

AURORA TAMAYO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND HEIRS OF PEDRO SOTTO, RESPONDENTS.

G.R. No. 174698. July 28, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this Petition for Review on Certiorari under Rule 45 of the Rules of Court,[1] petitioner Aurora Tamayo seeks to set aside the Order dated 19 September 2006 of the Tarlac City Regional Trial Court (RTC), Branch 63, in Criminal Case No. 8611.[2] In said Order, the RTC denied petitioner's motion to suspend the execution of its Decision dated 24 October 1997 in Criminal Case No. 8611 convicting her of the crime of Estafa,[3] on the ground that such Decision, which has been affirmed in toto by the Court of Appeals, has become final and executory.

The operative facts are herein summarized.

On 15 August 1994, an Information[4] was filed before the RTC charging petitioner and her friend, Erlinda Anicas (Anicas), with estafa under Article 315 of the Revised Penal Code, thus:

That on or before May 20, 1994 in the Municipality of Tarlac, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of deceit and with intent to defraud, did then and there willfully, unlawfully and feloniously, pretended themselves to be assembler of passenger jeepney and was able to convince Mr. and Mrs. Pedro Sotto of Maligaya, Maliwalo, Tarlac, Tarlac to have one unit of passenger jeep assembled for them for a price of P120,000.00 and once in possession of the said amount, far from complying with their obligation to assemble one unit of passenger jeepney for Mr. and Mrs. Pedro Sotto, misappropriated the same to their own personal use and benefit and in spite of repeated demands, said accused failed and refused, and still fails and refuses to return the amount of P120,000.00 nor to deliver the passenger jeepney to the complainants to the damage and prejudice of the latter for more than P120,000.00, Philippine Currency.

Petitioner was later apprehended while Anicas remained at large. When arraigned on 20 April 1995, petitioner, with the assistance of counsel de parte, pleaded "Not guilty" to the charge.[5] Trial on the merits ensued.

The prosecution presented as witnesses herein private complainants, spouses Pedro and Juanita Sotto (spouses Sotto). Their testimonies, woven together, bear the following:

Sometime in May 1993, petitioner and Anicas went to the house of spouses Sotto at Barangay Maliwalo, Tarlac City. Petitioner and Anicas introduced themselves to spouses Sotto as assemblers of passenger jeeps payable on installment basis. After a brief conversation with the spouses Sotto, petitioner and Anicas left.[6]

On 1 June 1993, petitioner and Anicas returned to the house of spouses Sotto on board a Malaguena-type passenger jeep. Petitioner and Anicas showed to spouses Sotto the said jeep and thence proposed to assemble for them such kind of jeep at a price of P210,000.00[7] to be delivered after a month. Allured by the beauty of the jeep and its low price, spouses Sotto agreed to the proposal of petitioner and Anicas.[8]

Thereafter, spouses Sotto made a series of partial payments to petitioner and Anicas in the total amount of P120,000.00, viz: (1) P30,000.00 on 2 June 1993; (2) P20,000.00 on 4 June 1993; (3) P10,000.00 on 7 June 1993; (4) P30,000.00 on 24 June 1993; and (5) P30,000.00 on 30 June 1993.[9]

After a month, Pedro Sotto asked petitioner to show him the jeep but petitioner told him that it was still being assembled in Laguna. Pedro then requested petitioner to accompany him to Laguna to inspect the jeep but petitioner refused and even tried to hide.[10]

Sensing that something fishy was going on, spouses Sotto sought the services of a lawyer who immediately sent letters to petitioner and Anicas demanding the return of P120,000.00. Upon receipt of the said letters, petitioner and Anicas went to the house of spouses Sotto and assured the latter they would return the money. Petitioner and Anicas, however, failed to return the money to the spouses Sotto. Subsequently, the spouses Sotto filed a complaint for estafa against petitioner and Anicas.[11]

The prosecution also adduced documentary evidence to bolster the testimonies of its witnesses, to wit: (1) receipts signed by petitioner and Anicas attesting that petitioner and Anicas received from Pedro several amounts totaling P120,000.00 as partial payment for the assembly of a passenger jeep (Exhibits A and B);[12] (2) a demand letter sent by the counsel of the spouses Sotto to petitioner and Anicas admonishing the two to return the amount of P120,000.00 to the spouses Sotto (Exhibit C);[13] (3) reply-letters of the counsel for petitioner and Anicas stating that the said demand letter was received by petitioner and Anicas (Exhibits D, E, and F);[14] and (4) complaint-affidavit for estafa filed by spouses Sotto against petitioner and Anicas.[15]

For its part, the defense presented the lone testimony of petitioner to refute the foregoing accusation. Petitioner disclaimed any liability to the spouses Sotto.

