

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. EDUARDO MONTENEGRO, DEFENDANT AND APPELLEE.*G.R. No. 46728. September 30, 1939*

Ponente: IMPERIAL, J.

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The accused was charged in the Court of First Instance of Oriental Negros with a violation of section 114, Title 38, of the United States Code Annotated, for having collected, in or about the month of September, 1932, in the municipality of Dumaguete, Province of Oriental Negros, the sum of \$700 equivalent to P1,400 from Valentina Calugcugan by reason of his having acted as attorney or agent of the latter in the filing and prosecution of her claim for pension earned upon the death of her husband Lorenzo Yrad, a soldier in the Philippine Scouts, when the Federal Government of the United States made the first remittance of the sum of \$1,386.60 on account of said pension, the compensation collected by the accused being in excess of that permitted by law, and the violation having been discovered only in the month of August, 1937. In the justice of the peace court of Dumaguete, where the original information was filed, the accused interposed a demurrer and filed a motion for dismissal based, respectively, on the grounds that the courts of this country have no jurisdiction to try the alleged offense and that the same, assuming that it had been committed and is cognizable here, has already prescribed. Both pleadings were overruled for lack of merit. The fiscal later amended the information by making it appear that the plaintiff is the People of the Philippines instead of the Government of the United States of America. Believing that the original information was substantially amended and abandoned, the Court of First Instance refrained from deciding the demurrer and the motion for dismissal interposed against the original information. When the case was called for trial, the accused prayed that his demurrer and motion for dismissal be considered reproduced, which motion was granted by the Court of First Instance. The court overruled the demurrer but sustained the motion for dismissal on the ground that the offense had already prescribed and, consequently, the case was dismissed, with the costs de oficio. The motion for reconsideration filed by the fiscal having been denied, he interposed the present appeal.

The only question discussed in the two assignments of error submitted by the fiscal is whether or not the offense charged has already prescribed and whether or not the court correctly dismissed the information.

The pertinent portion of section 114, Title 38, of the United States Code Annotated, reads as follows:

"The agent or attorney of record in the prosecution of the case may cause to be filed with the Commissioner of Pensions, articles of agreement, without additional cost to the claimant, setting forth the fee agreed upon by the parties which agreement shall be executed in the presence of and certified by some officer competent to administer oaths. In all cases where application is made for pension, and no agreement is filed with the commissioner as herein provided, the fee shall be \$10 and no more. * * *

"* * * Any agent or attorney or other person instrumental in prosecuting any claim for pension, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension than is herein provided, or for payment thereof at any other

time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or any agent, attorney, or other person instrumental in prosecuting any claim for increase of pension on account of the increase or disability for which pension was allowed, who shall directly or indirectly contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding \$500 or imprisoned, not exceeding two years, or both, in the discretion of the court. (R. S., sec. 4786; July 4, 1884, c. 181, sec. 4; 23 Stat. 99; March 3, 1891, c. 548; 26 Stat., 1082.)"

Section 582, Title 18, of the same United States Code Annotated, provides, in part, as follows:

"Sec. 582. Offenses not capital.—No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 584 of this title, unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed: * * *."

It is admitted that the offense under consideration is not among those denominated as capital offenses, nor among the exemptions enumerated in section 584 of the same title.

The pertinent part of section 1 of Act No. 3763 provides as follows:

"Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules:

* * * * *

"(c) After eight years for those punished by imprisonment for two years or more, but less than six years;"

The fiscal contends that the statute of limitations applicable is the above-quoted portion of Act No. 3763, while the accused maintains that it should be section 582, Title 18, of the United States Code Annotated. It is admitted that if the former statute were the one applicable, the appealed order should be reversed and the case tried on the merits, while if the latter statute were the one applicable, the appeal must be dismissed for lack of merit. Therefore, the question to be determined is which of said two statutes should govern and decide the issue.

It is well settled that the prescription of a crime or offense is but the loss or waiver by the State of its right to prosecute an act prohibited and punished by law (*People vs. Moran*, 44 Phil., 387; *Santos vs. Superintendent of the Philippine Training School for Girls*, 55 Phil., 345). On the other hand, the rules on *lex fori*, *lex domicilii* and *lex loci* are not applicable to the case under consideration on the ground that this country is not yet a State independent of the United States of America and because, if section 582, Title 18, were applicable at all, it would be so *ex proprio vigore*. Referring to the main question, it should be noted that the provisions relative to the limitation established in Act No. 3763 refer to violations punished by special Acts passed by the Philippine Legislature, and the violation imputed to the accused is not included among them. On the contrary, the limitation acknowledged in section 582, Title 18, of the United States Code Annotated, together with the provisos enumerated therein, is applicable to all crimes and offenses penalized by the United States statutes. We cannot conceive of any sound or convincing reason justifying the nonapplication of said section 582 to offenses committed within this jurisdiction and punished by statutes promulgated by the United States Congress. An opinion to the contrary would lead to the inexplicable paradox that if the accused had committed the offense in a territory of the United States and were tried therein, he would be acquitted for the reason that the statute would be applicable; while he would necessarily be convicted of the same offense if he committed it and were prosecuted here, notwithstanding the fact that the offense is defined and penalized by the same statute. Reasons of high sense of justice demand that the accused be granted the same kind of treatment as any other violator of the same law residing and tried in a United States territory. We conclude, therefore, that section 582, Title 18, of the United

States Code Annotated, is applicable to the violation imputed to the accused, that the order, appealed from is in accordance with law, and that the assignments of error relied upon by the fiscal are unfounded.

The order appealed from is affirmed, with the costs of this instance de oficio. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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