

RICARDO A. LLAMADO, PETITIONER, VS. HONORABLE COURT OF APPEALS AND LEON GAW, RESPONDENTS.

G.R. No. 84850. June 29, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner Ricardo A. Llamado was Treasurer of Pan Asia Finance Corporation. Together with Jacinto N. Pascual, Sr., President of the same corporation, petitioner Llamado was prosecuted for violation of Batas Pambansa Blg. 22 in Criminal Case No. 85-38653, Regional Trial Court of Manila, Branch 49. The two (2) had co-signed a postdated check payable to private respondent Leon Gaw in the amount of P186,500.00, which check was dishonored for lack of sufficient funds.

In a decision dated 10 March 1987, the trial court convicted the petitioner alone, since jurisdiction over the person of Pascual, who had thoughtfully fled the country, had not been obtained. Petitioner was sentenced to imprisonment for a period of one (1) year of prision correccional and to pay a fine of P200,000.00 with subsidiary imprisonment in case of insolvency. Petitioner was also required to reimburse respondent Gaw the amount of P186,500.00 plus the cost of suit.

On 20 March 1987, after the decision of the trial court was read to him, petitioner through counsel orally manifested that he was taking an appeal. Having been so notified, the trial court on the same day ordered the forwarding of the records of the case to the Court of Appeals. On 9 July 1987, petitioner through his counsel received from the Court of Appeals a notice to file his Appellant's Brief within thirty (30) days. Petitioner managed to secure several extensions of time within which to file his brief, the last extension expiring on 18 November 1987.[1]

Petitioner Llamado, even while his Appellant's Brief was being finalized by his then counsel of record, sought advice from another counselor. On 30 November 1987, petitioner, with the assistance of his new counsel, filed in the Regional Trial Court a Petition for Probation invoking Presidential Decree No. 968, as amended. The Petition was not, however, accepted by the lower court, since the records of the case had already been forwarded to the Court of Appeals.

Petitioner then filed with the Court of Appeals a "Manifestation and Petition for Probation" dated 16 November 1987, enclosing a copy of the Petition for Probation that he had submitted to the trial court. Petitioner asked the Court of Appeals to grant his Petition for Probation or, in the alternative, to remand the Petition back to the trial court, together with the records of the criminal case, for consideration and approval under P.D. No. 968, as amended. At the same time, petitioner prayed that the running of the period for the filing of his Appellant's Brief be held in abeyance until after the Court of Appeals shall have acted on his Petition for Probation.

In a "Manifestation and Motion" dated 3 March 1988 and filed with the Court of Appeals, petitioner formally withdrew his appeal conditioned, however, on the approval of his Petition for Probation.[2]

Complying with a Resolution of the Court of Appeals, the Office of the Solicitor General filed a Comment stating that it had no objection to petitioner Llamado's application for probation. Private respondent-complainant, upon the other hand, sought and obtained leave to file a Comment on petitioner Llamado's application for probation, to which Comment, petitioner filed a Reply. Private respondent then filed his "Comment" on the Office of the Solicitor General's Comment of 18 March 1988.

In a Resolution dated 17 June 1988, the Court of Appeals, through Mr. Justice Magsino, denied the Petition for Probation. A dissenting opinion was filed by Mr. Justice Bellosillo while Mr. Justice Santiago submitted a concurring opinion. Petitioner moved for reconsideration which Motion was denied by the Court of Appeals on 23 August 1988, with another, briefer, dissenting opinion from Mr. Justice Bellosillo.

Petitioner now asks this Court to review and reverse the opinion of the majority in the Court of Appeals and, in effect, to accept and adopt the dissenting opinion as its own.

The issue to be resolved here is whether or not petitioner's application for probation which was filed after a notice of appeal had been filed with the trial court, after the records of the case had been forwarded to the Court of Appeals and the Court of Appeals had issued the notice to file Appellant's Brief, after several extensions of time to file Appellant's Brief had been sought from and granted by the Court of Appeals but before actual filing of such brief, is barred under P.D. No. 968, as amended.

P.D. No. 968, known as the Probation Law of 1976, was promulgated on 24 July 1976. Section 4 of this statute provided as follows:

"Sec. 4. Grant of Probation. — Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant and upon application at any time of said defendant, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

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, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal.

An order granting or denying probation shall not be appealable." (Italics supplied).

