EN BANC

G.R. No. 206513 entitlled MUSTAPHA DIMAKUTA y MARUHOM @ BOYET v. PEOPLE OF THE PHILIPPINES

Promulgated:

October 20, 2015

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substantiate its claim of his innocence. Mustapha denied the accusation and claimed that AAA merely concocted the charge against him just so that she could have a reason to leave their house where she worked as a domestic helper and be reunited with her family in the province.

On September 3, 2008, the RTC rendered its Decision,[4] finding Mustapha guilty as charged, and meted out the penalty of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, with the accessory penalty of perpetual absolute disqualification. Further, Mustapha was ordered to pay a fine of ₱25,000.00; civil indemnity of ₱25,000.00; and moral damages of ₱25,000.00.

Not satisfied, Mustapha appealed the RTC judgment of conviction before the CA claiming that the trial court egregiously erred in declaring him guilty of violating Section 5(b), Article III of R.A. No. 7610. He faulted the trial court for giving undue faith and credence to the testimony of AAA, contending that it was laced with inconsistencies and improbabilities, tainting the veracity of her charge. He argued that even assuming that he indeed touched the breasts and vagina of AAA, still there was no concrete prosecution evidence showing that the said lascivious act was committed through force, duress, intimidation or violence and, hence, his conviction under R.A. No. 7610 was erroneous. He added that he could not be convicted of Acts of Lasciviousness under Article 336 of the Revised Penal Code (*RPC*) either as the prosecution failed to establish the essential elements of the said crime.

In its Appellee's Brief,[5] the Office of the Solicitor General (*OSG*) averred that the RTC was correct in lending weight and credence to the testimony of AAA and that the alleged inconsistencies in her testimony pertained merely on minor details and did not negate the commission of the sexual molestation. The **OSG,** however, was of the **view** that **Mustapha should have been convicted of Acts of Lasciviousness only** under Article 336 of the RPC and not for Violation of Section 5(b), Article III of R.A. No. 7610 because the prosecution failed to prove that the lascivious conduct was committed through coercion or intimidation.[6]

In its June 28, 2012 Decision,[7] the **CA agreed with the OSG** and *modified* the judgment of the RTC and convicted Mustapha for Acts of Lasciviousness only under Article 336 of the RPC explaining that coercion

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[4] Penned by Judge Joselito Vibandor; *rollo*, pp. 33-43.
[5] Id. at 77-1114.
[6] Id. at 102-107.
[7] Penned by Associate Justice Myra V. Garcia-Fernandez with Associate Vicente S.E. Veloso and Stephen C. Cruz, concurring; id. at 117-130.

or intimidation, the second element of the crime of violation of Section 5(b), Article III of R.A. No. 7610, was wanting in Criminal Case No. 05-1098. According to the CA, the evidence on record revealed that AAA was asleep at the time the sexual abuse happened and only awoke when she felt her breasts being mashed and her vagina being touched. The CA noted that after being roused from sleep, AAA immediately put on some clothes and rushed out of her room, leaving Mustapha behind, and locked herself in the stockroom.

The CA added that there was no showing that Mustapha compelled AAA, or cowed her into silence to bear his sexual assault. Neither was there evidence that she had the time to manifest conscious lack of consent or resistance to Mustapha's assault. It stressed that the lascivious acts imputed to him had taken place while private complainant was in deep slumber or unconscious, under almost the same factual circumstances as in the case of *People v. Abello,*[8] where the accused was found guilty beyond reasonable doubt of the crime of Acts of Lasciviousness, defined and penalized under Article 336 of the RPC instead of the charge of violation of Section 5(b), Article III of R.A. No. 7610. The CA justified its ruling that Mustapha's conviction under Article 336 of the RPC was proper for the reasons that: 1) the recital of ultimate facts and circumstances in the Information constituted acts of lasciviousness; and 2) the evidence adduced by the prosecution established beyond reasonable doubt his guilt of the said crime. The dispositive portion of the CA decision reads:

