

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SEBASTIAN S. LAMBINO, DEFENDANT AND APPELLANT.***G. R. No. 10875. April 28, 1958*

Ponente: ENDENCIA, J.

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On August 25, 1952, appellant herein was charged in the Court of First Instance of Pangasinan with the crime of malversation of public funds in the amount of P16,267.65 in an information filed by the provincial fiscal, which was later on amended in order to change the amount to P16,287.65. After his arrest, the case was set for his arraignment on February 12, 1953, but upon his petition, said arraignment was postponed several times until finally on March 12, 1953, appellant was duly arraigned and entered the plea of not guilty.

The case was set for hearing for May 11, and 12, 1954, but, upon petition of the accused, said hearing was postponed to May 26, then to June 17, June 29 and July 13, 1954. However, on the last date, the hearing of the case did not take place, because the appellant then filed a motion wherein he alleged that there has been no preliminary investigation in the case and that the information contained vague and indefinite averment of the date of the commission of the crime charged, and the court again postponed the hearing to July 29, 1954, so as to give the defense an opportunity to file a written argument supporting the motion. No action was taken thereon, but the case was definitely called for hearing on said date. Before the commencement of the trial, appellant reiterated his petition for preliminary investigation, but it was denied on the ground that "the court has studied the record of the case and is satisfied with the preliminary investigation conducted thereon." The trial was proceeded on and the prosecution presented its first witness, Auditor Dalmacio Ramos, who testified that he examined the accounts of the appellant as municipal treasurer of Sta. Barbara, Pangasinan, and found the shortage alleged in the information; and when this witness was about to finish his testimony, appellant, through counsel, asked the court that he be permitted to withdraw his former plea of not guilty and to substitute it for that of guilty, that he be given the benefit of the indeterminate sentence and that the reading of the sentence be deferred. The trial court granted this petition and forthwith ordered that the accused be again arraigned and, upon being rearraigned, appellant voluntarily entered the plea of guilty; and agreeing to appellant's petition, the lower court fixed August 17, 1954 as the date of promulgation of the judgment.

Decision was rendered on July 31, 1954, whereby the court found appellant guilty beyond reasonable doubt of the crime of malversation of public funds and, taking into account his plea of guilty as a mitigating circumstance, imposed upon the appellant a penalty of not less than eight years and one day of prison mayor, and not more than twelve years and one day of reclusion temporal, to pay a fine in the sum of P8,133.82, to suffer perpetual special disqualification from holding public office, to indemnify the municipal government of Sta. Barbara in the amount of P16,267.65, and to pay the costs.

On August 14, 1954, appellant filed a petition to withdraw his plea of guilty on the ground that—

"when the instant case was called for bearing last July 29, 1954, the undersigned accused inadvertently and

inadvisedly entered a plea of guilty to the information, having yielded to do so only after being seduced and influenced by outside intervention of other persons as further explained his affidavit of merits hereto attached and made an integral part of this petition; that in truth and in fact he did not very well understand the true import and full extent of the consequences of his ill-considered plea, and that after more intelligent consultation, deeper discernment and mature deliberation, he has finally come to regret his plea of guilty, and now most solicitously begs to withdraw the same."

Despite this motion, the lower court promulgated the decision, thus impliedly overruling said motion. Thereupon appellant orally announced his intention to appeal, but instead of filing the corresponding notice of appeal, he presented on August 24, 1954, a motion for reconsideration and new trial, alleging that there have been errors of law and irregularities in the trial of the case and that new and material evidence has been discovered which, if admitted, would probably change the judgment, to wit: list of Naric rice debtors, chits or promissory notes, duly signed, supporting said list. This motion was overruled by the lower court for lack of merit and, on August 28, 1954, the formal notice of appeal was filed and thus the case was elevated to the Court of Appeals which certified it to this Court for the reason that appellant, in his brief, raises only question of law.

Appellant claims that the lower court erred (1) in not granting appellant's motion for preliminary investigation filed on July 13, 1954; (2) in not granting appellant's 508 petition of August 14 to withdraw his plea of guilty and to substitute it for that not guilty; and (3) in overruling appellant's motion for reconsideration of the decision and new trial thereof.

