

NORBERTO FERIA Y PACQUING, PETITIONER, VS. THE COURT OF APPEALS, THE DIRECTOR OF THE BUREAU OF CORRECTIONS, MUNTINLUPA, METRO MANILA (IN PLACE OF THE JAIL WARDEN OF THE MANILA C...

G.R. No. 122954. February 15, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

The mere loss or destruction of the records of a criminal case subsequent to conviction of the accused will not render the judgment of conviction void, nor will it warrant the release of the convict by virtue of a writ of habeas corpus. The proper remedy is the reconstitution of judicial records which is as much a duty of the prosecution as of the defense.

Subject of this petition for review on certiorari are (1) the Decision dated April 28, 1995, of the Eighth Division of the Court of Appeals, which affirmed the dismissal of the petition for habeas corpus filed by petitioner, and (2) the Resolution of the Court of Appeals dated December 1, 1995, which denied the Motion for Reconsideration. As hereafter elucidated, we sustain the judgment of respondent appellate court.

Based on the available records and the admissions of the parties, the antecedents of the present petition are as follows:

Petitioner Norberto Feria y Pacquing has been under detention since May 21, 1981, up to present[1] by reason of his conviction of the crime of Robbery with Homicide, in Criminal Case No. 60677, by the Regional Trial Court of Manila, Branch 2, for the jeepney hold-up and killing of United States Peace Corps Volunteer Margaret Vivienne Carmona.

Some twelve (12) years later, or on June 9, 1993, petitioner sought to be transferred from the Manila City Jail to the Bureau of Corrections in Muntinlupa City,[2] but the Jail Warden of the Manila City Jail informed the Presiding Judge of the RTC-Manila, Branch 2, that the transfer cannot be effected without the submission of the requirements, namely, the Commitment Order or Mittimus, Decision, and Information.[3] It was then discovered that the entire records of the case, including the copy of the judgment, were missing. In response to the inquiries made by counsel of petitioner, both the Office of the City Prosecutor of Manila and the Clerk of Court of Regional Trial Court of Manila, Branch 2 attested to the fact that the records of Criminal Case No. 60677 could not be found in their respective offices. Upon further inquiries, the entire records appear to have been lost or destroyed in the fire which occurred at the second and third floor of the Manila City Hall on November 3, 1986.[4]

On October 3, 1994, petitioner filed a Petition for the Issuance of a Writ of Habeas Corpus[5] with the Supreme Court against the Jail Warden of the Manila City Jail, the Presiding Judge of Branch 2, Regional Trial Court of Manila, and the City Prosecutor of Manila, praying for his discharge from confinement on the ground that his

continued detention without any valid judgment is illegal and violative of his constitutional right to due process.

In its Resolution dated October 10, 1994,[6] the Second Division of this Court resolved -

" x x x (a) to ISSUE the Writ of Habeas Corpus; (b) to ORDER the Executive Judge of the Regional Trial Court of Manila to conduct an immediate RAFFLE of this case among the incumbent judges thereof; and (c) to REQUIRE [1] the Judge to whom this case is raffled to SET the case for HEARING on Thursday, October 13, 1994 at 8:30 A.M., try and decide the same on the merits and thereafter FURNISH this Court with a copy of his decision thereon; [2] the respondents to make a RETURN of the Writ on or before the close of office hours on Wednesday, October 12, 1994 and APPEAR PERSONALLY and PRODUCE the person of Norberto Feria y Pa[c]quing on the aforesaid date and time of hearing to the Judge to whom this case is raffled, and [3] the Director General, Philippine National Police, through his duly authorized representative(s) to SERVE the Writ and Petition, and make a RETURN thereof as provided by law and, specifically, his duly authorized representative(s) to APPEAR PERSONALLY and ESCORT the person of Norberto Feria y Pa[c]quing at the aforesaid date and time of hearing."

The case was then raffled to Branch 9 of the Regional Trial Court of Manila, which on November 15, 1994, after hearing, issued an Order[7] dismissing the case on the ground that the mere loss of the records of the case does not invalidate the judgment or commitment nor authorize the release of the petitioner, and that the proper remedy would be reconstitution of the records of the case which should be filed with the court which rendered the decision.

