

MANUEL RODRIGUEZ, PETITIONER, VS. THE DIRECTOR OF PRISONS, RESPONDENT.

G.R. No. 37914. August 29, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for habeas corpus filed by prisoner Manuel Rodriguez, praying that after proper proceedings an order be issued requiring the respondent Director of Prisons to immediately set him at liberty, on the ground that he is illegally detained, inasmuch as he has already served the penalty corresponding to his offence under the provisions of the Revised Penal Code.

The pertinent facts necessary for a solution of the question raised in the present petition are as follows:

Upon arraignment for the crime of estafa in the Court of First Instance of Manila, the petitioner spontaneously pleaded guilty, whereupon the trial court rendered a judgment of conviction, and there being no circumstance to modify his criminal liability, imposed upon him the minimum of the medium degree of the penalty of presidio correccional in its minimum and medium degrees, in accordance with the provisions of paragraph 3, article 534 of the old Penal Code, that is, one year, eight months, and twenty-one days of presidio correccional, to pay an indemnity of P647.70, and to suffer subsidiary imprisonment in case of insolvency.

The first question to decide here is whether or not the provisions of the Revised Penal Code with reference to the crime of estafa, of which the petitioner was convicted, are more favorable to him than those of the old Penal Code.

The penalty of one year, eight months, and twenty-one days imposed upon said petitioner by the trial court is the minimum of the medium degree of the penalty of presidio correccional in its minimum and medium degrees, ranging from six months and one day to four years and two months, as provided in article 534, paragraph 3, of the old Penal Code, as amended by Act No. 3244. The penalty provided in the Revised Penal Code, article 315, paragraph 3, for the same offence is arresto mayor in the maximum degree to prision correccional in the minimum degree, that is, from four months and one day to two years and four months, of which the medium degree is from one year and one day to one year and eight months, which is more lenient and hence more favorable to the petitioner than the same degree of the penalty imposed by article 534, paragraph 3, of the former Penal Code cited above.

Article 22 of the Revised Penal Code provides:

"Art. 22. Retroactive effect of penal laws.—Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

As the provisions of the aforementioned Revised Penal Code with reference to the crime of estafa here in question

are more favorable to the said petitioner, and as the latter is not an habitual criminal, the more lenient penalty provided in the Revised Penal Code must be imposed upon him.

The second question to decide is whether or not in habeas corpus proceedings the mitigating circumstance of voluntary confession of guilt established for the first time in article 13, paragraph 7, of the Revised Penal Code, can be taken into consideration.

The mitigating circumstances, as their name indicates, serve to lessen the penalty fixed by law, and whenever they are present courts are bound to take them into consideration, according to article 77, in connection with article 80, paragraph 3, of the old Penal Code, and article 62, in connection with article 64, paragraph 2, of the Revised Penal Code.

In the present case, the trial court could not legally take into account the mitigating circumstance of voluntary confession of guilt, established in article 13, paragraph 7, of the new Penal Code, because it did not exist in the old Penal Code under which the petitioner herein was prosecuted and sentenced.

Article 22 of the Revised Penal Code, above quoted, extends its benefits even to convicts serving sentence, and the only legal remedy open to them to make use of such benefits is the writ of habeas corpus, inasmuch as, if the penalty imposed upon them under the former penal law was decreased by the revised code, and the latter has retroactive effect, the excess has become illegal. Now then, it appearing from the sentence that there was a voluntary confession of guilt, and that it has served as the basis of conviction, and taking into consideration that had such circumstance been classified by the old Penal Code as a mitigating circumstance, the trial court would have been bound to give it effect, could we now disregard it without failing in our duty in order to give effect to the positive provisions of the law which make all penal laws retroactive in so far as they favor the accused, who is not an habitual criminal, there being no necessity to review the proceeding? In the case before us, the voluntary confession of guilt appears in the sentence and has served as the basis of the defendant's conviction by the trial court; for which reason we must take it into account, in order to give retroactive effect to article 22, cited above, of the Revised Penal Code for the benefit of the petitioner herein.

