

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONRADO LUCAS Y BRIONES, ACCUSED-APPELLANT.

G.R. Nos. 108172-73. January 09, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In the decision in this case, promulgated on 25 May 1994, the First Division touched on the nature of the penalty of reclusion perpetua in the light of Section 21 of R.A. No. 7659 [1] which amended Article 27 of the Revised Penal Code by specifically fixing the duration of reclusion perpetua at twenty (20) years and one (1) day to forty (40) years. It opined that since no corresponding amendment to Article 76 of the Revised Penal Code was made, the said law has not made explicit an intention to convert reclusion perpetua into a divisible penalty. Nevertheless, it applied Article 65 of the Revised Penal Code [2] and stated:

"Accordingly, the time included in the penalty of reclusion perpetua (twenty [20] years and one [1] day to forty [40] years) can be divided into three equal portions with each composing a period. The periods of reclusion perpetua would then be as follows:

minimum

-

20 years and 1 day to 26 years and 8 months

medium

-

26 years, 8 months and 1 day to 33 years and 4 months

maximum

-

34 years, 4 months and 1 day to 40 years.

Taking into account the presence of the aggravating circumstance of relationship in Criminal Case No. Q-91-18465, the accused may finally be sentenced to thirty-four (34) years, four (4) months and one (1) day of reclusion perpetua."

It then modified the challenged decision of the trial court by changing the penalty in Criminal Case No. Q-91-18465 from reclusion perpetua, as imposed by the trial court, to "imprisonment of 34 years, 4 months and 1 day of reclusion perpetua."

In a motion for clarification seasonably filed by the appellee on 28 June 1994 which was not opposed by the accused-appellant in his comment, the appellee asks the Court to correct the duration of the maximum period of

reclusion perpetua from thirty-four (34) years, four (4) months and one (1) day to forty (40) years, as stated in the decision, to thirty-three (33) years, four (4) months and one (1) day to forty (40) years.

Since the issue of whether the amendment of Article 27 of the Revised Penal Code by Section 21 of R.A. No. 7659 has made reclusion perpetua a divisible penalty is one of first impression and of sufficient importance, the First Division referred the motion for clarification to the Court en banc. The latter accepted the referral.

After deliberating on the motion and re-examining the legislative history of R.A. No. 7659, the Court concludes that although Section 17 of R.A. No. 7659 has fixed the duration of reclusion perpetua from twenty (20) years and one (1) day to forty (40) years, there was no clear legislative intent to alter its original classification as an indivisible penalty. It shall then remain as an indivisible penalty.

R.A. No. 7659 is a consolidation of Senate Bill (SB) No. 891 [3] and House Bill (HB) No. 62. [4] SB No. 891 seeks to amend Article 27 of the Revised Penal Code by inserting therein what are to be considered heinous crimes and to penalize these not with the death penalty, but with reclusion perpetua only, with the qualification that "any person sentenced to reclusion perpetua for ... [such heinous] crimes under this Code shall be required to serve thirty (30) years, without entitlement to good conduct time allowance and shall be considered for executive clemency only after service of said thirty (30) years." HB No. 62 defines and enumerates the heinous crimes and seeks to penalize them with the death penalty.

An amendment by substitution to SB No. 891 was introduced by the Senate Special Committee on Death Penalty. The amendment was entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose some Articles of Act No. 3815, as Amended, and for other Purposes." The substitute amendment sought to amend (a) Article 25 of the Revised Penal Code by providing in the scale of penalties the following:

"CAPITAL PUNISHMENT: DEATH

Afflictive Penalties: LIFE IMPRISONMENT

reclusion perpetua

Reclusion Temporal"

and (b) Article 27 of the same Code by inserting therein the penalty of life imprisonment and providing a specific duration therefor as well as for reclusion perpetua. The proposed amended Article 27 pertinently reads as follows:

"ART. 27. LIFE IMPRISONMENT. -- THE PENALTY OF LIFE IMPRISONMENT SHALL BE FROM THIRTY YEARS AND ONE DAY TO FORTY YEARS.

reclusion perpetua -- THE PENALTY OF reclusion perpetua SHALL BE FROM TWENTY YEARS AND ONE DAY TO THIRTY YEARS."

Thus, life imprisonment, heretofore a penalty imposed by special penal statutes, was sought to be incorporated as a penalty in the Revised Penal Code with a specific duration.

