

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE ANTONIO C. EVANGELISTA, AS PRESIDING JUDGE OF BRANCH XXI, 10TH JUDICIAL REGION, RTC OF MISAMIS ORIENTAL, CAGAYAN DE ORO CIT...

G.R. No. 110898. February 20, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

Private respondent Grildo S. Tugonan was charged with frustrated homicide in the Regional Trial Court of Misamis Oriental (Branch 21), the information against him alleging -

That on or about the 26th day of May, 1988, at more or less 9:00 o'clock in the evening at Barangay Poblacion, Municipality of Villanueva, Province of Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused with intent to kill and with the use of a knife, which he was then conveniently provided of, did then and there willfully, unlawfully and feloniously assault, attack and stab Roque T. Bade thereby inflicting upon him the following injuries, to wit:

Stab wound, right iliac area,
0.5 cm. penetrating non
perforating lacerating posterior
peritoneum, 0.5 cm.

thus performing all the acts of execution which would produce the crime of Homicide as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is by timely medical attendance which prevented his death.

CONTRARY TO and in violation of Article 249 in relation to Article 6 of the Revised Penal Code.

After trial he was found guilty and sentenced to one year of prision correccional in its minimum period and ordered to pay to the offended party P5,000.00 for medical expense, without subsidiary imprisonment, and the costs. The RTC appreciated in his favor the privileged mitigating circumstances of incomplete self-defense and the mitigating circumstance of voluntary surrender.

On appeal the Court of Appeals affirmed private respondent's conviction but modified his sentence by imposing on him an indeterminate penalty of 2 months of arresto mayor, as minimum, to 2 years and 4 months of prision correccional, as maximum.[1]

On December 21., 1992, respondent Judge Antonio C. Evangelista of the RTC set the case for repromulgation of January 4, 1993.

On December 28, 1992, private respondent filed a petition for probation,[2] alleging that (1) he possessed all the qualifications and none of the disqualifications for probation under P.D. No. 968, as amended; (2) the Court of Appeals had in fact reduced the penalty imposed on him by the trial court; (3) in its resolution, the Court of

Appeals took no action on a petition for probation which he had earlier filed with it so that the petition could be filed with the trial court; (4) in the trial court's decision, two mitigating circumstances of incomplete self-defense and voluntary surrender were appreciated in his favor; and (5) in *Santos To v. Paño*,^[3] the Supreme Court upheld the right of the accused to probation notwithstanding the fact that he had appealed from his conviction by the trial court.

On February 2, 1993, the RTC ordered private respondent to report for interview to the Provincial Probation Officer. The Provincial Probation Officer on the other hand was required to submit his report with recommendation to the court within 60 days.^[4]

On February 18, 1993, Chief Probation and Parole Officer Isias B. Valdehueza recommended denial of private respondent's application for probation on the ground that by appealing the sentence of the trial court, when he could have then applied for probation, private respondent waived the right to make his application. The Probation Officer thought the present case to be distinguishable from *Santos To v. Paño* in the sense that in this case the original sentence imposed on private respondent by the trial court (1 year of imprisonment) was probationable and there was no reason for private respondent not to have filed his application for probation then, whereas in *Santos To v. Paño* the penalty only became probationable after it had been reduced as a result of the appeal.

On April 16, 1993 Valdehueza reiterated^[5] his "respectful recommendation that private respondent's application for probation be denied and that a warrant of arrest be issued for him to serve his sentence in jail."

The RTC set aside the Probation Officer's recommendation and granted private respondent's application for probation in its order of April 23, 1993.^[6] Hence this petition by the prosecution.

The issue in this case is whether the RTC committed a grave abuse of its discretion by granting private respondent's application for probation despite the fact that he had appealed from the judgment of his conviction of the trial court.

The Court holds that it did.

Until its amendment by P.D. No. 1990 in 1986, it was possible under P.D. No. 986, otherwise known as the Probation Law, for the accused to take his chances on appeal by allowing probation to be granted even after an accused had appealed his sentence and failed to obtain an acquittal, just so long as he had not yet started to serve the sentence.^[7] Accordingly, in *Santos To v. Paño*, it was held that the fact that the accused had appealed did not bar him from applying for probation especially because it was as a result of the appeal that his sentence was reduced and made the probationable limit.