Petitioner testified that sometime in April 1992, Pedro and Anicas went to her house and requested her to look for a mechanic who can assemble a Malaguena-type passenger jeep. She introduced Pedro to a mechanic named Ernesto Ravana (Ravana) who agreed to assemble a Malaguena-type passenger jeep for Pedro in the amount of P120,000.00.[16]

Subsequently, Pedro handed to her an amount of P60,000.00 which she would give to Ravana as partial payment for the assembly of the jeep. She turned over the said amount to Ravana. Later, Pedro told her that he was no longer interested in the assembly of the jeep because he had no more money to pay the balance of its price, and that he wanted to get back the money he had paid for the jeep. She told Pedro that she would reimburse him the amount he gave to Ravana. Afterwards, she gave the amount of P60,000.00 to Ravana for the continuation of the jeep's assembly.[17]

Thereafter, Ravana told her to pay the balance of the jeep's price or he would discontinue its assembly. When she failed to pay the balance, Ravana avoided her and hid.[18]

She filed a complaint against Ravana before the officials of the barangay where Ravana resided. During their confrontation at the barangay hall, she and Ravana entered into an agreement whereby Ravana acknowledged an obligation of P120,000.00 to her and Ravana promised to reimburse her the said amount on a P1,000.00 per month basis. Ravana failed to comply with this agreement. Hence, she sued Ravana for estafa in court. Since then, Ravana has gone into hiding.[19]

After trial, the RTC rendered a Decision on 24 October 1997 convicting petitioner of estafa under Article 315 of the Revised Penal Code.[20] The trial court imposed on petitioner an indeterminate penalty ranging from 4 years 2 months and 1 day of prision correctional, as minimum, to 17 years of reclusion temporal, as maximum. Petitioner was also ordered to pay the spouses Sotto the amounts of P120,000.00, as actual damages, and

P10,000.00, as moral damages. The dispositive portion of the decision reads:

In view of the foregoing, the Court finds the accused Aurora Tamayo guilty beyond reasonable doubt of the crime of estafa, defined and penalized under Article 315, of the Revised Penal Code, and is hereby sentenced to suffer a prison term of four (4) years, two (2) months and one (1) day of prison correctional maximum, as the minimum to seventeen (17) years of reclusion temporal medium, as the maximum, and to indemnify the complainants Pedro and Juanita Sotto, the amounts of P120,000.00 as actual damages, and P10,000.00 as reasonable moral damages. The accused is also ordered to pay the costs of this proceeding.

Petitioner appealed the RTC Decision with the Court of Appeals. Meanwhile, on 30 May 2002, Pedro passed away.[21]

On 22 April 2004, the Court of Appeals promulgated its Decision affirming in toto the RTC Decision,[22] thus:

In fine, we hold that the prosecution was able to prove the guilt of the accused beyond reasonable doubt. After a careful review of the records, the Court finds that the trial court was justified in finding the accused-appellant guilty as charged.

WHEREFORE, the appealed decision of the court a quo dated October 24, 1997 is AFFIRMED. Costs against the accused-appellant.

On 13 December 2005, the Court of Appeals issued a Resolution declaring its Decision dated 22 April 2004 final and executory as of 1 June 2004 and ordering the same to be entered in the Book of Entries of Judgments,[23] viz:

In view of the report of the Court's Judicial Records Division dated November 21, 2005 that no motion for reconsideration before this court nor petition before the Honorable Supreme Court have been filed despite appellant's receipt of copy of this Court's Decision on May 14, 2004.

(1) The Decision dated April 22, 2004 is declared to have become FINAL and EXECUTORY as of June 1, 2004; and

(2) The same is ordered ENTERED in the Book of Entries of Judgments.