In his sponsorship of this substitute bill, Senator Arturo M. Tolentino explained the incorporation of life imprisonment as follows:

"But a very basic amendment was made, and that is, an amendment that will create a new penalty, known in this bill as life imprisonment. The new penalty was created in order to enable the committee to provide, in some crimes, a three-grade penalty that would be composed of reclusion perpetua, as now provided by the Revised Penal Code, as the lowest grade; on top of that, would be life imprisonment; and the third highest

grade would be the death penalty. With this new grade of penalty, it became possible for this bill now under consideration to impose a penalty ranging from reclusion perpetua to death, composed of actually three periods or grades." [5]

However the Bicameral Conference Committee eliminated from the proposed amendment of Article 27 the penalty of life imprisonment but extended the duration of reclusion perpetua from twenty (20) years and one (1) day to forty (40) years. Thus, in his sponsorship of the Conference Committee report on both the substitute SB No. 891 and HB No. 62, Senator Tolentino stated:

"By this, Mr. President, we have this new consolidated session that is before the Members of this Chamber. There is one part or one portion of the Senate version that we have agreed to be eliminated and that is the creation of a new penalty known as 'life imprisonment.' Even in this Chamber, there were some doubts as to the creation of this new penalty of life imprisonment because reclusion perpetua, which is in the Revised Penal Code and retained in this bill, also means the same thing. It is a perpetual imprisonment.

So in order to still accommodate the increase of imprisonment by means of life imprisonment -- while we eliminated the new penalty of life imprisonment which would last from 30 years and one day to forty years -- what we did was simply to extend the period of reclusion perpetua by adding 30 to 40 years imprisonment to the original 20 to 30 years, making the reclusion perpetua in this new bill range from 20 years and one day to 40 years. This would be what we had called before a 'flexible or divisible penalty.'" [6]

Although Senator Tolentino described reclusion perpetua as a "flexible or divisible" penalty, yet in the portion of his sponsorship speech immediately succeeding the foregoing description, he explicitly stated that the said penalty is one of the two indivisible penalties in the Revised Penal Code. Thus:

"Instead of having three penalties in the divisible [sic] penalty, we would have only two indivisible penalties -- reclusion perpetua to death; and the principles on aggravating and mitigating circumstances in the Revised Penal Code will be applicable to this penalty of reclusion perpetua to death." [7]

At first glance, by stating that reclusion perpetua was "flexible and divisible" and then later referring to it as one of two indivisible penalties, Senator Tolentino might have fallen into an inconsistency. If we recall, however, what he stated in his sponsorship speech of the substitute bill where, as above adverted to, he mentioned the proposed three-grade penalty ranging from reclusion perpetua to death, then indeed he could also be correct in the sense that such three-grade concept would in fact be a complex penalty which would be divisible, with each grade composing a period and which could then be governed by Article 77 [8] of the Revised Penal Code. That Senator Tolentino had this three-grade penalty in mind when he spoke of flexibility and divisibility and that he stood by his subsequent statement that reclusion perpetua is one of two indivisible penalties is further borne out by his explanations in relation to the rule in Article 63 of the Revised Penal Code on the application of mitigating and aggravating circumstances. Thus:

"Senator Tolentino:

In general, Mr. President, in all of these heinous crimes, the penalty is reclusion perpetua. Reclusion perpetua to death, if there is no aggravating circumstance, then the penalty will be of the lesser degree, which means: life imprisonment. But even if there is an aggravating circumstance, still death penalty will not be applied because it will still be the lesser penalty. This is how it is going to operate.

But if there is an aggravating circumstance, without any mitigating circumstance, the Revised Penal Code provides for the application of the higher penalty or the death penalty. That is how it is going to operate....to death. Unless otherwise provided in the bill itself, this means that the provisions on aggravating and mitigating circumstances will apply to them. Therefore that means, if there is no mitigating and no aggravating

circumstances, the penalty of death will not be applied because under the provisions of the Revised Penal Code, when there are two indivisible penalt[ies] such as

....

Senator Tañada.

Mr. President, permit me to clarify the matter further. The Gentleman is saying that the principle of mitigating and aggravating circumstances is applicable in general to all these crimes listed in this consolidated version. That means that, first, if there is no aggravating circumstance and there is no mitigating circumstance, then the crime, although listed here in the measure, will not be punished by death but by the lesser penalty of reclusion perpetua.

