

**THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JUAN P. ENRIQUEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF BATANGAS, SECOND BRANCH, AND FIDEL SALUD JR., RESPONDENTS.**

*G. R. No. L-4934. November 28, 1951*

Ponente: FERIA, J.

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**FERIA, J.:**

The essential facts in this case are the following:

On April 17, 1951, the respondent promulgated its decision sentencing the defendant in criminal case No. 158 of said court to an indeterminate sentence of six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum.

The defendant filed on May 2, 1951, a motion for reconsideration based on the ground that the court erred "in appreciating the age between seventeen and eighteen of the defendant as ordinary mitigating circumstance of minority and not as a privileged mitigating circumstance which lower the penalty by one degree, and in not appreciating the surrender of the defendant, admitted by the fiscal, as another mitigating circumstance, on the ground that the mere previous issuance of an order for his arrest precludes the appreciation of his surrender as mitigating circumstance."

The respondent judge, on June 18, 1951, granted the motion and amended its original decision promulgated on April 17, 1951, by considering the attendance of the above mentioned mitigating circumstances, in the commission of the offense, and sentencing the defendant to an indeterminate sentence of one (1) year and one (1) day of prision correccional as a minimum, to six (6) years and one (1) day of prision mayor as maximum. A motion for reconsideration of the second judgment "was filed by the prosecution and denied by the court.

After the denial of his motion for reconsideration, the provincial fiscal of Batangas has filed this petition for certiorari against the respondents on the ground that the respondent judge acted in excess of the courts jurisdiction in amending his original judgment promulgated on April 17, 1951, upon a motion for reconsideration filed by the defendant on the grounds above set forth, citing in support of his contention the decision of this Court in the case of *People vs. Tamayo*,[\*] G. R. No. L-2233, promulgated on April 25, 1950, wherein it was said that "the period at the end of which a judgment becomes final, which is fifteen days, is never, under any circumstances, suspended except by the filing of a motion for *nevi* trial by the defendant under Section 1 of Rule 117," and that "the judgment in a criminal case may be revised or modified only within the period to appeal or fifteen days from the date of its promulgation."

The decision in the case of *Tamayo* above quoted though not concurred in by the majority, who concurred in the result, is correct. The last quoted portion of the decision in "*People vs. Tamayo*" was taken from Section 7 of Rule 116 which provides that "A judgment of conviction may be modified or set aside by the court rendering it before the judgment has become final or appeal has been taken," but it does not support and is not applicable to the contention of the petitioner. What is applicable is the first quoted portion of the decision, though not in its literal

sense, to the effect "that the period at the end of which the judgment became final is never under any circumstances suspended except by the filing of a motion for new trial by the defendant under Section 1 of Rule 117," because if it is suspended by the filing of a motion for new trial by the defendant, it follows that it is also suspended by a motion for reconsideration filed by the defendant on errors law which is one of the grounds for new trial, for such motion for reconsideration is equivalent to a motion for new trial.

A motion for new trial filed in criminal case in a Court of First Instance may be based either (1) on the ground of errors of law or irregularities committed during ' the trial in its general sense, that is, errors of law committed during the period from the arraignment to the rendition of the judgment, prejudicial to the substantial rights of the defendant, and (2) on newly discovered evidence material to the case. A motion for new trial on the ground of errors of law in the judgment may be properly called a motion for reconsideration, because the court is not asked to reopen the case for further proceeding, but only, to reconsider its findings or conclusions of law and make them conformable to the law applicable to the case in the judgment the court has to render anew, as was done by the court in the present case. Such a motion for reconsideration has, according to Section 6 of Rule 118, the same effect as a motion for new trial, of interrupting the period for perfecting an appeal after which the judgment becomes final, in accordance with the following ruling laid down in the case of *Rodriguez vs. Rovira*, applicable by analogy to criminal cases:

