

**BENJAMIN PANGAN Y RIVERA, PETITIONER, VS. HON. LOURDES F. GATBALITE, AS THE PRESIDING JUDGE, REGIONAL TRIAL COURT OF ANGELES CITY, BRANCH 56, AND COL. JAMES D. LABORDO, AS THE C...**

*G.R. NO. 141718. January 21, 2005*

Ponente: AZCUNA, J.

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**AZCUNA, J.:**

Before the Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the decision of the Regional Trial Court of Angeles City, Branch 56, rendered on January 31, 2000.[1]

The facts of this case are undisputed. The petitioner was indicted for simple seduction in Criminal Case No. 85-816, at the Municipal Trial Court of Angeles City, Branch 3.

During the trial of the case, Atty. Eduardo Pineda, counsel for petitioner, submitted the case for decision without offering any evidence, due to the petitioner's constant absence at hearings.

On September 16, 1987, the petitioner was convicted of the offense charged and was sentenced to serve a penalty of two months and one day of arresto mayor.

On appeal, the Regional Trial Court, on October 24, 1988, affirmed in toto the decision of the Municipal Trial Court.

On August 9, 1991, the case was called for promulgation of the decision in the court of origin. Despite due notice, counsel for the petitioner did not appear. Notice to petitioner was returned unserved with the notation that he no longer resided at the given address. As a consequence, he also failed to appear at the scheduled promulgation. The court of origin issued an order directing the recording of the decision in the criminal docket of the court and an order of arrest against the petitioner.[2]

Pursuant to the order of arrest, on January 20, 2000, the petitioner was apprehended and detained at the Mabalacat Detention Cell. On January 24, 2000, petitioner filed a Petition for a Writ of Habeas Corpus at the Regional Trial Court of Angeles City. He impleaded as respondent the Acting Chief of Police of Mabalacat, Pampanga.[3] Petitioner contended that his arrest was illegal and unjustified on the grounds that:

(a) the straight penalty of two months and one day of arresto mayor prescribes in five years under No. 3, Article 93 [of the] Revised Penal Code, and

(b) having been able to continuously evade service of sentence for almost nine years, his criminal liability has long been totally extinguished under No. 6, Article 89 [of the] Revised Penal Code.[4]

After his transfer to the City Jail of Angeles City on January 25, 2000, petitioner filed an Amended Petition with the Regional Trial Court, impleading herein respondent Col. James D. Labordo, the Jail Warden of Angeles City, as respondent.[5]

In response, the Jail Warden alleged that petitioner's detention was pursuant to the order of commitment (mittimus), issued by Marlon P. Roque, Clerk of Court III of the Municipal Trial Court of Angeles City, Branch 3, dated January 25, 2000.[6]

On January 31, 2000, respondent Judge rendered the decision, which is the subject of this present appeal, which pronounced:

The Court cannot subscribe to the contention of the petitioner that the penalty imposed on him in the decision adverted to above had already prescribed, hence, his detention is illegal for under Article 93 of the Revised Penal Code:

"The period of prescription of penalties shall commence to run from the date when the culprit should evade the service of sentence, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government has no extradition treaty, or should commit another crime before the expiration of the period of prescription.

The elements of prescription are:

1. That the penalty is imposed by final judgment;
2. That convict evaded the service of the sentence by escaping during the term of his sentence;
3. That the convict who had escaped from prison has not given himself up, or been captured, or gone to a foreign country with which we have no extradition treaty, or committed another crime;
4. The penalty has prescribed, because of the lapse of time from the date of the evasion of the service of the sentence by the convict.

In this case, the essential element of prescription which is the evasion of the service of sentence is absent. Admittedly, the petitioner herein has not served the penalty imposed on him in prison and that during the service of the sentence, he escaped therefrom. Notably, at the trial of Crim. Case No. 85-816 in the Municipal Trial Court, Branch III, Angeles City and on the date set for the promulgation of the affirmed decision, the petitioner failed to appear and remained at large.

"There was no evasion of the service of the sentence in this case, because such evasion presupposes escaping during the service of the sentence consisting in deprivation of liberty." (Infante vs. Warden, 48 O.G. No. 122) (92 Phil. 310).

Corollarily, the detention of the petitioner in Angeles City Jail in compliance with the Order of Commitment (Exhibit E) is not illegal for –

"A commitment in due form, based on a final judgment, convicting and sentencing the defendant in a criminal case, is conclusive evidence of the legality of his detention, unless it appears that the court which pronounced the judgment was without jurisdiction or exceeded it." (U.S. vs. Jayne, 24 Phil 90, 24 J.F. 94, Phil. Digest, Vol. 2, 1398).

