

ORLANDO DE LEON, PETITIONER, VS. THE HON. JESUS S. RODRIGUEZ, ETC., ET AL., RESPONDENTS.*G.R. No. 14967. April 27, 1960*

Ponente: BAUTISTA ANGELO, J.

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Under date of June 2, 1958, the Chief of Police of Cauayan, Negros Occidental, filed a complaint for murder against Orlando de Leon before the justice of the peace court of said municipality. After conducting the requisite preliminary investigation, the case was forwarded to the court of first instance of the province for trial on the merits. The provincial fiscal filed on July 28, 1958 against the accused an information for homicide charging him with having killed one Lory Chavez.

On August 6, 1958, when the case was called for arraignment, the accused entered a plea of guilty: Whereupon, his counsel manifested in open court that there are present the mitigating circumstances of (a) voluntary surrender, (b) plea of guilty, and (c) the privilege mitigating circumstance of minority as defined under Article 68 of the Revised Penal Code, and with respect to the latter circumstance, he expressed his desire to present evidence as to the age of the accused if the prosecution was not willing to admit it. To this manifestation, Assistant Fiscal Joaquin Sola retorted by saying that the prosecution agrees to the existence of the three mitigating circumstances advanced by the defense and to that effect he recommends that a penalty of one year be imposed upon the accused.

On the strength of the above admission both on the part of the prosecution as well as of the defense, the court rendered decision on August 6, 1958 convicting the accused and sentencing him to a penalty of one year of prision correccional, with the accessory penalties of the law, to indemnify the heirs of the deceased in the sum of P3,000.00, with subsidiary imprisonment in case of insolvency, and to pay the costs.

Upon the promulgation of the decision, the accused began serving his sentence in the provincial jail of Negros Occidental. That was on August 6, 1958. On August 15, 1958, the provincial fiscal filed a motion for reconsideration alleging that the prosecution has in its possession documentary evidence in the form of official records to the effect that the accused was at the time of his arraignment more than 18 years of age for which reason it prayed that the decision be amended so that instead of the penalty of one year which was imposed upon him it be raised to 2 years 4 months and 1 day of prision correccional to 6 years and 1 day of prision mayor. On its part, the private prosecution moved the court to set aside the decision on the ground that the same was null and void and to authorize the provincial fiscal to file a new information for murder based on the same ground of fraud with regard to the age of the accused.

The two motions were set for hearing, and after both parties have argued orally and have submitted written memoranda, the court, on October 6, 1958, issued an order granting the motion for reconsideration by denying the motion for the filing of a new information for murder. To this effect, the court, without setting aside its decision of August 6, 1958, authorized the provincial fiscal to present evidence as to the age of the accused and the defense

to present rebuttal on October 18, 1958.

Upon receipt of this order, counsel for the accused filed a motion for reconsideration alleging that, as the accused has already begun serving his sentence, the court can no longer reopen the case because it has already lost jurisdiction over it, the judgment having already become final. This motion having been denied, the accused interposed the present petition for certiorari.

In authorizing the reopening of the case in order that the prosecution may present evidence with regard to the true age of the accused, the trial court made the following statement:

"Considering that, although the decision in this case was rendered after a plea of guilty and the accused forthwith commenced to serve his sentence, the Court, in the interest of justice and in view of the fact that, when the case was called on August 6, 1958, at the instance of the accused, and without sufficient previous notice to the Provincial Fiscal, the latter was thus unable to controvert in any way the existence of the privileged mitigating circumstance of minority, should at least grant the prosecution the chance to present formally in evidence Annexes A and B of its motion for reconsideration, with the right on the part of the accused to rebut the same."

Section 7, Rule 116, of the Rules of Court, provides:

"Sec. 7. Modification of judgment.—A judgment of conviction may be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. A judgment in criminal case 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 the defendant has expressly waived in writing his right to appeal."

From the above it appears that a judgment of conviction may only be modified or set aside before it has become final or appeal has been perfected, and a judgment becomes final after the lapse of the period of perfecting the appeal, or after the sentence has been partially or totally satisfied by the defendant. It appearing that the sentence imposed upon defendant has already become final because he has already begun serving the same on the very date of the promulgation of the judgment, it is evident that the case can no longer be reopened with a view to the modification of the sentence which is the purpose of the order of the court. Much as we sympathize with the move of the prosecution and the motive behind the order of the court in view of the apparent fraud the defendant has committed with regard to his age, the move cannot be entertained for it will place the accused in double jeopardy.

Wherefore, petition is granted. The order of the trial court dated October 6, 1958 is hereby set aside. No costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David JJ., concur.

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