

JOEY POTOT Y SURIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND LOLITO DAPULAG, RESPONDENTS.

G.R. No. 143547. June 26, 2002

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

After the accused has filed with the trial court a manifestation that he is not appealing its Decision convicting him of homicide and that he is ready to serve his sentence, can the same court, upon motion by the private complainant with the conformity of the public prosecutor, set aside the said judgment and remand the records of the case to the Office of the Provincial Prosecutor for re-evaluation of the evidence and the filing of the corresponding charge? This is the issue raised in the instant petition for review on certiorari.

Joey S. Potot, petitioner, was charged with homicide in Criminal Case No. 2739 before the Regional Trial Court (RTC), Branch 19, Catarman, Northern Samar. The information against him, filed on December 12, 1999, alleges:

“That on or about the 2[nd] day of November, 1999, at about 3:00 o’clock in the early morning in the public cemetery of the Municipality of Mondragon, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife locally called ‘dipang,’ with deliberate intent to kill and without justifiable cause, did then and there wifully, unlawfully and feloniously attack, assault and stab RODOLFO DAPULAG @ PILI with the use of said weapon which the accused had provided himself for the purpose, thereby inflicting upon said Rodolfo Dapulag @ Pili a mortal wound which caused the death of said victim.

“CONTRARY TO LAW.” [1]

Upon arraignment on February 1, 2000, wherein the information was read to him in his own dialect, petitioner, assisted by counsel, pleaded guilty to the charge.[2] Forthwith, he invoked not only the mitigating circumstance of plea of guilty, but also the circumstance of voluntary surrender since, as shown in the records, he surrendered voluntarily to the Philippine National Police (PNP) Headquarters immediately after the commission of the crime. The public prosecutor did not raise any objection. Instead, he manifested that there is no aggravating circumstance which attended the commission of the crime.

Thereupon, the trial court, after being satisfied that petitioner understood the meaning and consequences of his plea of guilty, rendered and promulgated its Decision[3] in open court convicting him of homicide, with the mitigating circumstances of plea of guilty and voluntary surrender appreciated in his favor. The dispositive portion of the Decision reads:

“WHEREFORE, the Court accepts the plea of guilty of Joey Potot y Sorio, and finds him guilty beyond reasonable doubt of the crime of homicide, and appreciating in his favor the mitigating circumstances of plea of guilty and voluntary surrender, with no aggravating circumstance in attendance, and applying the Indeterminate Sentence Law, sentences him to suffer an imprisonment ranging from two (2) years four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision

mayor, as maximum; to indemnify the heirs of Rodolfo Dapulag y Conge, also known as Pili, in the amount of P50,000.00; and to pay the costs.

“The period during which the accused has undergone preventive imprisonment shall be deducted in full from the foregoing sentences involving deprivation of liberty should the records reveal that he expressly agreed in writing to abide by the same rules and regulations governing convicted prisoner during his entire detention period and if the records show that he is entitled to the privilege under the law.

“SO ORDERED.”[4]

On February 3, 2000, petitioner, through counsel, filed a manifestation with motion[5] informing the trial court that he is not appealing from the Decision and praying that a commitment order be issued so he could immediately serve his sentence. Attached to the motion is petitioner's letter to the court stating that he does not intend to appeal from its Decision.[6]

However, on February 11, 2000, the private complainant, Rosalie Dapulag (wife of the victim), filed through counsel, a motion for reconsideration/retrial[7] praying that the Decision be set aside and that the case be heard again because “there were irregularities committed before and during the trial which caused miscarriage of justice.” The motion, which bears the conformity of the public prosecutor, alleges, among others, that:

“The true facts surrounding the commission of the crime as revealed by the eyewitnesses, EDUARDO BOYSON and JIMUEL MARQUITA, on December 8, 1999 is that RODOLFO DAPULAG, private offended party's deceased husband, was killed on that fateful morning by accused JOEY POTOT with the aid of DOMING JARILLA and MARLITO NAZAM who respectively held the right and left arm of Rodolfo Dapulag to ensure the commission of the crime by accused Joey Potot....

