

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMMA MAQUILAN, ACCUSED-APPELLANT.*G.R. No. 126170. August 27, 1998*

Ponente: MENDOZA, J.

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Accused-appellant Emma Maquilan was found guilty of drug-pushing in violation of R.A. No. 6425, as amended, and sentenced to suffer the penalty of reclusion perpetua in a decision rendered by the Regional Trial Court of Sindangan, Zamboanga del Norte (Branch 11) on October 14, 1994. The 59 sticks of handrolled marijuana cigarettes and the matchbox of marijuana seeds seized from her were ordered destroyed.

Accused-appellant filed a notice of appeal as a result of which the records of the case (Criminal Case No. S-2191) were forwarded to this Court. However, before the Court could act on the appeal and require her to file an appellant's brief, accused-appellant moved to withdraw her appeal. In a handwritten letter, dated March 14, 1997, prepared for her by another person, accused-appellant stated that she was going to file a petition for the issuance of a writ of habeas corpus to seek her release from confinement for the sake of her children who needed a mother's support and guidance. ("Sumulat po ako para po ipaalam na nais ko nang iurong ang aking apila dahilan po sa nais kong mag-file ng Habeas Corpus. May mga anak po akong lumalaki at kailangan ang pagsubaybay ng isang ina.")^[1]

In its resolution, dated July 9, 1997, the Court required the Solicitor General to comment, even as it required accused-appellant's counsel, Atty. Teresita S. de Guzman, of the Public Attorney's Office (PAO), to confer with her and to determine whether in filing the motion accused-appellant acted of her own free will.

In his comment, dated September 22, 1997, the Solicitor General stated he had no objection to the motion. Per certification of Cecilia B. Veneracion, Clerk I and Documents Incharge of the Bureau of Corrections, the Solicitor General believed that accused-appellant fully understood the nature and purpose of her motion. He cited the statement in *People v. Mendoza*,^[2] that "withdrawal of an appeal before the filing of the appellee's brief is allowed and granted."

On the other hand, in a manifestation, dated September 3, 1997, Atty. de Guzman informed the Court that accused-appellant had been released from prison on July 25, 1997 by virtue of an order of the Regional Trial Court of Pasig City (Branch 71) issued in a habeas corpus case. Counsel therefore asked to be excused from making a report on the voluntariness of the motion to withdraw appeal. In another manifestation, dated November 10, 1997, Atty. de Guzman stated that she had no participation in the filing of the habeas corpus case.

In view of this information, the Court required the Solicitor General to comment, but the latter reiterated his position that he had no objection to the withdrawal of the appeal and expressed the view that "appellant filed the proper remedy of a petition for the issuance of the writ of habeas corpus. Said remedy appears to be duly supported by evidence presented in the hearing of said petition and by jurisprudence."

In its resolution of June 15, 1998, the Court required Judge Celso D. Laviña of the Regional Trial Court of Pasig City, Branch 71, to show cause why he should not be held in contempt of court for granting the petition for the issuance of a writ of habeas corpus and for ordering the release of accused-appellant from confinement, considering that the appeal in this case was still pending. In compliance, Judge Laviña submitted the following explanation, dated July 22, 1998:

- On February 26, 1997, a verified and certified Petition for Issuance of a Writ of Habeas Corpus was filed by Atty. Editha C. Pio, PA III, Public Attorney's Office, Department of Justice, as counsel for petitioner Emma Maquilan versus Rachel D. Ruelo, respondent, in Sp. Proc. No. 10725, which was raffled to Branch 71, on February 27, 1997, a copy of which is hereto attached as Annex A.
- On March 10, 1997, an Order was issued setting the case for hearing on March 18, 1997 and the Writ directing respondent Ruelo, as Superintendent IV of the Correctional Institution for Women, Mandaluyong City, to produce the petitioner-inmate Maquilan and to make a return of the writ, copies of which are hereto attached as Annexes B and C.
- On March 18, 1997, respondent Ruelo through Concesa V. Mendoza, Superintendent I, filed a Comments, Exhibit C, stating "(T)hat she interposes no objection to the Petition and reliefs prayed for as she is entitled to the same pursuant to the rulings in the cases or jurisprudence mentioned in the Petition", a copy of which is hereto attached as Annex D.
- Per Orders of April 8, 1997, April 21, 1997, May 26, 1997, June 9, 1997 and June 30, 1997, as Annexes "E" to "E-4", respectively, the case was reset for hearing and heard with Minutes of sessions held on April 8, 1997, April 21, 1997, May 26, 1997, Notice dated May 27, 1997, Minutes on June 9, 1997, Subpoena dated June 10, 1997, Minutes on June 30, 1997, Subpoena dated June 30, 1997, Minutes on July 7, 1997 and Certification dated December 15, 1995 as Annexes "F" to "F-8", respectively.
- On July 7, 1997, an Order was issued granting the petition for habeas corpus and ordering the immediate release of petitioner unless "there is other lawful cause for her further detention", as Annex "G".

