502 Phil. 318

EN BANC

[G.R. No. 142675, July 22, 2005]

VICENTE AGOTE Y MATOL, PETITIONER, VS. HON. MANUEL F. LORENZO, PRESIDING JUDGE, RTC, BRANCH 43, MANILA AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

GARCIA, J.:

In this appeal by way of a petition for review on certiorari under Rule 45 of the Rules of Court, petitioner **Vicente Agote y Matol** seeks to annul and set aside the following resolutions of the Court of Appeals in **CA-G.R. SP No. 2991-UDK,** to wit:

1. **Resolution dated September 14, 1999,**[1] dismissing the Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order filed by the petitioner against the Honorable Manuel F. Lorenzo, Presiding Judge, Regional Trial Court, Manila, Branch 43 for refusing to retroactively apply in his favor Republic Act No. 8294[2]; and,

2. **Resolution dated February 8, 2000,**[3] denying petitioner's motion for reconsideration.

As culled from the pleadings on record, the following are the undisputed factual antecedents:

Petitioner Vicente Agote y Matol was earlier charged before the sala of respondent judge with Illegal Possession of Firearms under Presidential Decree No. 1866[4] and violation of COMELEC Resolution No. 2826[5] (Gun Ban), docketed as Criminal Cases No. 96-149820 and 96-149821, respectively, allegedly committed, as follows:

CRIMINAL CASE NO. 96-149820

> That on or about April 27, 1996 in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully, knowingly have in possession and under his custody and control, One (1) .38 cal. Rev. without serial no. with four (4) live bullets. Without first having secured from the proper authorities the necessary license therefor.
>
> CONTRARY TO LAW.

CRIMINAL CASE NO. 96-149821

> That on or about April 27, 1996, in the City of Manila, Philippines, the said accused did then and there, willfully, unlawfully and knowingly have

> in his possession and under his custody and control one (1) .38 cal. Rev. without serial number, with four (4) live ammunition/bullets in the chamber, by then and there carrying the same along V. Mapa Ext. Sta. Mesa, this City, which is a public place on the aforesaid date which is covered by an election period, without first securing the written authority from the COMELEC, as provided for by the COMELEC Resolution No. 2828, in relation to RA No. 7166 (Gun Ban).
>
> CONTRARY TO LAW.

On arraignment, petitioner pleaded "Not Guilty" to both charges. Thereafter, the two (2) cases were tried jointly.

Eventually, in a decision dated May 18, 1999, the trial court rendered a judgment of conviction in both cases, separately sentencing petitioner to an indeterminate penalty of ten (10) years and one (1) day of *prision mayor,* as minimum, to eighteen (18) years eight (8) months and one (1) day of *reclusion temporal,* as maximum, in accordance with PD. No. 1866 in **Crim. Case No. 96-149820** (illegal possession of firearm), and to a prison term of one (1) year in **Crim. Case No. 96-149821** (violation of the COMELEC Resolution on gun ban).

Meanwhile, on June 6, 1997, Republic Act No. 8294[6] was approved into law.

Pointing out, among others, that the penalty for illegal possession of firearms under P.D. No. 1866 has already been reduced by the subsequent enactment of Rep. Act No. 8294, hence, the latter law, being favorable to him, should be the one applied in determining his penalty for illegal possession of firearms, petitioner moved for a reconsideration of the May 18, 1999 decision of the trial court.

In its order dated July 15, 1999,[7] however, the trial court denied petitioner's motion, saying:

> While the law (R.A. 8294) is indeed favorable to the accused and therefore should be made retroactive we are also guided by Art. 4 of the Civil Code which states that laws shall have no retroactive effect, unless the contrary is provided. Republic Act 8294 did not so provide that it shall have a retroactive effect. The Supreme Court likewise in the case of Padilla vs. CA declared: `The trial court and the respondent court are bound to apply the governing law at the time of the appellant's commission of the offense for it is a rule that laws are repealed only by subsequent ones. Indeed, it is the duty of judicial officers to respect and apply the law as it stands.

Therefrom, petitioner went to the Court of Appeals on a petition for *certiorari* with prayer for a temporary restraining order, thereat docketed as **CA-G.R. SP No. 2991-UDK**.

In the herein assailed **resolution dated September 14, 1999,**[8] the appellate court dismissed petitioner's recourse on two (2) grounds, to wit: (a) the remedy of *certiorari* availed of by petitioner is improper since he should have appealed from the July 15, 1999 order of the trial court; and (b) lack of jurisdiction, as the issue involved is a pure question of law cognizable by the Supreme Court.

With his motion for reconsideration having been denied by the appellate court in its subsequent **resolution of February 8, 2000,**[9] petitioner is now with us, submitting for resolution the following issues: (1) whether the Court of Appeals erred in dismissing his petition for *certiorari*; and (2) whether the courts below erred in not giving Rep. Act No. 8294 a retroactive application.

The petition is partly meritorious.

