

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO SALLE, JR. Y GERCILLA @ “KA NONOY,” RICKY MENGOTE Y CUNTADO @ “KA RICKY/KA LIZA/KA JUN,” AND TEN JOHN DOES, ACCUSED,...

G.R. No. 103567. December 04, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

For resolution is the enforceability of the conditional pardon granted to accused-appellant Ricky Mengote during the pendency in this Court of his appeal from his conviction by the trial court.

In the decision[1] dated 18 November 1991 of Branch 88 of the Regional Trial Court (RTC) of Quezon City in Criminal Case No. Q--90-11835, the accused-appellants were found guilty beyond reasonable doubt as co-principals of the compound crime of murder and destructive arson and were each sentenced to suffer the penalty of reclusion perpetua and to pay, jointly and severally, an indemnity in the sum of P50,000.00 to the heirs of the victim.[2]

The appellants seasonably filed their Notice of Appeal. On 24 March 1993, this Court accepted the appeal. On 6 January 1994, however, appellant Francisco Salle, Jr. filed an Urgent Motion to Withdraw Appeal. The Court then required his counsel, Atty. Ida May La'o of the Free Legal Assistance Group (FLAG) to verify the voluntariness of the aforesaid motion.

In her Manifestation with Motion to Withdraw Appeal, Atty. La'o informed this Court that her verification disclosed that Salle signed the motion without the assistance of counsel on his misimpression that the motion was merely a bureaucratic requirement necessary for his early release from the New Bilibid Prison (NBP) following the grant of a conditional pardon by the President on 9 December 1993. He was discharged from the NBP on 28 December 1993. She further informed the Court that appellant Ricky Mengote was, on the same dates, granted a conditional pardon and released from confinement, and that he immediately left for his province without consulting her. She then prays that this Court grant Salle's motion to withdraw his appeal and consider it withdrawn upon his acceptance of the conditional pardon.

Until now, Mengote has not filed a motion to withdraw his appeal.

In the resolution of 23 March 1994, this Court granted Salle's motion to withdraw his appeal and considered this case closed and terminated insofar as he is concerned.

On 3 June 1993, Assistant Director Jesus P. Villanueva of the Bureau of Corrections submitted certified photocopies of the conditional pardon granted separately to Salle[3] and Mengote[4] and of their certificates of release.[5] The said copies of the conditional pardon state, among other things, that it is upon acceptance of the pardon that the appellants will be released from confinement. But there is nothing to show when the appellants accepted the pardon.

In its Comment of 17 August 1994, the Office of the Solicitor General asserted that with their acceptance of the conditional pardon, the appellants impliedly admitted their guilt and accepted their sentence, and hence, the appeal should be dismissed.[6]

After taking into consideration Section 19, Article VII of the Constitution which provides that the President may, except in cases of impeachment or as otherwise provided in the Constitution, grant pardon after conviction by final judgment, this Court resolved to require

- The Office of the Solicitor General and the counsel for the accused-appellants to submit, within thirty (30) days from notice hereof, their respective memoranda on the issue of the enforceability of the conditional pardon; and
- The Presidential Committee for the Grant of Bail, Release or Pardon to inform the Court, within ten (10) days from notice hereof, why it recommended to the President the grant of the conditional pardon despite the pendency of the appeal.[7]

In a Comment submitted on behalf of the Presidential Committee for the Grant of Bail, Release, or Pardon, Assistant Chief State Prosecutor Nilo C. Mariano avers that the Secretariat assisting the Committee has a standing agreement with the FLAG and other human rights organizations that it will recommend to the Presidential Committee for conditional pardon by the President of convicted persons who may have been convicted of crimes against national security and public order or of common crimes which appear to have been committed in pursuit of their political objectives; and that where the said convicted persons have pending appeals before the appellate court, the lawyers of the said organizations, particularly the FLAG, will take care of filing the appropriate motions for the withdrawal of their appeal considering that presidential pardon may be extended only to those serving sentence after final conviction. Notwithstanding that agreement, before it recommends to the Committee the grant of conditional pardon, the Secretariat also checks with the Bureau of Corrections the carpeta or records of recommendees whether they have pending appeals so that those concerned may be properly advised to withdraw the same. Mariano further contends that per information given to the Secretariat by Assistant Director Villanueva, Mengote's carpeta or prison record does not show that he has a pending appeal with the Court of Appeals or the Supreme Court. For that reason, the Secretariat was not able to advise those concerned to take appropriate steps for the withdrawal of the appeal before it recommended to the Committee the grant of conditional pardon in favor of Mengote. Mariano then assures the Court that there was no intention on the part of the Secretariat and the Committee to violate Section 19, Article VII of the Constitution, and that what happened was a clear misappreciation of facts due to the incomplete records of Mengote.