> WHEREFORE, the Decision appealed from is MODIFIED. Accused-appellant Mustapha Dimakuta y Maruhom alias "Boyet" is found GUILTY of acts of lasciviousness, defined and penalized under ARTICLE 336 of the REVISED PENAL CODE, as amended and he is sentenced to the indeterminate penalty of SIX (6) MONTHS of *arresto mayor*, as minimum, to FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional*, as maximum. Accused-appellant is likewise ordered to pay the private complainant TWENTY THOUSAND PESOS (₱20,000.00) as civil indemnity and THIRTY THOUSAND PESOS (₱30,000.00) as moral damages.
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> SO ORDERED.[9]

Instead of moving for reconsideration, Mustapha filed on July 23, 2012, a manifestation with motion[10] before the CA praying that he be allowed to apply for probation under Presidential Decree (P.D.) No. 968 upon its remand to the trial court for execution. He placed reliance on the Court's ruling in *Colinares* where the accused was allowed to apply for probation under the reduced penalty imposed on appeal. Mustapha

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[8] 601 Phil. 373 (2009).
[9] *Rollo*, pp. 129-130.
[10] Id. at 132-142.

contended that he should not be prejudiced by the erroneous judgment of the RTC which convicted him with the wrong crime and sentenced him with a penalty beyond the coverage of the Probation Law. He submitted that the Probation Law must be liberally construed in favor of the accused.

In its first assailed Resolution, dated September 3, 2012, the CA denied due course to Mustapha's manifestation with motion, holding that the *Colinares* case was not on all fours with the present case. The CA explained that in *Colinares* case, the petitioner raised as sole issue the correctness of the penalty imposed and claimed that the evidence at best warranted a conviction for a lesser offense of attempted homicide; while Mustapha never assailed the propriety of the penalty meted out against him and, in fact, questioned the findings of facts and conclusions drawn by the RTC based on the evidence adduced by the prosecution. It held that the ruling in *Lagrosa v. People*[11] is more at point. In said case, it was held that the petitioners therein were precluded from seeking probation after taking a guiltlessness stance and put in issue the merits of their conviction on appeal. The CA, thus, adjudged as follows:

> WHEREFORE, the Manifestation with Motion to Allow Accused-Appellant to Apply for Probation under Presidential Decree No. 968 is DENIED.
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> SO ORDERED.[12]

Mustapha moved for reconsideration, but his motion was denied in the second assailed Resolution, dated March 13, 2013.

Hence, this petition.

GROUND

> **THE COURT OF APPEALS' DENIAL OF THE PETITIONER'S RIGHT TO APPLY FOR PROBATION [AS IT DID] NOT QUESTION THE PROPRIETY OF THE PENALTY UPON APPEAL, IS CONTRARY TO THE DECIDED CASE OF ARNEL COLINARES VS. PEOPLE.**[13]

The threshold issue that begs an answer from this Court is whether or not Mustapha has the right to apply for probation under the new penalty imposed by the CA which is within the probationable limit.

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[11] 453 Phil. 270 (2003).
[12] *Rollo*, p. 29.
[13] Id. at 14.

Mustapha posits that he can still avail of the benefits of probation under P.D. No. 968, as amended by P.D. No. 1990, despite having appealed the September 3, 2008 RTC decision because the opportunity to apply for probation came into being only upon his conviction by the CA of the crime of Acts of Lasciviousness and the imposition of a lesser penalty which fell within the probationable level.

By way of Comment[14] to the petition, the OSG counters that Mustapha's right to apply for probation was lost when he perfected his appeal from the RTC judgment of conviction. It argues that the perfection of an appeal is a relinquishment of the alternative remedy of availing the Probation Law because appeal and probation are mutually exclusive remedies which rest on diametrically opposed legal positions. The OSG submits that the *Colinares* case is not squarely applicable in the case at bench because Mustapha never admitted guilt and did not limit the issue on the correctness of the penalty meted out by the trial court.

