

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
GAUDENCIO VERA, ET AL., DEFENDANTS, TAGUMPAY A.
NANADIEGO, DEFENDANT-APPELLEE.**

G.R. No. L-26539. February 28, 1990

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal interposed by the People of the Philippines from the Order[*] of the then Court of First Instance of Quezon, Ninth Judicial District, Branch II, in Criminal Case No. 12145 dated January 23, 1965, dismissing the case as against defendant-appellee Tagumpay A. Nanadiego with cost de officio.

The dispositive portion of the said order reads:

"IN VIEW OF THE FOREGOING, the instant case is Ordered dismissed as against this defendant Tagumpay A. Nanadiego, with cost de officio. The bail bond posted by said defendant for his provisional liberty is hereby cancelled and declared of no further force and effect.

SO ORDERED."

The antecedent facts of the case are as follows:

On July 23, 1954, a complaint for kidnapping with murder docketed as Criminal Case No. 2454 was filed in the Justice of the Peace Court of Unisan, Quezon by Sgt. Francisco G. de Asis, P.C. of Lucena City against the following: Gaudencio Vera, Restituto Figueras, Lorenzo Ambas, Justo Florido, Arcadio Talavera, Sr., Tagumpay Nanadiego, Paulino Bayran, Jaime Garcia and 92 others (Record, Vol. I, p. 1).

On December 20, 1954, a manifestation and motion was filed by the accused Gaudencio Vera, Restituto Figueras, Lorenzo Ambas and Tagumpay Nanadiego through counsel de Mesa and de Mesa where the above-named accused entered a plea of not guilty and further renounced their rights to the second stage of the preliminary investigation by the justice of the peace, and finally prayed that the case be elevated to the Court of First Instance of Quezon (Record, Vol. 1, p. 23) which was granted in an order dated December 22, 1954 by the aforesaid court (Record, Vol. I, pp. 24-25).

On February 23, 1955, an information (Record, Vol. I, p. 94) was filed by the then Provincial Fiscal Jose O. Lardizabal in the Court of First Instance of Quezon charging the accused (including Tagumpay Nanadiego) with the complex crime of Kidnapping with murder, defined and punished under Articles 48, 267 and 248 of the Revised Penal Code committed as follows:

"That on or about the 13th day of February, 1945, in the Municipality of Unisan, Province of Quezon, Philippines, and within the jurisdiction of His Hon. Court, the above-named accused Gaudencio Vera, Restituto Figueras, Lorenzo Ambas, Justo Florido, Arcadio Talavera, Tagumpay Nanadiego and Paulino Bayran alias Enong, together with Jaime Garcia and 92 other John Does who are still at large armed with high power rifles such as .50 caliber machinegun, .30 caliber machinegun, Browning automatic rifles, carbines,

Garrands, Springfield rifles, pistols and Revolver of different calibers, and by means of force, threats and intimidation, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously kidnap one Amadeo Lozanes in his residence at said municipality of Unisan, Quezon, with both hands tied together, detain and carry him to Vera's Headquarters located at Lalaguna, Municipality of Lopez, Quezon, and while he (Amadeo Lozanes) was under their custody and control, in pursuance of their conspiracy, taking advantage of their superior strength, with intent to kill and with evident premeditation, willfully, unlawfully and feloniously boxed, kicked, tortured and later on executed on March 14, 1945, in the said barrio of Lalaguna, Lopez, Quezon.

Contrary to law."

On May 11, 1955, an Urgent Petition was filed by Provincial Fiscal Lardizabal praying that the case be referred to the Amnesty Commission (Record, Vol. I, p. 158). On the same date, the AFP Amnesty Commission requested the Provincial Fiscal to furnish said Commission with a true copy of the records of Criminal Case No. 12145. The records requested were forwarded to the Commission on July 15, 1955 (Brief for the Appellant, p. 3, Rollo, p. 27).

