

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. TIMOTEO TAMAYO, DEFENDANT AND APPELLANT.

G.R. No. L-2233. April 25, 1950

Ponente: TUASON, J.

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TUASON, J.:

Timoteo Tamayo, the appellant, was charged in the Court of First Instance of Ilocos Norte with illegal possession of firearm and ammunition, upon an information of the following tenors

"That on or about August 17, 1946, at the municipality of Solsona, province of Ilocos Norte, Philippines, the said accused did then and there wilfully, unlawfully, and criminally have in his possession and under his custody and control one US carbine Cal. 30 Serial No. 1561754 and five magazines with 116 rounds of ammunitions without permission to hold same."

On July 16, 1947, the accused, assisted by counsels pleaded guilty, whereupon the court, taking into consideration said plea of guilty and the recommendation of the fiscal, sentenced him to pay a fine of P100 and costs. Upon petition of his attorney, the accused was given one month within which to pay the fine.

On July 24, 1947, the Provincial Fiscal moved the court to reconsider its decision on the ground that the imposable penalty was that provided in Republic Act No. 4, which became effective on July 19, 1946. Evidently when the case was tried and decision rendered, neither the court, the fiscal nor the defendant was aware of the enactment of the new law, which considerably increased the penalty for the possession, etc., of firearms and ammunition.

The defendant's counsel objected to the motion for reconsideration. Nevertheless, the court, on February 14, 1948, amended its decision and sentenced the accused to five years of imprisonment, accessories of the law, and Costs.

The question for decision is whether the court below had jurisdiction to modify its decision after the lapse of nearly seven months from the date of its promulgation, although the fiscal's motion for reconsideration was filed within fifteen days. The appellant says no, and the Solicitor General agrees with him, recommending that the amended decision "be declared null and void."

Section 7 of Rule 116 of the Rules of Court provides:

"Sec. 7. Modification of judgment.—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 perfected. A judgment in criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal."

Sections 1 and 6 of Rule 118 provide:

"Section 1. Appeal.— From all final judgments of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Court of Appeals or to the Supreme Court as hereinafter prescribed.

"Sec. 6. When appeal to be taken.—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."

In *U.S. vs. Vayson*, (27 Phil. 447), this Court went to great length in a discussion of the authority of the court to modify its judgment and concluded that before a judgment becomes final? the trial court has plenary power to alter or revise the same as law and justice require. The decision cited, among numerous cases, *Ex parte Lange* (85 U. S. 163, 21. Law. ed., 872), in which the Federal Supreme Court states the general rules "The general power of the court over its own judgments, orders and decrees, in both civil and criminal cases, during the existence of the term to which they are first made, is undeniable."

But 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 new trial by the defendant under Section 1 of Rule 117.[1] Before the adoption of the Rules of Court not even such motion by the accused could produce the effect of interrupting the period to appeal. Section 1 of Rule 117 is new; it has no counterpart in the Code of Criminal Procedure which the Rules of Court have superseded.

In the case of *U. S. vs. Flemister*, (1 Phil. 317), Mr. Justice Willard, speaking for the Court, said:

"Our conclusions are (1) that within the fifteen days allowed for an appeal the trial court may reopen the case on either of two grounds; (2) that if the defendant does not appeal he can make no motion in this court on either ground, (3) that if he does appeal he can move in this court on either ground. If the defendant makes a motion in the lower court and that is denied, he can still appeal if the fifteen days allowed therefor have not expired. If the defendant fails to appeal and limits himself to a motion in the trial court to reopen the case, this motion fails if it is not decided within the nonextendable period of fifteen days."

The same question was extensively discussed in *U. S. vs. Court of First Instance*, (24 Phil. 321), wherein the *Flemister* case was cited among many others.

If a motion for new trial or reconsideration by the accused himself could not stop the running of the period to appeal, save for Section 1 of Rule 117, how much less could the prosecution by a motion or otherwise do so in the absence of a similar provision?

Both the appellant and the Solicitor General concede that under Section 7 of Rule 116 a Judgment may be amended within fifteen days from the date of its promulgation; their objection is that the amendment in this case was made outside that period. However some members of the Court believe that without the consent of the defendant a judgment may not at any time be altered beyond the correction of clerical or inadvertent errors. They rely on section 1 of Rule 117 for this view.

