

**ODELON RAMOS, PETITIONER, VS. HON. ARSENIO M. GONONG,
JUDGE, COURT OF FIRST INSTANCE OF ILOCOS NORTE BRANCH IV,
AND MARIANO NALUPTA, SR., RESPONDENTS.**

G.R. No. L-42010. August 31, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

This petition for certiorari challenges the validity of an amendment of a judgment of conviction after the accused had manifested in writing to the trial court the withdrawal of his appeal, with prayer for the execution of the judgment. The antecedent facts are as follows:

On September 27, 1972, petitioner Odelon Ramos was charged with the crime of Damage to Property with Multiple Physical Injuries Thru Reckless Imprudence before Branch IV of the Court of First Instance of Ilocos Norte, with respondent Judge presiding.[1]

On October 3, 1975, after trial, a decision was rendered in said criminal case, convicting petitioner of the crime charged. The dispositive portion of the decision reads as follows:

"WHEREFORE, in view of the foregoing, the Court finds the accused Odelon Ramos guilty beyond reasonable doubt of the crime of Damages with Multiple Slight Physical Injuries thru Reckless Imprudence as defined and penalized in Art. 365, par. 3, and Art. 266, par. 2, Rev. Penal Code, in relation to Art. 26 & 48, having also in mind Art. 66 and 75 of the same code, sentencing him to double the amount of P7,425.95 or a total of P14,851.95; to pay P2,000.00 as moral damages and finally, to pay the statutory costs."[2]

The afore-mentioned decision was promulgated on October 20, 1975. After the reading thereof, the accused, through counsel, manifested in open court his intention to appeal and prayed, at the same time, that the bail bond for his provisional liberty be fixed, which the court a quo thereupon set at P16,500.00.

On the following day, October 21, 1975, petitioner filed a written manifestation "withdrawing his intention to appeal the decision" and praying that the decision be executed.[3] This was granted by Order of the court on the same date, thus: "Finding the manifestation reasonable, the notice of appeal is hereby withdrawn and let the decision as promulgated be executed."[4]

Two (2) days after the withdrawal of the appeal, or on October 23, 1975, the trial Fiscal filed a motion for reconsideration of the aforesaid decision, with a prayer that the dispositive portion thereof be amended to read as follows:

"WHEREFORE, in view of the foregoing, the Court finds the accused Odelon Ramos guilty beyond reasonable doubt of the crime of Damages with Multiple Slight Physical Injuries as defined and penalized in Art. 365, par. 3, and Art. 266, par. 2, Rev. Penal Code, in relation to Art. 26 and 48, having also in mind Art. 66 and 75 of the same code, sentencing him to a 'fine of' double the amount of P7,425.95 or a total of P14,851.95; 'to pay Mariano Nalupta Sr., the said amount of P14,851.95 as damage's and to suffer a subsidiary personal

imprisonment of not more than six (6) months in case of insolvency (Art. 39, par. 2, R.P.C.); to pay P2,000.00 as moral damages, and finally, to pay the statutory costs."

On October 27, 1975, respondent court, asserting its power to amend and control its processes and orders so as to make them conformable to law and justice before the judgment becomes final and executory, granted the motion for reconsideration, notwithstanding opposition thereto filed by herein petitioner, and the amendment of the dispositive portion sought by the trial Fiscal was accordingly adopted by the court.

A motion for reconsideration of the above Order seasonably filed by petitioner on November 5, 1975 was denied by respondent court "for want of merit" on November 19, 1975. Hence the instant petition for certiorari with preliminary injunction.

We grant the certiorari.

The applicable provision is section 7, Rule 120 of the Revised Rules of Court, thus:

"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 a 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." (Italics supplied.)

It is manifest from the foregoing that, before a judgment of conviction becomes final, the trial court has "ple-nary power to make, either on motion of one of the parties, or *motu proprio*, such amendments or alterations as it may deem best, within the frame of law, to promote the ends of Justice." [5] Thereafter, upon its finality, the trial court is divested of all authority to amend or alter the afore-said judgment, except to correct clerical errors. [6]

