

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NIGEL RICHARD GATWARD, AND U AUNG WIN, ACCUSED, NIGEL RICHARD GATWARD, ACCUSED-APPELLANT.

G.R. Nos. 119772-73. February 07, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

The accession into our statute books on December 31, 1993 of Republic Act No. 7659,[1] which authorized the re-imposition of the death penalty and amended certain provisions of the Revised Penal Code and the Dangerous Drugs Act of 1972, raised the level of expectations in the drive against criminality. As was to be expected, however, some innovations therein needed the intervention of this Court for a judicial interpretation of amendments introduced to the dangerous drugs law.[2]

The same spin-off of novelty, this time by the new provision fixing the duration of reclusion perpetua which theretofore had not been spelled out with specificity in the Revised Penal Code, produced some conflicting constructions, more specifically on whether such penalty is divisible or indivisible in nature. That is actually the major issue in these cases, the factual scenario and the culpability of both accused having been.

The antecedents being undisputed, and with a careful review and assessment of the records of this case having sustained the same, we reproduce hereunder the pertinent parts of the decision of the trial court jointly deciding the criminal cases separately filed against each of the accused. Although only one of them, Nigel Richard Gatward, has appealed his conviction to us, for reasons hereinafter explained we shall likewise include the disposition by the court a quo of the case against U Aung Win.

1. The lower court stated the cases against the accused, the proceedings therein and its findings thereon, as follows:

In Criminal Case No. 94-6268, the accused is charged with violating Section 4 of Republic Act No. 6425, the Dangerous Drugs Act of 1972, allegedly in this manner:

“That on or about the 31st (sic) day of August 1994, in the vicinity of the Ninoy Aquino International Airport, Pasay City, x x x, the above-named accused not being authorized by law, did then and there wilfully, unlawfully and feloniously transport heroin (2605.70 grams and 2632.0 grams) contained in separate carton envelopes with a total weight of 5237.70 grams which is legally considered as a prohibited drug.” (Information dated Sept. 14, 1994)

In Criminal Case No. 94-6269, the accused is indicted for transgressing Section 3 of the Dangerous Drugs Act of 1972, purportedly in this way:

“That on or about the 30th day of August 1994, at the arrival area of Ninoy Aquino International Airport, Pasay City, x x x, the above-named accused not being authorized by law, did, then and there wilfully, unlawfully and feloniously import and bring into the Philippines 5579.80 grams of heroin which is legally considered as a

prohibited drug.” (Information also dated Sept. 14, 1994)

Accused Nigel Richard Gatward in Criminal Case No. 94-6268 pleaded not guilty of the charge when arraigned.

On the other hand, accused U Aung Win in Criminal Case No. 94-6269, assisted by Atty. Willy Chan of the Public Attorney’s Office of the Department of Justice, entered a plea of guilty of the crime charged upon his arraignment. Since it is a capital offense, the Court asked searching questions to determine the voluntariness and the full comprehension by the accused of the consequences of his plea. The accused manifested that he was entering a plea of guilty voluntarily without having been forced or intimidated into doing it. The nature of the charge was explained to him, with emphasis that the offense carries with it the penalty of reclusion perpetua to death and his pleading guilty of it might subject him to the penalty of death. The accused answered that he understood fully the charge against him and the consequences of his entering a plea of guilty. The defense counsel likewise made an assurance in open court that he had explained to U Aung Win the nature of the charge and the consequences of his pleading guilty of it.

Having been thus apprised, the accused still maintained his plea of guilty of the offense charged against him. Since the offense admitted by him is punishable by death, the case was still set for trial for the reception of the evidence of the prosecution to prove the guilt and the degree of culpability of the accused and that of the defense to establish mitigating circumstances.

Upon motion of the prosecution without any objection from the defense, these two cases were consolidated and tried jointly, since the offenses charged arose from a series of related incidents and the prosecution would be presenting common evidence in both.

