

ALONZO BAGTAS Y ALEJANDRINO, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. L-3215. October 06, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

This is a petition for habeas corpus based upon the following facts:

On various dates between February 18 and May 14, 1948, the petitioner was convicted of estafa in seventeen criminal cases and sentenced by final judgments of the Court of First Instance of Manila to an aggregate penalty of 6 years, 4 months, and 26 days of imprisonment, to indemnify the offended parties in various sums aggregating P43,436.45, with subsidiary imprisonment in case of insolvency in each case, and to pay the costs. The most severe of the seventeen sentences against the petitioner was 6 months and 1 day of prision correccional plus an indemnity of P8,000, with subsidiary imprisonment in case of insolvency, and the costs. He commenced to serve these sentences on February 18, 1948.

The petitioner contends:

- (a) That under section 70 of the Revised Penal Code the maximum duration of his sentence cannot exceed threefold the length of time corresponding to the most severe of the penalties imposed upon him, that is to say, 18 months and 3 days;
- (b) That the application of the threefold rule does not preclude his enjoyment of the deduction from his sentence of 5 days for each month of good behavior as provided in paragraph 1 of article 97 of the Revised Penal Code;
- (c) That with such deduction his aggregate penalty should be only 15 months, and 3 days, and that therefore he should have been discharged from custody on June 3, 1949; and
- (d) That the subsidiary imprisonment should be eliminated because article 70 provides that "no other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period."

- We sustain petitioner's contentions (a) and (b) above set forth upon the threefold rule provided in article 70 of the Revised Penal Code, as amended by section 2 of Commonwealth Act No. 217, and the decisions of this court in numerous cases. (People vs. Garalde, 50 Phil., 823; Torres vs. Superintendent of San Ramon Prison and Penal Farm, 58 Phil., 847, and cases therein cited.)

- The important question to decide here is whether the subsidiary imprisonment should be eliminated from the penalty imposed upon the petitioner as reduced to thrice the duration of the gravest penalty imposed on him in accordance with article 70.

The pertinent provision of said article reads as follows:

"Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed

upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period."

Article 100 says that every person criminally liable for a felony is also civilly liable.

Articles 38 and 39 provide as follows:

"Art. 38. Pecuniary Liabilities.—Order of Payment.—In case the property of the offender should not be sufficient for the payment of all his pecuniary liabilities, the same shall be met in the following order:

"1. The reparation of the damage caused.

"2. Indemnification of consequential damages.

"3. The fine.

"4. The costs of the proceedings.

"Art. 39. Subsidiary Penalty.—If the convict has no property with which to meet the pecuniary liabilities mentioned in paragraphs 1st, 2nd, and 3rd of the next preceding article, 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:

"1. If the principal penalty imposed be prison correccional or arresto and fine, he shall remain under confinement until his fine and pecuniary liabilities referred in the preceding paragraph are satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner.

"2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a light felony.

"3. When the principal penalty imposed is higher than prison correccional no subsidiary, imprisonment shall be imposed upon the culprit.

"4. If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict, during the period of time established in the preceding rules, shall continue to suffer the same deprivations as those of which the principal penalty consists.

"5. The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from reparation of the damage caused, nor from indemnification for the consequential damages in case his financial circumstances should improve; but he shall be relieved from pecuniary liability as to the fine."

In the case of *People vs. Garalde*, supra, the accused was sentenced in several cases for the crime of estafa thru falsification of commercial documents, and his aggregate penalty was reduced to threefold the most severe of the penalties, which was 8 years and 1 day of prison mayor. The Judgment in that case contained the following proviso: "Provided, however, that in case of insolvency, by analogy, he is not to suffer subsidiary imprisonment, since his imprisonment would be in excess of thrice the duration of the gravest penalty imposed on him."

That judgment is invoked by the petitioner herein in support of his contention that he should not be made to suffer subsidiary imprisonment.

