

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

G.R. No. 15957. April 25, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On May 26, 1959, an information for homicide thru reckless imprudence was filed against Benjamin Espiritu and Marcelo Amador before the Court of First Instance of Nueva Ecija for which a bail bond of P6,000.00 for their provisional liberty was recommended. The case against Marcelo Amador who was only eight (8) years old was dismissed.

On June 8, 1959, counsel for Espiritu moved for the reduction of the bail bond as recommended to P3,000.00 considering that he was only thirteen (13) years old, which motion the court entertained favorably by reducing the bail to P4,000.00. Subsequently, counsel filed a motion to quash contending that being a minor below 15 years of age he could only be prosecuted if he acts with discernment which does not obtain in an act committed with reckless imprudence, and having the motion been denied, he again moved for the reduction of his bail to P2,000.00. Again, the court granted the motion. Pending, however, the posting of the bail for the provisional liberty of the minor, his counsel prayed that instead of posting a bail bond he be released and placed under the care and custody of a responsible person pending the trial of his case on the merits and, acting favorably thereon, the court issued an order portion of which we quote:

"The accused is hereby ordered released from confinement and committed to the care and custody of Atty. Honorio V. Garcia, if he accepts the said trust, who must signify his conformity in writing, and who must make available the person of the accused before the Court, whenever it is necessary."

As Atty. Garcia had expressed his conformity to the commitment, the court directed the release of the minor and placed him in his custody. Hence, the government interposed the present appeal disputing the authority of the trial court to release the accused without bail and to commit him instead to the care and custody of a private person pending trial of the case on the merits.

Considering that the order from which the government is appealing is interlocutory which cannot be the subject of appeal unless final judgment is rendered, it is the sense of this Court that this appeal should be dismissed (Section 2, Rule 41). If the government believes that the trial court has not acted properly, its remedy is to file, not an appeal, but a writ of certiorari.

Wherefore, the appeal is dismissed, without costs. The case is remanded to the lower court for further proceedings.

Bengzon, Acting C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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