377 Phil. 830

FIRST DIVISION

[G.R. No. 125834, December 06, 1999]

VIOLETA SANTIAGO VILLA, PETITIONER, VS. HONORABLE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

Petitioner seeks the modification of the Decision, dated August 19, 1994 of the respondent Court of Appeals in CA-G.R. CR No. 13611 imposing on her an indeterminate penalty of imprisonment ranging from six (6) years and one (1) day as minimum to ten (10) years as maximum for illegal possession of prohibited drugs.

Petitioner was charged before the Regional Trial Court of Bulacan, Branch 11, Malolos, in an information which reads:

> That on or about the 4th day of May, 1991, in the municipality of Guiguinto, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Violeta Santiago y Villa alias Violy, without authority of law, did then and there wilfully, unlawfully and feloniously possess two (2) sticks of marijuana cigarettes, which is a prohibited drug and fourteen (14) decks of metamphetamine hydrochloride (shabu); a regulated drug, without authority of law.
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> Contrary to law.[1]

After trial, the trial court rendered its Decision on May 22, 1992, the pertinent part of the dispositive portion states:

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> However, in Criminal Case No. 748-M-91, this Court finds accused Violeta Santiago GUILTY beyond reasonable doubt of violation of Section 8, Art. II of RA 6425 (Possession of Prohibited Drugs) and hereby sentences her to suffer the penalty of RECLUSION TEMPORAL in its maximum period (17 years, 8 months and 1 day to 20 years) and to pay a fine of Twenty Thousand (P20,000.00) Pesos.[2]

Petitioner interposed an appeal before the respondent Court of Appeals. In the meantime, on May 16, 1994, petitioner was also convicted of the crime of illegal possession of firearms and sentenced to suffer a prison term ranging from 17 years, 4 months and 1 day to 20 years of reclusion temporal as maximum.

On August 19, 1994, the respondent Court of Appeals rendered its Decision on the appeal, the dispositive portion of which reads:

> WHEREFORE, the appealed decision dated May 22, 1992 is AFFIRMED with the modification that the accused-appellant is sentenced to an indeterminate penalty of imprisonment ranging from six (6) years and one (1) day as minimum to ten (10) years as maximum and to pay a fine of ten thousand pesos (P10,000.00).
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> SO ORDERED.[3]

Petitioner started serving her sentence at the Correctional Institution for Women (CIW) in Mandaluyong City on August 14, 1993.[4]

On January 12, 1996, she filed a Motion for Reconsideration and Modification of Sentence with the respondent court seeking for the retroactive application to her of our decision in *People vs. Simon*.[5] She prayed that her sentence be reduced from six (6) years and one (1) day to ten (10) years to six (6) months to two (2) years and four (4) months and that her sentence for the violation of Section 8, Article II of R.A. No. 6425 be declared fully served.

On March 22, 1996, the respondent court issued a Resolution denying petitioner's motion for reconsideration and modification of sentence. A motion for reconsideration of he resolution was, likewise, denied.

Hence, this petition wherein petitioner raises the following issues, to wit:

> I.
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> WHETHER OR NOT THE HONORABLE COURT OF APPEALS IS COMPETENT TO REOPEN THE CASE AT BAR OR TO CONSIDER THE MOTION FOR RECONSIDERATION AND MODIFICATION OF SENTENCE FILED FOR THE PURPOSE OF REDUCING THE PENALTY.
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> II.
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> WHETHER OR NOT FINAL CONVICTION AND SERVING OF SENTENCE IN ANOTHER CASE IS A BAR TO THE REDUCTION OF SENTENCE IN THE OFFENSE OF VIOLATION OF REP. ACT NO. 6425, AS AMENDED BY FAVORABLE AND RETROACTIVE PROVISIONS OF REP. ACT NO. 7659.[6]

We shall deal with the issues together as they are interrelated.

In the present case, the respondent court refused to apply the ruling in *Simon* on the ground that aside from serving sentence for possession of prohibited drugs, she has, likewise, been convicted and is serving sentence for illegal possession of firearms. It is the respondent court's opinion that the retroactive application of the provision of R.A. No. 7659 would only be relevant if the convict has already served more than the maximum imposable penalty under the law and not where the convict is also serving sentence for another crime as in this case.

We disagree.

In *Simon*, it is clear that the favorable provision of R.A. No. 7659 (The Death Penalty Law) must be given retroactive effect except in the case of a habitual criminal as provided for in Article 22 of the Revised Penal Code.[7] Thus, we ruled:

> Considering that herein appellant is being prosecuted for the sale of four tea bags of marijuana with a total weight of only 3.8 grams and, in fact, stands to be convicted for the sale of only two of those tea bags, the initial inquiry would be whether the patently favorable provisions of Republic Act No. 7659 should be given retroactive effect to entitle him to the lesser penalty provided thereunder, pursuant to Article 22 of the Revised Penal Code.
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> Although Republic Act No. 6425 was enacted as a special law, albeit originally amendatory and in substitution of the previous Articles 190 to 194 of the Revised Penal Code, it has long been settled that by force of Article 10 of the said Code the beneficent provisions of Article 22 thereof applies to and shall be given retrospective effect to crimes punished by special laws. The exception in said article would not apply to those convicted of drug offenses since habitual delinquency refers to convictions for the third time or more of the crimes of serious or less serious physical injuries, *robo, hurto, estafa* or falsification.
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> Since, obviously, the favorable provisions of Republic Act No. 7659 could neither have then been involved nor invoked in the present case, a corollary question would be whether this court, at the present stage, can, *sua sponte* apply the provisions of said Article 22 to reduce the penalty to be imposed on appellant. That issue has likewise been resolved in the cited case of *People vs. Moran, et al., ante*., thus:
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> > "xxx. The plain precept contained in article 22 of the Penal Code, declaring the retroactivity of penal laws in so far as they are favorable to persons accused of a felony, would be useless and nugatory if the courts of justice were not under obligation to fulfill such duty, irrespective of whether or not the accused has applied for it, just as would also all provisions relating to the prescription of the crime and the penalty." (Underscoring ours)

In the present case, petitioner does not fall within the exception provided for by law. She was never convicted of any of the crimes stated under Article 62, paragraph 5, of the Revised Penal Code which would make her a habitual delinquent. Habitual delinquency is considered only with respect to the crimes specified in said Article. Hence, a conviction for illegal possession of drugs and for that matter, conviction for illegal possession of firearms, is not reckoned in habitual delinquency.[8] To deny petitioner's right to avail of the beneficial ruling in *Simon* would be a violation of a right clearly granted by law.

We now come to the question as to whether the respondent Court has the jurisdiction to entertain the motion for reconsideration and modification of sentence filed by petitioner.