At about 3:30 in the afternoon of August 30, 1994, accused U Aung Win, a passenger of TG Flight No. 620 of the Thai Airways which had just arrived from Bangkok, Thailand, presented his luggage, a travelling bag about 20 inches in length, 14 inches in width and 10 inches in thickness, for examination to Customs Examiner Busran Tawano, who was assigned at the Arrival Area of the Ninoy Aquino International Airport (NAIA) in Pasay City. The accused also handed to Tawano his Customs Declaration No. 128417 stating that he had no articles to declare. When Tawano was about to inspect his luggage, the accused suddenly left, proceeding towards the direction of Carousel No. 1, the conveyor for the pieces of luggage of the passengers of Flight No. 620, as if to retrieve another baggage from it.

After having inspected the luggages of the other incoming passengers, Tawano became alarmed by the failure of U Aung Win to return and suspected that the bag of the accused contained illegal articles. The Customs Examiner reported the matter to his superiors. Upon their instructions, the bag was turned over to the office of the Customs Police in the NAIA for x-ray examination where it was detected that it contained some powdery substance. When opened, the bag revealed two packages containing the substance neatly hidden in between its partitions. Representative samples of the substance were examined by Elizabeth Ayonon, a chemist of the Crime Laboratory Service of the Philippine National Police (PNP) assigned at the Arrival Area of the NAIA, and by Tita Advincula, another chemist of the PNP Crime Laboratory Service at Camp Crame, and found to be positive for heroin. The two chemists concluded that the entire substance, with a total weight of 5,579.80 grams, contained in the two packages found in the bag of U Aung Win, is heroin.

A manhunt was conducted to locate U Aung Win. The personnel of the Bureau of Immigration and Deportation in the NAIA were asked to place the accused in the hold order list. The offices of the different airlines in the airport were also alerted to inform the Enforcement and Security Service and the Customs Police Division of the NAIA of any departing passenger by the name of U Aung Win who would check in at their departure counters. A team was likewise sent to the Park Hotel in Belen St., Paco, Manila, which accused U Aung Win had indicated in his

Customs Declaration as his address in the Philippines. But the accused was not found in that hotel.

At about 7:45 p.m. of the same date of August 30, 1994, Rey Espinosa, an employee of the Lufthansa Airlines, notified the commander of the NAIA Customs Police District Command that a certain Burmese national by the name of U Aung Win appeared at the check-in counter of the airline as a departing passenger. Immediately, a team of law enforcers proceeded to the Departure Area and apprehended the accused after he had been identified through his signatures in his Customs Declaration and in his Bureau of Immigration and Deportation Arrival Card. Customs Examiner Tawano also positively identified the accused as the person who left his bag with him at the Arrival Area of the NAIA.

During the investigation of U Aung Win, the agents of the Customs Police and the Narcotics Command (NARCOM) gathered the information that the accused had a contact in Bangkok and that there were other drug couriers in the Philippines. Following the lead, a team of lawmen, together with U Aung Win, was dispatched to the City Garden Hotel in Mabini St., Ermita, Manila, to enable U Aung Win to communicate with his contact in Bangkok for further instructions. While the police officers were standing by, they noticed two persons, a Caucasian and an oriental, alight from a car and enter the hotel. U Aung Win whispered to Customs Police Special Agent Edgar Quiñones that he recognized the two as drug couriers whom he saw talking with his contact in Bangkok named Mau Mau. The members of the team were able to establish the identity of the two persons as accused Nigel Richard Gatward and one Zaw Win Naing, a Thaiander, from the driver of the hotel service car used by the two when they arrived in the hotel. It was gathered by the law enforcers that Gatward and Zaw Win Naing were scheduled to leave for Bangkok on board a KLM flight.

