

HEIRS OF THE LATE FRANCISCO ABUEG, PETITIONERS, VS. HONORABLE COURT OF APPEALS (SECOND DIVISION) AND JOSELITO ORAÑA, RESPONDENTS.

G.R. No. 96803, February 17, 1993

Ponente: NOCON, J.

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NOCON, J.:

This petition for certiorari, prohibition and mandamus seeks to nullify (a) the resolution of the Court of Appeals dated May 8, 1990 in CA-G.R. SP No. 20376[1] restraining the Regional Trial Court of Tagaytay City from enforcing its sentence of imprisonment against private respondent Joselito Oraña under date of September 6, 1989 and (b) the decision[2] of the same court in the same case dated July 10, 1990 setting aside the orders of January 16, 1990 and March 1, 1990 denying the application for probation and directing it to immediately release private respondent from imprisonment under his original bail bond.

The following is a narration of the relevant facts and proceedings:

Sometime on February 9, 1988, private respondent Joselito Oraña, while driving a Yamaha Enduro motorcycle travelling on the highway within the territorial jurisdiction of the municipality of Silang, Cavite, bumped a bicycle driven by one Francisco Abueg, resulting in his death. The private respondent was charged with Reckless Imprudence Resulting in Homicide and Damage to Property in an information dated June 1, 1988. After trial of the case, private respondent was found guilty as charged and sentenced to four (4) years and two (2) months of imprisonment and to pay the heirs of his victim P50,000.00 in moral damages, P50,000.00 in exemplary damages and P37,700.00 in actual damages.

On September 19, 1989, private respondent filed an application for probation alleging, in essence, that he is qualified to avail of the benefits of the Probation Law and that he is sincerely remorseful and penitent for the offense committed and, if granted probation, he is willing to undergo supervision under such terms and conditions that may be imposed.

Pursuant to the order dated October 24, 1989, Probation Officer Amelia J. Itoc prepared a Post Sentence Investigation Report recommending that private respondent be granted probation for a period of six (6) years, which report and recommendation was concurred in and approved by Probation Officer Jose N. Sidlacan. The private prosecutor representing the heirs of the victim objected to the application of the private respondent for probation and was virulent in attacking the psychological aspect or the state of mind of the private respondent.

On January 16, 1990, the trial court denied the application for probation and so with private respondent's motion for reconsideration in a resolution dated March 1, 1990.

On March 27, 1990, private respondent filed a petition for certiorari with preliminary mandatory injunction and restraining order with the Court of Appeals. As aforesaid, on May 8, 1990, respondent Court of Appeals issued a temporary restraining order enjoining the enforcement of the sentence of imprisonment against private respondent

and on July 10, 1990, rendered a decision, the dispositive portion of which is hereby quoted as follows:

"WHEREFORE, the petition for certiorari is hereby GRANTED. The assailed orders of respondent court dated January 16, 1990 and March 1, 1990 in Criminal Case No. TG-1309-88 are hereby SET ASIDE and the respondent court is hereby directed, to give due course to petitioner's application for probation. In the meantime, the petitioner shall be immediately released provisionally under his original bail bond. No costs."[3]

Petitioners herein anchor their arguments on the nullity of the resolution and decision of the appellate court on the finality of the decision and the orders of the trial court dated September 6, 1989, January 16, 1990 and March 1, 1990. They contend that the trial court had already committed private respondent to the City Jail of Tagaytay City on May 4, 1990, and was actually serving his final sentence of imprisonment when subsequently released therefrom pursuant to the resolution of the Court of Appeals on May 8, 1990. Thus, petitioners raised as errors of the Court of Appeals the following:

"I

IN RESTRAINING THE HON. REGIONAL TRIAL COURT OF TAGAYTAY CITY FROM ENFORCING ITS SEPTEMBER 6, 1989 SENTENCE OF IMPRISONMENT OF PRIVATE RESPONDENT.[4]

II

IN GRANTING THE PETITION FOR CERTIORARI WITH PRELIMINARY MANDATORY INJUNCTION AND RESTRAINING ORDER; SETTING ASIDE THE FINAL AND DULY EXECUTED ORDERS OF THE HON. COURT A QUO DATED JANUARY 16 AND MARCH 1, 1990 AND GIVING DUE COURSE TO THE APPLICATION FOR PROBATION; AND DIRECTING THE HON. COURT A QUO TO IMMEDIATELY RELEASE THE PRISONER UNDER HIS ORIGINAL BAIL BOND.[5]

III

IN DIRECTING THE HON. REGIONAL TRIAL COURT OF TAGAYTAY CITY TO GIVE DUE COURSE TO PRIVATE RESPONDENT APPLICATION FOR PROBATION."[6]

Petitioners argue that the challenged temporary restraining order of the Court of Appeals issued on May 8, 1990 is unavailing since private respondent was already serving his sentence of imprisonment on said date. Consequently, there was no pending action in the court below which may be restrained. Citing *Santiago v. Castro*,[7] moreover, a petition for certiorari is not available when orders sought to be annulled had already become final and executory, and *Manning vs. NLRC*,[8] that a final judgment cannot be modified even if the purpose is to correct a perceived erroneous conclusion of fact or law, regardless of whether the modification is to be made by the court rendering it or by the highest court of the land.

