

PEOPLE OF THE PHILIPPINES, AND ASST. PROV’L. FISCAL F. VISITACION, JR., PETITIONERS, VS. HONORABLE MIDPANTAO L. ADIL, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF ILOILO, BRANCH ...

G.R. No. L-41863. April 22, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari to set aside the orders of respondent judge dated September 22, 1975 and October 14, 1975 dismissing Criminal Case No. 5241 of the Court of First Instance of Iloilo against private respondent Margarito Fama, Jr., said dismissal being predicated on the ground of double jeopardy, in view of the dismissal of a previous charge of slight physical injuries against the same respondent for the same incident by the Municipal Court of Janiuary, Iloilo in Criminal Case No. 3335, notwithstanding that in the information in the first-mentioned case, it was alleged that the injuries sustained by the offended party, aside from possibly requiring medical attendance from 5 to 9 days "barring complications", as was alleged in the information in Criminal Case No. 3335, had left "a permanent scar and deform(ed) - the right face of (said offended party) Miguel Viajar."

The first criminal complaint filed against respondent Fama Jr. on April 15, 1975 (Case No. 3335) was as follows:

"That at about 5:30 o'clock in the afternoon of April 12, 1975, at Aquino Nobleza St., Municipality of Janiuary, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, while armed with a piece of stone, did then and there willfully, unlawfully and feloniously, assault, attack and use personal violence upon one Miguel Viajar by then hurling the latter with a stone, hitting said Miguel Viajar on the right cheek, thereby inflicting physical injuries which would have required and will require medical attendance for a period from 5 to 9 days barring complication as per medical certificate of the physician hereto attached.

"CONTRARY TO LAW." (Pp. 93-94, Record)

Arraigned on July 7, 1975, the accused entered a plea of not guilty.

Meanwhile, on June 8, 1975, complainant Viajar filed a letter-complaint with the Provincial Fiscal of Iloilo charging Atty. Alfredo Fama, Raul Fama and herein respondent Margarito Fama, Jr. with serious physical injuries arising from the same incident alleged in above Criminal Case No. 3335. After conducting a preliminary investigation, under date of July 28, 1975, the Fiscal filed in the Court of First Instance of Iloilo an information, but only against respondent Fama Jr., (Case No. 5241) for serious physical injuries as follows:

"That on or about April 12, 1975, in the Municipality of Janiuary, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the said accused, with deliberate intent, and without any justifiable motive, armed with pieces of stone did then and there willfully, unlawfully and feloniously attack, assault and throw pieces of stone at Miguel Viajar, hitting him on the lower right eye which would heal from five (5) to nine (9) days barring complications but leaving a permanent scar and deforming on the right face of said Miguel Viajar.

"CONTRARY TO LAW." (Pp. 94-95, Record)

On August 1, 1975, Fama Jr. filed an urgent motion to defer proceedings in Criminal Case No. 5241, claiming that since he was already charged and pleaded not guilty in Criminal Case No. 3335, he would be in double jeopardy, if Case No. 5241 were to be prosecuted. This motion was opposed by the Fiscal and the Court required both parties to file their respective memorandum on the issue of double jeopardy.

In the meantime, the Fiscal, after filing Case No. 5241, sought the dismissal of Case No. 3335, but the Municipal Court did not act on said motion. Instead, the case was set for hearing, and in view of the postponements asked by the Fiscal in order to await the resolution of the issue of double jeopardy in Case No. 5241, on September 11, 1975, the following order was entered:

"Under our democratic and constituted system of government litigants before our courts of justice, plaintiffs and defendants, complainants and accused are entitled to the equal protection of our laws. More is an accused, the trial of his case has been repeatedly postponed for several times by this Court in the exercise of its sound discretion at the instance of the prosecution. So, when this case was called for hearing on the afternoon of September 1, 1975 the accused through counsel vigorously objected to another postponement and moved for the dismissal of the case against him. To grant another postponement as sought by the Fiscal against the vehement, strong and vigorous objection of the accused is to the mind of the Court, no longer an exercise of sound discretion consistent with justice and fairness but a clear and palpable abuse of discretion amounting to a serious denial to, and a grave violation of, the right of the accused to a speedy trial to which he is rightfully entitled to under Section 16 of Article IV, (Bill of Rights) of the Philippine Constitution.