On June 22, 1955, the Provincial Fiscal filed an amended information against the same accused (including accused-appellee Tagumpay Nanadiego for the same offense in the Court of First Instance of Quezon (Record, Vol. I, p. 207).

On August 12, 1955, the above case was referred to the 8th Guerilla Amnesty Commission (Record, Vol. I, p. 229). Few days thereafter, Hon. Vicente del Rosario of the Court First Instance of Quezon, acting upon authority from the Department of Justice, convoked the 8th Guerilla Amnesty Commission composed of different judges of Laguna, Mindoro, Batangas and Quezon (Brief for the Appellant, p. 3; Rollo, p. 27).

On June 12, 1956, after a continuous trial of the case, in which Tagumpay Nanadiego was one of the accused, the 8th Guerilla Amnesty Commission held that none of the defendants admitted having committed the crime charged. Such being the case, defendants have no use for amnesty as amnesty presupposes the commission of a crime; hence, the 8th Guerilla Amnesty Commission has no jurisdiction, thereby remanding the case to the court a quo (Record, Vol. II, p. 156).

On July 20, 1956, accused filed a motion for reconsideration (Record, Vol. I, p. 167) which the 8th Guerilla Amnesty Commission denied in its order dated January 11, 1957, and maintained its order to return the case to the Court of First Instance of Quezon for lack of jurisdiction (Record, Vol. II, p. 175).

Thereafter, the accused interposed an appeal to the Court of Appeals from the decision and order of the 8th Guerilla Amnesty Commission under date of June 12, 1956 and January 11, 1957, respectively (Record, Vol. II, pp. 185-186) for which reason the entire record was elevated to the Court of Appeals as per order dated February 12, 1957 (Record, Vol. II, p. 187). On appeal, the case was docketed as CA-G.R. No. 2004-R.

On November 16, 1960, the Court of Appeals, in its decision affirmed the decision and order appealed from (Record, Vol. II, p. 191). Later, a petition for review was filed in the Supreme Court docketed as G.R. No. L-18184.

In a decision dated January 31, 1963, this Court affirmed the decision and order of the Court of Appeals sought to be reviewed, and ruled that a previous admission of guilt is necessary in amnesty since the invocation of amnesty is in the nature of a plea of confession and avoidance, which means that the pleader admits the allegations against him but disclaims liability therefor on account of intervening facts which, if proved, would bring the crime charged within the scope of the amnesty proclamation (Record, Vol. II, p. 198). The above decision became final and executory on November 6, 1963 as per Entry of Judgment (Record, Vol. II, p. 204).

On December 21, 1963, Special Prosecutor Artemio T. Asuncion filed a petition ex parte in the Court of First Instance of Quezon praying that a trial on the merits of the case be continued for which reason the case was set for arraignment and trial sometime in January, 1964 (Record, Vol. II, p. 205).

On January 11, 1965, defendant-appellee Tagumpay Nanadiego filed an "Urgent Motion to Quash the Information" (Record, Vol. II, p. 357) in the above entitled case on the ground that the criminal action or liability has been extinguished by virtue of the amnesty extended him by the Amnesty Commission, Armed Forces of the Philippines in Resolution No. 1-F 859 (Record, Vol. II, p. 360) dated July 7, 1959 in accordance with Proclamation No. 8, series of 1946 of the President of the Philippines, and that the defendant-appellee Tagumpay Nanadiego claimed that he applied before the Amnesty Commission, Armed Forces of the Philippines on July 26, 1954 for amnesty under Proclamation No. 8, s. 46 of the President of the Philippines in connection with the charge filed against him on July 23, 1954 before the Justice of the Peace Court of Unisan, Quezon. However, on January 22, 1965, an opposition to the urgent motion to quash was filed by special prosecutor Artemio T. Asuncion although the latter in his opposition admits that "on July 7, 1959, the AFP Amnesty Commission cleared the petitioner Tagumpay Nanadiego in its decision" (Record, Vol. II, p. 371).

