

PEOPLE OF THE PHILIPPINES, APPELLANT, VS. SALVADOR MONTEIRO, APPELLEE.

G.R. No. L-49454. December 21, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The appellant is questioning the order of the Court of First Instance of Laguna[1] dated May 17, 1976, granting the motion to quash the following information against Salvador Monteiro:

That on or about the period from January 1964 to May 31, 1974 at Liliw, Laguna and within the jurisdiction of this Honorable Court, the above-named accused, being the operator and owner of "Monteiro's Footwear," an establishment engaged in the manufacture of footwear, did then and there wilfully, unlawfully and feloniously fail to register and/or report to the Social Security System, Elizabeth Collantes as member thereof who was employed in said firm or establishment from January 1964 to May 1974 in violation of the Social Security Laws; and despite demands failed to register aforesaid employee to the damage and prejudice of the offended party.

The reason for the quashal was prescription. The trial court agreed with the appellee that the crime charged, which is punishable only with a fine from P500.00 to P5,000.00 or imprisonment of not less than six months to more than one year, or both, could no longer be prosecuted.[2] The law applied was Section 1(b) of Act 3326, as amended, providing that offenses punishable with imprisonment for more than one month but less than two years prescribe after four years.

The trial court reckoned the 4-year prescriptive period from January 1964, holding that the crime was deemed committed from the time the private respondent failed to register the employee. No other act was needed to complete the crime. The Order applied the case of *People v. Ching Lak*,[3] where this Court declared that the prescriptive period for violation of the War Profits Tax Law commenced from the date the accused failed to pay his war profits tax. As the information against Monteiro was filed only on November 10, 1975, it was clear that it was already time-barred under the cited provision.

The appellant contends otherwise. According to the Solicitor General, the 4-year period should commence, not in January 1964, when the violation started, but in May 1974, when it was discovered. He cites in support of his view Elizabeth Collantes's statements[4] at the preliminary investigation of the case and Section 2 of the same Act, providing as follows:

SEC. 2. Prescription shall commence to run on the day of the commission of the violation of the law and if the same be not known at that time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

For his part, the appellee argues that the appellant cannot change its theory on appeal from its original position that the offense was a continuing one. He insists that the prescriptive period should be counted from the date of the alleged violation as this was not concealed and did not have to be discovered. The statements of Collantes

were not admissible evidence because they had not been formally offered; hence, no proof of discovery had been presented by the appellant. He also suggests that the subsequent registration of Collantes with the SSS had the effect of extinguishing the offense and that in any case the appeal would place him in double jeopardy.

In the recent case of *Benedicto v. Abad Santos*,^[5] also involving the failure to register an employee with the SSS, the Court declared:

In the case at bar, the information was filed against petitioner Benedicto ten (10) years after the alleged violations had been discovered by the SSS. We hold that the statutory crime here charged had prescribed by then, the prescriptive period here applicable being four (4) years.

Although this was not the ratio decidendi of that case, we affirm the conclusion that the period of prescription for the offense of failure to register with the SSS shall begin from the day of the discovery of the violation if this was not known at the time of its commission. A contrary view would be dangerous as the successful concealment of an offense during the period fixed for its prescription would be the very means by which the offender may escape punishment.

The Solicitor General was, indeed, not changing his theory on appeal but merely shifting his emphasis. Even in the lower court, he had consistently opposed the contention that the offense had prescribed.

We cannot accept the appellee's argument that the appeal should be dismissed because the appellant had failed to show that it was only in 1974 that the offense was discovered. That was not his responsibility. On the contrary, the burden of proving that the crime had prescribed fell on the appellee because it was he who was invoking that affirmative defense.^[6] The fact of prescription not being apparent on the face of the information, it was incumbent on the appellee to establish the basis of that defense.^[7]

The trial court should have applied Section 7 of Rule 133 of the Rules of Court, providing as follows:

Sec. 7. Evidence on Motion. - When a motion is based on facts not appearing of record, the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

In *Sapida v. De Villanueva*,^[8] we held that "while the court may rule upon motions solely on the basis of affidavits and counter-affidavits, if the affidavits contradict each other on matters of fact, the court can have no basis to make its findings of facts and the prudent course is to subject the affiants to cross-examination so that the court can decide whom to believe."

We note that in the case at bar, the trial court resolved the motion merely on the basis of the amended information, the motion to quash and the opposition thereto. These were insufficient bases for the findings of fact needed to justify the grant of the motion. The trial judge did not require submission of affidavits and counter-affidavits or hold a preliminary hearing to inform himself of the date when the prescriptive period was supposed to have commenced. This was because he assumed at the outset that the period of prescription began in 1964.

In holding that the prescriptive period should begin in January 1964, the trial judge was merely presuming that the appellant was already aware on that date of the commission of the crime. There is no proof of this, nor is such knowledge deducible from a reading of the information. Even the motion to quash did not allege that the appellant already knew of the violation immediately when it began in January 1964.

The case of *People v. Dinsay*,^[9] where the Court dismissed the information because it had been filed beyond the prescriptive period is not in point. The estafa committed by the accused was known to the offended party from the very start; one would say the commission and the discovery of the offense were simultaneous. In the case at bar, it

does not appear that Collantes knew at the outset, that is, from January 1964, that she had not been registered by the appellee with the SSS. In fact, she said she learned she was not a member only much later, when she wanted to avail herself of SSS benefits because of the hospitalization of her husband.[10]

The appellee's claim that his subsequent registration of Collantes with the SSS extinguished his current liability, if any, is not acceptable. If subsequent compliance with the law were sufficient to condone past violation, then the penal clause might as well be deleted from the statute. Many an unscrupulous employer could simply not register his employees and, when found out and prosecuted, register them belatedly. Such an interpretation would nullify the purpose of the law, which is precisely to protect the members of the working class.

The invocation of the rule against double jeopardy must also be rejected. Double jeopardy will attach only if there is: (a) a valid complaint or information; (b) filed before a competent court; (c) to which the defendant had pleaded; and (d) of which he had been previously acquitted or convicted or which was dismissed or otherwise terminated without his express consent.[11] The herein appellee has not yet been arraigned and it was upon his express motion that the information was quashed and the case dismissed.

WHEREFORE, the challenged Order dated May 17, 1976, is SET ASIDE. This case is remanded to the Regional Trial Court of Laguna for determination, after hearing, of the date when the alleged offense was discovered and the prescriptive period commenced to run. No costs.

SO ORDERED.

Narvasa (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Presided by Judge Maximo A. Maceren.

[2] Rollo, p. 8.

[3] 103 Phil. 1149.

[4] Appellant's Brief, pp. 11-12, Rollo, p. 14.

[5] G.R. No. 74689, March 21, 1990.

[6] Francisco, Revised Rules of Court, Criminal Procedure, pp. 638-639, 1969 2nd ed.

[7] Ibid.

[8] 48 SCRA 19.

[9] C.A., 40 O.G., 12th Supp., 50.

[10] Appellant's Brief, pp. 12-13, Rollo, p. 14.

[11] People v. Obsania, 23 SCRA 1249.

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