

PHILANDER LONGAO, PETITIONER, VS. HON. JEROME FAKAT, MUNICIPAL JUDGE OF BONTOC, MOUNTAIN PROVINCE, RESPONDENT.

G.R. No. L-23978. December 27, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Original action of mandamus and prohibition pray-ing in effect that: (1) respondent judge be prohibited to enforce the judgment of conviction against petitioner; (2) said respondent judge be enjoined, instead, to give due course to petitioner's appeal from said judgment to this Court; and (3) that the records of his case be forwarded to this Court for proper disposition of his appeal.

In brief, the facts are as follows:

In Criminal Case No. 301 of the Municipal Court of Bontoc, Mountain Province, on April 18, 1960, petitioner who was the accused therein, pleaded guilty to an amended complaint charging him thus:

"The undersigned prosecuting officer under oath accuses PHILANDER LONGAO for the crime of HOMICIDE THRU RECKLESS IMPRUDENCE punishable under Article 365, Par. 7, enumeration No. 2, of the Revised Penal Code committed as follows:

"That on or about the 29th day of February, 1960, at 8:30 a.m. in the morning, in the municipality of Bontoc, Mt. Province, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while operating his car bearing plate No. 35-264, series of 1960, without taking the necessary precaution and without due regard to Traffic Rules and Regulations and in flagrant violation of the Automobile Law as said accused was driving on the wrong lane, did then and there wilfully, unlawfully and feloniously run over the person of ANDRE NGELANGEL which caused the death of the latter.

"Contrary to law."

Upon entering such plea, he asked for leave to prove the mitigating circumstance of voluntary surrender and this request was granted. After proper proceeding, the court rendered a judgment of conviction which pertinently reads:

"The offense charged is defined and penalized under paragraph 7, enumeration 2, Article 365 of the Revised Penal Code. The penalty therein prescribed is prision correccional in its medium and maximum periods of from two (2) years, four (4) months and one (1) day to six (6) years. The accused has two mitigating circumstances, namely, voluntary plea of guilty and voluntary surrender, in his favor with no aggravating circumstance against him. This being the case the penalty to be imposed, according to enumeration 5, Article 64 of the Revised Penal Code, shall be the penalty next lower to that prescribed by law. The penalty next lower to that of prision correccional in its medium and maximum periods is arresto mayor in its maximum period to prision correccional in its minimum period of from four (4) months and one (1) day to two (2) years and four (4) months. Applying the Indeterminate Sentence Law the Court finds that the penalty impossible

upon the herein accused is from one (1) month and one (1) day to two (2) years and four (4) months.

"FOR THE FOREGOING, judgment is hereby rendered sentencing the accused, PHILANDER LONGAO, to suffer an indeterminate imprisonment of two (2) months and one (1) day of arresto mayor to one (1) year and eight (8) months of prision correccional, to indemnify the heirs of the deceased, Andrew Ngelangel in the amount of SIX THOUSAND (P6,000) PESOS, Philippine Currency, plus the amount of ONE THOUSAND (P1,000.00) PESOS, Philippine Currency, for the mental anguish caused upon said heirs, and, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay the costs."

On April 23, 1960, petitioner perfected an appeal directly to this Supreme Court.[1] This appeal was dismissed, however, on March 25, 1961, since under the circumstances, it was opined that the same should have been made to the Court of First Instance of Mountain Province. Whereupon, petitioner pursued a new appeal from respondent court, but when the case reached the Court of First Instance, the appeal was dismissed, the said court holding that contrary to the ruling of this Court, the appeal should have been made here. The records were forwarded here by order of the court even without any appeal being made by either party and naturally, there being no appeal, the records were sent back to the Court of First Instance which, in turn, returned the same to the respondent court.

In the respondent court, the private prosecutor sought the execution of the judgment. Petitioner was notified to appear for said execution. Upon receiving such notice, petitioner moved to reconsider the order for his appearance, claiming that the judgment had not yet become final and could still be appealed. This motion was denied, and when the petitioner failed to appear, his arrest was ordered. Again, reconsideration was asked; petitioner further prayed that his appeal be given due course. Both prayers were denied, so petitioner tried to appeal to the Court of First Instance, but in his order of June 2, 1964, respondent judge refused to allow the appeal. All these adverse orders are now the subject of the instant proceeding.

As to his grounds for appeal from the judgment of conviction based on his plea of guilty, petitioner raised only two simple issues, to wit: (1) that it was error to base the penalty imposed on him on the paragraph numbered 2 of Article 365 of the Revised Penal Code instead of on the first paragraph thereof; and (2) that the award of P6,000 indemnity to the heirs for the death of the victim plus P1,000 moral damages is excessive.

In addition to these facts, it is alleged in the answer of respondent in this case that: "x x x as a matter of fact respondent is of the firm belief that petitioner being a United States Citizen has left the Islands surreptitiously and clandestinely since petitioner knew of the decision and asked his former counsel to make an appeal to this Court which has subsequently been dismissed; Respondent specifically denies that petitioner is a resident of Besao, Mt. Province"; and that "his right to appeal has been waived because he has fled the Islands and in fact is not a resident of the Philippines temporarily or otherwise since the promulgation of the decision of the Municipal Court of Bontoc, Mountain Province, up to the present," and these allegations are not denied, the petitioner not having filed any reply to such new matter alleged in the answer.

