

CLEMENTE LACESTE, PETITIONER, VS. PAULINO SANTOS, DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. 36886. February 01, 1932

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The petitioner, Clemente Laceste, prays the court to set him at liberty through the writ of habeas corpus, pleading that there is no sufficient legal ground for continuing his imprisonment any longer.

Together with Nicolas Lachica, he had been prosecuted, found guilty, and sentenced to commitment for the crime of rape.

Subsequently Nicolas Lachica married the victim, Magdalena de Ocampo, and was accordingly relieved from the criminal prosecution by virtue of section 2, Act No. 1773, and article 448 of the Penal Code then in force, which provided that such a marriage extinguished penal liability, and hence, the penalty. But the petitioner herein continued serving his sentence, which was not affected by the marriage of his coaccused and the offended party.

However, he is now entitled to the benefits accruing from such marriage in accordance with the last paragraph of article 344 of the Revised Penal Code, in force since the first of this year, providing as follows:

"In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the coprincipals, accomplices and accessories after the fact of the above-mentioned crimes."

"En los casos de estupro, rapto, abusos deshonestos y violacion, el matrimonio del ofensor con la ofendida extinguira la accion penal, a la pena que ya se le hubiere impuesto. Lo dispuesto en este parrafo alcanza lo mismo a los coautores que a los complices y encubridores de los delitos ya mencionados." (We have italicized the a).

We have quoted both the English and the Spanish text, in order to show the real meaning of the provision; for the Spanish version contains a clerical error: the preposition a is used instead of the disjunctive conjunction p in the third line, so that it reads "a la pena que ya se le hubiere impuesto," instead of "o la pena que ya se le hubiere impuesto."

The Attorney-General, answering the petition, is in favor of granting it, because, under the aforementioned last paragraph of article 344 of the Revised Penal Code now in force, which has retroactive effect, the petitioner is entitled, to his liberty. We approve and adopt the following observations made by the former:

"It is believed that the Revised Penal Code, Act No. 3815, article 344, last paragraph, applies to the case of the herein petitioner, and that he should be discharged from prison. All penal laws have been declared retroactive by the Honorable Supreme Court in the cases of *People vs. Moran* (44 Phil., 433); *People vs. Parel* (44 Phil., 437). And the Legislature, under section 366 of the New Penal Code, has clearly intended to give retroactive effect to article 22, because section 366 provides:

" '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.'

"If it was not the intention of the Legislature to make the new Code retroactive, it would have used the words 'notwithstanding' or 'in spite of, instead of 'without prejudice.' "

Article 22 of the Revised Penal Code 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."

That this article applies to crimes committed before the new Code took effect, cannot be doubted, for article 366 of said Code unmistakably provides for such cases in the following words:

"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."

It may be clearly seen that as far back as the year 1884, when the Penal Code took effect in these Islands until the 81st of December, 1931, the principle underlying our laws granting to the accused in certain cases an exception to the general rule that laws shall not be retroactive when the law in question favors the accused, has evidently been carried over into the Revised Penal Code at present in force in the Philippines through article 22, quoted above. This is an exception to the general rule that all laws are prospective, not retrospective, variously contained in the following maxims: *Lex prospicit, non respicit* (the law looks forward, not backward); *lex de futuro, judex de praeterito* (the law provides for the future, the judge for the past); and adopted in a modified form with a prudent limitation in our Civil Code (article 3). Conscience and good law justify this exception, which is contained in the well-known aphorism:

Favorabilia sunt amplianda, odiosa restringenda. As one distinguished author has put it, the exception was inspired by sentiments of humanity, and accept by science.

Article 22 of the new Penal Code is applicable to the petitioner, who comes within one of the cases especially provided for in article 344 of the Code: this is a point upon which there neither is, nor can be, any discussion between the parties to this case.

Wherefore, the petition is granted. Let the petitioner be immediately set at liberty, with costs *de officio*. So ordered.

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

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