

**AGUSTIN SALGADO, PETITIONER, VS. THE HON. COURT OF APPEALS,
(FOURTEENTH DIVISION) AND HON. ANTONIO SOLANO, IN HIS
CAPACITY AS PRESIDING JUDGE OF THE RTC-QUEZON CITY
(BRANCH 86) ...**

G.R. No. 89606. August 30, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for review on certiorari seeks to set aside the decision of the Court of Appeals in CA-G.R. SP No. 15493 entitled, "Agustin Salgado v. Hon. Antonio P. Solano, et al.," which affirmed the Order dated December 22, 1987 of the Regional Trial Court of Quezon City (Branch 86) sustaining its previous order dated November 18, 1987 directing the issuance of a writ of execution to enforce the civil liability of herein petitioner in Criminal Case No. 0-33798.

The facts are as follows:

Petitioner was charged with the crime of serious physical injuries in Criminal Case No. 0-33798 entitled, "People of the Philippines v. Agustin Salgado," before the Regional Trial Court of Quezon City (Branch 86). After trial, judgment was rendered on October 16, 1986 finding him guilty beyond reasonable doubt of the crime charged. The dispositive portion of the decision, states:

"WHEREFORE, the court finds the accused AGUSTIN P. SALGADO, JR., guilty beyond reasonable doubt of the crime of serious physical injuries, defined and penalized under paragraph 3 Article 263 of the Revised Penal Code, and appreciating in his favor the following mitigating circumstances:

- 1) voluntary surrender; and
- 2) No intention to commit so grave a wrong

hereby sentence (sic) said accused to suffer imprisonment for a period of four (4) months and twenty (20) days, with the accessories provided for by law, and to indemnify the victim, Francisco Lukban, Jr., in the sum of P126,633.50 as actual or compensatory damages, and the sum of P50,000.00 as damages for the incapacity of Francisco Lukban to pursue and engage in his poultry business.

"SO ORDERED." (p. 19, Rollo)

On October 17, 1986, petitioner filed an application for probation with the trial court. The application was granted in an Order dated April 15, 1987. The order contained, among others, the following condition:

"x x x.

"4. Indemnify the victim FRANCISCO LUKBAN, JR., in a monthly installment of P2,000.00 (TWO THOUSAND PESOS) every month during the entire period of his probation." (P. 15, Rollo)

For the months of May, June, July, August, September and October, 1987, petitioner complied with the above condition by paying in checks the said sum of P2,000.00 monthly, through the City Probation Officer, Perla Diaz Alonzo. Private respondent Francisco Lukban, Jr. voluntarily accepted the checks and subsequently encashed them (p. 19, Rollo).

On September 19, 1987, private respondent Francisco Lukban, Jr. filed a motion for the issuance of a writ of execution for the enforcement of the civil liability adjudged in his favor in the criminal case. The motion was opposed by the petitioner.

On November 18, 1987, the trial court issued an order granting the motion for issuance of a writ of execution. A motion for reconsideration was filed by petitioner but it was denied on December 22, 1987. After the denial of his motion for reconsideration, the petitioner filed directly with this Court a petition for review of the trial court's order granting the motion for issuance of a writ of execution. We referred the petition to the Court of Appeals in a resolution dated April 13, 1988 (p. 18, Rollo).

On March 16, 1989, respondent Court of Appeals rendered a decision affirming the order of the trial court granting the motion for the issuance of a writ of execution. A motion for reconsideration was filed by petitioner but respondent Court of Appeals denied the motion in a resolution dated August 3, 1989 (pp. 9-10, Rollo).

The petitioner went to this Court via a petition for review which was filed on September 26, 1989 and raised the following assignment of errors:

"ASSIGNMENT OF ERRORS

"1. THE COURT OF APPEALS ERRED IN HOLDING THAT THE ORDER DATED APRIL 15, 1987 HAS NOT MODIFIED THE DECISION OF OCTOBER 16, 1986 AS FAR AS THE CIVIL ASPECT IS CONCERNED.

"2. THE COURT OF APPEALS ERRED IN HOLDING THAT THE CONDITION IN THE PROBATION ORDER MODIFYING OR ALTERING THE CIVIL LIABILITY OF THE OFFENDER IS UNAUTHORIZED AND NOT SANCTIONED BY LAW." (p. 10, Rollo)

In its decision affirming the order of the trial court granting private respondent's motion for the issuance of a writ of execution, respondent Court of Appeals advanced three (3) reasons: 1) that the decision dated October 16, 1986 had become final and executory and the judge who rendered the decision cannot lawfully alter or modify it; 2) that it is clear that the probation law provides only for the suspension of sentence imposed on the accused; that it has absolutely no bearing on his civil liability and that none of the conditions listed under Section 10 of the Probation Law relates to civil liability; and 3) that private respondent is not estopped because he had nothing to do with the filing and the granting of the probation.