It will be noted that under Section 4 of P.D. No. 968, the trial court could grant an application for probation "at any time" "after it shall have convicted and sentenced a defendant" and certainly after "an appeal has been taken from the sentence of conviction." Thus, the filing of the application for probation was "deemed —. [to constitute] automatic withdrawal of a pending appeal."

On 1 December 1977, Section 4 of P.D. No. 968 was amended by P.D. No. 1257 so as to read as follows:

"Sec. 4. Grant of Probation. — Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant but before he begins to serve his sentence and upon his application, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

The prosecuting officer concerned shall be notified by the court of the filing of the application for probation and he may submit his comment on such application within ten days from receipt of the notification.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine with subsidiary imprisonment in case of insolvency. An application for probation shall be filed with the trial court, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal. In the latter case, however, if the application is filed on or after the date of the judgment of the appellate court, said application shall be acted upon by the trial court on the basis of the judgment of the appellate court." (Italics supplied)

Examination of Section 4, after its amendment by P.D. No. 1257, reveals that it had established a prolonged but definite period during which an application for probation may be granted by the trial court. That period was: "After [the trial court] shall have convicted and sentenced a defendant but before he begins to serve his sentence." Clearly, the cut-off time — commencement of service of sentence — takes place not only after an appeal has been taken from the sentence of conviction, but even after judgment has been rendered by the appellate court and after judgment has become final. Indeed, in this last situation, Section 4, as amended by P.D. No. 1257 provides that "the application [for probation] shall be acted upon by the trial court on the basis of the judgment of the appellate court"; for the appellate court might have increased or reduced the original penalty imposed by the trial court. It would seem beyond dispute then that had the present case arisen while Section 4 of the statute as amended by P.D. No. 1257 was still in effect, petitioner Llamado's application for probation would have had to be granted. Mr. Llamado's application for probation was filed well before the cut-off time established by Section 4 as then amended by P.D. No. 1257.

On 5 October 1985, however, Section 4 of the Probation Law of 1976 was once again amended. This time by P.D. No. 1990. As so amended and in its present form, Section 4 reads as follows:

"Sec. 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 as it may deem best; Provided, That no application for probation shall be entertained or granted if the defendant has perfected an appeal from the 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."

"An order granting or denying probation shall not be appealable." (Italics supplied).

In sharp contrast with Section 4 as amended by PD No. 1257, in its present form, Section 4 establishes a much narrower period during which an application for probation may be filed with the trial court: "after [the trial court] shall have convicted and sentenced a defendant and — within the period for perfecting an appeal —." As if to provide emphasis, a new proviso was appended to the first paragraph of Section 4 that expressly prohibits the grant of an application for probation "if the defendant has perfected an appeal from the judgment of conviction." It

is worthy of note too that Section 4 in its present form has dropped the phrase which said that the filing of an application for probation means "the automatic withdrawal of a pending appeal." The deletion is quite logical since an application for probation can no longer be filed once an appeal is perfected; there can, therefore, be no pending appeal that would have to be withdrawn.

In applying Section 4 in the form it exists today (and at the time petitioner Llamado was convicted by the trial court), to the instant case, we must then inquire whether petitioner Llamado had submitted his application for probation "within the period for perfecting an appeal." Put a little differently, the question is whether by the time petitioner Llamado's application was filed, he had already "perfected an appeal" from the judgment of conviction of the Regional Trial Court of Manila.

The period for perfecting an appeal from a judgment rendered by the Regional Trial Court, under Section 39 of Batas Pambansa Blg. 129, Section 19 of the Interim Rules and Guidelines for the Implementation of B.P. Blg. 129 and under the 1985 Rules on Criminal Procedure, as amended, or more specifically Section 5 of Rule 122 of the Revised Rules of Court, is fifteen (15) days from the promulgation or notice of the judgment appealed from. It is also clear from Section 3 (a) of Rule 122 that such appeal is taken or perfected by simply filing a notice of appeal with the Regional Trial Court which rendered the judgment appealed from and by serving a copy thereof upon the People of the Philippines. As noted earlier, petitioner Llamado had manifested orally and in open court his intention to appeal at the time of promulgation of the judgment of conviction, a manifestation at least equivalent to a written notice of appeal and treated as such by the Regional Trial Court.

