430 Phil. 685

EN BANC

[G.R. No. 148194, April 12, 2002]

WILLY TAN Y CHUA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

VITUG, J.:

On **12 December 1996**, petitioner Willy Tan was found guilty of bigamy by the Regional Trial Court, Branch 75, of San Mateo, Rizal. He was sentenced to suffer a prison term of *prision correccional* in its medium period ranging from two (2) years, four (4) months, and one (1) day, to four (4) years and two (2) months. On **23 December 1996**, petitioner applied for probation. On **8 January 1997**, the application was granted by the trial court but the release order was withheld in view of the filing by the prosecution, on **21 January 1997**, of a motion for modification of the penalty. The prosecution pointed out that the penalty for bigamy under Article 349 of the Revised Penal Code was *prision mayor* and the imposable penalty, absent any mitigating nor aggravating circumstance, should be the medium period of *prision mayor*, or from eight (8) years and one (1) day to ten (10) years. Thus, the prosecution argued, petitioner was not eligible for probation.

The trial court denied the motion of the prosecution for having been **filed out of time** since the decision sought to be modified had already attained finality. Indeed, petitioner had meanwhile applied for probation. Upon motion of the prosecution, however, the trial court reconsidered its order and rendered an amended decision, promulgated on **10 July 1998**, concluding thusly:

> "WHEREFORE, premises considered, judgment is hereby rendered finding accused Willy Tan GUILTY beyond reasonable doubt of the crime of Bigamy and applying the Indeterminate Sentence Law, is hereby sentenced to suffer a minimum prison term of *prision [correccional]* TWO (2) YEARS, FOUR (4) MONTHS AND ONE (1) DAY to a maximum prison term of EIGHT (8) YEARS AND ONE (1) DAY."[1]

On **13 July 1998**, petitioner filed a notice of appeal with the trial court and elevated the case to the Court of Appeals, contending that -

> "THE LOWER COURT ERRED IN AMENDING THE FIRST DECISION INCREASING THE PENALTY AFTER THE SAME HAD ALREADY BECOME FINAL AND EXECUTORY."[2]

The Court of Appeals, in a decision, dated 18 August 2000, dismissed petitioner's appeal on the ground that petitioner raised a pure question of law. Citing Article VIII, Section 5(2)(e), of the Constitution, the appellate court explained that jurisdiction over the case was vested exclusively in the Supreme Court and that, in accordance with Rule 122, Section 3(e), of the Rules of Criminal Procedure, the

appeal should have been brought up by way of a petition for review on *certiorari* with this Court and not by merely filing a notice of appeal before the trial court.

Petitioner filed a motion for reconsideration which, on 18 May 2001, was denied by the appellate court. The petition for review on *certiorari* before this Court raised the following issues:

> "I. THE COURT OF APPEALS GRAVELY ERRED IN APPLYING SECTION 2, RULE 50 ON DISMISSAL OF IMPROPER APPEAL TO THE COURT OF APPEALS AS THE SAID SECTION REFERS TO AN APPEAL UNDER RULE 41 IN ORDINARY CIVIL ACTION BUT NOT TO AN APPEAL IN CRIMINAL CASES WHICH IS GOVERNED BY RULE 122 OF THE REVISED RULES ON CRIMINAL PROCEDURE.
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> "II. THE COURT OF APPEALS ERRED IN HOLDING THAT THE SUPREME COURT HAS EXCLUSIVE APPELLATE JURISDICTION ON PURE QUESTIONS OF LAW.
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> "III. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT BECAUSE THE APPEAL RAISED PURE QUESTIONS OF LAW, IT IS WITHOUT JURISDICTION TO RESOLVE THE ISSUE RAISED IN THE APPEAL.
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> "IV. THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE APPEAL OUTRIGHT INSTEAD OF DECLARING THE AMENDED DECISION VOID FOR UTTER WANT OF JURISDICTION.
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> "V. THE COURT OF APPEALS ERRED IN HOLDING THAT RULE 65 IS THE PROPER REMEDY TO RAISE THE ISSUE OF JURISDICTION AND IF SO IN NOT TREATING THE APPEAL AS A SPECIAL CIVIL ACTION FOR CERTIORARI."[3]

In all criminal prosecutions, the accused shall have the right to appeal in the manner prescribed by law.[4] While this right is statutory, once it is granted by law, however, its suppression would be a violation of due process, itself a right guaranteed by the Constitution.[5] Section 3(a), Rule 122 of the Rules of Criminal Procedure states:

> "Section 3. *How appeal is taken.* –
>
> (a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by *filing a notice of appeal* with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party. (Emphasis supplied).

The above rule is plain and unambiguous – the remedy of ordinary appeal by notice of appeal, although not necessarily preclusive of other remedies provided for by the rules, is open and available to petitioner.

