Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

RODOLFO BASILONIA, LEODEGARIO CATALAN and JOHN BASILONIA, Petitioners,	**G.R. Nos. 191370-71**
	Present:
	VELASCO, JR., *J.*, *Chairperson*, PERALTA, VILLARAMA, JR., PEREZ,* and JARDELEZA, *JJ.*
- *versus* -	
HON. DELANO F. VILLARUZ, acting in his capacity as Presiding Judge of the Regional Trial Court, Roxas City, Branch 16, and DIXON ROBLETE, Respondents.	**Promulgated:** August 10, 2015

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DECISION

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. Villaruz of the Regional Trial Court (*RTC*), Roxas City, Branch 16, held in the affirmative.[3] We sustain in part.

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* Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2112 dated July 16, 2015.

1 *Rollo*, p. 73.

2 *Id.* at 78-79.

3 The case was raffled to RTC Branch 16 after the presiding judges of RTC Branches 18 and 15 voluntarily inhibited themselves (*Rollo*, pp. 71-72).

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 ₱32,100.00 representing funeral expenses, tomb, burial, and expenses for wake; the sum of ₱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

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4 Penned by Presiding Judge Jonas A. Abellar of Roxas City, RTC, Br. 18 (*Id.* at 23-49).
5 *Rollo*, pp. 48-49.
6 *Id.* at 50, 83, 147.
7 *Id.* at 54, 83, 147.

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

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8 *Id.* at 54, 73, 84, 147.
9 *Id.* at 55-56.
10 *Id.* at 51-52.
11 *Id.* at 148.
12 *Id.* at 59, 61-70, 148.
13 *Id.* at 59-60.
14 *Id.* at 74-77.
15 *Id.* at 80-81.
16 *Id.* at 82-86.

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:
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> 1. Death and reclusión 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*."

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[17] Approved on December 8, 1930 and took effect on January 1, 1932. (See *Atty. Risos-Vidal v. Commission on Elections*, G.R. No. 206666, January 21, 2015; *Lozano v. Hon. Martinez*, 230 Phil. 406, 415 [1986]; and *People v. Hernandez et al.*, 99 Phil. 515, 548 [1956]).

[18] 92 Phil. 310 (1952).

[19] 125 Phil. 966 (1967).

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.
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> 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 la

> condena". And, "quebrantamiento" or "evasion" means *escape*. Reason dictates that one can escape only after he has started service of sentence.
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> 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:
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> > "El tiempo de la prescripcion empieza a contarse desde el dia en que ha tenido lugar 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 la 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 la pena, pues que la notificacion personal no puede ser suplida por la 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 la prescripcion quebrantando el reo la condena*, pues que si no se hallare ya preso preventivamente, debera siempre procederse a su encerramiento en el acto de serle notificada personalmente la sentencia."
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> 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

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20 *Tanega v. Masakayan, et al., supra*, at 968-971.
21 442 Phil. 442 (2002).
22 490 Phil. 49 (2005).

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

The treatment of petitioners' civil liability arising from the offense committed is different.

Elementary is the rule that every person criminally liable for a felony is also civilly liable.[23] We said in one case:

> It bears repeating that "an offense as a general rule causes two (2) classes of injuries – the first is the social injury produced by the criminal act which is sought to be repaired thru the imposition of the corresponding penalty and the second is the personal injury caused to the victim of the crime which injury is sought to be compensated thru indemnity, which is civil in nature." (Ramos *v*. Gonong, 72 SCRA 559). As early as 1913, this Court in *U.S. v. Heery* (25 *Phil.* 600) made it clear that the civil liability of the accused is not part of the penalty for the crime committed. It is *personal* to the victim. x x x.[24]

Under Article 112 of the RPC, civil liability established in Articles 100,[25] 101,[26] 102,[27] and 103[28] of the Code shall be extinguished in the same

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23 RPC, ART. 100.

24 *Budlong v. Hon. Apalisok, et al.* 207 Phil. 804, 811 (1983).

25 ARTICLE 100. *Civil Liability of Person Guilty of Felony.* – Every person criminally liable for a felony is also civilly liable.

26 ARTICLE 101. *Rules Regarding Civil Liability in Certain Cases.* – The exemption from criminal liability established in subdivisions 1, 2, 3, 5, and 6 of article 12 and in subdivision 4 of article 11 of this Code does not include exemption from civil liability, which shall be enforced subject to the following rules:

First. In cases of subdivisions 1, 2, and 3 of article 12, the civil liability for acts committed by an imbecile or insane person, and by a person under nine years of age, or by one over nine but under fifteen years of age, who has acted without discernment, shall devolve upon those having such person under their legal authority or control, unless it appears that there was no fault or negligence on their part.