Under these circumstances, and inasmuch as the main case itself is now more than eight years old, no substantial justice can be attained by resolving the technical questions raised by petitioner as to whether or not he has been unduly deprived of his right to be heard on appeal. After all, he pleaded guilty to the charge and does not pretend that such plea is vitiated in any respect. On the other hand, it is quite obvious that his main appeal could not have prospered.

To be sure, this action can be declared to have become moot and academic because of the undenied allegation in the answer of respondent that petitioner has already left this jurisdiction and has thus waived his main appeal on the merits, pursuant to Our rulings to such effect since *People vs. Wilson & Dolores*, 52 Phil. 907, almost forty

years ago. In that case, We held:

"The law upon the subject is well settled, and the authorities are practically unanimous that in the absence of a statute regulating the practise, it is within the sound discretion of the appellate court to determine whether the case shall be postponed to await the recapture of the accused, or the appeal shall be dismissed. And this rule applies whether the accused escapes from custody in jail or is constructively in custody by being admitted to bail. (Warwick vs. State, 73 Ala, 486; People vs. Redinger, 55 Cal., 290; Bronk vs. Bronk, 46 Fla, 474; McGowan vs. People, 104 Ill., 100; State vs. Scott, 70 Kan., 692; Wilson vs. Com. 10 Bush [Ky.], 526; State vs. Wright, 32 La. Ann., 1017; People vs. Genet, 59 N.Y., 80; State vs. Jacobs, 107 N.C., 772; Tyler vs. State, 3 Okla. Crim. 179; U.S. vs. Revidas, 4 Phil., 271. See also note in 3 Ann. Cas., 512.) The principle upon which this rule rests is that a party appealing who flees the jurisdiction, pending the appeal, is in contempt of the authority of the court and of the law and places himself in position to speculate on the chances for a reversal, meanwhile keeping out of the reach of justice and preparing to render the judgment nugatory or not, at his option. Such conduct is intolerable and does not invite leniency on the part of the appellate court.

"The defendant has fled to a foreign country, is now a fugitive from justice, and there is a presumption that the judgments of the court below are in accordance with the law and the facts. Said judgments against Joseph L. Wilson are therefore declared final, and his appeal is dismissed with the costs against the defendant. So ordered."

Since his appeal may be considered as waived, there is no useful purpose in determining whether it has been properly made or not.

Rather than just consider this present case inconsequential, however, We have opted to take a look at the possible merits of petitioner's appeal from his conviction, and We find from a mere reading of his brief in G.R. No. L-16898 that there is absolutely no merit in any of the only two assignments of error aforementioned which petitioner made in said brief relative to the judgment of conviction against him. His theory that the respondent court erred in basing his penalty on the paragraph numbered 2 of Article 365 of the Revised Penal Code reading thus:

"2. When, by imprudence or negligence and with violation of the Automobile Law, the death of a person shall be caused, in which case the defendant shall be punished by prison correccional in its medium and maximum periods.

x x x x"

because no evidence was presented proving that he had violated the Automobile Law when he ran over his victim has absolutely no legal basis, it being a fact that he had pleaded guilty to the above-quoted amended complaint which explicitly alleges that the crime was committed by petitioner "in flagrant violation of the Automobile Law." Needless to say, a plea of guilty is an unqualified admission of the facts alleged in the criminal complaint, except as to the amount of damages that may be alleged therein, and can thus be the basis of a judgment without the need of evidence to prove them.

As regards the indemnity awarded to the heirs of the deceased child, namely, P6,000 as indemnity for death and P1,000 for moral damages, the same cannot be considered excessive. "From the time the New Civil Code took effect (in 1950), the courts could properly have awarded P9,000 as compensatory damages for death caused by a crime or quasi-delict." (People vs. Pantoja, G.R. No. L-18793, October 11, 1968) The incident involved in this petition took place in 1960, more than ten years after this Court held in People vs. Amansec, 80 Phil. 424, that indemnity for death should be P6,000.

Then also, there is the point that the People of the Philippines has not been joined as respondent in this action.

This non-joinder is fatal because the People is an indispensable party in any proceeding involving incidents in a criminal case, it being directly interested in the proper prosecution of all criminal cases, at least, when the interests of the state are involved as distinguished from the interests of the offended parties.

Without prejudice to passing on the technical pro-cedural questions raised by petitioner in a more appropriate case, the remedies herein sought should be denied. These remedies are basically ones in equity and We cannot say that petitioner has established the premises for equitable relief. On the other hand, substantial justice is better served by giving due course to the conviction of petitioner which appears, anyway, to be not without merit.

WHEREFORE, the petition is dismissed, with costs against petitioner.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, and Teehankee, JJ., concur.

[1] G.R. No. L-16898.

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