

DOMINGO LAGROSA AND OSIAS BAGUIN, PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 152044. July 03, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review of the decision of the Court of Appeals in CA-G.R. No. 67308,[1] which affirmed the Resolution of the Regional Trial Court of Tagbilaran City, Branch 2, denying petitioners' Application for Probation, and its Order denying petitioners' Motion for Reconsideration.[2]

The undisputed facts are as follows.

On October 29, 1996, the Regional Trial Court of Tagbilaran City, Branch 2, rendered a decision in Criminal Case No. 8243,[3] finding petitioners Domingo Lagrosa and Osias Baguin guilty of violation of Section 68 of P.D. 705, as amended (The Revised Forestry Code), for having in their possession forest products without the requisite permits. The trial court sentenced them to suffer the indeterminate penalty of imprisonment from two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum. Petitioners' Motion for Reconsideration of the decision[4] was denied by the trial court on November 21, 1996.[5]

Petitioners appealed their conviction to the Court of Appeals, where it was docketed as CA-G.R. CR No. 20632.[6] On March 14, 2000, the appellate court affirmed the conviction of the petitioners, with the modification as to the penalty imposed, which was reduced to an indeterminate penalty ranging from six (6) months and one (1) day of prision correccional, as minimum, to one (1) year, eight (8) months and twenty one (21) days of prision correccional, as maximum.[7] The decision became final and executory on April 12, 2000.

On August 29, 2001, petitioners filed an Application for Probation with the trial court,[8] which, as mentioned at the outset, was denied. Petitioners' motion for reconsideration was likewise denied by the trial court. Hence, petitioners filed a petition for certiorari with the Court of Appeals, which was docketed as CA-G.R. SP No. 67308.[9] On January 11, 2002, the Court of Appeals rendered the assailed decision affirming the questioned resolutions of the trial court.

Hence this petition, raising the following arguments:

1)

That Section 4 of Presidential Decree No. 968, as amended by PD No. 1990, is very absurd and illogical considering that petitioners were not given the opportunity to apply for probation when they were convicted by the Regional Trial Court of Bohol, Branch 2, because the penalty imposed by said court is more than six (6) years and therefore non-probationable.

That the first opportunity for herein petitioners to apply for probation was when the Court of Appeals modified the sentence imposed by the Regional Trial Court of Bohol, Branch 2, from two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, to six (6) months and one (1) day to one (1) year, eight (8) months and twenty one (21) days as maximum which is clearly probationable.

2)

That the ruling of this Honorable Supreme Court in the case of Pablo Francisco versus Court of Appeals, et al., G.R. No. 108747, is not applicable to the instant case because in the said Francisco case the accused therein can apply for probation because the penalty imposed by the lower court was already probationable but the accused instead appealed the decision but in the case of herein petitioners they cannot apply for probation when they were convicted because the penalty imposed by the lower court was more than six (6) years and therefore non-probationable.

3)

That the decision of the Court of Appeals herein sought to be reviewed is clearly contrary to the purpose of the Probation Law.[10]

The law that is at the heart of this controversy is Presidential Decree No. 968, also known as the Probation Law, as amended by P.D. 1990, the pertinent provision of which reads:

SEC. 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. (underscoring ours)

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.

Under Section 9 (a) of the Probation Law, offenders who are sentenced to serve a maximum term of imprisonment of more than six years are disqualified from seeking probation.

It should be noted that before P.D. 968 was amended by P.D. 1990, the accused was allowed to apply for probation even after he had already filed an appeal, as long as he had not yet begun to serve his sentence.[11]

Petitioners contend that they should be allowed to apply for probation even if they had already appealed the decision of the trial court. They argue that their case should be considered an exception to the general rule which excludes an accused who has appealed his conviction from the benefits of probation. In the case at bar, the trial court sentenced petitioners to a maximum term of eight years, which was beyond the coverage of the Probation Law. They only became eligible for probation after the Court of Appeals modified the judgment of the trial court and reduced the maximum term of the penalty imposed on them to one year, eight months and twenty-one days.[12] They submit that the ruling in the case of Francisco v. CA[13] is not applicable because in that case, the accused appealed their conviction notwithstanding the fact that the maximum term of the prison sentence imposed on them by the trial court was less than six years.[14]

In its Comment, the Office of the Solicitor General reiterates the express provision of P.D. 968 prohibiting the

grant of probation to those who have appealed their convictions.[15] It argues that, even if the petitioners have appealed for the purpose of reducing an incorrect penalty, this fact does not serve to remove them from the prohibition in Section 4 of P.D. 968 for the law makes no such distinction.[16]

There is no question that petitioners appealed from the decision of the trial court. This fact alone merits the denial of petitioners' Application for Probation. Having appealed from the judgment of the trial court and having applied for probation only after the Court of Appeals had affirmed their conviction, petitioners were clearly precluded from the benefits of probation.[17]

However, petitioners now ask us not to apply the letter of the law, claiming that their situation should be considered an exception to the rule. Their petition is without merit.

