

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. HAROLD M. HERNANDO IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF ABRA, AND COSME CALIBUSO, ERNESTO CALIBUS...

G.R. No. L-55213. October 09, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this original Petition for Certiorari, the People seek to set aside 1) the Amended Decision of respondent Judge, dated August 1, 1980, acquitting herein respondents who were the accused in Criminal Case No. 1020, and 2) the Orders of August 21, 1980 and September 1, 1980 denying reconsideration.

The antecedental facts follow:

On March 20, 1979, the three private respondents and two others were charged with the crime of Frustrated Murder for having stabbed with a pointed bladed weapon one Romeo Dukinal, inflicting upon him a stab wound, thus performing all the acts of execution which would have produced the crime of Murder as a consequence were it not for the timely medical attendance rendered to said victim, which prevented his death.

After pleas of Not Guilty were entered, trial proceeded with the accused setting up the common defense of "general denial" by disclaiming knowledge and/or participation in the commission of the crime.

On July 10, 1980, respondent Judge rendered a Decision finding the guilt of the three private respondents proven beyond reasonable doubt and con-victing them of the crime charged. The other two accused had remained at large and were not tried. Supportive of the conviction, respondent Judge explained:

"The issue must be resolved in the affirmative side because no mount of general details as a defense can overcome or off-set the clear and positive identification (of all the accused as the perpetrators of the crime charged in the information) by the several witnesses of the prosecution especially Romeo Dukinal and William Gonzales who were the offended parties and at the same time eye-witnesses to the stabbing at about 4:30 P.M. of November 27, 1978, inside the premises of the beerhouse located at Modiit, Dolores, Abra; The act of Cosme Calibuso in ordering or commanding his co-accused 'to kill Dukinal and Gonzales and give them reminder' and in immediate response, they consentedly and simultaneously, one after the other, actually acted in conspiracy, stabbed and stoned their victims and as a result, Romeo Dukinal was stabbed by Rey Tubaña and the rest of the other accused stoned Dukinal and Gonzales; the act of one was, therefore, the criminal act and responsibility of all the said accused. The commission of the crime at bar by all the accused was also attended with evident premeditation because after two (2) successive request to borrow the motorcycle by Cosme Calibuso from Dukinal and the latter refusal because Cosme Calibuso was drunk, the latter uttered 'Vulva of your mother' and then followed 'Kill them and give them reminder', by the interval of the utterances which were made after the other in a considerable space of time, all the accused were already alerted and placed on reflection and had decided to undividedly respond to the order of their commander Cosme Calibuso and which resulted to the stabbing of Dukinal and the stoning of Gonzales.[1]

On July 18, 1980, the accused Cosme Calibuso and Ernesto Calibuso (the Calibusos) moved for reconsideration on the ground of variance between the crime committed and that actually proven at the trial.

Before respondent Judge could act thereon, the Calibusos, joined by the other respondent-accused, Rey Tabaña, presented an Amended Motion for Reconsideration and/or Motion for New Trial on July 23, 1980, based on newly discovered evidence and their common claim that another person had committed the crime charged. Attached to the aforesaid Motion was an Affidavit of Merit of Leonico Talingdan, who averred that it was William Gonzales who had committed the crime after a quarrel between him and the victim, and another Affidavit of Merit of Nory S. Fernandez, a waitress in the beerhouse, who confirmed the quarrel between those two individuals.

Reconsideration and/or new trial was opposed by the Trial Fiscal on July 24, 1980 on the ground that the facts sought to be established by the proposed testimonies of Talingdan and Fernandez were not newly discovered evidence, having been known to the accused even during the trial, and that they would not in any way alter the judgment of conviction.

The Motion for Reconsideration, the Amended Motion for Reconsideration and/or Motion for New Trial were jointly heard on July 25, 1980. The transcript of stenographic notes taken during said hearing, which respondent Judge attached to his Comment, dis-closes that in the course thereof, he had issued this verbal

"ORDER. Motion for reconsideration, for lack of merit, the same is hereby denied. New trial is given due course. You can present now your witness compañero."[2]

The Fiscal's Motion for Reconsideration thereof was denied with respondent Judge stating that the prosecution could cross-examine the witness, Leonico Talingdan.