On August 31, 1994, operatives of the NAIA Customs Police mounted a surveillance operation at the Departure Area for Gatward and Zaw Win Naing who might be leaving the country. At about 7:45 p.m. of the same date, Special Agent Gino Minguillan of the Customs Police made a verification on the passenger manifest of KLM Royal Dutch Airlines Flight No. 806, bound for Amsterdam via Bangkok, which was scheduled to depart at about 7:55 that evening. He found the name "GATWARD/NRMR" listed therein as a passenger for Amsterdam and accordingly informed his teammates who responded immediately. Customs Police Captain Juanito Algenio requested Victorio Erece, manager of the KLM airline at the NAIA, to let passenger Gatward disembark from the aircraft and to have his checked-in luggage, if any, unloaded. The manager acceded to the request to off-load Gatward but not to the unloading of his check-in bag as the plane was about to depart and to do so would unduly delay the flight. However, Erece made an assurance that the bag would be returned immediately to the Philippines on the first available flight from Bangkok. Upon his disembarkment, Gatward was invited by the police officers for investigation.

At about 3:00 o'clock in the afternoon of September 1, 1994, Gatward's luggage, a travelling bag almost of the same size as that of U Aung Win, was brought back to the NAIA from Bangkok through the Thai Airways, pursuant to the request of Erece which was telexed in the evening of August 31, 1994, to the KLM airline manager in Bangkok. Upon its retrieval, the law enforcers subjected the bag to x-ray examinations in the presence of accused Gatward and some Customs officials. It was observed to contain some powdery substance. Inside the bag were two improvised envelopes made of cardboard each containing the powdery substance, together with many clothes. The envelopes were hidden inside the bag, one at the side in between a double-wall, the other inside a partition in the middle. Upon its examination by Chemists Ayonon and Advincula pursuant to the request of Police Senior Inspector John Campos of the NARCOM, the powdery substance contained in the two cardboard envelopes, with a net weight of 5,237.70 grams, was found to be heroin.[3]

The court below made short shrift of the defense raised by herein appellant. Apart from the well-known rule on the respect accorded to the factual findings of trial courts because of the vantage position they occupy in that

regard, we accept its discussion thereon by reason of its clear concordance with the tenets of law and logic. Again we quote:

Accused Gatward denied that the bag containing the heroin was his luggage. However, that the said bag belongs to him is convincingly shown by the fact that the serial number of the luggage tag, which is KL 206835, corresponds to the serial number of the luggage claim tag attached to the plane ticket of the accused. Moreover, as testified to by Manager Erece of the KLM airline, the luggage of Gatward located in Container No. 1020 of KLM Flight No. 806 was the same luggage which was returned to the NAIA on September 1, 1994, on board Thai Airways TG Flight No. 620, pursuant to the request made by him to the KLM manager in Bangkok. The testimony of Erece should be given weight in accordance with the presumption that the ordinary course of business has been followed. (Sec. 3(q), Rule 131, Revised Rules on Evidence). No circumstance was shown by the defense which would create a doubt as to the identity of the bag as the luggage of Gatward which he checked in for KLM Flight No. 806 for Amsterdam with stopover in Bangkok.

Accused Gatward was present during the opening of his bag and the examination of its contents. He was also interviewed by some press reporters in connection with the prohibited drug found in the bag. Gatward did not then disclaim ownership of the bag and its heroin contents. His protestations now that the bag does not belong to him should be deemed as an afterthought which deserves no credence.

Gatward posited that he checked in a different bag when he boarded KLM Flight No. 806, explaining that upon his apprehension by the agents of the NAIA Customs Police, he threw away the claim tag for the said luggage. He alleged that the said bag contained, among other things, not only important documents and papers pertaining to his cellular phone business in the pursuit of which he came to the Philippines, but also money amounting to L 1,500.00. Gatward stressed that the bag did not have any illegal articles in it. If this were so, it was unusual for him, and certainly not in accordance with the common habit of man, to have thrown away the claim tag, thereby in effect abandoning the bag with its valuable contents. Not having been corroborated by any other evidence, and being rendered unbelievable by the circumstances accompanying it as advanced by him, the stand of accused Gatward that his luggage was different from that which contained the 5,237.70 grams of heroin in question commands outright rejection.[4]

