

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. REMIGIO PONTILLAS, DEFENDANT AND APPELLEE.

G.R. No. 45267. June 15, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

The appellee was charged in the lower court upon an information reading as follows:

"The undersigned accuses Remigio Pontillas of violation of conditional pardon, committed as follows:

"That on or about the 24th day of December, 1935, in the City of Manila, Commonwealth of the Philippines, the said accused, having been granted on September 8, 1922, by His Excellency, the Governor-General, a pardon remitting the unexecuted portion of his sentence of six years and one day of prision correccional imposed upon him in criminal case No. 21823 of the Court of First Instance of Manila for the crime of illegal marriage, which he began to serve on February 14, 1921, subject to the condition that he shall not again violate any of the penal laws of the Philippine Islands, which condition was accepted by him on September 8, 1922, causing thereby his immediate release on that date from the Bilibid Prisons, did then and there willfully, unlawfully and feloniously violate the conditions of such pardon, by then and there committing the crime of damage to property thru reckless driving, for which he was received again in Bilibid Prisons on June 26, 1936, to suffer thirty days' subsidiary imprisonment in lieu of P61 fine and P60.30 indemnity imposed upon him by the Municipal Court in criminal case No. H-47583, by virtue of the judgment rendered by the said court, which judgment has become final and executory.

"Contrary to law.

(Sgd.) "LOPE CONSING

"Provincial Fiscal on detail

in the City Fiscal's Office"

He interposed a demurrer based on the ground that the facts charged do not constitute a public offense and, if true, would exempt him from criminal liability.

The lower court sustained the demurrer, holding that the penalty of six years and one day of prision correccional imposed upon the accused on February 14, 1921, of which he was pardoned on September 8, 1922 on condition that he would not again commit another offense, had long prescribed on June 26, 1936, when he was convicted and commenced serving a subsidiary imprisonment of thirty days for failure to pay a fine of P61 and an indemnity of P60.30 to which he was sentenced for having damaged another's property. The opinion of the lower court was that the first penalty imposed upon the accused having already prescribed when he committed his second offense, he could no longer be prosecuted for violation of conditional pardon inasmuch as the latter did not mean to impose upon him for life the duty of fulfilling its conditions, which would be cruel and unusual. The fiscal,

however, did not agree with the resolution of the court, from which he appealed, and now submits the following question:

May a person—who has been conditionally pardoned by the Chief Executive for illegal marriage or bigamy after he has served nineteen months of the penalty of six years and one day of prision correccional imposed upon him—be criminally prosecuted for violation of a conditional pardon on the sole ground that, contrary to the condition that "he shall not again violate any of the penal laws of the Philippine Islands", he has committed the crime of damage to another's property through reckless imprudence, for which he has been sentenced to pay a fine of P61 and an indemnity of P60.30 with thirty days' subsidiary imprisonment in case of insolvency?

It must first be observed that a manifest error has been committed in describing the penalty imposed upon the accused for bigamy as "prision correccional" when it was and is clearly prision mayor not only by reason of the duration of the penalty, which is six years and one day, but also of the crime for which it had been imposed. The law styles prision correccional all imprisonment above six months, but not exceeding six years; and prision mayor, all imprisonment above six years, but not more than twelve. (Article 27, paragraphs 4 and 3, of the Revised Penal Code; and article 28, paragraphs 5 and 3, of the old Penal Code.) The duration of penalties, and not the term by which they may be designated, is what determines their nature. And it is known that the crime of bigamy is punished, as it was before the Revised Penal Code was in force, with prision mayor to its full extent (article 471 of the old Penal Code; article 349 of the Revised Penal Code).

The question of whether at the time of the commission by the appellee of the crime of damage to property, or on December 24, 1935, the penalty of six years and one day imposed upon him for bigamy, had prescribed, is easily ascertainable by considering the interval between the two occasions. From February 14, 1921, when said penalty was imposed on him, to December 24, 1935, when he committed the crime of damage to another's property, only fourteen years, ten months and ten days had elapsed; and alike under the provisions of articles 132 and 25 of the old Penal Code and those of articles 92 and 25 of the Revised Penal Code corresponding thereto, the penalties of prision mayor prescribe only in fifteen years.

The fact that when his conditional pardon was granted the appellee and accepted by him, he had already extinguished nineteen months of his penalty of six years and one day, thus leaving only four years, five months and one day to be served by him, does not alter or change the nature thereof from prision mayor to prision correccional. Besides, the period of prescription of his penalty of six years and one day was interrupted by the mere fact of his acceptance of his pardon, which acceptance was precisely subject to the condition that he could enjoy and would continue to enjoy his liberty without being obliged to serve the remainder of his sentence so long as he did not violate any of the penal laws of the country. It is true that article 93 of the Revised Penal Code or article 132 of the old Penal Code from which the first was derived, which enumerates the causes for the interruption of the period of prescription of penalties, does not mention conditional pardon as one of said causes; but it is equally true that by the appellee's acceptance of his pardon, he was able to avoid serving his sentence, which he may be said to have done in much the same way as one who cannot be compelled to serve his sentence because he has fled to a foreign country with which the Government has no extradition treaty.

In the case of *State vs. Barnes* (6 L. R. A., 743, 744), the Supreme Court of South Carolina, in deciding a similar question, said:

"* * * While it is quite true that the term of two years' imprisonment, to which the defendant had been sentenced in 1883, has long since expired, yet it is equally true that the defendant has not yet suffered imprisonment for that length of time; and, as the pardon which he pleads has been adjudged insufficient to relieve him from suffering the whole punishment originally imposed upon him, it follows necessarily that he is still liable to be required to complete the term of imprisonment originally imposed, just as if he had escaped

during that term; and such is the clear result of the authorities, both English and American."

In this jurisdiction a conditional pardon is certainly a contract between two parties: the Chief Executive, who grants the pardon, and the convict, who accepts it. It does not become perfected until the convict is notified of the same and accepts it with all its conditions. (*De Leon vs. Director of Prisons*, 31 Phil., 60.) Accordingly, if it is a contract, it cannot be doubted that the pardoned convict is bound to fulfill its conditions and accept all its consequences, not as he chooses, but according to its strict terms. Otherwise, he would find himself in the same situation as before he was pardoned and he could be compelled to serve the remainder of his sentence, which he has not yet served. (*People vs. Ponce de Leon*, 56 Phil., 386; *U. S. vs. Ignacio*, 33 Phil., 202.)

In the appealed resolution it is stated that the crime of damage to property committed by the appellee is not one which shows moral perversity on his part, meaning thereby that, strictly speaking, he did not infringe any condition of his pardon. The above reason has no weight at all because the condition of the pardon did not consist in that he would not commit any crime, more or less grave, which might denote perversity, but in any violation of any penal law of the Philippines. The crime of damage to property of another, through reckless imprudence, is a crime expressly punished and considered as such by article 356 in relation to article 3 of the Revised Penal Code.

Since the question and the facts before us are different, it is not necessary for us to decide whether an action may be brought for the purpose of enforcing the service of a part of a sentence, which was not extinguished on account of conditional pardon, after the usual period of prescription of the penalty.

In view of all the foregoing, the question raised must be answered in the affirmative.

Wherefore, the appealed resolution is hereby reversed and it is ordered that the trial proceed in accordance with law. With costs de oficio. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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