

ROSARIO T. DE VERA, PETITIONER, VS. GEREN A. DE VERA, RESPONDENT.

G.R. No. 172832. April 06, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to reverse the February 28, 2006 Decision[1] of the Court of Appeals (CA) and its May 24, 2006 Resolution[2] in CA-G.R. SP No. 91916.

The facts, as found by the CA, are as follows:

Petitioner Rosario T. de Vera accused her spouse Geren A. de Vera (Geren) and Josephine F. Juliano (Josephine) of Bigamy. They were thus indicted in an Information, the accusatory portion of which reads:

That on or about the 31[st] day of July, 2003, in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the said accused Geren A. De Vera being previously united in lawful marriage with Rosario Carvajal Tobias-De Vera, and without said marriage having been legally dissolved, did, then and there willfully, unlawfully and feloniously contract a second marriage with accused Josephine Juliano y Francisco, who likewise has previous knowledge that accused Geren A. De Vera's previous marriage with Rosario T. De Vera is still valid and subsisting, said second marriage having all the essential requisites for its validity.

CONTRARY TO LAW.[3]

Upon arraignment, Geren pleaded "Guilty." However, in a Motion[4] dated April 8, 2005, he prayed that he be allowed to withdraw his plea in the meantime in order to prove the mitigating circumstance of voluntary surrender. The motion was opposed[5] by petitioner on the ground that not all the elements of the mitigating circumstance of "voluntary surrender" were present. She added that "voluntary surrender" was raised only as an afterthought, as Geren had earlier invoked a "voluntary plea of guilty" without raising the former. Finally, she posited that since the case was ready for promulgation, Geren's motion should no longer be entertained.

In an Order[6] dated June 6, 2005, the Regional Trial Court (RTC) granted Geren's motion and appreciated the mitigating circumstance of voluntary surrender in the determination of the penalty to be imposed. Thus, on even date, the RTC promulgated Geren's Sentence,[7] the dispositive portion of which reads:

WHEREFORE, the court finds accused Geren A. de Vera guilty beyond reasonable doubt of the crime of bigamy as charged in the Information and there being two (2) mitigating circumstances (Plea of guilty and voluntary surrender), and no aggravating circumstance and applying the provision of Article 349 in relation to paragraph 5, Article 64, Revised Penal Code, as amended, and the Indeterminate Sentence Law, accused is hereby sentenced to suffer the penalty of 6 MONTHS of ARRESTO MAYOR, as minimum to FOUR (4) YEARS, TWO (2) MONTHS of PRISION CORRECCIONAL, as maximum.

No pronouncement as to cost.

SO ORDERED.

Unsatisfied, petitioner moved for the partial reconsideration[8] of the decision but the same was denied in an Order[9] dated August 25, 2005.

In the meantime, on June 8, 2005, Geren applied for probation[10] which was favorably acted upon by the RTC by referring it to the Probation Officer of San Juan, Metro Manila.[11]

For failure to obtain favorable action from the RTC, petitioner instituted a special civil action for certiorari before the CA. However, she failed to persuade the CA which rendered the assailed decision affirming the RTC Order and Sentence, and the assailed resolution denying her motion for reconsideration. In sustaining the appreciation of the mitigating circumstance of voluntary surrender, the CA maintained that all its requisites were present.

Hence, the instant petition based on the following grounds:

THE HONORABLE COURT OF APPEALS HAS DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT PROBABLY IN ACCORD WITH LAW AND WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN:

- IT ERRONEOUSLY FAILED TO APPLY THE RULING IN PEOPLE VS. CAGAS REGARDING THE REQUISITES OF VOLUNTARY SURRENDER TO BE APPRECIATED IN THE INSTANT CASE.

- IT INCORRECTLY AFFIRMED THE ORDER AND SENTENCE BOTH DATED JUNE 6, 2005 AND THE ORDER DATED AUGUST 25, 2005 RENDERED BY THE PUBLIC RESPONDENT IN APPRECIATING THE MITIGATING CIRCUMSTANCES OF PLEA OF GUILTY AND VOLUNTARY SURRENDER IN FAVOR OF THE PRIVATE RESPONDENT IN CRIMINAL CASE NO. 130139, AN ACT THAT WARRANTS THIS HONORABLE COURT TO EXERCISE ITS APPELLATE JUDICIAL DISCRETION.[12]

The petition lacks merit.

While we are called upon to resolve the sole issue of whether the CA correctly denied the issuance of the writ of certiorari, we cannot ignore the procedural issues which the trial and appellate courts failed to appreciate.

