

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT VS. PABLO A. CONSIGNA, ET AL., DEFENDANTS AND APPELLEE.

G.R. No. L-18087. August 31, 1965

Ponente: DIZON, J.

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DIZON, J.:

Appeal by the Solicitor General from the portion of the decision of the Court of First Instance of Surigao in Criminal Case No. 2555 ordering the reinstatement of therein accused, Pablo A. Consigna, to his former position as Properly Clerk in the Office of the Division Superintendent of Schools, Surigao del Norte.

In an information filed with the above-named court, Consigna, then Property Clerk of the Division Superintendent of Schools for the province of Surigao del Norte, and Prospero E. Borja, warehouseman of the NAMARCO, Surigao Branch, were charged with the crime of malversation committed as follows:

"That during the period comprised from June 29 to August 22, 1955 and for some time thereafter, in the municipality of Surigao, province of Surigao, Philippines and within the jurisdiction of this Honorable Court, the said accused Pablo A. Consigna, being then an employee in the office of the Division Superintendent of Schools, Surigao, Surigao, and acting as Division Property Clerk of said office, and, as such, accountable for the materials and supplies received and handled by him, by reason of his position and employment and Prospero E. Borja, being then an employee of the Namarco, Surigao Branch, and acting as Warehouseman of the said Namarco, Surigao Branch, and, as such, accountable for all the merchandise received by him and stored in the Bodega of the said Namarco by reason of his position and employment, conspiring together and helping one another in their common intent to defraud, instead of shipping 860 G.I. corrugated sheets to the municipality of Hinatuan, Surigao, which were requisitioned and purchased for the repair and improvement of the Elementary Schools of the barrios of Malixi, Tidman, San Juan and Baculin of the municipality of Hinatuan, under projects Nos. 5286-74 (a), 5286-76 (a), 5286-77 (a), and 5164-61 (a), Republic Act No. 1200, did then and there willfully, unlawfully, feloniously and fraudulently, and with grave abuse of confidence, misappropriate, embezzle and take away the afore-mentioned 860 G.I. corrugated sheets from the Bodega of the said Namarco with a total value of P4,773.00 Philippine currency, which they appropriated and converted to their personal use and benefit and in spite of repeated demands by the Municipal Mayor of Hinatuan and the duly authorized officers, the said accused "failed" and refused to produce the 860 G.I. corrugated sheets, in question to the damage and prejudice of the said barrio schools."

After trial, the court, on October 1, 1960, rendered judgment of acquittal as follows:

"WHEREFORE, in consideration of the foregoing, for absolute lack of evidence, the Court hereby acquits the accused Pablo Consigna of the crime of Malversation and the Court on reasonable doubt, also hereby acquits the accused Prospero Borja of the crime charged against him; with costs de oficio and the cancellation of the bail bonds filed for the provisional liberty of each of the said accused.

"If any or both of said accused has been suspended or separated from his or their respective positions in connection with this case, it is hereby ordered that both accused, Pablo Consigna and Prospero Borja, be immediately reinstated to his or their positions, but only the accused Pablo Consigna shall be paid his full

salary during the period of his suspension and/or separation from his employment."

The provincial fiscal of Surigao moved for a reconsideration of the portion of the above decision ordering the reinstatement of Consigna and the payment of his salary during his suspension therefrom, invoking in support thereof the decision rendered by the Commissioner of Civil Service on September 16, 1959 in Administrative Case No. R-17915 finding Consigna, upon the same facts alleged in the information filed against him, guilty of gross negligence and ordering his removal from office.

Finding the motion partly well taken, the court eliminated the part of its decision which directed the payment of Consigna's salary during the period of his suspension, but left undisturbed the part which ordered the latter's reinstatement. Hence, this appeal by the Government.

The only issue before Us is whether or not the trial court, besides acquitting Consigna "for absolute lack of evidence", had the authority to order his reinstatement.

The State, invoking our decision in *People vs. Daleon*, G.R. No. L-15630 promulgated on March 24, 1961 and others, claims that the trial court had no such authority for the reason that the only issue joined by Consigna's plea of not guilty is whether or not he had committed the crime charged in the information, and such being the case, the only proper judgment that the trial court could render is either one of acquittal or of conviction, in the latter case, with the proper indemnity to the injured party and the accessories provided by law.

We do not agree with the position adopted by the State.

It seems obvious to Us that the decision of the Commissioner of Civil Service mentioned heretofore, rendered on September 16, 1969, is not binding upon the courts. Upon the other hand, it is also settled that under the information filed against Consigna, he could have been convicted not only of the willful offense expressly charged therein but also of the same offense of malversation through negligence. In a similar case—that of *Rufino T. Samson vs. The Court of Appeals, et al.*, G.R. No. L-10364 and L-10376, We held that, while a criminal negligent act is not a simple modality of a willful crime but a distinct crime in itself designated as a quasi-offense in our Penal Code, a conviction for the former can be had under an information exclusively charging the commission of a willful offense, upon the theory that the greater offense includes the lesser one. This is the situation obtaining in the present case where Consigna was charged with willful malversation of government property. Under the information filed he could have been convicted of the same offense but committed through negligence. Consequently, his acquittal by judgment rendered on October 1, 1960 "for absolute lack of evidence" showing his guilt of the willful act of malversation charged, impliedly but necessarily acquitted him also of malversation through negligence.

Upon the question of whether or not, considering the facts and circumstances of the present case, the trial court had authority to reinstate and was justified in ordering the reinstatement of Consigna, the following should be taken into consideration:

According to Article 217 of the Revised Penal Code, a party found guilty of malversation of public funds shall be punished with imprisonment and the additional penalty of special perpetual disqualification. It is clearly inferable from this that his conviction necessarily results in his dismissal from the public office he occupied at the time he committed the offense. On the other hand, the preventive suspension of Consigna followed his indictment for the crime of malversation, and this was later followed by an order for his dismissal as a result of the administrative investigation to which he was subjected even while the criminal case for malversation was pending in court. It must be observed, in this connection, that although this administrative investigation was started after the filing of the criminal case, Consigna's administrative superiors went ahead with said investigation—which ended with an

order for his dismissal—instead of waiting for the result of the criminal case. Paraphrasing our decision in *Batungbakal vs. National Development Company, et al.*, 93 Phil. 182; We would say that "the least that could be done is to restore to him the office and post of which he had been illegally deprived", x x x "to remedy the evil and wrong committed" and to fully accomplish the vindication to which he is entitled.

The case of *People vs. Daleon*, 111 Phil. 358, March 24, 1961—upon which appellant relies—is not controlling in the present, because our ruling in the former was simply to the effect that, upon acquitting one charged with malversation of public funds, the court has no authority to order payment of his salaries corresponding to the period of his suspension because his right to the same was not involved in the case. This ruling does not apply to defendant's right—in case of acquittal—to reinstatement to the position he was occupying at the time of his suspension, because, as we have said heretofore, this matter would seem to be involved in the case of malversation—albeit as a mere incident—because conviction of the offense charged results necessarily in a denial of such right to reinstatement in view of the penalty of disqualification provided by law. If this is the inevitable result of viction, reinstatement should also follow acquittal.

Premises considered, the decision appealed from is affirmed, with costs de oficio.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Regala, Makalintal, and Zaldivar, JJ., concur

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