

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
DIEGO VILLANUEVA, DEFENDANT AND APPELLEE.***G.R. No. 18769. May 27, 1966*

Ponente: ZALDIVAR. J.

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On May 14, 1957 Diego Villanueva, being then employed as Chief of the City Delivery Section of the Cebu City Post Office, was accused before the municipal court of Cebu City of having committed the crime of infidelity in the custody of documents.[1] Waiving his right to a preliminary investigation, Villanueva asked that the case be forwarded to the Court of First Instance of Cebu. An information was subsequently filed in the Court of First Instance of Cebu charging Villanueva of the same offense that he was charged before the municipal court of Cebu City, and, upon being arraigned, he pleaded not guilty. After due trial the Court of First Instance of Cebu, in a decision dated December 27, 1960, acquitted the accused of the crime charged for insufficiency of evidence. The decision "likewise orders the reinstatement of Mr. Diego Villanueva to the position he held at the time he was suspended, payment of his back salaries and other emoluments which he failed to receive in view of his suspension." The accused received a copy of the decision on January 14, 1961, while the City Fiscal of Cebu City received a copy of the same on January 17, 1961.

On January 18, 1961 the City Fiscal filed a notice of appeal, to the Supreme Court, from the decision in so far as it orders the reinstatement of the accused to the position he held at the time he was suspended and the payment of his back salaries and other emoluments which he failed to receive in view of his suspension, upon the ground that said portion of the decision is contrary to law.

On April 5, 1961, the counsel for the accused filed a motion to dismiss the appeal filed by the City Fiscal, upon the grounds (1) that the appellant failed to serve copy of the notice of appeal on the accused and (2) that the appellant had failed to file a record on appeal. On April 7, 1961 the City Fiscal filed an opposition to the motion to dismiss the appeal.

On May 26, 1961 the Court of First Instance of Cebu rendered an amendatory decision modifying its original decision of December 27, 1960, the pertinent portion of which reads as follows:

"Since the Court has not as yet acted on the motion to dismiss the appeal, it is the considered opinion of the Court that the civil aspect of the case as contained in the dispositive part of the decision may still be modified and the Court *motu proprio* amends the dispositive part of its decision of December 27, 1960, in line with a recent decision of the Supreme Court to the effect that the Court, in acquitting an accused who is a public official charged with a criminal offense, cannot order the payment of his back salaries and other emoluments, during the period of his suspension, for this matter falls within the province of the administrative authorities who exercise control and supervision over the accused in connection with his employment.

"WHEREFORE, the dispositive part of the decision in the case at bar dated December 27, 1960 is hereby amended to read as follows:

'IN VIEW OF ALL THE FOREGOING, the court hereby acquits Diego Villanueva of the crime charged for insufficiency of evidence, and likewise orders the reinstatement of said Diego Villanueva to the position he held at the time he was suspended. The Court also orders the cancellation of the bail bond posted by herein accused for his provisional release with costs de oficio.

With respect to the appeal filed by the City Fiscal of Cebu in behalf of the Government of the Republic of the Philippines, the Court finds the motion to dismiss of the defense well-founded and hereby orders said appeal dismissed."

Again, in due time the City Fiscal of Cebu filed a notice of appeal to the Supreme Court from the amendatory decision dated May 26, 1961, with respect to that portion of the amendatory decision which directs the reinstatement of the accused to the position he held at the time he was suspended, upon the ground that said portion of the amendatory decision is contrary to law.

In this appeal the Solicitor General assigns three errors as having been committed by the lower court, as follows:

- The lower court erred in ordering in its original decision the reinstatement of Mr. Diego Villanueva to the position he held at the time he was suspended, payment of his back salaries and other emoluments which he failed to receive in view of his suspension.
- The lower court erred in promulgating an amendatory decision, considering the fact that it has already lost jurisdiction over the case safter the appeal was filed by the City Fiscal.
- That granting arguendo that the amendatory decision issued by the trial court was legal, nevertheless, it erred in ordering the reinstatement of the accused Diego Villanueva to the position he held fit the time he was suspended.

We agree with the Solicitor General that the lower court committed an error when it promulgated its amendatory decision on May 26, 1961. The original decision, dated December 27, 1960, was considered promulgated on January 34, 1961 when the accused was served with a copy of said decision. The City Fiscal of Cebu received a copy of the decision on January 17, 1961, and on the following day-he filed a notice that he was appealing to the Supreme Court from that decision in so far as it orders the reinstatement of the accused to the position that he held at the time he was suspended and the payment of the salaries and other emoluments which he failed to receive during the period of his suspension. On April 5, 1961 counsel for the accused filed a motion to dismiss the appeal. The motion to dismiss the appeal was filed more than two months after the notice of appeal had been filed. Counsel for the accused must be laboring under the impression that the appeal referred only to the civil aspect of the case, and so the appeal must be perfected by the filing of a record on appeal.

