

**THE PEOPLE OF THE PHILIPPINES AND THE HONGKONG &
SHANGHAI BANKING CORPORATION, PETITIONERS, VS. JOSE O.
VERA, JUDGE AD INTERIM OF FIRST INSTANCE OF MANILA, AND
MARIANO CU UNJIEN...**

G. R. No. 45685. December 22, 1937

Ponente: LAUREL, J.

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LAUREL, J.:

After rendition of the judgment of this court in the above-entitled case,[1] the respondent Mariano Cu Unjierig, on November 26, 1937, gave notice of his intention to petition the Supreme Court of the United States for a writ of certiorari for the review of said judgment and, desiring to stay execution during the pendency of the application for the writ and of the proceedings relative thereto in the Supreme Court of the United States, now prays that the corresponding supersedeas bond be fixed, as provided by the rules of this court. The People of the Philippines and the Hongkong and Shanghai Banking Corporation, petitioners in the above-entitled case, oppose the application of the respondent for the granting of a supersedeas bond.

The original action instituted in this court which resulted in the declaration of unconstitutionality of the Probation Act (No. 4221) was for certiorari and prohibition. Respondent Mariano Cu Unjieng, thru counsel, states that as certiorari and prohibition are civil remedies, it is mandatory upon this court to stay enforcement of its judgment in the above-entitled case. (Sec. 46 [a] *infra*, Rules of the Supreme Court of the Philippines.) He also calls attention to the principle that probation can not be granted after the defendant has begun the service of his sentence and to the policy of this court to encourage review of its decisions and judgments on certiorari by the Federal Supreme Court. In opposition, the petitioners state that the judgment of this court declaring the Probation Act unconstitutional and void is self-executing; that there is no judgment in the instant proceedings to be executed and that the supersedeas will serve no useful purpose. The petitioner gave answer to the foregoing objections raised by the respondents and reiterated the arguments advanced by him in support of his petition for the fixing of the bond.

Section 46 (a) of the rules of this, court provides that:

"Whenever it is made to appear by notice in writing that any party to a civil case in which final judgment has been rendered by this court intends to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this court, and it appears that the case is one which, by reason of the amount involved or the nature of the questions of law presented, may be removed to the Supreme Court of the United States by writ of certiorari, and it further appears that the party intending to make application for such writ desires to stay the enforcement of the judgment of this court during the pendency of the application for the writ of certiorari and of the proceedings in the Supreme Court of the United States, if such is granted, this court shall grant a stay, for a term not to exceed ten days, within which the moving party may give a supersedeas bond, and shall designate one of its members to determine the sufficiency of such bond."

The foregoing rule requires that in any civil case in which final judgment has been rendered by this court, if any

party thereto gives notice in writing of his intention to remove the case to the Supreme Court of the United States by writ of certiorari, this court shall grant a stay for the period therein mentioned within which said party may give a supersedeas bond, the sufficiency of which is to be determined by one of the members of this court. It is admitted that certiorari and prohibition are civil remedies but the certiorari and prohibition proceedings originally instituted in this court were, like the proceedings for probation, an incident of the criminal case. Apart from this, it will be noted that the appeal taken is from the judgment of this court declaring the Probation Act unconstitutional and void. That judgment does not command or permit any act to be done. There is nothing there to be actively enforced by execution or otherwise. Because of its negative or prohibitive character, there is nothing to supersede; nothing, as petitioners assert, upon which the stay bond can operate. In reality, the supersedeas is intended to operate on the decision and judgment in the criminal case entitled "The People of the Philippine Islands vs. Mariano Cu Unjieng et al." The decision of the Court of First Instance of Manila in that case, rendered on January 8, 1934 (Criminal Case No. 42649), was affirmed by this court on March 26, 1935 (G. R. No. 41200) [1] The decision of this court in that criminal case has already become final and the petition for a writ of certiorari to review said decision was denied by the Supreme Court of the United States in November of last year. At bottom, supersedeas is being sought to stay the execution of the final judgment in said criminal case. Thereby, the petitioner will continue to be at large and this is the status quo desired to be maintained. We do not think that this should be allowed. (Sec. 46 [f], Rules of the Supreme Court of the Philippines.) The suspensive effect of supersedeas can only operate in this case on the judgment sought to be reviewed and cannot arrest the execution of the final judgment rendered in the criminal case against the respondent Mariano Cu Unjieng. (Cyc. of Fed. Proc, Civil and Criminal, Longsdorf, vol. 6, sec. 2869, p. 362.)

The public interest and the interest of the speedy administration of justice demand prompt execution of the final sentence of conviction rendered against the petitioner. Said petitioner has had all the time and opportunity which the law can possibly afford to anyone in self-defense. He had the assistance of able counsel and had opportunity to appeal to this court and the Supreme Court of the United States, and the least that can be said is that he must abide by this judgment and serve his term. It is further to be observed that the petition for probation of the respondent Mariano Cu Unjieng has already been denied by the trial court.

There is force in the argument that where the case is appealable under the Constitution and law to the Supreme Court of the United States, this court is but an agent of that court and must permit the case to take its due course. In such a case, the appeal is a matter of right. But from this premise it does not follow that a stay must be granted by this court where nothing can be stayed, or that the final decision in a criminal case which can no longer be appealed from should be superseded. Upon the other hand, the wide latitude necessarily possessed by this court in the interpretation of its Rules must be exercised in favor of what is believed to be a matter of public interest in the present case.

As a rule of federal practice in the United States, section 8 cd. of the Act of Congress of February 13, 1925 (43 Stat., 936, 940; 28 U. S. C. A., sec. 350), provides that in any case the execution and enforcement of final judgment or decree which is subject to review by the Supreme Court of the United States on writ of certiorari is discretionary with "a judge of the court rendering the judgment or decree or by a Justice of the Supreme Court," and this rule is reiterated in paragraph 6 of Rule 38 of the Supreme Court of the United States. (Robertson & Kirkham, sec. 413, p. 831 et seq.) In *Magnum Import Co. vs. De Spoturno Coty* (262 U. S., 159, 163; 43 S. Ct., 531; 67 Law. ed., 922), the Supreme Court of the United States, through Chief Justice Taft, said:

"The petition should, in the first instance, be made to the circuit court of appeals, which, with its complete knowledge of the cases, may, with full consideration, promptly pass on it. That court is in a position to judge, first, whether the case is one likely, under our practice, to be taken up by us on certiorari; and, second, whether the balance of convenience requires a suspension of its decree and a withholding of its mandate. It involves no

disrespect to this court for the circuit court of appeals to refuse to withhold its mandate or to suspend the operation of its judgment or decree pending application for certiorari to us. If it thinks a question involved should be ruled upon by this court, it may certify it. If it does not certify, it may still consider that the case is one in which a certiorari may properly issue, and may, in its discretion, facilitate the application by withholding the mandate or suspending its decree. This is a matter, however, wholly within its discretion. If it refuses, this court requires an extraordinary showing before it will grant a stay of the decree below pending the application for a certiorari, and even after it has granted a certiorari, it requires a clear case and a decided balance of convenience before it will grant such stay. These remarks, of course, apply also to applications for certiorari to review judgments and decrees of the highest courts of states."

Petition for stay of execution and the fixing of a supersedeas bond is denied. So ordered.

Avancena,, C. J,t Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

[1] Promulgated November 16, 1937.

[1] 35 Off. Gaz., 738. See also resolutions of December 17, 1935.

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