

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. LORENZO B. VENERACION, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, BRANCH 47, MANILA, HENR...

G.R. Nos. 119987-88. October 12, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The sole issue in the case at bench involves a question of law. After finding that an accused individual in a criminal case has, on the occasion of Rape, committed Homicide, is the judge allowed any discretion in imposing either the penalty of Reclusion Perpetua or Death?

The facts antecedent to the case before this Court, as narrated by petitioner,[1] involve the perpetration of acts so bizarre and devoid of humanity as to horrify and numb the senses of all civilized men:

On August 2, 1994, the cadaver of a young girl, later identified as Angel Alquiza wrapped in a sack and yellow table cloth tied with a nylon cord with both feet and left hand protruding from it was seen floating along Del Pan St. near the corner of Lavesares St., Binondo, Manila.

When untied and removed from its cover, the lifeless body of the victim was seen clad only in a light colored duster, without her panties, with gaping wounds on the left side of the face, the left chin, left ear, lacerations on her genitalia, and with her head bashed in.

On the basis of sworn statements of witnesses, booking sheets, arrest reports and the necropsy report of the victim, Abundio Lagunday, a.k.a. Jr. Jeofrey of no fixed address, and Henry Lagarto y Petilla, of 288 Area H. Parola Compound, Tondo, Manila were later charged with the crime of Rape with Homicide in an Information dated August 8, 1994 filed with the Regional Trial Court of Manila, National Capital Judicial Region. Said Information, docketed as Criminal Case No. 94-138071, reads:

That on or about August 2, 1994, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one alias 'LANDO' and other persons whose true names, identifies and present whereabouts are still unknown and helping one another, with treachery, taking advantage of their superior strength and nocturnity, and ignominy, and with the use of force and violence, that is, by taking ANGEL ALQUIZA y LAGMAN into a warehouse, covering her mouth, slashing her vagina, hitting her head with a thick piece of wood and stabbing her neck did then and there willfully, unlawfully and feloniously have carnal knowledge of the person of said ANGEL ALQUIZA y LAGMAN, a minor, seven (7) years of age, against the latter's will and consent and on said occasion the said ABUNDIO LAGUNDAY, a.k.a. 'LANDO' and others, caused her fatal injuries which were the direct cause of her death immediately thereafter.

CONTRARY TO LAW.

Subsequently thereafter, Ernesto Cordero y Maristela, a.k.a. 'Booster,' of 1198 Sunflower St., Tondo, Manila, Rolando Manlangit y Mamerta, a.k.a. 'Lando,' of 1274 Kagitingan St., Tondo, Manila, Richard Baltazar y Alino, a.k.a. 'Curimao,' also of 1274 Kagitingan St., Tondo, Manila, and Catalino Yaon y Aberin, a.k.a. 'Joel,' of 1282 Lualhati St., Tondo, Manila were accused of the same crime of Rape with Homicide in an Information dated August 11, 1994, docketed as Criminal Case No. 94-138138, allegedly committed as follows:

That on or about the 2nd day of August, 1994, in the City of Manila, Philippines, the said accused conspiring and confederating with ABUNDIO LAGUNDAY Alias 'JR,' JEOFREY and HENRY LAGARTO y PETILLA who have already been charged in the Regional Trial Court of Manila of the same offense under Criminal Case No. 94-138071, and helping one another, with treachery taking advantage of their superior strength and nocturnity and ignominy and with the use of force and violence, that is, by taking ANGEL ALQUIZA y LAGMAN into a pedicab, and once helpless, forcibly bringing her to a nearby warehouse, covering her mouth, slashing her vagina, hitting her head with a thick piece of wood and stabbing her neck, did then and there willfully, unlawfully and feloniously have carnal knowledge of the person of said ANGEL ALQUIZA y LAGMAN, a minor, seven (7) years of age, against the latter's will and consent and on said occasion the said accused together with their confederates ABUNDIO LAGARTO y PETILLA caused her fatal injuries which were the direct cause of her death immediately thereafter.