The law was, however, amended by P.D. No. 1990 which took effect on January 15, 1986^[8] precisely put a stop to the practice of appealing from judgments of conviction even if the sentence is probationable for the purpose of securing an acquittal and applying for probation only if the accused fails in his bid. Thus, as amended by P.D. No. 1990, §4 of the Probation Law now reads:

§4. Grant of Probation. Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; Provided, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable. (*Italics added*)

Since private respondent filed his application for probation on December 28, 1992, after P.D. No. 1990 had taken effect,[9] it is covered by the prohibition that "no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction" and that "the filing of the application shall be deemed a waiver of the right to appeal." Having appealed from the judgment of the trial court and having applied for probation only after the Court of Appeals had affirmed his conviction, private respondent was clearly precluded from the benefits of probation.

Private respondent argues, however, that a distinction should be drawn between meritorious appeals (like his appeal notwithstanding the appellate court's affirmance of his conviction) and unmeritorious appeals. But the law does not make any distinction and so neither should the Court. In fact if an appeal is truly meritorious the accused would be set free and not only given probation. Private respondent's original sentence (1 year of prision correccional in its minimum period) and the modified sentence imposed by the Court of Appeals (2 months of arresto mayor, as minimum, to 2 years and 4 months of prision correccional, as maximum) are probationable. Thus the fact that he appealed meant that private respondent was taking his chances which the law precisely frowns upon. This is precisely the evil that the amendment in P.D. No. 1990 sought to correct, since in the words of the preamble to the amendatory law, "probation was not intended as an escape hatch and should not be used to obstruct and delay the administration of justice, but should be availed of at the first opportunity by offenders who are willing to be reformed and rehabilitated."

The ruling of the RTC that "[h]aving not perfected an appeal against the Court of Appeals decision, [private respondent] is, therefore, not covered by [the amendment in] P.D. 1990" is an obvious misreading of the law. The perfection of the appeal referred in the law refers to the appeal taken from a judgment of conviction by the trial court and not that of the appellate court, since under the law an application for probation is filed with the trial court which can only grant the same "after it shall have convicted and sentenced [the] defendant, and upon application by said defendant within the period for perfecting an appeal." Accordingly, in *Llamado v. Court of Appeals*,^[10] it was held that the petitioner who had appealed his sentence could not subsequently apply for probation.

WHEREFORE, the petition is GRANTED and the order of April 23, 1993 of the Regional Trial Court of Misamis Oriental (Branch 21) granting probation to private respondent Grildo S. Tugonon is SET ASIDE.

SO ORDERED.

Regalado (Chairman), Romero, and Puno, JJ., concur.

[1] Decision dated January 23, 1992, per Associate Justice Loma S. Lombos-dela Fuente and concurred in by Associate Justices Alfredo M. Marigomen and Jainal D. Rasul, Petition, Annex D, Rollo, pp. 44-49.

[2] Petition, Annex F, Rollo, pp. 51-53.

[3] 120 SCRA 8(1983).

[4] Petition, Annex I, Rollo, p. 56.

[5] Petition, Annex N, Rollo, pp. 66-67.

[6] Petition, Annex A, Rollo, pp. 28-33.

[7] P.D. No. 968, § 4, as amended by P.D. No. 1287 provided:

Sec. 4. Grant of Probation. Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant but before he begins to serve his sentence and upon his application, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

The prosecuting officer concerned shall be notified by the court of the filing of the application for probation and he may submit his comment on such application within ten days from receipt of the notification.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine with subsidiary imprisonment in case of insolvency. An application for probation shall be filed with the trial court, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal. In the latter case, however, if the application is filed on or after the date of the judgment of the appellate court, said application shall be acted upon by the trial court on the basis of the judgment of the appellate court.

An order granting or denying probation shall not be appealable. (*Italics added*)

[8] P.D. No. 1990 was promulgated on October 5, 1985 and was published in the Official Gazette on December 30, 1985. Under its effectivity clause it shall take effect "after 15 days following its publication in the Official Gazette."

[9] P.D. No. 1990, §3 provides that the "provisions of Section 4 of PD. No. 968, as above amended, shall not apply to those who have already filed their respective applications for probation at the time of the effectivity of this Decree."

[10] 174 SCRA 566 (1989)

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