As to the first error, we find no irregularity in the actuation of the lower court, firstly because that petition for preliminary investigation was filed by appellant after he had entered his plea of not guilty on March 12, 1953. It is a settled rule in this jurisdiction that a preliminary investigation may be waived and that the accused may waive it expressly or impliedly. And in the case of *People vs. Magpale*, 70 Phil., 176, this Court held that "the right was waived by failure to claim it before the accused pleaded." Moreover in the case at bar, the information was filed originally with the court of first instance and after its filing the accused was ordered arrested, hence we presume that before the issuance of such order of arrest, the Honorable Judge presiding the lower court must have made the corresponding investigation provided for in Sec. 4 of Rule 108. Again, before the commencement of the trial, appellant reiterated his petition for a preliminary investigation, which was overruled, nevertheless appellant took no steps to bring the matter to higher courts and stop the trial of the case; instead he allowed the prosecution to present the first witness who was able to testify and show the commission of the crime charged in the information. By his conduct, we held that he waived his right to a preliminary investigation and is estopped from claiming it.

As to the second error ascribed to the lower court in that it did not allow appellant to withdraw his former plea of guilty and substitute it with one of not guilty, we find appellant's contention completely untenable. He claims to have pleaded guilty because "he has been seduced and influence by outside intervention" and that "he did not very well understand the true import and full extent of the consequences of his ill-considered plea, and that after more intelligent consultation, deeper discernment and mature deliberation, he has finally come to regret his plea of guilty." But the record shows that as early as June 17, 1954, appellant was already considering the advisability of pleading guilty, as Ms counsel so announced, when they then petitioned for the postponement of the hearing at a later date. Likewise, the record shows that the accused entered his plea of guilty after a witness for the prosecution had testified so convincingly that the appellant has committed the crime charged in the information. At that time he was assisted by an attorney and he pleaded guilty only after consultation with him. Under these circumstances, it could hardly be conceived that he involuntarily pleaded guilty without realizing the consequences of his plea. On the other hand, we find that the withdrawal of a plea of guilty in order to interpose a motion to quash or substitute therefore a, plea of not guilty, at any time before judgment, is not a matter of strict right to the accused but of sound discretion to the trial court. (*U. S. vs. Patala*, 2 Phil., 752; *U. S. vs. Molo*, 5 Phil., 412; *U. S. vs.*

Schneer, 7 Phil., 523; U. S. vs. Neri, 8 Phil, 669; U. S. vs. Sanchez, 13 Phil., 336; U. S. vs. Gran, 18 Phil., 122; People vs. Quinta, 51 Phil., 820; People vs. Ubaldo, 55 Phil., 95.)

Obviously appellant herein should not be allowed to gamble with his plea of guilty by withdrawing it after he learned the penalty imposed upon him.

As to the third error, we find appellant's contention also untenable, for by the plea of guilty he admits all the facts alleged in the information and, by that plea, he is precluded from showing that he has not committed them. And, even granting that the evidence he has discovered later on may have some influence in the matter, we find that the same, if at all, would only tend to prove that he disposed of the rice entrusted to him, selling it on credit without authority, thus malversing the proceeds thereof, so that the evidence in question would in nowise relieve him from responsibility and, therefore, it would not alter the decision of the lower court.

The Solicitor General recommends that the principal penalty imposed upon the accused be affirmed in toto. We find, however, that said penalty was erroneous, firstly because the lower court, in imposing such penalty, took into consideration the plea of guilty entered by the accused after a witness for the prosecution had sufficiently proved the crime at bar. Obviously, such plea of guilty cannot be given consideration as mitigating circumstance for it was entered after the prosecution had presented part of the evidence (People vs. Co Chan, 60 Phil., 293; People vs. De la Cruz, 63 Phil., 874). Secondly, the penalty fixed by the Revised Penal Code for the crime at bar (Art. 217, No. 4) is reclusion temporal in its medium and maximum periods because the amount involved is more than P12,000 but less than P20,000, so that the minimum penalty, under the Indeterminate Sentence Law, that should be imposed upon the defendant, is prision mayor in its maximum to reclusion temporal in its minimum or from 10 years and 1 day of prision mayor to 14 years and 8 months of reclusion temporal; consequently, the minimum of the indeterminate sentence applicable to the case at bar is not 8 years and 1 day as fixed by the trial judge, but a penalty of not less than 10 years and 1 day of prision mayor. And with regards to the maximum penalty, it should be 16 years, 5 months and 11 days of reclusion temporal, instead of 12 years and 1 day of reclusion temporal. Accordingly, the penalty imposed upon the appellant should be modified as above pointed out.

Wherefore, with the modification of the decision as above indicated, the same is hereby affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Felix, JJ., concur.

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