

FAUSTA LANESTOSA AND BERNABE LAMES, PETITIONERS, VS. FRANCISCO SANTAMARIA, JUDGE OF FIRST INSTANCE OF ILOILO, RESPONDENT.

G.R. No. 30076. September 13, 1928

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a mandamus proceeding instituted by Fausta Lanestosa and Bernabe Lames to have this court issue an order directed to the Honorable Francisco Santamaria, Judge of First Instance of Iloilo, commanding him to admit the appeal taken by them from his judgment finding them guilty of resistance to authority and sentencing them to one year and eight months, and four years imprisonment, respectively.

The pertinent and necessary facts for the solution of this proceeding appear in the respondent judge's answer and are as follows:

On July 7, 1928, the herein petitioners, defendants in criminal case No. 8142 of the Court of First Instance of Iloilo for the crime of resistance to authority, were informed of the judgment rendered against them by Judge Antonio M. Opisso, who presided over branch III of the said Court of First Instance of Iloilo.

On July 16, 1928, the warden of the provincial jail of Iloilo endorsed and forwarded to the Court of First Instance of the same province a written petition, signed by the petitioners and two other prisoners, wherein they voluntarily waived their right to appeal and prayed to be sent to Bilibid Prison at the earliest opportunity with the other prisoners, that is, on the 21st of the said month.

The lower court ordered the petitioners to appear before it, and after having personally heard them, issued the following order:

"ORDER

"The accused, named Fausta Lanestosa and Bernabe Lames, convicted in this case, having appeared and stated to the court through the interpreter Mr. Garcia, that it is true that in their statement dated the 16th instant they waived their right to appeal and desired to be transferred to Bilibid Prison in Manila next Saturday, the 21st instant;

"The court does hereby hold the defendants above named to have withdrawn their appeal and waived their right thereto, and orders their immediate commitment to Bilibid Prison in Manila.

"It is so ordered.

"Iloilo, July 17, 1928.

"F. SANTAMARIA

"Judge"

On July 18, 1928, the same petitioners filed the following motion:

"MOTION

"Come now the undersigned accused and pray the court to reconsider its order of the 17th instant and admit the appeal to be taken by the undersigned on the following grounds:

"That the undersigned signed tfre waiver of their right to appeal from the judgment in the above entitled case filed with this court, inasmuch as ever since the judgment of the present case was rendered, Mariano Lames, husband of Fausta Lanestosa and father of Bernabe Lames, did not put up the bond required by this court for the appeal to be taken by the undersigned; and because of this, they were desperate on account of the slight interest, or inability of said Mariano Lames to obtain the bond.

"That later on the undersigned, remembering the members of the family, especially Fausta Lanestosa who has at present a baby girl ten months old, and who is ill, according to information from her husband Mariano Lames, realized the gravity of the penalty imposed upon them, and are distressed at the thought of being separated from their families for so many years, if they are to be sent to Manila to suffer the imprisonment in the above entitled case without giving a bond or appealing therefrom.

"That it is very painful for a mother, like the undersigned Fausta Lanestosa, to leave a baby girl ten months old, if she is not allowed to withdraw the waiver of appeal in the present case, and the appeal to be taken, is not admitted due solely to her despair and, stated, she did not until later realize its fatal consequences in leaving for many years the dearest beings on earth.

"That this court has jurisdiction to reconsider the order dated 17th instant, and to admit the appeal to be taken in the present case, inasmuch as the period fixed by the law has not yet expired; and the accused are hopeful of being saved from the sentence imposed, or at least to have it reduced when the case comes up before the Supreme Court, because thus they believe in the facts presented during the hearing of the present cases and from the dictates of their conscience that they are innocent of the accusation brought against them.

"Wherefore the undersigned pray the court to reconsider its order dated the 17th instant, considering the waiver of their right to appeal from the judgment as withdrawn, and admitting the appeal to be presented by the undersigned, within the period fixed by the law.

"Iloilo, July 18, 1928.

"Respectfully submitted.

