

MARCELINA CABUNAG, PETITIONER, VS. VICENTE JOCSON, AS JUDGE OF FIRST INSTANCE OF THE THIRTEENTH JUDICIAL DISTRICT, RESPONDENT.

G.R. No. 11728. October 28, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is a petition to obtain a writ of certiorari directed to the Honorable Vicente Jocson, as judge of the Court of First Instance of the Province of Batangas, requiring him to remit to this court the proceedings had in a criminal action in which the petitioner was charged with a misdemeanor, for the purpose of revising certain of the steps taken in said proceeding by the court and the prosecuting officials and to annul certain of them on the ground that, in taking them, the court exceeded its jurisdiction and acted without jurisdiction, power or authority.

The petitioner was convicted of a misdemeanor in the justice's court of the municipality of Rosa no, Batangas, and immediately appealed to the Court of First Instance of that province. The cause was remitted to the Court of First Instance on the 11th day of August, 1915. On that day notice of the remission was given by the justice of the peace to the prosecuting attorney of the Province of Batangas. Nothing was done with the case until the 19th of October, 1915, when the prosecuting attorney, filed an information in the Court of First Instance. The case was not tried until the 8th of March, 1916, when the accused was convicted of the misdemeanor with which she stood charged, and duly sentenced.

The contention is that, nothing having been done from the time the appeal was received in the Court of First Instance on the 11th of August, 1915, until the 19th of October, 1915, when the information was filed, a period of two months and eight days, and the trial not having taken place until the month of March, 1916, prescription ran against the crime under those portions of article 131 of the Penal Code which declare that "misdemeanors prescribe in two months" and that "this prescription shall be interrupted from the commencement of the proceedings against the offender, and the term of prescription shall commence to run again when such proceedings terminate without the accused being convicted or the proceedings are suspended by reason of some cause other than the fault of the defendant." It is asserted that these provisions, taken in connection with article 130 which declares that criminal liability is extinguished by prescription of the crime as well as of the penalty, are applicable to petitioner's case in the court below and that her criminal liability has ceased to exist.

Answer was duly made to the petition and the cause submitted on the merits.

Dealing with the question from the standpoint of the facts the trial court says:

"According to the old organization of the courts of justice, the Courts of First Instance in the Philippine Islands were presided [over] by a single judge in each province and the sessions were continuous except holidays; but the present judicial organization under the American regime, especially Act No. 2347 as amended by Act No. 2495, established seasons or periods of sessions in each court, and in these prescribed periods ordinary cases shall be tried. Outside of these periods the judge, in his discretion, has the power to try cases which in his

opinion ought to be decided for the public good. Some of the judicial districts comprise two or more courts. The Province of Batangas, according to Act No. 2347, forms with the Province of Mindoro a judicial district; and according to Act No. 2495, enacted February 5, 1915, the regular sessions of court in this 13th district begin on the first Tuesday of February and August of each year, and in Calapan, Mindoro, on the first Tuesday of April and October of each year. According to this system the court was, in the month of October 1915, holding sessions in Calapan, Mindoro, and, on its return to Batangas, it heard cases which in its judgment were urgent in character and in which the public good required prompt decisions. Said sessions not being regular, the court included the ordinary cases in the calendar for the first Tuesday of the month of February, and among those included in said calendar is the present case which the defense alleges has prescribed. No ordinary session of this court has, therefore, been held upon which the claim could be based that the present action has been suspended; for the first Tuesday of February having been the first period of regular sessions of this court after the month of October of last year, the present case has suffered no delay under the present organization of the courts of justice in the Philippine Islands. Therefore, the defense of prescription is groundless; for, at any rate, this period of prescription should begin to run from the period of the sessions which commenced on the month of February of the present year and not from the month of October when the information was filed by the provincial fiscal; for the court was not obliged to try this case in the exercise of its discretion to hear and try cases which in his judgment the public good requires, particularly when we take into consideration the fact that the accused was at liberty under bail. If she were not under bail her case would have been tried immediately. The article of the Penal Code invoked to support prescription is now inapplicable, for the reason that the present Penal Code could only work harmoniously with the organization of the courts of justice during the Spanish regime. Furthermore, the decision relied upon by the defense takes for granted that the court of Pina negligently allowed the period of prescription to run and thereby abandoned the prosecution thereof. In the present case, however, the contrary happened; for the defense admitted openly and fairly that there had been no negligence or abandonment on the part of the court or on that of the fiscal. This being the case, that is, that no negligence or abandonment existed on the part of the officers of the court, the defense of prescription could not be invoked, even though the present organization of the courts of justice above mentioned was not taken into consideration; for the Supreme Court of Spain, in its decision of the 12th of April, 1880, holds that, in order that the defense of prescription be successful, abandonment or negligence must have existed on the part of the officers of the court; and if this abandonment or negligence does not exist, the defense of prescription cannot be sustained. (Viada, Vol. I, page 583.) To the same effect is the doctrine laid down in the decisions of the Supreme Court of Spain of November 18, 1882, and November 22 of the same year, found in pages 584 and 585, Viada, Vol. I. The defense of prescription, therefore, is improper and inadmissible in the present case."

The application for the writ of certiorari is denied on the ground that, upon the facts and circumstances set forth, there is no such a paralyzation or abandonment of the proceeding as would extinguish the criminal liability of the accused within the provisions of article 130 and 131 of the Penal Code. The changes wrought by the change of sovereignty in the Philippine Islands and by subsequent legislation with regard to the judiciary under which courts are now held in various provinces of the Islands during stated periods instead of continuously as under the Spanish system, have resulted necessarily in a modification of the conditions under which criminal liability will be extinguished by reason of the failure of the authorities to prosecute in cases of misdemeanors.

We do not hold at this time that that portion of article 131 referring to the matter before us has been repealed. It is unnecessary to a decision of this case. We simply hold that the conditions under which the suspension of proceedings in cases of misdemeanors works an extinction of the liability are changed to such an extent that, under the facts and circumstances presented in this case, such extinction has not occurred.

We do not now decide whether certiorari is the proper remedy even though extinction of the liability actually occurred. The case being before us we have decided it upon the merits regardless of the form of the proceeding in order that the parties may know their rights promptly.

The question presented is a new one and involves a consideration of the results flowing from a change in the judicial system brought about by the change of sovereignty and the subsequent legislation; and the court has considered it with care on several occasions. It is very likely that if the delay which took place in the prosecution of this case had occurred under the Spanish regime the provisions of article 131 of the Penal Code would have been applicable. Under the system as it now exists the delay does not, in our judgment, produce that result. Under the former system the essence of the matter seems to have been the negligence of the prosecuting officials; and this, taken in connection with the comparatively unimportant nature of the crime committed, was sufficient to permit the statute of limitations to run and the consequent extinguishment of the criminal liability. The delay as it occurred under the present system was not due to the negligence of the officials in charge of the prosecution but to the way in which the judiciary is organized, the time and place during and in which sessions of the court were held, and the pressing nature of the other business then before the court. Such being the case we hardly think that the spirit which informs articles 130 and 131 of the Penal Code would warrant us in holding that the criminal liability of the accused was extinguished by the delays which occurred.

The petition for the writ is denied, with costs. So ordered.

Torres, Carson, and Trent, JJ., concur.

Johnson, J., reserves his vote.

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