

FRUCTUOSA VELASCO VDA. DE TALAVERA, ON BEHALF OF HER DAUGHTER FELICIDAD TALAVERA DE CEMBRANO, PETITIONER AND APPELLANT, VS. THE SUPERINTENDENT AND WARDEN OF THE CORRECTIONAL INS...

G.R. No. 46356. April 25, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

On July 9, 1938, an information was filed with the Court of First Instance of Manila and docketed as criminal case No. 56581, charging Felicidad Talavera de Cembrano with having falsified three different ¼ units of Philippine Charity Sweepstakes tickets Nos. 0422413, 0673779, and 0566979, respectively, which units won prizes in the draw of May 15, 1938, and with having presented said units, once falsified, at the Philippine Charity Sweepstakes office, and with having attempted to collect the prizes corresponding to their numbers wherein she nevertheless failed because of the timely discovery of the falsification of said units. (Exhibit A.)

On July 15, 1938, the case was called for hearing, at which the accused appeared and the following examination took place:

"Court. Let the information be read to the accused.

"Clerk of Court. (Mr. Jacinto acting as interpreter in

Ilocano.) Reading the information to the accused.

"Court. To the accused Felicidad Talavera:

"Q. Do you plead guilty or not guilty?—ACCUSED TALAVERA. Guilty."

The accused having pleaded guilty, the trial judge rendered judgment finding her guilty of the crime with which she was charged in the information and sentencing her to suffer an indeterminate penalty of three years, six months and twenty-one days to four years, nine months and eleven days of prison correctional, and the costs of suit. (Exhibit B.)

On the following day the accused began to serve her sentence. (Exhibit C.)

On August 26, 1938, a petition for a writ of habeas corpus was presented on behalf of the prisoner Felicidad Talavera de Cembrano based on the following grounds: first, that the trial judge had no jurisdiction to impose the penalty to which the accused had been sentenced on the ground that said penalty is lower than the minimum prescribed by law, and is consequently null and void; second, that the penalty imposed upon the prisoner was cruel and unusual; and third, that the prisoner was not given an opportunity to utilize the services of an attorney in the hearing of the case.

The petition having been heard and the evidence adduced by the petitioner as well as that of the prosecution

having been considered, the court a quo issued an order on September 28, 1938, the dispositive part of which is as follows:

"In view of all the foregoing, the petition for habeas corpus is dismissed and as a question of law is raised therein, we suggest that the remedy prayed for be sought from the Honorable Supreme Court of the Philippines, or otherwise by an appeal from this order. We are of the opinion that it would have been better if the petition had been presented directly to the Honorable Supreme Court of the Philippines and not to this court whose jurisdiction is analogous to that of the judge who rendered the decision alleged to be illegal and void."

Petitioner interposed an appeal from the above order of dismissal in the form of a petition for a writ of habeas corpus, assigning as errors alleged to have been committed by the court a quo the following:

"1. The lower court erred in holding that it could not decide the merits of the petition for habeas corpus without annulling the judgment rendered in criminal case No. 56581 on July 15, 1938, of the Court of First Instance of Manila which is of analogous jurisdiction with the Court of First Instance of Rizal, and that the accused had already started serving her sentence on July 15, 1938.

"2. The lower court erred in holding that it was not authorized to modify or annul the decision rendered by the Court of First Instance of Manila which is of analogous jurisdiction with the said lower court and that the function of modifying or annulling a decision properly belongs to this Supreme Tribunal.

"3. The lower court erred in not deciding the contention of the petitioner herein that the detention, confinement, imprisonment, and restraint of the prisoner, Felicidad Talavera de Cembrano, by the respondent herein, are unjust, unlawful, and illegal, and that the illegality thereof consists of the following fundamental grounds:

"(1) That the imprisonment was and is predicated and held under a void judgment of Branch II of the Court of First Instance of Manila, for having been made without authority of law and want of authority and jurisdiction to render, impose and pronounce that particular judgment it being different either in character or extent of the punishment from that expressly provided by law for the specific offense of which the imprisoned, Felicidad Talavera de Cembrano stands convicted, and it being below the minimum penalty not specified, nor authorized by the statute made and provided.

