

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RITA LABRIAGA AND JOEL LABRIAGA, ACCUSED-APPELLANTS.

G.R. No. 92418. November 20, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

Accused-appellant Rita Labriaga, through the Public Attorney's Office (PAO), filed this motion for reconsideration with modification of sentence. Accused-appellant prays for the retroactive application to her case of R.A. No. 7659 and for her eventual release from confinement at the Correctional Institution for Women in Mandaluyong as a consequence of the application of the new law to her case.

Rita Labriaga was caught on January 28, 1988 selling two tea bags of marijuana in Daraga, Albay in a buy-bust operation conducted by the Narcotics Command. With her at the time was the other accused-appellant Joel Labriaga, who was found in possession of 3 grams of marijuana. Rita was found in possession of 115 grams of marijuana.

Corresponding charges for violation of R.A. No. 6425, otherwise known as the Dangerous Drugs Act, were filed against them. Rita Labriaga was convicted by the Regional Trial Court of Legazpi City, Branch 10, of drug pushing and sentenced to life imprisonment and fined P20,000.00. On the other hand, Joel Labriaga was convicted of illegal possession of marijuana and sentenced to 6 years and 1 day to 8 years and fined P6,000.00.

In her Motion for Reconsideration with Modification of Sentence, Rita Labriaga invokes the ruling in *People v. Simon*, 234 SCRA 555 (1994) that if the quantity of marijuana involved is less than 250 grams, the penalty imposable is prision correccional, that is, 6 months and 1 day to 6 years. Rita Labriaga contends that as the quantity of marijuana involved in her case is only 2 tea bags and in the case of *People v. Simon* the contents of the 4 tea bags weighed 3.8 grams, the amount of the marijuana in her case would approximately be 1.9 grams only and therefore the penalty of life imprisonment originally meted out to her should be reduced to prision correccional.

The attached prison records of the accused-appellant (Annexes C and D) show that she has been confined in the Correctional Institution for Women since March 20, 1990. She has been credited in the service of her sentence with 1 year, 7 months and 2 days, the time she spent under preventive imprisonment, and has actually served (as of August 17, 1995), inclusive of good conduct time allowances, 6 years, 5 months and 1 day.

Considering the quantity of marijuana involved and the period of her incarceration, which is more than the maximum penalty of prision correccional, the Court finds merit in the accused-appellant's motion. This conclusion is not altered even if the 115 grams found in Ms. Labriaga's possession, which was not considered in the disposition of her appeal, were to be included in determining the amount of marijuana involved, as the total amount would still be less than 250 grams.

The appropriate remedy of accused-appellant is to file a petition for habeas corpus considering that the decision in

this case is now final. However, in accordance with our resolution in *Angeles v. Bilibid Prison*, G.R. No. 117568, January 4, 1995 and *People v. Agustin*, G.R. No. 98362, September 5, 1995, in which we held that the rules on habeas corpus should be liberally applied in cases which are sufficient in substance, we have decided to treat the motion in this case as a substantial compliance with the rules on habeas corpus. The accused-appellant Rita Labriaga, having served more than the maximum imposable penalty of prision correccional, should be released.

ACCORDINGLY, the Director of the Bureau of Corrections is ORDERED to RELEASE Rita Labriaga y Millares from confinement at the Correctional Institution for Women, unless there is other lawful cause for detaining her.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.
Francisco, J., on leave.

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