

VICTOR SESE Y BUNO, PETITIONER, VS. AGUSTIN P. MONTESA, JUDGE, COURT OF FIRST INSTANCE OF MANILA, AND AUGUSTO LEONARDO, RESPONDENTS.*G.R. No. L-3942. August 30, 1950*

Ponente: PARAS, J.

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In criminal case No. 9763 of the Court of First Instance of Manila, the petitioner was convicted in a judgment promulgated on February 16, 1950, of the crime of damage to property through reckless imprudence, and contended to pay a fine of P856.80, with subsidiary imprisonment in case of insolvency. The petitioner waived, his right to appeal, and in an order forthwith issued by the respondent Judge he was committed to the New Bilibid Prisons at Muntinlupa, the period of imprisonment connecting to run from February 16. The respondent Augusto Leonardo, the offended party in the criminal case, filed through his attorney a motion for reconsideration dated May 5, 1950, alleging that in the decision of February 16 the court failed to sentence the petitioner to indemnify the offended party in the sum of P856.80, and praying that said decision be modified accordingly. In an order dated May 16, 1950, the respondent Judge amended the dispositive part of the decision of February 16, so as to read as follows:

"For all the foregoing, the Court finds that the guilt of the accused has been established, beyond reasonable doubt, as defined and punished under Art. 365 of the Rev. Penal Code, and hereby sentences him to pay a fine of P856.80, or suffer the subsidiary imprisonment in case of insolvency, and to indemnify the offended party in the amount of P856.80, without further subsidiary imprisonment in case of insolvency, and to pay the costs."

A new commitment order was thereafter issued, under which petitioner's term of imprisonment commenced to run from June 2, 1950. The petitioner instituted the present special civil action for certiorari to annul the order of May 16, 1950, amending the decision of February 16. The theory of the petitioner is that this decision became when he waived his right to appeal and immediately served his sentence, and the respondent Judge accordingly had no power to modify the same on May 16.

Counsel for respondents admits that while the decision of February 16 became final with respect to the criminal liability of the petitioner, it was not yet final with respect to his civil liability when the motion for reconsideration of May 5 was filed, because neither respondent Augusto Leonardo nor his counsel (the private prosecutor) received notice of said decision. Specifically, it is alleged that the private prosecutor acquired notice of the decision only after examining, on his own initiative, the court docket in the latter part of April.

There can be no doubt that respondent Augusto Leonardo was entitled to intervene, personally or by attorney, in criminal case No. 9763, as he did not waive the civil action or expressly reserve the right to institute it separately, subject of course to the direction and control of the fiscal. (Rule 106, sec. 15). In criminal cases the judgment if promulgated in open court (Rule 116, sec. 9); and it is not pretended that the fiscal was not notified of the decision of February 16 or its promulgation. While it may be desirable to give notice of all proceedings in a criminal case

to the private prosecutor, there is no legal requirement to that effect. Practically speaking, the employment of a private prosecutor is a mere gesture of assistance on the part of the offended party, and when one actually appears, he and the fiscal represent a common cause and party, with the fiscal having direction and control of the case. Hence notice to the fiscal is notice to the private prosecutor. (Rule 27, ces. 2.) Indeed, the fiscal could have filed the necessary motion for reconsideration.

Wherefore, the order of the respondent Judge dated May 5, 1950, and the corresponding order of commitment dated June 2, 1950, are hereby set aside. So ordered.

Moran, C.J., Ozaeta, Pablo. Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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