In the case at bar, it is clear that the judgment in Criminal Case No. 98-IV became final and executory upon the filing of the written manifestation by the accused, withdrawing his appeal, with prayer that the judgment in said case be executed, coupled with the approval by the court of such withdrawal. The full import of the prayer for the execution of the judgment, together with the clear and express withdrawal of "his intention to appeal the decision" demonstrates the conformity of the accused to the sentence of conviction within the intendment of the afore-quoted section 7 of the Rules and, therefore, after its approval by the Court, should have the legal effect of rendering the decision final. As We declared in a previous case, the waiver of the right to appeal by the defendant, after he has been notified of the judgment of conviction, accompanied by a voluntary petition to be immediately committed to prison, and the order of the court accepting such waiver and ordering defendant's confinement therein, bring the trial court's jurisdiction to an end, and the Supreme Court cannot order said judge, by *mandamus*, to reinstate defendant's right to appeal. [7]

The reliance placed by respondent court upon Rule 122, section 12, appears to be inapposite. Respondent court loses sight of the fact that a judgment of conviction may become final in a number of ways. Thus, a judgment becomes final in any of the following instances: (1) when the period for perfecting an appeal has lapsed; or (2) when the sentence has been partially or totally satisfied or served; or (3) when the defendant has expressly waived in writing his right to appeal. Upon the other hand, section 12 of Rule 122 expressly covers a case where, notwithstanding the perfection of the appeal, the court may allow the appellant to withdraw his appeal, provided the records of the case have not yet been transmitted to the appellate court, in which case, upon the grant of such withdrawal, the judgment shall become final. If the records have already been forwarded to the appellate court, only the latter court may, of course, act on the motion for withdrawal of appeal.

Contrary to the position taken by respondents, it is not necessary for the accused to go through the whole process

of perfecting an appeal before he may expressly waive in writing his right to appeal. As stated in *People v. Rodillas*,^[8] the judgment of conviction in a criminal case may become final even before the expiration of the period to appeal if the accused demonstrates his conformity in a clear and express manner to the sentence by renouncing or waiving in writing his right to appeal therefrom.

In the case at bar, the judgment had already become final, prior to the Order of October 27, 1975. It was, therefore, beyond the authority of the trial court to amend the penalty imposed in the aforesaid judgment.

There is no question that an accused cannot be made to undergo subsidiary imprisonment in case of insolvency to pay the fine imposed upon him when the subsidiary imprisonment is not imposed in the judgment of conviction.^[9] Consequently, the inclusion in the amended decision of the penalty of subsidiary imprisonment which is imposed upon the accused to be served by him, in lieu of the fine in case of insolvency, is a substantial amendment of the previous penalty imposed which cannot, after the decision has become final, be made by the trial court. It should be noted that under Article 39 of the Revised Penal Code, as amended by Republic Act No. 5465, no subsidiary penalty is imposed for non-payment of (1) the reparation of the damage caused; (2) indemnification of the consequential damages; and (3) the costs of the proceedings.

From the conclusion that the decision in question has become final as to its criminal aspect because the accused had waived his right to appeal on October 21, 1975, it does not necessarily follow that the trial court, on October 27, 1975, could not order the defendant to indemnify the offended party. Civil liability is not part of the penalty for the crime committed.^[10] It has been said that as a general rule, an offense causes two (2) classes of injuries – the first is the social injury produced by the criminal act which is sought to be repaired thru the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime, which injury is sought to be compensated thru indemnity, which is civil in nature.^[11]

Thus, it has been held that before the expiration of the fifteen-day period provided for appeal, the trial court can order the defendant to indemnify the offended party, notwithstanding that the judgment has become final because the accused has commenced the service of his sentence. In explaining why the trial court did not lose jurisdiction over the civil phase of the case, this Court, in *People v. Rodriguez*,^[12] said:

"In *People vs. Ursua*, 60 Phil., 252, where the defendant was found guilty of homicide through reckless imprudence and the trial court, upon motion of the prosecution, refused to enter judgment with respect to the civil liability of the defendant for the reason that the appeal taken by him divested the trial court of jurisdiction to pass upon the question of indemnity to the heirs of the deceased, we held:

"The trial court's resolution that, because the cause had been appealed by the accused, it had lost its jurisdiction to pass upon the motion for reconsideration filed by the private prosecution nine days after the date of the judgment, is unfounded.

"The right of the injured persons in an offense to take part in its prosecution and to appeal for purposes of the civil liability of the accused (section 107, General Orders No. 58), necessarily implies that such right is protected in the same manner as the right of the accused to his defense. If the accused has the right within fifteen days to appeal from the judgment of conviction, the offended party should have the right within the same period to appeal from so much of the judgment as is prejudicial to him, and his appeal should not be made dependent on that of the accused. If upon appeal by the accused the court altogether loses its jurisdiction over the cause, the offended party would be deprived of his right to appeal, although fifteen days have not yet elapsed from the date of the judgment, if the accused files his appeal before the expiration of said period. Therefore, if the court, independently of the appeal of the accused, has jurisdiction, within fifteen days from the date of the judgment, to allow the appeal of the offended party, it also has jurisdiction to pass upon the motion for reconsideration filed by the private prosecution in connection with the civil liability of the accused."

