

**TARCISIO ICAO, PETITIONER, VS. HON. SIMPLICIO M. APALISOK,
JUDGE, COURT OF FIRST INSTANCE, ZAMBOANGA DEL NORTE, AND
THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

G.R. No. 59581. December 29, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

Tarcisio Icao was a provincial guard employed by the Province of Zamboanga del Norte. His chief function was to guard prisoners confined in the provincial jail located at the provincial capital, Dipolog City. He was charged with the felony of infidelity in the custody of prisoners in the Court of First Instance at Dipolog City,[1] and after due arraignment -- at which he pleaded innocent -- and trial, was eventually convicted by respondent Judge of said crime and sentenced as follows:[2]

"PREMISES CONSIDERED, the Court finds accused TARCISIO ICAO, guilty beyond reasonable doubt of the offense of Infidelity in the Custody of Prisoner, defined and punishable by Art. 224 of the Revised Penal Code, by reason of which said accused has to be, as he hereby is, sentenced to serve an imprisonment of FOUR (4) MONTHS and ONE (1) DAY of arresto mayor, maximum, with temporary special disqualification.

"Same accused is further sentenced to pay costs.

"SO ORDERED."

On the same day that the judgment was promulgated,[3] Icao filed a petition for probation pursuant to the provisions of the Probation Law of 1976, and was released from custody on his own recognizance.[4] He never thereafter sought to take an appeal or have the verdict reversed or modified. According to the Solicitor General, Icao's application for probation was approved. Nothing in the record clearly supports this assertion. Whether or not probation was granted is not, however, material. The case will be resolved on other considerations.

One month later, the respondent Judge's attention was drawn to a letter of the Probation Officer of Dipolog City, replying to an inquiry of the Office of the Provincial Governor, stating that pending final action on his petition for probation, Icao could continue performing his duties as provincial guard in accordance with the spirit and intent of the Probation Law. The respondent Judge forthwith issued an order,¹ announcing his amendment of the judgment of conviction by specifying the period of temporary special disqualification of Icao, and requiring the latter's presence on November 23, 1981 for the promulgation of the amended decision. His Honor's Order pertinently reads as follows:

"For the purpose of the promulgation of the amended judgment as to the duration of the temporary special disqualification which is eight (8) years and one (1) day, issue subpoena for the appearance of the accused on November 23, 1981.

"To allow the accused to serve as provincial guard, the very position involved in the information in the case under which he was convicted, will be flouting with the law. It is the considered view of the Court that in no

case shall said accused Tarcisio Icao be allowed to continue serving as provincial guard.

"SO ORDERED."

Icao moved for reconsideration, arguing that the Court had already lost jurisdiction over the case, the judgment having become final, and the alteration by the respondent Judge of the decision under the circumstances would place him in double jeopardy.² His motion was denied,³ as was, too, a second motion for reconsideration.⁴ Hence, the petition for certiorari and prohibition now before this Court.

The writ prayed for will issue.

Under the facts, the respondent Judge had clearly lost the authority to modify the judgment of conviction. Section 7, Rule 120 of the Rules of Court of 1964,⁵ reads as follows:

"SEC. 7. Modification of judgment -- A judgment of conviction may be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. A judgment in a criminal case 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 the defendant has expressly waived in writing his right to appeal."

The judgment in the case became final and executory because the fifteen-day period of appeal provided by law¹ had lapsed without an appeal being taken. This circumstance renders unnecessary consideration and adjudgment of the appellant's alternative argument --- that the judgment had become final even before the lapse of the period for appeal for the reason that in accordance with Section 8 of the Rules on Probation, the filing of the petition for probation was deemed a waiver of the right to appeal.

The judgment having become final on October 28, 1981, after the lapse of 15 days from its promulgation on October 12, 1981, His Honor, to repeat, lost all power to amend it.² A rule of long standing and undeviating observance is that a judgment which has become final and executory can no longer be amended or corrected except only as regards clerical errors.³ Hence, even the subsequent discovery of an erroneous imposition of a penalty will not justify correction of the judgment after it has become final.⁴

Besides, under Article 44 of the Revised Penal Code, the penalty of arresto (imposed on Icao) carries with it that of suspension of the right to hold office and the right of suffrage during the term of the sentence. The plain implication would appear to be that courts have no power to fix a longer term for that accessory penalty of disqualification.

WHEREFORE, the challenged Orders of November 12, 1981, November 23, 1981, and January 4, 1982 in Criminal Case No. 2360 of the Court of First Instance (now Regional Trial Court) at Dipolog City are hereby ANNULLED AND SET ASIDE. No costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] For the escape of a prisoner (Bernardo Vitug, indicted for murder) while he was on duty

[2] Rollo, p. 22: Annex A, petition

[3] October 12, 1981

[4] Rollo, p. 4

1 Rollo, pp. 28-30: Annex E, petition

2 Id., pp. 31-34: Annex F, petition

3 Id., pp. 35-37: Annex G, petition

4 Id., pp. 38-41, 42-43: Annexes H and I, petition

5 The law at the time. Section 7 has since been amended -- the amendments being indicated in bold type -- and now reads as follows: "A judgment of conviction may, upon motion of the accused, be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. A judgment in a criminal case 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 the accused has expressly waived in writing his right to appeal, or the accused has applied for probation. (7a)"

1 Sec. 6, Rule 122, Rules of Court of 1964

2 Villanueva v. CFI, etc., 119 SCRA 288 [1982]

3 Mutual Security Insurance Corporation v. C.A., 153 SCRA 678 [1987]; Gabay v. Mendoza, 113 SCRA 400 [1982]; Lonzame v. Amores, 134 SCRA 386 [1985]; Duena v. Mandi, 151 SCRA 530 [1987]

4 Castillo v. Donato, 137 SCRA 210 [1985]

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