Should there be no person having such insane, imbecile or minor under his authority, legal guardianship, or control, or if such person be insolvent, said insane, imbecile, or minor shall respond with their own property, excepting property exempt from execution, in accordance with the civil law.

Second. In cases falling within subdivision 4 of article 11, the persons for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which they may have received.

The courts shall determine, in their sound discretion, the proportionate amount for which each one shall be liable.

When the respective shares cannot be equitably determined, even approximately, or when the liability also attaches to the Government, or to the majority of the inhabitants of the town, and, in all events, whenever the damage has been caused with the consent of the authorities or their agents, indemnification shall be made in the manner prescribed by special laws or regulations.

Third. In cases falling within subdivisions 5 and 6 of article 12, the persons using violence or causing the fears shall be primarily liable and secondarily, or, if there be no such persons, those doing the act shall be liable, saving always to the latter that part of their property exempt from execution.

27 ARTICLE 102. *Subsidiary Civil Liability of Innkeepers, Tavernkeepers and Proprietors of Establishments.* – In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases

manner as other obligations, in accordance with the provisions of the Civil Law. Since the Civil Code is the governing law, the provisions of the Revised Rules of Civil Procedure, particularly Section 6, Rule 39 thereof, is applicable. It states:

> Section 6. *Execution by motion or by independent action.* – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a)

Section 6, Rule 39 of the Rules must be read in conjunction with Articles 1144 (3) and 1152 of the Civil Code, which provide:

> Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> x x x x
>
> (3) Upon a judgment
>
> Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final.

Based on the foregoing, there are two (2) modes of enforcing a final and executory judgment or order: through motion or by independent action.

> These two modes of execution are available depending on the timing when the judgment creditor invoked its right to enforce the court's judgment. **Execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date of its entry.** On the other hand, execution by independent action is mandatory if the five-year prescriptive period for execution by motion had already elapsed. However, for execution by independent action to prosper – the Rules impose another limitation – the action must be filed before it is

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where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees.

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care of and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

[28] ARTICLE 103. *Subsidiary Civil Liability of Other Persons.* – The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

> barred by the statute of limitations which, under the Civil Code, is ten (10) years from the finality of the judgment.[29]

An action for revival of judgment is not intended to reopen any issue affecting the merits of the case or the propriety or correctness of the first judgment.[30] The purpose is not to re-examine and re-try issues already decided but to revive the judgment; its cause of action is the judgment itself and not the merits of the original action.[31] However, being a mere right of action, the judgment sought to be revived is subject to defenses and counterclaims like matters of jurisdiction and those arising after the finality of the first judgment or which may have arisen subsequent to the date it became effective such as prescription, payment, or counterclaims arising out of transactions not connected with the former controversy.[32]

Once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution the issuance of which is the trial court's ministerial duty, compellable by mandamus.[33] Yet, a writ issued after the expiration of the period is null and void.[34] The limitation that a judgment be enforced by execution within the stated period, otherwise it loses efficacy, goes to the very jurisdiction of the court. Failure to object to a writ issued after such period does not validate it, for the reason that jurisdiction of courts is solely conferred by law and not by express or implied will of the parties.[35]

Nonetheless, jurisprudence is replete with a number of exceptions wherein the Court, on meritorious grounds, allowed execution of judgment despite non-observance of the time bar. In *Lancita, et al. v. Magbanua, et al.*,[36] it was held:

> In computing the time limited for suing out an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise. Any interruption or delay occasioned by the debtor will extend

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29 *Olongapo City v. Subic Water and Sewerage Co., Inc.*, G.R. No. 171626, August 6, 2014, 732 SCRA 132, 147. (Emphasis in the original)

30 *Philippine Reconstruction Corporation, Inc. v. Aparente*, 150-A Phil. 570, 575 (1972).

31 *Enriquez v. Court of Appeals*, 423 Phil. 630, 637 (2001) and *Caiña v. Court of Appeals*, G.R. No. 114393, December 15, 1994, 239 SCRA 252, 262.

32 *Enriquez v. Court of Appeals*, *supra*, at 636; *Caiña v. Court of Appeals*, *supra*, at 262; and *Philippine Reconstruction Corporation, Inc. v. Aparente*, *supra* note 30.

