IN RE: PETITION FOR HABEAS CORPUS OF DAVID CRUZ y GONZAGA

G.R. No. 137560. January 19, 2000

Ponente: PUNO, J.

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PUNO, J.:

This is a consolidated petition for certiorari and habeas corpus. The petition for certiorari was filed by David Cruz y Gonzaga questioning the Resolution of the Court of Appeals in CA-G.R. CR No. 16944 which dismissed his appeal from the judgment of conviction of the Regional Trial Court, Branch 167, Pasig, Metro Manila for failure to file appellant's brief. The petition for habeas corpus was filed by David Cruz's mother, Maria Cruz y Gonzaga, against respondents Superintendent of the National Penitentiary and the Director of the Bureau of Corrections.[1]

Petitioner David Cruz y Gonzaga was charged before the Regional Trial Court, Branch 167, Pasig, Metro Manila with a violation of Republic Act (R.A.) No. 6425, the Dangerous Drugs Act of 1972. He allegedly sold to another person on April 11, 1992 dried marijuana fruiting tops weighing 2.70 grams. On September 23, 1993, the trial court found David Cruz guilty of the crime charged and sentenced him to suffer life imprisonment with all the accessory penalties of the law and to pay a fine of P20,000.00 and the costs.

David Cruz seasonably appealed to this Court. The First Division accepted his appeal and the case was docketed as G.R. No. 113390. Meanwhile, David Cruz was transferred from the Municipal Jail to the New Bilibid Prisons. His counsel of record, Atty. Carmelo L. Arcilla, was notified and required to file the appellant's brief within thirty (30) days from notice. The notice was, however, returned unserved.

On October 3, 1994, we issued a Resolution referring the appeal to the Court of Appeals in view of the effectivity of Republic Act No. 7659 and the promulgation of the case of People v. Martin Simon y Sunga.[2] We noted that as the quantity of the marijuana involved in the case was less than 750 grams, the imposable penalty on the appellant was not life imprisonment but one within the range of prision correccional to reclusion temporal, in accordance with the People v. Simon y Sunga ruling.

A second notice to file appellant's brief was sent to the new address of David Cruz's counsel, as furnished by Cruz. The notice was again returned unserved.

On September 19, 1995, David Cruz filed with us an "Urgent Motion to Withdraw Appeal." Attached to the motion was the Indorsement of Assistant Director Jesus P. Villanueva, Bureau of Corrections, stating that the legal effects of the Motion were adequately explained to Cruz. The motion was referred to the Court of Appeals.

On October 24, 1995, the Court of Appeals, Seventh Division, issued a Resolution holding in abeyance its resolution on the motion to withdraw appeal "until the situation is explained to him by the Director, National [sic] Bilibid Prison." The Director was ordered to submit a written report, together with the reply of David Cruz, within ten (10) days from receipt thereof. In the same Resolution, the Court of Appeals also noted that:

> "The penalty imposable for the offense charged against David Cruz, considering the quantity of the prohibited drug involved, is 6 months of arresto mayor, as the minimum, to four (4) years and two (2) months of prision

> correccional, as the maximum, pursuant to the Sunga case.
>
> "By 1996, David Cruz shall have served the maximum penalty imposable. We seriously doubt if this was explained to him.
>
> x x x.
>
> "SO ORDERED."[3]

No report was submitted by the Director, New Bilibid Prisons.[4]

A third notice to file appellant's brief was sent to David Cruz's counsel which he received on June 8, 1996. Despite this receipt, no appellant's brief was filed.

On September 18, 1996, the Court of Appeals issued another Resolution declaring David Cruz's appeal as abandoned and dismissed the same. The dispositive portion of this Resolution reads as follows:

> "For failure to file appellant's brief despite receipt by accused-appellant's counsel on June 8, 1996 of the notice to do so, the court resolved to consider the appeal ABANDONED and accordingly DISMISSED pursuant to Section 8, Rule 124 of the 1985 Rules on Criminal Procedure."[5]

This Resolution became final and executory on October 14, 1996. Judgment was entered on April 1, 1997.[6] In 1998, petitioner Maria Cruz sought the assistance of the Office of Legal Aid of the University of the Philippines College of Law. Hence, this petition.

