

## MARY HELEN ESTRADA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND HON. BONIFACIO SANZ MACEDA, RESPONDENTS.

*G.R. NO. 162371. August 25, 2005*

Ponente: AUSTRIA-MARTINEZ, J.

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### AUSTRIA-MARTINEZ, J.:

This resolves the petition for review on certiorari seeking the reversal of the Decision[1] of the Court of Appeals (CA) promulgated on October 28, 2003, and the CA Resolution dated February 23, 2004, denying petitioner's motion for reconsideration; together with the letter of petitioner dated January 18, 2005 which was treated by the Court as a petition for habeas corpus alleging that the Decision dated July 2, 1997 of the Regional Trial Court (RTC) of Las Piñas City, Branch 275, imposed upon petitioner an erroneous and excessive penalty.

The present case has its origin in a criminal case filed against petitioner. An Information charging petitioner with estafa was filed with the RTC of Las Piñas City. In view of the fact that petitioner jumped bail, the RTC issued an Order dated May 14, 1997, considering petitioner to have waived her right to present evidence. Thus, the RTC rendered judgment based only on prosecution evidence and made the following conclusions:

...Junimar Bermundo applied for employment in Japan with the accused. Accused collected money from Junimar and his wife in the total amount of P68,700.00.

These payments were all evidenced by various receipts bearing different dates. ...

...

Junimar and his wife were able to pay the accused by using the money they obtained from a loan with the Luzon Development Bank using their parcel of land located at Pangao, Lipa City as collateral (Exh. "L").

After making the necessary payments, the accused told Junimar to proceed to the Japanese Embassy to claim the plane tickets in December 1993, but when they went to the Japanese Embassy, they were told that nothing was filed with their office. Junimar then informed the accused what happened and the latter accompanied him the second time to the Japanese Embassy. It was only at that time that accused filed the necessary documents. ...Accused told them that if they would use the name of her daughter, the processing of their papers would be faster because her daughter performs outside the country.

However, in the early part of 1994, the Japanese Embassy wrote a letter to Junimar requiring them to submit documents but the accused failed to produce these documents. Junimar then decided to abandon his plan of going to Japan and just get the money from the accused. Accused, however, failed to return the money despite receipt of a demand letter the witness made (Exh. "I" & "J", tsn, Sept. 5, 1995, pp. 2-9).

Under the established facts, accused indeed deceived Junimar Bermundo and Rosalie Bermundo by means of false pretenses and fraudulent misrepresentations which induced the Bermundos to deliver to the accused their (sic) amount of P68,700.00 which amount accused applied and used for her own benefit to the damage and prejudice of Junimar and Rosalie Bermundo.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is rendered finding accused GUILTY beyond reasonable doubt as charged which is punished under Article 315, par. 2 (a), and applying the Indeterminate Sentence Law, accused MARY HELEN ESTRADA is hereby sentenced to suffer an indeterminate prison term of TWELVE (12) YEARS of prison mayor maximum as minimum to TWENTY-FOUR (24) YEARS as maximum; to pay back the sum of P68,700.00 to Junimar Bermundo and Rosalie Bermundo; and to pay the costs. [2]

In a petition for certiorari and/or mandamus filed with the CA, petitioner assailed the decision of the RTC, alleging the same to be null and void for having been rendered in violation of petitioner's constitutional rights.

The proceedings that transpired in the trial court are accurately set forth in the Decision of the CA dated October 28, 2003, as follows:

On October 24, 1994, Asst. Provincial Prosecutor Danilo Uy filed an Information for estafa against petitioner Mary Helen B. Estrada docketed as Criminal Case No. 94-6230...

...

On January 23, 1995, petitioner signed an undertaking that in case of her failure to appear during the trial despite due notice, her absence would constitute as an express waiver of her right to be present during trial and promulgation of judgment and the lower court would then proceed with the hearing in absentia.

