102 Phil. 926

[G. R. No. L-10702. January 29, 1958]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT VS. SIXTO CABARLES, DEFENDANT AND APPELLEE.

D E C I S I O N

ENDENCIA, J.:
Calixto Cabarles was prosecuted in the justice of the peace court of Leon, province of Iloilo, for violation of Art. Ill, Sec. 1, Schedule G-5-A in relation to Art. VII, Sec. 1 of Municipal Ordinance No. 19, Series of 1955, upon an information charging:

> "That during the period from February 3, 1956, to February 14, 1956, in the municipality of Leon, province of Iloilo, Philippines, and within the jurisdiction of this Court, the said accused as owner of a female carabao, unbranded, about 2% years old, which has been impounded in the municipal pound during said period for being loose and having allegedly destroyed the plants of one Juan Cabrieto as well as for the failure and negligence of its owner to have same branded and registered, with deliberate intent, *did then and there wilfully and criminally fail and refuse to pay the impounding fees* at the rate of P5 per day, as fixed by the ordinance, or a total of P55 for the 11 day period." (Italics supplied).

Upon arraignment, the accused plead not guilty.

At the trial of the case, the prosecution presented no other evidence than the report of the chief of police of Leon to the municipal treasurer and the latter's testimony to the effect that the chief of police reported to him that he received from Juan Cabrieto a carabao of the accused, without brand, which destroyed Cabrieto's crop at the sitio of Camando, Leon, Iloilo; that said carabao was impounded for eleven days, and that the accused refused to pay the impounding fee of P55, in violation of the ordinance in question. After the prosecution

had rested its case, counsel for the defendant verbally moved to "quash the information for insufficiency of evidence," contending that what is penalized by the aforementioned ordinance is the act of letting loose any large cattle specified in Sec. 24, Art. V of said ordinance, and not the refusal of its owner to pay the impounding fee; and this petition was granted in an order the dispositive part of which reads as follows:

> "In view of the foregoing consideration this Court finds and so holds that the mere failure and refusal to pay the impounding fee as charged in the information do not constitute any violation punishable by the Municipal Ordinance. The amended information is hereby dismissed."

Thereupon the provincial fiscal appealed to the court of first instance of Iloilo where, when the case was called for hearing, the accused filed a motion to quash the appeal and to dismiss the case on the ground (1) "that the prosecution had no authority to appeal from the judgment of the justice of the peace court, and (2) that the defendant has been previously placed in jeopardy of being convicted or acquitted of the offense charged." This motion was granted and the case dismissed. Hence the present appeal.

As could be noted, the case was dismissed or, in the language of the justice of the peace, "the amended information is hereby dismissed," after the prosecution had rested its case, for insufficiency of evidence; and on appeal, the court of first instance of Iloilo, upon motion of the accused, entered the following order:

> "the court sustains the motion to quash and accordingly dismisses this case with costs de oficio and orders the cancellation of the bond filed by the accused for his temporary liberty."

Under these circumstances, may the present appeal be entertained by this Court? The answer is clearly in the negative, for the dismissal of the case by the justice of the peace was an acquittal or discharge of the defendant after the prosecution had presented the evidence, at a proper trial, before a competent court, on a valid information, from which acquittal the fiscal cannot certainly appeal without doing violence to the constitutional provision on double jeopardy. It was a dismissal upon the merits of the case which cannot be appealed from.