Subsequently, the Court of First Instance of Quezon, in an order dated January 23, 1965 ordered that the aforesaid case against Tagumpay Nanadiego be dismissed (Record, Vol. II, p. 375) on the ground that "the crime for which the accused was charged in the Armed Forces Amnesty Commission is the same charge in the criminal case No. 12145" which was "admitted by the Special Prosecutor of the Department of Justice in open court" manifesting that the accused was granted amnesty on July 7, 1959. Further, the lower court ruled that "to try the accused under the information in criminal case No. 12145 would be tantamount to trying him for an offense where he has been granted amnesty long time ago, and to try him again would constitute double jeopardy." However, a motion for reconsideration dated January 31, 1965 was filed by special prosecutor Artemio T. Asuncion (Record, Vol. II, p. 377) which was denied by the trial court in its order dated February 6, 1965 (Record, Vol. II, p. 401).

Hence, this appeal.

On February 11, 1965, the special prosecutor filed a notice of appeal from the order dated January 23, 1965 dismissing the case against Tagumpay Nanadiego (Record, Vol. II, p. 400). Meanwhile, on May 24, 1965, a Motion to Set Arraignment and Trial and Manifestation was filed by the special prosecutor in the trial court (Record, Vol. II, pp. 402-403) which was granted in an order dated August 28, 1965 and the arraignment and trial was set on September 4, 1965 (Record, Vol. II, p. 411).

On the other hand, defendants filed through their counsel a Petition and Counter Petition the Court of First Instance of Quezon dated August 27, 1965 followed by their Motion for Reconsideration dated September 3, 1965 (Record, Vol. II, p. 412) which seeks to set aside the order dated August 28, 1965 and approval of the Petition and Counter Petition dated August 27, 1965 (Record, Vol. II, p. 410). Accordingly, on September 10, 1965, the Court of First Instance of Quezon issued an Order denying the Motion for Reconsideration for lack of merit (Record, Vol. II, p. 414).

A petition to elevate the case was filed by Special Prosecutor Artemio T. Asuncion on November 5, 1965 (Record, Vol. II, p. 429) in connection with the appealed case against defendant-appellee Tagumpay Nanadiego. Likewise, said Special Prosecutor filed a 4th Motion to set arraignment and trial in the Court of First Instance of Quezon against the other defendants on January 24, 1966 (Record, Vol. II, p. 432) which was granted in an order of the Court a quo dated February 26, 1966 and the arraignment and trial was set on June 21, 1966 (Record, Vol. II, p. 436).

The lower court not having elevated the case to this Court. Special Prosecutor Artemio T. Asuncion filed on

February 28, 1966 another Petition to elevate the case to the Supreme Court (Record, Vol. II, p. 456) which was granted by the court a quo in its order dated March 5, 1966 (Rollo, p. 6).

On July 11, 1966, the Court a quo acting on the Manifestation of the Special Prosecutor, ordered the cancellation and postponement of the arraignment and trial scheduled on that day until the special prosecutor shall have terminated the reinvestigation of the case with respect to some of the defendants or until such time that he (the Special Prosecutor) has filed an amended information. In the same order, the court a quo reiterating its order dated March 5, 1966, ordered the elevation of the record of the case to the Supreme Court (Rollo, p. 7). Thus, on August 15, 1966 (Rollo, p. 1; p. 40), the records of the case was elevated to this Court. Said records, however, show that the trial has not been finished as regards the other accused (Rollo, p. 82).

On March 13, 1967, the Solicitor General, representing the People of the Philippines, appellant, filed its Brief (Rollo, p. 27). Meanwhile, in the Court a quo, the Special Prosecutor filed a Motion to Dismiss dated October 18, 1967 against the defendants for lack of sufficient evidence and loss of interest of the prosecution witnesses, whose testimony is indispensable without which the prosecution cannot prosecute the same (Rollo, p. 41). On November 20, 1967, the court a quo acting on the Motion to Dismiss, ruled that it can act on said motion, when the special prosecutor has withdrawn his appeal in order that the record of the case be returned to the court a quo (Rollo, p. 48).