During the hearing on May 30, 1996, Atty. Ma. Nenette Quicho, counsel for petitioner, failed to appear. On motion of the private prosecutor, the lower court directed Atty. Ma. Nenette Quicho to explain in writing within ten (10) days from notice why she should not be cited for contempt.

After the presentation of evidence for the prosecution on March 31, 1997, the lower court scheduled the reception of evidence for the petitioner on May 14, 1997. Counsel for petitioner failed to explain her absence in the previous hearing. She was found guilty of contempt of court and was sentenced to suffer the penalty of one (1) day imprisonment.

On May 14, 1997, in view of the fact that petitioner jumped bail, the lower court considered her to have waived the presentation of her evidence and declared the case submitted for decision.

On June 13, 1997, a Notice of Appearance with Motion for Presentation of Evidence for the Defense was filed by Atty. Herenio E. Martinez, as collaborating counsel for petitioner. He argued among others, that the fact that despite trial in absentia and accused's (petitioner) failure to surrender, still petitioner could present her evidence in support of her defense because there were other witnesses who would testify for her. Hence, she prayed that the scheduled date for promulgation of decision (June 18, 1997) be cancelled and she be allowed to present her evidence.

However, the subject decision was promulgated on July 2, 1997, convicting petitioner of the crime charged.

The Decision was entered in the Docket Book on September 3, 1997.

On December 1, 1999, petitioner moved for reconsideration and/or new trial stating that her constitutional rights to be heard and to counsel were violated for the following reasons:

- (1) counsel for petitioner was not served a copy of the Order dated March 31, 1997 citing her for contempt of court;
- (2) counsel for petitioner was not served any copy of the Order dated May 14, 1997 declaring petitioner to have waived her right to present evidence and set the date of promulgation of decision on June 18, 1994 (sic) at 2:00 p.m.;
- (3) the order dated July 18, 1997 denying the motion for reception of petitioner's evidence was not furnished

counsel for petitioner and it came after the judgment of conviction; and

(4) the penalty imposed was beyond that allowed by law.

On March 6, 2000 the motion for reconsideration was denied for lack of merit.

On April 5, 2000 petitioner filed her notice of appeal but was denied due course in an Order dated April 5, 2000.[3]

It also appears from the records that on September 13, 1999, petitioner was arrested and detained at the Las Piñas Police Station.[4] This was a little over two years after the judgment of conviction against her had been entered in the criminal docket book on September 3, 1997, and prior to the filing of a motion for reconsideration and/or new trial with the trial court on December 1, 1999.

Petitioner's appeal was denied due course by the trial court in its Order dated April 5, 2000 for having been filed beyond the reglementary period.[5] She then filed the aforementioned petition for certiorari and/or mandamus with the CA, alleging that: the RTC judge violated petitioner's constitutional right to due process by depriving petitioner of the right to be assisted by counsel during the proceedings and failing to notify petitioner of the scheduled presentation of defense evidence; the RTC judge imposed upon petitioner a penalty which was not authorized under the law for which petitioner had been charged; the RTC judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction when he denied petitioner's motion for reconsideration of the decision and/or motion for new trial; neither petitioner nor her counsel has officially received a copy of the RTC decision, hence, the same has not yet become final and executory at the time petitioner filed her motion for reconsideration and/or new trial; the RTC judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction when he denied due course to petitioner's appeal because petitioner filed her notice of appeal well within the fifteen-day period within which to appeal, thus, it was the mandatory duty of the RTC judge to approve the notice of appeal.

On October 28, 2003, the CA promulgated its decision denying the petition for certiorari. The CA held that there was no grave abuse of discretion committed by the RTC judge as his actions were anchored on Section 14 (2), Article III of the 1987 Constitution which states that "after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable," and on Section 1(c), Rule 115 of the Rules of Court which provides that "[t]he absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat." The CA further held that "[t]he deprivation of her right to present evidence in her defense shall be deemed to include the non-admission of the testimonies of the other witnesses other than the petitioner herself. This must be so because the deprivation of her opportunity to present evidence due to unreasonable absences on the scheduled hearings is primarily intended to safeguard the orderly administration of justice." Thus, the CA concluded that the trial court's action was well within its jurisdiction.

