99 Phil. 967

[G.R. No. L-8818. September 27, 1956]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. VENANCIO C. MANGAMPO, DEFENDANT AND APPELLANT.

D E C I S I O N

FELIX, J.:

On August 5, 1954, Venancio C. Mangampo was prosecuted in the Court of First Instance of Manila charged with a violation of Commonwealth Act No. 303 in relation to Article 315, paragraph 4, sub-paragraph 2 (a) of the Revised Penal Code. It is alleged in the information that on or about and during the period comprised between February 8 and 26, 1952, the said defendant, being an independent contractor engaged in the unloading of cement belonging to the Pan-Philippine Shipping Co., Inc., from the boat ("Banzai Maru"), hired the services of Tomas Carnecete and 35 others whom he employed as foremen, watchmen, signalmen, laborers, etc., at the daily wages and for the number of days mentioned in the indictment, and that after they had unloaded the same, the defendant with intent to defraud, wilfully and feloniously refused and failed to pay their wages despite repeated demands made upon him to do so, to their damage and prejudice in the respective amounts given in front of their names, to wit:

Tomas Carnecete.....	P249.00
Emilio Aguilar.....	105.50
Pedro Guevara.....	81.00
Numeriano Larguesa.....	90.50
Meliton Pelaes.....	70.30
Adriano Ballandares	102.65
Pedro Manabat.....	108.00
Juan Rosel.....	84.50
Cosmo Fortales.....	78.50
Francisco Favillar	166.84
Juanito Bacarra.....	112.50

Sixto Reyes……	150.84
Abundio Globa……	76.50
Pedro Capispisan……	148.04
Venancio Aguilar……	112.50
Juan Manguerra……	95.00
Marcelino Seraspe……	97.10
Juan Fernandez……	97.70
Dominador Longasa……	95.50
Amancio Brodes……	134.00
Sesinando Ubaldo……	152.04
Benigno Viray……	142.54
Mateo Larion……	92.50
Lorenzo Bacarra……	99.50
Primo Batistil……	80.50
Vicente Pangusan……	99.10
Vicente Manito……	101.50
Pedro Dael ……	11850
Vedaato de la Cruz……	109.40
Florencio Remolleno……	96.90
Dominador Merilo……	80.50
Isabelo Samodio……	131.25
Marciano Diomangay……	131.25
Vivencio Oreta……	142.82
Ildefonso Ordonez……	102.50
Vicente Rosal……	131.25
Total……	P4,068.52

After proper proceedings and hearing, the Court found defendant guilty as charged in the information and sentenced him to suffer an indeterminate penalty of not less than 4 months of *arresto mayor* and not more than 4 years and 8 months of *prision correctional*, to the accessory penalties of the law, to indemnify the corresponding laborers in their respective unpaid wages, with subsidiary imprisonment in case of insolvency and to pay the costs.

From this verdict defendant appealed to this Superiority and his counsel maintains in this instance that the lower court erred (1) in not taking into consideration the fact that the defendant-appellant was put in double jeopardy because he has been convicted previously in Criminal Case No. 24569 of the Court of First Instance of Manila, Branch XIII; and (2) in

not acquitting the defendant-appellant.

Sometime in February, 1952, appellant contracted the services of about 286 laborers from Binondo, Manila, and took them to Mariveles, Bataan, to unload cement from the ship *Banzai Maru*. The 36 complainants in this case were among the laborers brought by appellant to Mariveles who worked from February 8 to February 26, 1952, inclusive. The agreement was that appellant was to pay each laborer or stevedore upon completion of the work and at different rates of compensation depending on the nature of the individual work of each laborer. Inspite of the fact that their work had been terminated and notwithstanding their repeated demands for payment, complainants have not as yet been fully paid by appellant. After deducting the small amounts that appellant delivered to complainants at the time they were still in Mariveles, the latter have not yet been paid the balance still due them as listed' above, amounting to the aggregate sum of P4,068.52.

Appellant told complainants that his failure to pay them in full was due to the fact that the Pan-Philippine Shipping Co., Inc., with whom he had a contract for services (Exhibit A) has not as yet given him the *entire payment* for the stevedoring services. But upon discovering that appellant was telling a falsehood—because he had received P9,460 from the Pan-Philippine Shipping Co., Inc., and had signed a quit-claim deed (Exhibit C) in favor of the Union Trading Company, Inc., by virtue of which, and in consideration of the sum of P3,900 he released the said company from any further claim or claim's from any stevedoring services—complainants caused the institution of the present criminal action.

