secs. 9 and 10 Rule 9).

[5] U.S. vs. Perez, 1 Phil., 203; U.S. vs. Cruz, 36 Phil., 727; U.S. vs. Ondaro 39 Phil., 76; P. vs. Cabero, 61Phil., 121; Trinidad vs. Siiochi, 72 Phil., 241.

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