Petitioner duly appealed said Order to the Court of Appeals, which on April 28, 1995, rendered the assailed Decision[8] affirming the decision of the trial court with the modification that "in the interest of orderly administration of justice" and "under the peculiar facts of the case" petitioner may be transferred to the Bureau of Corrections in Muntinlupa City without submission of the requirements (Mittimus, Decision and Information) but without prejudice to the reconstitution of the original records.

The Motion for Reconsideration of the aforesaid Order having been denied for lack of merit,[9] petitioner is now before us on certiorari, assigning the following errors of law:[10]

I. WHETHER OR NOT, UNDER THE PECULIAR CIRCUMSTANCES OF THIS CASE, WHERE THE RECORDS OF CONVICTION WERE LOST, THE PETITIONER'S CONTINUED INCARCERATION IS JUSTIFIED UNDER THE LAW.

COROLLARY TO THIS, WHETHER OR NOT THE COURT OF APPEALS' RESOLUTION, AFFIRMING THE DENIAL OF HEREIN APPELLANT'S PETITION FOR HABEAS CORPUS IS, IN CONTEMPLATION OF LAW, A JUDGMENT OR A SUBSTITUTE JUDGMENT, WHICH CAN BE UTILIZED AS A SUFFICIENT BASIS FOR HIS INCARCERATION.

II. WHETHER OR NOT THE RECONSTITUTION OF OFFICIAL RECORDS LOST/DESTROYED SHOULD BE INITIATED BY THE GOVERNMENT AND ITS ORGANS, WHO ARE IN CUSTODY OF SUCH, OR BY THE PRISONER, WHOSE LIBERTY IS RESTRAINED.

Petitioner argues that his detention is illegal because there exists no copy of a valid judgment as required by Sections 1 and 2 of Rule 120 of the Rules of Court,[11] and that the evidence considered by the trial court and Court of Appeals in the habeas corpus proceedings did not establish the contents of such judgment. Petitioner further contends that our ruling in *Gunabe v. Director of Prisons*, 77 Phil. 993, 995 (1947), that "reconstitution is as much the duty of the prosecution as of the defense" has been modified or abandoned in the subsequent case of *Ordonez v. Director of Prisons*, 235 SCRA 152, 155 (1994), wherein we held that "[i]t is not the fault of the prisoners that the records cannot now be found. If anyone is to be blamed, it surely cannot be the prisoners, who were not the custodians of those records."

In its Comment,[12] the Office of the Solicitor General contends that the sole inquiry in this habeas corpus proceeding is whether or not there is legal basis to detain petitioner. The OSG maintains that public respondents have more than sufficiently shown the existence of a legal ground for petitioner's continued incarceration, viz., his conviction by final judgment, and under Section 4 of Rule 102 of the Rules of Court, the discharge of a person suffering imprisonment under lawful judgment is not authorized. Petitioner's remedy, therefore, is not a petition for habeas corpus but a proceeding for the reconstitution of judicial records.

The high prerogative writ of habeas corpus, whose origin is traced to antiquity, was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom.[13] It secures to a prisoner the right to have the cause of his detention examined and determined by a court of justice, and to have the issue ascertained as to whether he is held under lawful authority.[14] Consequently, the writ may also be availed of where, as a consequence of a judicial proceeding, (a) there has been a deprivation of a constitutional right resulting in the restraint of a person, (b) the court had no jurisdiction to impose the sentence, or (c) an excessive penalty has been imposed, as such sentence is void as to such excess.[15] Petitioner's claim is anchored on the first ground considering, as he claims, that his continued detention, notwithstanding the lack of a copy of a valid judgment of conviction, is violative of his constitutional right to due process.

Based on the records and the hearing conducted by the trial court, there is sufficient evidence on record to establish the fact of conviction of petitioner which serves as the legal basis for his detention. Petitioner made judicial admissions, both verbal and written, that he was charged with and convicted of the crime of Robbery with Homicide, and sentenced to suffer imprisonment "habang buhay".

