

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PEDRO T. VILLANUEVA, DEFENDANT AND APPELLANT.

G.R. No. L-2073. October 19, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

By a decision dated November 19, 1947, the Fifth Division of the defunct People's Court after trial of appellant Pedro T. Villanueva on a charge of treason on several counts, found him guilty of treason and murder and sentenced him thus—

"In view of the foregoing considerations, the court, finding the accused Pedro T. Villanueva guilty of the complex crime of treason and murders as defined in Article 114 of the Revised Penal Code, in connection with Article 48 of the same code, sentences him to suffer death penalty, with the accessories of the law, to indemnify the heirs of Cosme Calacasan in the amount of P2,000, to indemnify the heirs of Julia Cabilitasan in the amount of P2,000, to indemnify the heirs of Sofia Tambirao in the amount of P2,000, and to pay a fine of twenty thousand pesos (P20,000) and the costs of the proceedings."

Villanueva duly appealed to this court. The records were sent up to us not only by virtue of the appeal but also under the provisions of Rule 118, Section 9, of the Rules of Court which provides for review and judgment by this Tribunal of all cases in which the death penalty shall have been imposed by a court of first instance, whether the defendant shall have appealed or not.

It appearing that the stenographic notes taken of the testimony of the witnesses who testified on October 8, 1947, could not be located, and following the recommendation of the solicitor general, a resolution was promulgated on August 1, 1952, remanding the case to the Court of First Instance of Iloilo for the retaking of the testimony of said witnesses.

Thereafter before said court defendant-appellant Villanueva filed a petition dated August 24, 1953, stating that about July 4, 1953, the Chief Executive granted executive clemency to all prisoners convicted of treason, including those whose cases were pending appeal, on condition that such appeals be first withdrawn, supposedly to give finality to the judgment of the lower court, and asking that he be allowed to withdraw his appeal. Acting upon said petition the Court of First Instance of Iloilo issued an order dated September 10, 1953, directing the return of the case to this Court for whatever action it may take in the premises, in view of the petition for withdrawal of the appeal filed by appellant and because the case had to be reviewed by the Supreme Court anyway regardless of the appeal by the defendant.

The case was considered by us on September 21, 1953. The agenda of this Court on that date as regards this was prepared by the Clerk of Court's Office only on the basis of the motion for withdrawal of appeal by the defendant. Our attention was not called to the fact that defendant had previously appealed from a decision sentencing him to death, which decision called for an automatic review and judgment by us. So, following the practice of this Tribunal of acting favorably on petitions for withdrawal of appeals where the briefs have not yet been filed, as in

the present case, said petition for withdrawal of appeal was granted by resolution of September 21, 1953. On the same date, however, and presumably after the passing of the resolution, appellant Villanueva filed directly with this court a petition reiterating the request for withdrawal of his appeal previously made with the Court of First Instance of Iloilo, attaching to his petition Exhibits A and B, said to be copies of the conditional pardon and of the letter of the legal assistant in the Office of the President addressed to the director of prisons. It was only on considering said petition that we realized the nature of the case and the decision appealed to this Court, the withdrawal of which appeal had been granted by the resolution of September 21, 1953.

An accused appealing from a decision sentencing him to death may be allowed to withdraw his appeal like any other appellant in an ordinary criminal case before the briefs are filed, but his withdrawal of the appeal does not remove the case from the jurisdiction of this court which under the law is authorized and called upon to review the decision though unappealed. Consequently, the withdrawal of the appeal in this case could not serve to render the decision of the People's Court final. In fact, as was said by this court through Justice Moreland in the case of *U.S. vs. Laguna*, 17 Phil., 532, speaking on the matter of review by this court of a decision imposing the death penalty, the judgment of conviction entered in the trial court is not final, and cannot be executed and is wholly without force or effect until the case has been passed upon by the Supreme Court en consulta; that although a judgment of conviction is entered by the trial court, said decision has none of the attributes of a final judgment and sentence; that until it has been reviewed by the Supreme Court which finally passes upon it, the same is not final and conclusive; and that this automatic review by the Supreme Court of decisions imposing the death penalty is something which neither the court nor the accused could waive or evade.

Furthermore, when the case was remanded to the lower court for the purpose of retaking the testimony of those witnesses who testified on October 8, 1947, the case was virtually remanded for new trial. Of course, the evidence and the testimony received during the trial before the People's Court which is still intact and available shall stand and the new trial will be confined to the testimony of the same witnesses who testified on October 8, 1947, the stenographic notes or transcript of which cannot now be found. Under these circumstances, it is necessary for the trial court to render a new decision because the new trial is being held before a new Judge and there is no assurance that the witnesses testifying, altho the very same ones who were on the witness stand on October 8, 1947, would testify to the same facts and in the same manner that they did at the former trial, altho they are supposed to do so. (See *Demetria Obien de Almario vs. Fidel Ibañez, et al.*, 46 Off. Gaz., Supp. No. 1, p. 390, 81 Phil., 592). Going over the record of the case, we find that it would not be too difficult for the trial judge to see to it that the said witnesses as far as possible confine themselves to the same points on which they testified on October 8, 1947, because testimonies of said witnesses including the defendant are referred to and described in the decision of the People's Court on pages 87, 123, and 124 to 129, and that there are only four witnesses including the accused himself.

Examining Exhibits A and B submitted by appellant in relation to this petition for the withdrawal of his appeal, we find that although his name appears in the list of prisoners convicted by the People's Court and supposed to be pardoned conditionally, the pardon itself refers to the remission of the "unexpired portions of the prison sentence terms and the fines of the prisoners listed below who were convicted by the defunct People's Court of treason and committed to the new Bilibid Prison to serve their sentence." [1] It is highly doubtful that the pardon could have contemplated and included appellant herein because his sentence of death does not merely involve a prison term which expires in time. Besides, a death sentence is not exactly served but rather executed. [2] Moreover, Exhibit B says that "those prisoners whose cases are still pending on appeal shall be released only after their appeal has been withdrawn." The implication is that the withdrawal of the appeal rendered the decision of the People's Court final, resulting in conviction, this to bring it into harmony with article VII, section 10(6) of the Constitution which requires conviction as a condition precedent to the exercise of Executive clemency. As we have already stated,

despite defendant's withdrawal of his appeal from the decision imposing the death sentence, there is no definite conviction or sentence until and after this tribunal has reviewed the case and rendered its own decision affirming, modifying or reversing that of the lower court, unless of course in the new decision of the trial court based on the new trial a sentence other than death is imposed, in which case there would be no automatic review by us.

Let the record of this case be again remanded to the Court of First Instance of Iloilo for new trial and thereafter, for a new decision.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1]Italics ours.

[2]Italics ours.

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