33 *Sps. O and Cheng v. Sps. Javier and Dailisan*, 609 Phil. 434, 442-443 (2009).

34 *Olongapo City v. Subic Water and Sewerage Co., Inc.*, *supra* note 29, at 148; *Barrera v. Court of Appeals*, 423 Phil. 559, 568-569 (2001); and *Ramos v. Hon. Garciano, etc. et al.*, 137 Phil. 814, 819 (1969).

35 *Ramos v. Hon. Garciano, etc. et al.*, *supra*, at 819.

36 117 Phil. 39 (1963).

> the time within which the writ may be issued without *scire facias*. x x x.[37]

Thus, the demands of justice and fairness were contemplated in the following instances: dilatory tactics and legal maneuverings of the judgment obligor which redounded to its benefit;[38] agreement of the parties to defer or suspend the enforcement of the judgment;[39] strict application of the rules would result in injustice to the prevailing party to whom no fault could be attributed but relaxation thereof would cause no prejudice to the judgment obligor who did not question the judgment sought to be executed;[40] and the satisfaction of the judgment was already beyond the control of the prevailing party as he did what he was supposed to do.[41] Essentially, We allowed execution even after the prescribed period elapsed when the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage.[42]

In the instant case, it is obvious that the heirs of Atty. Roblete did not file a motion for execution within the five-year period or an action to revive the judgment within the ten-year period. Worse, other than the bare allegation that the judgment has not been enforced because the public prosecutor has not acted on the request to file a motion for execution, no persuasive and compelling reason was presented to warrant the exercise of Our equity jurisdiction. Unfortunately for private respondent Roblete, the instant case does not fall within the exceptions afore-stated. It cannot be claimed that the delay in execution was entirely beyond their control or that petitioners have any hand in causing the same.[43] As regards the civil aspect of a criminal case is concerned, it is apt to point that –

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[37] *Lancita, et al. v. Magbanua, et al. supra*, at 44-45. See also *Bañez, Jr. v. Concepcion*, G.R. No. 159508, August 29, 2012, 679 SCRA 237, 254; *Spouses Topacio v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 157644, November 17, 2010, 635 SCRA 50, 57; *Zamboanga Barter Traders Kilusang Bayan, Inc. v. Hon. Plagata et al.*, 588 Phil. 464, 488 (2008); *Yau v. Silverio, Sr.*, 567 Phil. 493, 502 (2008); *Francisco Motors Corp. v. Court of Appeals*, 535 Phil. 736, 751 (2006); *De La Rosa v. Fernandez*, 254 Phil. 373, 378 (1989); *Provincial Gov't of Sorsogon v. Vda. de Villaroya, et al.*, 237 Phil. 280, 288 (1987); *Republic v. Court of Appeals*, 221 Phil. 685, 693 (1985); and *Ramos v. Hon. Garciano, etc. et al.*, 137 Phil. 814, 819-820 (1969).

[38] *Lumakin v. Davao Medical Center*, G.R. No. 190808, February 17, 2014 (2nd Div. Resolution); *California Bus Lines, Inc. v. Court of Appeals, et al.*, 584 Phil. 385 (2008); *Yau v. Silverio, Sr.*, *supra*; *Francisco Motors Corp. v. Court of Appeals*, *supra*; *Salientes v. IAC*, 316 Phil. 197 (1995); *Villaruel v. Court of Appeals*, 254 Phil. 305 (1989); and *Republic v. Court of Appeals*, *supra*.

[39] *National Waterworks and Sewerage Authority v. National Labor Relations Commission*, 327 Phil. 653 (1996); and *Torralba v. Judge De Los Angeles*, 185 Phil. 40 (1980).

[40] *Rubio v. Alabata*, G.R. No. 203947, February 26, 2014, 717 SCRA 554.

[41] *Zamboanga Barter Traders Kilusang Bayan, Inc. v. Hon. Plagata et al.*, 588 Phil. 464 (2008).

[42] *Olongapo City v. Subic Water and Sewerage Co., Inc.*, *supra* note 34, at 148-149; *Zamboanga Barter Traders Kilusang Bayan, Inc. v. Hon. Plagata et al.*, *supra* note 37, at 488; *Yau v. Silverio, Sr.*, *supra* note 37, at 503; and *Francisco Motors Corp. v. Court of Appeals*, *supra* note 37, at 753.

[43] See *Villeza v. German Management and Services, Inc., et al.*, 641 Phil. 544 (2010) and *Macias v. Lim*, 474 Phil. 765 (2004).