“This information was deliberately withheld by the said eyewitnesses, especially EDUARDO BOYSON, during the investigation conducted by the police and the preliminary investigations conducted by the presiding judge of MCTC of Mondragon-San Roque and the Office of the Provincial Prosecutor upon the solicitations of Mayor Elito Dapulag, who in good faith believed that the inclusion of Doming Jarilla and Marlito Nazam would make the prosecution of the case more difficult. The eyewitnesses, who are likewise in the belief that indeed the inclusion of the above-named persons would complicate the case, withheld the said information until witness Jimuel Marquita revealed the same to the private offended party on December 8, 1999.

x x x x x x x x

“The private offended party (not in her capacity as such, but as a citizen) has the right to demand from the State the punishment of heinous crimes in accordance with law. And such right is now in jeopardy of being lost for some causes not attributable to her.

x x x x x x x x

“Hereto attached and made integral parts hereof are the affidavits of eyewitnesses JIMUEL MARQUITA and EDUARDO BOYSON.” (Emphasis supplied)

Petitioner opposed[8] the motion, asserting that there was no irregularity in the preliminary investigation of the case and in the proceedings before the trial court; and that the decision can no longer be modified or set aside because it became final when he formally waived his right to appeal.

The trial court, in its order dated May 3, 2000,[9] granted private complainant's motion and set aside its February 1, 2000 Decision “as proceeding from a rigged, hence, sham hearing.” It likewise ordered that the records of the case be remanded to the Office of the Provincial Prosecutor “for re-evaluation of the evidence and to file the corresponding charge,” thus:

"From the records are gathered that the case, as originally referred to the Municipal Circuit Trial Court, was for murder. In the conduct of the preliminary investigation, said court determined that a prima facie case exists and recommended the accused be held for trial on the charge. In his resolution reviewing the records of the preliminary investigation conducted by the municipal court, the prosecutor entirely missed discussion of the participation of two others allegedly in conspiracy with the accused. The exclusion of the two others identified as Doming Jarilla and Marlito Nazam was orchestrated by the Municipal Mayor who, in good faith, prevailed upon the witnesses not to implicate them. To these foregoing, the Provincial Prosecutor is in conformity.

"Accordingly, the Branch Clerk of Court shall remand the records hereof to the Office of the Provincial Prosecutor for re-evaluation of the evidence and to file the corresponding charge supported by the same. The motion or manifestation requesting for the issuance of a commitment order filed by the defense is DENIED.

"SO ORDERED."

Petitioner filed a motion for reconsideration^[10] contending that the trial court has no jurisdiction to issue the February 1, 2000 order as the Decision had become final, and that the said order "would place the accused in double jeopardy." In the order of May 26, 2000,^[11] the trial court denied the motion for reconsideration for the reason that the State is not bound by the error or negligence of its prosecuting officers, hence, jeopardy does not attach."

Petitioner now assails the orders of May 3 and 26, 2000.

The Solicitor General agrees with the petitioner that the challenged orders should be set aside and that the February 1, 2000 Decision should be reinstated.^[12]

We find the petition meritorious.

Section 7, Rule 120 of the Revised Rules on Criminal Procedure, as amended, provides:

"SEC. 7. Modification of judgment. – A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment 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 when the accused has waived in writing his right to appeal, or has applied for probation. (7a)" (Emphasis ours)

It is thus clear that only the accused may ask for a modification or setting aside of a judgment of conviction. And this he must do before the said judgment becomes final or before he perfects his appeal. Such judgment becomes final in any of the following ways: (a) when no appeal is seasonably filed by the accused, except in case of automatic review of the decision imposing the capital penalty;^[13] (b) when he has partially or totally served his sentence; (c) when he expressly waives his right to appeal the judgment, except when the death penalty is imposed; or (d) when he applies for probation. When one of these circumstances is present, the trial court which rendered the judgment of conviction loses jurisdiction to alter, modify or revoke it.^[14]

It is an undisputed fact that on February 3, 2000, or three days after the promulgation of the judgment of conviction, petitioner filed a manifestation expressly waiving his right to appeal therefrom. His intention not to appeal is further indicated by his prayer in the same manifestation for the immediate issuance of a commitment order so he could serve his sentence. Such waiver has the effect of causing the judgment to become final and unalterable.^[15] Thus, it was beyond the authority of the trial court to issue the order of May 3, 2000 setting aside its February 3, 2000 Decision which had attained finality.

In *Calalang vs. Register of Deeds of Quezon City*^[16] and in a long line of cases, this Court (En Banc) held that a judgment which has acquired the status of finality becomes immutable. Any error, assuming one was committed

in the judgment, will not justify its amendment except only to correct clerical errors or mistakes.

It is likewise procedurally impermissible for the trial court to grant private complainant's motion for reconsideration of its Decision. Section 1, Rule 121 of the same Rules provides:

“SECTION 1. New trial or reconsideration. - At any time before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with the consent of the accused, grant a new trial or reconsideration. (1a)” (Emphasis ours)

Since the motion for reconsideration of the judgment of conviction was not initiated by the accused (petitioner) or at the instance of the trial court with his consent, the same should have been denied outright as being violative of the above provision.