In its Order dated October 17, 1994, the RTC-Manila, Branch 9, made the finding that -[16]

"During the trial and on manifestation and arguments made by the accused, his learned counsel and Solicitor Alexander G. Gesmundo who appeared for the respondents, it appears clear and indubitable that:

(A) Petitioner had been charged with Robbery with Homicide in Criminal Case No. 60677, Illegal Possession of Firearm in Criminal Case No. 60678 and Robbery in Band in Criminal Case No. 60867 x x x In Criminal Case No. 60677 (Robbery with Homicide) the accused admitted in open Court that a decision was read to him in open Court by a personnel of the respondent Court (RTC Branch II) sentencing him to Life Imprisonment (Habang buhay)..." (italics supplied)

Further, in the Urgent Motion for the Issuance of Commitment Order of the Above Entitled Criminal Case dated June 8, 1993,[17] petitioner himself stated that -

"COMES NOW, the undersigned accused in the above entitled criminal case and unto this Honorable Court most respectfully move:

1. That in 1981 the accused was charge of (sic) Robbery with Homicide;
2. That after four years of trial, the court found the accused guilty and given a Life Sentence in a promulgation handed down in 1985; (emphasis supplied)
3. That after the sentence was promulgated, the Presiding Judge told the council (sic) that accused has the right to appeal the decision;
4. That whether the de officio counsel appealed the decision is beyond the accused comprehension (sic) because the last time he saw the counsel was when the decision was promulgated.
5. That everytime there is change of Warden at the Manila City Jail attempts were made to get the Commitment Order so that transfer of the accused to the Bureau of Corrections can be affected, but all in

vain;"

Petitioner's declarations as to a relevant fact may be given in evidence against him under Section 23 of Rule 130 of the Rules of Court. This rule is based upon the presumption that no man would declare anything against himself, unless such declaration were true,[18] particularly with respect to such grave matter as his conviction for the crime of Robbery with Homicide. Further, under Section 4 of Rule 129, "[a]n admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made." Petitioner does not claim any mistake nor does he deny making such admissions.

The records also contain a certified true copy of the Monthly Report dated January 1985[19] of then Judge Rosalio A. De Leon, attesting to the fact that petitioner was convicted of the crime of Robbery with Homicide on January 11, 1985. Such Monthly Report constitutes an entry in official records under Section 44 of Rule 130 of the Revised Rules on Evidence, which is prima facie evidence of facts therein stated.

Public respondents likewise presented a certified true copy of People's Journal dated January 18, 1985, page 2,[20] issued by the National Library, containing a short news article that petitioner was convicted of the crime of Robbery with Homicide and was sentenced to "life imprisonment." However, newspaper articles amount to "hearsay evidence, twice removed"[21] and are therefore not only inadmissible but without any probative value at all whether objected to or not,[22] unless offered for a purpose other than proving the truth of the matter asserted. In this case, the news article is admissible only as evidence that such publication does exist with the tenor of the news therein stated.

As a general rule, the burden of proving illegal restraint by the respondent rests on the petitioner who attacks such restraint. In other words, where the return is not subject to exception, that is, where it sets forth process which on its face shows good ground for the detention of the prisoner, it is incumbent on petitioner to allege and prove new matter that tends to invalidate the apparent effect of such process.[23] If the detention of the prisoner is by reason of lawful public authority, the return is considered prima facie evidence of the validity of the restraint and the petitioner has the burden of proof to show that the restraint is illegal. Thus, Section 13 of Rule 102 of the Rules of Court provides:

"SEC. 13. When the return evidence, and when only a plea.—If it appears that the prisoner is in custody under a warrant of commitment in pursuance of law, the return shall be considered prima facie evidence of the cause of restraint, but if he is restrained of his liberty by any alleged private authority, the return shall be considered only as a plea of the facts therein set forth, and the party claiming the custody must prove such facts."

Public respondents having sufficiently shown good ground for the detention, petitioner's release from confinement is not warranted under Section 4 of Rule 102 of the Rules of Court which provides that -

"Sec. 4. When writ not allowed or discharge authorized. - If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment."