Petitioners repeatedly assert that their application for probation was made at the "first opportunity," undoubtedly invoking the fourth "whereas" clause of P.D. 1990, which reads:

WHEREAS, 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; x x x.

To bolster this assertion, petitioners claim that what prompted them to appeal the decision of the trial court was the erroneous penalty imposed by the trial court.[18]

Petitioners are not being very candid. In their appellant's brief filed in CA-G.R. CR No. 20632, they raised the following assignment of errors:

I

THAT THE LOWER COURT ERRED IN FINDING BOTH ACCUSED GUILTY OF THE OFFENSE CHARGED BECAUSE THE EVIDENCE AGAINST THEM LACKS MORAL CERTAINTY.

II.

IF EVER ACCUSED ARE GUILTY, THE LOWER COURT ERRED IN IMPOSING THE PROPER PENALTY AS PROVIDED BY LAW.

The fact that petitioners put the merits of their conviction in issue on appeal belies their claim that their appeal was prompted by what was admittedly an incorrect penalty. Certainly, the protestations of petitioners connote a profession of guiltlessness, if not complete innocence, and do not simply assail the propriety of the penalties imposed. For sure, petitioners never manifested that they were appealing only for the purpose of correcting a wrong penalty - to reduce it to within probationable range. Hence, upon interposing an appeal, more so after asserting their innocence therein, petitioners should be precluded from seeking probation. By perfecting their appeal, petitioners ipso facto relinquished the alternative remedy of availing of the Probation Law, the purpose of which is simply to prevent speculation or opportunism on the part of an accused who, although already eligible, does not at once apply for probation, but did so only after failing in his appeal.[19]

Although it has been suggested that an appeal should not bar the accused from applying for probation if the appeal is solely to reduce the penalty to within the probationable limit may be equitable,[20] we are not yet prepared to accept this proposition, specially given the factual circumstances of this case. Had the petitioners' appeal from the decision of the trial court raised the impropriety of the penalty imposed upon them as the sole issue, perhaps this Court would have been more sympathetic to their plight. Unfortunately, their misrepresentation has led to their own undoing.

WHEREFORE, in view of the foregoing, the petition is DENIED. The Decision of the Court of Appeals dated

January 11, 2002 in CA-G.R. No. 67308, which affirmed the Resolution of the Regional Trial Court of Tagbilaran City, Branch 2, denying petitioners' Application for Probation, and its Order denying petitioners' Motion for Reconsideration, is AFFIRMED. Costs against the petitioners.

SO ORDERED.

Davide, Jr., C.J., Carpio, and Azcuna, JJ., concur.

Vitug, J., I reiterate my separate (dissenting) opinion in Francisco vs. CA (243 SCRA 384, 399).

[1] CA Rollo, p. 51; penned by Associate Justice Rodrigo V. Cosico, concurred in by Associate Justices Eubulo G. Verzola and Eliezer R. De Los Santos.

[2] Records, pp. 262, 264, 275, 294; penned by Judge Baudilio K. Dosdos.

[3] Records, pp. 219-224.

[4] Records, pp. 229-233.

[5] Records, pp. 241-242.

[6] Records, p. 243.

[7] CA Rollo for CA-G.R. CR No. 20632, pp. 88-98; penned by Associate Justice Renato C. Dacudao, concurred in by Associate Justices Quirino D. Abad Santos, Jr. and B.A. Adefuin-De La Cruz.

[8] Records, pp. 262-263.

[9] CA Rollo for CA-G.R. SP No. 67308, pp. 4-9.

[10] Rollo, pp. 7-8.

[11] People v. Evangelista, 324 Phil. 80 (1996); citing P.D. 968, as amended by P.D. 1287.

[12] Rollo, pp. 7-9.

[13] 313 Phil. 241 (1995).

[14] Rollo, pp. 8-9.

[15] Rollo, pp. 30-32.

[16] Rollo, p. 30.

[17] People v. Evangelista, 324 Phil. 80 (1996).

[18] Rollo, p. 8.

[19] Francisco v. CA, 313 Phil. 241, 265 (1995).

[20] Francisco v. CA, *supra*.

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