The trial court was also correct in rejecting the challenge to the admissibility in evidence of the heroin retrieved from the bag of appellant. While no search warrant had been obtained for that purpose, when appellant checked in his bag as his personal luggage as a passenger of KLM Flight No. 806 he thereby agreed to the inspection thereof in accordance with customs rules and regulations, an international practice of strict observance, and waived any objection to a warrantless search. His subsequent arrest, although likewise without a warrant, was justified since it was effected upon the discovery and recovery of the heroin in his bag, or in flagrante delicto.

The conviction of accused U Aung Win in Criminal Case No. 94-6269 is likewise unassailable. His culpability was not based only upon his plea of guilty but also upon the evidence of the prosecution, the presentation of which was required by the lower court despite said plea. The evidence thus presented convincingly proved his having imported into this country the heroin found in his luggage which he presented for customs examination upon his arrival at the international airport. There was, of course, no showing that he was authorized by law to import such dangerous drug, nor did he claim or present any authority to do so.

2. It is, however, the penalties imposed by the trial court on the two accused which this Court cannot fully accept. This is the presentation made, and the rationalization thereof, by the court below:

According to Section 20 of the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659, the penalties for the offenses under Sections 3 and 4 of the said Act shall be applied if the dangerous drugs involved,

with reference to heroin, is 40 grams or more. Since the heroin subject of each of these two cases exceeds 40 grams, it follows that the penalty which may be imposed on each accused shall range from reclusion perpetuo death.

To fix the proper penalty, it becomes necessary to determine whether any mitigating or aggravating circumstance had attended the commission of the offenses charged against the accused. With respect to Gatward, no aggravating or mitigating circumstance was shown which might affect his criminal liability. Relative to U Aung Win, no aggravating circumstance was likewise established by the prosecution. However, the voluntary plea of guilty of the said accused, which was made upon his arraignment and therefore before the presentation of the evidence of the prosecution, should be appreciated as a mitigating circumstance.

Under Article 63 of the Revised Penal Code, which prescribes the rules for the application of indivisible penalties, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the lesser penalty shall be applied, if neither mitigating nor aggravating circumstances are present in the commission of the crime, or if the act is attended by a mitigating circumstance and there is no aggravating circumstance. However, this rule may no longer be followed in these cases, although the penalty prescribed by law is reclusion perpetuo death, since reclusion perpetua, which was an indivisible penalty before, is now a divisible penalty with a duration from 20 years and one (1) day to 40 years, in accordance with Article 27 of the Revised Penal Code, as amended by Republic Act No. 7659.

Consequently, the penalty of “reclusion perpetuo death” should at present be deemed to fall within the purview of the “penalty prescribed” which “does not have one of the forms specially provided for” in the Revised Penal Code, the periods of which “shall be distributed,” applying by analogy the prescribed rules, in line with Article 77 of the Revised Penal Code. Pursuant to this principle, the penalty of “reclusion perpetuo death” shall have the following periods: Death, as the maximum; thirty (30) years and one (1) day to forty (40) years, as the medium; and twenty (20) years and one (1) day to thirty (30) years, as the minimum.

As there is no mitigating or aggravating circumstance shown to have attended the commission of the offense charged against Gatward, the penalty to be imposed on him shall be within the range of the medium period. On the other hand, since U Aung Win is favored by one mitigating circumstance without any aggravating circumstance to be taken against him, the penalty which may be imposed on him shall be within the range of the minimum period. (Art. 64(1) & (2), Revised Penal Code)

The accused in these cases may not enjoy the benefit of Act No. 4103, the Indeterminate Sentence Law, for under Section 2 of the said Act, its provisions shall not apply to those convicted of offenses punished with life imprisonment, which has been interpreted by the Supreme Court as similar to the penalty of reclusion perpetuaas far as the non-application of the Indeterminate Sentence Law is concerned. (People vs. Simon, G.R. No. 93028, July 29, 1994)[5]