Apparently the lower court was of the impression that the notice of appeal of the City Fiscal, which was filed on January 18, 1961, did not have the effect of perfecting the appeal from the original decision dated December 27, 1960. That is why the lower court, in its amendatory decision dated May 26, 1961, made these statements: "Since the Court has not as yet acted on the motion to dismiss the-appeal, it is the considered opinion of the Court that the civil aspect of the case as contained in the dispositive part of the decision may still be modified and the Court *motu proprio* amends the dispositive part of its decision of December 27, 1960...."; and "the Court finds the motion to dismiss of the defense well-founded and thereby orders said appeal dismissed."

We hold that the lower court erred in ordering the dismissal of the appeal of the City Fiscal of Cebu City upon the grounds alleged in the motion to dismiss, namely: that the accused was not served with a copy of the notice of

appeal, and that the appellant had not filed a record on appeal." We also hold that the lower court erred when it considered itself as still having jurisdiction to promulgate the amendatory decision dated May 26, 1961.

The fact that no copy of the notice of appeal in a criminal case is served upon the opposite party is not fatal to the perfection of the appeal as long as the notice of appeal had been filed on time.[2] An appeal from the decision in a criminal case relating to the civil aspect of the case does not have to be perfected by the filing of a record on appeal as in civil cases. The fact that the decision, or order, in a criminal case covers certain civil matters incident to the case does not thereby change the nature of the case from criminal to civil as would require the filing of a record on appeal in connection with the appeal from the decision or order referring to the civil aspect of the case.[3]

It is the settled rule in this jurisdiction that the court has power to alter, modify, or even set aside, its own decisions, and even order a new trial, at any time before the decision becomes final, or before an appeal from that decision has been perfected.[4]

In the present case We hold that when the City Fiscal of Cebu City filed his notice of appeal on January 18, 1961, appealing from the original decision dated December 27, 1960, the appeal was thereby perfected[5]and the Court of First Instance of Cebu had lost jurisdiction to amend its decision. The amendatory decision promulgated by the lower court on May 26, 1961 is null and void, because said court no longer had jurisdiction to issue said amendatory decision.

The City Fiscal of Cebu had appealed in due time from the original decision as well as from the amendatory decision. We may say in this connection that the City Fiscal tried to play safe.

In the appeal from the original decision the City Fiscal was of the opinion that the lower court can not order the reinstatement of the accused to the position which he occupied at the time he was suspended and also it can not order the payment of the salaries and emoluments which he failed to receive during the period of his suspension. Somehow the City Fiscal was partly sustained by the lower court when said court amended its original decision by eliminating that part of the original decision which orders the payment of the salaries and other emoluments which the accused failed to receive during the period of his suspension. While the amendment made by the lower court of its original decision is correct, that amendment can not be given force and effect because, as we have adverted to the lower court no longer had jurisdiction to make that amendment of its original decision.

The City Fiscal appealed from the amendatory decision with respect to that portion of the amendatory decision which orders the reinstatement of the accused. Inasmuch as we have ruled that the amendatory decision is null and void, this case should be considered now at the present instance on the appeal of the City Fiscal from the original decision. It is the contention of the City Fiscal of Cebu, and the Solicitor General joins in this contention, that the lower court cannot order the reinstatement of the accused Diego Villanueva and at the same time order the payment of the salaries and other emoluments that he failed to receive during the period of his suspension. This contention is only partly correct. This Court has already held that in criminal cases where the accused is a person in the service of the government and was suspended during the pendency of the criminal proceedings, the court may order his reinstatement to the office he held at the time he was suspended, in the event of his acquittal.[6] This Court has held, however, that it is not within the power of the court, in the event of an acquittal, to order the payment of the salaries and other emoluments which the accused had failed to receive during the period of his suspension from office.[7]

Wherefore, the original decision of the court a quo, dated December 27, 1960, is hereby modified by eliminating therefrom that portion which orders the payment of the salaries and other emoluments which the accused Diego Villanueva failed to receive in view of his suspension. In all other respects the said original decision is affirmed.

The amendatory decision dated May 26, 1961 is declared null and void. No costs. It is so ordered.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P. and Sanchez, JJ., concur.

Decision affirmed with modification.

[1] He was suspended from office during the pendency of the criminal case against him.

[2] U.S. vs. Sotavento and Sotavento, 40 Phil. 17G. Sec. 5, Rule 122 of the Revised Rules of Court.

[3] P. P. vs. Lorredo, 50 Phil. 209.

[4] U.S. vs. Vayson, 27 Phil. 4477; U.S. vs. De Iro, 33 Phil. 14; U.S. vs. Ballad and Tamaray, 35 Phil. 14; People vs. Buyson Lampa, 58 Phil. 757. See also Sec. 7," Rule 120, Rules of Court.

[5] Secs. 3, and 6, Rule 122, Rules of Court.

[6] People vs. Consigna, et al., L-18087, August 31, 1965.

[7] People vs. Mañago, 69 Phil. 496; Pueblo vs. Lagutan, 70 Phil. 481; Manila Railroad Co. vs. Baltazar, 93 Phil., 715; People vs. De Leon, L-15630, March 24, 1961.

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