

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO DORIQUEZ, DEFENDANT-APPELLANT.

G.R. Nos. L-24444 & L-24445. July 29, 1968

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

The appellant Romeo Doriquez, on August 28, 1964, was charged with the offense of grave oral defamation before the Court of First Instance of Iloilo, by virtue of an information which re-cites

"That on or about April 22, 1964, in the municipality of Batad, province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named defendant, with deliberate in-tent of bringing Attorney Sixto Demaisip into dis-credit, disrepute and public contempt, did then and there willfully, unlawfully and feloniously speak and utter in a loud voice and in the presence of many persons against the said Attorney Demaisip the following insulting and defamatory words and expressions, to wit: 'Tonto ka nga klase sang tao, quin pierde mo ang asunto ko, nagastohan ako sing linibo sang ulihi nag pabakal ikaw kay Purita; pasuguiroon ka P30.00 lang ang nabayad ko pero linibo ang gasto ko,' which, translated into English' runs as follows: 'You are a foolish class of person, you had to lose my case, I spent thousands of pesos and later you allowed yourself to be sold to Purita; you had been telling people that I paid you only P30.00 when I spent thousand of pesos for my case,' and other similar words of import."

Six days later, or on September 3, 1964, the same Doriquez was indicted before the same court for discharge of firearm, committed, in the language of the information, as follows:

"That on or about April 22, 1964, in the municipality of Batad, province of Iloilo, Philippines, and within the jurisdiction of this Court, the said accused, armed with a revolver and without intent to kill, did then and there willfully, un-lawfully and feloniously discharge twice said re-volver at one Attorney Sixto Demaisip."

Upon arraignment, he pleaded not guilty to the two indict-ments. On December 3, 1964 he moved to dismiss both informations, claiming that (1) the court a quo has no jurisdiction over the offense of grave oral defamation in virtue of Republic Act 3328 which enlarged the original exclusive jurisdiction of city and mu-nicipal courts; and (2) the institution of the criminal action for discharge of firearm places him in double jeopardy for he had already been in jeopardy once in the municipal court of Batad, Iloilo which dismissed, without his consent, the information charging him with the offense of alarm and scandal, allegedly based on the self-same facts/relies upon by Fiscal Simeon A. Barranco in support of the aforesaid information for discharge of firearm.

In its order of March 8, 1965 the court a quo denied the motion to dismiss. The subsequent motion for reconsideration was likewise denied by the trial court in its order of March 20, 1965. From these two orders, the present appeal was inter-posed.

It is our view, in the first instance, that the appeal is pre-mature.

Section 2 of Rule 41 of the Revised Rules of Court provides:

"Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of an appeal until final judgment or order is rendered for one party or the other."

Construing the aforequoted section, this Court has repeatedly and uniformly held that a judgment or order may be appealed only when it is final - in the sense that it completely disposes of the cause and definitively adjudicates the respective rights of the parties, leaving thereafter no substantial proceeding to be had in connection with the case except the proper execution of the judgment or order; and that, conversely, an interlocutory order or judgment is not appealable for it does not decide the action with finality and leaves substantial proceedings still to be had.[1] It is an elementary rule of adjective law that an order denying a motion to dismiss is interlocutory, hence not appealable, because it "does not terminate the proceedings, nor finally dispose of the contentions of the parties." [2] An order, for example, rejecting a motion to dismiss based on lack of jurisdiction [3] is interlocutory because after such denial proceedings of substance are still to be had by the trial court, such as hearing of the case on the merits and rendition of final judgment.

The latest unequivocal restatement of the rule that interlocutory orders are not appealable was made in *Ramos vs. Ardant Trading Corporation*. [4] Concluding that the appeal therein was premature, Mr. Chief Justice Roberto Concepcion emphasized that "the orders denying defendant's motion for dismissal and its subsequent motion for reconsideration are interlocutory in nature, and hence, not appealable until after the rendition of judgment on the merits. Defendant's appeal contravenes the explicit provisions of Rule 41, Section 2, of the Rules of Court . . . which, moreover, incorporates a well-established rule of practice and procedure, constituting one of the main tenets of our remedial law." In order to stress its disapproval of appeals from interlocutory orders, this Court, in the aforementioned case, assessed treble costs against the appellant therein, jointly and severally, with its counsel.

The rationale underlying the rule that an interlocutory order is not appealable is, basically, the avoidance of "multiplicity of appeals in a single case." If every interlocutory order or judgment may be appealed, and the appeal stays the progress of the action, there could arise countless appeals in a single case, and the magnitude and extent of the delay in the final disposition thereof will be such that, conceivably, in a number of instances, the parties may not survive the case. [5] This Court has consistently frowned upon - and has firmly stricken down - piece-meal appeals, "because it [piece-meal appeal] delays the speedy disposition of the case, and is often resorted to as a means of draining the resources of the poorer party and of compelling it to submit out of sheer exhaustion, even if its demands should be conformable to reason and justice." [6]

Two alternative remedies were forthwith available to Doriquez after the denial of his motion for reconsideration, namely, (1) proceed immediately to trial on the merits and interpose as integral part of his defense the grounds stated in his motion to dismiss, and, in the event of an adverse decision, appeal to the proper Court for resolution of all pertinent issues, including those he has posed in the present appeal; (2) interpose a petition for certiorari to enable this Court to dispose, on the merits, the issues raised herein, anchoring said petition on the twin grounds that (a) the court a quo acted without jurisdiction or in excess of its jurisdiction in taking cognizance of the offense of grave oral defamation, and (b) the trial judge committed grave abuse of discretion in refusing to dismiss the information for discharge of firearm in the face of his avowal that the said indictment places him in peril of a second jeopardy. This latter action should of course be availed of with candor and absolute absence of deviousness, with no intention (howsoever disguised) of causing undue delay.