Petitioner urges, however, that the phrase "period for perfecting an appeal" and the clause "if the defendant has perfected an appeal from the judgment of conviction" found in Section 4 in its current form, should not be interpreted to refer to Rule 122 of the Revised Rules of Court; and that the "whereas" or preambulatory clauses of P.D. No. 1990 did not specify a period fifteen (15) days for perfecting an appeal.[3] It is also urged that "the true legislative intent of the amendment (P.D. No. 1990) should not apply to petitioner who filed his Petition for probation at the earliest opportunity then prevailing and withdrew his appeal." [4] Petitioner invokes the dissenting opinion rendered by Mr. Justice Bellosillo in the Court of Appeals. Petitioner then asks us to have recourse to "the cardinal rule in statutory construction" that "penal laws [should] be liberally construed in favor of the accused," and to avoid "a too literal and strict application of the proviso in P.D. No. 1990" which would "defeat the manifest purpose or policy for which the [probation law] was enacted —,"

We find ourselves unable to accept the eloquently stated arguments of petitioner's counsel and the dissenting opinion. We are unable to persuade ourselves that Section 4 as it now stands, in authorizing the trial court to grant probation "upon application by [the] defendant within the period for perfecting an appeal" and in reiterating in the proviso that

no application for probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction."

did not really mean to refer to the fifteen-day period established, as indicated above, by B.P. Blg. 129, the Interim Rules and Guidelines Implementing B.P. Blg. 129 and the 1985 Rules on Criminal Procedure, but rather to some vague and undefined time, i.e., "the earliest opportunity" to withdraw the defendant's appeal. The whereas clauses invoked by petitioner did not, of course, refer to the fifteen-day period. There was absolutely no reason why they should have so referred to that period for the operative words of Section 4 already do refer, in our view, to such fifteen-day period. Whereas clauses do not form part of a statute, strictly speaking; they are not part of the operative language of the statute.[5] Nonetheless, whereas clauses may be helpful to the extent they articulate the

general purpose or reason underlying a new enactment, in the present case, an enactment which drastically but clearly changed the substantive content of Section 4 existing before the promulgation of P.D. No. 1990. Whereas clauses, however, cannot control the specific terms of the statute; in the instant case, the whereas clauses of P.D. No. 1990 do not purport to control or modify the terms of Section 4 as amended. Upon the other hand, the term "period for perfecting an appeal" used in Section 4 may be seen to furnish specification for the loose language "first opportunity" employed in the fourth whereas clause. "Perfection of an appeal" is, of course, a term of art but it is a term of art widely understood by lawyers and judges and Section 4 of the Probation Law addresses itself essentially to judges and lawyers. "Perfecting an appeal" has no sensible meaning apart from the meaning given to those words in our procedural law and so the law-making agency could only have intended to refer to the meaning of those words in the context of procedural law.

Turning to petitioner's invocation of "liberal interpretation" of penal statutes, we note at the outset that the Probation Law is not a penal statute. We, however, understand petitioner's argument to be really that any statutory language that appears to favor the accused in a criminal case should be given a "liberal interpretation." Courts, however, have no authority to invoke "liberal interpretation" or "the spirit of the law" where the words of the statute themselves, and as illuminated by the history of that statute, leave no room for doubt or interpretation. We do not believe that "the spirit of law" may legitimately be invoked to set at naught words which have a clear and definite meaning imparted to them by our procedural law. The "true legislative intent" must obviously be given effect by judges and all others who are charged with the application and implementation of a statute. It is absolutely essential to bear in mind, however, that the spirit of the law and the intent that is to be given effect are to be derived from the words actually used by the law-maker, and not from some external, mystical or metajuridical source independent of and transcending the words of the legislature.

The Court is not here to be understood as giving a "strict interpretation" rather than a "liberal" one to Section 4 of the Probation Law of 1976 as amended by P.D. No. 1990. "Strict" and "liberal" are adjectives which too frequently impede a disciplined and principled search for the meaning which the law-making authority projected when it promulgated the language which we must apply. That meaning is clearly visible in the text of Section 4, as plain and unmistakable as the nose on a man's face. The Court is simply reading Section 4 as it is in fact written. There is no need for the involved process of construction that petitioner invites us to engage in, a process made necessary only because petitioner rejects the conclusion or meaning which shines through the words of the statute. The first duty of a judge is to take and apply a statute as he finds it, not as he would like it to be. Otherwise, as this Court in *Yangco v. Court of First Instance of Manila* warned, confusion and uncertainty in application will surely follow, making, we might add, stability and continuity in the law much more difficult to achieve:

