

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
GERARDO NAZARIO Y ENRIQUEZ, DEFENDANT AND APPELLANT.***G.R. No. L-1217. September 22, 1947*

Ponente: PARAS, J.

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The appellant, Gerardo Nazario y Enriquez, was accused in the Municipal Court of Manila of qualified theft and, after trial, convicted of only simple theft for which he was sentenced to four months and one day of arresto mayor and to pay the costs. An appeal was taken to the Court of First Instance of Manila wherein a plea of not guilty was entered by the appellant who, however, subsequently withdrew the same and pleaded guilty to simple theft. Whereupon, he was sentenced to the same penalty imposed by the Municipal Court. After a notice of appeal had been filed, the appellant presented a motion praying that the judgment be set aside, that he be allowed to withdraw his plea of guilty and substitute it with his former plea of not guilty, and that a new trial be held. No action on this motion appears to have been taken by the Court of First Instance; and in the appeal now before us, the appellant contends that said motion should have been granted.

Section 6 of Rule of Court No. 114 provides that if judgment of conviction has been entered on a plea of guilty 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." Consequently, in not allowing the withdrawal of appellant's plea of guilty, the Court of First Instance of Manila merely exercised a clearly discretionary power in a way warranted by the circumstances of this case. The appellant cannot be said to have acted ignorantly and hastily in the matter, not only because he was assisted by an attorney de oficio, but because, after his trial and conviction in the Municipal Court, he must have been more than sufficiently conversant with his case at the time he was arraigned, on appeal, in the Court of First Instance. The withdrawal was made after a notice of appeal had been filed and was based on an allegation that the principal witnesses for the prosecution had already gone to the United States, from which the implication is plain that said withdrawal was a colorable afterthought. As hinted in the brief for the Government, the affidavit of one Cayetano Suarez attached to the motion for withdrawal and claimed to be newly discovered evidence, contains gratuitous conclusions regarding appellant's innocence that "cannot be given greater weight than the very admission of appellant."

The appellant also argues that the lower court should have considered his plea of guilty as a mitigating circumstance. This argument raises a question already well settled by the rule that the appellant's plea of guilty entered upon appeal in the Court of First Instance cannot be considered a mitigating circumstance. (People vs. Hermino, 64 Phil., 403; People vs. Bawasanta, 64 Phil., 409; People vs. Javier, 64 Phil., 413; People vs. Cariaga, G. R. No. 46245, October 18, 1938; People vs. Jose, 68 Phil., 396.)

Even so, we are constrained to restate, for the benefit of those who would seek to re-examine the rule, the following considerations in support of our adherence: (1) The reason for the existence of the mitigating circumstance of the plea of guilty is that it reveals to a certain extent an act of repentance, a moral disposition

favorable to the defendant's reform and submission to the law (*People vs. De la Cruz* (63 Phil., 874), cited in *People vs. Hermino* (supra), the evident purpose of the statute being to encourage such repentance which not only ennoble the soul and tends to avoid recidivism but also saves the Government from the expenses of a trial and the judicial and executive officials from much trouble (*People vs. Javier*, supra). Such repentance cannot be attributed to the herein appellant who not only did not plead guilty in the competent court of origin (Municipal Court) but appealed, first, to the Court of First Instance and, then, to this Court. (2) The contrary rule will open the door to cases wherein the defendant intentionally abstains from pleading guilty in the justice of the peace or municipal court in the hope of being acquitted and, upon conviction and on appeal to the Court of First Instance, pleads guilty merely for the purpose of enjoying the benefit of such mitigating circumstance. In such cases the spontaneous willingness on the part of the defendant to admit the commission of the offense charged, the very thing rewarded by the mitigating circumstance, in question, is certainly absent. (3) While a trial de novo in the Court of First Instance technically means a trial in the same manner, with the same effect, and upon the same issues as when the case was tried in the Municipal Court, in accordance with the rules of practice in the appellate court (*Crisostomo vs. Director of Prisons*, 41 Phil., 468), it does not follow that all the proceedings in the lower court have thereby been wiped out so as to preclude the ascertainment of whether the defendant voluntarily pleaded guilty for the purpose of determining the presence of said mitigating circumstance (*People vs. Bawasanta*, supra). (4) Inasmuch as an accused will not plead guilty unless he in fact committed the offense which he is charged, there is neither sense nor reason for allowing him, upon a plea of not guilty, to be tried and convicted in a municipal or justice of the peace court before he can be said to have discovered for the first time, in the Court of First Instance, that he is the author of said offense.

Being in accordance with law, the appealed judgment is hereby affirmed with costs against the appellant. So ordered.

Feria, Pablo, Bengzon, Padilla, and Tuason, JJ., concur.

CONCURRING AND DISSENTING

HILADO, J.:

I concur in that a judgment of conviction is deserved by the herein appellant. I, however, have to dissent from the majority's stand in not appreciating in his favor as a mitigating circumstance under article 13, No. 7, of the Revised Penal Code, his voluntary confession of guilt before the Court of First Instance prior to the presentation of evidence for the prosecution. The aforecited provision does not make, nor even hint at, the distinction which the majority make. The provision being clear and unequivocal, our only duty is to apply, not construe, it.