Because, however, all the cogent issues are now before us, we will treat the instant appeal as a petition for certiorari. This positive and pragmatic approach will definitively resolve the contentions of Doriquez and thus dissipate any and all speculation on the part of all concerned as to the correctness of their respective positions.

1. Doriquez maintains that the municipal court of Batad, Iloilo, not the Court of First Instance of Iloilo, has

original exclusive jurisdiction over the offense of grave oral defamation which, under article 358 of the Revised Penal Code, is punishable by arresto mayor in its maximum period to prision correccional in its minimum period, reasoning that the exclusive original jurisdiction of municipal and city courts has been enlarged by Republic Act 3828 to include offenses for which the penalty provided by law is imprisonment for not more than three years, or a fine of not more than three thousand pesos, or both such imprisonment and fine.

The appellant is in error.

The rule is now beyond all area of dispute that in view of the latest amendment to section 87(c) of the Judiciary Act of 1948 and also taking into account the unaltered provisions of section 44(f) of the same Act, the zone of concurrent jurisdiction of municipal and city courts and courts of first instance has been considerably widened. This jurisdictional parity embraces all offenses for which the penalty provided by law is imprisonment for more than six months but not exceeding three years (or six years with respect to city courts and municipal courts in the capitals of provinces and sub-provinces vis-a-vis the courts of first instance), or a fine of more than two hundred pesos but not exceeding three thousand pesos (or six thousand pesos in the proper cases), or both such imprisonment and fine. This confluence of jurisdiction was first clearly etched in *Esperat vs. Avila et al*, [7] and the rule in that case was affirmed in *Le Hua Sia vs. Reyes* [8] and *Andico vs. Roan, et al.*[9]

In *Esperat vs. Avila*, Mr. Justice J.B.L. Reyes delineated with specificity the respective jurisdictional boundaries of the various trial courts. Said Mr. Justice Reyes:

"The fallacy in petitioner's argument lies in his failure to consider section 44(f) of the same Judiciary Act of 1948, in conjunction with its section 87(c). Note that notwithstanding the various amendments received by section 87, section 44(f) remained unaltered, thereby indicating the intention of the legislators to retain the original jurisdiction of the court of first instance in certain cases. The fact that the jurisdiction of the municipal or city courts was enlarged in virtue of the amendment of section 87(c), cannot be taken as a repeal or withdrawal of the jurisdiction conferred on the court of first instance. Not only is implied repeal disfavored by the law, but also, it is a cardinal principle that a statute must be so construed as to harmonize all apparent conflicts, and give effect to all its provisions whenever possible.

"Actually, there is nothing irreconcilable between sections 44(f) and 87(c) of the Judiciary Act.

"As therein provided, the court of first instance was given original jurisdiction over cases where the penalty prescribed by law is imprisonment for more than 6 months or fine of more than P200.00; the justices of the peace and municipal or city courts of chartered cities, over cases where the penalty is imprisonment for not more than 3 years, and fine of not more than P3,000.00. In other words, where the prescribed penalty is imprisonment for more than 6 months, but not exceeding 3 years, or fine of more than P200.00 but not exceeding P3,000.00 the justice of the peace or municipal court only has concurrent (and not exclusive) original jurisdiction with the court of first instance. And, it may be stated that this concurrent jurisdiction between the inferior courts and the court of first instance was not provided for the first time in Republic Act No. 3828. Under Republic Act 2613, crimes the penalties for which do not exceed 3 years, or fine of not more than P3,000.00, were specifically placed within the jurisdiction of the justice of the peace and municipal courts, concurrent with the court of first instance.

"It follows, therefore, that the exclusive original jurisdiction of the justice of the peace and municipal courts is confined only to cases where the prescribed penalty is imprisonment for 6 months or less, or fine of P200.00 or less, whereas, the exclusive original jurisdiction of the court of first instance covers cases where the penalty is incarceration for more than 3 years (or 6 years in the case of city courts and municipal courts in provincial capitals), or fine of more than P3,000.00 (or P6,000.00 in proper cases), or both such imprisonment and fine. Between these exclusive jurisdictions lies a zone where the jurisdiction is concurrent. This is the proper construction to be placed on the provisions involved herein, regardless of what may have been the

prior rulings on the matter."

The offense of grave oral defamation which carries a maximum penalty of prision correccional in its minimum period (or incarceration not exceeding 2 years and 4 months) falls within the above-described zone of concurrent jurisdiction. Consequently, the court a quo did not err in assuming jurisdiction.