> "Defendant was regularly arraigned, pleaded not guilty, put upon his trial by the calling of the government's witnesses against him, and thereafter discharged by the trial court. It is true that thu court made no express finding as to whether the defendant did or did not commit the specific acts set out in the information, and that the dismissal of the information was based on the court's conclusion of law that there being no copyright law in force in these Islands, the acts which it is alleged were committed by the defendant do not constitute the crime with which he was charged, nor any other offense defined and penalized by law. But the reasoning and authority of the opinion of the Supreme Court of the United States in the case of Kepner vs. United States, supra, is conclusively against the right of appeal1 by the government from a judgment discharging the defendant in a criminal case after he has been brought to trial, whether defendant was acquitted on the merits or whether defendant's discharge was based upon the trial court's conclusion of law that the trial had failed for some reason to establish the guilt of the defendant as charged.
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> "This court has frequently held that legal jeopardy attaches in criminal proceedings in this jurisdiction after arraignment and plea in a court of competent jurisdiction, at the moment when the first witness is called to the stand and interrogated, and it is quite clear that the defendant in this case having been brought to trial after arraignment and plea and all the government's witnesses having testified on his trial, is entitled to protection against the peril of being again brought to trial for the offense with which he was charged at that trial and this whether the rulings of the trial judge on which he based his order discharging the defendant and dismissing the information were or w«re not erroneous. (U.S. vs. Ballentine, 4 Phil. Rep. 672; U. S. vs. Montiel, 7 Phil. Rep. 272; U.S. vs. Gemora, 8 Phil. Rep. 19)." U.S. vs. Yam Tung Way, 21 Phil. 67.

The Solicitor General, contends, however, that the provincial fiscal had the right to appeal from the decision rendered by the justice of the peace on the ground that there had only been a quashal of the information and not a dismissal of the case, but the record of the case clearly discloses that said information was *dismissed* by reason of *insufficiency of the evidence*, in that the fact averted in the amended information and proved by the prosecution were not punishable by the ordinance allegedly violated.

The Solicitor General also contends "that a plea of double jeopardy is erroneously sustained where the defendants themselves showed that the information was insufficient to charge them with any criminal offense" citing the case of People vs. Reyes, et al., 96 Phil., 927; 51 Off. Gaz., 2408. But in that case, the defendants who were charged as accessories after the fact, filed a motion to quash on the ground that, being brothers and sisters of the principal defendant who pleaded guilty, were exempt of criminal responsibility as provided for in Art. 20 of the Revised Penal Code. The fiscal then moved to be allowed to amend the information by inserting the allegation that the accused profited from the effects of the crime; whereupon counsel for the accused moved to withdraw his motion to quash, but the court, without acting on it denied instead the motion to amend the information, so that the fiscal was constrained to ask for the dismissal of the case. When a new information against them was filed, the defendants pleaded double jeopardy which the lower court erroneously sustained, as we so declared when the case was brought to us on appeal, for we held that the first information could not be said to have been terminated without the express consent of the accused, and because the defendants themselves showed that the first information was insufficient to charge them with any criminal offense by reason of their relationship with the principal defendant. The present case completely differs from the Reyes case. Here, there has been an arraignment, plea of not guilty, and presentation of complete evidence by the prosecution, at which state the accused may choose either to present his evidence to refute the charges against him or to just submit the case upon the strength or weakness of the evidence for the government, and under these circumstances, a dismissal of the information is an adjudication on the merits, and operates as an acquittal, from which the prosecution cannot appeal.

True, the order of the justice of the peace recites that "the attorney for the accused presented an oral petition to quash the information for insufficiency of evidence," and in the dispositive part of the order, he says "The amended information is hereby dismissed;" but the fact of the matter is that in the case at bar, the dismissal was based precisely on the finding that the facts alleged in the information and proved by the prosecution, to wit, the refusal and failure of the accused to pay the impounding fee, are not punished by the ordinance in question, which is tantamount to saying that the accused did not commit any violation of said municipal ordinance and, therefore, should be discharged; and certainly a dismissal like the one at bar, after complete presentation of evidence by the prosecution, even if erroneous, is unappealable, for—

"The right granted to the prosecution by Section 64 of G. O. No. 58 (now Section

> 2 of Rule 118 of the Rules of Court) to appeal from a judgment or order of the courts is not absolute; it is limited to such orders which sustain a demurrer or overrule a complaint or information without presentation of evidence, which is different from the instant case. The prosecution cannot appeal from an order which dismisses the case on motion of the defense after the prosecution has closed its evidence. The spirit of the Constitution is to prohibit and prevent the occurrence of a case wherein the accused continues to run the risk of being punished due to the same offense, two or more times. If this were not so, an accused would never have security as to when his calvary will end when charged with the commission of a crime." (People vs. Bringas, 70 Phil. 528).

Wherefore, the appeal under consideration is overruled and the case definitely dismissed.

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

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