The CA did not dwell on the propriety of the penalty imposed on petitioner although petitioner raised it as one of the issues in the petition. In her motion for reconsideration of the CA Decision, petitioner called the CA's attention to this fact, and also pointed out that although petitioner, by failing to appear at several trial dates, may be deemed to have waived her right to be present during the proceedings, such waiver does not include a waiver of her right to present evidence. On February 23, 2004, the CA issued a resolution denying the motion for reconsideration for lack of merit.

Hence, petitioner filed the present petition for review on certiorari.

Previously, however, petitioner had filed an administrative case (A.M. OCA IPI No. 00-1002-RTJ) against Judge

Bonifacio Sanz Maceda of the RTC of Las Piñas City, Branch 275 for gross ignorance of the law. In a Resolution dated August 13, 2001, the Court dismissed said administrative complaint but issued a stern reminder to respondent judge to be more cautious in computing the appropriate penalty in the future to avoid injustice.

In connection with said administrative case, petitioner, who is presently detained at the Correctional Institution for Women, sent a letter dated January 18, 2005, wherein she emphasized that although the Court's Resolution of August 13, 2001 issued such stern warning to respondent judge, the same resolution did not give any relief for the injustice she is now suffering due to the erroneous penalty imposed on her. Thus, in said administrative case, the Court issued a Resolution dated March 9, 2005, resolving to treat petitioner's letter as a petition for habeas corpus and ordered the Office of the Solicitor General to comment on said letter-petition. Thereafter, the Office of the Solicitor General filed its Comment where it was manifested that there is a pending petition for review on certiorari with the Court which turned out to be the herein petition under consideration, involving the issue of the penalty imposed on petitioner.

Thus, in a Resolution dated July 5, 2005, the Court resolved to consolidate the letter/petition for habeas corpus with the instant petition for review on certiorari.

Petitioner alleges that the CA erred in deciding the case in a way not in accord with law or jurisprudence and departed from the usual course of judicial proceedings. In support of said allegations, petitioner reiterated her arguments that the trial court denied her the constitutional right to be heard and to be assisted by counsel by failing to furnish her counsel copies of the order setting the date for reception of defense evidence on May 14, 1997, and the order considering petitioner to have waived her right to present evidence in her defense; that the decision of the trial court was null and void for imposing a penalty not authorized by law; that inasmuch as the decision was null and void, the trial court acted with grave abuse of discretion in denying petitioner's motion for reconsideration and/or new trial on the ground that the assailed decision had become final; and that the CA utterly failed to resolve petitioner's submission that the trial court's decision was null and void by virtue of the excessive penalty imposed.

At the outset, the undisputed fact that petitioner jumped bail while trial was pending should be emphasized. In fact, it appears that from the beginning, the address she furnished the trial court was incorrect. The trial court's process server, Nap Manguserra, made a note on the subpoena he was trying to serve on petitioner, that "per ocular inspection made, said address is a vacant lot & subject person is unknown to her neighbors." [6] From such fact alone, petitioner's arguments regarding the validity of the proceedings and promulgation of judgment in absentia for being in violation of her constitutional right to due process are doomed to fail.

