44 Phil. 565

[G.R. No. 20343. March 02, 1923]

SEVERINO LUNA, PETITIONER, VS. THE WARDEN OF THE PROVINCIAL PRISON OF BATANGAS, RESPONDENT.

D E C I S I O N

OSTRAND, J.:

This is a petition for a writ of habeas corpus. It appears that on June 13, 1903, the Court of First Instance of Batangas found the petitioner, Severino Luna, guilty of vagrancy and sentenced him to one year and one day of imprisonment under Act No. 519 of the Philippine Commission. While the petitioner was serving this sentence he was convicted of the crime of theft and sentenced to undergo three months of *arresto mayor*, the service of this sentence to begin at the termination of the service of the sentence for vagrancy.

After having served seven months and sixteen days of the sentence for vagrancy and before beginning the service for theft, the petitioner made his escape and remained at large until January 19, 1923, when he was again apprehended and recommitted to prison for the continuation of the service of the sentence mentioned. He now seeks his liberty alleging that the penalties imposed have prescribed under article 132 of the Penal Code.

That the penalty of three months of *arresto mayor* has prescribed admits of no doubt. *Arresto mayor* is a correctional penalty which, under article 132 of the Penal Code, prescribes in ten years and in this case the prescription began to run upon the escape of the convict from the prison.

With respect to the penalty for vagrancy, the situation is different. It was imposed under Act No. 519, is only simple imprisonment and is not classified in accordance with the scheme followed in the Penal Code. There is no special

provision for its prescription and if prescribable at all, it must be under the general provisions for prescription of penalties found in article 132 of the Code mentioned. Examining this article it will be observed that the prescription there provided for relates only to classified penalties; for instance, the death penalty and *cadena perpetua* prescribe in twenty years; other afflictive penalties in fifteen years; correctional penalties in ten years, *et cetera*. It may be readily seen that it would be wholly impracticable to attempt to apply this article to unclassified simple imprisonment and there being no other provision for the prescription of that penalty, it follows that the petitioner is still liable to serve the remaining portion of his sentence for vagrancy.

The same conclusion was reached in the case of United States *vs*. Lao Lock Hing (14 Phil., 86), though there the decision was based on the ground that an Act of the Philippine Commission is a special law within the meaning of article 7 of the Penal Code and that, therefore, offenses punishable under such Acts are not subject to the provisions of that Code. There may, however, be some doubt as to the soundness of this reasoning; it is somewhat difficult to see how an act or law passed by the lawmaking body of the country and which is of general application can be considered a special law.

The petition for a writ of habeas corpus is denied, with the costs against the petitioner. So ordered.

Araullo, C.J., Street, Avanceña, Villamor, Johns, and *Romualdez, JJ.,* concur.

CONCURRING

MALCOLM, J.:

I concur in the result for reasons which appear in United States *vs*. Lao Lock Hing (14 Phil., 86) and United States *vs*. Serapio (23 Phil., 584).

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