

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
ARMANDO FAJARDO Y GALANG AND VICENTE LIWANAG Y
MARCELO, DEFENDANTS AND APPELLEES.**

G. R. No. L-18257. June 30, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Armando Fajardo y Galang and Vicente Liwanag y Marcelo were charged in the Court of First Instance of Manila with violation of Section 878 of the Revised Administrative Code, in connection with Section 2692 thereof, under an information which reads:

"That on or about the 19 th day of June 1960, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping each other, did then and there wilfully and unlawfully have in their possession and under their custody and control one (1) home made revolver, Paltik, 22 caliber without ammunition, without having first secured the necessary license or permit therefor."

Upon arraignment both of the defendants pleaded not guilty. More than six months thereafter they filed a motion to quash on the grounds that:

"The facts charged in the said information do not constitute an offense against one of the two accused for the reason that two (2) persons cannot be held responsible for the illegal possession of One (1) Paltik as it cannot be actually possessed by both of them at the same time, it being well settled that the rule of conspiracy in the Revised Penal Code is not applicable to violations of any provision of the Revised Administrative Code.

"Paltik, a home made revolver, is not a firearm for which a license or permit can be issued to its possessor and, therefore, it is not a 'firearm' contemplated within the purview of Section 878 in connection with Section 2692 of the Revised Administrative Code as amended by Commonwealth Act No. 56, as further amended by Republic Act No. 4. A Paltik with ammunition is a 'deadly weapon'; without ammunition, it is merely a 'weapon'."

and prayed that:

"The information in the above-entitled case be quashed or in fairness to one of the accused, a re-investigation of this case be ordered with the object in view of determining the true person criminally liable and dropping from the information the innocent one."

Acting on the motion and the assistant fiscal's opposition thereto, the court issued an order as follows:

"Finding the motion to quash of defendant dated February 14, 1961, to be meritorious, the Assistant Fiscal is hereby ordered to file an amended information, within five days from receipt of this order, otherwise this case will be dismissed."

Upon failure of the assistant fiscal to file an amended information, the court on March 13, 1961 ordered the case dismissed provisionally with costs de oficio and directed the release of the accused.

The State appealed and now claims that the lower court erred (1) in entertaining the motion to quash the information after the defendants had been arraigned and had pleaded not guilty; (2) in holding that the motion to quash was meritorious and in ordering the filing of an amended information; and (3) in dismissing the case and ordering the release of defendants from custody.

Defendants, however, argue that the prosecution may not appeal because they would be placed in double jeopardy.

An appeal by the prosecution in a criminal case is not available if the defendant would be placed thereby in double jeopardy (Rule 118, Section 2, Revised Rules of Court). 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 (Section 9, Rule 117, *id.*).

There can be no question that the information was sufficient with respect to both appellees. While no license or permit may be issued for a "paltik", it is, nevertheless, a "firearm" as the term is used in the Revised Penal Code, which "includes rifles, muskets, carbines, shotguns, revolvers, pistols, and all other deadly weapons from which a bullet, ball, shot, shell, or other missile may be discharged by means of gunpowder or other explosive" (Section 817). A "paltik" discharges bullets by means of gunpowder.

To be guilty of the crime of illegal possession of firearms, one does not have to be in actual physical possession of a firearm. The law does not punish physical possession alone but possession in general, which includes not only actual physical possession but also constructive possession, or the subjection of the thing to the owner's control (*People vs. Villanueva*, 43 O.G. 1271). Since the information charged both appellees with having conspired and helped each other in possessing the firearm, both could have been convicted of that crime, even if only one was in actual physical possession of the firearm.

The decisive issue here is whether the case against the accused was dismissed or otherwise terminated with their express consent.

The record does not reveal that appellees expressly agreed to the dismissal of the information as ordered by the trial Judge or that they performed any act which could be considered as express consent within the meaning of the rule. While they did file a motion asking that the case be quashed or that a reinvestigation thereof be ordered, the court granted neither alternative. What it did was to order the prosecution to amend the complaint. This order was in effect a denial of the motion to quash; and it was only after the prosecution failed to amend that the court dismissed the case on that ground. Consequently, even under the theory enunciated in some decisions of this Court,[1] that if a valid and sufficient information is erroneously dismissed upon motion of the defendant he is deemed to have waived the plea of double jeopardy in connection with an appeal from the order of dismissal, appellees here are not precluded from making such plea.

WHEREFORE, the appeal is dismissed, with costs de oficio.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

[1] *People vs. Salico*, 84 Phil. 722; *People vs. Acierto*, 92 Phil. 534; *People vs. Reyes*, 98 Phil. 646; *People vs. Casiano*, L-15309, February 16, 1961; and *People vs. Archilla*, L-15632, February 28, 1961.

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