WHEREFORE, for not being meritorious and well-founded, the petition for a writ of habeas corpus is hereby denied.

SO ORDERED.

Angeles City, January 31, 2000.[7]

From the above quoted decision, petitioner filed the instant petition for review on a question purely of law and raised the following issue:

HOW SHOULD THE PHRASE “SHALL COMMENCE TO RUN FROM THE DATE WHEN THE CULPRIT SHOULD EVADE THE SERVICE OF SENTENCE” IN ARTICLE 93 OF THE REVISED PENAL CODE ON THE COMPUTATION OF THE PRESCRIPTION OF PENALTIES BE CONSTRUED? PUT A LITTLE DIFFERENTLY, WHEN DOES THE PRESCRIPTIVE PERIOD OF PENALTIES BEGIN TO RUN?[8]

Petitioner claims that:

xxx the period for the computation of penalties under Article 93 of the Revised Penal Code begins to run from the moment the judgment of conviction becomes final and the convict successfully evades, eludes, and dodges arrest for him to serve sentence.[9]

Petitioner supports his claim in the following manner:

The Decision subject of this appeal, which was based on the 1952 ruling rendered in *Infante vs. Warden*, 48 O.G. No. 122, 92 Phil. 310, is, petitioner most respectfully submits, not good case law. It imposes upon the convict a condition not stated in the law. It is contrary to the spirit, nature or essence of prescription of penalties, creates an ambiguity in the law and opens the law to abuse by government.

THE INFANTE RULING IMPOSES A  
CONDITION NOT STATED IN THE LAW.

It appears that the *Infante* ruling imposes that, as an essential element, the convict must serve at least a few seconds, minutes, days, weeks or years of his jail sentence and then escapes before the computation of prescription of penalties begins to run. This, petitioner respectfully submits is not a condition stated in Article 93, which states that, the prescription of penalties “shall commence to run from the date when the culprit should evade the service of sentence.”

There is no dispute that the duty of government to compel the service of sentence sets in when the judgment of conviction becomes final.

The dispute, however, is in the construction of the phrase “should evade the service of sentence.” When does the period of prescription of penalties begin to run? The *Infante* ruling construes this to mean that the convict must escape from jail “because such evasion presupposes escaping during the service of the sentence consisting in deprivation of liberty.”

Petitioner, with due respect, disagrees because if that were the intention of the law, then the phrase “should evade the service of sentence” in Article 93 would have read: “should escape during the service of the sentence consisting in deprivation of liberty.” The legislature could have very easily written Article 93 to read this way

—  
“The period of prescription of penalties shall commence to run from the date when the culprit should escape during the service of the sentence consisting in deprivation of liberty, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government has no extradition treaty, or should commit another crime before the expiration of the period of prescription.”

But they did not.

The legislature wrote “should evade the service of sentence” to cover or include convicts like him who, although convicted by final judgment, were never arrested or apprehended by government for the service of their sentence. With all the powers of government at its disposal, petitioner was able to successfully evade service of his 2 months and 1 day jail sentence for at least nine (9) years, from August 9, 1991 to January 20, 2000. This is approximately 3 years and 5 months longer than the 5-year prescriptive period of the penalty imposed on him.

That, as the respondent RTC Judge noted, petitioner did not attend the trial at the Municipal Trial Court and the

promulgation of his judgment of conviction in August 9, 1991 is of no moment. His bond for provisional release was surely cancelled and an order of arrest was surely issued against petitioner. The undisputed fact is that on August 9, 1991 the judgment of conviction was promulgated in absentia and an order for petitioner's arrest was issued by the Municipal Trial Court of Angeles City, Branch III.

The duty of government, therefore, to arrest petitioner and compel him to serve his sentence began on August 9, 1991. The 5-year prescriptive period of his arresto mayor penalty also began to run on that day considering that no relief was taken therefrom. Since petitioner never gave himself up [n]or was [he], until January 20, 2000, ever captured, for the service of his sentence nor did he flee to some foreign country with which [our] government has no extradition treaty, that 5-year prescriptive period of his penalty ran continuously from August 9, 1991 when his judgment of conviction was promulgated in absentia and was never interrupted.

