

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FRANCISCO QUEBRAL Y ARCILLA, LEONARDO HILARIO Y SANTOS,
JOHN DOE, AND RICHARD DOE, DEFENDANTS. FRANCISCO QUEBRAL
Y ARC...**

G.R. No. L-13. March 20, 1946

Ponente: OZAETA, J.

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OZAETA, J.:

The appellant, Francisco Quebral y Arcilla, together with three other persons who have not yet been apprehended, was accused of the crime of robbery in band alleged to have been committed on or about the 13th of March, 1945, in the City of Manila, it being alleged in the information that the said accused and his three companions, all armed with firearms and conspiring together and helping one another, did then and there wilfully, unlawfully, and feloniously, by means of intimidation—by threatening to shoot Antonio Sy and Domingo Tan if the latter would not deliver their money and other personal belongings to them—forcibly take and carry away from the said Antonio Sy jewelry and cash of the total value of P530, to the damage and prejudice of the said owner in the said amount.

The said accused was arraigned on April 21, 1945, and entered the plea of not guilty. The trial of the cause began on April 26, 1945, and was continued on May 4, 1945, when the prosecution rested after having presented three witnesses. The continuation of the trial was then set for May 8, 1945. On that date, instead of presenting evidence in his defense the accused, through his attorney, Pascual Santos, moved the court to permit him to withdraw his former plea of not guilty and to substitute it with that of guilty. That motion was granted, the information was again read to the accused, and the latter voluntarily entered the plea of guilty. Thereupon the court (Judge Pompeyo Diaz presiding) found him guilty as charged and sentenced him to suffer an indeterminate sentence of not less than two (2) years, four (4) months, and one (1) day of prison correctional and not more than ten years and one day of prison mayor, to indemnify the offended party in the sum of P530, and to pay the costs.

The sentence was reduced to writing and signed by the judge and read to the accused on the same day, May 8, 1945. On that same day the accused began to serve his sentence in Bilibid Prison.

Two weeks later, that is to say, on May 22, the accused, through another attorney, Engracio Clemeña, filed a motion asking that he be permitted to withdraw his last plea of guilty and to maintain his former plea of not guilty, that the case be reopened, and that he be permitted to present evidence in his favor. On the same date the trial court denied the motion upon the ground that, the accused having commenced to serve his sentence, the same had become final under section 7 of Rule 116 and that therefore the court had no jurisdiction to modify it. On the following day, May 23, 1945, the accused filed a notice of appeal and tendered a cash bond of P2,000 (which was substituted on June 21, 1945, with a personal bond in the same amount). Both the appeal and the bond were approved by the court.

Although the parties filed their respective briefs on the merits and raised no question as to the appealability of the

sentence of the trial court, we cannot ignore our lack of jurisdiction to entertain this appeal. As stated by the trial court and concurred in by counsel de oficio for the appellant in this court, the sentence against the accused had become final under section 7 of Rule 116 of the Rules of Court, inasmuch as the said accused had commenced to serve or extinguish it. Said section 7 of Rule 116 reads in part as follows: "A judgment in criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal." That rule is a restatement in statutory form of the doctrine laid down by this Supreme Court in the cases of *United States vs. Hart* (24 Phil., 578), and *Gregorio vs. Director of Prisons* (43 Phil., 650). Needless to say, a final and executory judgment is not appealable and the appellate court has no jurisdiction to review, reverse, or modify it. Any error prejudicial to the accused that may have been committed by the trial court in meting out the penalty can be corrected only by executive clemency.

Wherefore, the appeal is dismissed, without any finding as to costs in this instance.

De, Joya, Perfecto, Hilado, and Bengzon, JJ., concur.

Appeal dismissed.

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