On those considerations, the trial court handed down its verdict on March 3, 1995 finding both accused guilty as charged, thus:

WHEREFORE, in Criminal Case No. 94-6268, accused Nigel Richard Gatward is found guilty beyond reasonable doubt of transporting, without legal authority therefor, 5,237.70 grams of heroin, a prohibited drug, in violation of Section 4 of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659; and there being no aggravating or mitigating circumstance shown to have attended the commission of the crime, he is sentenced to suffer the penalty of imprisonment for thirty-five (35) years of reclusion perpetuaand to pay a fine of Five Million Pesos (P5,000,000.00).

In Criminal Case No. 94-6269, accused U Aung Win is found guilty beyond reasonable doubt of importing or bringing into the Philippines 5,579.80 grams of heroin, a prohibited drug, without being authorized by law to do so, contrary to Section 3 of Republic Act No. 6425, the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659; and in view of the presence of one (1) mitigating circumstance of voluntary plea of guilty, without any aggravating circumstance to offset it, he is sentenced to suffer the penalty of imprisonment for twenty-five (25) years of reclusion perpetua and to pay a fine of One Million Pesos (P1,000,000.00).

The heroin involved in these cases is declared forfeited in favor of the government and ordered turned over to the Dangerous Drugs Board for proper disposal.

With costs de officio.[6]

It is apropos to mention at this juncture that during the pendency of this appeal, and while awaiting the filing of appellant's brief on an extended period granted to his counsel de parte, the Court received on September 5, 1995 a mimeographed form of a so-called "Urgent Motion to Withdraw Appeal." It bears the signature of appellant but without the assistance or signature of his counsel indicated thereon. No reason whatsoever was given for the desired withdrawal and considering the ambient circumstances, the Court resolved on September 27, 1995 to deny the same for lack of merit.[7]

On June 10, 1996, a letter was received from one H.M. Consul M.B. Evans of the British Embassy, Consular Section, Manila, seeking an explanation for the aforesaid resolution and with the representation that "a convicted person who did not, on reflection, wish to continue with an appeal would not need to prove merit but could simply notify the courts of his wish to withdraw and that would be the end of the matter." To be sure, this is not the first time that members of foreign embassies and consulates feel that they have a right to intrude into our judicial affairs and processes, to the extent of imposing their views on our judiciary, seemingly oblivious or arrogantly disdainful of the fact that our courts are entitled to as much respect as those in their own countries.

Such faux pas notwithstanding, a reply was sent to Mr. Evans informing him that, while there is no arrangement whereby a foreign consular officer may intervene in a judicial proceeding in this Court but out of courtesy as enjoined in Republic Act No. 6713, the unauthorized pleading of appellant was made under unacceptable circumstances as explained in said reply; that it is not mandatory on this Court to dismiss an appeal on mere motion of an appellant; that the Court does not discuss or transmit notices of judicial action except to counsel of the parties; and that, should he so desire, he could coordinate with appellant's counsel whose address was furnished therein.[8]

In a resolution dated June 19, 1996, appellant's counsel was ordered to show cause why he should not be disciplinarily dealt with or held for contempt for his failure to file appellant's brief. On July 24, 1996, said counsel and the Solicitor General were required to comment on the aforestated motion of appellant to withdraw his appeal, no brief for him having yet been filed. Under date of September 6, 1996, the Solicitor General filed his comment surprisingly to the effect that the People interposed no objection to the motion to withdraw appeal. Appellant's counsel, on the other hand, manifested on November 4, 1996 that he was willing to file the brief but he could not do so since appellant asked for time to consult his pastor who would later inform said counsel, but neither that pastor nor appellant has done so up to the present.