The notice of appeal was timely filed by petitioner on 13 July 1998, three days after the questioned decision was promulgated.[6] It was a remedy that the law allowed him to avail himself of, and it threw the whole case effectively open for review on both questions of law and of fact whether or not raised by the parties.

Neither the Constitution nor the Rules of Criminal Procedure exclusively vests in the Supreme Court the power to hear cases on appeal in which only an error of law is involved.[7] Indeed, the Court of Appeals, under Rule 42 and 44 of the Rules of Civil Procedure, is authorized to determine "errors of fact, of law, or both."[8] These rules are expressly adopted to apply to appeals in criminal cases,[9] and they do not thereby divest the Supreme Court of its **ultimate jurisdiction** over such questions.

Anent the argument that petitioner should have filed a petition for *certiorari* under Rule 65, it might be pointed out that this remedy can only be resorted to when there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[10] Appeal, being a remedy still available to petitioner, a petition for *certiorari* would have been premature.

In fine, petitioner had taken an appropriate legal step in filing a notice of appeal with the trial court. Ordinarily, the Court should have the case remanded to the Court of Appeals for further proceedings. The clear impingement upon petitioner's basic right against double jeopardy,[11] however, should here warrant the exercise of the prerogative by this Court to relax the stringent application of the rules on the matter. When the trial court increased the penalty on petitioner for his crime of bigamy after it had already pronounced judgment and on which basis he then, in fact, applied for probation, the previous verdict could only be deemed to have lapsed into finality.

Section 7, Rule 120, of the Rules on Criminal Procedure that states –

> **"Sec. 7. Modification of judgment. – A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation"**-

implements a substantive provision of the Probation Law which enunciates that the mere filing of an application for probation forecloses the right to appeal.

> "SEC. 4. *Grant of Probation.* – Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best: *Provided,* That no application for probation shall be entertained or granted if the defendant has perfected

the appeal from the judgment or conviction.

"Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. **The filing of the application shall be deemed a waiver of the right to appeal.**

"An order granting or denying probation shall not be appealable. (As amended by PD 1257, and by PD 1990, Oct. 5, 1985.)"[12]

Such a waiver amounts to a voluntary compliance with the decision and writes *finis* to the jurisdiction of the trial court over the judgment.[13] There is no principle better settled, or of more universal application, than that no court can reverse or annul, reconsider or amend, its own final decree or judgment.[14] Any attempt by the court to thereafter alter, amend or modify the same, except in respect to correct clerical errors, would be unwarranted.

WHEREFORE, the petition is given due course. The assailed amendatory judgment of the trial court is SET ASIDE and its decision of 12 December 1996 is REINSTATED. No costs.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Kapunan, Ynares-Santiago, Sandoval-Gutierrez, and *Carpio, JJ.*, concur.
Mendoza, J., see dissent.
Bellosillo, Quisumbing, and *De Leon, Jr., JJ.*, joins the dissenting opinion of J. Mendoza.
Panganiban, J., in the result.

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[1] Rollo, pp. 109 – 112.

[2] Appellant's Brief, p. 5.

[3] Petition, p. 11; Rollo, p. 15.

[4] Section 1(i), Rule 115, Rules of Criminal Procedure.

[5] Estoya vs. Abraham-Singson, 237 SCRA 1.

[6] See Section 6, Rule 122, Rules of Criminal Procedure.

[7] Sec. 5. The Supreme Court shall have the following powers:

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(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari* as the law or

the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
(c) All cases in which the jurisdiction of any lower court is in issue.
(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.
(e) All cases in which only an error or question of law is involved.

[8] Section 2, Rule 42; Section 15, Rule 44, Rules of Civil Procedure

[9] Section 18, Rule 124, Rules of Criminal Procedure.

[10] Section 1, Rule 65, Rules of Civil Procedure.

[11] Gregorio vs. Director of Prisons, 43 Phil. 650; US vs. Hart, 24 Phil. 578.

[12] Establishing A Probation System, Appropriating Funds Therefor And For Other Purposes (P.D. No. 968, as amended by P.D. 1990.

[13] Lanestosa vs. Santamaria, 52 Phil. 67.

[14] United States vs. Ballad and Tamaray, 35 Phil. 15.

Justice Jose Feria, commenting on the 1985 Rules on Criminal Procedure, has this to say –

> "A judgment of conviction may now be modified by the court rendering it only `upon motion of the accused.' This provision changes the previous rulings of the Supreme Court to the effect that such modification may be made upon motion of the fiscal, provided the same is made before the judgment has become final or an appeal has been perfected." (Feria, Philippine Legal Studies Series No. 2.)

DISSENTING OPINION

MENDOZA, J.:

The reasons for my disagreement with the majority will be spelled out in detail, but in brief they are as follows: (1) The case before the Court of Appeals did not involve an error of judgment but an alleged error of jurisdiction and, therefore, appeal was not the appropriate remedy to bring the matter to that court. (2) Even assuming the case involved an error of judgment and therefore appeal was the appropriate