The holding of trial in absentia is authorized under Section 14 (2), Article III of the 1987 Constitution which provides that "after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable." In fact, in *People vs. Tabag*, [7] the Court even admonished the trial court for failing to proceed with the trial of some accused who escaped from preventive detention, to wit:

Finally, the trial court also erred in not proceeding with the case against Laureño Awod and Artemio Awod after their successful escape on 19 October 1989 while in preventive detention. They had already been arraigned. Therefore, pursuant to the last sentence of paragraph (2), Section 14, Article III of the Constitution, trial against them should continue and upon its termination, judgment should be rendered against them notwithstanding their absence unless, of course, both accused have died and the fact of such death is sufficiently established. Conformably with our decision in *People v. Salas*, their escape should have been considered a waiver of their right to be present at their trial, and the inability of the court to notify them of the subsequent hearings did not prevent it from continuing with their trial. They were to be deemed to have

received notice. The same fact of their escape made their failure to appear unjustified because they have, by escaping, placed themselves beyond the pale and protection of the law. This being so, then pursuant to *Gimenez v. Nazareno*, the trial against the fugitives, just like those of the others, should have been brought to its ultimate conclusion. Thereafter, the trial court had the duty to rule on the evidence presented by the prosecution against all the accused and to render its judgment accordingly. It should not wait for the fugitives' re-appearance or re-arrest. They were deemed to have waived their right to present evidence on their own behalf and to confront and cross-examine the witnesses who testified against them.

It is obvious that the trial court forgot our rulings in *Salas* and *Nazareno*. We thus take this opportunity to admonish trial judges to abandon any cavalier stance against accused who escaped after arraignment, thereby allowing the latter to make a mockery of our laws and the judicial process. Judges must always keep in mind *Salas* and *Nazareno* and apply without hesitation the principles therein laid down, otherwise they would court disciplinary action.[8] (Emphasis supplied)

From the foregoing pronouncement, it is quite clear that all of petitioner's protestations that she was denied due process because neither she nor her counsel received notices of the trial court's orders are all to naught, as by the mere fact that she jumped bail and could no longer be found, petitioner is considered to have waived her right to be present at the trial, and she and her counsel were to be deemed to have received notice.

Moreover, in the earlier case of *People vs. Magpalao*[9], the Court already ruled that:

... once an accused escapes from prison or confinement or jumps bail or flees to a foreign country, he loses his standing in court and unless he surrenders or submits to the jurisdiction of the court he is deemed to have waived any right to seek relief from the court.[10]

Nevertheless, in this case, records reveal that the trial court sent out notices to petitioner and her counsel. In a Resolution dated September 30, 2002, the CA required the Office of the Solicitor General to submit proof of service on petitioner and her counsel of the RTC's Order dated March 31, 1997 setting the date for reception of evidence on May 14, 1997; the Order dated May 14, 1997 considering petitioner to have waived her right to present evidence in her defense in view of the fact that she has jumped bail; and the RTC Decision dated July 2, 1997. On December 20, 2002, the Office of the Solicitor General, submitted such proof of service. Thus, in its Decision promulgated on October 28, 2003, the CA made the factual finding that petitioner and her counsel were indeed duly served with copies of the assailed RTC orders and decision at the addresses they submitted to the trial court. Factual findings of the CA are conclusive on the parties and not reviewable by this Court.[11] As held in *Morandarte vs. Court of Appeals*,[12] "inquiry upon the veracity of the CA's factual findings and conclusion is not the function of the Supreme Court for the Court is not a trier of facts."

With the finding that petitioner and her counsel were duly notified of the hearing dates for reception of defense evidence and the decision of the trial court, in addition to the undisputed fact that petitioner jumped bail when trial of her case was pending, petitioner's argument that the RTC Decision was null and void for having been rendered in violation of petitioner's constitutional right to due process, i.e., the right to be heard and be assisted by counsel, must also fail.

Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy.[13]

In the present case, petitioner was afforded such opportunity. The trial court set a hearing on May 14, 1997 for reception of defense evidence, notice of which was duly sent to the addresses on record of petitioner and her counsel, respectively. When they failed to appear at the May 14, 1997 hearing, they later alleged that they were not notified of said setting. Petitioner's counsel never notified the court of any change in her address, while petitioner gave a wrong address from the very beginning, eventually jumped bail and evaded court processes.