CONTRARY TO LAW.

The two criminal cases were consolidated to Branch 47 of the Regional Trial Court of Manila, presided over by respondent Judge.

Duly arraigned, all the accused, except Abundio Lagunday who was already dead, (allegedly shot by police escorts after attempting to fire a gun he was able to grab from SPO1 D. Vidad on August 12, 1994), pleaded 'Not Guilty.' Abundio Lagunday was dropped from the Information.

After trial and presentation of the evidence of the prosecution and the defense, the trial court rendered a decision[2] on January 31, 1995 finding the defendants Henry Lagarto y Petilla and Ernesto Cordero y Maristela guilty beyond reasonable doubt of the crime of Rape with Homicide and sentenced both accused with the "penalty of reclusion perpetua with all the accessories provided for by law." [3] Disagreeing with the sentence imposed, the City Prosecutor of Manila on February 8, 1995, filed a Motion for Reconsideration, praying that the Decision be "modified in that the penalty of death be imposed" against respondents Lagarto and Cordero, in place of the original penalty (reclusion perpetua). Refusing to act on the merits of the said Motion for Reconsideration, respondent Judge, on February 10, 1995, issued an Order denying the same for lack of jurisdiction. The pertinent portion reads:

The Court believes that in the above-entitled cases, the accused Lagarto and Cordero have complied with the legal requirements for the perfection of an appeal. Consequently, for lack of jurisdiction, this Court cannot take cognizance of the Motion for Reconsideration of the Public Prosecutor of Manila.

WHEREFORE, the order earlier issued by this Court regarding the Notices of Appeal filed by both herein accused is hereby reiterated.

The Clerk of this Court is hereby directed to transmit the complete records of these cases, together with the notices of appeal, to the Honorable Supreme Court, in accordance with Sec. 8, Rule 122 of the Revised Rules of Criminal Procedure.

SO ORDERED.

Hence, the instant petition.

The trial court's finding of guilt is not at issue in the case at bench. The basis of the trial court's determination of guilt and its conclusions will only be subject to our scrutiny at an appropriate time on appeal. We have thus clinically limited our narration of events to those cold facts antecedent to the instant case relevant to the determination of the legal question at hand, i.e., whether or not the respondent judge acted with grave abuse of discretion and in excess of jurisdiction when he failed and/or refused to impose the mandatory penalty of death under Republic Act No. 7659, after finding the accused guilty of the crime of Rape with Homicide.

We find for petitioner.

Obedience to the rule of law forms the bedrock of our system of justice. If judges, under the guise of religious or political beliefs were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, then law becomes meaningless. A government of laws, not of men excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, judges are guided by the Rule of Law, and ought "to protect and enforce it without fear or favor,"[4] resist encroachments by governments, political parties,[5] or even the interference of their own personal beliefs.

In the case at bench, respondent judge, after weighing the evidence of the prosecution and the defendant at trial found the accused guilty beyond reasonable doubt of the crime of Rape with Homicide. Since the law in force at the time of the commission of the crime for which respondent judge found the accused guilty was Republic Act No. 7659, he was bound by its provisions.

Section 11 of R.A. No. 7659 provides:

Section 11. Article 335 of the same Code is hereby amended to read as follows:

Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation.
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. x x x.[6]

Clearly, under the law, the penalty imposable for the crime of Rape with Homicide is not Reclusion Perpetua but Death. While Republic Act 7659 punishes cases of ordinary rape with the penalty of Reclusion Perpetua, it allows judges the discretion - depending on the existence of circumstances modifying the offense committed - to impose the penalty of either Reclusion Perpetua only in the three instances mentioned therein. Rape with homicide is not

one of these three instances. The law plainly and unequivocally provides that "[w]hen by reason or on the occasion of rape, a homicide is committed, the penalty shall be death." The provision leaves no room for the exercise of discretion on the part of the trial judge to impose a penalty under the circumstances described, other than a sentence of death.