I am of the view that the petition is impressed with merit.

Probation is not a right of an accused but a mere privilege, an act of grace and clemency or immunity conferred by the State, which is granted to a deserving defendant who thereby escapes the extreme rigors of the penalty imposed by law for the offense of which he was convicted.[15] In recent jurisprudence, it has been clarified that while the convicted offender has no right to such privilege, nevertheless, he has the right to apply for that privilege,[16] provided that he is not disqualified from availing the benefits of probation.

To properly understand the current application of the Probation Law, a brief review of its history is but appropriate. As originally promulgated on July 24, 1976, P.D. No. 968 allowed the filing of an application for probation even if an appeal had been perfected by the convicted offender. When the law was later amended by P.D. No. 1257 on December 1, 1977, the filing of an application for probation pending appeal was still allowed and, in fact, fixed the period to the point just "before he begins to serve his sentence." With the subsequent amendment of Section 4 of P.D. No. 968 by P.D. No. 1990, however, the application for probation is no longer allowed if the accused has perfected an appeal from the judgment of conviction. Section 4 of the Probation Law now reads:

> 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

[14] Id. at 169-182.
[15] *Moreno v. Commission on Elections*, 530 Phil. 279, 290 (2006).
[16] *Colinares v. People*, supra note 3, at 497.

> 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 an appeal from the judgment of 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.

The reason underlying the amendment was amply articulated in the preambulatory clauses of P.D. No. 1990, thus:

> **WHEREAS,** it has been the sad experience that persons who are convicted of offenses and who may be entitled to probation still appeal the judgment of conviction even up to the Supreme Court, only to pursue their application for probation when their appeal is eventually dismissed;
>
> **WHEREAS,** the process of criminal investigation, prosecution, conviction and appeal entails too much time and effort, not to mention the huge expenses of litigation, on the part of the State;
>
> **WHEREAS,** the time, effort and expenses of the Government in investigating and prosecuting accused persons from the lower courts up to the Supreme Court, are oftentimes rendered nugatory when, after the appellate Court finally affirms the judgment of conviction, the defendant applies for and is granted probation;
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> x x x x

In *Almero v. People*,[17] the Court stated that the Probation Law was amended "precisely to put a stop to the practice of appealing from judgments of conviction - even if the sentence is probationable - for the purpose of securing an acquittal and applying for the probation only if the accused fails in his bid." In *Sable v. People*,[18] the Court elucidated that the requirement that an accused must not have appealed his conviction before he can avail of probation, outlaws the element of speculation on the part of the accused - to wager on the result of his appeal - that when his conviction is finally affirmed on appeal, the moment of truth well-nigh at hand, and the service of his sentence inevitable, he now applies for probation as an "escape hatch," thus, rendering nugatory the appellate court's affirmance of his conviction.

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[17] G.R. No. 188191, March 12, 2014.
[18] 602 Phil. 989, 997 (2009).

Resultantly, under Section 4 of P.D. No. 968 as amended, the **accused is given the choice of appealing** his sentence or **applying for probation**. If he appeals, he cannot later apply for probation. If he opts for probation, he cannot appeal.

Going back to the case at bench, I am of the considered view that Mustapha can apply for probation. Mustapha, just like the petitioner in the *Colinares* case, **did not have a choice between appeal** and **probation** when the trial court convicted him of a wrong offense. The trial court's erroneous conviction of Mustapha for Violation of Section 5(b), Article III of R.A. No. 7610 and the imposition of a prison term of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, deprived him of the choice to pursue an application for probation considering that the maximum probationable imprisonment under the Probation Law was only up to six (6) years.

