

LUIS R. PIMENTEL, PETITIONER AND APPELLANT, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT AND APPELLEE.*G.R. Nos. 47038, 47039 and 47040. June 06, 1941*

Ponente: MORAN, J.

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Prosecuted for murder in the Court of First Instance of Ilocos Sur, under three separate informations, for the death of Eusebio Asuit, Tomas Tapiod and Felix Bangsaleo, defendants Luis R. Pimentel and Juan Paredes were, after a joint trial, convicted of homicide and were sentenced individually, under each information, to an indeterminate penalty of from ten (10) years and one (1) day of prision mayor to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, with the proviso that the total penalty for each of the accused in all the three cases should not exceed 40 years, and to indemnify, each group of the heirs of the three deceased in the sum of P1,000. Defendants appealed from this judgment.

At the hearing of the cases before the first division of the Court of Appeals, Juan M. Ladaw appeared for petitioner Luis R. Pimentel; counsel de oficio for the other appellant Juan Paredes failed to appear; and the government was represented by Solicitor Jose C. Zulueta. Two versions were offered for what transpired at the hearing. In behalf of the petitioner, his counsel alleged that when, at the commencement of his oral argument, he casually mentioned the fact that the Solicitor General recommended death penalty for both appellants, Justice Albert stated that under such circumstance, the Court would have no jurisdiction of the cases; that thereupon, the first division decided to suspend the hearing so that it may determine first the matter of its jurisdiction, with the understanding that if its conclusion be in favor of its jurisdiction it would reset the case for hearing so as to give the petitioner a chance to be heard, and, if not, it would certify them to this Court; that this notwithstanding and without resetting these cases for hearing, the appellate court, through its second division rendered judgment affirming the decision of the trial court; that a petition to set aside this judgment, for want of hearing, was denied and instead, petitioner was given fifteen days within which to file a motion for reconsideration. Solicitor Zulueta, in behalf of the Government, averred that it was petitioner's counsel who informed the Court that, although he was the one who actually conducted the trial of the cases for the defense, he was not then in a position to argue because, another lawyer prepared the brief for petitioner; that, accordingly, he asked for permission to file a memorandum in lieu of oral argument; that having been reminded by Justice Albert that the Solicitor-General had recommended death penalty, petitioners counsel argued that such recommendation notwithstanding, the Court had jurisdiction over the cases, the appealed decision being for homicide and that the crimes committed could not be graver than those found by the trial court, if appellants were to be given the benefit of the doubt; that apparently convinced by this argument, the Court decided to retain jurisdiction and to take the same under advisement, informing counsel that should it arrive at the conclusion that murder was involved, it would forward the cases to the Supreme Court; that at this juncture, counsel reiterated his request to file a memorandum which was denied on the ground that it was not necessary as the Court would examine and study the entire record of the cases and that counsel still file a motion for reconsideration should the Court arrive at any conclusion unfavorable to petitioner.

Whichever of these two versions is the correct one, the undeniable fact, remains that petitioner could not argue the case orally in the Court of Appeals before it rendered judgment against him and the other appellant. While the fundamental right to hearing may be waived, the waiver, to be effectual, must be positive and unequivocal; and, if any implied waiver is to be sanctioned at all, it cannot be made to rest upon light and dubious circumstances, but upon such facts as are clearly indicative of an intention to that effect. From the circumstances of the instant cases, nothing can be inferred that petitioner has ever intended to waive his right to be heard.

Judgment is reversed, and the cases are ordered remanded to the Court of Appeals for hearing thereon and for judgment thereafter, without costs.

Avancena, C. J., Imperial, Diaz, Laurel, and Horrilleno, JJ., concur.

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