On 13 June 2006, the RTC issued an Order directing the arrest of petitioner for him to serve the sentence imposed in its Decision dated 24 October 1997.[24] The Order reads:

Considering the Decision of the Court of Appeals in CA-G.R. CR No. 21762 (Crim. Case No. 8611) promulgated on April 22, 2004 has already become final, let an order of arrest be issued against Aurora Tamayo to serve the sentence of Four (4) Years, Two (2) Months and One (1) Day of prison correccional maximum, as the minimum to Seventeen (17) Years of reclusion temporal medium, as the maximum.

On 18 August 2006, petitioner filed a Manifestation before the RTC alleging that while the instant case was pending with the Court of Appeals, she and Pedro had settled their disputes and that Pedro would no longer pursue the present case against her. She prayed that the implementation of the RTC Order dated 13 June 2006 be cancelled. [25]

On 22 August 2006, petitioner filed a Motion to Suspend the Writ of Execution of the RTC Order dated 13 June 2006 on the ground that supervening facts had occurred making the execution of the said Order unjust.[26] She explained in this wise:

DISCUSSION

Accused received a copy of the Order dated June 23, 2006, granting execution on 16 June 2006. Her former Counsel never informed her when the judgment became final on April 22, 2004.

What actually happened is that when this case was pending review in the Court of Appeals, the Private Complainant compromised with the accused resulting to the receipt by the former first the amount of P10,000.00 on March 18, 2001; and another amount of P110,000.00 on March 22, 2001, binding herself to dismiss the appealed CA G.R. No. 21762 (Crim. Case No. 8611). Xerox copy of said receipt is hereto attached as Annex 1 and Annex 2, respectively, both duly signed by Private Complainant. A copy thereof had been furnished Atty. Mergas but he did not take the trouble to present the same in the Court of Appeals, to the great damage and prejudice of herein accused. This negligence of counsel cannot be attributed to the accused.

x x x x

WHEREFORE, premises duly considered, it is respectfully prayed that the Writ of Execution assailed herein be suspended in the meantime, allowing the accused to present evidence warranting such suspension or dismissal of this case against accused herein. She likewise prays for any other relief and remedy consistent with law, justice and equity.

On 19 September 2006, the RTC issued an Order denying petitioner's motion on the ground that the Decision of the Court of Appeals dated 22 April 2004 was already final and executory,[27] viz:

After the decision of the Court of Appeals became final, affirming the conviction of accused, the records were returned to this Court for execution of the judgment.

This Court then issued an order of arrest of the accused Aurora Tamayo for her to serve the sentence. Now comes the motion to suspend the writ of execution.

This Court cannot do anything. Nothing could be done about a final judgment, except to execute it.

WHEREFORE, for lack of merit, the motion to suspend the execution is denied. The Commonwealth Insurance Company should produce the body of the accused Aurora Tamayo and explain within thirty (30) days from receipt of this order why no judgment should be rendered against her bond. After the lapse of said period and for non-compliance, the Court will issue a judgment against the bond.

On 2 November 2006, petitioner filed the instant petition before us raising a single issue, to wit:

WHETHER THE DECISION DATED 22 APRIL 2004 OF THE COURT OF APPEALS AFFIRMING PETITIONER'S CONVICTION FOR ESTAFA, AFTER HAVING BEEN DECLARED AS FINAL AND EXECUTORY, CAN BE MODIFIED OR SET ASIDE IN LIGHT OF THE COMPROMISE AGREEMENT BETWEEN PETITIONER AND PEDRO.

Section 7, Rule 120 of the Revised Rules of Criminal Procedure provides for the rules in modifying a judgment of conviction, to wit:

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.

As can be gleaned from the foregoing provision, a judgment of conviction may be modified or set aside only if the judgment is not yet final. Further, a judgment becomes final when no appeal is seasonably perfected.