"This court has repeatedly held that a motion for reconsideration based upon any of the causes enumerated in section 145 of the Code of Civil Procedure as a ground for a motion for a new trial has the same effect as a motion for a new trial, regardless of the fact that it is styled differently and the ground is stated in a different manner but with an identical meaning. (*Pascua vs. Ocampo*, 59 Phil., 48; *Blouse vs. Moreno and Garcia*, 60 Phil., 741; *Lavett vs. Sy Quia*, 61 Phil., 847.)" [63 Phil. 476]

If a motion for new trial or reconsideration is filed within the period of 15 days from the promulgation of the judgment of conviction of the defendant, as the motion filed in the present case, it may be decided or passed upon validly at any time thereafter by the court. Because, although the granting, after said period, of a motion for new trial would place the defendant in double jeopardy, he waived his right not to be placed therein by the filing of such a motion. And Sec. 6, Rule 118, provides that "this period of perfection an appeal shall be interrupted from the time a motion for new trial is filed until notice of the order overruling the motion shall have been served upon the defendant."

The dissenting opinion contends that the phrase "during the trial" used in section 2, Rule 117, of the Rules of Court, is used not in its general sense, but in its restricted sense limited to the period for the introduction of evidence. This contention is groundless. It is obvious that the word during the trial is used in said section 2 in its general sense, including the rendering of the judgment (*Bouvier's Law Dictionary*, Volume 2, p.3320), because it was taken from section 42 of the General Orders No. 58, which provided that within a like period after conviction a case may be reopened on account of errors of law committed at the trial in its general sense; the word trial covers sections 31 to 41 of said General Orders No. 58 and includes the rendition of the judgment. The same Rule 111 of the Rules of Court, in speaking of "the rights of the defendant at the trial," provides in its section 1 that "In all criminal prosecutions the defendant shall be entitled to be present and defend in person and by attorney at every stage of the proceeding, that is, from the arraignment to the promulgation of the judgment." And American Jurisprudence, "Volume 14, pp. 898, 900, says: "In common law and under the decisions of many courts it is the right of the prisoner in a criminal case to be present throughout the entire trial from the commencement of the selection of the jury until the verdict is rendered and jury discharged. (Italics ours)

To construe the phrase "during the trial" used in section 2(a) of Rule 117 in its restricted sense, as the dissenter Mr. Justice Jugo does, would be to circumscribe the first ground for new trial in criminal cases to only errors of

law committed by the court in the admission or exclusion of evidence. Errors of law or irregularities committed before and after the introduction of evidence such as those committed in denying the defendant his right to be informed of the offense charged, in refusing to grant him a previous preliminary investigation, in not informing the defendant of his right to be assisted by an attorney before pleading guilty or not guilty, and in not giving him at least two days to prepare for trial, could not be alleged as grounds for a new trial. And the object of a new trial on errors of law in the judgment, which is to invite the attention of the trial court to such errors so that they may be corrected in order to avoid taking an appeal for the same purpose, would be thwarted.

From the fact that Rule 115 treats of trial, and Judgment or Sentence is treated in Rule 116, it does not follow that the word "trial" in the phrase "errors of law at the trial or during the trial" as a ground for new trial used in Sec. 2(a) of Rule 117 is used in its limited sense and refers only to the production of evidence, and not in its general sense which includes every stage of the trial from arraignment to judgment. In the same way that arraignment is treated in Rule 112 separately from Motion to Quash treated in Rule 113 and Plea in Rule 114, although arraignment does not include motion to quash and plea, and plea is a part and parcel of the arraignment, which consists of the information to a defendant of the charge against him and his answer to plea to that charge. It is obvious that the separation of trial from judgment as subject matter of different Rules of Court was made only for clearness' sake, and not because the Rules of Court on Criminal Procedure uses the word "trial" throughout the Rules of Court in its limited sense.