"(2) That the penalty imposed upon the imprisoned, Felicidad Talavera de Cembrano, as well as the penalty prescribed by the Revised Penal Code of 1932 for the crime of which she was convicted, is highly in contravention of and very repugnant to that provision of the Bill of Rights in its clause 19, Article III of the Philippine Constitution of 1935 which forbids the infliction of cruel and unusual punishments; and

"(3) That the said accused and prisoner, Felicidad Talavera de Cembrano, was summarily convicted without having enjoyed the constitutional rights to be heard by herself and counsel of her choosing, nor was she ever informed of her constitutional right to a compulsory process to secure the attendance of witnesses in her behalf—all such deprivation of her constitutional rights being and constituting a violation of the provisions of the clause 17 of section 1, Article III, of the Philippine Constitution."

The first question to be decided in the present petition is whether or not the trial court lacked jurisdiction to impose the penalty to which the prisoner was sentenced for the reason that the same is lower than the minimum penalty prescribed by law and is, accordingly, null and void and without any legal effect.

The Courts of First Instance have original jurisdiction to try crimes committed within their territorial jurisdiction whose penalty exceeds six months imprisonment or P200 fine. The accused Felicidad Talavera de Cembrano was charged with the crime of attempted estafa through falsification of a public document, the penalty prescribed by law being the maximum of the penalty corresponding to the more serious crime, which is that of falsification of a public document, or prison correccional in its medium and maximum periods. The penalty of three years, six

months and twenty-one days of prison correccional imposed by the court being higher than six months, the trial court had jurisdiction to impose the same. The fact that said court did not impose on her at the same time the fine prescribed by article 172 of the Revised Penal Code, is at most an error of law and not of jurisdiction.

Neither is the penalty imposed by the trial court cruel and unusual, considering the nature of the crime (*People vs. Araneta*, 48 Phil., 650).

As to whether the accused has been denied her constitutional right to be informed of her right to employ the services of an attorney, the presumption is that the procedure prescribed by law has been observed. (*U. S. vs. Labial and Abuso*, 27 Phil., 82; *U. S. vs. Escalante*, 36 Phil., 743; *People vs. Abuyen*, 52 Phil., 722; *People vs. Del Rosario*, No. 34551, 56 Phil., 796.)

Although it appears from the evidence adduced at the hearing of the petition for habeas corpus that the accused Felicidad Talavera de Cembrano had not been informed of her constitutional right to be heard by herself or counsel, and although section 17 of General Orders No. 58 imposes on the court the duty to inform her of such right and to ask whether she desires to have a lawyer before arraignment, which does not positively appear to have been done, nevertheless, the mere violation of constitutional provisions or the denial of a constitutional right in the proceedings in a case, cannot be a ground for a petition for a writ of habeas corpus when the error is not of such a nature as to void the whole proceedings, and the remedy for such error is ordinarily that of appeal. (29 *Corpus Juris*, page 29.) "Mere errors in point of law, however serious, committed by a criminal court in the exercise of its jurisdiction over a case properly subject to its cognizance, cannot be reviewed by habeas corpus. That writ cannot be employed as a substitute for the writ of error." (Citations follow.), (*McMicking vs. Schields*, 238 U. S., 99; 59 *Law. ed.*, 1220; 41 Phil., 971, 979.)

In view of the foregoing considerations, we are of the opinion and so hold that the failure of a court to inform the accused before arraignment of his right to be assisted by counsel, is an error of law which should be remedied by appeal and cannot be a ground for a petition for a writ of habeas corpus.

Wherefore, the petition is denied with costs to the petitioner. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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