For reasons known only to it, however, government failed or neglected, for almost nine (9) years, to arrest petitioner for the service of his arresto mayor sentence [which] should not be taken against petitioner. He was able to successfully evade service of his sentence for a period longer than the 5-year prescriptive period of his penalty and, as such, is entitled to total extinction of his criminal liability.

To say, as was said in *Infante*, that the prescriptive period of the penalty never began to run in favor of petitioner because he never escaped from jail during the service of his sentence imposes a condition not written in the law. It also violates the basic principle that the criminal statutes are construed liberally in favor of the accused and/or convict and is contrary to the spirit behind or essence of statutes of limitations [and] prescription, in criminal cases.[10]

The Regional Trial Court based its decision on the case of *Infante v. Warden*[11]. In said case, *Infante*, the petitioner, was convicted of murder and was sentenced to seventeen years, four months and one day of reclusion temporal. After serving fifteen years, seven months and eleven days, he was granted a conditional pardon. The condition was that "he shall not again violate any of the penal laws of the Philippines." Ten years after his release on conditional pardon, *Infante* was found guilty by a Municipal Court for driving without a license. *Infante* was immediately ordered rearrested for breach of the condition of his pardon. One of the issues raised by *Infante* in his petition,

xxx was that the remitted penalty for which the petitioner had been recommitted to jail – one year and 11 days – had prescribed. xxx [12]

The Court disagreed and reasoned out thus:

The contention is not well taken. According to article 93 of the Revised Penal Code the period of prescription of penalties commences to run from the date when the culprit should evade the service of his sentence. It is evident from this provision that evasion of the sentence is an essential element of prescription. There has been no such evasion in this case. Even if there had been one and prescription were to be applied, its basis would have to be the evasion of the unserved sentence, and computation could not have started earlier than the date of the order for the prisoner's rearrest.[13]

A perusal of the facts in *Infante v. Warden* reveals that it is not on all fours with the present case. In *Infante*, the convict was on conditional pardon when he was re-arrested. Hence, he had started serving sentence but the State released him. In the present case, the convict evaded service of sentence from the start, and was arrested eight years later.

The RTC decision, however, must stand, since it is in accord with applicable decisions of this Court. The issue raised by petitioner is not novel. Article 93 of the Revised Penal Code[14] has been interpreted several times by the Court.

The case of *Tanega v. Masakayan*[15] falls squarely within the issues of the present case. In that case, petitioner Adelaida Tanega failed to appear on the day of the execution of her sentence. On the same day, respondent judge issued a warrant for her arrest. She was never arrested. More than a year later, petitioner through counsel moved to quash the warrant of arrest, on the ground that the penalty had prescribed. Petitioner claimed that she was convicted for a light offense and since light offenses prescribe in one year, her penalty had already prescribed. The Court disagreed, thus:

xxx The period of prescription of penalties — the succeeding Article 93 provides — "shall commence to run from the date when the culprit should evade the service of his sentence". What then is the concept of evasion of service of sentence? Article 157 of the Revised Penal Code furnishes the ready answer. Says Article 157: "ART. 157. Evasion of service of sentence. — The penalty of prision correccional in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by escaping during the term of his imprisonment by reason of final judgment. xxx"

Elements of evasion of service of sentence are: (1) the offender is a convict by final judgment; (2) he "is serving his sentence which consists in deprivation of liberty"; and (3) he evades service of sentence by escaping during the term of his sentence. This must be so. For, by the express terms of the statute, a convict evades "service of his sentence" by "escaping during the term of his imprisonment by reason of final judgment." That escape should take place while serving sentence, is emphasized by the provisions of the second sentence of Article 157 which provides for a higher penalty if such "evasion or escape shall have taken place by means of unlawful entry, by breaking doors, windows, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution, . . ." Indeed, evasion of sentence is but another expression of the term "jail breaking."

xxx

We, therefore, rule that for prescription of penalty of imprisonment imposed by final sentence to commence to run, the culprit should escape during the term of such imprisonment.