On the witness stand, Talingdan reiterated substantially the same facts alleged in his Affidavit of Merit. The Fiscal endeavored to reserve the cross-examination for the main trial, the "hearing being only as to whether there is a prima facie case for new trial", but respondent Judge replied "No, this is now the hearing and the court will determine if the new trial is meritorious or not." [3] Thereafter, the following proceedings transpired:

"FISCAL BARBERO

Are we made to understand that the motion for new trial is already granted, Your Honor?

"COURT

Yes. You go ahead with your cross-examination, unless if you waive.

"FISCAL BARBERO

No we are not waiving, Your Honor.

"COURT

Alright, proceed."

The Fiscal then proceeded to cross-examine Leonico Talingdan lengthily.

On the same date of the hearing, July 25, 1980, respondent Judge issued the following Order:

"For lack of merit, the Motion for Reconsideration from the decision of this Court is hereby denied.

Set the promulgation of the decision on the basis of the new trial on August 1, 1980 at 8:00 o'clock in the morning.

SO ORDERED.

Bangued, Abra, July 25, 1980."[4]

On the date set, August 1, 1980, respondent Judge rendered an Amended Decision acquitting all of the accused, which is reproduced hereunder in full:

"AMENDED DECISION

Acting upon the motion for new trial and finding the same to be merit-orious, the same is hereby given due course.

The basis for new trial is upon the newly discovered witness or evidence in the person of Leonico Talingdan who, on July 25, 1980, in open court, testified as follows: That on November 27, 1978, in the afternoon together with Federico Buenavista were in the beer house at Modiit, Dolores, Abra, at about 3:00 o'clock in the afternoon; that they occupied a table and began ordering beer; that at about 4:30 that same afternoon, two persons or customers came inside the beer house in the person of Romeo Dukinal and William Gonzales who rode on a motorcycle. When these two persons had already parked their motorcycle they also entered the beer house and occupied another table and began ordering beer; their tables were near each other; afterwards, Romeo Dukinal and William Gonzales were talking in a loud voice and then Romeo Dukinal stood up and shouted: 'Vulva of your mother', addressed to his companion William Gonzales. The other customers inside the beer house were surprised and so the persons inside began to disperse; While the people inside were busy dispersing, Ernesto Calibuso and Rey Tubaña who were inside the kitchen of the beer house overheard the loud voices and shouts of Romeo Dukinal and William Gonzales who were at that time arguing each other as to who of them would pay for their bills in the beer house; hence, Ernesto Calibuso and Rey Tubaña went out of the kitchen and accosted and brought Romeo Dukinal and William Gonzales outside the beer house because they did not want trouble inside the beer house; the two were able to pacify Romeo Dukinal and William Gonzales and were taken outside the beer house; when Romeo Dukinal and William Gonzales were already outside the beer house, they continued quarreling with each other and Ernesto Calibuso and Rey Tubaña returned inside the beer house. Romeo Dukinal and William Gonzales continued quarreling and then William Gonzales said to Romeo Dukinal, 'If you do not stop, then I will give you something' and at the same time he unsheathed a knife placed on his waist and thrust it on the right chest of Romeo Dukinal; hence, the injury inflicted upon Romeo Dukinal and because it was not serious, the two (2) went together and rode on the same motorcycle and proceeded to the highway until they reached the Bangued Christian Hospital where Romeo Dukinal was treated. After Romeo Dukinal and William Gonzales had left the beer house, this witness and Federico Buenavista also left.

The witness was cross-examined by the Acting 1st Assistant Provincial Fiscal Carlos B. Barbero and after the cross examination, the defense submitted their case on new trial.

Issue: 'Whether or not the accused are prima facie guilty of the crime of Frustrated Murder as alleged in the Information.'

The testimony of Leonico Talingdan on new trial had completely erased any and all criminal liability and/or participations of the accused in the present case because said witness, had positively testified during said new trial that it was William Gonzales, the companion of Romeo Dukinal, who stabbed the latter and not any of the accused in this case. This testimony of Leonico Talingdan on new trial was never rebutted by the prosecution. Clearly, therefore, the charge of Frustrated Murder in the Information, if the Office of the Provincial Fiscal should have carefully investigated this case, it would have found out the correct culprit.

