

ARTURO V. ESCALANTE, PETITIONER, VS. PAULINO SANTOS, DIRECTOR OF PRISONS, RESPONDENT

G.R. No. 36828. February 02, 1932

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The present habeas corpus proceeding was instituted by Arturo V. Escalante, who is in Bilibid Prison. On November 14, 1928, he was convicted of estafa and sentenced to two years, eleven months, and eleven days of presidio correccional, to indemnify the offended party in the sum of P4,836.53, with subsidiary imprisonment in case of insolvency, and to pay the costs. This penalty is the minimum of the maximum degree of the penalty provided in article 634, paragraph No. 3, of the Penal Code then in force, that is, presidio correccional in the minimum and medium degrees, i. e., six months and one day to four years and two months of presidio correccional, because the amount abstracted exceeds 6,250 pesetas.

Estafa in that amount (P4,836.53) not exceeding P6,000 is punished in the Revised Penal Code, in force since the first of this year (article 315, paragraph 3), with a penalty ranging from arresto mayor in the maximum degree to prison correccional in the minimum degree, i. e., four months and one day to two years and four months of imprisonment.

The Attorney-General, recommending that the petition be granted and the petitioner set at liberty, submits the following computations:

"4. If the minimum of the maximum degree were to be imposed under the new Penal Code (it being the grade imposed in the original decision of the Supreme Court), the computation of the total term which petitioner has to serve is as follows:

Year Month Day

"Minimum of the maximum..... 1 8 1

"Subsidiary imprisonment..... 6 20

2 2 21

"The petitioner was also sentenced to 2 months

and 16 days' imprisonment for a violation of

conditional pardon 2 16

"Total term to be served..... 2 5 7

"This total term does not include allowances for good conduct.

"5. Petitioner entered Bilibid on January 17, 1929, and hence has already served more than three years of

imprisonment, which is more than the total term above computed.

"6. If, on the other hand, the maximum of the maximum were to be imposed under the new Penal Code (section 315, paragraph 3), the petitioner would still be entitled to his discharge because of allowances for good conduct which he can invoke in his favor, in accordance with the records of the Bureau of Prisons. The computation of the penalty will then be as follows:

Year Month Day

"Maximum of the maximum..... 2 4

"Subsidiary imprisonment..... 9 10

"Sentence for violation of conditional pardon..... 2 16

"Total 3 3 26

"Good-conduct allowances to which entitled on

3 years, 1 month, 10 days..... 5 26

"Net term to be served..... 2 10

"So that petitioner should have been released at all events on November 16, 1931.

"7. In both cases, therefore, petitioner, having already served more than three years, is entitled to be now discharged under the provisions of article 22 of the new Penal Code." (Pages 1, 2 and 3, Answer of the Attorney General, Rollo.)

Article 22 of the Revised-Penal Code, to which the Attorney-General refers, reads as follows:

"Art. 22. Retroactive effect of penal laws.—Penal laws, shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same." With reference to the application of prior laws, the Code provides the following:

"Art. 366. Application of laws enacted prior to this Code.—Without prejudice to the provisions contained in article 22 of this Code, felonies and misdemeanors, committed prior to the date of effectiveness of this Code shall be punished in accordance with the Code or Acts in force at the time of their commission."

Inasmuch as the law in this case is more favorable to the accused, and the latter has not been shown to be an habitual criminal, article 315, paragraph 3, of the Revised Penal Code now in force must be applied to the estafa of which the petitioner was convicted; and inasmuch as he has already served that penalty, he must be set at liberty immediately.

Some light is thrown on the intention of the new law with reference to its being retroactive when favorable to the accused, by the interpretation of its provisions by the chairman and a member of the committee created to draft the present Revised Penal Code. Judge Anacleto Diaz, the chairman of the committee, says the following in a communication addressed to Justice George A. Malcolm of this court:

"I was present when the proposed bill referred to was discussed in the Joint Committee as I had been assigned to assist it in any way possible. I was also present when the bill as amended by the Joint Committee was finally submitted and approved by the two Houses, and I can positively say that the two articles were accepted and passed without any discussion whatsoever. In view of this, I believe that the two articles referred to must be construed, taking into consideration not only their literal meaning but the purpose in view of the law-making body that first approved art. 22 (art. 23, P. C. of Spain) as understood by the courts and the authorities called

upon to construe the same.

"There seems to be no doubt that the purpose of art. 366 is to give the benefit of the retroactivity of a penal law as expressly and unmistakably stated in art. 22 to any person that may be found under the circumstances therein provided."

Representative Quintin Paredes, member of the committee in charge of drafting the new Code, and also of the Committee for the Revision of Codes of the Eighth Legislature, expresses himself as follows upon the point in a communication likewise addressed to Justice Malcolm:

"In reply to your letter of the 26th instant, just received yesterday, I wish to inform you that I believe the members of the House Committee on Revision of Codes which introduced and recommended the bill that was later enacted as the 'Revised Penal Code' intended to give said code retro-active effect in so far as it favors a person guilty of a felony, although at the time of its enactment a final sentence has already been pronounced and the convict is serving the same, provided that he is not an habitual criminal. To emphasize this intention, section 366 providing that 'felonies and misdemeanors committed prior to the date of this code shall be punished in accordance with the codes or acts in force at the time of their commission' was preceded by the saving clause 'without prejudice to the provisions contained in article 22 of this Code/ which to my mind means that while felonies and misdemeanors committed prior to the date of effectiveness of the Revised Penal Code shall be punished in accordance with the Code or Acts in force at the time of their commission, the same should not be the case if such Code or Acts are unfavorable to the guilty party, for the general principle on the retroactivity of favorable penal laws, recognized in article 22, should then apply."

And lest it be doubted that article 22 of the Revised Penal Code applies to said Code, Representative Quintin Paredes adds the following:

"The use of the words 'penal laws' in general, instead of 'this Revised Penal Code and any other penal laws' in article 22, may give room for a doubt as to whether said article meant to include in the phrase 'penal laws' the same Revised Penal Code that was establishing the provision. But this doubt, I think, should not be entertained inasmuch as the Revised Penal Code is itself a penal law and the phrase 'penal laws' is broad enough to include all laws that are penal in character."

As we have just held in the case of *Laceste vs. Santos* (page 472, ante), it is evident that the principle that penal laws are retroactive so far as they favor the accused, is sanctioned by the present as well as the former Penal Code.

The petition for habeas corpus being justified, it is hereby granted, and let the petitioner be at once set at liberty, with costs de oficio. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Villa-Real, and Imperial, JJ., concur.

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