It would then be worthwhile to restate for future referential purposes the rules in criminal cases on the withdrawal of an appeal pending in the appellate courts. The basic rule is that, in appeals taken from the Regional Trial Court to either the Court of Appeals or the Supreme Court, the same may be withdrawn and allowed to be retracted by the trial court before the records of the case are forwarded to the appellate court.[9] Once the records are brought to the appellate court, only the latter may act on the motion for withdrawal of appeal.[10] In the Supreme Court,

the discontinuance of appeals before the filing of the appellee's brief is generally permitted.[11] Where the death penalty is imposed, the review shall proceed notwithstanding withdrawal of the appeal as the review is automatic and this the Court can do without the benefit of briefs or arguments filed by the appellant.[12]

In the case at bar, however, the denial of the motion to withdraw his appeal by herein appellant is not only justified but is necessary since the trial court had imposed a penalty based on an erroneous interpretation of the governing law thereon. Thus, in *People vs. Roque*,[13] the Court denied the motion of the accused to withdraw his appeal, to enable it to correct the wrongful imposition by the trial court of the penalty of "reclusion temporal to reclusion perpetua" for the crime of simple rape, in clear derogation of the provisions of Article 335 of the Revised Penal Code and the Indeterminate Sentence Law. Similarly, in another case,[14] the motion to withdraw his appeal by the accused, whose guilt for the crime of murder was undeniable and for which he should suffer the medium period of the impossible penalty which is reclusion perpetua, was not allowed; otherwise, to permit him to recall the appeal would enable him to suffer a lesser indeterminate sentence erroneously decreed by the trial court which imposed the minimum of the penalty for murder, that is, reclusion temporal in its maximum period.

In the cases at bar, the same legal obstacle constrained the Court to deny appellant's motion to withdraw his appeal. The trial court had, by considering reclusion perpetua as a divisible penalty, imposed an unauthorized penalty on both accused which would remain uncorrected if the appeal had been allowed to be withdrawn. In fact, it would stamp a nihil obstat on a penalty that in law does not exist and which error, initially committed by this Court in another case on which the trial court relied, had already been set aright by this Court.

3. As amended by Republic Act No. 7659, the respective penalties imposable under Sections 3 and 4 of the Dangerous Drugs Act, in relation to Section 20 thereof, would range from reclusion perpetua to death and a fine of P500,000.00 to P10,000,000.00 if the quantity of the illegal drug involved, which is heroin in this case, should be 40 grams or more. In the same amendatory law, the penalty of reclusion perpetua is now accorded a "defined duration" ranging from twenty (20) years and one (1) day to forty (40) years, through the amendment introduced by it to Article 27 of the Revised Penal Code.

This led the trial court to conclude that said penalty is now divisible in nature, and that "(c)onsequently, the penalty of "reclusion perpetua to death" should at present be deemed to fall within the purview of the "penalty prescribed" which "does not have one of the forms specially provided for" in the Revised Penal Code, and the periods of which "shall be distributed" by an analogous application of the rules in Article 77 of the Code. Pursuant to its hypothesis, the penalty of "reclusion perpetua to death shall have the following periods: death, as the maximum; thirty (30) years and one (1) day to forty (40) years, as the medium; and twenty (20) years and one (1) day to thirty (30) years, as the minimum." [15]

We cannot altogether blame the lower court for this impass'e since this Court itself inceptively made an identical misinterpretation concerning the question on the indivisibility of reclusion perpetua as a penalty. In *People vs. Lucas*,[16] the Court was originally of the view that by reason of the amendment of Article 27 of the Code by Section 21 of Republic Act No. 7569, there was conferred upon said penalty a defined duration of 20 years and 1 day to 40 years; but that since there was no express intent to convert said penalty into a divisible one, there having been no corresponding amendment to Article 76, the provisions of Article 65 could be applied by analogy. The Court then declared that reclusion perpetua could be divided into three equal portions, each portion composing a period. In effect, reclusion perpetua was then to be considered as a divisible penalty.

