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SECOND DIVISION

[G.R. No. 149375, November 26, 2002]

MARVIN MERCADO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

BELLOSILLO, J.:

MARVIN MERCADO, together with Rommel Flores, Michael Cummins, Mark Vasques and Enrile Bertumen, was charged with and convicted of violation of R.A. 6538 or *The Anti-Carnapping Act of 1972,* as amended, for which he and his co-accused were sentenced to a prison term of twelve (12) years and one (1) day as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.[1]

The case before us concerns only the petition for review of accused Marvin Mercado where he assails his conviction, and arguing that the Court of Appeals having increased the penalty imposed by the court *a quo* to a prison term of seventeen (17) years and four (4) months to thirty (30) years, should have certified the case to this Court as the penalty of thirty (30) years was already *reclusion perpetua,* pursuant to the last paragraph of Sec. 13, Rule 124,[2] of the *2000 Rules of Criminal Procedure.*

We cannot sustain the petition; we agree instead with the Court of Appeals.

In denying the prayer of petitioner, the Court of Appeals correctly held that the provision of Sec. 13, Rule 124, relied upon by petitioner, was applicable only when the penalty imposed was *reclusion perpetua* or higher as a single indivisible penalty, i.e., the penalty was at least *reclusion perpetua.* Hence, the penalty imposed by the appellate court on the accused was clearly in accordance with Sec. 14 of RA 6538,[3] which is not considered *reclusion perpetua* for purposes of Sec. 13, Rule 124.[4]

The Court of Appeals in its assailed resolution relied on *People v. Omotoy*[5] where the Regional Trial Court found the accused guilty of arson and sentenced him to imprisonment ranging from twelve (12) years of *prision mayor* maximum, as minimum, to *reclusion perpetua.* The case reached this Court on automatic appeal. In *Footnote 16* of the decision, it was observed -

> The appeal was taken directly to this Tribunal for the reason no doubt that the penalty of *reclusion perpetua* is involved, albeit joined to *prision mayor* in its maximum period in accordance with the Indeterminate Sentence Law. Actually, the appeal should have gone to the Court of Appeals since strictly speaking, this Court entertains appeals in criminal cases only where "the penalty imposed is *reclusion perpetua* or higher" (Sec. 5[2](d), Article VIII, Constitution), i.e., the penalty is *at least reclusion perpetua* (or life imprisonment, in special offenses). The lapse will be overlooked so as not to delay the disposition of the case. It is of

slight nature, the penalty of *reclusion perpetua* having in fact been imposed on the accused, and causes no prejudice whatsoever to any party.

Petitioner now asks whether the last paragraph of Sec. 13, Rule 124, of the 2000 *Rules of Criminal Procedure* is applicable to the instant case considering that the penalty imposed was seventeen (17) years and four (4) months to thirty (30) years.

Article 27 of *The Revised Penal Code* states that the penalty of *reclusion perpetua* shall be from twenty (20) years and one (1) day to forty (40) years. While the thirty (30)-year period falls within that range, *reclusion perpetua* nevertheless is a single indivisible penalty which cannot be divided into different periods. The thirty (30)-year period for *reclusion perpetua* is only for purposes of successive service of sentence under Art. 70 of *The Revised Penal Code.*[6]

More importantly, the crime committed by petitioner is one penalized under RA 6538 or *The Anti-Carnapping Act of 1972* which is a special law and not under *The Revised Penal Code.* Unless otherwise specified, if the special penal law imposes such penalty, it is error to designate it with terms provided for in *The Revised Penal Code* since those terms apply only to the penalties imposed by the *Penal Code,* and not to the penalty in special penal laws.[7] This is because generally, special laws provide their own specific penalties for the offenses they punish, which penalties are not taken from nor refer to those in *The Revised Penal Code.*[8]

The penalty of fourteen (14) years and eight (8) months under RA 6538 is essentially within the range of the medium period of *reclusion temporal.* However, such technical term under *The Revised Penal Code* is not similarly used or applied to the penalty for carnapping. Also, the penalty for carnapping attended by the qualifying circumstance of violence against or intimidation of any person or force upon things, i.e., seventeen (17) years and four (4) months to thirty (30) years, does not correspond to that in *The Revised Penal Code.*[9] But it is different when the owner, driver or occupant of the carnapped vehicle is killed or raped in the course of the carnapping or on the occasion thereof, since this is penalized with *reclusion perpetua* to death.[10]