> Litigants represented by counsel should not expect that all they need to do is sit back and relax, and await the outcome of their case. They should give the necessary assistance to their counsel, for at stake is their interest in the case. While lawyers are expected to exercise a reasonable degree of diligence and competence in handling cases for their clients, the realities of law practice as well as certain fortuitous events sometimes make it almost physically impossible for lawyers to be immediately updated on a particular client's case.[44]

Aside from the civil indemnity arising from the crime, costs and incidental expenses of the suit are part of the judgment and it is incumbent upon the prevailing party in whose favor they are awarded to submit forthwith the itemized bill to the clerk of court.[45] Manifestly, the heirs of Atty. Roblete failed to do so. Their indifference, if not negligence, is indicative of lack of interest in executing the decision rendered in their favor. To remind, the purpose of the law in prescribing time limitations for executing judgments or orders is to prevent obligors from sleeping on their rights.[46] Indeed, inaction may be construed as a waiver.[47]

To close, the Court cannot help but impress that this case could have been averted had the lower court been a competent dispenser of justice. It is opportune to remind judges that once a judgment of conviction becomes final and executory, the trial court has the ministerial duty to immediately execute the penalty of imprisonment and/or pecuniary penalty (fine). A motion to execute judgment of conviction is not necessary. With respect to the penalty of imprisonment, the trial court should cancel the bail bond and issue a warrant of arrest, if the accused is not yet under detention. If the convicted accused is already under detention by virtue of the warrant of arrest issued, the trial court should immediately issue the corresponding *mittimus* or commitment order for the immediate transfer of the accused to the National Penitentiary to serve his sentence, if the penalty imposed requires the service of sentence in the National Penitentiary. The commitment order should state that an appeal had been filed, but the same had been withdrawn/dismissed/decided with finality.

If aside from the penalty of imprisonment the penalty of fine is likewise imposed, the trial court should issue at once an order requiring the payment of fine within a reasonable period of time and, in case of non-payment and subsidiary imprisonment is imposed, he should likewise serve

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44 *Sps. O and Cheng v. Sps. Javier and Dailisan*, *supra* note 33, at 443-444.

45 See *Estayo v. De Guzman*, 104 Phil. 1038, 1041 (1958).

46 *Villeza v. German Management and Services, Inc., et al., supra* note 43, at 552; *Bausa, et al. v. Heirs of Juan Dino, et al.*, 585 Phil. 526, 534 (2008); *California Bus Lines, Inc. v. Court of Appeals, et al., supra* note 38, at 398; *Francisco Motors Corp. v. Court of Appeals*, *supra* note 38, at 752; and *Republic v. Court of Appeals*, *supra* note 38, at 693.

47 *Macias v. Lim*, *supra* note 43, at 789.

the subsidiary imprisonment. If, however, the penalty is only fine and the judgment has become final and executory, an order should be issued by the trial court at once for the payment of the fine. And in case of non-payment, the bail bond previously issued for his provisional liberty should be cancelled and a warrant of arrest should be issued to serve the subsidiary imprisonment, if there is any.

In cases where the accused is a detention prisoner, *i.e.,* those convicted of capital offenses or convicted of non-capital offenses where bail is denied, or refused to post bail, a *mittimus* or commitment order should be immediately issued after the promulgation of judgment by the trial court as long as the penalty imposed requires the service of sentence in the National Penitentiary. The filing of a motion for reconsideration, motion for new trial, or notice of appeal should not stop the lower court from performing its ministerial duty in issuing the commitment order, unless a special order has been issued by the Court in specific cases – to the effect that the convicted accused shall remain under detention in the provincial jail or city jail while the motion is being heard or resolved.

In so far as the civil liability arising from the offense is concerned, a motion for execution should be filed in accordance with Section 6, Rule 39 of the *Rules* and existing jurisprudence.

WHEREFORE, the foregoing considered, the instant petition for *certiorari* is **PARTIALLY GRANTED**. The Orders dated December 3, 2009 and January 25, 2010 of Presiding Judge Delano F. Villaruz, Regional Trial Court, Roxas City, Branch 16, are **AFFIRMED IN PART** only insofar as to the execution of the penalty of imprisonment is concerned. Let the records of this case be **REMANDED** to the trial court for the immediate issuance of *mittimus,* pursuant to OCA Circular No. 40-2013, in relation to OCA Circular No. 4-92-A.

The Office of the Court Administrator is hereby **DIRECTED** to conduct an investigation on the possible culpability of those responsible for the unreasonable delay in the execution of the judgment of conviction.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice