

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JUDGE IRINEO V. MENDOZA OF THE COURT OF FIRST INSTANCE OF QUEZON, MAUBAN BRANCH V AND ANDY DE LOS SANTOS, JR., RESPONDENTS.

G.R. Nos. 58678-80. July 20, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the setting aside of a judgment of conviction based on a plea of guilty and allowing the accused to substitute it with a plea of not guilty and have a trial on the merits.

Andy de los Santos, Jr. was charged on July 29, 1981 with estafa in three informations all dated May 28, 1981 for having issued in Mauban, Quezon in November, 1980 postdated checks drawn against the Quezon City branch of the Pacific Banking Corporation as payment for lumber purchased from Rafael Ayuste in the amounts of P33,785.80, P30,877.40 and P31,920.60. The checks were dishonored for lack of funds (Criminal Cases Nos. 749, 753 and 754).

The investigating fiscal certified that he furnished accused De los Santos with copies of complainant's affidavit and that the accused did not present any counter-affidavit.

In the three cases, De los Santos pleaded not guilty at his arraignment on August 12, 1981. Then, at the hearing on September 7, 1981, his counsel de oficio manifested that the accused was withdrawing his plea of not guilty and substituting it with a plea of guilty. De los Santos was re-arraigned. Upon interrogation by respondent judge, De los Santos declared that he understood the consequences of his plea of guilty, that he knew that he would receive imprisonment sentences, that he conferred with his lawyer regarding the plea of guilty and that he changed his plea voluntarily.

His counsel de oficio asked the trial court to take into account the mitigating circumstances of plea of guilty and voluntary surrender to the authorities. The fiscal interposed no objection to that request. The trial court on that same date, September 7, 1981, rendered three separate decisions, imposing upon De los Santos in each of the three cases an indeterminate penalty of four months and twenty-one days of arresto mayor as minimum to one year, eight months and twenty-one days of prision correccional as maximum and to pay the corresponding indemnity. He was given the benefit of the two extenuating circumstances. The court directed that the accused be given credit for his preventive imprisonment.

Presumably, the said decisions were promulgated on the said date. The record does not disclose whether De los Santos started serving sentence after the promulgation of the said decisions.

Three days later, or on September 10, 1981, his counsel filed a "petition" (motion) to set aside the judgments of conviction. It contains the following brief allegations:

"1. That the accused has entered a plea of guilty to all these criminal cases captioned above;

"2. That the accused intends to substitute the same with a plea of not guilty in accordance with Sec. 6, Rule 118 of the Rules of Court of the Philippines.

"WHEREFORE, undersigned counsel most respectfully prays that judgment in all these cases be set aside and allow accused to enter a plea of not guilty and henceforth set these cases for trial." (p. 41, Rollo.)

The fiscal was furnished with a copy of that motion. It was not set for hearing. It was submitted for resolution on the date that it was filed. The trial court in its order of September 14, 1981, after noting that the judgments of conviction had not yet become final, set them aside, granted the prayer of the accused that a plea of not guilty be entered for him and set the three cases for trial on September 21, 1981. A copy of the order was received by the fiscal on September 15 (p. 54, Rollo).

The fiscal in a motion dated September 17 asked for the reconsideration of the order and for modification of judgment (due to the alleged error in the computation of the penalties). The motion was set for hearing on September 21, the date that the three cases were scheduled for trial.

The trial court in its order of September 21, 1981 reiterated its view that De los Santos should be allowed to substitute a plea of not guilty for his plea of guilty. It did not categorically deny the motion for reconsideration. As the fiscal did not present his evidence, the case was rescheduled for hearing on the following day, September 22, in spite of the fiscal's manifestation that the complainant was in Manila having a medical checkup for hypertension and that there was no time to contact the prosecution witnesses.

On September 22 no trial was held. The fiscal's witnesses were not available. He asked that the case be reset on October 5. He filed a second motion for reconsideration dated September 23. He stressed that De los Santos' motion of September 10, 1981 to set aside the judgments of conviction was not based on any ground and was not set for hearing.

The trial court at the hearing on October 5 denied that second motion for reconsideration. When the fiscal did not present his witnesses after the defense counsel invoked the right of the accused to a speedy trial, the court dismissed the cases and ordered the release of De los Santos.

That order of dismissal and the order setting aside the judgments of conviction are assailed in this appeal under Republic Act No. 5440.

The issue is whether the trial court gravely abused its discretion in setting aside the judgments of conviction and later dismissing the three estafa cases when the prosecution did not present its evidence.

Section 6, Rule 118 of the Rules of Court empowers the trial court, if the judgment has not become final, to allow a plea of guilty to be withdrawn, to set aside a judgment of conviction and to allow a plea of not guilty.

The exercise of that power should be justified by some compelling reason such as error, fraud, illegality or manifest injustice. The trial court is not invested with unbridled discretion to set aside a judgment of conviction based on a plea of guilty just because it has not yet become final.

It is not the ministerial or routinary duty of the trial court, on a mere request or petition of the accused, to allow him to substitute a plea of not guilty for his prior plea of guilty and to set aside the judgment of conviction already rendered in the case.

In such a situation, the setting aside of the judgment is tantamount to reopening the case and granting a new trial (Fiscal of Manila vs. Del Rosario, 52 Phil. 20, 24). While the motion of the accused for the withdrawal of his plea of guilty need not be verified (Paredes vs. Borja and Catalan, 113 Phil. 482, 489), it should at least have some rational basis. The accused should state that he has meritorious defenses to the charge. The motion should be set

for hearing.

