

**CEFERINO E PAREDES, AS ASSISTANT PROVINCIAL FISCAL OF
OCCIDENTAL MISAMIS, PETITIONER AND APPELLEE, VS. FELIX V.
BORJA, JUSTICE OF THE PEACE OF BONIFACIO, OCCIDENTAL
MISAMIA, AND...**

G.R. No. L-15559. November 29, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

On 9 July 1958 the Assistant Provincial Fiscal of Occidental Misamis filed a petition for certiorari with preliminary injunction in the Court of First Instance of the said province against Felix V. Borja, Justice of the Peace of Bonifacio, Occidental Misamis, and Cresencio Catalan as respondents, alleging that on 2 June the chief of police subscribed and on 3 June 1958 swore to a complaint charging the last named respondent with malicious mischief for pulling and destroying the corn plants of Josefa Lapora, a tenant of Exaltacion Jagonia de Amparado, and filed it in the Justice of the Peace Court (Crim. Case No. 488, Annex A); that on 6 June 1958, upon arraignment, the respondent, defendant therein, assisted by counsel de oficio, entered a plea of guilty and the respondent Justice of the Peace Court sentenced him to indemnify the offended party in the sum of P10, to suffer the penalty of ten days imprisonment and to pay the costs (Annex B); that on the same day the respondent filed a motion for reconsideration on the ground that the imposition of the penalty of ten days imprisonment "is too severe considering the fact that under Article 329, paragraph 3, of the Revised Penal Code, the penalty may be arresto menor or a fine of not less than the value of the damage caused and not more than 200 pesos, if the amount involved does not exceed 200 pesos or cannot be estimated," and prayed "that instead of the penalty of imprisonment of 10 days the accused be made to pay a fine only" (Annex C); that on 10 June 1958 the respondent filed an amended motion for reconsideration alleging that in a civil case between the respondent and his co-heirs on the one hand and Exaltacion Jagonia de Amparado and her parents on the other hand, involving ownership of four parcels of land (civil No. 1434) the Court of First Instance of Occidental Misamis had ordered the therein defendants to return possession to the herein respondent and his co-heirs one-half of the parcels of land in question described in certificate of title No. 397; that for that reason he has a legitimate claim of ownership to the parcel of land from where he uprooted the growing corn plants and his liability, if any, was only civil and not criminal in nature; and praying that the judgment of conviction rendered by the respondent Justice of the Peace Court be set aside; that his plea of guilty be withdrawn and substituted by another of not guilty; and that the case be dismissed (Annex D); that on 12 June 1958 the respondent Justice of the Peace Court entered an order setting aside its judgment dated 6 June 1958, ordering that a plea of not guilty be entered for the respondent and setting the case for trial on 18 June 1958 (Annex F) ; that on 16 June 1958 the respondent filed a "motion for postponement" of "the hearing of the amended motion for reconsideration" to "some other dates" (Annex E); that on 25 June 1958 the petitioner filed an "urgent motion for reconsideration of the order dated June 12, 1958, setting aside the Judgment," on the ground that the respondent's motions for reconsideration which were in the nature of motions for rehearing were not verified and not supported by affidavits of merit; that during the arraignment the respondent was assisted by counsel and he entered a plea of guilty after his counsel had explained