Under the Rules of Court, judgments of the Court of Appeals in criminal cases must be appealed by the accused within fifteen (15) days from service of a copy thereof upon the accused or her counsel[28] either (a) by filing a motion for reconsideration,[29] or (b) by filing a motion for new trial,[30] or (c) by filing a petition for review on certiorari to this Court.[31]

In its Resolution dated 13 December 2005,[32] the Court of Appeals noted that, based on its Judicial Records Division, petitioner did not file a motion for reconsideration or new trial of its Decision dated 22 April 2004 despite her receipt of its copy on 14 May 2004. Neither did petitioner file a petition for review of such decision before this Court within the period as aforementioned. Thus, it declared its Decision dated 22 April 2004 as final and executory as of 1 June 2004, and ordered the same to be entered in the Book of Entries of Judgments. The Court of Appeals also issued a Certificate of Entry of Judgment which attested that, as of 1 June 2004, its Decision dated 22 April 2004 in the instant case had become final and executory, and that it was already recorded in the Book of Entries of Judgments on the same date.[33]

It is clear from the foregoing that petitioner did not appeal the Decision of 22 April 2004 of the Court of Appeals despite her, or her former counsel's, receipt of the same. Petitioner does not deny the veracity of the facts stated in the Resolution dated 13 December 2005. Consequently, the Decision dated 22 April 2004 of the Court of Appeals affirming petitioner's conviction for estafa has already attained finality. As such, it cannot be modified or set aside anymore in accordance with Section 7, Rule 120 of the Revised Rules of Criminal Procedure.

Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered or modified in any respect except to correct clerical errors or to make nunc pro tunc entries.[34] Nothing further can be done to a final judgment except to execute it.[35] No court, not even this Court, has the power to revive, review, or modify a judgment which has become final and executory.[36] This rule is grounded on the fundamental principle of public policy and sound practice that the judgment of the court must become final at some definite date fixed by law.[37] It is essential to an effective administration of justice that once a judgment has become final, the issue or cause therein should be laid to rest.[38]

Petitioner, nonetheless, claims that she and Pedro entered into a compromise while the instant case was pending appeal with the Court of Appeals. Pursuant to the compromise, she reimbursed to Pedro the amount of P120,000.00, which the latter paid for the assembly of the jeep; while Pedro, in turn, agreed to dismiss the present case. She argues that the execution of the Decision dated 22 April 2004 of the Court of Appeals would be unjust and inequitable because, in accordance with the compromise, she already returned to Pedro the latter's money and Pedro expressly agreed to dismiss the instant case against her. She asserts that the compromise extinguished her criminal and civil liability for estafa.[39]

It is a hornbook doctrine in our criminal law that the criminal liability for estafa is not affected by a compromise, for it is a public offense which must be prosecuted and punished by the government on its own motion, even though complete reparation should have been made of the damage suffered by the private offended party.[40] Since a criminal offense like estafa is committed against the State, the private offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the crime.[41]

In *Firaza v. People*[42] and *Recuerdo v. People*,[43] we emphasized that in a crime of estafa, reimbursement or belated payment to the offended party of the money swindled by the accused does not extinguish the criminal liability of the latter. Thus:

The reimbursement or restitution to the offended party of the sums swindled by the petitioner does not extinguish the criminal liability of the latter. It only extinguishes pro tanto the civil liability. Moreover, estafa is a public offense which must be prosecuted and punished by the State on its own motion even though complete reparation had been made for the loss or damage suffered by the offended party. The consent of the private complainant to petitioner's payment of her civil liability pendent lite does not entitle the latter to an acquittal. Subsequent payments does not obliterate the criminal liability already incurred. Criminal liability for estafa is not affected by a compromise between petitioner and the private complainant on the former's civil liability.

Likewise, in *Metropolitan Bank and Trust Company v. Tonda*,^[44] we held that in a crime of estafa, reimbursement of, or compromise as to, the amounts misappropriated, after the commission of the crime, affects only the civil liability of the offender but does not extinguish his criminal liability, viz:

[I]t is too well-settled for any serious argument that whether in malversation of public funds or estafa, payment, indemnification, or reimbursement of, or compromise as to, the amounts or funds malversed or misappropriated, after the commission of the crime, affects only the civil liability of the offender but does not extinguish his criminal liability or relieve him from the penalty prescribed by law for the offense committed, because both crimes are public offenses against the people that must be prosecuted and penalized by the Government on its own motion, though complete reparation should have been made of the damage suffered by the offended parties x x x.

As in this case, the alleged compromise between petitioner and Pedro, wherein petitioner allegedly reimbursed to Pedro the amount swindled in exchange for Pedro's consent to dismiss the instant case, does not extinguish petitioner's criminal liability for estafa.