In the *Colinares* case, the petitioner was convicted by the trial court of Frustrated Homicide and sentenced him to suffer imprisonment from two (2) years and four (4) months of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, but later, on appeal, this Court found him guilty only of Attempted Homicide, and sentenced him to suffer an indeterminate penalty from four (4) months of *arresto mayor*, as minimum, to two (2) years and four (4) months of *prision correccional*, as maximum. Verily, because of the stiff penalties imposed against both Mustapha and Arnel Colinares by the trial courts, they had no way of obtaining relief except by appealing their respective judgments.

In the *Colinares* case, the Court resolved that it is but fair to allow the petitioner the right to apply for probation under the reduced penalty upon remand of the case to the RTC. I see no reason why the case of Mustapha should be treated differently considering that his sentence was reduced by the CA to an indeterminate penalty of six (6) months of *arresto mayor*, as minimum to four (4) years and two (2) months of *prision correccional*, as maximum. By appealing the merits of the case, together with the conformity of the OSG, the CA found Mustapha guilty only of the crime of Acts of Lasciviousness with a penalty well within the probationable period.

It bears stressing that the evil of speculation and opportunism on the part of the accused sought to be curbed by the amendment in P.D. No. 1990 was not present in the case at bench inasmuch as the penalty imposed by the RTC against Mustapha was not probationable at the outset. Besides, nowhere in the amendatory decree does it state or even hint that in limiting the accused to the choice of either appealing from the decision of the trial court or applying for probation, the purpose is to deny him of the right to

apply for probation in cases like the one at bench where he became eligible for probation only because his sentence was reduced on appeal. To repeat, the purpose of the amendment is simply to prevent speculation or opportunism on the part of the accused who, *although already eligible for probation,* does not at once apply for probation, but did so only after failing in his appeal.[19]

The CA explained that in the *Colinares* case, the petitioner therein raised as sole issue the correctness of the penalty imposed while the OSG contends that the *Colinares* case is not squarely applicable to present case because Mustapha never admitted guilt and did not limit the issue on appeal to the correctness of the penalty meted out by the trial court.

These arguments are specious.

Firstly, in the *Colinares* case, the accused therein did not only question the correctness of the penalty, but also the merits of the case by arguing that he should be exonerated due to the presence of the justifying circumstance of self-defense. The Court did not agree with his defense but nevertheless found him guilty of a lesser offense of attempted homicide with a probationable penalty. Just like in this case, Mustapha appealed the merits of the case by questioning the appreciation of evidence of the trial court.

Secondly, it cannot be said with absolute certainty that the sole and exclusive motivation of Mustapha for lodging the appeal was his desire to be acquitted. Proof of this is that after Mustapha was found guilty by the CA of acts of lasciviousness and sentenced to a lesser penalty which thereby qualified him for probation, he did not appeal further although he could have done so. What he did, instead, was to accept the new sentence and seek a declaration from the CA that he is entitled to apply for probation upon remand of the case to the RTC for execution. This shows that he is willing to accept the conviction of crime, albeit for a lower penalty.

Thirdly, regardless of the whether an accused appealed the merits of the case or simply the correctness of the penalty imposed, the Court should not distinguish insofar as the application of the Probation Law is concerned. The Court cannot expect Mustapha to forgo the remedy of appeal and admit guilt over a crime he did not commit due to an erroneous appreciation of the merits of the case. He should not accept the erroneous judgment of the RTC for, in truth, he only committed Acts of Lasciviousness with a maximum penalty of four (4) years and two (2) months. Mustapha should not be made to suffer through the forfeiture of the right to apply for probation simply

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[19] *Francisco v. Court of Appeals*, 313 Phil. 241, 264 (1995).

because the RTC had blundered. In the *Colinares* case, it was written:

> The Probation Law never intended to deny an accused his right to probation through no fault of his. The underlying philosophy of probation is one of liberality towards the accused. Such philosophy is not served by a harsh and stringent interpretation of the statutory provisions. As Justice Vicente V. Mendoza said in his dissent in *Francisco*, the Probation Law must not be regarded as a mere privilege to be given to the accused only where it clearly appears he comes within its letter; to do so would be to disregard the teaching in many cases that the Probation Law should be applied in favor of the accused not because it is a criminal law but to achieve its beneficent purpose.

