

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ALEJANDRO PAET Y VELASCO, DEFENDANT AND APPELLEE.

G.R. No. L-9551. November 26, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In an amended information dated January 27, 1955, filed in the Court of First Instance of Manila, Alejandro Paet y Velasco was accused of a violation of Circulars Nos. 20 and 42, as amended by Circular Nb. 55, of the Central Bank of the Philippines, in relation to section 34, Republic Act No. 265, committed as follows:

"That on or about the 20th day of December, 1954, in the City of Manila, Philippines, the said accused, having in his possession the amount of \$3,140, did then and there willfully and unlawfully conceal, fail and refused to declare the same with any authorized agent of the Central Bank of the Philippines as prescribed by circulars 20 and 42 as amended by Circular 55 of the Central Bank."

Upon calling the case for hearing on May 13, 1955, the defendant with the assistance of counsel asked permission to withdraw his former plea of not guilty and to substitute therefor a plea of guilty, which permission was granted. Upon re-arraignment, he pleaded guilty to the amended information, and upon recommendation of the prosecution, the trial court in a decision dated June 10, 1955, found him guilty of the charge and sentenced him to suffer the penalty of ten (10) days imprisonment, to pay a fine of one hundred pesos (P100), with subsidiary imprisonment in case of insolvency, and to pay the costs.

It would appear that before the decision was rendered, counsel for the defendant had filed a memorandum, praying that the amount of \$3,140, marked as Exhibit 1, or its equivalent in Philippine pesos, which had been taken by the authorities from the said defendant, be returned to the latter as the lawful owner hereof. The trial court either overlooked this prayer or else did not deem it necessary to include it in its decision. The fact is that the decision did not provide for the confiscation or forfeiture of the aforementioned amount in favor of the government. It seems that this point was subsequently raised both by the prosecution and the defense, the former contending that the confiscation, should have been included in the decision as part of the penalty, and the latter naturally claiming return to the accused. At the suggestion of the trial court, written memoranda were filed by both parties. Thereafter, the lower court issued a resolution dated July 30, 1955, expressing the opinion and holding that the amount of \$3,140 should not be confiscated, but should be exchanged with pesos in the Philippine currency at the Central Bank, and delivered to the accused. The government, through the Solicitor General, is appealing from the resolution directly to this Court.

With the view we take of the propriety and legality of the appeal, we find it unnecessary to go into the merits of the contention of the parties, although it may not be out of place to state that according to the decision of June 10, 1955, as well as the appealed resolution, the penalty imposed which did not include the confiscation of the amount of \$3,140, was upon the recommendation of the prosecution itself. In the first place, the confiscation or forfeiture of the above mentioned sum would be an additional penalty and would amount to an increase of the penalty already imposed upon the accused. To re-open the case for the purpose of increasing the penalty, as is sought in

the Government's appeal, would be placing the accused in double. Jeopardy, and. under Rule 118, section 2 of the Rules of Court, the Government cannot appeal in a criminal case if the defendant would be placed thereby in double jeopardy. (People vs. Cornelio Ferrer, supra, p. 124; People vs. Angr Cho Kio, 95 Phil., 475, 50 Off. Gaz., No. 8, p. 3563; People vs. Luis M. Taruc, 97 Phil., 927.) In the present case, the defendant-appellee did not file any brief, naturally, this point of the legality of the appeal of the Government is not raised; even so, this Tribunal feels it is its duty to apply the law, specially when it favors the accused in a criminal case. In the second place, the record shows that at the time the appealed resolution was issued on July 30, 1955, the decision of June 10, 1955 had already become final and no longer subject to modification for the reason that the accused had already served the sentence, not partially but totally. (Rule 116, section 7, Rules of Court.)

In view of the foregoing, the appeal of the Government from the resolution is hereby dismissed. No costs.

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

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