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THIRD DIVISION

[G.R. Nos. 191370-71, August 10, 2015]

RODOLFO BASILONIA, LEODEGARIO CATALAN AND JOHN BASILONIA, PETITIONERS, VS. HON. DELANO F. VLLLARUZ, ACTING IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, ROXAS CITY, BRANCH 16, AND DIXON ROBLETE, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

The lone issue for resolution in this petition for *certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure (*Rules*) with prayer for the issuance of preliminary injunction and/or temporary restraining order is the applicability of Section 6, Rule 39 of the Rules in criminal cases. Specifically, does a trial court have jurisdiction to grant a motion for execution which was filed almost twenty (20) years after the date of entry of judgment? In his Orders dated December 3, 2009[1] and January 4, 2010,[2] respondent Judge Delano F. Vi11aruz of the Regional Trial Court (*RTC*), Roxas City, Branch 16, held in the affirmative.[3] We sustain in part.

The Facts

On June 19, 1987, a Decision[4] was promulgated against petitioners in Criminal Case Nos. 1773, 1774 and 1775, the dispositive portion of which states:

> WHEREFORE, and in view of the foregoing considerations, this court finds the [accused] Rodolfo Basilonia, Leodegario Catalan, and John "Jojo" Basilonia, GUILTY BEYOND REASONABLE DOUBT, as principals in Criminal Case No. 1773 for the murder of Atty. Isagani Roblete on September 15, 1983 in Roxas City, Philippines, defined under Article 248 of the Revised Penal Code of the Philippines, without any aggravating or mitigating circumstance, and sentences the said [accused] to suffer an indeterminate sentence of 12 years, 1 month and 1 day of reclusion temporal as minimum, to 20 years, and 1 day of reclusion temporal as maximum, and the accessory penalties thereto; to pay and [indemnify], jointly and severally, the heirs of the deceased Atty. Isagani Roblete the sum of 1!32,100.00 representing funeral expenses, tomb, burial, and expenses for wake; the sum of 1!30,000.00 as indemnity for the death of Atty. Isagani Roblete; the amount of lost income cannot be determined as the net income of the deceased cannot be ascertained; and to pay the costs of suit. [Accused] Vicente Catalan and Jory Catalan are ACQUITTED for lack of evidence.
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> In Criminal Case No. 1775 for Frustrated Murder, this court finds the

> accused John "Jojo" Basilonia GUILTY BEYOND REASONABLE DOUBT of the crime of Frustrated Homicide, as principal, committed against the person of Rene Gonzales on September 15, 1983, defined under Article 249, in relation to Articles 6 and 50 of the Revised Penal Code and sentences the said accused to suffer an indeterminate sentence of 2 years, 4 months and 1 day of prision [correccional] as minimum, to 6 years, and 1 day of prision mayor as maximum; and to pay the costs. [Accused] Rodolfo Basilonia, Leodegario Catalan, Vicente Catalan and Jory Catalan are ACQUITTED for lack of evidence.
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> In Criminal Case No. 1774 for Illegal Possession of Firearm, all [accused] are ACQUITTED for insufficiency of evidence.
>
> SO ORDERED.[5]

Petitioners filed a Notice of Appeal on July 30, 1987, which the trial court granted on August 3, 1987.[6]

On January 23, 1989, the Court of Appeals (CA) dismissed the appeal for failure of petitioners to file their brief despite extensions of time given.[7]

The Resolution was entered in the Book of Entries of Judgment on September 18, 1989.[8] Thereafter, the entire case records were remanded to the trial court on October 4, 1989.[9]

Almost two decades passed from the entry of judgment, on May 11, 2009, private respondent Dixon C. Roblete, claiming to be the son of the deceased victim, Atty. Roblete, filed a Motion for Execution of Judgment.[10]

He alleged, among others, that despite his request to the City Prosecutor to file a motion for execution, the judgment has not been enforced because said prosecutor has not acted upon his request.

Pursuant to the trial court's directive, the Assistant City Prosecutor filed on May 22, 2009 an Omnibus Motion for Execution of Judgment and Issuance of Warrant of Arrest.[11]

On July 24, 2009, petitioners filed before the CA a Petition for Relief of Judgment praying to set aside the June 19, 1987 trial court Decision and the January 23, 1989 CA Resolution.[12] Further, on September 1, 2009, they filed before the trial court a Manifestation and Supplemental Opposition to private respondent Roblete's motion.[13]

The trial court granted the motion for execution on December 3, 2009 and ordered the bondsmen to surrender petitioners within ten (10) days from notice of the Order. The motion for reconsideration[14] filed by petitioners was denied on January 4, 2010.

Due to petitioners' failure to appear in court after the expiration of the period

granted to their bondsmen, the bail for their provisional liberty was ordered forfeited on January 25, 2010.[15] On even date, the sheriff issued the writ of execution.[16]

The Court's Ruling

The determination of whether respondent trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting a motion for execution which was filed almost twenty (20) years after a judgment in a criminal case became final and executory necessarily calls for the resolution of the twin issues of whether the penalty of imprisonment already prescribed and the civil liability arising from the crime already extinguished. In both issues, petitioners vehemently assert that respondent trial court has no more jurisdiction to order the execution of judgment on the basis of Section 6, Rule 39 of the Rules.

We consider the issues separately.

