

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
KAMAD AEINSO, DEFENDANT AND APPELLEE.***G.R. No. L-6990. July 20, 1956*

Ponente: CONCEPCION, J.

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Defendant Kamad Arinso was accused, in the Court of First Instance of Cotabato, of illegal possession of a hand grenade. When the case was called for trial on the merits, on July 17, 1953, Arinso—then a detention prisoner, for failure to file a bail bond—with the leave of the court, withdraw his previous plea of not guilty and entered, in lieu thereof, that of guilty. Thereupon, applying the provisions of section 106 of the Administrative Code for Mindanao and Sulu, and considering, in favor of the defendant, the mitigating circumstances of plea of guilty and lack of sufficient instruction, said court sentenced him to imprisonment for six (6) months, with the accessory penalties provided by law, and to pay the costs, apart from ordering the confiscation of the hand grenade aforementioned. The prosecution moved for a reconsideration of this sentence, upon the ground that said section 106 should not have been applied, but the motion was denied. Hence, the present appeal by the Government, upon the ground that:

- "The lower court erred in finding that at the time of filing the motion for reconsideration by the provincial fiscal, the appellee had already commenced serving the sentence imposed, and in denying said motion on the ground that the decision has become final.

- "The lower court erred in interpreting that the motion for reconsideration filed by the provincial fiscal was in effect a motion for new trial, and in denying said motion allegedly because to grant it for the purpose of raising the penalty would constitute double jeopardy.

- "The lower court erred in considering in favor of the appellee the provisions of section 106 of the Administrative Code of Mindanao and Sulu, and in sentencing him to six (6) months of imprisonment only."

The first assignment of error need not be considered, for, even if it were well taken, the appeal is devoid of merit. What is more, it cannot even be entertained.

The Government maintains that the penalty meted out to the defendant is too light, inasmuch as said hand grenade had been used by him to commit the crime of robbery in band with homicide, with which he is charged in another case. However, under the provisions of section 106 of said Administrative Code, the lower court had discretion to impose said penalty, which, accordingly, cannot be assailed as erroneous, from the legal viewpoint.

More important still, the lower court admittedly had jurisdiction to render the decision appealed from, as well as over the subject matter of the case and over the parties. Likewise, it is not disputed that the information against the accused is sufficient in form and in substance, and that he had been arraigned and had entered his plea prior to

the rendition of said decision. In other words, he has already been placed in jeopardy of punishment for the offense charged in the lower court, and the appeal of the prosecution, with a view to urging an increase of his penalty, places him twice in jeopardy of punishment for said offense, as held in *People vs. Ang Cho Kio* (95 Phil., 475, 50 Off. Gaz., 3563) and reiterated in *People vs. Taruc* (87 Phil., 927, decided November 28, 1955).

Wherefore, plaintiff's appeal is hereby dismissed, with costs de oficio. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

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