

EPIFANIA CUENCA Y MENDOZA, PETITIONER AND APPELLANT, VS. THE SUPERINTENDENT OF THE CORRECTIONAL INSTITUTE FOR WOMEN, RESPONDENT AND APPELEE.

G.R. No. L-17400. December 30, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

Epifania Cuenca y Mendoza, is appealing from the decision of the Court of First Instance of Rizal (in Spec. Proc. No. 3379), denying her petition for a writ of habeas corpus. Sometime in 1955, appellant was charged with the crime of theft in the Municipal Court of Manila (in Crim. Case No. D-46759), with 3 others, under the following information:

"The undersigned accuses Epifania Cuenca y Mendoza, Alfredo Coronel y Sarmiento, Remigio Lachica y Basilan, and Ariston Cuevas y Baldueza, of the crime of theft, committed as follows:

"That on or about the 21st day of July, 1955, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully, and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal, and carry away two (2) packages of one pound each of Cafe Puro coffee, valued at P5.20, belonging to Cesar Ascoña, to the damage and prejudice of the said owner in the aforesaid amount of P5.20 Philippine currency.

"* * * that the said accused Epifania Cuenca y Mendoza and Ariston Cuevas y Baldueza are habitual delinquents according to Art. 62, Sec. 5(a) [of the Revised Penal Code], they having been previously convicted several times of the crime of theft by virtue of final judgments rendered by competent Courts, as follows:

EPIFANIA CUENCA Y MENDOZA

Date

Date of

Conviction

Charge

Disposition

3-22-48

2-28-49

Theft

P30.00 fine & cost,
MC-B-32494

3-22-48

2-28-49

Theft

P30.00 fine & cost,
MC-B-32495

3-31-49

7-21-49

Att. Theft

4 mos. & 20 days
MC-43884

6-17-49

7-21-49

Theft

do

10-24-51

12-17-51

Theft

1 mo. & 1 da.,
MC-B-73094

* * * * *

"Contrary to law."

Upon arraignment, appellant pleaded not guilty. The case was then tried and, after trial, the Municipal Court of Manila, on August 29, 1955, rendered a decision which, in part, reads:

"The Court finds the accused Epifania Cuenca y Mendoza * * * guilty as charged in the information. Epifania Cuenca y Mendoza is sentenced to suffer two (2) months and one (1) day of arresto mayor, plus the additional penalty of twelve (12) years of prision mayor, for being a habitual delinquent and costs, * * *."

Pursuant to a commitment order of the Municipal Court of Manila, appellant commenced to serve her sentence on the same date, at the Correctional Institution for Women.

On April 12, 1960, after having served 5 years, 7 months and 12 days (including good conduct time allowances) of her sentence, she filed the present petition for a writ of habeas corpus (Spec. Proc. No. 3379) with the Court of First Instance of Rizal alleging, among others, that the allegations of habitual delinquency in the information (in Crim. Case No. D-46759) are insufficient, as they do not contain an averment of the date of commission of and the imposition of an additional penalty for habitual delinquency based on such insufficient allegation, even granting that she entered a plea of guilty, is null and void; and that even granting that said allegations regarding habitual delinquency are sufficient, the penalty imposed by the trial (municipal) judge is excessive, considering that said allegations only show that she should have been imposed an additional penalty for a fourth conviction, in accordance with the decision in *People vs. Kaw Liong*, 57 Phil., 839.

After hearing the petition on the merits, the court, on August 5, 1960, dismissed the same, in a decision which in part reads;

"The Court finds no merit on the first issue raised by the petitioner. It is true that habitual delinquency requires that the second crime was committed after the first conviction, the third, after the second, the fourth, after the third, and so on (*People vs. Santiago*, 55 Phil., 266) and hence, the date of commission is an indispensable allegation. The Court, however, believes that the face of the information shows a sufficient allegation of the dates of commission. The information runs, thus

'* * *; that the said accused Epifania Cuenca y Mendoza and Ariston Cuevas y Baldueza are habitual delinquents according to Art. 62, Sec. 5(a), they having previously been convicted several times of the crime of theft by virtue of final judgment rendered by competent courts, as follows:

EPIFANIA CUENCA Y MENDOZA

Date

Date of
Conviction

Charge

Disposition

3-22-48

2-28-49

Theft

* * *

3-22-48

12-17-51

Theft

* * *

3-31-49

7-21-49

Att. Theft

* * *

6-17-49

2-28-49

Theft

* * *

10-25-51

7-21-49

Theft

* * *

"It must be observed that the first column is denominated 'DATE' without mentioning whether it is the date of the commission or not, The Court believes that, considering that the rest of the allegations are substantially complete, said designation may be reasonably presumed to refer to the date of commission, because the above preliminary paragraph before the tabulation, clearly stated 'habitual delinquents' and, therefore, whatever may appear in the tabulation must be deemed to cover only those necessary to constitute a sufficient allegation of the habitual delinquency, one of which is the date of commission.

