

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. PASCUAL LABATETE, DEFENDANT AND APPELLEE.

G.R. No. L-12917. April 27, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from an order of the Court of First Instance of Camarines Sur, Hon. Perfecto R. Palacio, presiding, dated July 11, 1957, denying the fiscal's motion to reconsider a previous order of the court dated March 14, 1957 denying the admission of an amended information presented by the fiscal on March 13, 1957. The order of denial issued by the court is based on the ground that the presentation of an amended information places the accused in double jeopardy.

The original information filed in this case reads as follows:

"That on or about January 27, 1953 in the municipality of Del Gallego, province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the accused, herein, obtained from complainant Genoveva Malinao P400 giving as a security to her for the payment thereof within two years, the improvements and products of his property under Original Certificate of Title No. 484; and after the stipulated term in which he failed to redeem the security, by reason thereof he forfeited to the complainant all said improvements and products, and in order to defraud and prejudice said, complainant by means of deceit and fraud, said accused, on December 23, 1955 in Del Gallego, Camarines Sur, did, then and there, intentionally, maliciously, and criminally manage and cause to have extended another period of six months to redeem said security asking additional amount of P1900 indebtedness or a total of P2,300, only to have the said security violated by said accused, in which he, on February 28, 1956, did, then and there, criminally and feloniously transfer by way of mortgage, to the Rehabilitation Finance Corporation for P950 not only the improvements and products previously encumbered to complainant Genoveva Malinao but the title of said property also, without first discharging said previous indebtedness and mortgage of the improvements and products to complainant Genoveva Malinao to her great actual damage and prejudice in the amount of P2,300 plus P1,000 consequential damage thereof."

The above information was read to the accused on January 7, 1957. The accused pleaded not guilty to the charge, so the trial was commenced on the same date with the presentation of the offended party as a witness. The testimony of the offended party, however, was suspended because the accused presented a motion to dismiss the information (dated January 11, 1957), on the ground that the facts alleged therein do not constitute a crime. The motion to dismiss the information alleges that inasmuch as the properties supposedly mortgaged to the complainant or offended party are merely the products and improvements on a certain parcel of land, not the land itself, the transaction between the parties could not be a mortgage; furthermore, that as the contract was not recorded, the alleged mortgage could not be valid, so that the subsequent contract by which the land was mortgaged to the Rehabilitation Finance Corporation is not inconsistent with the previous mortgage in favor of the offended party of the products and improvements on the land. The motion to dismiss was set for hearing with the opposition of the fiscal and the court on February 4, 1957 held that the facts alleged in the information do not

constitute the crime of estafa. It, therefore, ordered the dismissal of the information.

A motion to reconsider the order of dismissal was presented but the same was denied, so the fiscal presented a motion to admit an amended information. In this amended information a change is made, as it is alleged therein that the accused gave as security for the payment of his loan the land under Original Certificate of Title No. 484, not only the products and improvements thereon, while the indebtedness in favor of the offended party was still unpaid and unsatisfied, and that, thereafter, the accused mortgaged the property to the RFC of Naga City. At first the court admitted the amended information, no objection having been filed, but subsequently, upon motion of the accused, it reconsidered its order admitting the said amended information. The fiscal tried to have this order denying the admission of the amended information revoked, but to no avail, hence this appeal.

The trial had begun on the original information when the amended information was filed, so the rule applicable to the case is that stated in the first paragraph of Section 13 of Rule 106, which provides:

"Sec. 13. Amendment.—The information or complaint may be amended, in substance or form, without leave of court, at any time before the defendant pleads; and thereafter and during the trial as to all matters of forms, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the defendant."

A reading of both the original and the amended information clearly shows that the latter changes the facts or the ground of responsibility for which the accused is indicted; for whereas in the original information only the improvements and products are alleged to have been mortgaged, in the amended information both the land and the products and improvements are alleged to have been mortgaged to the offended party. This is a substantial amendment changing the acts imputed to the accused as constituting an offense and is not allowed as held in the case of *People vs. Zulueta*, 89 Phil., 880. If the amended information were to be admitted, the accused will be deprived of his defense of double jeopardy because by the amended information he is sought to be made responsible for the same act of borrowing on a mortgage for which he had already began to be tried and acquitted by the dismissal of the original information. As the law permits amendment only when amendment can be done without prejudice to the rights of the defendant, it is very clear that the admission of the amended information would prejudice the rights of the defendant, more especially his right to the defense of double jeopardy.

In the brief of the Solicitor General the admission of the amended information is sought to be justified on the ground that as the accused himself had asked for the dismissal of the information, his action in having the case dismissed constitutes a waiver of his constitutional right not to be prosecuted again for the same offense. The cases cited by him to support his claim are the following: *Gandicela vs. Hon. Lutero*, 88 Phil., 299; *People vs. Marapao*, 85 Phil., 832 and *People vs. Salico*, 84 Phil., 722; 47 Off. Gaz. (4) 1765.

In the first case (*Gandicela vs. Lutero*, supra), we held that the dismissal of a case, because the fiscal could not produce his evidence at the trial, after a denial of his motion for postponement, is a bar to a prosecution for the same offense although it was granted on the express motion of the accused because it was actually an acquittal. This case is no authority for the Solicitor General's contention in the case at bar. Neither is the case of *People vs. Marapao*, supra, applicable because the first case which was dismissed was for slight physical injuries, while the second was for an assault against a person in authority—a different offense.

