

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. SERGIO DAGATAN ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-4396. October 30, 1951*

Ponente: PARAS, C.J.

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On October 6, 1937, an information for murder was filed in the Court of First Instance of Cebu (criminal case No. 1095) against Julio Dagatan, Sergio Dagatan and Saturnino Dagatan. According to counsel for the accused, although the parties had long presented their respective evidence, the case has remained undecided. The records were destroyed during the last war. Nothing was done with the case until February 22, 1949, when the provincial fiscal of Cebu filed a petition for reconstitution of the original records. At the hearing of the petition for reconstitution, counsel for the accused did not appear. Whereupon the Court of First Instance of Cebu directed said counsel to produce copies of all pertinent papers in his possession within five days from notice. As counsel for the accused failed to do so, a new information for murder was filed against Sergio Dagatan and Saturnino Dagatan. Julio Dagatan was not included, because he was already dead. The provincial fiscal filed an amended information on August 8, 1949, to which the accused pleaded not guilty on February 16, 1950. Counsel for the accused filed a motion to quash the information on the ground of double jeopardy. From the order of the Court of First Instance of Cebu of October 31, 1950, dismissing the information, the Government has appealed.

The dismissal complained of was based upon the following theory: "The Court is, therefore, inclined to conclude as it hereby concludes that to subject the defendants now to the requirements of a new trial under the new information would be tantamount to placing them twice in jeopardy for the same offense."

Section 9, Rule 113, of the Rules of Court provides that "when a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the 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 very clear that there can be no double jeopardy where there has been no conviction, acquittal, dismissal or termination in a former case for the same offense. No pretense is made in the case at bar that the defendants were ever acquitted or convicted in Criminal Case No. 1095, or that said case was ever dismissed or otherwise terminated without the consent of the defendants. Upon the other hand, it is admitted that the records were destroyed during the war without the case having been decided. In such a situation the remedy of the parties is reconstitution in conformity with law (Act No. 3110 and Rule 124, section 5, paragraph [h], of the Rules of Court). The provincial fiscal of Cebu therefore took the proper step when he filed on February 22, 1949, a petition for reconstitution; and there is absolutely no allegation that said petition was out of time. Indeed, under Republic Act No. 441, the period for reconstituting destroyed judicial records was extended up to June 7, 1951.

In the cases of *People vs. Comon*, Criminal Case No. 4798 of the Court of First Instance of Surigao, Resolution of October 8, 1948, and *Ramos vs. Director of Prisons*, G. R. No. L-3017, Resolution of July 22, 1949, we already authorized the filing of new informations against the accused in view of the loss or destruction of the records and the impossibility of reconstitution.

In the present case, there might have been a delay that has worked hardship or disadvantage on the accused, but the same cannot be attributed solely to the Government, since reconstitution is as much the duty of the prosecution as of the defense (*Gunabe vs. Director of Prisons*, 44 O. G. 1244)[1]. Again, if it be claimed that decision of the former case was unreasonably delayed, the accused had the ample remedy of mandamus to compel the lower court to render the necessary judgment (*Talabon vs. Iloilo Provincial Warden*, 44 O. G., No. 11, p. 4326)[2].

The following passage from the decision of this Court in *U. S. vs. Laguna*, 17 Phil. 532, 540, has full application to the case now before us: "Every person who finds himself in a court of justice, in whatever capacity, must hold himself while there subject to those unforeseen events which suddenly and unavoidably intervene and change the whole aspect of things. The sickness or death of the judge, or of counsel for the prosecution, the destruction by fire or flood of the court-house and all the records and evidence of the pending trial—any of these things are sufficient to interrupt the course of the proceedings and to require that they be begun anew. Such events weigh equally against all. As no one can be charged with their occurrence, so no one can legally lose or profit by their results. While the law protects persons charged with crime from the unjust and arbitrary acts of man, there is no shield which may be interposed against the tyranny of unforeseen events. Until the proceedings which, under the system which the law provides, constitute his trial are terminated, the happening of an unforeseen event which renders the continuance of his trial for the time impossible, as it can not be used for his conviction, can not be urged for his absolution. As the burning of this court-house with all the criminal records which it contains could not be used as a basis for the affirmance of the conviction of all those whose causes are pending in this court, so the same event could not be urged as a reason for the delivery of such persons from jail on the ground that a retrial would be a second jeopardy."

Wherefore, the appealed order is hereby reversed and the case remanded to the Court of First Instance of Cebu for further proceedings. So ordered without costs.

Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, and Jugo, JJ., concur.

[1] 77 Phil., 993.

[2] 78 Phil., 599.

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