Clearly, therefore, petitioner and her counsel were given all the opportunities to be heard. They cannot now complain of alleged violation of petitioner's right to due process when it was by their own fault that they lost the opportunity to present evidence.

The Court likewise upholds the validity of the promulgation in absentia of the RTC judgment and the RTC's Order dated April 5, 2000, denying due course to petitioner's notice of appeal for being filed beyond the reglementary period. Section 6, Rule 120 of the 1985 Rules on Criminal Procedure, the Rule applicable in this case since promulgation was held before the effectivity of The Revised Rules of Criminal Procedure, provides:

Section 6. Promulgation of judgment --The judgment is promulgated by reading the same in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside of the province or city, the judgment may be promulgated by the clerk of court.

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court that rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. In case the accused fails to appear thereat the promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused or counsel. If the judgment is for conviction and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused, who may appeal within fifteen (15) days from notice of the decision to him or his counsel. (*Italics supplied*)

Clearly, promulgation of judgment in absentia is allowed under the Rules. Hence, in *Pascua vs. Court of Appeals*,<sup>[14]</sup> it was held that such promulgation is valid provided the following essential elements are present: (a) that the judgment be recorded in the criminal docket; and (b) that a copy thereof be served upon the accused or counsel. The factual circumstances in said case are analogous to the case at bar.

In *Pascua*, the promulgation of judgment in said case was set on May 5, 1998. When the case was first called on that date, petitioner was not present although her counsel of record was in court. The case was set for second call. After the lapse of two hours, the accused still had not appeared, thus, the dispositive portion of the decision was read in open court. Afterwards, counsel for the accused received a copy of the decision, and upon motion of the prosecution, the trial court ordered the issuance of a warrant of arrest and forfeiture of accused's cash bond. No motion for reconsideration or notice of appeal was filed by the accused within 15 days from May 5, 1998. On June 8, 1998, accused, without discharging her counsel of record, filed through another lawyer a notice of change of address, together with an omnibus motion to lift warrant of arrest and confiscation of bail bond, and also to set anew the promulgation of the decision, alleging that the accused failed to appear at the scheduled promulgation because notices for said schedule were sent to her former address, hence she was not able to receive any notice. Said motion was denied by the trial court. The matter was brought to this Court where the accused argued that there was no valid promulgation because she was not properly notified of the date thereof. The Court held thus:

Let us examine the validity of the May 5, 1998 promulgation which took place in the case at bar. The dispositive portion of the decision convicting petitioner was read in open court, after which the public prosecutor, the defense counsel Atty. Marcelino Arias, and private complainant Lucita Lopez, acknowledged receipt of their respective copies of the decision by affixing their signatures at the back of the original of the decision on file with the record of the case. Atty. Arias failed to file a notice of appeal within fifteen days from receipt of the decision. Is it proper to rule that the period within which to file an appeal has lapsed?

In *Florendo v. Court of Appeals* (239 SCRA 325 [1994]), the facts are parallel to those of the instant case. We

held -

In the case at bench, a copy of the judgment was served to the counsel of petitioner on June 15, 1992; therefore, he had only up to June 30, 1992 within which to appeal. The notice of appeal filed on July 6, 1992 was clearly out of time.

It is presumed that official duties are regularly performed and that the proceedings are made of record. This serves as a substantial compliance with the procedural requirement of the recording of the judgment in the criminal docket of the court. At any rate, petitioner does not question non-compliance of the requirement of the recording of the judgment in the criminal docket.

(At p. 329.)

Petitioner's first argument is devoid of merit. In the first place, her non-receipt of the notice of promulgation was due to her own failure to immediately file a notice of change of address with the trial court, which she clearly admitted. Besides, promulgation could be properly done even in her absence, subject to the service of a copy of the decision upon her or her counsel and the recording of the judgment in the criminal docket.