On the other hand, this Court, in its resolution dated February 19, 1980 (Rollo, p. 37) considered this case submitted for decision without Appellee's Brief, while defendants filed in this Court on February 20, 1980 a Motion for Remand of Record to the Court of First Instance of Quezon in order that the pending motion to dismiss before the Court a quo may be acted upon (Rollo, p. 38).

In its resolution dated March 4, 1980, this Court required the Solicitor General to comment on the motion filed by the counsel for accused-appellee dated February 9, 1980 (Rollo, p. 50) which was complied with by the Solicitor General in a comment filed on June 5, 1980 (Rollo, p. 81).

In the resolution of June 17, 1980, this Court granted the motion to remand the case to the Court of First Instance of Quezon (Rollo, p. 86).

On August 25, 1980, the court a quo, in resolving the Motion to Dismiss dated October 18, 1967 filed by Special Prosecutor Artemio T. Asuncion, ordered the dismissal of the case against all the accused, with the exception of accused Tagumpay Nanadiego and further ordered the return of the record of this case to this Court where the appeal of the State Prosecutor in connection with the case as against the accused-appellee Tagumpay Nanadiego is still pending (Record, Vol. IV, p. 189).

On April 11, 1988, this Court in its Resolution required the parties to manifest whether or not they are still interested in prosecuting this case or if supervening events have transpired which render the case moot and academic or otherwise substantially affect the same (Rollo, p. 102).

On July 11, 1988, the Solicitor General filed a manifestation stating that he is still interested in prosecuting the case (Rollo, p. 111).

In its brief, appellant assigned the following errors:

I

"THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT-APPELLEE WAS VALIDLY GRANTED AMNESTY ON JULY 7, 1959 BY THE ARMED FORCES COMMISSION DESPITE THE FACT THAT THE 8TH GUERRILLA AMNESTY COMMISSION IN ITS DECISION DATED JUNE 12,

1956 HAS ALREADY DENIED AMNESTY TO DEFENDANTS IN CRIMINAL CASE NO. 12145 AND SUSTAINED BY THE HONORABLE COURT OF APPEALS AND THE SUPREME COURT IN ITS DECISIONS DATED NOVEMBER 16, 1960 AND JANUARY 21, 1963.

II

THE TRIAL COURT ERRED IN HOLDING THAT TO TRY THE DEFENDANT-APPELLEE UNDER THE INFORMATION IN CRIMINAL CASE 12145 WOULD CONSTITUTE DOUBLE JEOPARDY.

III

THE TRIAL COURT ERRED IN DISMISSING THE CASE AS AGAINST DEFENDANT-APPELLEE TAGUMPAY NANADIEGO."

The pivotal issue of the case is whether or not the trial court erred in dismissing the case against Tagumpay Nanadiego.

In its Brief, appellant People of the Philippines contends that the trial court erred in dismissing the case against herein appellee Tagumpay Nanadiego. Appellant averred that the 8th Guerilla Amnesty Commission and the Armed Forces of the Philippines Amnesty Commission both derived authorities from Proclamation No. 8, series of 1946 by the President of the Philippines. In this connection, as creations of the said proclamation, both commissions have concurrent jurisdiction over the case at bar and the first body that acquires jurisdiction retains it to the exclusion of the other. Appellant further claimed that the decision of the 8th Guerilla Amnesty Commission dated June 12, 1956 was issued or rendered earlier than that of the Armed Forces of the Philippines Amnesty Commission dated July 7, 1959. Hence, the decision of the former is the controlling decision in the case at bar.