"BERNABE LAMES

"FAUSTA D. LAMES

"FAUSTA LANESTOSA"

The motion was called for hearing on July 21, 1928, and the respondent judge, having heard the petitioners, entered the following order:

"ORDER

"After hearing the motion presented on the 18th instant and signed by the defendants in this case, and having heard the said defendants, who failed to give a satisfactory explanation to the court as to why, in appearing before the court on the 17th of this month, they confirmed everything appearing in their petition filed on the 16th instant, their confirmation having been made in open court on the 17th instant, and the same having been the reason for issuance of the order of said date of July 17th, declaring the judgment rendered in this order final, the accused having waived their right of appeal, and in which order the commitment of the accused to

Bilibid Prison in Manila was ordered, as the accused themselves had petitioned the court, and who orally prayed for their commitment to Manila today which is the day on which the boat leaves Iloilo for Manila.

"The court having issued the order dated the 17th instant stating that the accused in this case in their personal appearance in court and expressly waived their right to appeal, the court holds that it lacks jurisdiction to admit the appeal taken by the accused in their motion presented the 18th day of this month.

"Wherefore, the court denies the motion.

"It is so ordered.

"Iloilo, Iloilo, P. I., July 21, 1928.

"F. SANTAMARIA

"Judge of the Twenty-third Judicial District, Branch I"

In the case of *Macali vs. Revilla and Ocampo* (48 Phil., 751), this court laid down the following doctrine:

"1. CRIMINAL PROCEDURE; PLEA OF GUILTY; WAIVER OF APPEAL; MANDAMUS.—While the court may legally render judgment convicting a defendant when the latter pleads guilty, and commit him to prison before the lapse of the fifteen days' period for perfecting an appeal, if he waives his right thereto, yet if the case is of a grave crime, such as homicide, it is the duty of the court to ascertain first if the accused has understood the nature and consequences of his plea of guilty and of his waiver of the appeal, and when it appears from the record that the accused was not well aware of the extent and meaning of his waiver, it is the duty of the court to admit the appeal that he may file within the period fixed by the law."

In that case, the petitioner was accused of the crime of murder and at his attorney's suggestion pleaded guilty; immediately thereafter he was sentenced, and through ignorance stated that he waived his right to appeal, and surrendered himself to the proper authorities, who thereupon proceeded to commit him to Bilibid Prison pursuant to the proper order issued.

In the present case, nine days after having been informed of the judgment against them, the herein petitioners voluntarily and in writing waived their right to appeal and prayed to be sent to Bilibid Prison at the earliest opportunity. The court wished to hear them personally before adjudging their petition, and it was only after having heard them that the order was issued admitting their waiver of their right to appeal and ordering their immediate commitment to Bilibid Prison in Manila.

The petitioners, therefore, had all the time they needed to ponder and consult upon the waiver they wished to make of their right to appeal before presenting it; and in voluntarily asking to be sent to Bilibid Prison at the earliest opportunity they were perfectly aware of the scope and meaning of such a waiver.

The petitioners being willing to comply with the judgment imposed upon them, when the respondent judge granted their petition and ordered their immediate commitment to Bilibid Prison, the execution of said judgment began and said judge ceased to have jurisdiction over the same.

In the case of *Gregorio vs. Director of Prisons* (43 Phil., 650), this court laid down the following doctrine:

"2. ID.; ID.; CRIMINAL LAW.—A sentence in a criminal case in this jurisdiction may become final in two ways: First, by the lapse of fifteen days after the same is rendered and pronounced, and second, by compliance with the terms of the sentence.

"3. ID.; ID.; ID.; EXECUTION OF SENTENCE; DOUBLE JEOPARDY.—As a general rule, where the defendant has executed or entered upon the execution of a valid sentence, the court cannot, even during the fifteen-day period, set it aside and render a new sentence. To do so would be to put him in jeopardy twice."

In conclusion, we are of the opinion and so hold, that the waiver of the right to appeal made by a defendant nine days after having been informed of a judgment of conviction, accompanied by a voluntary petition to be immediately committed to Bilibid Prison and the order of the lower court admitting said waiver and ordering their immediate commitment to Bilibid Prison, amount to a voluntary compliance with said judgment, and bring the trial judge's jurisdiction over the same to an end, "and this court cannot order said judge to reinstate the defendant's right to appeal.

Wherefore, the petition is denied, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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