We are aware of the trial judge's misgivings in imposing the death sentence because of his religious convictions. While this Court sympathizes with his predicament, it is its bounden duty to emphasize that a court of law is no place for a protracted debate on the morality or propriety of the sentence, where the law itself provides for the sentence of death as a penalty in specific and well-defined instances. The discomfort faced by those forced by law to impose the death penalty is an ancient one, but it is a matter upon which judges have no choice. Courts are not concerned with the wisdom, efficacy or morality of laws. In *People vs. Limaco*[7] we held that:

[W]hen ... private opinions not only form part of their decision but constitute a decisive factor in arriving at a conclusion and determination of a case or the penalty imposed, resulting in an illegality and reversible error, then we are constrained to state our opinion, not only to correct the error but for the guidance of the courts. We have no quarrel with the trial judge or with anyone else, layman or jurist as to the wisdom or folly of the death penalty. Today there are quite a number of people who honestly believe that the supreme penalty is either morally wrong or unwise or ineffective. However, as long as that penalty remains in the statute books, and as long as our criminal law provides for its imposition in certain cases, it is the duty of judicial officers to respect and apply the law regardless of their private opinions. It is a well settled rule that the courts are not concerned with the wisdom, efficacy or morality of laws. That question falls exclusively within the province of the Legislature which enacts them and the Chief Executive who approves or vetoes them. The only function of the judiciary is to interpret the laws and, if not in disharmony with the Constitution, to apply them. And for the guidance of the members of the judiciary we feel it incumbent upon us to state that while they as citizens or as judges may regard a certain law as harsh, unwise or morally wrong, and may recommend to the authority or department concerned, its amendment, modification, or repeal, still, as long as said law is in force, they must apply it and give it effect as decreed by the law-making body.[8]

Finally, the Rules of Court mandates that after an adjudication of guilt, the judge should impose "the proper penalty and civil liability provided for by the law on the accused." [9] This is not a case of a magistrate ignorant of the law. This is a case in which a judge, fully aware of the appropriate provisions of the law, refuses to impose a penalty to which he disagrees. In so doing, respondent judge acted without or in excess of his jurisdiction or with grave abuse of discretion amounting to a lack of jurisdiction in imposing the penalty of Reclusion Perpetua where the law clearly imposes the penalty of Death.

WHEREFORE, PREMISES CONSIDERED, the instant petition is GRANTED. The case is hereby REMANDED to the Regional Trial Court for the imposition of the penalty of death upon private respondents in consonance with respondent judge's finding that the private respondents in the instant case had committed the crime of Rape with Homicide under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, subject to automatic review by this Court of the decision imposing the death penalty.

SO ORDERED.

Feliciano, Padilla, Romero, Bellosillo, Melo, Puno, Mendoza, Francisco and Hermosisima, Jr., JJ., concur.

Narvasa, C.J., see separate opinion.

Regalado, J., see concurring opinion.

Davide, Jr., J., joins J. Vitug in his separate opinion.

[1] Rollo, p. 4, Except as to the penalty imposed, petitioner and respondent court are in agreement as to the essential facts of the case.

[2] Rollo, pp. 24-51.

[3] Rollo, p. 28, The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered, dismissing the information as against ROLANDO MANLANGIT for lack of evidence, and finding both accused HENRY LAGARTO y PETILLA and ERNESTO CORDERO y MARISTELA 'guilty beyond reasonable doubt of the crime of RAPE WITH HOMICIDE charged in the Information of these cases, and sentencing both accused the penalty of reclusion perpetua with all the accessories provided for by law.'

Said accused are further ordered to indemnify, jointly and severally, the private complainant the sum of P100,000 for the death of the victim, ANGEL ALQUIZA; the sum of P500,000 for moral damages and the amount of P52,000.00 for actual damages representing expenses incurred for the wake and funeral of the victim. They are further ordered to pay the costs of these suits.

SO ORDERED. (ANNEX 'A', Petition)

[4] Act of Athens (1955).

[5] Id.

[6] Underscoring supplied.

[7] 88 Phil. 36 [1951].