We now come to the case of *People vs. Salico*, supra. It is true, as Chief Justice Moran has indicated in his comments on the Rules of Court (2 Moran, 1957 ed., p. 798) that the principle contained therein has been abandoned by us. We will now proceed to explain our reasons, for doing so.

In that case, after the prosecution had closed its evidence and before the defendant presented his own, the defendant moved for the dismissal of the case on the ground that the prosecution had failed to prove that the crime

(homicide) was committed within the jurisdiction of the trial court. The trial court granted the motion and so the fiscal appealed from the order of dismissal. The majority decision says that the trial court should have taken judicial notice of the fact that the municipality of Victorias, wherein the crime was alleged to have been committed, was within its jurisdiction. The issue to be decided, as stated by the majority itself, is as follows:

"The only question which is necessary for us to determine is whether or not the appeal by the prosecution from the order of the Court of First Instance in the present case would place the defendant in double jeopardy. We hold that it does not, for the following reasons: First, because by the dismissal of the case by the court below upon motion of the defendant, the latter has not been in jeopardy; second, because the appeal by the prosecution in the present case would not place the defendant in double jeopardy. And third, because assuming *arguendo* that the defendant had been already in jeopardy in the court below and would be placed in double jeopardy by the appeal, the defendant has waived his constitutional right not to be put in danger of being convicted twice for the same offense." (People vs. Salico, *supra*.)

The provision of law upon which the legal conclusion of the majority is based is Section 9 of Rule 113, which provides:

"Sec. 9. Former conviction or acquittal or former jeopardy.— 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 will be noted that there are three cases where jeopardy would lie according to the above provision, namely, conviction, acquittal, or dismissal or other termination of the case without the express consent of the accused. Note that the phrase without the express consent of the accused can not refer to conviction or acquittal, because in case of conviction after trial and without a plea of guilty, the termination is against the express consent of the accused. The only conviction which would be had with the express consent of the accused would be when a plea of guilty has been entered. When the defendant is acquitted after trial, it is always upon petition of the accused. If we were to make the said phrase (without the express consent of the accused) applicable to acquittal, there would be no case of jeopardy even when there is acquittal, because the acquittal will always be with the express consent, because ordinarily granted upon motion of, the accused, So it is that the phrase with the express consent of the accused can refer only to a dismissal or other termination, not a conviction or acquittal.

What, then, is a dismissal with the express consent of the accused, which is not an acquittal? Such dismissal, in the first place, must not be one where the court has no jurisdiction, or where the information is not valid or sufficient to sustain a conviction, for in these cases no jeopardy attaches by express provision of the rule. Also, the dismissal must be after the defendant has pleaded, as also provided expressly in the rule. The above underlined phrase did not exist in General Orders No. 58. Under the old criminal procedure jeopardy did not attach till the actual trial or the investigation of the offense had commenced by the calling of a witness. However, the old rule was modified, in the present rules by considering that the plea of the defendant, not the calling of the first witness, is the precise moment when jeopardy attaches. We must also note that the dismissal is before the judgment (of acquittal or conviction), as expressly stated in Section 28 of General Orders No. 58, which reads as follows:

"Sec. 28. A person can not be tried for an offense, nor for any attempt to commit the same or frustration thereof, for which he has been previously brought to trial in a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, after issue properly joined, when the case is dismissed or otherwise terminated before judgment without the consent

of the accused."

One case contemplated by the rule as a dismissal or termination of the case would be where the fiscal, upon the case being called for trial and after a plea has been entered, states that he is not ready to proceed and the accused, who is not agreeable to a postponement, is willing to have the case dismissed provisionally. The dismissal is provisional and there would not be any jeopardy at all. Another is when after plea the accused asks for another investigation, or the fiscal asks for it, and the court which does not want to have a case pending because of the possibility that there may be no sufficient evidence ultimately, dismisses the case. Still another is where the accused is to be used as State witness, and is willing to act as such, so the case is dismissed. Of course, he will still be subject to prosecution if he fails to comply with his commitment. For the moment we cannot think of any other instance; but similar instances may happen when the dismissal is no bar to another prosecution. It is similar to a dismissal without prejudice" in civil cases.

We can see that none of the above possibilities existed in the case of Salico. The judgment was not a provisional dismissal of the case entered with a possibility of filing of a subsequent one. The judgment of the trial court was in fact an acquittal because of failure on the part of the fiscal to prove that the crime was committed within the jurisdiction of the court. The judgment was in fact a final judgment of acquittal. The mere fact that the accused asked for his acquittal after trial on the merits, is no reason for saying that the case was "dismissed" with his express consent and he may again be subjected to another prosecution.

We again call attention to the fact that judges should be careful in the use of the term "dismissal" and not use the term in cases where there has been a trial on the merits and the court finds that the evidence is insufficient, in which case the judgment that should be entered is one of acquittal, not merely of dismissal. Even where the fiscal fails to prosecute and the judge "dismisses" the case, the termination is not real dismissal but acquittal because the prosecution failed to prove the case when the time therefor came.

Going now to the case at bar, we find that the trial court found that the accused could not be found guilty of any offense under the information. The judgment entered was not one of dismissal but one of acquittal, and whether the judgment is correct or incorrect, the same constitutes a bar to the presentation, of the amended information sought to be introduced by the fiscal. The order of the court denying the admission of the amended information is, therefore, in order and is hereby affirmed. Without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Endencia, Barrera, and Gutierrez, David, JJ., concur.

Padilla, J., on leave.

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