1 Phil. 317

[G.R. No. 876. August 09, 1902]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOHN H. FLEMISTER, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The defendant was prosecuted in the Court of First Instance of Ilocos Sur for the crime of allanamiento de morada. Judgment was rendered on February 6, 1902, condemning the defendant to six years of *presidio correccional* and a fine of 3,250 pesetas. His appeal against this judgment was admitted on February 12. On May 8 he filed in this court a motion in which he asked for a new trial (1) on the ground of newly discovered evidence and (2) for errors of law committed at the trial below. The Solicitor-General has filed an *escrito* in which he consents that the motion may be granted. The motion was argued on the 19th of July.

The question presented called for a construction of article 42 ol General Orders, No. 58. That article is as follows:

> "At any time before the final entry of a judgment for conviction, the defendant may move, either in the court in which the trial was had or on appeal to a higher court, for a reopening of the case upon the ground of newly discovered evidence material to his defense. The motion must be made to the court which pronounced sentence, or to the appellate court if the case shall have been appealed, and must be made in writing and be supported by the affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated copies of documents which it is proposed to introduce in evidence. Within a like period after conviction, a case may be reopened on account of errors of law committed at the trial. The motion must be in writing and must set forth the errors alleged

> to have been committed. In courts of higher jurisdiction the decision of the court on such motions shall be in writing, and, together with the motion and affidavit, shall be attached to the papers in the case, and any evidence admitted must be taken and recorded as upon the original hearing. The new hearing, if allowed, shall take place in the, court of original jurisdiction."

So far as this article relates to a motion for a new trial on the ground of newly discovered evidence it is not difficult of construction. The right to move for a new trial on this ground both in the lower court and in this court is clearly given. Nor can there be doubt as to the time within which this motion may be heard. The language is "at any time before the final entry of a judgment for conviction." In the time of the Spanish sovereignty and down to the promulgation of General Orders, No. 58, there was no final judgment in any criminal case until this court or rather its predecessors had so ordered. If the case was not brought up by appeal it was sent up for review and no one was finally acquitted or convicted of a public offense until his case had been passed upon here. This is the settled doctrine of this court. (United States vs. Perez, April 9, 1902; United States vs. Keener, February 6, 1902; and of its immediate predecessor, United States vs. Gascon, January 30, 1901.)

By article 50 of General Orders, No. 58, it was provided that cases in which the penalty did not exceed one year's confinement or a fine of 250 pesos should not be sent up for review, and by Act No. 194 of the Commission that no cases should be sent up for review except those in which the punishment ordered was death. There still remained in all these cases the right of appeal within fifteen days after the rendition of the judgment. The effect of these provisions was to make final and conclusive after fifteen days all those judgments of the Courts of First Instance not declaring the death penalty from which no appeal had been taken.

It is said that the article gives the defendant the right to present his petition for a new trial on the first ground, namely, newly discovered evidence, at any time within the fifteen days, and does not require it to be decided within that time.

The first clause of the article says that the defendant may move for a "reopening" of the case. This indicates that the case is not reopened when the defendant makes his motion, but when it is granted. It follows that when later on in the article it is stated that the case may be "reopened" within a like period, the meaning is that the motion must be heard and decided within that period. Although the phraseology is not the same in both clauses, we do

not think that the legislative power intended to provide that a motion on one ground should be decided within the time to appeal, while if made on the other ground it would be sufficient to merely present it within that time. No reason is apparent why any distinction of this kind should be made between the two cases.

It may be stated, we think, as a general rule that any action which the trial court takes in a case must be taken before the time to appeal from the final judgment expires. When such time has once expired it ought to be certain that the rights of the parties, so far as the trial court is concerned, are definitely fixed.

If the mere presentation of the motion within the time is sufficient, this might be done on the last day and the case thus kept in the hands of the trial court for an indefinite time. The defendant in the meantime either would have to be committed, the court hearing and deciding the motion afterwards, or the execution of the sentence would have to be stayed until such hearing and decision could be had. This by reason of the press of business or for other causes might occasion a delay of some considerable time. If the latter course were pursued it is probable that the trial court would be called upon to hear such a motion in almost every case, for the mere presentation thereof would secure a stay of execution.

For these reasons we hold that a motion to reopen the case on either ground must be heard and decided before the time to appeal from the judgment expires. The Court of First Instance may grant a new trial on the ground of newly discovered evidence at any time after the trial and before judgment, and also until the expiration of the fifteen days allowed for an appeal.

Article 42 contains also the following provision:

> "Within a like period after conviction, a case may be reopened on account of errors of law committed at the trial."

Must such a motion be made in the trial court or can it be made also in the appellate court? In support of the former view it may be said that a motion for a new trial in an appellate court for errors committed in a trial court is unusual, if not unknown, and that for the correction of such errors the defendant already had a remedy by appeal, in which they all can be reviewed. But, on the other hand, the law distinctly gives a defendant the right to have such a motion considered "within a like period after conviction." As we have seen, that

period does not terminate in appealed cases until judgment is rendered in this court. The law therefore gives him a right to move in this court. The words “after conviction” indicate that the time in which he may make this class of motion does not commence until after the judgment is rendered in the lower court.

Our conclusion is (1) that within the fifteen days allowed for an appeal the trial court may reopen the case on either of the two grounds; (2) that if the defendant does not appeal he can make no motion in this court on either ground; (3) that if he does appeal he can move in this court on either groundIf the defendant makes the motion in the lower court and that is denied, he can still appeal if the fifteen days allowed therefor have not expired. If the defendant fails to appeal and limits himself to a motion in the trial court to reopen the case, this motion fails if it is not decided within the said nonextendible period of fifteen days. If he presents such a motion and before it has been decided he appeals within the said fifteen days from the judgment which has been rendered. in the case, it will be considered that he has waived his right to have his motion determined by the trial court. The case having been remitted to this court the appeal will be proceeded with, without prejudice, however, to the right of the defendant to move here for a reopening of the case before the final judgment is rendered.

When a motion is made on either or both grounds in this court, the motion will be heard at the same time that the appeal is heard. In this respect we conform the practice to that marked out for civil cases by article 497, No. 2, of the Code of Procedure in Civil Actions.

The result of the foregoing conclusions applied to the case at bar is that the hearing already had on the motion is vacated, and the motion is set down to be heard with the appeal on the 22d day of August, 1902.

Arellano, C.J., Torres, Cooper, and *Ladd, JJ.,* concur.

Mapa, J., did not sit in this case.

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