Forty-five of appellant's laborers preferred charges against him with the City Fiscals Office. According to the defense this office divided the action into 3 cases or groups. The first was filed on November 12, 1953, in the Court of First Instance of Manila against appellant at the instance of 7 of the unpaid complaining laborers (Criminal Case No. 24569) which was assigned to Branch XIII of said court and decided on August 16, 1954. This case is pending appeal in the Court of Appeals (CA-G. R. No. 13394-R).

The second case was filed in the Municipal Court of Manila on November 17, 1953, in which the offended parties allegedly are the complainants herein (36). This case was elevated on appeal to the Court of First Instance of Manila, Branch XIII (Criminal Case No. 27867) and was finally decided against appellant on December 17, 1954, who then took the matter up to the Court of Appeals (CA-G. R. No. 14132-R), where it is now pending.

Then came the third case which was initiated by the City FiscaFs Office,on August 5,

1954, in the Court of First Instance of Manila, Branch XVII, and decided by this court on January 24, 1955. This is the case now on appeal before Us.

Sections 1 and 4 of Commonwealth Act No. 303 which are pertinent to the case at bar, provide the following:

> "SECTION 1. Every employer, including the head of every goverment office, whether national, provincial or municipal, shall pay the salaries and wages of his employees and laborers at least once every two weeks or one-half month unless it be impossible to do so due to *force majeure* or to some other causes beyond his control, or unless he has been previously exempted by the Secretary of Labor from this requirement. Exemption may be granted by the Secretary of Labor only if, after the proper inquiry, he becomes convinced that the conditions and exigencies of the business of an employer require less frequent payment of salaries and wages but no employer shall be authorized to make such payment with less frequency than once a month and unless he establishes a store within or near the business premises from which the employees and laborers can conveniently buy foodstuffs and other articles of prime necessity v at cost and on credit, payable at the following pay day.
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> * * * SEC. 4. Failure of the employer to pay his employee or laborer as required by section one of this act, shall *prima facie* he considered a fraud committed by such employer against his employee or laborer by means of false pretenses similar to those mentioned in article three hundred and fifteen, paragraph four, sub-paragraph two (a) of the revised Penal Code and shall be punished in the same manner as therein provided."

Appellant admits that he was not able to pay in full the services of the herein 36 complainants, but he claims that he has been placed in double jeopardy because he had been previously convicted in Criminal Case No. 24569 (he must refer to Criminal Case No. 27837 decided by the lower court on December 17, 1954) which is now pending before the Court of Appeals (CA—G. R. No. 14132-R).

We see, therefore, that the only question at issue in this appeal is whether in view of the facts alleged by the defense, appellant's plea of double jeopardy is tenable. An examination of the record shows that on February 13, 1954, appellant filed in the lower court a motion

to quash based on 3 grounds, one of which was that "the defendant had been *previously convicted* and is now in jeopardy of being convicted for the second time of the same crime for which he is actually prosecuted." We do not find in the record the order disposing of said motion to quash, although counsel for appellant says in his brief that it was denied. This counsel, however, must be confused because the case docketed as Criminal Case No. 27837 of the Court of First Instance of Manila is not the case at bar which was docketed as Criminal Case No. 28083 of the said court.

According to the defense, the complainants in the second case (now CA-G. R. No. 14132-R) initiated in the Municipal Court of Manila and in the case at bar (CFI— Criminal Case No. 28083) are the same, but no copy of said second case appears on record and the only document that We find on page 66 thereof that may have some connection with the facts of the present case is a decision rendered by Judge Ramon A. Ycasiano of the Municipal Court dated July 2, 1954 (Criminal Case No. D-10996), convicting the same defendant Venancio Mangampo of a similar violation of Commonwealth Act No. 303 in relation to Article 315 of the Revised Penal Code, wherein the offended party is only one laborer, Bernardo Castillo, to whom he failed to pay the sum of PI 14 and this Bernardo Castillo is not one of the complainants in the case at bar.