There are views that Mustapha should not be allowed to apply for probation anchored on the following grounds:

1] the *Colinares* case should not be made to apply to this case because it is not yet an established doctrine and the pronouncements therein were not supported by the text of the Probation Law; and

2] even if the ratiocination in the *Colinares* case is sound, still, it finds no application in the case at bench inasmuch as the CA erred in modifying the judgment of the RTC.

I disagree.

Adherence to the *Colinares* case is dictated by this Court's policy of securing and maintaining certainty and stability of judicial decisions in accordance with the legal maxim *stare decisis et non quieta movere* (or simply, *stare decisis* which means "follow past precedents and do not disturb what has been settled"). The principle, entrenched under Article 8[20] of the Civil Code, evokes the general rule that, for the sake of certainty, a conclusion reached in one case should be doctrinally applied to those that follow if the facts are substantially the same, even though the parties may be different.[21] Otherwise stated, once a point of law has been established by the Court, that point of law will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised.

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[20] Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

[21] *Belgica v. Ochoa, Jr.*, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 101-102.

Stare decisis proceeds from the first principle of justice that, absent powerful countervailing considerations, like cases ought to be decided alike.[22] Hence, where, as in this case, the same question relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[23] Significantly, the respondent has not shown any strong and compelling reason to persuade the Court that the manner of disposition in *Colinares v. People* pertaining to the matter of probation should not be observed and adopted in the case at bench.

Anent the second ground, suffice it to state that the June 28, 2012 Decision of the CA convicting Mustapha for Acts of Lasciviousness became final and executory only upon the failure of either party to question the decision. On the other hand, after Mustapha received a copy of the aforesaid decision on July 6, 2012, he did not further appeal the same to this Court. Instead, he filed before the CA on July 23, 2012, a manifestation with motion to allow him to apply for probation upon remand of the case to the trial court for execution. To review the correctness of the final and executory June 28, 2012 Decision of the CA at this point is no longer permissible in the light of the constitutional interdict against double jeopardy.

Not surprisingly, the OSG did not question the decision anymore as it conformed to its own recommendation that the petitioner should be found guilty of Acts of Lasciviousness only.[24]

Let it be underscored that the primodial consideration of this Court in allowing the petitioner in the *Colinares* case to apply for probation was one of fairness. Here, considering that the sentence of the RTC against Mustapha was modified by the CA to a probationable range upon recommendation of the OSG, and that he is not one of those disqualified offenders under Section 9 of P.D. No. 968 as amended, he should not be denied his right to apply for probation in the spirit of fairness. To rule otherwise would send Mustapha straight to jail and, thus, robbing him of the chance to undergo reformation and rehabilitation as a penitent offender, defeating the avowed purpose and objective of the Probation Law.

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[22] *Ayala Corporation v. Rosa-Diana Realty and Development Corporation*, 400 Phil. 511, 521 (2000).
[23] *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, 573 Phil. 320, 337 (2008).
[24] *Rollo*, p. 102.

IN VIEW OF ALL THE FOREGOING, I recommend that the petition be **GRANTED**; that the assailed September 3, 2012 and March 13, 2013 Resolutions of the Court of Appeals (*CA)* in CA-G.R. CR No. 31963 be **REVERSED** and **SET ASIDE**; and that petitioner Mustapha Dimakuta y Maruhon @ Boyet be declared as entitled to apply for probation within fifteen (15) days from notice that the record of the case has been remanded for execution to the Regional Trial Court of Las Piñas City, Branch 199, in Criminal Case No. 05-1098.

JOSE CATRAL MENDOZA
Associate Justice

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CLERK OF COURT, EN BANC
SUPREME COURT