WHEREFORE, judgment is hereby rendered acquitting all the accused in the present case. With costs de oficio.

The bail bond of the accused posted by them for their provisional liberty during the pendency of this case are

hereby released and cancelled.

SO ORDERED.

Bangued, Abra, August 1, 1980"

The Fiscal moved for reconsideration on the following grounds:

"I. Amended Decision is contrary to law denying plain-tiff's fundamental right to due process;

II. Findings (of) Amended Decision are contrary to facts, not newly discovered not material and thus not sufficient to grant new trial."[5]

Respondent Judge denied reconsideration predicated on the doctrine of double jeopardy. The dispositive portion of said Order dated August 21, 1980, also challenged herein, read:

"WHEREFORE, the Provincial Fiscal is therefore directed to submit before this Court within 10 days from today a decision of the Honorable Supreme Court whereby a judgment of acquittal can be the subject matter of a motion for reconsideration. If, after the lapse of 10 days counted from today, and the prosecution cannot submit said decision, then the motion for recon-sideration will be DENIED.

SO ORDERED."[6]

On September 1, 1980, respondent Judge again denied reconsideration presumably for failure of the Fiscal to submit the Supreme Court Decision that was required. This Order is likewise assailed.

The issues presented for resolution in these Certiorari proceedings are:

"First, whether or not the petitioner People of the Philippines was deprived of its day in court without due process of law;

Second, whether or not the respondent judge acted without or in excess of jurisdiction and/or committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Amended Decision of August 1, 1980 and the Order dated September 1, 1980 deny-ing a motion for reconsideration thereof; and

Third, whether or not the granting of this petition would violate the right of the accused against double jeopardy."[7]

Upon the record, we are hard-pressed to find deprivation of due process of law. Petitioner con-tends that "while the counsels for the accused were allowed to argue fully in support of their motion for reconsideration and motion for new trial, the Fiscal was allowed to argue only against the motion for reconsideration." That contention is not supported by the aforequoted portions of the transcript taken during the hearing of July 25, 1980. Respondent Judge had stopped the Fiscal from proceeding with his argument because the Judge felt that the latter was going "too far" and was told to "go to the point directly." [8] Again, contrary to the prosecution contention, the Fiscal was given a chance to argue against the Motion for New Trial. In fact, he expounded:

"FISCAL BARBERO

The testimony of proposed witness Leonico Talingdan, Your Honor, tends to show that it was William Gonzales who stabbed the victim, and going over the motion for new trial, witness Leonico Talingdan is a first degree cousin of Cosme Calibuso and known to me personally being a neighbor in Lagangilang and Dolores, Abra. And we have seen him during the trial and in fact he was always here in court during the trial and in fact he is here now. Even during the trial, Your Honor, he was here. How could the defense say now that he is a newly discovered evidence."

True, respondent Judge forthwith proceeded to take Talingdan's testimony. However, the Fiscal was given all the

opportunity to cross-examine said witness.

It is not apt to state that the Order of July 25, 1980 resolved only the Motion for Reconsideration, not the Motion for New Trial. The verbal Order during the hearing held on said date stated in no uncertain terms "new trial is given due course." It was followed by the written Order, which explicitly ordained "set the promulgation of the decision on the basis of the new trial on August 1, 1980 x x x".

It is also inaccurate to aver that the Motion for New Trial was yet to be resolved when respondent Judge issued his Amended Decision on August 1, 1980. In said Judge's verbal Order during the hearing, heretofore quoted, he specifically ruled "New trial is given due course. You can present now your witness compañero." [9] But apparently, respondent Judge had forgotten what had transpired during the hearing for he prefaced the Amended Decision by stating: "Acting upon the motion for new trial and finding the same to be meritorious, the same is hereby given due course." While, in fact, misleading, the Trial Fiscal was present during the hearing, was informed that the new trial had been granted, and that the decision based thereon was to be promulgated on a certain date.