In a subsequent re-examination of and a resolution in said case on January 9, 1995, occasioned by a motion for clarification thereof,[17] the Court en banc realized the misconception, reversed its earlier pronouncement, and has since reiterated its amended ruling in three succeeding appellate litigations.[18] The Court, this time, held that

in spite of the amendment putting the duration of reclusion perpetua at 20 years and 1 day to 40 years, it should remain as an indivisible penalty since there was never any intent on the part of Congress to reclassify it into a divisible penalty. This is evident from the undisputed fact that neither Article 63 nor Article 76 of the Code had been correspondingly altered, to wit:

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).

In the same resolution, the Court adverted to its holding in *People vs. Reyes*, [19] that while the original Article 27 of the Revised Penal Code provided for the minimum and the maximum ranges of all the penalties therein, from arresto menor to reclusion temporal but with the exceptions of bond to keep the peace, there was no parallel specification of either the minimum or the maximum range of reclusion perpetua. Said article had only provided that a person sentenced to suffer any of the perpetual penalties shall, as a general rule, be extended pardon after service thereof for 30 years. Likewise, in laying down the procedure on successive service of sentence and the application of the three-fold rule, the duration of perpetual penalties is computed at 30 years under Article 70 of the Code.

Furthermore, since in the scales of penalties provided in the Code, specifically those in Articles 25, 70 and 71, reclusion perpetua is the penalty immediately higher than reclusion temporal, then its minimum range should by necessary implication start at 20 years and 1 day while the maximum thereunder could be co-extensive with the rest of the natural life of the offender. However, Article 70 provides that the maximum period in regard to service of the sentence shall not exceed 40 years.

Thus, the maximum duration of reclusion perpetua is not and has never been 30 years which is merely the number of years which the convict must serve in order to be eligible for pardon or for the application of the three-fold rule. Under these accepted propositions, the Court ruled in the motion for clarification in the *Lucas* case that Republic Act No. 7659 had simply restated existing jurisprudence when it specified the duration of reclusion perpetua at 20 years and 1 day to 40 years.

The error of the trial court was in imposing the penalties in these cases based on the original doctrine in *Lucas* which was not yet final and executory, hence open to reconsideration and reversal. The same having been timeously rectified, appellant should necessarily suffer the entire extent of 40 years of reclusion perpetua, in line with that reconsidered dictum subsequently handed down by this Court. In passing, it may be worth asking whether or not appellant subsequently learned of the amendatory resolution of the Court under which he stood to serve up to 40 years, and that was what prompted him to move posthaste for the withdrawal of his appeal from a sentence of 35 years.

4. The case of U Aung Win ostensibly presents a more ticklish legal poser, but that is not actually so. It will be recalled that this accused was found guilty and sentenced to suffer the penalty of reclusion perpetua supposedly in its minimum period, consisting of imprisonment for 25 years, and to pay a fine of P1,000,000.00. He did not appeal, and it may be contended that what has been said about the corrected duration of the penalty of reclusion perpetua which we hold should be imposed on appellant Gatward, since reclusion perpetua is after all an indivisible penalty, should not apply to this accused.

Along that theory, it may be asserted that the judgment against accused U Aung Win has already become final. It may also be argued that since Section 11(a) of Rule 122 provides that an appeal taken by one accused shall not affect those who did not appeal except insofar as the judgment of the appellate court is favorable and applicable to the latter, our present disposition of the correct duration of the penalty imposable on appellant Gatward should not affect accused U Aung Win since it would not be favorable to the latter. To use a trite and tired legal phrase, those objections are more apparent than real.

At bottom, all those postulations assume that the penalties decreed in the judgment of the trial court are valid, specifically in the sense that the same actually exist in law and are authorized to be meted out as punishments. In the case of U Aung Win, and the same holds true with respect to Gatward, the penalty inflicted by the court a quo was a nullity because it was never authorized by law as a valid punishment. The penalties which consisted of aliquot one-third portions of an indivisible penalty are self-contradictory in terms and unknown in penal law. Without intending to sound sardonic or facetious, it was akin to imposing the indivisible penalties of public censure, or perpetual absolute or special disqualification, or death in their minimum or maximum periods.