In its Memorandum filed for the Appellee on 15 December 1994, the Office of the Solicitor General maintains that the conditional pardon granted to appellant Mengote is unenforceable because the judgment of conviction is not yet final in view of the pendency in this Court of his appeal.

On the other hand, the FLAG, through Atty. La'o, submits that the conditional pardon extended to Mengote is valid and enforceable. Citing *Monsanto vs. Factoran, Jr.*,[8] it argues that although Mengote did not file a motion to withdraw the appeal, he was deemed to have abandoned the appeal by his acceptance of the conditional pardon which resulted in the finality of his conviction.

The pivotal issue thus raised is the enforceability of a pardon granted to an accused during the pendency of his appeal from a judgment of conviction by the trial court.

This calls for a review of the Philippine laws on presidential pardons. We shall start with the Jones Law.[9] Section 21 thereof provided in part as follows:

SEC. 21. That the supreme executive power shall be vested in an executive officer, whose official title shall be

"The Governor-General of the Philippine Islands." ... He is hereby vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures....

Then came the 1935 Constitution. Paragraph 6, Section 10, Article VII thereof provided as follows:

(6)

The President shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose. He shall have the power to grant amnesty with the concurrence of the Congress.

This provision differed from that of the Jones Law in some respects. Thus, in *People vs. Vera*,^[10] this Court held:

Under the Jones Law, as at common law, pardon could be granted any time after the commission of the offense, either before or after conviction (Vide Constitution of the United States, Art. II, sec. 2; In re Lontok [1922], 43 Phil. 293). The Governor-General of the Philippines was thus empowered, like the President of the United States, to pardon a person before the facts of the case were fully brought to light. The framers of our Constitution thought this undesirable and, following most of the state constitutions, provided that the pardoning power can only be exercised "after conviction".

The requirement of after conviction operated as one of the limitations on the pardoning power of the President. Thus:

It should be observed that there are two limitations upon the exercise of this constitutional prerogative by the Chief Executive, namely: (a) that the power be exercised after conviction; and (b) that such power does not extend to cases of impeachment.^[11]

The 1973 Constitution went further by providing that pardon could be granted only after final conviction. Section 14 of Article IX thereof reads as follows:

The Prime Minister may, except in cases of impeachment, grant reprieves, commutations, and pardons, remit fines and forfeitures, after final conviction, and, with the concurrence of the National Assembly, grant amnesty. (Italics supplied)

The 1981 amendments to the 1973 Constitution, however, removed the limitation of final conviction, thereby bringing us back to the aforementioned provision of the Jones Law. Section 11, Article VII of the 1973 Constitution, as thus amended, reads:

The President may, except in cases of impeachment, grant reprieves, commutations and pardons, remit fines and forfeitures and, with the concurrence of the Batasang Pambansa, grant amnesty.

But the said limitation was restored by the present Constitution. Section 19, Article VII thereof reads as follows:

Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress. (Italics supplied)

Where the pardoning power is subject to the limitation of conviction, it may be exercised at any time after conviction even if the judgment is on appeal. It is, of course, entirely different where the requirement is "final conviction," as was mandated in the original provision of Section 14, Article IX of the 1973 Constitution, or

"conviction by final judgment," as presently prescribed in Section 19, Article VII of the 1987 Constitution. In such a case, no pardon may be extended before a judgment of conviction becomes final.

A judgment of conviction becomes final (a) when no appeal is seasonably perfected, (b) when the accused commences to serve the sentence, (c) when the right to appeal is expressly waived in writing, except where the death penalty was imposed by the trial court, and (d) when the accused applies for probation, thereby waiving his right to appeal.[12] Where the judgment of conviction is still pending appeal and has not yet therefore attained finality, as in the instant case, executive clemency may not yet be granted to the appellant.

We are not, however, unmindful of the ruling of this Court in *People vs. Crisola*[13] that the grant of executive clemency during the pendency of the appeal serves to put an end to the appeal. Thus:

The commutation of the penalty is impressed with legal significance. That is an exercise of executive clemency embraced in the pardoning power. According to the Constitution: "The President may, except in cases of impeachment, grant reprieves, commutations and pardons, remit fines and forfeitures and, with the concurrence of the Batasang Pambansa, grant amnesty." Once granted, it is binding and effective. It serves to put an end to this appeal.

It must, nevertheless, be noted that the constitutional provision quoted is that of the 1973 Constitution, as amended, which authorized the exercise of the pardoning power at anytime, either before or after conviction. Also, in *Monsanto vs. Factoran*,[14] this Court stated that the acceptance of a pardon amounts to an abandonment of an appeal, rendering the conviction final; thus:

The 1981 amendments had deleted the earlier rule that clemency could be extended only upon final conviction, implying that clemency could be given even before conviction. Thus, petitioner's unconditional pardon was granted even as her appeal was pending in the High Court. It is worth mentioning that under the 1987 Constitution, the former limitation of final conviction was restored. But be that as it may, it is our view that in the present case, it is not material when the pardon was bestowed, whether before or after conviction, for the result would still be the same. Having accepted the pardon, petitioner is deemed to have abandoned her appeal and her unreversed conviction by the Sandiganbayan assumed the character of finality.

