399 Phil. 526

FIRST DIVISION

[G.R. No. 137491, November 23, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE FLORES Y MONDRAGON, ACCUSED-APPELLANT.

D E C I S I O N

DAVIDE JR., C.J.:

In an Information filed on 14 October 1996, accused-appellant Vicente Flores y Mondragon (hereafter VICENTE) was charged before the Regional Trial Court of Dumaguete City with the violation of Section 9, Article II of R.A. 6425,[1] as amended. The case was docketed as Criminal Case No. 12731 and assigned to Branch 35 thereof. The information alleges:

> That on October 11, 1996, at about four o'clock in the afternoon, at Sitio Tontonan, Barangay Bal-os, Basay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully and unlawfully PLANT and CULTIVATE Indian hemp or Marijuana plants, all having a total weight of 230 grams, without authority of law.
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> CONTRARY TO LAW.[2]

When arraigned on 8 January 1999, VICENTE, in the presence and with the assistance of his counsel, pleaded guilty to the crime charged.[3] The trial court inquired into the voluntariness of the plea and VICENTE's comprehension thereof. It informed VICENTE that the offense with which he was charged and which he admitted carries the penalty of *reclusion perpetua* to death; but VICENTE was firm in his plea of guilty.

As a result of VICENTE's voluntary plea of guilty, the trial court on 12 January 1999 promulgated an Order,[4] the pertinent portion of which reads:

> In view therefore of the spontaneous and voluntary plea of guilty entered by accused Vicente Flores y Mondragon, the Court finds him guilty beyond reasonable doubt of violating Section 9, Article II of R.A. 6425 as amended, otherwise known as the Dangerous Drugs Act of 1972, and appreciating in his favor the mitigating circumstance of plea of guilty without any aggravating circumstance to offset the same, and applying the Indeterminate Sentence Law, hereby sentence him to reclusion perpetua and to pay a fine of five hundred thousand pesos, without subsidiary imprisonment, however, in case of insolvency, and to pay the

cost.

> The accused shall be credited with the full time of his preventive imprisonment in accordance with Art. 29 of the Revised Penal Code as amended by R.A. 6127, if the conditions prescribed therein have been complied.[5]

Not satisfied with the penalty imposed by the trial court, VICENTE moved to reconsider the same. He contended that since only 230 grams of marijuana were found to have been cultivated and planted by him, then in accordance with Section 17 of R.A. No. 7659 and with the doctrine enunciated in *People v. Simon*,[6] he should be sentenced to suffer only the penalty of six (6) months of *arresto mayor*, as minimum, to two years and four (4) months of *prision correccional*, as maximum.

On 2 February 1999, the trial court issued an order denying the motion for reconsideration for lack of merit.[7]

Not satisfied, VICENTE appealed to us. On 5 July 1999 we accepted the appeal.

In his Appellant's Brief, VICENTE alleges that:

> I
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> THE COURT A QUO GRAVELY ERRED IN IMPOSING THE PENALTY OF RECLUSION PERPETUA IN THE CASE AT BAR IN THE LIGHT OF THE PREVAILING JURISPRUDENCE ON THE MATTER.
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> II
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> CONSIDERING THE COURT A QUO'S FINDING THAT THE CASE AT BAR INVOLVES A CAPITAL OFFENSE, IT GRAVELY ERRED IN NOT PROPERLY OBSERVING THE PROVISIONS OF SECTION 3, RULE 116 OF THE RULES OF COURT.

Then in his Supplemental Appellant's Brief, which we admitted on 6 March 2000, VICENTE submits this additional assignment of error:

> THE COURT A QUO GRAVELY ERRED IN IMPOSING A FINE OF FIVE HUNDRED THOUSAND PESOS IN THE CASE AT BAR IN THE LIGHT OF THE PREVAILING JURISPRUDENCE ON THE MATTER.

He contends that the quantity of the marijuana involved in this case is only 230 grams. Conformably then with Section 20 of R.A. No. 6425, as amended by Section 17 of R.A. 7659[8] and the rule laid down in *People v. Simon*,[9] *reclusion perpetua* cannot be imposed on him. Applying in his favor the Indeterminate Sentence Law, he can be sentenced only to an indeterminate penalty ranging from six (6) months of *arresto mayor*, as minimum, to two (2) years and four (4) months of *prision*

correccional, as maximum. It also follows that no fine could be imposed on him because, as pronounced in *People vs. Simon*, "fine is imposed as a conjunctive penalty only if the penalty is *reclusion perpetua* to death."