In *People v. De Lara* (236 SCRA 291, 299), it was held that "(I)f the marijuana involved is from 500 to 749 grams, the penalty to be imposed is reclusion temporal. If the marijuana involved is from 250 to 499 grams, the penalty to be imposed is prision mayor and if the weight of the marijuana involved is below 250 grams, the penalty to be imposed is prision correccional." In *People v. Simon* (234 SCRA 555), R.A. No. 6425, as amended, was further amended by R.A. No. 7659 which took effect on December 31, 1993 (On page 569). And, "it has long been settled that by force of Article 10 of said Code the beneficent provisions of Article 22 thereof applies to and shall be given retrospective effect to crimes punished by special laws" like R.A. No. 6425, as amended by R.A. No. 7659 (On page 570).

Petitioner Maquilan in Sp. Proc. No. 10725 and accused-appellant herein, stated that she was convicted in Crim. Case No. S-2191 for selling "fifty five (55) sticks of marijuana cigarettes rolled in RP paper and one (1) match box of marijuana seeds" in violation of Republic Act No. 6425 (Sec. 4)" (pp. 1-2, Petition as Annex "A").

Prosecution's witness, in Crim. Case No. S-2191, RTC Sindangan, Zamboanga del Norte, Branch 11, Chief Inspector Godofredo Dalida testified that his group took "from inside the cabinet" of Maquilan 50 or 51 sticks of marijuana cigarettes rolled in RP paper plus the 4 sticks of handrolled marijuana cigarettes handed by Maquilan to asset/poseur-buyer Diogracias Ramirez. In his Decision dated October 17, 1994, the Honorable Presiding Judge ordered 59 sticks of handrolled marijuana cigarettes and one (1) matchbox of marijuana seeds destroyed. He sentenced Maquilan "to suffer the penalty of Reclusion Perpetua" (Decision as Annex A of Petition).

Petitioner Maquilan states that “she has actually served 4 years, 10 months and 13 days of good conduct time allowance as of 06 January 1997” (Par. 7, Petition as Annex “A”). In a Certification dated January 6, 1997 (Exhibits B and Annex C of Petition) signed by Asst. Documents Incharge Edna T. Miranda and Superintendent IV Rachel D. Ruelo, Correctional Institution for Women, it stated that Maquilan “was credited in the service of her sentence with 1 year, 6 months and 15 days xxx and has actually served 4 years, 10 months and 13 days.”

Acting Chief Idabel Bernabe-Pagulayan of Forensic Chemistry Division, NBI, Manila, testified on Exhibit “D”, as Annex “G” which was the Certification dated December 15, 1995 to the effect that the average weight of one stick of marijuana cigarette was 0.3300 to 0.5000 gram in Metro Manila and nearby provinces.

Since there were 59 sticks of handrolled marijuana cigarettes ordered destroyed at 0.5000 gram per stick, the result would be 29.5 grams plus one (1) match box of marijuana seeds which would total to not more than but less than 250 grams or for 55 sticks of handrolled marijuana cigarettes at 0.5000 gram per stick would be 27.5 grams plus one (1) match box of marijuana seeds. The total would be not more than 250 grams.

Under SIMON, the penalty to be imposed should be prision correccional or 6 months and 1 day to 6 years to be taken from the medium period (On page 573, 574, thereof) or two (2) years, four (4) months and one (1) day to four (4) years and two (2) months.