The reception of Talingdan's testimony on July 25, 1980 was actually, as events transpired, the new trial. The Fiscal had pointedly asked "are we made to understand that the motion for new trial is already granted, Your Honor?" To which the Court succinctly replied: "Yes, You go ahead with your cross-examination, unless if you waive." [10] If the Fiscal was desirous of presenting rebuttal evidence after the re-direct examination he could have asked the Court for permission to do so, but he did not.

We are not minded to conclude, therefore, that the prosecution was deprived of the right to assail the granting of the new trial either by asking for a reconsideration thereof and/or by filing a petition for certiorari therefrom. Between July 25, 1980, the date of the written Order, and August 1, 1980, the date set for the promulgation of the Decision "on the basis of the new trial", the Fiscal could have moved for reconsideration or filed a petition for Certiorari. But again, he did not.

Be that as it may, respondent Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when he granted new trial. The facts sought to be established by the testimonies of witnesses Talingdan and Fernandez could not be considered newly discovered evidence within the meaning of the law (Sec. 2(b), Rule 121, Rules of Court). They could have been discovered and produced during the trial with the exercise of reasonable diligence. They were forgotten evidence, which is not a ground for new trial. [11]

Moreover, more meticulous and careful evaluation would have disclosed that the proffered evidence could not, in any way, have altered the judgment. It could only affect the credibility of witnesses. It was essentially impeaching in character. [12] William Gonzales was himself the victim of stoning by the accused. He was a witness at the trial and pointed to the accused as the culprits. The defense had sufficient opportunity to turn the tables on him. And if, as testified to by Talingdan, William Gonzales had stabbed the victim, it is highly incredible that they would have ridden together on the same motorcycle going to the highway. On other hand, as stated in his original Decision, respondent Judge had categorically found that the offended parties Romeo Dukinal and William Gonzales had clearly and positively identified the accused as the culprits. The evidence introduced by the prosecution at the original trial was too strong to be overcome by a reproduction on the witness stand of the contents of the affidavits of the proffered witnesses. It was grave abuse of discretion, therefore, on the part of respondent Judge to have rendered the Amended Decision acquitting the accused. He should also be called to task for his lack of clear-cut procedures that led to confusion in the proceedings before him.

Notwithstanding, the error committed can no longer be rectified under the cardinal rule on double jeopardy. The judgment of acquittal in favor of an accused necessarily ends the case in which he is prosecuted and the same

cannot be appealed nor reopened because of the doctrine that nobody may be put twice in jeopardy for the same offense. Respondents have been formally acquitted by respondent Court, albeit erroneously. That judgment of acquittal is a final verdict. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of antrefois acquit.[13] The proceedings in the Court below were not an absolute nullity as to render the judgment of acquittal null and void. The prosecution was not without the opportunity to present its evidence or even to rebut the testimony of Leonico Talingdan, the witness on new trial. It cannot be justifiably claimed, therefore, that the prosecution was deprived of its day in Court and denied due process of law, which would have rendered the judgment of acquittal a nullity[14] and beyond the pale of a claim of double jeopardy. What was committed by respondent Judge was a reversible error but which did not render the proceedings an absolute nullity.

WHEREFORE, although respondent Judge had committed grave abuse of discretion in rendering his Amended Decision acquitting the accused, relief herein is barred by the fundamental principle of double jeopardy.

No costs.

SO ORDERED.

Makasiar, (Acting Chairman), Fernandez, Guerrero, and De Castro*, JJ., concur.

[1] Decision, Annex "B" of Petition, p. 13, Rollo.

[2] T.s.n., p. 7.

[3] T.s.n., p. 17.

[4] p. 29, Rollo.

[5] p. 32, Rollo.

[6] p. 34, *ibid.*,

[7] p. 146, *ibid.*

[8] T.s.n., p. 6.

[9] T.s.n., p. 7.

[10] T.s.n., p. 17.

[11] *People vs. Penesa*, 81 Phil. 398 (1948).

[12] *People vs. Evaristo*, 13 SCRA 172, 184 (1965); *Lee Cheng Poe*, 39 Phil. 466 (1919).

[13] *Com. vs. Goddard*, 13 Mass. 458.

[14] see *People vs. Balicasan*, 17 SCRA 1119 (1966).

* Justice Pacifico P. de Castro was designated to sit in the First Division, Justice Claudio Teehankee being on official leave.

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