

THE FISCAL OF THE CITY OF MANILA, PETITIONER, VS. SIMPLICIO DEL ROSARIO, JUDGE OF FIRST INSTANCE OF MANILA, CATALINA ORQUETA ET AL., RESPONDENTS.

G.R. No. 29842. August 25, 1928

Ponente: MALCOLM, J.

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MALCOLM, J.:

In certiorari proceedings, the Fiscal of the City of Manila challenges as illegal and null the resolution approved by the trial judge on June 2, 1928, in the case of *The People vs. Fortunato Galang et al.*, case No. 36396, of the Court of First Instance of Manila, setting aside the sentence promulgated in the case, authorizing the accused to retire their plea of guilty and to substitute therefor a plea of not guilty, and transferring the hearing of the case to another branch of the court. The resolution is defended by the trial judge in his own behalf and by counsel for the accused in their behalf as authorized by law and as made pursuant to an absolute judicial discretion before the judgment in the case had become final.

On May 4, 1928, twelve persons were informed against in the Court of First Instance of Manila for a violation of the Opium Law. On May 24, 1928, ten of the accused were arraigned, and with the permission of the court, were permitted to change their previous plea of not guilty to that of guilty. "In view of the spontaneous declaration of guilt," to use the language of the trial judge, "the court deems it wise to accede to the petition of the same that the minimum penalty be imposed," and accordingly, on the same day, handed down a decision, sentencing each of the accused to three months and a half imprisonment, to pay a fine of P300, or suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs. The following day, the accused, through a newly contracted attorney, asked leave to withdraw their plea of guilty and to substitute for it the plea of not guilty. It was alleged that the declaration of guilt by the accused was due "without doubt to ignorance or misunderstanding," and that counsel has a good defense to present on behalf of his clients. This application was not verified and was not supported by affidavits. On June 2, 1928, the trial judge, thinking it proper "to give the accused every opportunity to amply and freely defend themselves, if in reality they have the means," made the order acceding to the petition as hereinbefore indicated.

The application to withdraw the plea was made under section 25 of the Code of Criminal Procedure, which provides that "A plea of guilty can be put in only by the defendant himself in open court. The court may at any time before judgment upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted." As the language of the statute implies and as has often been expressly held, applications of this kind are addressed to the sound discretion of the trial court. One may even go further and say that before judgment is pronounced upon the prisoner he has a right to withdraw his plea of guilty. But the same situation does not obtain after judgment for the law restricts the power of the court by a negative pregnant.

The purpose of the law is not difficult to understand. It is intended to permit a plea of guilty only to be made by the defendant himself in open court so as fully to protect his rights. Even then, before the trial judge has gotten

round to pronounce judgment, the defendant may ask for a chance to plead not guilty and to go to trial. Undoubtedly, every trial judge would exercise his discretion in the matter in favor of life and liberty. If the judge did not, it would constitute an abuse of discretion which could be corrected. At the same time, the defendant, cannot be allowed to gamble on judicial results. He may say to himself, "Should I plead guilty, I may gain favor in the court and so receive light punishment." But on pronouncement of the sentence, the defendant may find himself receiving a severe sentence. He has taken his chance and must abide by it even if, as has happened, the death penalty be imposed. So the law is wisely circumscribed by the insertion of the phrase "before judgment."

It has been said to be the rule that whether a plea of guilty can be withdrawn after judgment has been rendered thereon seems to be a controverted question. In some jurisdictions, it is well settled that, in the absence of a statutory provision to the contrary, it is in the discretion of the court to allow the plea to be withdrawn after sentence is pronounced. On the other hand, it has been held that no withdrawal and substitution may be allowed after sentence has been pronounced. The Philippine jurisdiction would appear to fall into the latter category. When the law says before judgment, it does not mean after judgment. The time of the judgment has importance. Yet a harsh and uncompromising rule need not be announced. Even following judgment, a plea of guilty could be changed to a plea of not guilty in the discretion of the court, as we will now proceed to explain.

The trial judge has control over judgments rendered by him until they become final. He may set aside a judgment or revise it as he deems best in the interest of justice. But the trial judge may not act so as to nullify the explicit provisions of section 25 of the Code of Criminal Procedure, or any other provision of law. After judgment, the showing made must be more than a mere request, a mere motion, a mere petition, and must assume the characteristics of a motion for the reopening of the case. Such reasons must exist as would justify the granting of a new trial. The motion must be verified and supported by affidavits.

It is said here on the one hand by the respondents that until the judgment becomes final, the judge has unlimited power over it, and on the other hand by the City Fiscal that the judgment has become final because the accused have begun to serve their sentences. We feel that neither proposition is exactly correct. It is true that courts in this jurisdiction have control over their judgments until they become final, and may set them aside and modify them as law and justice may require, but it is likewise true that such action must be taken in conformity with proper proceedings and law. In this instance, for example, within the fifteen-day period the trial judge could have lowered the sentence from three months and fifteen days' imprisonment to three months' imprisonment, or could have raised it even to deportation of those accused who were aliens. But no proper basis was laid on an unverified and unsupported motion of an attorney newly employed, who admits that he had never spoken a word to the defendants, for a change of a plea of guilty after judgment to a plea of not guilty. As to the contention of the City Fiscal, we think that he is overstating the matter when he claims that the accused assented to the sentence imposed on them. Although the Director of Prisons states that on May 24, 1928, the prisoners were received and began to serve their imprisonment, the record fails to show if any order of commitment was issued. It must not be forgotten that the accused were not admitted to bail so that after conviction, even if they had desired to appeal, they had no other place to go except to prison.