With regard to the effect of the alleged compromise on petitioner's civil liability, it is true, as held in the foregoing cases, that a compromise extinguishes pro tanto the civil liability of an accused. However, such rule cannot be applied in favor of petitioner.

It is a basic principle in our rules on evidence that he who alleges a fact has the burden of proving the truth thereof.^[45] It must also be stressed that the evidence to prove this fact must be clear, positive and convincing.^[46]

In the instant case, it is incumbent upon petitioner to prove that she and Pedro entered into a compromise as regards the present case. Although petitioner attached to her instant petition a handwritten receipt^[47] which she claims to be the proof of compromise between her and Pedro, she, nonetheless, failed to prove with convincing evidence that the receipt was genuine. Petitioner did not submit any proof to show that the signatures of Pedro and of the witnesses in the receipt were authentic.

Further, Juanita and counsel for the spouses Sotto, Atty. Servillano Santillan, have expressly and consistently denied in their Comment on,^[48] Rejoinder to^[49] and Memorandum on^[50] the instant petition that a compromise took place between petitioner and Pedro, and that the latter received money from petitioner. They asserted that the receipt was falsified or fictitious.

In sum, petitioner failed to discharge his burden of proving through convincing evidence that she and Pedro had entered into a compromise.

Petitioner also avers that she informed her former counsel, namely, Atty. Edwin Mergas (Atty. Mergas), of the alleged compromise, but the latter failed to relay the same to the Court of Appeals for the dismissal of the instant case. She contends that she cannot be bound by such negligence of Atty. Mergas.^[51]

Mistake and negligence of a counsel bind his client. The basis is the tenet that an act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of a counsel may result in the rendition of an unfavorable judgment against his client.^[52]

A contrary view would be inimical to the greater interest of dispensing justice. For all that a losing party will do is to invoke the mistake or negligence of his counsel as a ground for reversing or setting aside a judgment adverse to him, thereby putting no end to litigation. To allow this obnoxious practice would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing favorable rulings in cases of conviction.^[53]

Concededly, the foregoing rule admits of exceptions. Hence, in cases where (1) the counsel's mistake is so great and serious that the client is prejudiced and denied his day in court, or (2) the counsel is guilty of gross negligence resulting in the client's deprivation of liberty or property without due process of law, the client is not bound by his counsel's mistakes.[54]

Tested against these guidelines, we find that petitioner's case falls within the general rule rather than the exceptions.

Atty. Mergas had sufficiently performed his duties in defending petitioner. During the trial, the RTC issued an Order dated 29 November 1996 declaring petitioner's right to continue her direct testimony given in court and her right to present evidence was waived because of petitioner's constant absences in the hearings.[55] Atty. Mergas, as the newly hired lawyer of petitioner, immediately filed an entry of appearance and a motion for reconsideration of the said order to preserve the rights of petitioner.[56] He also conducted a thorough direct and re-direct examinations of petitioner and objected to some of the questions she was asked during her cross-examination.[57] Moreover, he filed a Formal Offer of Evidence for the petitioner and a Motion for Reconsideration of the RTC Order dated 19 November 1997 directing petitioner's arrest and cancellation of her bail bond.[58] He even appealed the RTC Decision convicting petitioner of estafa to the Court of Appeals.[59]

Assuming *arguendo* that Atty. Mergas was negligent in failing to inform the Court of Appeals of the alleged compromise between petitioner and Pedro, such cannot be considered as recklessness or gross negligence on his part because, as herein earlier discussed, a compromise agreement does not obliterate the criminal liability of an accused, specially in this case, in which the judgment of conviction has already become final and executory.

We shall now discuss the propriety of the penalties imposed by the RTC on petitioner.