MORAN, C.J.:

I join Mr. Justice Hilado in this opinion.

CONFORME Y DISIDENTE

BRIONES, M.:

Estoy conforme con el veredicto de culpabilidad, pero disiento de la ponencia en cuanto no se aprecia como atenuante el haberse declarado culpable el acusado ante el Juzgado de Primera Instancia, al elevarse la causa del juzgado municipal en grado de apelacion. Donde la ley no distingue no debemos distinguir. El articulo 13, seccion

7 delCodigo Penal Revisado, establece como atenuante la circunstancia de que el acusado "haya retirado voluntariamente su declaracion de no-culpable ante el tribunal, antes de la presentacion de las pruebas de cargo", y no distingue entre causas originarias o elevadas en alzada para ante el Juzgado de Primera Instancia.

DISSENTING

PERFECTO, J.:

On October 23, defendant filed notice of appeal. On October 28, defendant filed with the lower court a petition to set aside the decision, to hold a new trial on newly discovered evidence, and to allow the defendant to withdraw his plea of guilty and to substitute it with one of not guilty. As stated in the majority opinion, the lower court failed to take action on the motion.

Section 6 of Rule 114 of the Rules of Court provides:

"Plea of guilty—withdrawal of.—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."

There is no question that the power to allow withdrawal of a plea of guilty to be substituted for one of not guilty rests upon the sound discretion of the court. But there should not also be any quarrel as to the spirit of the rule. As drafted, the above provision reveals the purpose of granting ample opportunity to the defendant to make a withdrawal. The provision permits the withdrawal at any time before sentence. Even after judgment of conviction has been entered, provided the judgment has not become final, the court may set aside such judgment and allow a plea of not guilty. Therefore, it is our opinion that only in exceptional cases and upon strong grounds should the court deny the petition of withdrawal. Profiting by the sad experience of the past, when many innocent persons were convicted upon their plea of guilty which they had made involuntarily, the drafters of the rules enhanced the opportunity of the defendant to withdraw his plea of guilty. There is no reason why the withdrawal prayed for should be denied; the discretion should be exercised to grant.

In the present case, there are two main reasons in support of the reversal of the appealed decision. First, because there is no reason why the motion filed by the defendant to withdraw his plea of guilty should not be granted, and in the second place, because the lower court failed to act on said motion for no reason at all.

The case should be remanded to the lower court so that the same may exercise the discretion granted to him by section 6 of Rule 114 which he failed to exercise.

The next important question in this case is whether the plea of guilty should be reckoned as a mitigating circumstance. According to article 13, subsection 7 of the Revised Penal Code, one of the mitigating circumstances is "that the offender had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution."

The Solicitor General agrees with the defense counsel that the court should have accorded appellant the benefit of said mitigating circumstance, that of having confessed his guilt before any evidence has been presented. In this case no kind of evidence has been presented by any one. The majority disagree. Their main argument is that it is a settled doctrine that appellant's plea of guilty entered upon appeal in a Court of First Instance cannot be considered as a mitigating circumstance. But such allegedly settled doctrine is contrary to the provisions of the law which provides that the plea of guilty shall be considered as a mitigating circumstance if entered before the

presentation of the evidence for the prosecution. In the lower court no evidence has at all been presented by the prosecution. Therefore, the plea of guilty entered into by appellant has been made in accordance with the specific provision of subsection 7 of article 13 of the Revised Penal Code.

Any rule that runs counter to a specific provision of the law cannot be taken into consideration. In a government of laws, legal provisions should prevail upon doctrines or rules which are against the law.

It is alleged that the reason for the mitigating circumstance in question is because the plea of guilty reveals to a certain extent an act of repentance, a moral disposition favorable to the defendant's reform and submission to the law, and that the purpose of the statute is to encourage such repentance to avoid recidivism and to save the government the expenses of a trial and the judicial and executive officials from much trouble.

In our opinion the only reason of the law for recognizing the confession of guilt as a mitigating circumstance, is expediency and no other. To talk about repentance, disposition favorable to moral reform, submission to law, avoidance of recidivism is to look at the matter through the glass of illusion or fiction. The lawmakers were realists and not dreamers.

The confession of guilt was not a mitigating circumstance before the enactment of the Revised Penal Code, but it has been an old practice in courts to consider it as such to expedite the early disposal of criminal cases wherein the accused wanted to take advantage of the benefit. The legislature only sanctioned by law what was an old practice on courts. In our opinion, the lower court erred in not according appellant the benefits of said circumstance.

For all the foregoing, we are of opinion and so we vote that this case should be remanded to the lower court, where the defendant shall be allowed to withdraw his plea of guilty to be substituted for that of not guilty or, at any rate, so that the lower court may exercise the power granted by section 6 of Rule 114, and that if his plea of guilty should be made to stay, that it be taken into consideration so as to reduce the penalty imposed on appellant as recommended by the Solicitor General.

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