

FELIPE TORIBIO AND JULIAN LA-BRADOR, PETITIONERS, VS. HON. TEMISTOCLES B. DIEZ, JUDGE, REGIONAL TRIAL COURT, NEGROS ORIENTAL (BRANCH 37), AND THE PEOPLE OF THE PHILIPPINES, RESP...*G.R. No. 84623. May 08, 1992*

Ponente: NARVASA, J.

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At issue in this case is the timeliness and propriety of the petitioners' application for probation in view of the amendment of Presidential Decree No. 968 --- in accordance with which such an application could be filed even if an appeal from a judgment of conviction had been perfected --- by Presidential Decree No. 1990 --- providing that "no application for probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction" --- which latter decree became effective only after the petitioners had perfected their appeal.

Petitioners Toribio and Labrador, together with Vicente Saycon, were accused of arson thru reckless imprudence in the Regional Trial Court of Negros Oriental, Branch 37, the case being docketed as Criminal Case No. 2373. The action resulted in their conviction by a Decision promulgated on February 12, 1986 in virtue of which they were each sentenced to pay a fine of P15,000.00, with subsidiary imprisonment in case of insolvency.

Toribio, Labrador and Saycon took an appeal to the Court of Appeals on February 19, 1986,[1] but several months later, or more precisely on December 8, 1986, Toribio and Labrador -- Saycon having died in the meantime -- filed in the Court of Appeals a pleading entitled "Explanation and Withdrawal of Appeal," in which they confirmed their counsel's act of earlier withdrawing their appeal since "they were applying for probation and (hence) were not interested anymore in prosecuting the appeal." Acting thereon, the Appellate Court promulgated a Resolution on May 13, 1987 dismissing the case as regards the deceased, Vicente Saycon, and considering as WITHDRAWN the appeal of Toribio and Labrador "on the ground that they are going to apply for probation." Entry of the Resolution was made on the same day.

Twenty-one days later, or on June 3, 1987, the records of the case having been remanded back to the Regional Trial Court, Toribio and Labrador presented a "Motion for Probation" with said Trial Court. In their motion they alleged that "they withdrew their appeal before the Court of Appeals for the reason that they wish to avail themselves of the benefits of the probation law," and prayed that "an Order issue directing the Provincial Probation Officer to make an investigation and report on their probation status, suspending in the meantime the execution of the sentence, and, after such investigation and report shall have been made, that an Order of Probation be issued in ** (their) favor **."

The Assistant Provincial Fiscal filed a "Comment" on the motion for probation, simply drawing attention to Presidential Decree No. 1990 supposedly issued on October 5, 1985, Section 1 whereof "amended Section 4 of Presidential Decree No. 968 to read as follows:

Section 4. Grant of probation. -- Subject to the provisions of this Decree the Trial Court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions that it may deem best - Provided, That no application for probation shall be entertained or granted if the defendant has perfected an appeal from judgment of conviction.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An Application for Probation shall be filed with the Trial Court. The filing of the Application shall be deemed a waiver of the right to appeal."

The petitioners filed a Reply dated August 6, 1987. They pointed out that PD 1990 was printed in Volume 81 of the Official Gazette dated December 30, 1985 but said issue was released for circulation only on July 1, 1986; hence, PD 1990 became effective after fifteen (15) days from July 1, 1986, in accordance with Article 2 of The Civil Code, or on July 16, 1986.[2] Said PD 1990 was therefore not yet in effect at the time that they appealed from the judgment of conviction pronounced against them, in February, 1986, at which time they "already enjoyed the right to ask for probation in spite of appeal because the Probation Law (without P.D. 1990) gave them that right." They argued that the amendatory law should not be given retroactive effect because it is penal in character, and their right to probation should be determined as of the time of the filing of their appeal, which they subsequently withdrew even "before submission of their briefs."

The Trial Judge ruled against them, by Order rendered on January 7, 1988. His Honor adverted to "two important changes ** effected on Section 4 (of the original Probation Law [PD 968]), namely that the application for probation by the defendant shall now be made 'within the period for perfecting an appeal,' and that no probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction;" pointed out that it was "only on June 3, 1987 that the accused filed their Motion for Probation, or almost a year after P.D. 1990 became effective," and that "(e)ven if it were to be considered that the accused never appealed, still their application for probation will hit a snag in view of the provision which states that the application for probation must be filed within the period for perfecting an appeal ** (because) filed way, way beyond the period for perfecting an appeal." Upon these premises, the Judge denied the motion for probation.

This Order is assailed as a "patent nullity" by the petitioners in the special civil action of certiorari at bar, who thus pray that it be set aside and their application for probation be allowed due course. Parenthetically, it would seem that the Appellate Court's Resolution of May 13, 1987 dismissing the case as regards the deceased, Vicente Saycon, and considering as WITHDRAWN the appeal of Toribio and Labrador "on the ground that they are going to apply for probation," is in implicit agreement with the petitioners' thesis.

Certain it is that at the time that the petitioners perfected their appeal from the judgment convicting them of the felony of arson thru criminal negligence (in February, 1986), the law (P.D. 968) did not prohibit their subsequently applying for probation in the event of an unsuccessful appeal. In other words, as the law stood at that time, persons convicted of a crime had the option either to apply for probation immediately, or first take an appeal and then, if unsuccessful in the appeal, ask for probation. The presidential decree removing that option (P.D. 1990) -- i.e., requiring that applications for probation be made within the period of appeal, and providing that perfection of an appeal from a verdict of conviction operated to bar the appellant from availing of the benefit of probation -- did not take effect until July 16, 1986, five months or so after the perfection of the petitioners' appeal to the Court of Appeals.

It was, to be sure, unreasonable to expect that, in February, 1986, petitioners would comply with the requirement that applications for probation be made within the period for perfecting an appeal, since no such requirement was then in existence and legally exigible. So, also, at the time that the appeal was actually taken by the petitioners, no

forfeiture or loss of the right to apply for probation could possibly have operated against them, since no such conditionality was then in existence. In other words, it is neither logically nor legally, possible to determine the juridical effects of their appeal vis a vis probation by norms laid down some five (5) months after their appeal. Nor is it fair that petitioners, who availed of the statutory option then existing -- to appeal and subsequently apply for probation -- be deemed to have lost that option because of its removal by later legislation. In ruling otherwise, the respondent Trial Court ignored patent logical and legal considerations and thereby incurred in error amounting to grave abuse of discretion.

WHEREFORE, the challenged Order of January 7, 1988 of respondent Trial Court is NULLIFIED AND SET ASIDE; and said Trial Court is DIRECTED to accept and pass upon the merits of the petitioners' application for probation. No costs.

SO ORDERED.

Cruz, Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] The appeal was docketed as CA-G.R. Cr. No. 03112

[2] "ART. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. * *."

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