As we have seen, the aforesaid petitioner was sentenced to one year, eight months, and twenty-one days of presidio correccional, to pay an indemnity of P647.70, and to suffer subsidiary imprisonment in case of insolvency, which is the minimum of the medium degree (from one year, eight months, and twenty-one days to two years, eleven months, and ten days) of the penalty of presidio correccional in the minimum and medium degrees (from six months and one day to four years and two months), prescribed by article 534, paragraph 3, of the old Penal Code, as amended by Act No. 3244. The penalty provided in article 315, paragraph 3, of the Revised Penal Code for the same crime is arresto mayor in the maximum degree to prision correccional in the minimum degree, that is, four months and one day to two years and four months, which is more lenient than that provided in the old Penal Code. Taking into account the mitigating circumstance of voluntary confession of guilt, without any aggravating circumstance to offset it, the penalty provided in the Revised Penal Code must be imposed in the minimum degree, that is, four months and one day to one year (article 80, paragraph 2, of the old Penal Code, and article 64 of the Revised Penal Code), and inasmuch as it is the practice of Courts of First Instance in the exercise of their discretion (article 81, paragraph 7, as amended by section 1 of Act No. 2298) to fix the penalty in the minimum period, and the trial court having fixed the penalty imposed upon the petitioner in the minimum period of the medium degree, we must also fix it accordingly, that is, four months and one day of arresto mayor, which is the minimum period of the minimum degree of the penalty provided by the Revised Penal Code.

The herein petitioner having already served seven months and twenty-nine days of imprisonment, as against the penalty of four months and twenty-one days, with all possible allowances, in accordance with the Revised Penal

Code, he has already more than served his sentence and is entitled to be released immediately.

For the foregoing considerations, we are of opinion and hold that when in a sentence of conviction it appears that the defendant voluntarily confessed his guilt in court before the prosecution has presented its evidence, such voluntary confession shall be taken into account in a petition for habeas corpus to give effect to article 22 of the Revised Penal Code.

Wherefore, the herein petitioner being illegally detained, the petition is granted and the respondent Director of Prisons is hereby ordered to set him at liberty immediately, without special pronouncement of costs. So ordered.

Avanceña, C. J., Villamor, Abad Santos, Imperial, and Butte, JJ., concur.

MALCOLM, J., with whom concur STREET, OSTRAND, HULL, and VICKERS, JJ., dissenting:

We stand squarely on the proposition that, after a court having jurisdiction of a criminal case has rendered a final judgment in that case and the convict has begun to serve his sentence in conformity with that judgment, the courts can not, in habeas corpus proceedings, enter upon a review of the decision or record to determine if a mitigating circumstance should be taken into account in order to obtain a reduction of the penalty and the liberation of the convict. Habeas corpus lies only to determine the question of the jurisdiction and lawful power of the custodian to hold the petitioner in custody, and is not available as a revisory remedy for the correction of errors either of law or fact. (29 C. J., 25; Trono Felipe vs. Director of Prisons [1913], 24 Phil., 121.) The Revised Penal Code provides that felonies and misdemeanors committed prior to the date of effectiveness of this Code shall be punished in accordance with the code or acts in force at the time of their commission, while retroactive effect may only be given to the Revised Penal Code for the benefit of the person guilty of a felony who is not a habitual criminal to determine the proper penalty as found under the old Penal Code and to contrast with it the penalty corresponding to the crime under the Revised Penal Code. But if the courts are to scrutinize the decision and the record to ascertain if mitigating circumstances now found for the first time in the Revised Penal Code are to be given effect, the courts will embark upon uncharted seas and unutterable confusion will result. We believe that the court should not now revise a final judgment by inserting in that judgment a finding relating to a mitigating circumstance, thus permitting the liberation of the accused. As a consequence, our vote is for the denial of the writ.

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