In the present case, therefore, since the records bear out the fact that copies of the decision were sent by registered mail to the given addresses of petitioner and her counsel, Atty. Herenio Martinez, and there is no question that the judgment was indeed recorded in the criminal docket of the court, the promulgation was valid. The significance of recording the decision in the criminal docket of the court was explained in *Pascua*, thus:

What is the significance of the recording of the judgment with the criminal docket of the court? By analogy, let us apply the principles of civil law on registration.

...Simply stated, registration is made for the purpose of notification (*Paras*, Civil Code of the Philippines, Vol. II, 1989 ed., p. 653, citing *Bautista vs. Dy Bun Chin*, 49 O.G. 179 [1952]).

...Its purpose is to give notice thereof to all persons. ...

Applying the above-mentioned principles to the instant case, we are prompted to further examine the provisions on promulgation in absentia.

As held in *Florendo vs. Court of Appeals* (*supra*), the rules allow promulgation of judgment in absentia to obviate the situation where juridical process could be subverted by the accused jumping bail. But the Rules also provide measures to make promulgation in absentia a formal and solemn act so that the absent accused, wherever he may be, can be notified of the judgment rendered against him. As discussed earlier, the sentence imposed by the trial court cannot be served in the absence of the accused. Hence, all means of notification must be done to let the absent accused know of the judgment of the court. And the means provided by the Rules are: (1) the act of giving notice to all persons or the act of recording or registering the judgment in the criminal docket (which Section 6 incidentally mentions first showing its importance); and (2) the act of serving a copy thereof upon the accused (at his last known address) or his counsel. In a scenario where the whereabouts of the accused are unknown (as when he is at large), the recording satisfies the requirement of notifying the accused of the decision wherever he may be.

From the foregoing, petitioner is deemed notified of the decision upon its recording in the criminal docket on September 3, 1997 and she only had fifteen (15) days therefrom within which to file an appeal. Evidently, the notice of appeal filed only on April 5, 2000 was filed out of time.

However, the Court cannot close its eyes to the fact that the penalty imposed by the trial court on petitioner was indeed erroneous. The dispositive portion of the RTC's Decision reads thus:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is rendered finding accused GUILTY

beyond reasonable doubt as charged which is punished under Article 315, par. 2 (a), and applying the Indeterminate Sentence Law, accused MARY HELEN ESTRADA is hereby sentenced to suffer an indeterminate prison term of TWELVE (12) YEARS of prison mayor maximum as minimum to TWENTY-FOUR (24) YEARS as maximum; to pay back the sum of P68,700.00 to Junimar Bermundo and Rosalie Bermundo; and to pay the costs.

Art. 315 of the Revised Penal Code provides that the penalty of prison correccional in its maximum period to prison mayor in its minimum period shall be imposed if the amount of the fraud is over P12,000.00 but not over P22,000.00; if the amount of fraud exceeds P22,000.00, the penalty provided for shall be imposed in its maximum period, adding one year for each additional P10,000.00, but the total penalty which may be imposed shall not exceed twenty years.

Thus, in this case, since the amount of fraud, which is P68,700.00, exceeds P22,000.00, the penalty should be imposed in the maximum period. The range of the penalty provided for by law is composed of only two periods, thus, to get the maximum period of the imposable penalty, the total number of years included in the two periods should be divided into three. A computation produces the following results: the minimum period is 4 years, 2 months and 1 day to 5 years, 5 months and 10 days; the medium period is 5 years, 5 months and 11 days to 6 years, 8 months and 20 days; and the maximum period is 6 years, 8 months and 21 days to 8 years.[15]

The amount defrauded being in excess of P22,000.00, the penalty imposed should be the maximum period or 6 years, 8 months, and 21 days to 8 years of prison mayor. However, Art. 315 also provides that an additional one year shall be imposed for each additional P10,000.00 amount of the fraud. Since the total amount of the fraud in this case is P68,700.00 ( $P68,700.00 - P22,000.00 = P46,700.00$ ), an additional four (4) years of penalty should be imposed. Thus, the correct imposable maximum penalty is anywhere between 10 years, 8 months and 21 days and 12 years of prison mayor in its maximum period.