The RTC was correct in awarding moral damages in the amount of P10,000.00 because it appears in the record that petitioner acted in evident bad faith and succeeded in defrauding the spouses Sotto.[60] Petitioner introduced herself to the spouses Sotto as an assembler of a jeep when in fact she was not. She even showed to spouses Sotto a gorgeous Malaguena-type passenger jeep to convince them that she could really assemble and deliver to them such kind of jeep within a month at the low price of P210,000.00. Because of petitioner's false pretenses, the spouses Sotto were induced to make partial payments for the same kind of jeep. Petitioner also failed to show that the jeep was indeed being assembled. When Pedro requested petitioner to show him the jeep, petitioner replied that it was still being assembled in Laguna. But when Pedro asked petitioner to accompany him to Laguna to see the jeep, petitioner refused and even tried to hide. Further, spouses Sotto were forced to hire the services of a lawyer who immediately sent letters to petitioner demanding the return of the money they paid for the jeep. Upon receipt of the said letter, petitioner went to the house of spouses Sotto and promised to return the money, but she failed to do so.[61]

The RTC, however, committed an error in imposing improper prison term on petitioner. Article 315, paragraph 1 of the Revised Penal Code, provides for the penalty in estafa cases in which the amount defrauded exceeds P22,000.00, as in this case, to wit:

ART 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the

other provisions of this Code, the penalty shall be termed prison mayor or reclusion temporal, as the case may be.

The penalty prescribed by Article 315 is composed of two, not three periods, in which case, Article 65 of the same Code requires the division of the time included in the penalty into three equal portions of time included in the penalty imposed, forming one period for each of the three portions.[62] Applying the latter provisions, the maximum, medium and minimum periods of the penalty given are:

Maximum -- 6 years, 8 months, 21 days to 8 years

Medium -- 5 years, 5 months, 11 days, to 6 years, 8 months, 20 days

Minimum -- 4 years, 2 months, 1 day to 5 years, 5 months, 10 days

In the present case, since the amount involved is P120,000.00, which exceeds P22,000.00, the penalty imposable should be within the maximum period of 6 years, 8 months and 21 days to 8 years of prison mayor. Article 315 further states that a period of one year shall be added to the penalty for every additional P10,000.00 defrauded in excess of P22,000.00, but in no case shall the total penalty which may be imposed exceed 20 years.[63]

We now apply the Indeterminate Sentence Law in computing the proper penalty. Since the penalty prescribed by law for the estafa charge against petitioner is prison correccional maximum to prison mayor minimum, the penalty next lower would then be prison correccional in its minimum to medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months, while the maximum term of the indeterminate sentence should not exceed 20 years of reclusion temporal.[64]

In the case at bar, the RTC imposed on petitioner an indeterminate sentence of 4 years, 2 months and 1 day of prison correccional as the minimum penalty to 17 years of reclusion temporal as the maximum penalty. The maximum term imposed is correct because of the additional one (1) year for every additional P10,000.00 defrauded in excess of P22,000.00. However, the minimum term thereof is inaccurate. The inclusion of 1 day to the minimum term of 4 years and 2 months is improper since the correct duration of prison correccional in its minimum to medium periods may be anywhere from 6 months and 1 day to 4 years and 2 months only.[65]

Be that as it may, we can no longer correct the foregoing penalty, even if it is erroneous, because, as earlier ruled, the judgment of conviction has become final and executory. We have held that the subsequent discovery of an erroneous penalty will not justify correction of the judgment after it has become final.[66]

WHEREFORE, the petition is DENIED. The RTC Order dated 19 September 2006 in Criminal Case No. 8611 is hereby AFFIRMED.

SO ORDERED.

Quisumbing, Ynares-Santiago, (Chairperson), and Austria-Martinez, JJ., concur.
Reyes, J., in the result.

* Justice Leonardo A. Quisumbing was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 17 March 2008.

[1] Rollo, pp. 9-17.

[2] Id. at 34.

[3] Penned by Presiding Judge Arsenio P. Adriano; CA rollo, pp. 55-60.