It will be noted, however, that in that case the principal penalty imposed was higher than prison correccional, and therefore the accused was exempt from subsidiary imprisonment in accordance with paragraph 3 of article 39 hereinabove quoted. That, in our opinion, should have been the reason stated by the court in that case for

exempting the accused from subsidiary imprisonment.

Subsidiary imprisonment forms part of the penalty and its imposition is required by article 39 in case of insolvency of the accused to meet the pecuniary liabilities mentioned in the first three paragraphs of article 38; it cannot be eliminated under article 70 so long as the principal penalty is not higher than 6 years of imprisonment. The provision of article 70 that "no other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period," simply means that the convict shall not serve the excess over the maximum of threefold the most severe penalty. For instance, if the aggregate of the principal penalties is six years and that is reduced to two years under the threefold rule of article 70, he shall not be required to serve the remaining four years.

In the case of *Jose Arlinda vs. Director of Prisons*, G. R. No. 47326, this court, by a resolution dated March 18, 1940, held that the contention of the petitioner that in applying the threefold rule the court should not have taken into account the indemnity of P498 or its corresponding subsidiary imprisonment was without merit, "for an Indemnity, to all intents and purposes, is considered a penalty, although pecuniary in character, in Title Three of the Revised Penal Code, so much so that it is reducible in terms of imprisonment at the rate of one day for each 2 pesos and 50 centavos should the offender turn out to be insolvent (article 39, Revised Penal Code); that, moreover, the indemnity which a person is sentenced to pay forms an integral part of the penalty, it being expressly provided by article 100 of the Revised Penal Code that 'every person criminally liable for a felony is also civilly liable'; that, finally, article 70 of the Revised Penal Code, as amended by Commonwealth Act No. 217, in limiting the prisoner's penalty to not more than threefold the length of the most severe penalty imposed upon him, makes no distinction between the principal penalty and subsidiary imprisonment."

We note, however, that in the case just above cited the highest penalty which formed the basis of the computation under the threefold rule was 4 years, 2 months, and 1 day of imprisonment plus an indemnity of P498 and that the court added the equivalent of the indemnity in terms of subsidiary imprisonment, namely, 6 months and 19 days, to the principal penalty of 4 years, 2 months, and 1 day and multiplied the sum by 3, with the result that petitioner's aggregate penalty was fixed at 14 years and 2 months of imprisonment, instead of multiplying the principal penalty (without the subsidiary imprisonment) by 3, and requiring the convict to pay the indemnity, for which he should not have been made to suffer subsidiary imprisonment in case of insolvency in view of the fact that the aggregate of the principal penalties as reduced under article 70 exceeded 6 years of imprisonment. We think it was error to add the subsidiary imprisonment to the principal penalty at the outset for the purpose of applying the threefold rule, because the imposition of subsidiary imprisonment is conditioned on the insolvency of the convict and the latter is required to serve it only when he fails or is unable to pay the indemnity.

We hold that the correct rule is to multiply the highest principal penalty by 3 and the result will be the aggregate principal penalty which the prisoner has to serve, plus the payment of all the indemnities which he has been sentenced to pay, with or without subsidiary imprisonment depending upon whether or not the principal penalty exceeds 6 years.

Applying that rule to the instant case, we find that the maximum duration of the principal penalty which the herein petitioner has to serve under his conviction in the 17 cases in question is threefold of 6 months and 1 day, or 18 months and 3 days, it being understood that he shall be required to pay to the offended parties the indemnities aggregating P43,436.45, with subsidiary imprisonment in case of insolvency which shall not exceed one third of the principal penalty. Assuming that the petitioner will not be able to pay the indemnity, the maximum duration of his imprisonment shall be 18 months and 3 days of principal penalty plus 6 months and 1 day of subsidiary imprisonment, or a total of 2 years and 4 days.

It appearing that the petitioner has not yet served his sentence as above reduced, even with good conductm time allowance, the petition is denied, without any finding as to costs.

Moran, C.J., Feria, Bengzon, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

Paras, and Padilla, JJ., concur in the result.

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