"IN VIEW OF THE FOREGOING, the above-entitled case is hereby ordered dismissed. The Cash Bond posted by the accused is hereby ordered cancelled and released." (Pp. 96-97, Record.)

Whereupon, on even date, Fama Jr. filed an addendum to his memorandum in Case No. 5241 inviting attention to the above dismissal order and reiterating his theory of double jeopardy. On September 22, 1975, respondent court issued the impugned order sustaining the contention of double jeopardy and dismissing Case No. 5241. The prosecution's motion for reconsideration was denied in the other assailed order of October 14, 1975, respondent judge relying on the ruling laid down in *Peo. vs. Silva*, 4 SCRA 95.

In brief, what happened here was that when Case No. 3335 was filed in the inferior court of Janiuay, the charge against Fama Jr. had to be for slight physical injuries only, because according to the certification of the attending physician, the injuries suffered by the offended party Viajar, would require medical attendance from 5 to 9 days only "barring complications." Indeed, when the complaint was filed on April 15, 1975, only three days had passed since the incident in which the injuries were sustained took place, and there were yet no indications of a graver injury or consequence to be suffered by said offended party. Evidently, it was only later, after Case No. 3335 had already been filed and the wound on the face of Viajar had already healed, that the alleged deformity became apparent.

Now, expert evidence is not needed for anyone to understand that the scar or deformity that would be left by a wound on the face of a person cannot be predetermined. On the other hand, whether or not there is actually a deformity on the face of Viajar is a question of fact that has to be determined by the trial court. The only issue we are to resolve here is whether or not the additional allegation of deformity in the information in Case No. 5241 constitutes a supervening element which should take this case out of the ruling in *People vs. Silva* cited by respondent court.

In *Silva*, there was no question that the extent of the damage to property and physical injuries suffered by the offended parties therein were already existing and known when the prior minor case was prosecuted. What is

controlling then in the instant case is *Melo vs. People*, 85 Phil. 766, in which it was held:

"This rule of identity does not apply, however, when the second offense was not in existence at the time of the first prosecution, for the simple reason that in such case there is no possibility for the accused during the first prosecution, to be convicted for an offense that was then inexistent. Thus, where the accused was charged with physical injuries and after conviction the injured dies, the charge of homicide against the same accused does not put him twice in jeopardy."

So also is *People vs. Yorac*, 42 SCRA, 230, to the following effect:

"Stated differently, if after the first prosecution 'a new fact supervenes' on which defendant may be held liable, resulting in altering the character of the crime and giving rise to a new and distinct offense, 'the accused cannot be said to be in second jeopardy if indicted for the new offense.'"

In *People vs. Buling*, 107 Phil. 112, We explained how a deformity may be considered as a supervening fact. Referring to the decision in *People vs. Manolong*, 85 Phil. 829, We held:

"No finding was made in the first examination that the injuries had caused deformity and the loss of the use of the right hand. As nothing was mentioned in the first medical certificate about the deformity and the loss of the use of the right hand, we presume that such fact was not apparent or could have been discernible at the time the first examination was made. The course (not the length) of the healing of an injury may not be determined before hand; it can only be definitely known after the period of healing has ended. That is the reason why the court considered that there was a supervening fact occurring since the filing of the original information."

In other words, in the peculiar circumstances of this case, the plea of double jeopardy of private respondent Fama Jr., cannot hold. It was, therefore, a grave error correctible by certiorari for respondent court to have dismissed Criminal Case No. 5241.

ACCORDINGLY, the orders of September 22, 1975 and October 14, 1975 herein complained of are hereby set aside and respondent court is ordered to proceed with the trial and judgment thereof according to law. Costs against private respondent Fama Jr.

Fernando, (Chairman), Antonio, Aquino, and Concepcion, Jr., JJ., concur.

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