This statement should not be taken as a guiding rule for it is nothing but an obiter dictum. Moreover, the pardon involved therein was extended on 17 December 1984 or under the regime of Section 11, Article VII of the 1973 Constitution, as amended, which allowed the grant of pardon either before or after conviction.

The reason the Constitutional Commission adopted the "conviction by final judgment" requirement, reviving in effect the original provision of the 1973 Constitution on the pardoning power, was, as expounded by Commissioner Napoleon Rama, to prevent the President from exercising executive power in derogation of the judicial power.[15]

Indeed, an appeal brings the entire case within the exclusive jurisdiction of the appellate court. A becoming regard for the doctrine of separation of powers demands that such exclusive authority of the appellate court be fully respected and kept unimpaired. For truly, had not the present Constitution adopted the "conviction by final judgment" limitation, the President could, at any time, and even without the knowledge of the court, extend executive clemency to any one whom he, in good faith or otherwise, believes to merit presidential mercy. It cannot be denied that under the Jones Law and the 1981 amendments to the 1973 Constitution on the pardoning power which did not require conviction, the President had unimpeded power to grant pardon even before the criminal case could be heard. And under the 1935 Constitution which required "conviction" only, the power could be exercised at any time after conviction and regardless of the pendency of the appeal. In either case, there could

be the risk not only of a failure of justice but also of a frustration of the system of administration of justice in view of the derogation of the jurisdiction of the trial or appellate court. Where the President is not so prevented by the Constitution, not even Congress can impose any restriction to prevent a presidential folly.[16] Hence, nothing but a change in the constitutional provision consisting in the imposition of "conviction by final judgment" requirement can change the rule. The new Constitution did it.

Hence, before an appellant may be validly granted pardon, he must first ask for the withdrawal of his appeal, i.e., the appealed conviction must first be brought to finality.

Accordingly, while this Court, in its resolution of 21 March 1991 in *People vs. Pedro Sepada*,^[17] dismissed the appeal for having become moot and academic in view of the parole granted to the appellant, it explicitly declared the necessity of a final judgment before parole or pardon could be extended. Thus:

CONSIDERING THE FOREGOING, the COURT RESOLVED to DISMISS the appeal for having become moot and academic. To avoid any possible conflict with the judicial determination of pending appeals, the Court further DIRECTED the Board of Pardons and Parole to adopt a system which enables it to ascertain whether a sentence has become final and executory and has, in fact, been executed before acting on any application for parole or pardon. The Court Administrator shall coordinate with the Department of Justice on how this may be best achieved. (Emphasis supplied).

Recently, in its resolution of 31 January 1995 in *People vs. Hinlo*,^[18] this Court categorically declared to be "in clear violation of the law" the "practice of processing applications for pardon or parole despite pending appeals." This Court resolved therein as follows:

IN VIEW OF THE FOREGOING, in order to put a stop to the practice of processing applications for pardon and parole despite pending appeals which is in clear violation of the law, the Court Resolved to:

1.

REQUIRE Atty. Conrado H. Edig, counsel de parte of accused Bernardo Hinlo, Catalino Capin, Martin Hinlo and Cecerio Ongco, who were given pardon, to secure and file the withdrawal of the appeals of said accused within ten days from receipt of this Resolution;

2.

CALL the attention of the Presidential Committee to observe the proper procedure as required by law before granting bail, pardon or parole in cases before it; and

3.

REMIND the Board of Pardons and Parole about the Court's directive in the *People v. Sepada* case. (Italics supplied).

The above pronouncements of this Court in *Sepada* and in *Hinlo* may still be unheeded, either through deliberate disregard thereof or by reason of an erroneous application of the obiter dictum in *Monsanto* or of the ruling in *Crisola*. Hence, the need for decisive action on the matter.

We now declare that the "conviction by final judgment" limitation under Section 19, Article VII of the present Constitution prohibits the grant of pardon, whether full or conditional, to an accused during the pendency of his appeal from his conviction by the trial court. Any application therefor, if one is made, should not be acted upon or the process toward its grant should not be begun unless the appeal is withdrawn. Accordingly, the agencies or instrumentalities of the Government concerned must require proof from the accused that he has not appealed from his conviction or that he has withdrawn his appeal. Such proof may be in the form of a certification issued by the

trial court or the appellate court, as the case may be. The acceptance of the pardon shall not operate as an abandonment or waiver of the appeal, and the release of an accused by virtue of a pardon, commutation of sentence, or parole before the withdrawal of an appeal shall render those responsible therefor administratively liable. Accordingly, those in custody of the accused must not solely rely on the pardon as a basis for the release of the accused from confinement.