[8] Id. at 43-44.

[9] Rule 120, sec. 1.

CONCURRING OPINION

NARVASA, C.J.:

I concur with the conclusions and dispositions set forth in the opinion of Mr. Justice Kapunan. I draw up this separate opinion merely to address a question which may be raised in relation to the appeal taken by the accused from the judgment of conviction rendered by respondent Judge. It will be recalled that respondent Judge declined to act on the merits of motion for reconsideration filed by the prosecution — praying that his decision sentencing both accused to suffer reclusion perpetua be "modified in that the penalty of death be imposed" — for the reason that since the accused had already "complied with the legal requirements for the perfection of an appeal," the Trial Court had lost jurisdiction over the cases. It was precisely that refusal that prompted the institution in this Court of the special civil action of certiorari at bar.

It is indeed axiomatic that once an appeal is perfected from a judgment, jurisdiction is lost by the court rendering the judgment; and jurisdiction over the case passes to the appellate tribunal. This proposition considered, and following respondent Judge's reasoning, this Court's directive for the remand of the case "to the Regional Trial Court for the imposition of the penalty of death upon private respondents," might appear to be open to question, since it would require the Trial Court to act in cases over which it had lost jurisdiction. Such a conclusion is not warranted.

The judgment in question is void, and has been annulled and set aside by this Court, because rendered "without or in excess of ** jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction," in so far as it imposes, in light of the facts found to have been proven beyond reasonable doubt, a penalty other than that peremptorily prescribed by law. The judgment being void, the appeal attempted to be taken therefrom is inefficacious. The Trial Court may not be deemed to have thereby lost jurisdiction of the cases. It cannot thus be said that it is being required by this Court to act in cases over which it has already lost jurisdiction. There exists no legal obstacle to the remand of the cases to it and its modification of the judgment so that it may comply with the mandatory prescription of the law.

CONCURRING OPINION

REGALADO, J.:

I concur without reservation in the ponencia in this case and its directive that the court a quo impose the correct penalty of death as provided by law and consequent to its findings of guilt on the part of private respondents. Indeed, this separate opinion which explicates my conformity with the procedure adopted and the mandate thereof would not have been necessary were it not for the contrary observations that the petition herein should either have been dismissed or consolidated with the criminal case elevated on appeal by private respondents.

Such digression from the judgment unconditionally accepted by the other members of the Court does not impress me as being concordant with the Rules of Court and decisional law. What is before us in the case at bar is an original civil action invoking the extraordinary writ of certiorari for the imposition of the correct penalty specified by law, which legal duty respondent judge refused to comply with in grave abuse of his judicial discretion.[1] On the other hand, the criminal case with which it is sought to be consolidated is an appellate recourse wherein the relief sought is primarily the reversal of the finding of guilt and the absolution of private respondents.

Evidently, the determinative issues involved and the limited relief sought in the present special civil action are entirely different from the issues for resolution and the modificatory judgment desired in the appealed criminal case. The basic rule in consolidation of cases in civil procedure[2] requires, among others, the same subject matter and the existence of a common question of law or fact. This is essentially the same as the rule on consolidation in criminal procedure[3] which contemplates charges for offenses founded on the same facts, or forming part of a series of offenses of similar character.

Also, these reglementary requisites for consolidation require two or more ordinary civil or criminal actions, and not a special civil action in combination with the former. The impropriety of the latter situation is specially underscored where the resolution of the controversy in the special civil action is a pre-judicial matter in the appealed criminal case. These considerations apply to both the trial courts in the exercise of original jurisdiction and to the appellate courts in the implementation of revisory power.

The purpose of the present original action for certiorari is to have the erroneous judgment of respondent judge — erroneous because he imposed the wrong penalty — corrected on that score in the first instance. After such correction shall have been effected, then the appeal from his judgment shall proceed for the desired review by this Court to determine the guilt or innocence of appellants. The corrective action must proceed first and the resultant amended judgment containing the proper penalty shall be the basis for the review as to whether appellants are truly guilty and have to be meted that ultimate penalty. To have the certiorari action proceed simultaneously and in unification with the appellate proceeding strikes me as an aberrant procedure. While it does not exactly square with the figurative posture of putting the cart before the horse, it does result in the same absurdity of both the

horse and the cart moving abreast at the same time along the same judicial path.