In filing her motion for reconsideration before the RTC and her petition for certiorari before the CA, petitioner sought the modification of the court's judgment of conviction against Geren, because of the allegedly mistaken application of the mitigating circumstance of "voluntary surrender." The eventual relief prayed for is the increase in the penalty imposed on Geren. Is this action of petitioner procedurally tenable?

Section 7, Rule 120 of the Revised Rules of Criminal Procedure provides:

Sec. 7. Modification of judgment. - A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation.

Simply stated, in judgments of conviction, errors in the decision cannot be corrected unless the accused consents thereto; or he, himself, moves for reconsideration of, or appeals from, the decision.[13]

Records show that after the promulgation of the judgment convicting Geren of bigamy, it was petitioner (as private complainant) who moved for the reconsideration[14] of the RTC decision. This was timely opposed by

Geren, invoking his right against double jeopardy.[15] Although the trial court correctly denied the motion for lack of merit, we would like to add that the same should have been likewise denied pursuant to the above-quoted provision of the Rules.

As explained in *People v. Viernes*,[16] the rule on the modification of judgments of conviction had undergone significant changes before and after the 1964 and 1985 amendments to the Rules. Prior to the 1964 Rules of Court, we held in various cases[17] that the prosecution (or private complainant) cannot move to increase the penalty imposed in a promulgated judgment, for to do so would place the accused in double jeopardy. The 1964 amendment, however, allowed the prosecutor to move for the modification or the setting aside of the judgment before it became final or an appeal was perfected. In 1985, the Rules was amended to include the phrase "upon motion of the accused," effectively resurrecting our earlier ruling prohibiting the prosecution from seeking a modification of a judgment of conviction. Significantly, the present Rules retained the phrase "upon motion of the accused." Obviously, the requisite consent of the accused is intended to protect him from having to defend himself anew from more serious offenses or penalties which the prosecution or the court may have overlooked.[18]

Equally important is this Court's pronouncement in *People v. Court of Appeals*[19] on the propriety of a special civil action for certiorari assailing a judgment of conviction. In that case, the trial court convicted the accused of homicide. The accused thereafter appealed his conviction to the CA which affirmed the judgment of the trial court but increased the award of civil indemnity. The Office of the Solicitor General (OSG), on behalf of the prosecution, then filed before this Court a petition for certiorari under Rule 65, alleging grave abuse of discretion. The OSG prayed that the appellate court's judgment be modified by convicting the accused of homicide without appreciating in his favor any mitigating circumstance. In effect, the OSG wanted a higher penalty to be imposed. The Court declared that the petition constituted a violation of the accused's right against double jeopardy; hence, dismissible. Certainly, we are not inclined to rule differently.

Indeed, a petition for certiorari may be resorted to on jurisdictional grounds. In *People v. Veneracion*,[20] we entertained the petition for certiorari initiated by the prosecution to resolve the issue of whether the RTC gravely abused its discretion in imposing a lower penalty. In that case, the trial judge, fully aware of the appropriate provisions of the law, refused to impose the penalty of death because of his strong personal aversion to the death penalty law, and imposed instead reclusion perpetua. In resolving the case in favor of the prosecution, the Court concluded that the RTC gravely abused its discretion, and remanded the case to the trial court for the imposition of the proper penalty. By so doing, we allowed a modification of the judgment not on motion of the accused but through a petition initiated by the prosecution. But it was an exceptional case. Here and now, we reiterate the rule that review is allowed only in apparently void judgments where there is a patent showing of grave abuse of discretion amounting to lack or excess of jurisdiction. The aggrieved parties, in such cases, must clearly show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.[21]

Grave abuse of discretion defies exact definition, but it generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[22] Obviously, no grave abuse of discretion may be attributed to a court simply because of its alleged misappreciation of the mitigating circumstance of voluntary surrender. Consequently, the trial court's action cannot come within the ambit of the writ's limiting requirement of excess or lack of jurisdiction. Thus, the trial court's action becomes an improper object of, and therefore non-reviewable by, certiorari.[23]

Even if we dwell on the merit of the case, which had already been done by the appellate court, we find no cogent

reason to grant the instant petition.

For voluntary surrender to be appreciated, the following requisites should be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary.[24] The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[25] Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.[26]

Petitioner is correct in saying that in *People v. Cagas*[27] and in *People v. Taraya*,[28] the Court added a fourth requisite before "voluntary surrender" may be appreciated in favor of the accused - that there is no pending warrant of arrest or information filed. Since the warrant of arrest had been issued, petitioner insists that arrest was imminent and the "surrender" could not be considered "voluntary."

In *Cagas*, after the stabbing incident, the accused ran to the upper portion of the cemetery where a police officer caught up with him. Thereupon, he voluntarily gave himself up. The Court held that if the accused did then and there surrender, it was because he was left with no choice. Thus, the "surrender" was not spontaneous.