"x x x [w]here language is plain, subtle refinements which tinge words so as to give them the color of a particular judicial theory are not only unnecessary but decidedly harmful. That which has caused so much confusion in the law, which has made it so difficult for the public to understand and know what the law is with respect to a given matter, is in considerable measure the unwarranted interference by judicial tribunals with the English language as found in statutes and contracts, cutting the words here and inserting them there, making them fit personal ideas of what the legislature ought to have done or what parties should have agreed upon, giving them meanings which they do not ordinarily have cutting, trimming, fitting, changing and coloring until lawyers themselves are unable to advise their clients as to the meaning of a given statute or contract until it has been submitted to some court for its interpretation and construction." [6]

The point in this warning may be expected to become sharper as our people's grasp of English is steadily attenuated.

There is another and more fundamental reason why a judge must read a statute as the legislative authority wrote it, not as he would prefer it to have been written. The words to be given meaning whether they be found in the Constitution or in a statute, define and therefore limit the authority and discretion of the judges who must apply those words. If judges may, under cover of seeking the "true spirit" and "real intent" of the law, disregard the words in fact used by the law-giver, the judges will effectively escape the constitutional and statutory limitations on their authority and discretion. Once a judge goes beyond the clear and ordinary import of the words of the legislative authority, he is essentially on uncharted seas. In a polity like ours which enshrines the fundamental notion of limiting power through the separation and distribution of powers, judges have to be particularly careful lest they substitute their conceptions or preferences of policy for that actually projected by the legislative agency. Where a judge believes passionately that he knows what the legislative agency should have said on the particular matter dealt with by a statute, it is easy enough for him to reach the conclusion that therefore that was what the law-making authority was really saying or trying to say, if somewhat ineptly. As Mr. Justice Frankfurter explained:

"Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great judges have constantly admonished their brethren of the need for discipline in observing the limitations. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense of internal contradictions. x x x." [7]

Petitioner finally argues that since under Section 4 of Probation Law as amended has vested in the trial court the authority to grant the application for probation, the Court of Appeals had no jurisdiction to entertain the same and should have (as he had prayed in the alternative) remanded instead the records to the lower court. Once more, we are not persuaded. The trial court lost jurisdiction over the case when petitioner perfected his appeal. The Court of Appeals was not, therefore, in a position to remand the case except for execution of judgment. Moreover, having invoked the jurisdiction of the Court of Appeals, petitioner is not at liberty casually to attack that jurisdiction when exercised adversely to him. In any case, the argument is mooted by the conclusion that we have reached, that is, that petitioner's right to apply for probation was lost when he perfected his appeal from the judgment of conviction.

WHEREFORE, the Decision of the Court of Appeals in C.A.-G.R. No. 04678 is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Records on Appeal, p. 21.

[2] Records on Appeal, pp. 41-42.

[3] These clauses read:

“WHEREAS, it has been the sad experience that persons who are convicted of offenses and who may be entitled to probation still appeal the judgment of conviction even up to the Supreme Court, only to pursue their application for probation when their appeal is eventually dismissed.

WHEREAS, the process of criminal investigation, prosecution, conviction and appeal entails too much time and effort, not to mention the huge expenses of litigation, on the part of the State;

WHEREAS, the time, effort and expenses of the Government in investigating and prosecuting accused persons from the lower courts up to the Supreme Court, are often times rendered nugatory when, after the appellate court finally affirms the judgment of conviction, the defendant applies for and is granted probation;

WHEREAS, the probation was not intended as an escape hatch and should not be used to obstruct and delay the administration of justice, but should be availed of at the first opportunity by offenders who are willing to be reformed and rehabilitated.

WHEREAS, it becomes imperative to remedy the problems above-mentioned confronting our probation system."

[4] Petition, p. 11; Rollo, p. 12.

[5] *Yazoo & Mississippi Valley R. Co. v. Thomas*, 132 US 174 (1889); 33 L Ed 302. See also *Idaho Commission on Human Rights v. Campbell*, 506 P 2d 112; 95 Id. 215 (1973).

[6] 29 Phil, at 188 (1915); Italics supplied.

[7] *Some Reflections on the Reading of Statutes*, 47 Columbia Law Review 527 (1947); Reprinted in 4 Sutherland, *Statutory Construction* (4th ed. 1972) 409 at 416-417. Italics supplied.

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