After our reply to the dissenting opinion was inserted in the majority's decision, the dissenting opinion was amended by eliminating the dissenters' arguments in support of their theory that the errors of law committed during the trial do not include errors of law in the judgment, for the alleged reason that the word trial in Section (a) of Rule 117 is used in its restricted sense limited to the period for the introduction of evidence, and inserting in the amended dissenting opinion the following: "It is obvious that the rule Sec. 2 (a) Rule 177 refers to errors of law committed during the trial, which can not be corrected except by a new trial, because it would be idle to pray for a new trial when the errors of law can be corrected without it. \* \* \* (page 1 of the dissenting opinion), and that "all errors of law requiring new trial for their correction are deemed errors committed during the trial. Many examples of these errors, besides the error in the admission or the exclusion of evidence, are given by Chief Justice Moran in his Comment on the Rules of Court, Volume II pages 806, 807 3rd edition."

This new theory advocated in the dissenting opinion has absolutely no legal basis and runs counter to the contention that the errors of law committed during the trial refer? to those committed during the period for the introducing of evidence or trial in the restricted sense of the word under section 2(a) of Rule 117. The examples of errors of law given by the former Chief Justice as grounds for new trial in his comments, such as the trial of an accused without a preliminary investigation, or without having been informed of the offense charged, are errors committed during the arraignment and before the period for the introduction of evidence as we have already pointed out at the beginning of this decision, and said examples support our conclusion. Such errors of law require a new trial for their correction because they affect the validity of the whole proceeding taken after they have been committed in accordance with provisions of Section 5 of Rule 117. But as an errors of law in the judgment do not affect or invalidate the whole proceeding prior to the judgment, but only the judgment itself, to correct such errors no new trial is required but only a reconsideration of the original and rendition of a new judgment, without necessity of granting new trial.

Section 5(a) of Rule 117 provides that:

"(a) When a new trial is granted on the ground of errors of law or irregularities committed during the trial, all the proceedings and evidence not affected by the commission of such errors and irregularities shall stand, but those affected thereby shall be set aside and taken anew. The court may, in the interest of justice, allow the

introduction of additional evidence?

"(c) In all cases, the original judgment shall be set aside and a new judgment rendered, and the former shall not be used or referred to in evidence or argument on the new trial."

This rule in criminal cases is stated in civil cases in the following way in Section 3 of Rule 37, which is substantially the same as the rule above quoted, to wit:

"If the motion is made upon the cause mentioned in sub-section (c), section 1 of this Rule, and the court finds its judgment to be contrary to evidence or law, it may amend such judgment accordingly without granting a new trial, unless the court deems the introduction of additional evidence advisable."

In the United States wherefrom the provisions of our criminal law on new trial have been taken, errors of law in the judgment or verdict in criminal cases are grounds for new trial. "A new trial will be granted where the verdict is against the law." (16 C. J. Sec. 2706; Wharton's Criminal Procedure, Sec. 1747. This principle or doctrine on grounds for a new trial in criminal cases is applicable by analogy in these Islands; because "We have always felt ourselves bound by the rulings of the Supreme Court of the United States in construing and applying statutory enactments modelled or borrowed from English or American originals" (Cuyugan vs. Santos, 34 Phil. 100, 107).

And in our resolution of the motion for reconsideration in the case of *People vs. Romero*, G. E. No. L-4517-20 promulgated on July 31, 1951, we have already laid down the ruling, in which the dissenters concurred, that in criminal cases a motion for reconsideration on the ground of errors of law in the judgment is equivalent to a motion for new trial, and interrupts the period of fifteen days for the perfection of an appeal.

In view of the foregoing, the respondent judge, did not act in excess of the court's jurisdiction in amending its former judgment, and therefore the present petition for certiorari is dismissed for lack of merits. So ordered.

Pablo, Bengzon and Bautista Angelo, JJ., concur.

Paras C. J., and Reyes J., concur in the result.