Hence, it was error for the trial court to impose the penalty of "*x x x imprisonment of TWELVE (12) YEARS and ONE (1) DAY as minimum to* SEVENTEEN *(17) YEARS and FOUR (4) MONTHS of reclusion temporal as maximum.*"[11] For these reasons the use of the term *reclusion temporal* in the decretal portion of its decision is not proper. Besides, we see no basis for the trial court to set the minimum penalty at twelve (12) years and one (1) day since RA 6538 sets the minimum penalty for carnapping at fourteen (14) years and eight (8) months.

We see no error by the appellate court in relying on a *Footnote* in *Omotoy*[12] to affirm the conviction of the accused. The substance of the *Footnote* may not be the *ratio decidendi* of the case, but it still constitutes an important part of the decision since it enunciates a fundamental procedural rule in the conduct of appeals. That this rule is stated in a *Footnote* to a decision is of no consequence as it is merely a matter of style.

It may be argued that *Omotoy* is not on all fours with the instant case since the former involves an appeal from the Regional Trial Court to the Supreme Court while

the case at bar is an appeal from the Court of Appeals to the Supreme Court. As enunciated in *Omotoy,* the Supreme Court entertains appeals in criminal cases only where the penalty imposed is *reclusion perpetua* or higher. The basis for this doctrine is the Constitution itself which empowers this Court to review, revise, reverse, modify or affirm on appeal, as the law or the *Rules of Court* may provide, final judgments of lower courts in all criminal cases in which the penalty imposed is *reclusion perpetua* or higher.[13]

Where the Court of Appeals finds that the imposable penalty in a criminal case brought to it on appeal is at least *reclusion perpetua,* death or life imprisonment, then it should impose such penalty, refrain from entering judgment thereon, certify the case and elevate the entire records to this Court for review.[14] This will obviate the unnecessary, pointless and time-wasting shuttling of criminal cases between this Court and the Court of Appeals, for by then this Court will acquire jurisdiction over the case from the very inception and can, without bothering the Court of Appeals which has fully completed the exercise of its jurisdiction, do justice in the case.[15]

On the other hand, where the Court of Appeals imposes a penalty less than *reclusion perpetua,* a review of the case may be had only by petition for review on certiorari under Rule 45[16] where only errors or questions of law may be raised.

Petitioner, in his Reply, also brings to fore the issue of whether there was indeed a violation of *The Anti-Carnapping Act.* This issue is factual, as we shall find hereunder.

In the evening of 26 May 1996 Leonardo Bhagwani parked the subject Isuzu Trooper in front of his house at No. 7015-B Biac-na-Bato St., Makati City, Metro Manila. The vehicle was owned by Augustus Zamora but was used by Bhagwani as a service vehicle in their joint venture. The following day the Isuzu Trooper was nowhere to be found prompting Bhagwani to report its disappearance to the Makati Police Station and the Anti-Carnapping (ANCAR) Division which immediately issued an Alarm Sheet.[17]

On 31 May 1996 Bhagwani's neighbor, fireman Avelino Alvarez, disclosed that he learned from his daughter, a common-law wife of accused Michael Cummins, that the accused Rommel Flores, Mark Vasques, Enrile Bertumen and Michael Cummins himself stole the Isuzu Trooper. Alvarez's daughter however refused to issue any statement regarding the incident.[18]

In the evening of 31 May 1996 SPO3 "Miling" Flores brought to his house Michael Cummins, Mark Vasques, Enrile Bertumen, Rommel Flores, and complaining witness Bhagwani. In that meeting, Cummins, Vasques, Bertumen and Flores admitted that they took the vehicle and used it in going to Laguna, La Union and Baguio.[19] They claimed however that it was with the knowledge and consent of Bhagwani. They alleged that on the night they took the vehicle, they invited Bhagwani to join them in their outing to Laguna. But when Bhagwani declined, they asked him instead if they could borrow the Isuzu Trooper. Bhagwani allegedly agreed and even turned over the keys to them.[20]

Petitioner Marvin Mercado was absent during that *confrontasi* in the house of SPO3 "Miling" Flores but his co-accused narrated his participation in the crime.[21]