The prosecution should be heard on that motion. The trial court should state the reasons for setting aside the judgment of conviction and for permitting the accused to substitute a plea of not guilty for his plea of guilty.

The trial court should not act in a perfunctory manner in setting aside the judgment of conviction and in allowing the substitution of pleas because the accused should not trifle with the court by gambling on the result of his change of pleas. See *People vs. Nazario*, 79 Phil. 297, where the accused wanted to withdraw his plea of guilty after the principal prosecution witnesses had gone abroad.

In California, "the remedy of vacating the judgment and withdrawal of the plea of guilty may be resorted to and utilized only when, because of fraud, duress or other force overreaching the free will and judgment of the accused, he has been deprived of the right to a trial on the merits, and only on a strong and convincing showing of the deprivation of legal rights by extrinsic causes" (22 C.J.S. 1158).

Evidence should be introduced to show duress, fraud or misrepresentation when the plea of guilty was made (*People vs. Lamb*, 148 Pac 2nd 873). In Kentucky, the withdrawal of a plea of guilty may be made after judgment if it is shown that such a plea was made due to fear, deceit or coercion (*Kidd vs. Commonwealth*, 74 SW 2nd 944; *Clift vs. Commonwealth*, 105 SW 2nd 557).

In the *Del Rosario* case, *supra*, ten persons, who were charged with a violation of the Opium Law, were permitted by the trial court to change their plea of not guilty to guilty. The trial court forthwith rendered the corresponding judgment of conviction.

On the following day, the accused, through a new counsel, asked leave to withdraw their plea of guilty and to enter a plea of not guilty. Counsel simply alleged that the plea of guilty was made due to ignorance or misunderstanding and that he has a good defense to present in behalf of his clients.

The trial judge granted the motion and set aside the judgment of conviction already promulgated on the theory that the accused should be given every opportunity to defend themselves freely and adequately. The City Fiscal of Manila assailed in this Court by means of certiorari the said order setting aside the judgment of conviction and allowing the change of plea. That order was nullified by this Court because the motion to set aside the judgment was unverified and unsupported by affidavits of merits.

In *People vs. Pangilinan*, 74 Phil. 451, the accused, who was charged with theft, pleaded not guilty upon arraignment. When the case was called for trial, he, with the assistance of counsel, asked leave of court to change his plea of not guilty to guilty. The court allowed the change of plea, and after asking the accused whether he understood the information and whether he knew that on the basis of his plea he would be convicted, the court imposed the corresponding penalty.

However, as the accused did not agree to the penalty imposed, he took the witness stand. Instead of testifying on the mitigating circumstances, he denied having committed the theft. The trial court did not believe his testimony. It main-tained the sentence already imposed on him.

Thereafter, counsel for the accused filed a motion to reopen the case on the ground that the plea of guilty was made on the understanding that the accused would be given only a penalty of four months and twenty-one days.

The trial court denied the motion to reopen the case. The accused appealed. This Court upheld the judgment of conviction. It said that the trial court was perfectly justified in not allowing the accused to trifle with a solemn judicial proceeding by changing his plea from not guilty to guilty, solely because the penalty meted out by the court, although in accordance with the law, was not satisfactory to him.

In the instant case, we hold that the trial court committed a grave abuse of discretion, amounting to lack of jurisdiction, in setting aside the three judgments of conviction on the basis of De los Santos' flimsy and whimsical "petition" which does not contain any reason as to why he wanted to change his plea of guilty to that of not guilty.

In unceremoniously and summarily setting aside the judgments of conviction and allowing the change of plea on the ground that the said judgments were not yet final, the trial court assumed that the change of plea was a matter of right. It did not accord to its own judgments the respect and importance which they deserved. It allowed itself to be influenced by De los Santos' capricious conduct.

It disregarded the settled rule that "where (as in the instant case) the record conclusively shows that the accused freely, voluntarily and spontaneously entered the plea of guilty with a full and complete realization of the meaning and consequences of that plea, after the same had been clearly explained to him by the court, he shall not be allowed to withdraw that plea and substitute therefor the plea of not guilty." In such a case, the trial court commits no error in denying the motion of the accused to withdraw his plea of guilty (*People vs. Ubaldo and Tuason*, 55 Phil. 94).

The trial court in this case acted with commendable circumspection in interrogating De los Santos when he withdrew his plea of not guilty and substituted it with a plea of guilty. On the other hand, it acted with deplorable precipitancy in allowing the withdrawal of De los Santos' plea of guilty, setting aside the judgments of conviction and entering for him a plea of not guilty without requiring him to explain why he had changed his mind.

WHEREFORE, the trial court's orders of September 14 and 21 and October 5, 1981, setting aside the judgments of conviction, allowing the accused to withdraw his plea of guilty and substituting it with a plea of not guilty, scheduling the cases for trial and later dismissing them because of the prosecution's failure to present its evidence, are reversed and set aside.

The judgments of conviction against the accused are reinstated and hereby declared final and executory. Costs against the accused.

SO ORDERED.

Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

Barredo, J., (Chairman), concurs, and in connection with the observation that accused should be allowed to appeal, might say that having pleaded guilty and the annotation being reinstated by the law based on said plea, appeal is out of the question.

Abad Santos, J., concurs in the reinstatement of the judgments of conviction. However, he cannot agree in declaring them final and executory because the lower court found the contrary in allowing the change of plea. Accordingly, the private respondent may, if he should so decide, still appeal.

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