This was not a case of a court rendering an erroneous judgment by inflicting a penalty higher or lower than the one imposable under the law but with both penalties being legally recognized and authorized as valid punishments. An erroneous judgment, as thus understood, is a valid judgment.^[20] But a judgment which ordains a penalty which does not exist in the catalogue of penalties or which is an impossible version of that in the roster of lawful penalties is necessarily void, since the error goes into the very essence of the penalty and does not merely arise from the misapplication thereof. Corollarily, such a judgment can never become final and executory.

Nor can it be said that, despite the failure of the accused to appeal, his case was reopened in order that a higher penalty may be imposed on him. There is here no reopening of the case, as in fact the judgment is being affirmed but with a correction of the very substance of the penalty to make it conformable to law, pursuant to a duty and power inherent in this Court. The penalty has not been changed since what was decreed by the trial court and is now being likewise affirmed by this Court is the same penalty of reclusion perpetua which, unfortunately, was imposed by the lower court in an elemental form which is non-existent in and not authorized by law. Just as the penalty has not been reduced in order to be favorable to the accused, neither has it been increased so as to be prejudicial to him.

Finally, no constitutional or legal right of this accused is violated by the imposition upon him of the corrected duration, inherent in the essence and concept, of the penalty. Otherwise, he would be serving a void sentence with an illegitimate penalty born out of a figurative liaison between judicial legislation and unequal protection of the law. He would thus be the victim of an inadvertence which could result in the nullification, not only of the judgment and the penalty meted therein, but also of the sentence he may actually have served. Far from violating any right of U Aung Win, therefore, the remedial and corrective measures interposed by this opinion protect him against the risk of another trial and review aimed at determining the correct period of imprisonment.

WHEREFORE, the judgment of the court a quo, specifically with regard to the penalty imposed on accused-appellant Nigel Richard Gatward in Criminal Case No. 94-6268 and that of accused U Aung Win in

Criminal Case No. 94-6269, is hereby MODIFIED in the sense that both accused are sentenced to serve the penalty of reclusion perpetua in its entire duration and full extent. In all other respects, said judgment is hereby AFFIRMED, but with costs to be assessed against both accused in all instances of these cases.
SO ORDERED.

Romero, Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] 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] See *People vs. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555.

[3] Rollo, 47-50; penned by Presiding Judge Alfredo J. Gustilo, Regional Trial Court, Branch 116, Pasay City.

[4] Rollo, 52-53.

[5] Rollo, 51-52.

[6] *Ibid.*, 53-54.

[7] *Ibid.*, 53-54.

[8] *Ibid.*, 80-81.

[9] Section 12, in relation to Section 8, Rule 122, Rules of Court.

[10] *Ramos vs. Gonong*, L-42010, August 31, 1976, 72 SCRA 559.

[11] *People vs. Mendoza*, 93 Phil. 581 (1953).

[12] *People vs. Villanueva*, 93 Phil. 927 (1953).

[13] G.R. No. 53470, June 26, 1981, 105 SCRA 117.

[14] *People vs. Maguddayao, et al.*, L-43923, September 12, 1984, 132 SCRA 35.

[15] Original Record, 486-487.

[16] G.R. Nos. 108172-73, May 25, 1994, 232 SCRA 537.

[17] See 240 SCRA 66.

[18] *People vs. Baculi*, G.R. No. 110591, July 26, 1995, 246 SCRA 756; *People vs. Uycogue*, G.R. No. 107495, July 31, 1995, 246 SCRA 769; *People vs. Magallano*, January 16, 1997, G.R. No. 114872.

[19] G.R. Nos. 101127-31, August 7, 1992, 212 SCRA 402.

[20] *De la Cruz vs. Ejercito, etc., et al.*, L-40895, November 6, 1975, 68 SCRA 1.

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