Prescription of Penalty

With respect to the penalty of imprisonment, Act No. 3815, or the Revised Penal Code (*RPC*)[17] governs. Articles 92 and 93 of which provide:

> ARTICLE 92. *When and How Penalties Prescribe.* - The penalties imposed by final sentence prescribe as follows:
>
> 1. Death and reclusion perpetua, in twenty years;
> 2. Other afflictive penalties, in fifteen years;
> 3. Correctional penalties, in ten years; with the exception of the penalty of arresto mayor, which prescribes in five years;
> 4. Light penalties, in one year.

> ARTICLE 93. Computation of the Prescription of Penalties.- The period of prescription of penalties shall commence to run from the date when the culprit should evade the service of his 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.

As early as 1952, in *Infante v. Provincial Warden of Negros Occidental,*[18] the Court already opined that evasion of service of sentence is an essential element of prescription of penalties. Later, *Tanega v. Masakayan, et al*.[19] expounded on the rule that the culprit should escape during the term of imprisonment in order for prescription of penalty imposed by final sentence to commence to run, thus:

> x x x The period of prescription of penalties- so the succeeding Article 93 provides - "shall commence to run from the date when the culprit should *evade the service of his sentence*."

What then is the concept of evasion of service of sentence? Article 157 of the Revised Penal Code furnishes the ready answer. Says Article 157:

> ART. 157. *Evasion of service of sentence.* - The penalty of *prision correccional* in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by escaping during the term of his imprisonment by reason of final judgment. However, if such evasion or escape shall have taken place by means of unlawful entry, by breaking doors, windows, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution, the penalty shall be prision correccional in its maximum period.
>
> Elements of evasion of service of sentence are: (1) the offender is a *convict* by final judgment; (2) he "is *serving* his sentence which consists in deprivation of liberty"; and (3) he evades service of sentence by *escaping* during the term of his sentence. This must be so. For, by the express terms of the statute, a convict evades "service of his sentence" by "*escaping* during the term of his imprisonment by reason of final judgment." That escape should take place while serving sentence, is emphasized by the provisions of the second sentence of Article 157 which provides for a higher penalty if such "*evasion* or *escape* shall have taken place by means of unlawful entry, by breaking doors, windows, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the *penal institution,* * * *" Indeed, evasion of sentence is but another expression of the term "jail breaking."

A dig into legal history confirms the views just expressed. The Penal Code of Spain of 1870 in its Article 134 - from whence Articles 92 and 93 of the present Revised Penal Code originated- reads:

> "Las penas impuestas por sentencia firme prescriben: Las de muerte y cadena perpetua, a los veinte años.
>
> * * *
>
> Las leves, al año.
>
> El tiempo de esta prescripcion comenzara a correr desde el dia en que se notifique personalmente al reo la sentencia firme, o desde el quebrantamiento de la condena, si hubiera esta comenzado a cumplirse. * * *"

Note that in the present Article 93 the words "desde el dia en que se notifique personalmente al reo la sentencia firme", written in the old code, were deleted. The omission is significant. What remains reproduced in Article 93 of the Revised Penal Code is solely "quebrantamiento de Ia

condena". And, "quebrantamiento" or "evasion" means *escape.* Reason dictates that one can escape only after he has started service of sentence.

Even under the old law, Viada emphasizes, where the penalty consists of imprisonment, prescription shall only begin to run when he escapes from confinement. Says Viada:

> "El tiempo de la prescripcion empieza a contarse desde el dia en que ha tenido Iugar la notificacion personal de la sentencia firme al reo: el Codigo de 1850 no expresaba que la notificacion hubiese de ser personal, pues en su art. 126 se consigna que el termino de Ia prescripcion se cuenta desde que *se notifique* la sentencia, causa de la ejecutoria en que se imponga le pena respectiva. *Luego ausente el reo, ya no podra prescribir hoy Ia pena, pues que Ia notificacion personal no puede ser sup/ida por Ia notificacion hecha en estrados. Dada la imprescindible necesidad del requisito de la notificacion personal, es obvio que en las penas que consisten en privacion de libertad solo podra existir Ia prescripcion quebrantando el reo Ia condena*, pues que si no se hallare ya preso preventivamente, debera siempre procederse a su encerrarniento en el acto de serle notificada personalmente la sentencia."

We, therefore, rule that for prescription of penalty of imprisonment imposed by final sentence to commence to run, the culprit should escape during the term of such imprisonment.[20]

Following *Tanega, Del Castillo v. Hon. Torrecampo*[21] held that one who has not been committed to prison cannot be said to have escaped therefrom. We agree with the position of the Solicitor General that "escape" in legal parlance and for purposes of Articles 93 and 157 of the RPC means unlawful departure of prisoner from the limits of his custody.

Of more recent vintage is Our pronouncements in *Pangan v. Hon. Gatbalite*,[22] which cited *Tanega* and *Del Castillo*, that the prescription of penalties found in Article 93 of the RPC applies only to those who are convicted by final judgment and are serving sentence which consists in deprivation of liberty, and that the period for prescription of penalties begins only when the convict evades service of sentence by escaping during the term of his sentence.

Applying existing jurisprudence in this case, the Court, therefore, rules against petitioners. For the longest time, they were never brought to prison or placed in confinement despite being sentenced to imprisonment by final judgment. Prescription of penalty of imprisonment does not run in their favor. Needless to state, respondent trial court did not commit grave abuse of discretion in assuming jurisdiction over the motion for execution and in eventually granting the same.

Extinction of Civil Liability