Others, including the writer of this decision, maintain that Section 1 of Rule 117 does not control. They are of the opinion that this rule has no bearing on the case at bar; that the applicable rule is Section 7 of Rule 116, and that this rule and Rule 117, Section 1, relate to different subjects and do not conflict or interfere with each other. Section 7 of Rule 116 refers to modification of judgment, as its title shows, while section 1 of Rule 117 refers to new trial.

What is a new trial? While "new trial" is a term of broad signification, we think that Section 5 of Rule 117 furnishes a clue to its meaning as the term is employed in Rule 117. Said Section 5 is as follows:

"Sec. 5. Effect of granting a new trial.— The effects of granting a new trial are the following:

"(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.

"(b) When a new trial is granted on the ground of newly discovered evidence, the evidence already taken shall stand, and the newly discovered and such other evidence as the court may, in the interest of justice, allow to be introduced, shall be taken and considered together with the evidence already in the record.

"(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."

These directions portray a proceeding whereby errors of law or irregularities are expunged from the record, or new evidence is introduced, or both steps are taken. In a new trial, by the very nature of its purpose and of what is to be done, both parties have to intervene. On the other hand, Section 7 of Rule 116 contemplates no new hearing or proceeding of any kind or change in the record or evidence. To modify a judgment, the court alone, of its own motion and without any notice to either party, may and does generally act. This is so because a simple modification of a judgment is accomplished on the basis of what is already in the record. No irregularities or omissions are involved and absolutely nothing is added to or taken from what is before the court. Only wrong conclusions from or wrong appreciation of the proofs already at hand are corrected in the decision.

Again, whereas, when a motion for new trial is granted, "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" (Section 5 of Rule 117), as though no judgment had been rendered, yet under Section 7 of Rule 116 the integrity of the decision already handed down is unaffected, except for the proposed change, change which may consist of alteration, insertion, or elimination of a word, phrase, sentence or paragraph, although there is nothing to prevent the entire decision from being rewritten as was done in this case.

One other objection to a modification at any time of a judgment prejudicial to the accused is—so it is contended—that the accused would be put twice in jeopardy. Our answer is that the doctrine of double jeopardy does not enter into the case for the reason that jeopardy does not attach until the period for appeal has expired. The principle of double jeopardy in this respect has not been changed by law or the Constitution. The rule is the same now as when the Vayson case was decided; the same rule that prevails under the Constitution of the United States and the constitutions of the various States on which the decisions cited in the Vayson case are predicated. The matter relative to the time when jeopardy attaches is largely statutory, and Section 7 of Rule 116, in express and plain language, fixes such time at the expiration of fifteen days. Section 1 of Rule 117 for the reason already explained does not affect in any manner Section 7 of Rule 116. It is submitted that to interpret the latter provision in the light of Section 1 of Rule 117 would be virtually to annul it and violate the rule of statutory construction that different provisions of a law must be reconciled so far as it is possible to do so.

To summarize 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; the 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.

The allegations in the information do not constitute cause of action. Republic Act No. 625 became effective on July 19, 1946, but the President, in Proclamation No. 1, by virtue of the power conferred upon him by that Act, fixed August 31, 1946, up to which possessors of unlicensed firearms might surrender them to lawful authorities

without incurring any criminal liability. The clear inference from the terms of the proclamation is that from the date of the effectivity of Republic Act No. 4 to August 31, 1946, the penalty for mere possession of firearms, ammunition, etc., was suspended. The only instances in which such possession was punishable before August 31, 1946 were making use of the firearms, except in self-defense, or carrying them for purposes other than surrendering them to the proper authorities. (See *People vs. Aquino*, G. R. No. L-1429 [1])

However, this case is not before us on appeal on the merit. We are requested not to review the original judgment but to declare it subsisting and to set aside the modified judgment.

The modified judgment of the lower court dated August 7, 1947, will be set aside and the original judgment declared final. This decision will be without prejudice to whatever recourse the accused may deem available to annul the original judgment. Without costs.

Ozaeta, Pablo, and Montemayor, JJ., concur.

Moran, C. J., concurs in the result but not in the reasoning of the decision.

Bengzon and Reyes, JJ., concur in the result.

[1] New Trial.—At any time before the final entry of a judgment of conviction, the court may on motion of the defendant, or on its own motion with the consent of the defendant, grant a new trial.

[1] 83 Phil., p. 614.

TUASON, J.:

I certify that Mr. Justice Padilla took part in the deliberation and concurred in this decision.

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