Appellant also contends that although in CFI—Criminal Case No. 24569 (CA-G. R. No. 13394-R of the Court of Appeals) the complainants were only 7 and another gr6up of 36 in the case at bar, both cases cover the same offense because the information filed in both cases refer to the same crime committed on the same dates and on the same place. In support of this contention, counsel for the defense cites the case of People *vs*. Tumlos, 67 Phil. 320, wherein this Court held that the accused performed but one indivisible criminal act in having stolen 13 cows at the same time and in the same place although 8 cows pertained to one owner and 5 to another owner. But the Solicitor General replies that appellant's claim of double jeopardy is not supported by the records, for although he raised the question of double jeopardy in his motion to quash, that was all that he has done. Neither the information nor the sentence in the alleged Criminal Case No. 24569 has been submitted in evidence in this case. There is nothing in the record to show that the offense for which he has formerly been charged and convicted is the same offense prosecuted in the instant case. Mere mention of criminal case numbers and alleged portions of both informations for which he has supposedly been tried and convicted is not sufficient proof of double jeopardy. Thus, in the case of U.S. *vs*. Claveria, 29 Phil. 527-529, this Court held, among other things, that:

> "In pleading a former jeopardy it is not sufficient that the defendant simply alleged that *he had been once in jeopardy; he must both allege and prove specifically that the offense, of which he has been formerly convicted or acquitted, is the same offense for which it is proposed to try him again.*"

The Solicitor General further argues that the case of People *vs*. Tumlos, supra, has no bearing on this case because the act of taking in that case of theft, not susceptible of division, was only one, while the acts of appellant in contracting the services of the 286 laborers, 45 of whom (including the complainants herein) were not fully paid. the act of paying their partial wages and the act of non-payment of the salaries due them separately, constitute independent acts of deception. Each laborer had his own contract with appellant and if one laborer was not paid the amount due him on the date agreed upon, then such laborer could file the corresponding action to right the wrong done to him. In fact, there were as many estafas as there are off ended parties (People *vs*. Buted, 47 Off. Gaz. 6259). In the decision appealed from, the trial court says the following:

> "It appears in this case and as admitted by the accused himself, that partial payments had been made by him to said laborers on account of their wages on different dates and occasions, which necessarily gave rise to different transactions."

We agree with the Solicitor General that the defense of double jeopardy in the case at bar has not been established and that the information that initiated this case charges the defendant with 36 different and distinct violations of Commonwealth Act No. 303, i.e., one for each of appellant's laborers whose wages were not paid by their contractor, and as appellant has not objected to the information on the ground of multiplicity of offenses charged, he is deemed to have waived said defect and may be sentenced for as many crimes as are described in the information and established by the evidence (People *vs*. Policher, 60 Phil.,.770; U. S. *vs*. Balaba, 37 Phil., 260). This latter conclusion brings to the case two necessary implications, to wit:

> (*a*) The imposition upon appellant of the penalty provided in Article 315, 3rd paragraph of the Revised Penal Code, which is *arresto mayor* in its maximum to *prision correctional* in its minimum, in the case of foreman Tomas

Carnecete, for his claim of P249.00, which is over P200.00, and the lesser penalty provided in Article 315, 4th paragraph of the same legal body, *arresto mayor* in its medium and maximum periods, in each of the 35 other cases in which the claims of the offended parties do not exceed P200.00; and

(*b*) The application of the provisions of Article 70 of the Revised Penal Code, as amended by section 2 of Commonwealth Act No. 317, to the 36 eases charged in the information. The pertinent part of said Article 70, as amended, read as follows:

ARTICLE 70. * * *

Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum of those imposed equals the same maximum period.

Such maximum period shall in no case exceed forty years.

(S*ee* People *vs*. Garalde, 50 Phil. 823).

Wherefore, upon finding defendant-appellant guilty of 36 violations of Section 4 of Commonwealth Act No. 303 in relation to Article 315, 3rd and 4th paragraphs, sub-paragraph 2 (a) of the Revised Penal Code, and there being no modifying circumstances of criminal liability attending, We sentence him as follows: In the case of foreman Tomas Carnecete, to suffer the indeterminate penalty of from 2 months and 1 day of *arresto mayor* to" 1 year and 1 day of *prision correctional;* and in the 35 other cases of unpaid laborers, to suffer in each of said cases the penalty of 3 months and 11 days of *arresto mayor.* These penalties are subject to the aforequoted provisions of the Code that the duration of the complete sentence herein imposed shall not be more than threefold the length of time corresponding to the case of Tomas Carnecete, or 3 years and 3 days of incarceration. With these modifications, the decision appealed from is hereby affirmed in all other respects with costs against appellant. It is so ordered.

Paras, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Date created: October 10, 2014