Senator Tolentino.

Yes, Mr. President.

Senator Tañada.

Second, if there is an aggravating circumstance, but there is also a mitigating circumstance, then generally speaking, that aggravating circumstance is offset by the mitigating circumstance in which case the lesser penalty which is reclusion perpetua will be the one imposed.

Senator Tolentino.

That is right, Mr. President." [9]

Article 63 of the Revised Penal Code provides that in all cases in which the law prescribes a single indivisible penalty, it shall be applied regardless of any mitigating or aggravating circumstance that may have attended the commission of the deed, and if the law prescribes a penalty composed of two indivisible penalties, then the greater penalty shall be applied if there is present only one aggravating circumstance, and the lesser penalty shall be applied when the commission of the act was attended by some mitigating circumstance but without an aggravating circumstance or when there was neither mitigating nor aggravating circumstance, and if both mitigating and aggravating circumstances were present, the court shall reasonably allow them to offset one another taking into account their number and importance and then to apply the preceding rules according to the result of such compensation.

Verily, if reclusion perpetua was reclassified as a divisible penalty, then Article 63 of the Revised Penal Code would lose its reason and basis for existence. To illustrate, the first paragraph of Section 20 of the amended R.A. No. 6425 provides for the penalty of reclusion perpetua to death whenever the dangerous drugs involved are of any of the quantities stated therein. If Article 63 of the Code were no longer applicable because reclusion perpetua is supposed to be a divisible penalty, then there would be no statutory rules for determining when either reclusion perpetua or death should be the imposable penalty. In fine, there would be no occasion for imposing reclusion perpetua as the penalty in drug cases, regardless of the attendant modifying circumstances.

This problem revolving around the non-applicability of the rules in Article 63 assumes serious proportions since it does not involve only drug cases, as aforesaid. Under the amendatory sections of R.A. No. 7659, the penalty of reclusion perpetua to death is also imposed on treason by a Filipino (Section 2), qualified piracy (Section 3), parricide (Section 5), murder (Section 6), kidnapping and serious illegal detention (Section 8), robbery with homicide (Section 9), destructive arson (Section 10), rape committed under certain circumstances (Section 11), and plunder (Section 12).

Now then, if Congress had intended to reclassify reclusion perpetua as a divisible penalty, then it should have

amended Article 63 and Article 76 of the Revised Penal Code. The latter is the law on what are considered divisible penalties under the Code and what should be the duration of the periods thereof. There are, as well, other provisions of the Revised Penal Code involving reclusion perpetua, such as Article 41 on the accessory penalties thereof and paragraphs 2 and 3 of Article 61, which have not been touched by a corresponding amendment.

What then may be the reason for the amendment fixing the duration of reclusion perpetua? The deliberations in the Bicameral Conference Committee and in both Chambers of Congress do not enlighten us on this, except the cryptic statement of Senator Tolentino adverted to above on the elimination of the "new penalty" of life imprisonment by the Bicameral Conference Committee. It may, however, be pointed out that although the Revised Penal Code did not specify the maximum of reclusion perpetua, it is apparent that the maximum period for the service of this penalty shall not exceed forty (40) years. In *People vs. Reyes*, [10] this Court, speaking through Mr. Justice Florenz D. Regalado, stated:

"We hold that there is legal basis, both in law and logic, for Presidential Decree No. 818 to declare that any penalty exceeding twenty (20) years, or the maximum duration of reclusion temporal, is within the range of reclusion perpetua.

It will be observed that Article 27 of the Code provides for the minimum and maximum ranges of all the penalties in the Code (except bond to keep the peace which shall be for such period of time as the court may determine) from arresto menor to reclusion temporal, the latter being specifically from twelve years and one day to twenty years. For reclusion perpetua, however, there is no specification as to its minimum and maximum range, as the aforesaid article merely provides that '(a)ny person sentenced to any of the perpetual penalties shall be pardoned after undergoing the penalty for thirty years, unless such person by reason of his conduct or some other serious cause shall be considered by the Chief Executive as unworthy of pardon.'

The other applicable reference to reclusion perpetua is found in Article 70 of the Code which, in laying down the rule on successive service of sentences where the culprit has to serve more than three penalties, provides that 'the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him,' and '(i)n applying the provisions of this rule the duration of perpetual penalties (pena perpetua) shall be computed at thirty years.'