In the case of *Gomez v. Director of Prisons*, 77 Phil. 458 (1946), accused was convicted by the trial court of the crime of rape, and was committed to the New Bilibid Prison. Pending appeal with the Court of Appeals, the records of the case were, for reasons undisclosed, completely destroyed or lost. Accused then filed a petition for

the issuance of the writ of habeas corpus with the Supreme Court. The Court denied the petition, ruling thus:

"The petition does not make out a case. The Director of Prisons is holding the prisoner under process issued by a competent court in pursuance of a lawful, subsisting judgment. The prisoner himself admits the legality of his detention. The mere loss or destruction of the record of the case does not invalidate the judgment or the commitment, or authorize the prisoner's release."

Note further that, in the present case, there is also no showing that petitioner duly appealed his conviction of the crime of Robbery with Homicide, hence for all intents and purposes, such judgment has already become final and executory. When a court has jurisdiction of the offense charged and of the party who is so charged, its judgment, order, or decree is not subject to collateral attack by habeas corpus.[24] Put another way, in order that a judgment may be subject to collateral attack by habeas corpus, it must be void for lack of jurisdiction.[25] Thus, petitioner's invocation of our ruling in *Reyes v. Director of Prisons*, supra, is misplaced. In the *Reyes* case, we granted the writ and ordered the release of the prisoner on the ground that "[i]t does not appear that the prisoner has been sentenced by any tribunal duly established by a competent authority during the enemy occupation" and not because there were no copies of the decision and information. Here, a copy of the mittimus is available. And, indeed, petitioner does not raise any jurisdictional issue.

The proper remedy in this case is for either petitioner or public respondents to initiate the reconstitution of the judgment of the case under either Act No. 3110,[26] the general law governing reconstitution of judicial records, or under the inherent power of courts to reconstitute at any time the records of their finished cases in accordance with Section 5 (h) of Rule 135 of the Rules of Court.[27] Judicial records are subject to reconstitution without exception, whether they refer to pending cases or finished cases.[28] There is no sense in limiting reconstitution to pending cases; finished cases are just as important as pending ones, as evidence of rights and obligations finally adjudicated.[29]

Petitioner belabors the fact that no initiative was taken by the Government to reconstitute the missing records of the trial court. We reiterate, however, that "reconstitution is as much the duty of the prosecution as of the defense." [30] Petitioner's invocation of *Ordoñez v. Director of Prisons*, 235 SCRA 152 (1994), is misplaced since the grant of the petition for habeas corpus therein was premised on the loss of records prior to the filing of Informations against the prisoners, and therefore "[t]he government has failed to show that their continued detention is supported by a valid conviction or by the pendency of charges against them or by any legitimate cause whatsoever." In this case, the records were lost after petitioner, by his own admission, was already convicted by the trial court of the offense charged. Further, the same incident which gave rise to the filing of the Information for Robbery with Homicide also gave rise to another case for Illegal Possession of Firearm,[31] the records of which could be of assistance in the reconstitution of the present case.

WHEREFORE, the petition is DENIED for lack of merit, and the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] He was initially detained at the Manila City Jail, then transferred to the Youth Rehabilitation Center, Camp Sampaguita, Muntinlupa, and later, pursuant to the assailed Decision of the Court of Appeals dated April 28, 1995, transferred to the Bureau of Corrections in Muntinlupa City; *Petition for Habeas Corpus*, Records, p. 5.

[2] Urgent Motion for the Issuance of Commitment Order of the Above Entitled Criminal Case, Annex "F",

Records, p. 31-32.

[3] Letter dated November 26, 1993 to Hon. Napoleon Flojo, Presiding Judge, RTC-Manila, Branch 2, from C/Insp. JMP Warden Reynaldo E. Erlano, Annex "L" to the Petition for Habeas Corpus, Records, p. 42.

[4] Petition, Records, p. 9; Certification dated November 17, 1993, by Emilia V. Queri, Chief, Records Division, City Prosecutor's Office, Records, p. 38; Certification dated April 8, 1987 by Zenaida A. Arabiran, OIC, Administrative Division, City Fiscal's Office, Manila, Records, p. 39.

[5] Records, pp. 1-14.

[6] Id. at 61.

[7] Id. at 121-122.

[8] Rollo, pp. 43-46.

[9] Rollo, p. 50.

