

CHING JUAT, PETITIONER, VS. BONIFACIO YSIP, JUDGE OF FIRST INSTANCE OF BULACAN, RESPONDENT.*G.R. No. 920. January 27, 1947*

Ponente: PERFECTO, J.

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Maria Ching was found guilty by the respondent judge of illegal marriage, as punished by article 350 of the Revised Penal Code, for marrying Co Heong on June 21, 1946, because at the time of her marriage she was only 16 years old, that is, lacking the required age to marry. Due to her minority, sentence against her was suspended and her commitment to the Welfareville Correctional Institution at Mandaluyong, Rizal, was ordered.

Having appealed in due time, she was allowed to be released on bail upon posting a bond in the sum of P1,000 in an order issued by respondent on August 27, 1946. Petitioner impugns the validity of the order because by the minor's release on bail, she was taken by her husband and co-accused Co Heong, who was able to have and to hold her, and petitioner was illegally deprived of his patria potestas as father of the minor.

Petitioner's complaint has no ground in law. A minor found guilty, in the lower court, of a criminal offense is not deprived, because of the fact of his minority, of the right to appeal. The decision or judgment finding him guilty and ordering his commitment to a correctional or educational institution as provided by article 80 of the Revised Penal Code, is stayed and is unenforceable until it becomes final and executory. Appeal suspends its effects. This is logical, because appeal may result in reversal. When a minor appeals from a judgment finding him guilty of a criminal offense, he is generally entitled, as all other accused, to be allowed provisional release on bail. The order to commit him to the custody of a correctional or educational institution should not be enforced in the meantime, because the order of commitment provided by article 80 of the Revised Penal Code becomes only executory when the decision or judgment upon which it is based becomes final and executory. There is no reason why a minor should be excluded from the benefits of constitutional and legal provisions on bail. A minor is entitled to more protection from the law, never to less.

That upon the minor's release on bail, instead of going to her father's custody, she sought to join her husband's company, is no reason for petitioner to complain of the lower court's action in issuing the order of August 27, which was within his legal power to issue, nor is it a ground for the petitioner to advance the novel theory that he was deprived of his patria potestas. Deprivation of patria potestas is a negative action and cannot result from the affirmative action of the lower court in allowing Maria Ching to be released on bail. The freedom granted to her could not have the effect of depriving petitioner the right to have her under his custody, in the hypothesis that he still retains patria potestas over his daughter. Unfortunately for petitioner, it is not even possible to entertain such an hypothesis, because by his daughter's marriage, the latter became emancipated from her parent's custody, her marriage having the effect of transferring her to her husband's care and protection, there being no question that the marriage is valid, as the offense of which the newly-weds were found guilty by the lower court cannot affect the validity of the marriage. Petitioner himself had not even attempted to put in doubt its validity. Petition denied.

Moran, C.J., Paras, Feria, Pablo, Hilado, Bengzon, and Padilla, JJ., concur.

CONFORME

BRIONES, M.:

Estoy conforme con la parte dispositiva de la sentencia por el unico fundamento de que lo que plantea y discute en su apelacion Maria Ching es precisamente la cuestion de su edad; ella alega y arguye que cuando se caso ya tenia mas de 18 años de edad, o que, por lo menos, asi le habian asegurado sus padres, y que, por tanto, no infringio el articulo 350 delCodigo Penal Revisado (E. U. contra Peñalosa y Rodriguez, 1 Jur. Fil., 111). Resulta evidente que la apelante tiene una causa meritoria; asi que el Juzgado no abuso de su discrecion al concederle libertad provisional mediante la prestacion de la correspondiente fianza.

Sobre si en un caso en que no hay controversia respecto de la edad la menor apelante tiene derecho a prestar fianza durante la pendencia de la apelacion, es cosa acerca de la cual no estoy preparado ni dispuesto a emitir mi opinion.

CONCURRING

TUASON, J.:

The right to be released on bail is guaranteed by the Constitution. An accused minor comes under this protection. The purported aims of a confinement and the name and atmosphere of the place count for little. An accused cannot be deprived of the right to be bailed by a process of reasoning premised on man-made legal fictions. Such deprivation to be sanctioned must rest on a more solid foundation. The court will regard substance rather than form; will look at realities rather than what may seem logic. Freedom from restraint is a living, vital thing to be dealt with in the light of cold facts. The point I am trying to get at is, one cannot be denied the constitutional right to file a bail bond before final conviction simply because the place of incarceration is called a school, and confinement therein purports to be educational or correctional in its objective instead of punishment. The bitter taste of a medicine is not changed by giving it a sweet name. In spite of the suspension of sentence and legal theories and noble intentions, confinement for a crime before final conviction in a so-called reformatory school or correctional institution actually inflicts almost, if not quite, the same degree of moral pains and physical hardship and affliction, and leaves the same stinging rebuke and stains on reputation as does detention in a common jail.

"Statutes which include or provide within their scope for commitment for strictly criminal offenses without requiring the constitutional procedure in prosecutions for public offenses generally have been declared unconstitutional." (31 C. J., 1105.) The Juvenile Delinquency Act does not speak of bail, and I do not believe that matter even entered into the thought of the Legislature. This is all the more reason for sustaining the order of the lower court granting the accused provisional liberty during the pendency of her appeal.

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