At the outset, it must be stressed that petitioner never put in issue the factual findings of the trial court. What he questions is said court's legal conclusion that Rep. Act No. 8294 cannot be retroactively applied to him. Unquestionably, the issue raised is one purely of law. As we have said in *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*:[10]

> For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any one of them. And the distinction is well-known: there is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of the facts alleged.

Considering that *"judgments of regional trial courts in the exercise of their original jurisdiction are to be elevated to the Court of Appeals in cases when appellant raises questions of fact or mixed questions of fact and law",* while *"appeals from judgments of the [same courts] in the exercise of their original jurisdiction must be brought directly to the Supreme Court in cases where the appellant raises only questions of law"*[11]*,* petitioner should have appealed the trial court's ruling to this Court by way of a petition for review on *certiorari* in accordance with Rule 45 of the 1997 Rules of Civil Procedure, as amended,[12] pursuant to Rule 41, Section 2 (c) of the same Rules, *viz*:

> SEC. 2. Modes of appeal. -
>
> (a) xxx xxx xxx
>
> (b) xxx xxx xxx
>
> (c) Appeal by *certiorari*. - In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

By reason, then, of the availability to petitioner of the remedy of a petition for review under Rule 45, his right to resort to a petition for *certiorari* under Rule 65 was effectively foreclosed, precisely because one of the requirements for the availment of the latter remedy is that "*there should be no appeal, or any plain, speedy and adequate remedy in the ordinary course of law*",[13] the remedies of appeal and certiorari being mutually exclusive and not alternative or successive.[14]

As correctly observed by the Court of Appeals, what petitioner should have done was to take an appeal from the trial court's order of July 15, 1999 which denied his

motion for reconsideration of the May 18, 1999 judgment of conviction.

Petitioner's case is worse compounded by the fact that even his period for appeal had already prescribed when he filed with the Court of Appeals his *certiorari* petition in CA-G.R. SP No. 2991-UDK. The *Rollo* of said case reveals that petitioner received his copy of the trial court's order denying his motion for reconsideration on **July 20, 1999**. As the same *Rollo* shows, it was only on **August 23, 1999**, or after more than fifteen (15) days when petitioner filed his wrong remedy of certiorari with the appellate court.

Be that as it may, the Court feels that it must squarely address the issue raised in this case regarding the retroactivity of Rep. Act No. 8294, what with the reality that the provisions thereof are undoubtedly favorable to petitioner. For this purpose, then, we shall exercise our prerogative to set aside technicalities in the Rules and "hold the bull by its horns", so to speak. After all, the power of this Court to suspend its own rules whenever the interest of justice requires is not without legal authority or precedent. In *Solicitor General, et. al. vs. The Metropolitan Manila Authority,*[15] we held:

> Unquestionably, the Court has the power to suspend procedural rules in the exercise of its inherent power, as expressly recognized in the Constitution, to promulgate rules concerning `pleading, practice and procedure in all courts.' In proper cases, procedural rules may be relaxed or suspended in the interest of substantial justice, which otherwise may be miscarried because of a rigid and formalistic adherence to such rules. xxx
>
> xxx xxx xxx
>
> We have made similar rulings in other cases, thus:
>
> > Be it remembered that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. xxx Time and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require.

We shall now proceed to determine whether the provisions of Rep. Act No. 8294 amending P.D. No. 1866 can be retroactively applied to this case.

Here, the two (2) crimes for which petitioner was convicted by the trial court, i.e., (1) illegal possession of firearms under P.D. No. 1866 and (2) violation of COMELEC Resolution No. 2826 on gun ban, were both committed by the petitioner on April 27, 1996. For the crime of illegal possession of firearms in Crim. Case No. 96-149820, he was sentenced to suffer a prison term ranging from ten (10) years and one (1) day of *prision mayor*, as minimum, to (18) eighteen years, eight (8) months and one (1) day of *reclusion temporal,* as maximum, in accordance with P.D. No. 1866, Section 1 of which reads:

> SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms of Ammunition. — **The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed** upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition. (Emphasis supplied)

When Rep. Act No. 8294 took effect on July 6, 1997,[16] the penalty for illegal possession of firearms was lowered, depending on the class of firearm possessed, *viz*:

> SECTION 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:
>
> > `SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. — **The penalty of prision correccional in its maximum period** and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: **Provided, That no other crime was committed.**
> >
> > The penalty of prision mayor in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: **Provided, however, That no other crime was committed by the person arrested.** (Emphasis supplied)

Based on the foregoing, petitioner contends that the reduced penalty under Rep. Act No. 8294 should be the one imposed on him. Significantly, in its **Manifestation In Lieu of Comment,**[17] the Office of the Solicitor General agrees with the petitioner, positing further that the statement made by this Court in *People vs. Jayson*[18] to the effect that the provisions for a lighter penalty under Rep. Act No. 8294 does not apply if another crime has been committed, should not be applied to this case because the proviso in Section 1 of said law that "*no other crime was committed*" must refer only to those crimes committed with the **use** of an unlicensed firearm and not when the other crime is not related to the use thereof or where the law violated merely criminalizes the possession of the same, like in the case of election