There is no question that the decision of October 16, 1986 in Criminal Case No. Q-33798 finding petitioner guilty beyond reasonable doubt of the crime of serious physical injuries had become final and executory because the filing by respondent of an application for probation is deemed a waiver of his right to appeal (See Section 4 of P.D. 968. Likewise, the judgment finding petitioner liable to private respondent for P126,633.50 as actual damages and P50,000.00 as consequential damages had also become final because no appeal was taken therefrom. Hence, it is beyond the power of the trial court to alter or modify. In the case of *Samson v. Hon. Montejo*, L-18605, October 31, 1963, 9 SCRA 419, 422-423 cited by respondent appellate court, it was held:

"x x x, once a decision becomes final, even the court which rendered it cannot lawfully alter or modify the same (*Rili, et al. v. Chunaco, et al.*, G.R. No. L-6630, Feb. 29, 1956), especially, considering the fact that, as in the instant case, the alteration or modification is material and substantial (*Ablaza v. Sycip, et al.*, L-12125,

Nov. 23, 1960). In the case of Behn, Meyer & Co., v. J. McMicking, et al., 11 Phil. 276, (cited by respondents), it was held that 'where a final judgment of an executory character had been rendered in a suit the mission of the court is limited to the execution and enforcement of the said final judgment in all of its parts and in accordance with its express orders.' The judgment in question is clear, and with the amended writ of execution, the liability of petitioner is greatly augmented, without the benefit of proper proceeding. (underscoring ours)

We do not believe, however, that the order dated April 15, 1987 granting the application for probation and imposing some conditions therein altered or modified the decision dated October 16, 1986. The April 15, 1987 Order of the trial court granting the application for probation and providing as one of the conditions therein that petitioner indemnify private respondent P2,000.00 monthly during the period of probation did not increase or decrease the civil liability adjudged against petitioner but merely provided for the manner of payment by the accused of his civil liability during the period of probation.

It is the submission of private respondent that in the case of Budlong v. Apalisok, No. 60151, June 24, 1983, 122 SCRA 935, We already ruled that "(T)he 'conviction and sentence' clause of the statutory definition clearly signifies that probation affects only the criminal aspect of the case."

The pronouncement in Apalisok that "probation affects only the criminal aspect of the case" should not be given a literal meaning. Interpreting the phrase within the context of that case, it means that although the execution of sentence is suspended by the grant of probation, it does not follow that the civil liability of the offender, if any, is extinguished. This can be inferred from a reading of the text of the Apalisok case where the issue that was involved therein was whether a grant of probation carries with it the extinction of the civil liability of the offender. The reason for ruling that the grant of probation does not extinguish the civil liability of the offender is clear," (T)he extinction or survival of civil liability are governed by Chapter III, Title V, Book I of the Revised Penal Code where under Article 113 thereof provides that: 'x x x, the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact that he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon, commutation of sentence, or any other reason.'" In the instant case, the issue is not the survival or extinction of the civil liability of a probationer but, whether or not the trial court may impose as a condition of probation the manner in which a probationer may settle his civil liability against the offended party during the period of probation.

Respondent appellate court ruled that Section 10 of the Probation Law enumerates thirteen (13) conditions of probation not one of which relates to the civil liability of the offender (p. 22, Rollo).

Section 4 of Presidential Decree No. 968 (Probation Law of 1976) provides:

"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.

In the case of Florentino L. Baclayon v. Hon. Pacito G. Mutia, et al., G.R. No. 59298, April 30, 1984, 129 SCRA 148, We ruled that the conditions listed under Section 10 of the Probation Law are not exclusive. Courts are allowed to impose practically any term it chooses, the only limitation being that it does not jeopardize the constitutional rights of the accused. Courts may impose conditions with the end that these conditions would help the probationer develop into a law-abiding individual. Thus,

"The conditions which trial courts may impose on a probationer may be classified into general or mandatory and special or discretionary. The mandatory conditions, enumerated in Section 10 of the Probation Law,

require that probationer should a) present himself to the probation officer designated to undertake his supervision at such place as may be specified in the order within 72 hours from receipt of said order, and b) report to the probation officer at least once a month at such time and place as specified by said officer. Special or discretionary conditions are those additional conditions, listed in the same Section 10 of the Probation Law, which the courts may additionally impose on the probationer towards his correction and rehabilitation outside of prison. The enumeration, however, is not inclusive. Probation statutes are liberal in character and enable courts to designate practically any term it chooses as long as the probationer's constitutional rights are not jeopardized. There are innumerable conditions which may be relevant to the rehabilitation of the probationer when viewed in their specific individual context. It should, however, be borne in mind that the special or discretionary conditions of probation should be realistic, purposive and geared to help the probationer develop into a law-abiding and self-respecting individual. Conditions should be interpreted with flexibility in their application, and each case should be judged on its own merits - on the basis of the problems, needs and capacity of the probationer. x x x."