At any rate, the records do not show any irregularity in the preliminary investigation of the case before the Provincial Prosecutor's Office. The motion for reconsideration filed by the private complainant questions the (1) alleged failure of the Provincial Prosecutor to appreciate the sworn statements of two prosecution witnesses implicating two other individuals in the commission of the crime; and the (2) downgrading by the Provincial Prosecutor of the initial charge of murder to homicide. But the motion for reconsideration itself reveals that the supposed vital information from two witnesses implicating two other persons in the crime “was deliberately withheld by the said witnesses ... during the police investigation and the preliminary investigation conducted by the MCTC Judge and the Office of the Provincial Prosecutor.” Hence, the Provincial Prosecutor who reviewed the records could not have possibly appreciated the alleged vital facts. Besides, the complainant did not appeal from the Provincial Prosecutor's finding of probable cause for the crime of homicide against petitioner. It bears stressing at this point that the public prosecutor has the quasi-judicial prerogative to determine what crime should be filed in court and who should be charged therefor. He always assumes and retains full discretion and control of the prosecution of all criminal actions.[17] As held by this Court in *People vs. Vergara*:[18]

“Section 5 of Rule 110 of the New Rules of Criminal Procedure expressly provides that ‘[a]ll criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the fiscal.’ It must be remembered that as public prosecutor he is the ‘representative not of the ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.’ Hence, the fiscal or public prosecutor always assumes and retains full direction and control of the prosecution of the case. The institution of a criminal action depends upon his sound discretion. He has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court; whether a prima facie case exists to sustain the filing of an Information; whether to include in the charge those who appear to be responsible for the crime; whether to present such evidence which he may consider necessary.” (Emphasis ours)

Finally, we agree with the petitioner that the assailed orders would violate his constitutional right against double jeopardy.[19] Such right prohibits any subsequent prosecution of any person for a crime of which he has previously been acquitted or convicted. The objective is to set the effects of the first prosecution forever at rest, assuring the accused that he shall not thereafter be subjected to the peril and anxiety of a second charge against him for the same offense.[20]

To invoke the defense of double jeopardy, the following requisites must be present: (1) a valid complaint or information; (2) the court has jurisdiction to try the case; (3) the accused has pleaded to the charge; and (4) he has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent.[21]

These requisites have been established. Records show that petitioner was charged with homicide in Criminal Case No. 2739 under a valid information before the trial court which has jurisdiction over it. He was arraigned and pleaded guilty to the charge. On the basis of his plea, petitioner was convicted and meted the corresponding penalty. As petitioner has been placed in jeopardy for the crime of homicide, he cannot be prosecuted anew for the same offense, or any offense which necessarily includes or is necessarily included in the first offense charged.[22]

WHEREFORE, the instant petition is hereby GRANTED. The assailed orders dated May 3, 2000 and May 26, 2000 issued in Criminal Case No. 2739 by the trial court are SET ASIDE. Its Decision dated February 1, 2000 is REINSTATED.

SO ORDERED.

Puno, (Chairman), and Carpio, JJ., concur.
Panganiban, J., on official leave.

[1] Annex “C,” Petition; Rollo, p. 16.

[2] Pursuant to Section 4, Rule 117 of the Revised Rules on Criminal Procedure, as amended.

[3] Dated February 1, 2000, penned by Judge Cesar R. Cinco.

[4] Annex “D,” supra, pp. 17-18.

[5] Annex “F,” *ibid.*, p. 21.

[6] Annex “E,” *ibid.*, pp. 19-20.

[7] Annex “G,” *ibid.*, pp. 22-23.

[8] Annex “J,” *ibid.*, pp. 28-29.

[9] Annex “A,” *ibid.*, pp. 13-14.

[10] Annex “S,” *ibid.*, pp. 43-47.

[11] Annex “B,” *ibid.*, p. 15.

[12] Manifestation and Motion In Lieu of Comment.

[13] Sections 3 (d) and 10, Rule 122 of the Revised Rules on Criminal Procedure, as amended.

[14] Cf. *U.S. vs. De Iro*, 33 Phil. 475, 479 (1916).

[15] *People vs. Español*, 114 SCRA 911, 922-923 (1982).

[16] 231 SCRA 88 (1994).

[17] Section 5, Rule 110 of the Revised Rules on Criminal Procedure, as amended.

[18] 221 SCRA 560 (1993).

[19] Section 21, Article III of the 1987 Constitution.

[20] *People vs. Vergara*, 221 SCRA 560, 565 (1993), citing *Cruz, Isagani A.*, *Constitutional Law*, 1987 Ed., pp.

314-315.

[21] Section 7, Rule 117 of the Revised Rules on Criminal Procedure, as amended; *Navallo vs. Sandiganbayan*, 234 SCRA 175 (1994).

[22] *Ibid.*

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