Adverting to the facts, we have here the case of a convict who — sentenced to imprisonment by final judgment — was thereafter never placed in confinement. Prescription of penalty, then, does not run in her favor.[16]

In *Del Castillo v. Torrecampo*[17], the Court cited and reiterated *Tanega*. Petitioner, Del Castillo, was charged for violation of Section 178 (nn) of the 1978 Election Code. The trial court found Del Castillo guilty beyond reasonable doubt and sentenced him to suffer an indeterminate sentence of imprisonment of 1 year as minimum to 3 years as maximum. On appeal the Court of Appeals affirmed the decision of the trial court in toto. During the execution of judgment on October 14, 1987, petitioner was not present. The presiding Judge issued an order of arrest and the confiscation of his bond. Petitioner was never apprehended. Ten years later, petitioner filed a motion to quash the warrant of arrest on the ground that the penalty imposed upon him had already prescribed. The motion was denied by the trial court. Del Castillo, on a petition for certiorari to the Court of Appeals, questioned the denial by the trial court. The Court of Appeals dismissed the petition for lack of merit. Upon denial of his Motion for Reconsideration, Del Castillo raised the matter to this Court. The Court decided against Del Castillo and after quoting the ratio decidendi of the Court of Appeals in full, it ratiocinated, thus:

The foregoing conclusion of the Court of Appeals is consistent with the ruling of this Court in *Tanega vs. Masakayan, et al.*, where we declared that, for prescription of penalty imposed by final sentence to commence to run, the culprit should escape during the term of such imprisonment.

The Court is unable to find and, in fact, does not perceive any compelling reason to deviate from our earlier pronouncement clearly exemplified in the *Tanega* case.

Article 93 of the Revised Penal Code provides when the prescription of penalties shall commence to run. Under said provision, it shall commence to run from the date the felon evades the service of his sentence. Pursuant to Article 157 of the same Code, evasion of service of sentence can be committed only by those who have been convicted by final judgment by escaping during the term of his sentence.

As correctly pointed out by the Solicitor General, "escape" in legal parlance and for purposes of Articles 93 and 157 of the RPC means unlawful departure of prisoner from the limits of his custody. Clearly, one who has not been committed to prison cannot be said to have escaped therefrom.

In the instant case, petitioner was never brought to prison. In fact, even before the execution of the judgment for his conviction, he was already in hiding. Now petitioner begs for the compassion of the Court because he has ceased to live a life of peace and tranquility after he failed to appear in court for the execution of his sentence. But it was petitioner who chose to become a fugitive. The Court accords compassion only to those who are deserving. Petitioner's guilt was proven beyond reasonable doubt but he refused to answer for the wrong he committed. He is therefore not to be rewarded therefor.

The assailed decision of the Court of Appeals is based on settled jurisprudence and applicable laws. It did not engage in judicial legislation but correctly interpreted the pertinent laws. Because petitioner was never placed in confinement, prescription never started to run in his favor.[18]

Consistent with the two cases cited above, this Court pronounces that the prescription of penalties found in Article 93 of the Revised Penal Code, applies only to those who are convicted by final judgment and are serving sentence which consists in deprivation of liberty. The period for prescription of penalties begins only when the convict evades service of sentence by escaping during the term of his sentence. Since petitioner never suffered deprivation of liberty before his arrest on January 20, 2000 and as a consequence never evaded sentence by escaping during the term of his service, the period for prescription never began.

Petitioner, however, has by this time fully served his sentence of two months and one day of *arresto mayor* and should forthwith be released unless he is being detained for another offense or charge.

WHEREFORE, the decision of the Regional Trial Court of Angeles City, Branch 56 is **AFFIRMED**, but petitioner is ordered released effective immediately for having fully served his sentence unless he is detained for another offense or charge.

No costs.

### **SO ORDERED.**

Quisumbing, (Acting Chairman), Ynares-Santiago, and Carpio, JJ., concur.  
Davide, Jr., C.J., (Chairman), on leave.

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[1] Rollo, pp. 26 - 29.

[2] RTC Decision, SP. PROC. No. 5784; Rollo, pp. 26 – 27.

[3] Rollo, p. 6.

[4] Rollo, p. 6.

[5] Id.

[6] Rollo, p. 27.

[7] Rollo, pp. 27 – 29.

[8] Rollo, p. 9.

[9] Rollo, p. 24.

[10] Rollo, pp. 9 – 13.

[11] 92 Phil 310 (1967).

[12] Supra, at 313.

[13] Supra, at 313.

[14] The period of prescription of penalties shall commence to run from the date when the culprit should evade the service of his sentence, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government as no extradition treaty, or should commit another crime before the expiration of the period of prescription.

[15] 125 Phil 966 (1967).

[16] Supra, at 968 - 971.

**[17] 394 SCRA 221 (2002).**

[18] Supra, at 225 – 226.

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