It would even be worse if, as suggested, this certiorari action should be dismissed and the appellate review be conducted with the judgment containing an unauthorized penalty as the basis therefor, with this Court closing its eyes to such a flagrant mistake. This time the cart precedes the horse. True, an appeal throws the judgment a quo open for review and the Court may raise the penalty to the appropriate punitive level. But, as the People pertinently observes, what is there to prevent appellants from withdrawing their appeal upon sensing from the arguments that, instead of the acquittal or reduced penalty aspired for, the ultimate denouement would be the death sentence?

Jurisprudence tells us that before the case is submitted for decision, an appellant may withdraw his appeal in the appellate court.[4] Generally, the withdrawal of an appeal before the filing of the appellee's brief in this Court is permitted.[5] Assuming that the Court denies the withdrawal of the appeal in order that the mistake in the penalty imposed may be corrected in the judgment of the case on the merits,[6] why should the appellate course of the proceedings still have to be subject to such contingencies — with the inevitable waste of time and effort in the formulation of alternative theories in two sets of pleadings by both parties — when with the decisive sweep of the adjudgment here the doubts are dissipated and the real areas of contention are laid bare?

Nor is that all. Appellants have come to this Court through the medium of an appeal by writ of error from a judgment of the trial court imposing the wrong penalty of reclusion perpetua. If the mistake in the penalty is now rectified with the death sentence being substituted therefor, as undeniably it should be, then the case will consequently be before this Court on automatic review. That provision calling for automatic review when capital punishment is inflicted[7] serves equally the interests of both the defense and the prosecution through protective features established by case law.

Thus, even if the accused had unnecessarily appealed from the judgment imposing the penalty of death and he thereafter withdraws his appeal, the automatic review of the case shall nonetheless proceed, albeit without the benefit of briefs or arguments from the accused.[8] The automatic review of the case shall proceed even if the death convict shall escape,[9] as an exception to the provisions of Section 8, Rule 124, and such automatic review cannot be waived.[10] The aforementioned beneficial effects are not provided for and may not be availed of by the accused in an ordinary appeal to this Court.

The automatic review of the death sentence ensures the right of the condemned person to procedural due process on appeal, and safeguards the interests of the State by exacting the corresponding penal sanction decreed by law. The disposition adopted by the Court in this case subserves the ends of these fundamental policies, hence my unqualified assent thereto.

[1] *People vs. Olaes*, 105 Phil. 502 (1959); *People vs. Limaco*, 88 Phil. 35 (1951); *People vs. Carillo, et al.*, 85 Phil. 611 (1950).

[2] Section 1, Rule 31.

[3] Section 14, Rule 119.

[4] *U.S. vs. Sotto*, 38 Phil. 666 (1918).

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

[6] See *People vs. Roque*, G.R. No. 53470, June 26, 1981, 105 SCRA 117.

[7] Sec. 10, Rule 122.

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

[9] *People vs. Vallente*, L-37937, September 30, 1986, 144 SCRA 495; *People vs. Cornelio, et al.*, L-1289, June 10, 1971, 39 SCRA 435.

[10] *People vs. Daban*, L-31429, January 31, 1972, 43 SCRA 185.

SEPARATE OPINION

VITUG, J.:

The ponencia itself indicates that the case against the convicted accused is already on appeal before this Court. Thus, the instant petition, in my view, has become academic since an appeal brings the case wide open for review and consideration. A ruling on the petition would be precipitate and might be so perceived as peremptory on the imposition of the death penalty.

With all due respect, it is my personal view that if the Court is not disposed to dismiss the petition, it should at the very least be consolidated with the appealed case.

Accordingly, I am constrained, at this time, to vote for the dismissal of the petition.

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