

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. G. JESUS B. RUIZ, PRESIDING JUDGE, BRANCH I, COURT OF FIRST INSTANCE, FIRST JUDICIAL DISTRICT, TUGUEGARAO, CAGAYAN AND RODRIGO MA...

G.R. No. L-43672. January 31, 1978

Ponente: FERNANDO, J.

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FERNANDO, J.:

To state the question raised in this mandamus proceeding is to render evident why the Comment of Solicitor General Mendoza[1] was quite emphatic as to its being devoid of support in law. The prosecution in a criminal case for homicide, apparently dissatisfied with the decision of respondent Judge Jesus B. Ruiz of the Court of First Instance of the First Judicial District stationed in Tuguegarao, Cagayan, convicting private respondent Rodrigo Mamanao of homicide but finding him entitled to the benefits of incomplete self-defense, there being unlawful aggression from the victim and no provocation on his part, filed a notice of appeal. More specifically, the objection was to the penalty imposed of six months and one day and the indemnity to the heirs of the deceased fixed at P4,000.00. Respondent Judge having failed to honor such notice of appeal, he was sought to be compelled by this petition to comply with what the prosecution considered "a purely ministerial act." [2] As was pointed out in the aforesaid Comment, *People v. Ang Cho Kio* [3] is squarely in point. In that 1954 decision, this Tribunal, through Justice Pablo, explicitly ruled: "Creemos que en el caso presente se pone al acusado en doble jeopardy, esto es, en el peligro de recibir la condena de reclusion perpetua despues de haber sido condenado ya por el juzgado inferior a una pena menor. Por este peligro, el ministerio fiscal no puede apelar, de acuerdo con el articulo 2 de la Regla 118 y siguiendo la garantia constitucional de que 'no se pondra a una persona el peligro de ser castigada dos veces por la misma infraccion' on en jeopardy." [4]

The petition must fail.

1. It is indeed surprising that Assistant Fiscal Teodoro L. Hernando, who prepared and signed the petition, [5] could so confidently assert that he could rely on Rule 122 of the Revised Rules of Court. He completely ignored Section 2 which reads thus: "The People of the Philippines can not appeal if the defendant would be placed thereby in double jeopardy. In all other cases either party may appeal from a final judgment or ruling or from an order made after judgment affecting the substantial rights of the appellant." [6] He likewise ignored the explicit ruling in *Ang Cho Kio*. In *People v. Paet*, [7] decided two years later, Justice Montemayor, speaking for the Court reaffirmed such a doctrine: "With the view we take of the propriety and legality of the appeal, we find it unnecessary to go into the merits of the contention of the parties, although it may not be out of place to state that according to the decision of June 10, 1955, as well as the appealed resolution, the penalty imposed which did not include the confiscation of the amount of \$3,140, was upon the recommendation of the prosecution itself. In the first place, the confiscation or forfeiture of the above mentioned sum would be an additional penalty and would amount to an increase of the penalty already imposed upon the accused. To reopen the case for the purpose of increasing the penalty as is sought in the Government's appeal, would be placing the accused in double jeopardy,

and under Rule 118, section 2 of the Rules of Court, the Government cannot appeal in a criminal case if the defendant would be placed thereby in double jeopardy." [8]

2. There ought to have been awareness on the part of Assistant Provincial Fiscal Hernando that on at least two occasions, the Ang Cho Kio ruling was sought to be reconsidered, but each time it failed. In *People v. Pomeroy*, [9] the then Justice, later Chief Justice, Concepcion's explained why: "The prosecution in the case at bar urges a reexamination of the question decided in the Ang Cho Kio cases and a reconsideration of the view therein expressed by this Court. To our mind, however, the reasons advanced by the Solicitor General in support of his pretense are not sufficiently weighty to warrant a reversal of said view which is a mere corollary of the practice established in the Philippines and in the United States, for so long a time as to form part and parcel, not merely of the settled jurisprudence, but, also, of the constitutional law, in both jurisdictions." [10] In *People v. Arinso*, [11] it was the same fate that attended such a move.

3. The tone of confidence quite marked in the petition was most certainly unwarranted. Assistant Provincial Fiscal Hernando and Provincial Fiscal Bello would have been well-advised had they exerted greater efforts to acquaint themselves with the state of the law. They must ever keep in mind that decisions of this Court are authoritative and therefore call for deference and respect. Moreover, as appealed criminal cases, when allowable under existing legal norms, are handled by the Office of the Solicitor-General, it certainly would have been dictated by prudence, to say the least, if that dignitary were consulted. Then blunders of this kind would have been avoided. The prosecutors responsible for this petition would have been spared the mild reproof implicit in the comment of Solicitor-General Mendoza, arising from their inadequate grasp of controlling doctrines, especially those of constitutional dimension. [12]

WHEREFORE, the petition for mandamus is dismissed. No costs.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

Santos, J., is on official leave.

[1] He was assisted by Assistant Solicitor General Santiago M. Kapunan and Solicitor Celso R. Ylagan.

[2] Petition, 4.

[3] 95 Phil. 475.

[4] *Ibid*, 480-481.

[5] It was given the approval of Acting Provincial Fiscal Felix J. Bello.

[6] Section 2 of Rule 122 of the Revised Rules of Court. This Section was formerly Section 2 of Rule 118 of the original Rules of Court.

[7] 100 Phil. 357 (1956).

[8] *Ibid*, 359-360. *People v. Sanchez*, 101 Phil. 745 (1957); *People v. Exconde*, 101 Phil. 1125 (1957); and *People v. Revil*, 104 Phil. 1043 (1958) adhered to the Ang Cho Kio pronouncement.

[9] 97 Phil. 927 (1955).

[10] *Ibid*, 940.

[11] 99 Phil. 583 (1956).

[12] According to Article IV, Section 22 of the Constitution: "No person shall be twice put in jeopardy of punishment for the same offense. * * *" Cf. People v. Montemayor, L-29599, January 30, 1969, 26 SCRA 687.

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