- [4] Records, p. 1.
- [5] Id. at 32.
- [6] TSN, 20 July 1995, pp. 7-10; TSN, 17 August 1995, pp. 46-48.
- [7] The agreed total purchase price of the jeep was P210,000.00 and not P120,000.00 as alleged in the information.
- [8] TSN, 20 July 1995, pp. 10-12; TSN, 17 August 1995, pp. 48-50.
- [9] Id. at 12-17; id. at 50-52.
- [10] Id. at 17-18; id. at 52-54.
- [11] Id. at 23-26; id. at 54-56.
- [12] Records, pp. 41-42.
- [13] Id. at 43-44.
- [14] Id. at 45-48.
- [15] Id. at 49.
- [16] TSN, 5 July 1996, pp. 4-7.
- [17] Id. at 10-12.
- [18] Id. at 12.
- [19] Id. at 13-15.
- [20] CA rollo, pp. 55-60.
- [21] Rollo, p. 20.
- [22] Id. at 37-44.
- [23] CA rollo, pp. 101-102.
- [24] Rollo, p. 29.
- [25] Id. at 21-22.
- [26] Id. at 25-28.
- [27] Id. at 34.
- [28] Rules on Criminal Procedure, Rule 122, Section 6; REMEDIAL LAW COMPENDIUM, Florenz D. Regalado, Volume II (2004 Ed.), p. 632.
- [29] Rules on Criminal Procedure, Rule 124, Section 16.
- [30] Id., Section 14.
- [31] Id., Rule 125, Section 2, in relation to Rule 45, Section 2.
- [32] CA rollo, p. 101.

[33] *Id.* at 102.

[34] *Bearneza v. National Labor Relations Commission*, G.R. No. 146930, 11 September 2006, 501 SCRA 372, 375; *Berboso v. Court of Appeals*, G.R. Nos. 141593-94, 12 July 2006, 494 SCRA 583, 603-604; *Equitable Banking Corporation v. Sadac*, G.R. No. 164772, 8 June 2006, 490 SCRA 380, 416-417.

[35] *Florentino v. Rivera*, G.R. No. 167968, 23 January 2006, 479 SCRA 522, 528.

[36] *Dinglasan, Jr. v. Court of Appeals*, G.R. No. 145420, 19 September 2006, 502 SCRA 253, 266.

[37] *Filipro Inc. v. Permanent Savings Loan Bank*, G.R. No. 142236, 27 September 2006, 503 SCRA 430, 438.

[38] *Rigor v. Tenth Div. of Court of Appeals*, G.R. No. 167400, 30 June 2006, 494 SCRA 375, 383.

[39] *Rollo*, pp. 9-17.

[40] *Firaza v. People*, G.R. No. 154721, 22 March 2007, 518 SCRA 681, 694; *Recuerdo v. People*, G.R. No. 168217, 27 June 2006, 493 SCRA 517, 536; *Metropolitan Bank and Trust Company v. Tonda*, G.R. No. 134436, 338 SCRA 254, 269.

[41] *People v. Benitez*, 108 Phil. 920, 922 (1960).

[42] *Supra* note 40.

[43] *Id.*

[44] *Id.*

[45] *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.*, G.R. No. 152613 No. 152628, 23 June 2006, 429 SCRA 355, 379; *Bejoc v. Cabreros*, G.R. No. 145849, 22 July 2005, 464 SCRA 78, 86-87; *Joson v. Mendoza*, G.R. No. 144071, 25 August 2005, 468 SCRA 95, 105.

[46] *Id.*

[47] *Rollo*, p. 36.

[48] *Id.* at 46-48.

[49] *Id.* at 55-58.

[50] *Id.* at 128-132.

[51] *Id.* at 9-17.

[52] *Ceniza-Manantan v. People*, G.R. No. 156248, 28 August 2007, 531 SCRA 364, 379-380.

[53] *Id.*

[54] *Id.* at 380.

[55] *Records*, pp. 77-81.

[56] *Id.*

[57] *TSN*, 28 July 1997, pp. 1-25 and 25 August 1997, pp. 1-43.

[58] *Records*, pp. 113 and 138.

[59] *CA rollo*, pp. 26-48.

[60] *Naya v. Sps. Abing*, 446 Phil. 484, 495 (2003).

[61] TSN, 20 July 1995, pp. 10-18; 23-26; TSN, 17 August 1995, pp. 48-56.

[62] *Ceniza-Manantan v. People*, supra note 52 at 382-383; *People v. Gabres*, 335 Phil. 242, 256-257 (1997); *De la Cruz v. Court of Appeals*, 333 Phil. 125, 141 (1996).

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Rafael Reyes Trucking Corporation v. People*, 386 Phil. 41, 61 (2000); *People v. Gatward*, 335 Phil. 440, 460 (1997); *Castillo v. Donato*, G.R. No. L-70230, 24 June 1985, 137 SCRA 210, 212.

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