490 Phil. 49

FIRST DIVISION

[G.R. NO. 141718, January 21, 2005]

BENJAMIN PANGAN Y RIVERA, PETITIONER, VS. HON. LOURDES F. GATBALITE, AS THE PRESIDING JUDGE, REGIONAL TRIAL COURT OF ANGELES CITY, BRANCH 56, AND COL. JAMES D. LABORDO, AS THE CITY JAIL WARDEN OF ANGELES CITY, RESPONDENTS.

DECISION

AZCUNA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the decision of the Regional Trial Court of Angeles City, Branch 56, rendered on January 31, 2000.[1]

The facts of this case are undisputed. The petitioner was indicted for simple seduction in Criminal Case No. 85-816, at the Municipal Trial Court of Angeles City, Branch 3.

During the trial of the case, Atty. Eduardo Pineda, counsel for petitioner, submitted the case for decision without offering any evidence, due to the petitioner's constant absence at hearings.

On September 16, 1987, the petitioner was convicted of the offense charged and was sentenced to serve a penalty of two months and one day of *arresto mayor*.

On appeal, the Regional Trial Court, on October 24, 1988, affirmed *in toto* the decision of the Municipal Trial Court.

On August 9, 1991, the case was called for promulgation of the decision in the court of origin. Despite due notice, counsel for the petitioner did not appear. Notice to petitioner was returned unserved with the notation that he no longer resided at the given address. As a consequence, he also failed to appear at the scheduled promulgation. The court of origin issued an order directing the recording of the decision in the criminal docket of the court and an order of arrest against the petitioner.[2]

Pursuant to the order of arrest, on January 20, 2000, the petitioner was apprehended and detained at the Mabalacat Detention Cell. On January 24, 2000, petitioner filed a Petition for a Writ of Habeas Corpus at the Regional Trial Court of Angeles City. He impleaded as respondent the Acting Chief of Police of Mabalacat, Pampanga.[3] Petitioner contended that his arrest was illegal and unjustified on the grounds that:

(a) the straight penalty of two months and one day of arresto mayor prescribes in five years under No. 3, Article 93 [of the] Revised Penal Code, and

(b) having been able to continuously evade service of sentence for almost nine years, his criminal liability has long been totally extinguished under No. 6, Article 89 [of the] Revised Penal Code.[4]

After his transfer to the City Jail of Angeles City on January 25, 2000, petitioner filed an Amended Petition with the Regional Trial Court, impleading herein respondent Col. James D. Labordo, the Jail Warden of Angeles City, as respondent.[5]

In response, the Jail Warden alleged that petitioner's detention was pursuant to the order of commitment (*mittimus*), issued by Marlon P. Roque, Clerk of Court III of the Municipal Trial Court of Angeles City, Branch 3, dated January 25, 2000.[6]

On January 31, 2000, respondent Judge rendered the decision, which is the subject of this present appeal, which pronounced:

The Court cannot subscribe to the contention of the petitioner that the penalty imposed on him in the decision adverted to above had already prescribed, hence, his detention is illegal for under Article 93 of the Revised Penal Code:

"The period of prescription of penalties shall commence to run from the date when the culprit should evade the service of sentence, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government has no extradition treaty, or should commit another crime before the expiration of the period of prescription.

The elements of prescription are:

1. That the penalty is imposed by final judgment;

2. That convict evaded the service of the sentence by escaping during the term of his sentence;

3. That the convict who had escaped from prison has not given himself up, or been captured, or gone to a foreign country with which we have no extradition treaty, or committed another crime;

4. The penalty has prescribed, because of the lapse of time from the date of the evasion of the service of the sentence by the convict.

In this case, the essential element of prescription which is the evasion of the service of sentence is absent. Admittedly, the petitioner herein has not served the penalty imposed on him in prison and that during the service of the sentence, he escaped therefrom. Notably, at the trial of Crim. Case No. 85-

816 in the Municipal Trial Court, Branch III, Angeles City and on the date set for the promulgation of the affirmed decision, the petitioner failed to appear and remained at large.