The records, however, show that the appellee Tagumpay Nanadiego applied for Amnesty before the Armed Forces of the Philippines Amnesty Commission on July 26, 1954 right after the case was filed in the Justice of the Peace Court of Unisan, Quezon. On the other hand, the Court of First Instance of Quezon, upon motion of the Provincial Fiscal, referred the case (Criminal Case No. 12145) to the 8th Guerilla Amnesty Commission, on August 12, 1955. Therefore, insofar as appellee Tagumpay Nanadiego is concerned, jurisdiction was properly acquired by the Armed Forces of the Philippines Amnesty Commission earlier than that of the 8th Guerilla Amnesty Commission. Furthermore, it appears that appellee Tagumpay Nanadiego did not participate in the proceedings before the 8th Guerilla Amnesty Commission. Be that as it may, in cases of concurrent jurisdiction, the court first acquiring jurisdiction excludes the other courts (*Lee v. Presiding Judge*, G.R. No. 68789, November 10, 1986, 145 SCRA 408). Jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated (*Abadilla v. Ramos*, G.R. No. 71973, December 1, 1987, 156 SCRA 92); *Lat v. Philippine Long Distance Telephone Co.*, 69 SCRA 425 [1975]; *Republic v. Central Surety & Insurance Co.*, 25 SCRA 641 [1968]; *Rizal Surety & Insurance Co. v. Manila Railroad Company*, 16 SCRA 908 [1966]; *Tuvera v. de Guzman*, 13 SCRA 729 [1965]).

On July 7, 1959, the criminal liability of the appellee had been completely extinguished by virtue of the amnesty extended him by the Amnesty Commission. Armed Forces of the Philippines in Resolution No. 1-F 859. It has been consistently ruled by this Court that amnesty looks backward and abolishes and puts into oblivion the offense itself, it so overlooks and obliterates the offense with which he is charged; that the person released by amnesty stands before the law precisely as though he had committed no offense (*Barrioquinto, et al. vs. Fernandez, et al.*, 82 Phil. 642 [1949]). Amnesty is a public act of which the court should take judicial notice. Thus, the right to the benefits of amnesty, once established by the evidence presented, either by the complainant or prosecution or by the defense, can not be waived, because it is of public interest that a person who is regarded by the Amnesty Proclamation, which has the force of law, not only as innocent, for he stands in the eyes of the

law as if he had never committed any punishable offense because of the amnesty, but as a patriot or hero, and not be punished as criminal (Barrioquinto, et al. v. Fernandez, et al., supra). Moreover, when the Court a quo dismissed the case upon motion of defendant-appellee based on the resolution of the Armed Forces of the Philippine Amnesty Commission granting him amnesty, said court did not commit grave abuse of discretion.

One of the grounds for a motion to quash a criminal case is when the criminal action or liability has been extinguished (Sec. 2 [f], Rule 117). Criminal action or liability is totally extinguished by, among others, amnesty. Thus, Art. 89 of the Revised Penal Code provides:

"Article 89. How criminal liability is totally extinguished. Criminal liability is totally extinguished:

xxx xxx xxx

(3) By amnesty, which completely extinguishes the penalty and all its effects;

xxx xxx xxx."

Furthermore, it must be remembered that the Court a quo, acting on the motion to dismiss dated October 18, 1967 filed by Special Prosecutor Artemio T. Asuncion in Criminal Case No. 12145 alleging as grounds therefore, among others, insufficiency of evidence to warrant the prosecution of the case, issued an order dated August 20, 1980 dismissing the case against all the accused except appellee Tagumpay Nanadiego. The latter was excluded from the order of dismissal because of the pendency of this appeal. To remand the case for further proceedings before the trial court at this late hour when as early as October 18, 1967, the prosecution has admittedly no evidence sufficient to warrant its prosecution, is a useless ritual which would not serve the ends of justice. At the risk of being repetitious, nothing would be gained by remanding the case to the court a quo for further proceedings since there is no offense to prosecute.

WHEREFORE, the Order of the trial court dated January 23, 1965 dismissing Criminal Case No. 12145 as against appellee Tagumpay A. Nanadiego with cost de oficio is **AFFIRMED**.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

[*] Penned by Judge Manalo L. Maddela.

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