"The Court is of the opinion that petitioners second contention is untenable. It is a well-settled rule of law that the writ of habeas corpus is not a writ of error and hence, the question of the sufficiency or lack of evidence adduced in a case cannot be Inquired into, as long as the Court which decided the case had jurisdiction over the same.

"There is merit however in the third contention of petitioner, namely, that the penalty of habitual delinquency is excessive. The penalty imposed by the trial Court for habitual delinquency is 12 years of prison mayor, or otherwise stated, prison mayor In its maximum period, which, under Article 62, par. 5(c) of the Revised Penal Code is imposable only upon a fifth or additional conviction. As previously pointed out, the trial court can

impose the penalty for habitual delinquency only insofar as the allegations of the information warrant, regardless of whatever extraneous evidence may be presented. The information in the aforementioned criminal case, can permit the imposition of said penalty on a fourth, not fifth conviction. As shown by the above tabulation, the convictions for the first and second crimes fall on the same date and, therefore, should be regarded as only the first convictions; the same is true with the third and fourth convictions, which should then be considered only as the second conviction (*People vs. kaw liong*, 57 Phil., 839) Thus the fifth crime results in the third conviction and the crime petitioner is now serving sentence should be regarded as only the fourth conviction, for purposes of the habitual delinquency law, the imposable penalty, of which, is that falling under Article 62, par. 5(b), which is prision mayor in its minimum and medium periods, the range of which is from 6 years and 1 day to 10 years. The trial (municipal) court, therefore, had jurisdiction to Impose the penalty in question only up to 10 years and, consequently, cannot have jurisdiction to impose a 12-years penalty. Petitioner further contends that considering the triviality of the amount involved and the age of the accused, the trial (municipal) court should have imposed prision mayor in its minimum period, which is 6 years and 1 day. This latter contention, the Court cannot uphold. As repeatedly stated, the writ of habeas corpus is not a writ of error nor a writ for the purpose of review. In the case at bar, the (municipal) court has jurisdiction to impose an additional penalty to the extent of 10 years, and up to that extent, the validity of the judgment can not be inquired upon in a habeas corpus case. As held in *Cruz vs. Director of Prisons* (17 Phil. 269), said writ can be availed of to release a prisoner under a sentence imposed in excess of the power of the court, if he had served so much of the sentence as was and could be lawfully imposed, because said sentence was void only as to such excess.

"It appearing, therefore, that the petitioner has not yet served the sentence that could be lawfully imposed, which is ten years, she is still restrained of her liberty under a valid process issued by a court of competent jurisdiction; wherefore, a writ of habeas corpus will not lie to secure her release."

From this decision, appellant instituted the present appeal, with the following assignment of errors:

- (1) The trial court erred in not finding that appellant has been illegally declared (by the Municipal Court, in *Crim. Case No. D-46759*) a habitual delinquent.
- (2) The trial court erred in not finding that the additional penalty of 12 years imprisonment (imposed by said Municipal Court) for habitual delinquency is null and void, as having been imposed with grave abuse of discretion and in excess of jurisdiction tantamount to lack of jurisdiction.
- (3) The trial court erred in declaring that habeas corpus is not the proper remedy in the case of the appellant.
- (4) The trial court erred in not ordering the immediate release of the appellant.

The appeal is devoid of any merit. This Court has repeatedly held that a writ of habeas corpus is not a writ of error, or a writ for the purpose of review. (*Felipe vs. Director of Prisons*, 27 Phil., 378; *Pomeroy vs. Director of Prisons*, 107 Phil., 50 ; 57 Off. Gaz., [40] 7150).[1] In the *Pomeroy* case, we stated that:

"With reference to persons in custody pursuant to a final judgment, the rule is that the writ of habeas corpus can issue only for want of jurisdiction of the sentencing court, and cannot function as a writ of error. Hence, the writ will not lie to correct mere mistakes of fact or of law which do not nullify the proceedings taken by a court in the exercise of its functions, if the court has jurisdiction over the crime and over the person of the defendant."