Anent the second assigned error VICENTE argues that since the trial court was of the view that the case at bar involved a capital offense, it erred in not properly observing the procedure provided for in Section 3, Rule 116 of the Rules of Court which states:

> Sec. 3. *Plea of guilty to capital offense; reception of evidence*. - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.

VICENTE asserts that in *People v. Dayot*[10] we held that under this section, the judge is required to accomplish three things: (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the accused's plea; (2) to require the prosecution to prove the guilt of the accused and the precise degree of his culpability; and (3) to inquire whether or not the accused wishes to present evidence on his behalf and allow him to do so if he so desires. This procedure is mandatory, and a judge who fails to observe it commits a grave abuse of discretion.

In the Appellee's Brief the Office of the Solicitor General agrees with VICENTE as regards the latter's first assigned error in the Appellant's Brief and the additional assigned error in the Supplemental Appellant's Brief. It disagreed with him on the second assigned error because Section 3 of Rule 116 of the Rules of Court is not applicable in this case. VICENTE did not plead to a capital offense since the imposable penalty for the offense charged is only *prision correccional* under the law and according to the current jurisprudence. The applicable provision is Section 4 of Rule 116, which provides:

> SEC. 4. When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed.

However, such reception is within the discretion of the court.

The appeal is meritorious.

We agree with VICENTE that the trial court erred in imposing on him the penalty of *reclusion perpetua* and ordering him to pay a fine of Five Hundred Thousand Pesos on the basis of Section 9, Article II of R.A. No. 6425 as amended, which reads:

> SEC. 9. *Cultivation of Plants which are Sources of Prohibited Drugs*.- The penalty of *reclusion perpetua* to death and a fine ranging from five

> hundred thousand pesos to ten million pesos shall be imposed upon any person who shall plant, cultivate or culture on any medium Indian hemp, opium poppy (papaver somniferum) or any other plant which is or may hereafter be classified as dangerous drug or from which any dangerous drug may be manufactured or derived.

It is true that under this section the prescribed penalty is *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million. However, this section is subject to the provision of Section 20 of R.A. No. 6425, as amended by Sec. 17 of R.A. No. 7659, the pertinent portion of which reads as follows:

> SEC. 20. *Application of Penalties, Confiscation and forfeiture of the Crime.* - The penalties for offenses under Section 3, 4, 7, 8, and 9 of Article II and Section 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:
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> x x x
>
> 5. 750 grams or more of indian hemp or marijuana;
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> x x x
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> Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from *prision correccional* to *reclusion perpetua* depending upon the quantity.

Consequently, the penalty prescribed in Section 9 will apply only if the quantity of the dangerous drugs involved falls within the first paragraph of Section 20 as amended, *i.e*., 750 grams or more of Indian hemp or marijuana. If the quantity is lower than that specified therein, *i.e*., less than 750 grams, the penalty shall be from "*prision correccional* to *reclusion perpetua*," pursuant to the second paragraph of said Section 20. Withal, the penalty under Section 9 shall be applicable depending on the quantity of the regulated drugs involved.

On the basis of the foregoing, considering that the Indian hemp or marijuana plants found in the possession of VICENTE had a total weight of only 230 grams, the imposable penalty is only *prision correccional* pursuant to our decision in *People v. Simon.*[11] We quote these pertinent portions thereof:

> (1) Where the quantity of the dangerous drug involved is less than the quantities stated in the first paragraph of Section 20 of R.A. No. 6425, the penalty to be imposed shall range from *prision correccional* to reclusion temporal, and not *reclusion perpetua*. The reason is that there is an overlapping error, probably through oversight in the drafting, in the provisions on the penalty of *reclusion perpetua* as shown by its dual imposition, i.e., as the minimum of the penalty where the quantity of the dangerous drugs involved is more than those specified in the first paragraph of the amended Section 20 and also as the maximum of the