

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BENJAMIN Z. YELO, DEFENDANT AND APPELLANT.

G.R. No. L-2014. May 16, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from an order of the Court of First Instance of Negros Occidental modifying its decision in a criminal case after the case had been dismissed.

It appears that on March 25, 1947, the city attorney of Bacolod filed with the municipal court an information charging Benjamin Z. Yelo, the present appellant, with slight physical injuries. Having been found guilty of the offense charged, he was sentenced to pay a fine of P25 and costs. From that decision the defendant appealed to the Court of First Instance where the information filed with the municipal court was reproduced.

On December 23, 1947, the latter court dismissed the case in an order which reads as follows:

"ORDEN

"Al llamarse a vista esta causa, el acusado asistido de su abogado, Sr. Amado B. Parreño, ha comparecido. El Fiscal, Sr. Sola manifiesto que esta causa ha sido iniciada por la Fiscalia de la Ciudad de Bacolod y en vista de que ningun Fiscal de dicha oficina ha comparecido, pidio la posposicion de la vista de la misma.

"Esta causa se halla ante este Juzgado en grado de apelacion y la querella se reprodujo el 23 de Junio, 1947. La vista de la misma ha estado posponiendose: la primera vez el Noviembre 20 y la segunda vez el Noviembre 27.

"En el dia de hoy, ninguno de los testigos del gobierno ha comparecido y menos el ofendido Aguinaldo Absalon.

"Se deniega la peticion y se sobresee esta causa con las costas de oficio.

"El Sr. Amado B. Parreño, abogado de la defensa, manifiesto acto continuo que el acusado es policia de la Ciudad de Bacolod y ha sido suspendido de su cargo desde la fecha de la presentacion de la querella, o sea, 25 de Marzo de este año; habiendo sido sobreseida la misma, alego que, por virtud del Art. 2272 delCodigo Administrativo Revisado, tiene derecho no solamente a ser repuesto en el cargo sino tambien a recibir el salario correspondiente desde la fecha de su suspension hasta su reposicion y pidio, en su virtud, que el Juzgado dicte una orden al efecto.

"Como se pide, se declara al referido acusado con derecho a recibir el salario correspondiente a todo el tiempo de su suspension."

On the same date, immediately after the promulgation of the above-quoted order, the city attorney filed a motion for reconsideration. Judge Arellano, presiding over the court, refused to reconsider the dismissal of the case. But he set aside and declared null and without effect the order in so far as it provided for the payment of the salary of the accused during the period of his suspension.

It is the contention of the appellant that the lower court had no jurisdiction to make this modification in its judgment.

Section 2272 of the Revised Administrative Code reads:

"When a chief or member of the municipal police is accused in court of any felony or violation of law by the provincial fiscal, the municipal president shall immediately suspend the accused from office pending final decision of the case by the courts and, in case of acquittal, the accused shall be entitled to payment of the entire salary he failed to receive during his suspension if the court should so provide in his sentence."

This provision authorizes the court to order the payment of the entire salary of a suspended member of the police force if he is acquitted. Granting, for the purpose of argument, that the dismissal of the case at bar operated as an acquittal and terminated the case definitely, it is our opinion that the court below retained the jurisdiction to eliminate from its order, within fifteen days from the date the defendant was notified thereof, the payment of the defendant's back compensation. Judgment for this payment lies within the court's sound discretion, is of civil or administrative character, and does not come within the jeopardy provision of the Constitution. With the possible exception that a judgment of acquittal may not at any time after the discharge of the accused be changed without his consent, the power of the courts to revise, correct and change the sentences before the expiration of the period for appeal and before anything has been done, was recognized in *United States vs. Vayson*, 27 Phil., 447, in which the subject was treated at great length with abundant citations of authorities. In the *Vayson* case and in the cases therein cited, the authority of the court to increase or mitigate the penalty imposed on the accused before the judgment became final and before it was put in operation was affirmed. One of the cases cited with approval was *Ex parte Lange*, 85 U. S., 163; 21 Law. ed., 872, in which this rule was laid down: "The general power of the court over its own judgments, orders and decrees, during the existence of the term to which they are first made, is undeniable."

The Solicitor General contends that the dismissal of the case was arbitrary and unlawful and urges us to revoke the order and to decree the remand of the case for further proceeding. It is enough to say in this connection that the Government not having appealed the order, assuming, without deciding, that it was appealable, the Court can not entertain the appellee's prayer.

The appealed order is affirmed with the costs of appeal against the appellant.

Moran, C. J., Ozaeta, Paras, Feria, Pablo, Perfecto Bengzon, Montemayor, and Reyes, JJ., concur.

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