Petitioners claim that:

> "I. The Court of Appeals committed grave abuse of discretion in considering petitioner's appeal abandoned despite its October 24, 1995 Resolution.
>
> "II. The correct penalty to be imposed should be determined in a new trial. Jjsc
>
> "III. There is no lawful writ or process which justifies petitioner's restraint of liberty."[7]

The petition for certiorari must be dismissed.

Respondent Court of Appeals did not err in declaring the appeal of petitioner David Cruz as abandoned and dismissed. Section 8 of Rule 124 of the 1985 Rules on Criminal Procedure, as amended, provides:

> "Sec. 8. Dismissal of appeal for abandonment or failure to prosecute.-The appellate, court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except in case the appellant is represented by a counsel de oficio.
>
> "The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or jumps bail or flees to a foreign country during the pendency of the appeal."[8]

An appeal may be dismissed by the Court of Appeals, upon motion of the appellee or upon the court's own motion, if the appellant fails to file his brief within the prescribed time. The only exception is when the appellant is represented by counsel de officio.

Petitioner David Cruz was represented not by counsel de officio, but by counsel of his own choice. His lawyer, Atty. Carmelo Arcilla, was counsel de parte before the trial court, before this Court on appeal, and before the Court of Appeals. There is nothing in the records that would show that Atty. Arcilla withdrew his representation of petitioner. On the contrary, the notice from the Court of Appeals requiring the filing of the appellant's brief was received by Atty. Arcilla. And despite this receipt, still no appellant's brief was filed. It was more than three (3)

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months later that the appellate court issued the questioned Resolution. By dismissing David Cruz's appeal, the Court of Appeals acted within its discretion.

A new trial to determine his penalty cannot be granted petitioner. A motion for new trial may be granted by the Court of Appeals only on the ground of newly discovered evidence material to the accused's defense. This is clear from Section 14, Rule 124 of the 1985 Rules on Criminal Procedure, to wit:

> "Sec. 14. Motion for new trial.-At any time after the appeal from the lower court has been perfected and before the judgment of the appellate court convicting the accused becomes final, the latter may move for a new trial on the ground of newly discovered evidence material to his defense, the motion to conform to the provisions of Section 4, Rule 121."

Maria Cruz's petition for habeas corpus, on the other hand, must be granted. Her son, David, was tried and convicted by the trial court for violation of Article II, Section 4 of the Dangerous Drugs Act of 1972. He was convicted on September 27, 1993 and sentenced to life imprisonment and its accessory penalties. He was committed to the National Penitentiary on October 13, 1993. On December 31, 1993, Republic Act (R.A.) No. 769 took effect. This law amended provisions of several penal laws, including the Dangerous Drugs Act of 1972.

Before R. A. No. 7659, Article II, Section 4 of the Dangerous Drugs Act of 1972 provided:

> "Sec 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. --. The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. If the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall, be imposed."

With the effectivity of R. A. No. 7659, Section 4, Article II now reads:

> "Sec. 4. Sale; Administration, Delivery, Distribution and Transportation of Prohibited Drugs. - The penalty of reclusion perpetua to death, and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.
>
> "Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed."

R.A. No. 7659 also added the following provision:

> "Sec. 17. Section - 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:
>
> "Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instrument of the Crime.-The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:
>
> "1. x x x
>
> x x x
>
> 5. 750 grams or more of indian hemp or marijuana; x x x."
>
> "Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prision

correccional to reclusion perpetua depending upon the quantity.

"x x x."

The penalty for the illegal sale of marijuana under the old law was "life imprisonment to death." Under R.A. 7659, the penalty depended on the quantity of the drug. The sale of "750 grams or more of Indian hemp or marijuana" became punishable by reclusion perpetua, to death.[9] The penalty for the sale of less than 750 grams of marijuana was reduced to a range "from prision correccional to reclusion perpetua, depending upon the quantity" of the drug.