The first assigned error is grounded on the alleged insufficiency of the allegations of the Information (in *Crim. Case No. D-46759*, Municipal Court of Manila) and the lack of evidence to sustain the charge of habitual delinquency. But these alleged defects in the information, even if true—which are not, as explained and found in the decision appealed from—are mere errors of fact or law, which do not nullify the proceedings taken by said court in the exercise of its functions, considering that it had jurisdiction over the offense charged (theft), and the

person of appellant. The second error, on the other hand, attacks the Municipal Court's appreciation of the number of appellant's previous convictions for theft. Again, this is merely an error of judgment by said court, which did not in any way affect its jurisdiction, or could nullify its proceedings, but was correctible only by a seasonal appeal.

In the Felipe case, *supra*, we pointed out:

"But the writ of habeas corpus is not a remedy provided for the correction of such errors. Courts cannot, in habeas corpus proceedings, review the record in a criminal case after a judgment of conviction has been rendered, and the defendants have entered on the execution of the sentence imposed, to ascertain whether the facts found by the trial court were in accordance with the evidence disclosed by the record, or in order to pass upon the correctness of the conclusions of law by the trial court based on the facts thus found. Under the statute, a commitment in due form based on a final judgment convicting and sentencing a defendant in a criminal case is conclusive of the legality of his detention under such commitment, unless it appears that the court which pronounced the judgment was without or exceeded its jurisdiction in imposing the penalty. Mere errors of law or of fact, which did not have the effect of depriving the trial court of its jurisdiction over the cause and the person of the defendant, if corrected at all, must be corrected on appeal in the form and manner prescribed by law."

Reliance is placed on our ruling in the cases of *Cruz vs. Director of Prisons* (17 Phil. 269) and *Caluag vs. Pecson*, (82 Phil. 8), but these cases are not in point, for they involved penalties not provided by law and, therefore, beyond the power or jurisdiction of the trial court to impose. Thus, in the *Pomeroy* case, *supra*, we said:

"While this Court has ruled that an excessive sentence or penalty imposed by final judgment may be corrected by habeas corpus, the cases where such ruling was applied involved penalties that could not be imposed under any circumstances for the crime for which the prisoner was convicted; (subsidiary imprisonment for violation of special acts, in *Cruz vs. Director of Prisons*, 17 Phil., 269; imprisonment for contempt by refusal to execute a conveyance instead of having the conveyance executed as provided by Sec. 10 of Rule 39, in *Caluag vs. Pecson*, 82 Phil. 8). * * *"

In the case at bar, the Municipal Court of Manila had, undoubtedly, the jurisdiction to impose on appellant the additional penalty for habitual delinquency, as provided by Article 62, paragraph 5, of the Revised Penal Code.^[2] What is here questioned is only the correctness of the exercise of that jurisdiction.

In the decision appealed from, the trial judge declared that the Municipal Court of Manila had jurisdiction to impose on appellant an additional penalty of 10 years only, and not 12 years. He arrived at said conclusion after examining the information (in *Crim. Case No. D-46759*), and finding appellant had only 4 convictions for theft and, pursuant to Article 62(5) (b) of the Revised Penal Code, is liable only for a maximum additional penalty of 10 years, for habitual delinquency. While the reasoning may be correct, yet the conclusion of the court *a quo* is wrong. The mistake committed by the sentencing court in the appreciation of the facts and in the application of the law thereto, did not divest it of its jurisdiction, and such error was beyond the power of the trial judge in the present case to correct, because as we have pointed out in the *Felipe* case, *supra*, "mere errors of law or fact, which did not have the effect of depriving the trial court of its jurisdiction over the cause and the person of the defendant, if corrected at all, must be corrected on appeal in the form and manner prescribed by law."

Wherefore, with the above modification, the judgment of the court *a quo* appealed from, is hereby affirmed, with costs against the petitioner-appellant. So ordered.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, and De Leon, JJ., Concur.

[1] See also *Talabon vs. Prov. Warden*, 78 Phil. 599; *Perkins vs. Director of Prisons*, 58 Phil. 271; *Paguntalan vs. Director of Prisons*, 57 Phil. 140; *Trono Felipe vs. Director of Prisons*, 24 Phil. 121; *U.S. vs. Jayme*, 24 Phil. 90; *McMicking vs. Schields*, 41 Phil. 971.

[2] *People vs. Acha*, 68 Phil. 664, 666.

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