Petitioners also argue that the contested decision of the Court of Appeals under Rule 65 cannot interrupt the regular course of finality and execution of the Regional Trial Court's final and duly executed orders of January 16, 1990 and March 1, 1990.

We find the foregoing arguments inapplicable to the case at bar and hence, devoid of merit.

There is no question that the decision of the trial court dated September 6, 1989 finding respondent guilty as charged has become final but it is incorrect to say that it has become executory. In *Palo vs. Militante*,[9] this Court held that Section 7, Rule 12 of the 1985 Rules on Criminal Procedure is explicit that a judgment in a criminal case becomes final when the accused has applied for probation. This is totally in accord with Section 4 of Presidential Decree No. 968, otherwise known as the Probation Law of 1976, as amended, which in part provides that the filing of an application for probation is deemed a waiver of the right to appeal. In other words, the judgment ipso facto attains finality, although it is not executory pending resolution of the application for probation.

It is true that the application for probation of private respondent was eventually denied on January 16, 1990 and so with his motion for reconsideration on March 1, 1990. Petitioner, however, was of the erroneous belief that said orders attained finality for failure of private respondent to appeal. Nothing is further from the truth. Under Section 24 of the Rules on Probation, the order of the court granting or denying probation is not appealable. Since there being no appeal, private respondent has no other plain, speedy and adequate remedy in the ordinary course of law against the denial of his application for probation except for the special civil action of certiorari with preliminary mandatory injunction and restraining order which he timely filed before the respondent appellate court on March 27, 1990. With the filing of the original petition for certiorari, it is clear that the denial of probation has not become final and executory.

Neither can petitioners' argument that the whole legal controversy has become moot and academic as the trial court, after denying private respondent's application for probation had already ordered his commitment to prison on May 4, 1990 well-taken.

Indeed, private respondent's commitment to prison would have rendered his petition before the Court of Appeals moot and academic if the same is implemented and private respondent started to serve his sentence of conviction. Precisely, to forestall such an eventuality, the Court of Appeals issued its order of May 8, 1990 restraining the enforcement and/or continuance of private respondent's sentence of imprisonment. A restraining order may be utilized not only to enjoin the commission of an act but also the continuance thereof, if the same has already started. Its essential function is to preserve the status quo during the pendency of the suit. Accordingly, the timely action of the Court of Appeals precluded the rendering of the case moot and academic.

In their third assignment of error, petitioners assail the ruling of the Court of Appeals directing the trial court to give due course to the application for probation of private respondent as having been issued with grave abuse of discretion. They contend that the private respondent is not entitled to probation for the simple reason that in his personal being there is nothing mental, physical, environmental or the likes thereof, to be corrected, rehabilitated, reformed and given individualized treatment outside of prison; that he has not shown remorse as he has not asked forgiveness from any of the heirs who were left orphaned and that he drives around unlicensed and under the influence of liquor. Petitioners also claim that the grant of probation to private respondent will result in his "eventual release from his civil liabilities to the unfortunate heirs of the late Francisco Abueg for actual damages of P37,700.00, moral damages of P50,000.00, exemplary damages of P50,000.00, with subsidiary imprisonment in case of insolvency x x x." [10]

We find no grave abuse of discretion on the part of the appellate court in issuing the assailed order. Petitioners' opposition to the grant of probation banked not only on generalities but also on self-serving, gratuitous and baseless allegations such as that private respondent drives around unlicensed and under the influence of liquor with nothing to support the same. Petitioners likewise failed to rebut the factual basis for the objective and comprehensive post investigation report made by probation officers Amalia J. Itoc and Jose N. Sidlacan.

Finally, We find an appalling want of knowledge on the part of petitioners on the philosophy, purpose and objectives of the probation law when they alleged that the grant of probation will result in the eventual release of private respondent from his civil liabilities. This is not so. The system of probation was established as a less costly alternative to the government in the imprisonment of offenders. It is a disposition under which an offender, after conviction and sentence, is released from imprisonment only. He is not released from his civil liabilities. The condition usually imposed in the grant of probation as embodied in the post sentence investigation report is that the offender pays his civil indemnity which in this case amounts to a total of P137,700.00 [11] Contrary to petitioners' belief, the granting of probation will allow private respondent to secure a stable job which will enable him to pay the adjudged civil liabilities.

WHEREFORE, finding no grave abuse of discretion on the part of the appellate court, the petition is DISMISSED. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Campos, Jr., JJ., concur.

[1] Ponente: Justice Antonio M. Martinez and concurred in by Justice Jose A.R. Melo and Justice Filemon H. Mendoza.

[2] Ponente: Justice Antonio M. Martinez with Justice Jose A.R. Melo and Justice Nicolas P. Lapeña, concurring.

[3] Rollo, p. 27.

[4] Id., p. 7.

[5] Id., p. 9.

[6] Id., p. 11.

[7] G.R. No. 62014-16, 128 SCRA 545 (1984).

[8] G.R. No. 83018, 195 SCRA 155 (1991).

[9] G.R. No. 76100, 184 SCRA 395 (1990).

[10] Rollo, p. 15.

[11] Original Records, p. 29.

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