The imputed duration of thirty (30) years for reclusion perpetua, therefore, is only to serve as the basis for determining the convict's eligibility for pardon or for the application of the three-fold rule in the service of multiple penalties. Since, however, in all the graduated scales of penalties in the Code, as set out in Article 25, 70 and 71, reclusion perpetua is the penalty immediately next higher to reclusion temporal, it follows by necessary implication that the minimum of reclusion perpetua is twenty (20) years and one (1) day with a maximum duration thereafter to last for the rest of the convict's natural life although, pursuant to Article 70, it appears that the maximum period for the service of penalties shall not exceed forty (40) years. It would be legally absurd and violative of the scales of penalties in the Code to reckon the minimum of reclusion perpetua at thirty (30) years since there would thereby be a resultant lacuna whenever the penalty exceeds the maximum twenty (20) years of reclusion temporal but is less than thirty (30) years." [11]

At most then, in fixing a specific duration for reclusion perpetua, Section 21 of R.A. No. 7659 merely restated the existing jurisprudence.

WHEREFORE, the Court Resolved to MODIFY the decision of 25 May 1994 in this case by DELETING therefrom the disquisitions on whether reclusion perpetua is a divisible penalty and SETTING ASIDE its division into three periods and, finally, AMENDING the dispositive portion thereof to read as follows:

"WHEREFORE, the challenged decision of 28 October 1992 of Branch 104 of the Regional Trial Court of

Quezon City in Criminal Case No. Q-91-18465 and Criminal Case No. Q-91-18466 is hereby AFFIRMED, subject to the modifications above indicated. As modified:

(1)

In Criminal Case No. Q-91-18465, in addition to the penalty of reclusion perpetua imposed by the trial court, accused JOSE CONRADO LUCAS y BRIONES is further ordered to indemnify the offended party, Chanda Lucas y Austria, in the sum of Fifty Thousand Pesos (P50,000.00); and

(2)

In Criminal Case No. Q-91-18466, accused JOSE CONRADO LUCAS y BRIONES is hereby found GUILTY beyond reasonable doubt of the lesser offense of attempted rape and is hereby sentenced to suffer an indeterminate penalty ranging from Four (4) Years, Two (2) Months and One (1) Day of prision correccional as minimum to Ten (10) Years and One (1) Day of prision mayor as maximum, and to indemnify the offended party, Chanda Lucas y Austria, in the sum of Thirty Thousand Pesos (P30,000.00).

Costs against the accused-appellant.

SO ORDERED."

Narvasa, C.J., Padilla, Bidin, Regalado, Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.

Feliciano, J., on leave.

[1] Entitled, "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes."

[2] It reads:

"ART. 65. Rule in cases in which the penalty is not composed of three periods. — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions."

[3] Submitted by the Senate Committee on Constitutional Amendments, Revision of Codes and Laws, and Justice and Human Rights on 30 October 1992 as a consolidation of various individual Senate Bills. It is entitled "An Act Defining Heinous Crimes, Imposing the Penalty Therefor, Amending for that Purpose Article 27 and Adding a New Article 27-A in Act No. 3815, as Amended, The Revised Penal Code, and for other Purposes."

[4] Introduced by Congressman Pablo P. Garcia. It is entitled "An Act to Declare, for Compelling Reasons of Public Policy and in the Interest of National Security, Public Order and Safety, Certain Crimes as Heinous crimes within the Meaning of Section Nineteen, Paragraph One of Article III of the Constitution, and to Provide Penalties Therefor."

[5] Vol. II, CP-Senate, TSP, 100 (Wednesday, 17 March 1993) 9th CRP 1st Regular Session, No. 71, 10.

[6] Vol. II, CP-Senate, TSP, 94 (Thursday, 2 December 1993) 9th CRP, 2nd Regular Session, No. 39, 32.

[7] Id.

[8] It provides:

"ART. 77. When the penalty is a complex one composed of three distinct penalties. — In cases in which the law

prescribes a penalty composed of three distinct penalties, each one shall form a period; the lightest of them shall be the minimum, the next the medium, and the most severe the maximum period."

[9] Vol. II, CP-Senate, TSP, 94, 9[th] CRP, 2nd Regular Session, No. 39; 44--45.

[10] 212 SCRA 402 [1992]

[11] Id. at 407-408 (footnote omitted).

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