To explain and at the same time consolidate our point of view, we desire to reiterate—To attain the status of a matter of right, an application to change a plea of guilty to not guilty must be made before judgment. The court retains control over its judgments in criminal cases until they either become final through the elapsing of fifteen days, or through compliance with the terms of the sentence. For a motion to set aside a judgment to gain judicial attention after judgment, it must be verified and supported and there must exist such reasons as would be sufficient to warrant a reopening of the case. In the case at bar, as the plea of guilty was put in by the defendants in open court, as a judgment was rendered by the court upon that plea, and as the application for permission to

substitute a plea of not guilty for a plea of guilty came in after judgment, unverified and unsupported, there was not a showing which would justify the granting of the application. If the defendants even now desire either to appeal or to present the proper kind of a motion, they have it within their power, and the trial judge has it within his power to grant or to deny the same as he deems wise. But as the record stands, it would be sanctioning a dangerous practice to permit defendants to speculate on sentences and to play with the courts in defiance of clear provisions of law.

Writ granted, without costs.

Street, Ostrand, Romualdez, and Villa-Real, JJ., concur.

Johnson, J., concurs in the result.

DISSENTING

AVANCEÑA, C. J., with whom concurs VILLAMOR, J.:

This being a certiorari proceeding instituted in this court, the whole question to be decided is whether or not the respondent judge acted without or in excess of his jurisdiction.

As grounds for this petition, it is alleged that when the respondent judge set aside his judgment and allowed the defendants to change their plea of guilty for that of not guilty, said judgment was already final, and, that, in any case, the respondent judge violated section 25 of General Orders No. 58.

In regard to the first ground alleged, I concur with the majority in holding that the judgment rendered by the respondent judge had not yet become final when it was set aside.

But I cannot agree with the majority in granting the remedy sought, on the strength of the alleged violation of section 25 of General Orders No. 58.

It is a well-established rule that before a judgment of the court becomes final, it is within its jurisdiction, and may be modified or set aside by it. This rule is applicable to the case in which judgment has been rendered upon the evidence, as well as when judgment has been rendered only upon defendant's plea of guilty. There is no reason for discriminating between the two. The purpose of the rule is to provide the court with an opportunity to correct any mistake it may have made in the judgment rendered before the latter becomes final and the right to its execution has not yet arisen—and this purpose is present in one case as well as in the other. It was so held in the case of *United States vs. Vayson* (27 Phil., 447). In that case, the defendant having pleaded guilty, judgment was rendered on September 29th, sentencing him to one month's imprisonment, and on the following October 31st, the court set aside this judgment and rendered another, sentencing defendant to six months' imprisonment. It may be noted that judgment was amended in that case for the purpose of increasing the penalty. In accordance with this precedent, there can be no doubt that in the present case the respondent judge could set aside his judgment in order to correct an error which he thought he had committed, and, having set it aside, there was no longer any judgment. Then, when the defendants were allowed to withdraw their plea of guilty, such withdrawal was not barred by section 25 of General Orders No. 58, since there was no longer any judgment.

But, even regarding the matter from the viewpoint taken in the majority decision, that is, whether a court may set aside its judgment rendered upon a plea of guilty, in order to permit the defendants to withdraw said plea and substitute one of not guilty, the question is the same. When a defendant pleads guilty, it is the duty of the court to ascertain whether such plea is made with an exact knowledge of the nature of the facts charged and their effects, and when such knowledge is lacking, the judgment rendered upon the plea of guilty is erroneous and illegal. So

that if after judgment has been rendered, the judge believes that the plea of guilty was entered on account of the ignorance of the defendants, without their being correctly informed of the acts charged and the liability these acts entail, there is no reason why he cannot set aside his judgment and permit them to withdraw their plea of guilty substituting one of not guilty therefor, just as he can set aside a judgment rendered upon the evidence introduced, and acquit the defendants, if he afterwards believes that he committed an error in his first judgment. There is no difference between the two cases. If, in the case of Vayson, *supra*, the judgment was set aside for the purpose of increasing the penalty imposed, I do not see why the same cannot be done in this case—with greater reason, because this judgment is favorable to the defendants. In both cases the object is the same: to make the judgment conform to justice and law.

In the majority opinion it is admitted that if the respondent judge had set aside his judgment by virtue of a motion meeting the conditions required for obtaining a new trial, he should then have acted lawfully. Now, then, one of the cases wherein a judge may order a new trial, even *motu proprio*, is when, as in the present case, he believes his judgment contrary to law. At any rate, the question then would be, not one of jurisdiction, which is taken for granted, but one upon the merits, in which case, a writ of certiorari would not lie.

In fact this court laid down such a ruling in the case of *United States vs. Neri* (8 Phil., 669). In that case the defendant pleaded guilty and judgment was rendered against him. Immediately after said judgment had been rendered, the defendant moved the court to permit him to withdraw his plea of guilty. Considering that motion, the court denied it for the following reason:

"It was entirely within the discretion of the lower court to permit the defendant to change his plea after sentence. The lower court having denied the defendant this right, we refuse to interfere with such discretion. The court was justified, under the circumstances, in denying said motion."

This citation recognizes that the lower court has jurisdiction, since it admits that it rests with its own discretion to act either in one way or in the other.

In my opinion the writ should be denied.

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