[10] Memorandum, Rollo, p. 156; Petition for Review, Rollo, pp. 14-15.

[11] Section 1 of Rule 120 provides:

"Section 1. Judgment defined. - The term judgment as used in this Rule means the adjudication by the court that the accused is guilty or is not guilty of the offense charged, and the imposition of the proper penalty and civil liability provided for by law on the accused."

Section 2 provides:

"Section 2. Form and contents of judgment. - The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts proved or admitted by the accused and the law upon which the judgment is based.

If it is of conviction, the judgment shall state (a) the legal qualification of the offense constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending the commission thereof, if there are any; (b) the participation of the accused in the commission of the offense, whether as principal, accomplice or accessory after the fact; (c) the penalty imposed upon the accused; and (d) the civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived.

In case of acquittal, unless there is a clear showing that the act from which the civil liability might arise did not exist, the judgment shall make a finding on the civil liability of the accused in favor of the offended party."

[12] Rollo, pp. 66-102; Public Respondents filed a Manifestation and Motion in lieu of Memorandum; Rollo, pp. 134-135.

[13] Velasco v. Court of Appeals, 245 SCRA 677, 679 (1995); Nava v. Gatmaitan, 90 Phil. 172, 176 (1951); Villavicencio v. Lukban, 39 Phil. 778, 788 (1919).

[14] Nava v. Gatmaitan, 90 Phil. 172, 176 (1951); Quintos v. Director of Prisons, 55 Phil. 304, 306 (1930).

[15] Andal v. People of the Philippines. et. al., G.R. Nos. 138268-69, May 26, 1999, p. 3; Harden v. Director of Prisons, 81 Phil. 741, 746 (1948); Cruz v. Director of Prisons, 17 Phil. 269, 272 (1910).

[16] Records, pp. 69-70.

[17] Annex "F" of the Petition for Habeas Corpus, Records, pp. 31-32.

[18] Francisco, R., Basic Evidence, 1991 ed., p. 116.

[19] Records, p. 52.

[20] Id. at 90.

[21] State Prosecutors v. Muro, 251 SCRA 111, 113 (1995), citing 3 Jones, Commentaries on Evidence, 2d. ed., Sec. 1084.

[22] State Prosecutors v. Muro, 251 SCRA 111, 113 (1995); Salonga v. Cruz Paño, 134 SCRA 438, 451 (1985).

[23] 39 Am Jur 2d § 152.

[24] Harden v. Director of Prisons, 81 Phil. 741, 749-750 (1948).

[25] 39 C.J.S. § 35; 39 Am Jur 2d § 11, 28, 30, 64.

[26] AN ACT TO PROVIDE AN ADEQUATE PROCEDURE FOR THE RECONSTITUTION OF THE RECORDS OF PENDING JUDICIAL PROCEEDINGS AND BOOKS, DOCUMENTS, AND FILES OF THE OFFICE OF THE REGISTER OF DEEDS, DESTROYED BY FIRE OR OTHER PUBLIC CALAMITIES, AND FOR OTHER PURPOSES; See also Almario v. Ibañez, 81 Phil. 592 (1948); Zafra v. De Aquino, 84 Phil. 507 (1949).

[27] Yatco v. Cruz, 6 SCRA 1078, 1081 (1962); Wee Bin v. Republic, 100 SCRA 139, 149 (1980).

[28] Erlanger & Galinger v. Exconde, 93 Phil. 894, 900 (1953).

[29] Ibid.

[30] Gunabe v. Director of Prisons, 77 Phil. 993, 995 (1947); See also People v. Catoltol, Sr., 265 SCRA 109, 112 (1996), where it was the Public Attorney's Office which initiated the request for the reconstitution of the burned records of a decided case for rape; Asiavest Limited v. Court of Appeals, G.R. No. 128803, September 25, 1998, p. 541, where it was plaintiff, through counsel, which moved for the reconstitution of a pending civil case.

[31] People of the Philippines v. Norberto Feria y Pacquing, Criminal Case No. 60678, decided by the RTC-Manila, Branch 4 on January 24, 1983, convicting accused (petitioner herein); Records, Annex "C" to the Petition, p. 23-25.

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