In *Taraya*, when the accused learned that the police authorities were looking for him (because of a warrant for his arrest), he immediately went to the police station where he confessed that he killed the victim. Notwithstanding such surrender and confession to the police, the Court refused to appreciate the mitigating circumstance in his favor.

Lastly, in *People v. Barcino, Jr.*,[29] the accused surrendered to the authorities after more than one year from the incident in order to disclaim responsibility for the killing of the victim. The Court refused to mitigate the accused's liability because there was no acknowledgment of the commission of the crime or the intention to save the government the trouble and expense in his search and capture; and there was a pending warrant for his arrest.

Certainly, we cannot apply the same conclusion to the instant case. *Cagas* is not applicable because the accused therein did not surrender but was caught by the police. In *Taraya*, the warrant of arrest had, in fact, been issued and was forwarded to the proper authorities for implementation. In *Barcino*, it was a year after the commission of the crime when the accused went to the police station, not for purposes of acknowledging his culpability, nor to save the government the expense and trouble of looking for and catching him, but actually to deny his culpability.

In this case, it appears that the Information was filed with the RTC on February 24, 2005. On March 1, 2005, the court issued an Order finding probable cause for the accused to stand trial for the crime of bigamy and for the issuance of a warrant of arrest. In the afternoon of the same day, Geren surrendered to the court and filed a motion for reduction of bail. After the accused posted bail, there was no more need for the court to issue the warrant of arrest.[30]

The foregoing circumstances clearly show the voluntariness of the surrender. As distinguished from the earlier cases, upon learning that the court had finally determined the presence of probable cause and even before the issuance and implementation of the warrant of arrest, Geren already gave himself up, acknowledging his culpability. This was bolstered by his eventual plea of guilt during the arraignment. Thus, the trial court was correct in appreciating the mitigating circumstance of "voluntary surrender."

We would like to point out that the mere filing of an information and/or the issuance of a warrant of arrest will not automatically make the surrender "involuntary." In *People v. Oco*,[31] the Court appreciated the mitigating

circumstance because immediately upon learning that a warrant for his arrest was issued, and without the same having been served on him, the accused surrendered to the police. Thus, it is clear that notwithstanding the pendency of a warrant for his arrest, the accused may still be entitled to the mitigating circumstance in case he surrenders, depending on the actual facts surrounding the very act of giving himself up.

WHEREFORE, premises considered, the petition is DENIED. The Court of Appeals February 28, 2006 Decision and its May 24, 2006 Resolution in CA-G.R. SP No. 91916 are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio Morales[*], Chico-Nazario and Peralta, JJ., concur.

[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 602 dated March 20, 2009.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe, concurring; rollo, pp. 43-51.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Hakim S. Abdulwahid and Seginando E. Villon, concurring; rollo, pp. 52-53.

[3] Rollo, p. 45.

[4] Id. at 100-101.

[5] Id. at 102-107.

[6] Penned by Judge Jesus G. Bersamira, id. at 115-116.

[7] Id. at 117-118.

[8] Rollo, pp. 122-131.

[9] Id. at 144-145.

[10] Id. at 119-120.

[11] Id. at 139.

[12] Id. at 347-348.

[13] *People v. Astudillo*, 449 Phil. 778, 793-794 (2003).

[14] Rollo, pp. 122-131.

[15] Id. at 143.

[16] 423 Phil. 463 (2001).

[17] *People v. Judge Ruiz*, 171 Phil. 400 (1978); *People v. Pomeroy, et al.*, 97 Phil. 927 (1955); *People v. Ang Cho Kio*, 95 Phil. 475 (1954).

[18] *People v. Astudillo*, *supra* note 13, at 793.

[19] 405 Phil. 247 (2001).

[20] 319 Phil. 364 (1995).

[21] People v. Court of Appeals, 368 Phil. 169, 180 (1999).

[22] Id.

[23] People v. Court of Appeals, 468 Phil. 1, 12 (2004).

[24] People v. Oco, 458 Phil. 815, 851 (2003).

[25] People v. Garcia, G.R. No. 174479, June 17, 2008, 554 SCRA 616, 637; Mendoza v. People, G.R. No. 173551, October 4, 2007, 534 SCRA 668, 697-698.

[26] People v. Garcia, *supra*, at 637-638.

[27] G.R. No. 145504, June 30, 2004, 433 SCRA 290.

[28] 398 Phil. 311 (2000).

[29] 467 Phil. 709 (2004).

[30] Rollo, p. 115.

[31] *Supra* note 24.

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