(Pp. 254-255.)

and remanded the case to the lower court for determination of the civil liability.

"As the trial court did not lose jurisdiction over the civil phase of the case even if the defendant had commenced the service of his sentence, no error was committed by it in ordering him to indemnify the offended party in the amount of P1,000.00 before the expiration of the 15-day period provided for appeal." (p. 351.)

We observe that the court a quo was inaccurate in the imposition of the penalty. It imposed only a fine of double the amount of the damage to property, disregarding the multiple slight physical injuries likewise resulting from the negligent act. For the latter, the penalty provided in paragraph 1 of Article 365 of the Revised Penal Code, in relation to paragraph 6, No. 1, should likewise have been imposed.^[13] Article 365, paragraph 1 provides that if the reckless imprudence resulted in an act which, had it been intentional, would have constituted a light felony, the penalty of arresto menor in its maximum period shall be imposed. On the other hand, No. 1 of paragraph 6 thereof provides that if the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of the article, the penalty next lower in degree shall be imposed, in the proper period. Article 266 penalizes the offense of slight physical injuries with arrestomenor (sub-par. 1), or arrestomenor or fine (sub-pars. 2 and 3), depending upon the kind thereof. If the multiple slight physical injuries which resulted from the accused's negligent act fall within that class punishable by arrestomenor, the penalty next lower in degree, or fine, should therefore have been imposed. As the judgment in the criminal aspect is final, such an additional penalty can no longer be imposed.

It is likewise noted that, contrary to the holding of respondent court, Article 48, which deals with complex crimes, has no application herein. There can be no complex crime where one or both of the two crimes resulting from the single act is a light felony.^[14]

With respect to the damages to be paid to the offended party, the latter is only entitled to the actual or compensatory damages proven at the trial. It appears that the respondent court should not have doubled the amount of damages because the value of the damages sustained is limited to the amount of P7,425.90. As the amount is now questioned by petitioner (Annex "F"), We hereby order its reduction to the actual amount of the damage, or P7,425.90.

WHEREFORE, the writ of certiorari is granted. The respondent Judge is hereby directed to issue an Order, modifying its questioned Order of October 27, 1975, in accordance with the observation of this Court as herein above indicated. Costs against private respondent.

Fernando, Acting C.J., Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Criminal Case No. 98-IV, entitled "People of the Philippines, Plaintiff, versus Odelon Ramos, Accused."

[2] Page 1 of Petition.

[3] Annex "A" of Petition, Rollo, p. 6.

[4] Annex "B", Ibid., p. 7.

[5] U.S. v. Vayson, 27 Phil. 447; Gregorio v. Director of Prisons, 43 Phil. 650; Provincial Fiscal of Rizal v. Muñoz Palma, 109 Phil. 368; Paredes v. Borja, 113 Phil. 482.

[6] U.S. v. Court of First Instance, 24 Phil. 321; U.S. v. Ballad, 35 Phil. 14; De Leon v. Rodriguez, 107 Phil. 759.

[7] *Lanestosa & Lames v. Santamaria*, 52 Phil. 67.

[8] 89 Phil. 99.

"La conformidad de un acusado a la condena impuesta a él debe ser expresa para que el juzgado pueda expedir el *mittimus* correspondiente. Solamente se expide el *mittimus* después de transcurridos los 15 días de plazo para la apelación, a menos que el acusado lo pida antes de una manera clara y expresa, o a menos que 'el acusado haya renunciado expresamente por escrito a su derecho de apelar.' (Art. 7, Regla 116.)" (*Ibid.*, at page 103.)

See also *Lanestosa & Lames v. Santamaria*, *supra*; *U. S. v. Hart*, et al., 24 Phil. 578; *U. S. v. Ballard*, et al., 35 Phil. 14.

[9] *People v. Fajardo*, 65 Phil. 539.

[10] *U.S. v. Heery*, 25 Phil. 600.

[11] Guevara, *Commentaries on the Revised Penal Code*, 5th Ed., p. 159.

[12] 97 Phil. 349.

[13] *Angeles, etc., et al. v. Jose, et al.*, 96 Phil. 151.

[14] *People v. Turla*, 50 Phil. 1001.

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