The primary consideration in granting probation is the reformation of the probationer. That is why, under the law, a post sentence investigation, which is mandatory, has to be conducted before a person can be granted probation to help the court in determining whether the ends of justice and the best interest of the public as well as the defendant will be served by the granting of the probation (Alvin Lee Koenig, *Post Sentence Investigation, Its Importance and Utility*, IBP Journal, Special Issue on Probation, Vol. 5, No. 5, pp. 381-387). In the case of *People v. Lippner*, 219 Cal. 395, 26 p. 2d, 457, 458 (1933), among those which has to be ascertained is the financial condition and capacity of the offender to meet his obligations:

"x x x there can be no real reformation of a wrong-doer unless there is at least a willingness on his part to right the wrong committed, and the effect of such an act upon the individual is of inestimable value, and to a large extent, determines whether there has been any real reformation. To be clearly consonant with such a purpose, the post sentence investigation must include a financial examination of the offender's capability in order to work out a system of payment which can effectively accomplish reimbursement without interfering with the defendant's family and other financial responsibilities, according to U.S. Model Penal Code of the American Law Institute. x x x. (Sec. 301.1 Comments (Tentative Draft No. 2, 1954; Also 2 U.S. Dept. of Justice, Attorney General's Survey of Release Procedures 38 (1939) cited in *The Period and Conditions of Probation* by Sergio F. Go, IBP Journal Special Issue on Probation, Vol. 5, No. 5, pp. 406-420)." (underscoring ours)

The trial court is given the discretion to impose conditions in the order granting probation "as it may deem best." As already stated, it is not only limited to those listed under Section 10 of the Probation Law. Thus, under Section 26, paragraph (d) of the Rules on Probation Methods and Procedures, among the conditions which may be imposed in the order granting probation is:

"Sec. 26. Other conditions of Probation. The Probation Order may also require the probationer in appropriate cases, to:

"x x x

"(d) comply with a program of payment of civil liability to the victim or his heirs x x x."

However, this is not to say that the manner by which the probationer should satisfy the payment of his civil liability in a criminal case during the probation period may be demanded at will by him. It is necessary that the condition which provides for a program of payment of his civil liability will address the offender's needs and capacity. Such need may be ascertained from the findings and recommendations in the post-sentence investigation report submitted by the Probation Officer after investigation of the financial capacity of the offender and that such condition is to the end that the interest of the state and the reformation of the probationer is best served.

In the instant case, in the absence of any showing to the contrary, it is presumed that when the trial court issued the order of April 15, 1987, the condition that the petitioner has to pay private respondent P2,000.00 a month for the satisfaction of the civil liability adjudged against him was recommended by the probation officer who prepared the post-sentence investigation and that such condition is, in the judgment of the trial court, "deemed best" under the circumstances.

Counting from April 15, 1987, the date of issuance of the order granting probation which under the law is also the date of its effectivity (Sec. 11, P.D. 968), the probation period must have lapsed by now. Hence, the order for petitioner to indemnify the private respondent in the amount of P2,000.00 monthly during the period of probation must have also lapsed. If such were the case, there would therefore, be no more obstacle for the private respondent to enforce the execution of the balance of the civil liability of the petitioner. However, the records are bereft of allegations to this effect.

ACCORDINGLY, the petition is GRANTED. The decision dated March 16, 1989 of respondent Court of Appeals affirming the order of the trial court granting the motion for the issuance of a writ of execution as well as the resolution dated August 3, 1989 of the same court are hereby REVERSED and SET ASIDE.

SO ORDERED.

Narvasa, (Chairman), Gancayco, and Grino-Aquino, JJ., concur.

Cruz, J., see separate opinion.

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separate opinion

CRUZ, J.:

I concur in the result, the issue having become moot and academic. At the same time, however, I must express my reservation on the holding that the condition imposed on the probation was a valid requirement and within the sound discretion of the trial court. I am not certain that the award of civil damages, having become final and executory, could still be amended by the trial court by providing for its payment in installments during the period of probation. It seems to me that the said award was already a vested property right of the victim and that it could be enforced by him immediately and in full as in ordinary money judgments where there is no indication of a different mode and period of payment. There is none in the decision in question. That decision was never appealed. Consequently, I submit that the trial judge had no authority to in effect defer the immediate enforcement of the civil award of P176,633.50 by requiring the probationer to pay it at the rate of only P2,000.00 a month, a paltry amount, indeed, considering the total obligation. The fact that the victim accepted the payments did not validate the condition, which was void ab initio as far as he was concerned. At any time he saw fit, he could have disregarded that condition as an invalid amendment of the decision and demanded the immediate issuance of a writ of execution for the full amount of the civil award. I believe that was his vested right.

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