to him the consequences of entering a plea of guilty; and that the respondent's motions for reconsideration were filed and granted ex-parte and without hearing (Annex G); that on the same date, 25 June 1958, the respondent Justice of the Peace Court, in open court, denied the petitioner's motion for reconsideration; that on 2 July 1958 the petitioner filed another motion for reconsideration (Annex H) and on 3 July 1958, again the respondent Justice of the Peace Court denied the petitioner's motion; that the respondent Justice of the Peace Court gravely abused its discretion in entering the order of 12 June 1958 (Annex F) and denying the petitioner's motions for reconsideration of 25 June (Annex G) and 2 July 1958 (Annex H; see Orders of 25 June and 3 July 1958) and entertaining the respondent's motions for reconsideration despite the fact that they were not verified and not supported by affidavits of merit; that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law; that the respondent Justice of the Peace Court had set the trial of the case on 11 July 1958 and unless restrained would try it; and that the trial of the case would work injustice to the petitioner for it would complicate, aggravate and multiply the issues of the case. The petitioner prayed that pending determination of the case a writ of preliminary injunction be issued restraining the respondent Justice of the Peace Court from further proceeding in and trying criminal case No. 488; that the orders of the respondent Court dated 12 June 1958, setting aside the judgment dated 6 June 1958 (Annex B), entering a plea of not guilty for the defendant and setting the case for trial on 18 June 1958 (Annex F) and of 25 June 1958 and 3 July 1958, denying the petitioner's motions for reconsideration, be set aside and annulled; that the respondent Justice of the Peace Court be ordered to execute its judgment in criminal case No. 488 (Annex B), and that the respondent be ordered to pay the costs (civil No. 2119).

On 10 July 1958 the Court of First Instance entered an order directing the respondent Justice of the Peace Court to desist from further proceeding in criminal case No. 488 and the respondents to answer the petition within five days from date of service of a copy of the petition.

On 15 July 1958 the respondents filed their answer to the petition setting up the defense that after rendition of judgment of conviction and before it became final, it was discretionary with the Justice of the Peace Court to grant or deny the defendant's motion to withdraw a plea of guilty and enter one of not guilty; that in granting the defendant's petition to withdraw his plea of guilty and enter one of not guilty, the respondent Justice of the Peace Court did not gravely abuse its discretion; that although the motions to that effect were not verified and no affidavits of merit were attached thereto, the defects were cured when the respondent took the witness stand and was examined under oath by the prosecution and the defense; that the defects were only in form and no prejudice would be caused thereby; and that to allow the respondent to be convicted of an offense and imprisoned upon a plea of guilty improvidently entered would result in a miscarriage of justice.

On 23 July 1958 the petitioner filed a reply to the respondents' answer contending that they are estopped from claiming that the respondent had improvidently entered a plea of guilty since he was assisted by counsel and citing the cases of *Fiscal of Manila vs. del Rosario*, 52 Phil., 20 and *People vs. Damiao*, 56 Phil., 734, in support of his position.

On 23 August 1958 the Court entered an order directing the petitioner "to file a motion to decide the case on the pleadings." On 29 August 1958 the petitioner filed a motion submitting the case for judgment on the pleadings.

On 29 December 1958 the Court rendered judgment holding " * * * that the actuations of the respondent Justice of the Peace is very irregular and suspicious and absolutely unwarranted, * * *" declaring null and void the orders entered by the respondent Justice of the Peace Court on 12 June, 25 June and 3 July 1958, and ordering it to desist from further proceeding in criminal case No. 488 and to execute the judgment rendered therein on 6 June 1958.

On 9 February 1959 the respondents filed a motion for reconsideration, on 13 February 1959 the petitioner, an

objection thereto, and on 14 February 1959 the respondents, memorandum in support of their motion for reconsideration. On 18 March 1959 the Court denied the respondents' motion for reconsideration. On 18 April 1959 the respondents filed a second motion for reconsideration. On 9 May 1959 the respondents filed a notice of appeal. On the same day, 9 May 1959, the Court denied the respondents' second motion for reconsideration on the ground that they had abandoned it by filing a notice of appeal.

Section 6, Rule 114, provides:

The court may in its discretion at any time before sentence permit a plea of guilty to be withdrawn. If judgment of conviction has been entered thereon and the same has not become final, the court may set aside such judgment, and allow a plea of not guilty, or, with the consent of the fiscal, allow a plea of guilty of a lesser offense which is necessarily included in the charge.