Applying the Indeterminate Sentence Law, the minimum penalty that should have been imposed by the RTC should be within the range of the penalty next lower to that prescribed by Article 315 of the Revised Penal Code for the crime committed. Thus, in this case, the minimum penalty should be anywhere between 6 months, and 1 day of prison correccional in its minimum period and 4 years and 2 months of prison correccional in its medium period.

In *Rigor vs. The Superintendent, New Bilibid Prison*,<sup>[16]</sup> this Court found it to be in the interest of justice to correct the penalty imposed by the trial court so as to conform to the penalty prescribed by law despite the fact that the judgment had already become final and executory for therein petitioner's failure to take an appeal. Therein, the Court expounded thus:

However, the Court noted a palpable error in the Joint Decision of the trial court that must be rectified in order to avoid its repetition. The trial court erroneously included an additional one day on the maximum period of arresto mayor imposed on petitioner, which is incorrect, as it is outside the range of said penalty. ...

...

In line with the ruling of the Court in *People vs. Barro, Sr.*, to wit:

"However, where the penalty imposed on the co-accused who did not appeal was a nullity because it was never authorized by law, that penalty imposed on the accused who did not appeal can be corrected to make it conform to the penalty prescribed by law, the reason being that, said penalty can never become final and executory and it is within the duty and inherent power of the Court to have it conformable with law."

the error of the trial court in the present case can be corrected to make it conform to the penalty prescribed by law as it is within the Court's duty and inherent power. "Thus, the correction to be made by this Court is meant only

for the penalty imposed against petitioner to be in accordance with law and nothing else. "[17]

Thus, pursuant to the foregoing ruling, the Court likewise sees it befitting in this case to modify the penalty imposed on petitioner. It must be noted, though, that in the afore-quoted case, the Court also pointed out that the petition for habeas corpus cannot be granted if the accused has only served the minimum of his sentence because he must serve his sentence up to its maximum term.[18]

WHEREFORE, the letter/petition for habeas corpus is DENIED. The petition for review on certiorari is PARTLY GRANTED insofar only as the penalty is concerned. In the interest of justice, the sentence of petitioner in Criminal Case No. 94-6230 is MODIFIED as follows: Applying the Indeterminate Sentence Law and there being no mitigating or aggravating circumstance, petitioner is sentenced to suffer an indeterminate prison term of two (2) years of prision correccional as MINIMUM to eleven (11) years of prision mayor as MAXIMUM.

**SO ORDERED.**

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Eubulo G. Verzola and Edgardo F. Sundiam, concurring.

[2] RTC Decision dated July 2, 1997, CA Rollo, pp. 23-24.

[3] Rollo, pp. 69-70.

[4] See Compliance dated November 29, 2002, filed by Judge Sanz Maceda with the Court of Appeals, CA Rollo, pp. 101-102.

[5] Rollo, p. 68.

[6] Rollo, p. 155.

[7] G.R. No. 116511, February 12, 1997, 268 SCRA 115.

[8] Id., pp. 133-134.

[9] G.R. No. 92415, May 14, 1991, 197 SCRA 79.

[10] Id., pp. 87-88.

[11] Fernandez vs. Fernandez, G.R. No. 143256, August 28, 2001, 416 Phil. 322, 337.

[12] G.R. No. 123586, August 12, 2004, 436 SCRA 213, 222.

[13] People vs. Larrañaga, G.R. Nos. 138874-75, February 3, 2004, 421 SCRA 530, 569.

[14] G.R. No. 140243, December 14, 2000, 348 SCRA 197, 207.

[15] People vs. Billaber, G.R. Nos. 114967-68, January 26, 2004, 421 SCRA 27, 42.

[16] G.R. No. 156983, September 23, 2003, 411 SCRA 646.

[17] Id., pp. 650-651.

[18] Id., p. 651.

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