Based upon the evidence on hand and solely guided by the averments in the verified Petition as Annex “A” hereof, the Certification, Exhibit “D” as Annex “G” by respondent Ruelo, Exhibit “B” as Annex “C” of Petition, the Comment by respondent Ruelo, Exhibit “C” as Annex “D” hereof, interposing no objection to the petition, the testimony of Acting Chief Forensic Chemist Pagulayan on the quantity or weight of the marijuana and the existing jurisprudence on the matter, an Order dated July 7, 1997, as Annex “H” was issued granting the petition for habeas corpus and ordering the immediate release of petitioner from detention as petitioner Maquilan had already served 4 years, 10 months and 13 days as of January 6, 1997 “unless there is other lawful cause for further detention.”

Petitioner Maquilan therefore “is entitled to benefit from the reduction of penalty introduced by the new law” and her “continued detention in the (Correctional Institution for Women) is a violation of (her) basic human rights and that, therefore, (she) should be released from prison without further delay” (*Ordoñez v. Vinarao*, 239 SCRA 114, 115).

It appears that in her petition for the issuance of a writ of habeas corpus, accused-appellant falsely stated that she was in custody “by reason of a final decision issued by the Regional Trial Court of Sindangan, Zamboanga del Norte (Branch 11).”[3] No mention was made by her of her appeal pending in this Court. On the other hand, the respondent in the habeas corpus case, Rachel D. Ruelo, Superintendent IV of the Correctional Institute for Women, filed a comment interposing no objection to the petition.[4]

The release of accused-appellant constitutes unlawful interference with the proceedings of this Court and is only somewhat mitigated by the fact that the Regional Trial Court of Pasig City appears to have been misled by accused-appellant as to the status of the decision in Criminal Case No. S-2191. The trial court’s order granting release on habeas corpus, based as it is on the erroneous assumption that the decision in the criminal case had become final, is void. The trial court had no jurisdiction to issue the order in question.

This case is analogous to *People v. Bacang*. [5] There accused-appellants moved for the withdrawal of their appeal but, without waiting for the resolution of their motion, they applied for and were granted pardon by the President and released from confinement. Quoting *People v. Salle, Jr.*, [6] this Court ruled:

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.[7]

Accordingly, the Court in that case denied the accused-appellants' motion to withdraw their appeal and ordered their rearrest. Those responsible for their release were cited for contempt.

What was said in *Bacang* applies *mutatis mutandis* to this case. The use of the high prerogative writ as a post-conviction remedy presupposes a final judgment by virtue of which accused is detained for the service of his sentence. As a matter of fact, however, that is not the case here as accused-appellant's appeal is still pending.

WHEREFORE, the motion to withdraw appeal is DENIED and the Bureau of Corrections is DIRECTED to effect the rearrest within sixty (60) days from notice of accused-appellant Emma Maquilan, utilizing for this purpose the assistance of the Philippine National Police and the National Bureau of Investigation, and her reconfinement thereafter at the Correctional Institute for Women in Mandaluyong, Metro Manila and forthwith to submit a report to the Court. Further action on the appeal is held in abeyance pending the rearrest of accused-appellant Emma Maquilan.

Accused-appellant Emma Maquilan, Atty. Editha C. Pio of the Public Attorney's Office, and Rachel D. Ruelo, Superintendent IV of the Correctional Institute for Women are hereby REQUIRED to SHOW CAUSE within ten (10) days from notice why they should not be held in contempt for misrepresenting to the Regional Trial Court of Pasig City (Branch 71) the status of Criminal Case No. S-2191.

SO ORDERED.

Melo (Acting Chairman), Puno and Martinez, JJ., concur.
Regalado (Chairman), J., on official leave.

[1] Rollo, p. 27.

[2] 93 Phil. 581 (1953).

[3] *Id.*, p. 84. (Emphasis added).

[4] *Id.*, pp. 104-105.

[5] 260 SCRA 44 (1996).

[6] 250 SCRA 581, 592 (1996).

[7] *Supra* note 5, pp. 47-48.

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