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## CONCURRING

### TUASON, J.

In *People of the Philippines vs. Tamayo*, G. R. No. L-2233, we said:

"Judgment in a criminal case may be revised or modified only within the period to appeal, or fifteen days from the date of its promulgation. We see no reason why the Government may not make a motion for reconsideration as distinct from a motion for new trial before the judgment becomes executory, but such motion can not operate to suspend or extend the above period; court must act before that period terminates. If the revision, alteration, or modification is to be valid. Only a motion by the defendant can interrupt the running of the period at the expiration of which the judgment becomes final."

In that decision we drew a distinction between a motion for new trial and a motion for reconsideration, in a manner that conforms to Mr. Justice Jugo's dissenting opinion. However, in the said decision the motion for reconsideration had been filed by the Provincial Fiscal. I am inclined to the view that the *Tamayo* ruling on this aspect of the case, may and should be relaxed having in mind the policy that penal statutes ought to be construed liberally in favor of accused in the absence of explicit provisions which preclude any room for such interpretation.

If a motion for new trial by the accused suspends the period for appeal, there is no sufficient reason why a motion for reconsideration by the same party should not. Both motions are calculated to serve the same end. Accordingly, the rule that the spirit rather than the letter of the law determines the construction thereof; that the court looks less to its words and more to the context, consequence and effect; and that what is within the spirit is within the law although it is not within the letter thereof, while that which is in the letter, although not within the spirit, is not within the law, may be summoned in this case.

With this observation, I join in the opinion of Mr. Justice Feria for the majority of the Court.

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## DISSENTING

JUGO, J.,

I dissent.

Section 6 of Rule 118 reads as follows:

"An appeal must be taken within fifteen days from the rendition of the judgment or order appealed from. This period for perfecting an appeal shall be interrupted from the time a motion for new trial is filed until notice of the order overruling the motion shall have been served upon the defendant or his attorney."

Section 2(a) of Rule 117 provides that "the court shall grant a new trial on any of the following grounds:

"(a) That errors of law or irregularities have been committed during the trial prejudicial to the substantial rights of the defendant;

\* \* \* \* \*

The fifteen-day "period for perfecting an appeal shall be interrupted from the time a motion for new trial is filed until notice of the order overruling the motion shall have been served upon the defendant or his attorney."

A mere motion for reconsideration, which does not contain allegations necessary for a motion for new trial, does not interrupt the time to appeal, for otherwise the rule would have so provided.

It is obvious that the rule refers to "errors of law committed during the trial," which cannot be corrected except by a new trial, because it would be idle to pray for a new trial when the error of law can be corrected without it. The phrase "committed during the trial" modifies both the nouns "errors of law" and "irregularities," for the reason that if said phrase did not refer to «errors of law," then this phrase would have no predicate and it would stand alone dangling in the air. It would read as follows: "That errors of law prejudicial to the substantial rights of the defendant," the word "that" being disconnected. However, in the majority opinion practically all errors of law are in effect made grounds for new trial. If this were true, the phrase "committed during the trial" would be useless and meaningless, for it would not limit anything.

It is out of place to cite decisions regarding new trial in civil cases for they are based on different provisions of the rules. It is evident that different statutory provisions cannot be given the same meaning. It is also inopportune to cite decisions in the United States regarding new trials and verdicts, for those decisions are based on different statutes and on the jury system in which the new verdict must be rendered by a different jury, thus requiring a new trial.

Section 42 of General Orders No. 58 is cited in the majority opinion. The pertinent part of said section reads as follows:

"\* \* \* Within a like period after conviction, a case may be reopened on account of errors of law committed at the trial\* \* \* The new hearing, if allowed, shall take place in the court of original jurisdiction."

On pages 263 to 265 of Albert's "The Law of Criminal Procedure," the procedure for holding the new trial on account of errors of law committed at the trial is explained, necessarily implying that a new trial is to be held, which would not "be essential if the errors of law can be corrected without a new trial.

All errors of law requiring new trial for their correction are deemed errors committed during the trial. Many examples of these errors, besides the error in the admission or the exclusion of evidence, are given by Chief Justice Moran in his Comments on the Rules of Court, Volume II, pages 806, 807, 3rd edition.

Padilla, J., concurs

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