2. Doriquez likewise contends that the filing a the infor-mation for discharge of firearm has placed him in peril of double jeopardy as he had previously been charged with the offense of alarm and scandal in a complaint filed in the municipal court of Batad, Iloilo, upon the same facts which constitute the basis of the indictment for discharge of firearm. The said complaint, which was allegedly dismissed without his consent, recites

"That on or about 12:00 p.m., April 21, 1964, at the gate in front of the Municipal Building, Poblacion, Batad, Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there wil-fully, unlawfully and feloniously with deliberate intent to cause alarm in the public, discharge his License Revolver caliber .22 SN-368383 one on the ground and one into the air within the town limits and without any justifiable purpose thus causing alarm upon the general public."

This plea of Doriquez is obviously untenable.

For double jeopardy to attach in his favor, the accused must prove, among other things, that there is "identity of offen-ses," so that, in the language of section 9, Rule 117 of the Re-vised Rules of Court, his "conviction or acquittal x x x or the dismissal of the case [without his express consent] shall be a bar to another prosecution for the same offense charged or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information." It is altogether evident, however, that the offense of discharge of firearm is not the crime of alarm and scandal, nor is it an at-tempt or a frustration of the latter felony. Neither my it be asserted that every crime of discharge of firearm produces the offense of alarm and scandal. Nor could the reverse situation be true, for the less grave felony of discharge of firearm does not include or subsume the offense of alarm and scandal which is a light felony.

Although the indictment for alarm and scandal filed under article 155(1) of the Revised Penal Code and the information for discharge of firearm instituted under article 258 of the same Code are closely related in fact (as the two apparently arose from the same factual setting, the firing of a revolver by the accused being a common element), they are definitely diverse in law. Firstly, the two indictments do not describe the same felony - alarm and scandal is an offense against public order while discharge of fire-arm is a crime against persons. Secondly, the indispensable ele-ment of the former crime is the discharge of a firearm calculated to cause alarm or danger to the public, while the gravamen of the latter is the discharge of a firearm against or at a certain person, without intent to kill.

The plea of double jeopardy cannot therefore be accorded merit, as the two indictments are perfectly distinct in point of law howsoever closely they may appear to be connected in fact.[10]

It is a cardinal rule that the protection against double jeo-pardy may be invoked only for the same offense[11] or identical offense.[12] A single act may offend against two (or more) entirely distinct and unrelated provisions of law, and if one provision requires proof of an additional fact or element which the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other.[13] Phrased otherwise, where two different laws (or articles of the same code) define two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other.[14]

In the case at bar granting that the two indictments arose from the same act - a contention traversed by the State -

they describe and constitute, nevertheless, essentially different felonies having fundamentally diverse indispensable elements. Hence, there can be no such "identity of offenses" as would support the suggestion that double jeopardy has ensued. The trial judge, therefore, did not commit abuse of discretion in refusing to dismiss the information for discharge of firearm.

In sum, we hold that the instant appeal is premature, and that - even if it were treated as a petition for certiorari - the contentions and arguments of the appellant cannot be accorded credit.

ACCORDINGLY, the present appeal is dismissed. This case is hereby ordered remanded to the court of origin for immediate trial on the merits. Costs against the appellant.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

[1] Bairan vs. Tan Siu Lay, et al., L-19460, December 28, 1966, 18 SCRA 1235; People vs. Manuel, L-6794 & L-6795, August 11, 1954; Antonio vs. Samonte, L-15410, April 26, 1961.

[2] Harrison Foundry and Machinery and Chua vs. Harrison Foundry Workers' Association, L-18432, June 29, 1963; see also Fuster vs. Johnson, 1 Phil. 670; Philippine Refining Co., Inc. vs. Ponce, et al, 99 Phil. 269.

[3] Hodges vs. Villanueva, 90 Phil. 255; Goat vs. Hugo, 93 Phil. 613; People vs. Aragon, 94 Phil. 357, 360.

[4] L-21975, June 13, 1968.

[5] Moran (1963 edition), p. 353, citing Sitchon vs. Sheriff of Occidental Negros, 80 Phil. 397.

[6] Harrison Foundry and Machinery and Chua vs. Harrison Foundry Workers' Association, supra, note 2.

[7] L-25922, June 30, 1967, 1967E PHILD 771, 20 SCRA 597.

[8] L-21686, April 16, 1968.

[9] L-26563, April 16, 1968.

[10] Gavieres vs. U.S., 41 Phil. 961, citing Burton vs. United States (202 U.S. 344).

[11] People vs. Cabrera, 43 Phil. 82; U.S. vs. Vitog, 37 Phil. 42; U.S. vs. Capurro, 7 Phil. 24; U.S. vs. Ching Po, 23 Phil. 578; People vs. Gavieres, supra, note 10.

[12] See 4 Moran (1963 edition), pp. 212-220.

[13] See People vs. Bacolod, 89 Phil. 621; People vs. Capurro, supra, note 11.

[14] People vs. Alvarez, 477 Phil. 472.

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