

TIMOTEO EVANGELISTA, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF BULACAN AND DY BUNCIO, RESPONDENTS.

G.R. No. 40492. December 08, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an original petition for writ of prohibition to prevent the respondent from exercising or attempting to exercise any jurisdiction in criminal case No. 6208 in the Court of First Instance of Bulacan upon an information filed on August 15, 1933, by the provincial fiscal and charging the petitioner with the crime of theft.

On November 6, 1928, the Court of First Instance of Manila rendered a decision in two cases, Nos. 35916 and 35917, finding the defendant guilty of the crimes of robbery. But it appears from the record that he did not appear for the reading of the sentence and could not be found. It developed that he was a fugitive from justice, and in the month of June, 1933, he was extradited from Hongkong to appear for further proceedings in the said criminal cases Nos. 35916 and 35917. He was thereupon sentenced in said cases and confined in Bilibid. In July, 1933, he appealed to this court from the final judgment in said cases. While his appeals were pending here the provincial fiscal of Bulacan, on August 15, 1933, filed an information against the petitioner, criminal case No. 6208, in the Court of First Instance of Bulacan, in which it is charged in substance that the petitioner on or about December 3, 1927, in the municipality of Baliuag, Province of Bulacan, stole the sum of P733 from one Dy Buncio.

When the case was called for trial on September 4, 1933, the accused (petitioner here) promptly challenged the jurisdiction of the court to proceed with the case on the ground that having been brought from Hongkong against his will under an extradition proceeding, he could be tried only for the offense or offenses described in the application for extradition and could not be tried for any other offense committed prior to his extradition. The Court of First Instance of Bulacan overruled the objection to the jurisdiction of the court and set the case for trial on the 18th of September, 1933. On the 15th of September, 1933, the accused filed in this court the petition for writ of prohibition which is now before us.

On October 11, 1933, this court rendered its decision affirming the two convictions of the defendant in cases 35916 and 35917 for robbery.[1] On November 1, 1933, a motion for reconsideration was denied and said decision became final.

The petitioner is entitled to the writ as prayed for. As the petitioner became a fugitive from justice before sentence was pronounced upon him in said criminal cases Nos. 35916 and 35917, and as the pronouncement of sentence is an essential in the completion of the trial, his extradition from Hongkong in June, 1933, which was executed under the treaty between the United States and Great Britain concluded July 12, 1889, proclaimed March 25, 1890 (U. S. Stat., vol. 26, page 1508), his status is governed by Article III of the said treaty which reads as follows:

"No person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or offense, committed prior to his extradition, other than the offense for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered."

This article is so plain and the facts of the present case fall so clearly within its provisions that it is unnecessary to review the jurisprudence which has been to a large extent a simple paraphrase of Article III aforesaid. International treaties must be interpreted and applied with uberrima fides.

Let the writ of prohibition issue as prayed for, with costs de oficio.

Avanceña, C. J., Street, Abad Santos, and Vickers, JJ., concur.

[1] G. R. Nos. 39950-39952, *People vs. Evangelista*, 58 Phil., 960.

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