3 Phil. 691

[G.R. No. 1329. April 15, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLANT, VS. RAFAEL SAMIO, DEFENDANT AND APPELLEE.

D E C I S I O N

TORRES, J.:

Under the inquisitorial system of criminal procedure, a judgment rendered by a Court of First Instance in a criminal case did not become final until the supreme court of the district to which the trial court belonged had approved the judgment, as the law required every decision, either of acquittal or conviction, to be reviewed by the supreme court, whether the parties appealed or not. Consequently, in case of the reversal of the judgment of the trial court whether on review or appeal it was the decision of the supreme court which was executed.

This being so, it is evident that even although the accused or the private prosecutor should withdraw an appeal from the judgment of the court, the case would take the same course in the second instance, and in case of an appeal by the prosecution, the appeal could not be withdrawn because it was the duty of the prosecuting officer, under the law, to appear for the Government in all criminal cases. Consequently, under the inquisitorial system, the prosecuting officer could not withdraw an appeal taken from a decision of the trial court.

It was the practice under that system if the attorney-general after an examination of the record, became convinced that an appeal taken by the district prosecuting attorney from an order directing the release or imprisonment of an accused person was without merit, for him to withdraw the appeal, and ask that the record be returned to the trial

court for the execution of the order appealed, which, by reason of such withdrawal, became at once a finality, and could be executed.

These were the only cases in which the attorney-general could withdraw an appeal from a final or interlocutory order. With respect to such orders, it was also permissible for the accused or the prosecuting witness to withdraw an appeal, the approval of the supreme court not being indispensable to the validity of such orders.

After a criminal case had been prosecuted through both instances the judgment of the local supreme court was a final judgment, and the supreme court of Spain could only take jurisdiction over it by writ of error, with the exception of cases in which the death penalty was imposed, as to which a writ of error was allowed by operation of law for the benefit of the accused.

In cases in which a writ of error was sued out by the local attorney-general against the decision of the local supreme court, the attorney-general of the supreme court of Spain, in case he was of the opinion that the writ was not advisedly sued out, if it concerned a question of law, communicated his decision to the attorney-general of the court to which the writ was directed, so that he might so inform the local court; but if the writ was based upon some breach of form, and had been allowed, and the attorney-general of the supreme court of Spain believed it to be unsustainable, he could dismiss the writ and the corresponding, chamber of the supreme court would communicate to the local court the order permitting such dismissal.

These are the provisions of articles 876 and 877 of the Law of Criminal Procedure of 1872, to which reference is made by the provision of the law for the application of the Penal Code under the inquisitorial system which prevailed before the enactment in these Islands of General Orders, No. 58. This order, which was dated April 23, 1900, established for the first time in this Archipelago the accusatorial system, although with some modifications tending to prevent the transition from being too violent, and to facilitate the change from one system to another. The provisions of section 50 of

General Orders, No. 58, are the result of this modification. Under this section the only cases which were brought before the Supreme Court in accordance with the old system were those already appealed and those in which the death penalty is imposed, or the judgment is for imprisonment for a greater period than six years, or a fine of more than 1,250 pesos. If the penalty imposed was imprisonment exceeding one year or a fine of over 250 pesos, section 50 provided for the procedure to be followed. This has been done away with by Act No. 194, passed by the Civil Commission.

Section 4 of Act No. 194 provides that it shall no longer be necessary to forward to the Supreme Court or to the Attorney-General's department the records of criminal cases for revision or consideration, except where the death penalty is imposed, unless such case shall have been duly appealed as provided in General Orders, No. 58. But the records of all cases in which the death penalty shall have been imposed by any Court of First Instance, whether the defendant appeals or not, are to be forwarded to the Supreme Court for investigation and judgment, as the law and justice shall dictate.