"There was no evasion of the service of the sentence in this case, because such evasion presupposes escaping during the service of the sentence consisting in deprivation of liberty." (Infante vs. Warden, 48 O.G. No. 122) (92 Phil. 310).

Corollarily, the detention of the petitioner in Angeles City Jail in compliance with the Order of Commitment (Exhibit E) is not illegal for –

"A commitment in due form, based on a final judgment, convicting and sentencing the defendant in a criminal case, is conclusive evidence of the legality of his detention, unless it appears that the court which pronounced the judgment was without jurisdiction or exceeded it." (U.S. vs. Jayne, 24 Phil 90, 24 J.F. 94, Phil. Digest, Vol. 2, 1398).

WHEREFORE, for not being meritorious and well-founded, the petition for a writ of habeas corpus is hereby denied.

SO ORDERED.

Angeles City, January 31, 2000.[7]

From the above quoted decision, petitioner filed the instant petition for review on a question purely of law and raised the following issue:

HOW SHOULD THE PHRASE "SHALL COMMENCE TO RUN FROM THE DATE WHEN THE CULPRIT SHOULD EVADE THE SERVICE OF SENTENCE" IN ARTICLE 93 OF THE REVISED PENAL CODE ON THE COMPUTATION OF THE PRESCRIPTION OF PENALTIES BE CONSTRUED? PUT A LITTLE DIFFERENTLY, WHEN DOES THE PRESCRIPTIVE PERIOD OF PENALTIES BEGIN TO RUN?[8]

Petitioner claims that:

xxx the period for the computation of penalties under Article 93 of the Revised Penal Code begins to run from the moment the judgment of conviction becomes final and the convict successfully evades, eludes, and dodges arrest for him to serve sentence.[9]

Petitioner supports his claim in the following manner:

The Decision subject of this appeal, which was based on the 1952 ruling rendered in *Infante vs. Warden*, 48 O.G. No. 122, 92 Phil. 310, is, petitioner most respectfully submits, not good case law. It imposes upon the convict a condition not stated in the law. It is contrary to the spirit, nature or essence of prescription of penalties, creates an ambiguity in the law and opens the law to abuse by government.

THE *INFANTE RULING* IMPOSES A

CONDITION NOT STATED IN THE LAW.

It appears that the Infante ruling imposes that, as an essential element, the convict must serve at least a few seconds, minutes, days, weeks or years of his jail sentence and then escapes before the computation of prescription of penalties begins to run. This, petitioner respectfully submits is not a condition stated in Article 93, which states that, the prescription of penalties "*shall commence to run from the date when the culprit should evade the service of sentence*."

There is no dispute that the duty of government to compel the service of sentence sets in when the judgment of conviction becomes final.

The dispute, however, is in the construction of the phrase "*should evade the service of sentence.*" When does the period of prescription of penalties begin to run? The *Infante ruling* construes this to mean that the convict must escape from jail "because such evasion presupposes escaping during the service of the sentence consisting in deprivation of liberty."

Petitioner, with due respect, disagrees because if that were the intention of the law, then the phrase "should evade the service of sentence" in Article 93 would have read: "should escape during the service of the sentence consisting in deprivation of liberty." The legislature could have very easily written Article 93 to read this way –

> "The period of prescription of penalties shall commence to run from the date when the culprit **should escape during the service of the sentence consisting in deprivation of liberty,** and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government has no extradition treaty, or should commit another crime before the expiration of the period of prescription."
>
> But they did not.

The legislature wrote "*should evade the service of sentence*" to cover or include convicts like him who, although convicted by final judgment, were never arrested or apprehended by government for the service of their sentence. With all the powers of government at its disposal, petitioner was able to successfully evade service of his 2 months and 1 day jail sentence for at least nine (9) years, from August 9, 1991 to January 20, 2000. This is approximately 3 years and 5 months longer than the 5-year prescriptive period of the penalty imposed on him.

That, as the respondent RTC Judge noted, petitioner did not attend the trial at the Municipal Trial Court and the promulgation of his judgment of conviction in August 9, 1991 is of no moment. His bond for provisional release was surely cancelled and an order of arrest was surely issued against petitioner. The undisputed fact is that on August 9, 1991 the judgment of conviction was promulgated *in absentia* and an order for