

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. AURELIO LABAY, DEFENDANT AND APPELLEE.*G.R. No. L-8294. June 25, 1956*

Ponente: REYES, J.B.L., J.

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Appeal by the prosecution from an order of the Court of First Instance of Marinduque, in Criminal Case No. 1630 thereof, setting aside its judgment of conviction based on the defendant's plea of guilty, and granting a new trial.

It appears that when Criminal Case No. 1630 for slander by deed was called for trial in the court below, appellee appeared without counsel because he could not afford to pay the services of a lawyer. Thereupon, the trial court appointed for him a public defender. Upon the latter's advice, appellee entered a plea of guilty; and on the basis of such plea, the trial court rendered judgment finding him guilty of the crime charged and sentencing him accordingly. A week later, appellee moved to set aside the judgment of conviction, to withdraw his plea of guilt and substitute it with one of not guilty, and for a trial on the merits, which motion the Court granted. Not agreeable with the withdrawal of appellee's plea and the new trial, the fiscal appealed.

We agree with appellee that the order in question is not appealable.

Under section 1 of Rule 118, Rules of Court, only final judgments or orders may be appealed from; that is, such judgments or orders that completely dispose of the cause so that no further questions affecting the merits remain for adjudication (II Moran, Rules of Court [1952 ed.], p. 880). The order appealed from allows the withdrawal of the defendant's plea of guilt, sets aside the judgment of conviction, and orders a new trial. Far from disposing the cause on the merits, this order reopens the case and grants a new hearing. Like an order over ruling a motion to quash the information, it leaves further proceedings to be done in the trial court, and is therefore interlocutory and unappealable (cf. *People vs. Virola and Alia*, 97 Phil., 759; *People vs. Manuel*, L-6794-95, August y, 1954).

The Solicitor General claims that the evidence sought to be presented by the accused at the new trial—which is the testimony of a witness who avers that the accused slapped the complainant because the latter abused him in public (Original Records, p. 58)—is only cumulative to the plea of guilty and would not change the result of the case. Assuming such claim to be correct, the state would suffer no substantial damage or prejudice by the new hearing, because it would also result in the defendant's conviction. If, on the other hand, the evidence intended to be presented by the accused is of such materiality as to prove his innocence, then the interests of justice demand that he be allowed to change his plea of guilt and prove his innocence by such evidence. In any case, it is discretionary with the trial court to allow a change of plea after judgment (section 5, Rule 114), and the appellate court will not interfere with such discretion in the absence of abuse.

Wherefore, the order appealed from is affirmed, with costs de oficio. So ordered.

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

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