This act of the Civil Commission, which modified General Orders, No. 58, has established the radical effects of final judgments under the accusatorial system in criminal cases, as every decision, whether of conviction or acquittal, with the exception of those imposing the death penalty, becomes final by operation of law if an appeal is not taken from it within fifteen days from the date of its rendition.

In case the district attorney has appealed from a judgment of acquittal by the trial court, and the Attorney-General or the Solicitor-General see fit to withdraw the appeal, it is within their authority to do so under the present system of procedure. Is it the duty of the Attorney-General or the Solicitor-General to state in a notice of the withdrawal of an appeal the reasons upon which the action is based, and can the court require him to give those reasons? We believe not, for the Attorney-General Or the Solicitor-General are at liberty to act in such matters at their discretion, and such a withdrawal is equivalent to the consent of those officers to the

judgment appealed—it is equivalent to a statement on the part of the Attorney-General that in his judgment the decision of the court below is correct, and the opinion of the district attorney erroneous.

It must be remembered that under the inquisitorial system it was the duty of the district attorneys to interpose appeals in due time and form, *subject to the decision of their immediate superiors as to the subsequent progress of the appeal*. (Art. 166 of the royal cedula of January 30, 1855, and art. 458, par. 5, of the decretal law of January 5, 1891.)

If the power of the attorney-general of the old supreme court was ample with respect to the control of appeals taken by his subordinates under the inquisitorial regime, it is evident that those powers are much greater under the accusatorial system, in which the mere silence of the parties, including the fiscal, is sufficient to give finality to an unappealed decision.

We consider that the statement made by the Attorney-General or the Solicitor-General in the notice of withdrawal of appeal, that it is not considered that the appeal is sustainable, is quite sufficient. We do not think it necessary to require an expression of the reasons upon which the conclusion is based, as the statement implies a concurrence in the view taken by the trial court. Under the accusatorial system the sphere of action of the prosecuting officers has been greatly widened. They not only represent the law, with the right to inspect the action of the court on behalf of the Government, but have a more direct and active participation in the proceedings at the trial; upon them devolves the defense of the public interests, threatened by crime, as though the prosecuting officer were the person directly injured by the offense. But it is also of interest to society that an innocent person be free from molestation, and therefore the prosecuting attorneys should only institute proceedings and make use of the machinery of the law when in their opinion justice requires such action.

In criminal cases there are always two opposing interests, that of society, which demands that the crime be punished, and that of the

accused, who has an absolute right to his defense. Upon the supposition that in accordance with the fundamental principles underlying the accusatorial system, courts and judges should be passive and neutral in the contest between the prosecution and the defense, it must be admitted that the fate of the accused and the success of the prosecution depend upon the good faith, the. zeal, skill, and intelligence of the prosecuting attorney. The present system has placed in the hands of the prosecuting attorneys the power to prosecute and punish every crime and offense, with the exception of those of a private character, and consequently upon them depends the realization of the purposes of the law.

If the provincial fiscal might have consented to the judgment appealed, without having taken any appeal whatever from it, the prosecuting officers are also entitled to withdraw the appeal upon reaching the conclusion that the provincial fiscal was not justified in appealing.

If the Supreme Court of these Islands is without jurisdiction to examine or revise a criminal case in which a final judgment has been rendered and the parties have not appealed, we do not think that it has jurisdiction to discuss the propriety or impropriety of the withdrawal by the Attorney-General or the Solicitor-General of an appeal deemed to have been improperly taken by a provincial fiscal. The officer who may before trial withdraw the information may also, in our opinion, withdraw an appeal, and the court, in conformity with the principles of the accusatorial system and the express provisions Of section 4 of Act No. 194, feels constrained to permit the withdrawal of this appeal.

For the reasons stated we are of the opinion that the Solicitor-General should be permitted to withdraw the appeal in question, and that the case should be remanded to the trial court. So ordered.

Arellano, C. J., Willard, Mapa, and *McDonough, JJ.,* concur.

Cooper, J., dissents.

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