Before a judgment of conviction upon a plea of guilty becomes final the Court may, in its discretion, set aside such judgment and allow a plea of not guilty to be entered by the defendant. Acts done by an inferior court in the exercise of its discretion will not be interfered with by an appellate court in the absence of grave abuse. The reasons of the respondent Justice of the Peace Court in setting aside its judgment dated 6 June 1958 convicting the appellant of malicious mischief and directing that a plea of not guilty be entered in lieu of that guilty, is that the appellant (the defendant in crim. case No. 488) asserts a valid homestead claim and has a good defense and the respondent Court has doubts as to his guilt; and in denying the petitioner's motion for reconsideration of the last mentioned order, are:

* * * upon hearing this motion, the accused testified in open court that the land from which he had uprooted young corn plants so as to build his house thereon and for which he is now prosecuted is his homestead acquired from his deceased father as may be shown in Homestead Patent No. 63050 issued October 18, 1940. The Chief of Police on cross-examination showed the accused copy of the decision of the Court of First Instance of Misamis Occidental in Civil Case No. 1434 affecting the land in question. In view of this sworn testimony of the defendant, his counsel asked leave to amend his motion now seeking the dismissal of the charge; and upon continuance of the hearing, the Court directed the trial of the case on its merits as shown in its order dated June 12, 1958, which is now the subject of reconsideration by urgent motion of the Assistant Provincial Fiscal, who presented in evidence the decision of the Court of First Instance in aforesaid Civil Case No. 1434 adjudicating half of said land described in Certificate of Title No. 397 to the defendant and his co-heirs described in Certificate of Title No. 397 to the defendant and his co-heirs upon reimbursement of a total sum of P3,150.00; which judgment is still pending execution; or partition pending of the lands therein adjudicated. In the face of these facts, we doubt very much the guilt of the defendant who appears to have entered an improvident plea. * * * (Order of 25 June 1958. Record of civil case No. 2119, page 51).

These reasons find support in the judgment rendered by the Court of First Instance of Occidental Misamis on 27 July 1954 in civil case No. 1434, entitled *Cesaria Jagonia et al., plaintiffs vs. Eduardo Jagonia et al., defendants*, where the appellant is one of the plaintiffs and Exaltacion Jagonia de Amparado, the landlord of Josefa Lapora, the offended party in criminal case No. 488, is one of the defendants (Exhibit B), ordering the therein defendants to deliver possession to the therein plaintiff's one-half of four parcels of land described in O.C.T. No. 397 upon reimbursement to the former by the latter of the sum of P3,150. Considering the reasons given by the respondent Justice of the Peace Court, it cannot be said that it had gravely abused its discretion in entering the orders complained of.

The appellee contends that the respondent Justice of the Peace Court should not have entertained the appellant's Motions for reconsideration because they were not verified and not supported by affidavits. In support of his contention he cites the cases of *Fiscal of Manila vs. del Rosario* 52 Phil., 20 and *People vs. Damiao*, 56 Phil., 734, where the rule is that after a judgment of conviction has been entered in a criminal case, the motion filed for the

purpose of substituting a plea of guilty by one of not guilty is equivalent to a petition for reopening the case, and must not only be verified but accompanied by an affidavit of merit. Such rule enunciated in those two cases, decided on 25 August 1928 and 31 March 1932, respectively, while the law on criminal procedure was General Orders No. 58, is no longer controlling. The present rules on criminal procedure are as provided for in the Rules of Court which took effect on 1 July 1940, and do not require that a motion for new trial be verified. And while the Rules of Court also require, as in the supplanted law, that an affidavit of merit be attached to support a motion for new trial based on newly discovered evidence, yet the defect of lack of it in the appellant's motions for reconsideration or rehearing had been cured by the testimony under oath of the appellant at the hearing of the motion for reconsideration on 25 June 1958. It was the appellee himself who presented in evidence the judgment (Exhibit B) which is the basis of the appellant's motions for reconsideration.

The judgment appealed from is reversed and the writ prayed for by the appellee is denied, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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