In the 1994 case of People v. Simon y Sunga,[10] we held that for drugs with quantities weighing 750 grams or more, and for drugs with quantities weighing below 750 grams, reclusion perpetua could not be imposed twice.[11] The penalty of "prision correccional" to reclusion perpetua" for drug offenses where the quantity involved is less than those enumerated in the first paragraph of Section 17 of R.A. 7659 was construed as "prision correccional to reclusion temporal." This was the range of the imposable penalty for drugs weighing less than 750 grams and the proper penalty depended on the quantity of the drug involved. If the drug weighs less than 250 grams, the penalty to be imposed is prision correctional; from 250 grams to 499 grams, prision mayor; and from 500 grams to 749 grams, reclusion temporal.[12]

In the instant case, the amount of marijuana for which David Cruz was convicted is 2.70 grams. The imposable penalty for this amount under the Simon ruling is prision correctional which has a duration of six (6) months and one (1) day to six (6) years. Presently, David Cruz has already served six (6) years and three (3) months of his sentence which is way beyond the last day of prision correccional. The continued detention of Cruz at, the National Penitentiary has been admitted by the Solicitor General as already illegal.[13] David Cruz should therefore be released from prison without further delay.

An application for the writ of habeas corpus is made upon verified petition setting forth: (1) that the person in whose behalf the application is made is imprisoned or restrained of his liberty; (2) the officer or name of the person by whom he is imprisoned or restrained; (3) the place where he is imprisoned or restrained of his liberty; and (4) a copy of the commitment or cause of detention of such person.[14] The writ of habeas corpus extends to all cases of illegal confinement or detention by which any person is deprived of his liberty.[15]

IN VIEW WHEREOF, the petition is GRANTED. Let a writ of habeas corpus issue immediately. The Director, Bureau of Corrections, is commanded to forthwith execute the writ for the discharge of DAVID CRUZ y GONZAGA from confinement and RELEASE him, unless he is being detained for some other lawful cause, and to make due return of the writ. With costs de officio.

FURTHER, in view of the Court of Appeals' dismissal of petitioner's appeal on the ground of abandonment for failure to file appellant's brief, Atty. Carmelo L. Arcilla is hereby ordered to explain within fifteen (l5) days from receipt of this decision why no disciplinary action should be taken against him by this Court.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Yñares-Santiago, JJ., concur.

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[1] Please see Petition, pp. 2-3, Rollo, pp. 4-5; see also Comment of the Solicitor General, pp. 1-2, Rollo, pp. 27-18.

[2] G.R. No. 93028, promulgated on July 29, 1994, 234 SCRA 555.

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[3] Resolution of the Court of Appeals, Annex "B" to the Petition, Rollo, pp. 17-18.

[4] Petition, p. 4, Rollo, p. 6.

[5] Comment, p. 5, Rollo, p. 31; see also Entry of Judgment, Annex "A" to the Petition, Rollo, p. 15.

[6] Entry of Judgment, Annex "A" to the Petition, Rollo, p. 15.

[7] Petition, pp. 5, 6 and 8, Rollo, pp. 7, 8 and 10.

[8] Emphasis supplied. Rule 124 is entitled "Procedure in the Court of Appeals."

[9] Section 13 and Paragraph 1, Section 17, R.A. 7659.

[10] 234 SCRA 555 (1994)

[11] Id., at 571-572.

[12] Id., at 573; see also People v. Caco, 269 SCRA 271, 273 (1997)

[13] Comment of the Solicitor General, pp. 13-14, Rollo, pp. 39-40.

[14] Section 3, Rule 102, Revised Rules of Court.

[15] Ordonez v. Vinarao, 239 SCRA 114, 115 (1994); Section 1, Rule 102, Revised Rules of Court.

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