And now on the instant case. Considering that appellant Ricky Mengote has not filed a motion to withdraw his appeal up to this date the conditional pardon extended to him should not have been enforced. Nonetheless, since he stands on the same footing as the accused-appellants in the Hinlo case, he may be freed from the full force, impact, and effect of the rule herein pronounced subject to the condition set forth below. This rule shall fully bind pardons extended after 31 January 1995 during the pendency of the grantee's appeal.

WHEREFORE, counsel for accused-appellant Ricky Mengote y Cuntado is hereby given thirty (30) days from notice hereof within which to secure from the latter the withdrawal of his appeal and to submit it to this Court. The conditional pardon granted the said appellant shall be deemed to take effect only upon the grant of such withdrawal. In case of non-compliance with this Resolution, the Director of the Bureau of Corrections must exert every possible effort to take back into his custody the said appellant, for which purpose he may seek the assistance of the Philippine National Police or the National Bureau of Investigation.

Let copies of this Resolution be furnished the Office of the President, the Department of Justice, the Board of Pardons and Parole, and the Presidential Committee for the Grant of Bail, Release, or Pardon.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Romero, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., and Panganiban, JJ., concur.
Bellosillo, J., concurring opinion.

[1] Per Judge Tirso D.C. Velasco.

[2] Rollo, 19-31.

[3] Rollo, 75.

[4] Id., 73.

[5] Id., 72, 74.

[6] Id., 79.

[7] Rollo, 84.

[8] 170 SCRA 190 [1989].

[9] Philippine Autonomy Act.

[10] 65 Phil. 56, 97-98 [1937].

[11] Cristobal vs. Labrador, 71 Phil. 34, 38 [1940].

[12] FLORENZ D. REGALADO, Remedial Law Compendium, vol. Two [1989], 370; Section 7, Rule 120, Rules of Court.

[13] 128 SCRA 1, 3 [1984].

[14] Supra, note 8 at 196-197.

[15] Record of the Constitutional Commission, vol. 2, 395.

[16] Cristobal vs. Labrador, supra note 11.

[17] G.R. No. L-47514.

[18] G.R. No. 110035.

CONCURRING OPINION**BELLOSILLO, J.:**

I concur. The grant of reprieves, commutations and pardons, as well as the remission of fines and forfeitures by the President may be done only after the grantee has been convicted by final judgment in the instances enumerated in the majority ponencia. This is crystal clear from the terms of Sec. 19, Art. VII, 1987 Constitution, which states that "[e]xcept in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment x x x" as distinguished from its counterpart provision in the 1973 Constitution, as amended, under which *People v. Crisola*[1] and *Monsanto v. Factoran, Jr.*[2] were decided. Accordingly, any grant of pardon in favor of an appellant whose appeal is still pending resolution violates the Constitution.

Thus where an appeal is taken from a judgment of conviction, the appellant must first withdraw his appeal or await the resolution thereof so that the judgment on appeal may attain finality. If his appeal is not yet resolved with finality, the appellant must first withdraw his appeal before his application for reprieve, commutation, pardon, remission of fines or forfeitures may be acted upon favorably by the Board of Pardons and Parole and, for that matter, by the Presidential Committee for the Grant of Bail, Release or Pardon. Consequently, such application should not be processed until the applicant sufficiently shows that the decision finding him guilty has become final.

To allow the processing of such application in the case before us despite the pendency of an appeal may lead to confusion since the applicant may yet be acquitted by the appellate court although already granted pardon by the President. That would be incongruous and unwarranted. Hence, the present practice of the Board of Pardons and Parole, which may be an unjustified carry-over from the past under the old Constitution, and of the Presidential Committee for the Grant of Bail, Release or Pardon, of processing applications for reprieves, pardons, commutations, etc., despite the pendency of an appeal must immediately be abated.

The persistent recurrence of the grant of such applications despite repeated admonitions from this Court demands a firm and uncompromising stand from us lest we permit continuous and unmitigated diminution if not derogation of judicial prerogative. A mere deferment or suspension of the effectivity of the conditional pardon until the withdrawal of the appeal, to my mind, is a sanction too lenient, or an accommodation too generous, that can hardly be considered a corrective measure. The manifest and repeated violation of the Constitution, wittingly or unwittingly, necessitates a commensurable response from this Court as guardian of the Constitution.

[1] No. L-32422, 2 March 1984, 128 SCRA 1.

[2] G.R. No. 78239, 9 February 1989, 170 SCRA 190.

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