

CARIDAD CABARROGUIS, PETITIONER, VS. HON. LOURDES P. SAN DIEGO, JUDGE, COURT OF FIRST INSTANCE OF RIZAL, PASAY CITY BRANCH, RESPONDENT.

G.R. No. L-19517. November 30, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an original action for certiorari and prohibition against the Court of First Instance of Rizal, Pasay City Branch, presided over by respondent, Hon. Lourdes P. San Diego, Judge.

Petitioner Caridad Cabarroguis is accused of estafa in Criminal Case No. 5355-P of said court. At the hearing thereof on February 28, 1962, complainant therein, Ernerita C. Orpilla, was the sole witness for the prosecution. She declared, among other things:

"FISCAL:

"Q.

When the herein accused informed you she was in need of cash to pay some customs duties, what did you tell Mrs. Cabarroguis, if you told her anything?

A.

She asked me to finance the customs duties.

COURT:

Q.

What do you mean she asked you to finance the customs duties. Do you mean she asked you to lend her some money?

A.

Yes, she told me to give her some money and in return she would pay me in goods.

FISCAL:

Q.

Did you ask her what goods she would give you in payment of the money that you were going to lend her?

A.

Yes, sir.

Q.

What were these goods?

A.

Sewing machines, clothing, Namarco goods which were pending in the pier for payment of customs duties.

Q.

When you were informed of these goods were pending payment of customs duties in the pier and she could not pay for them, what did you tell her?

A.

I agreed her to pay me in goods.

Q.

And you were referring to the goods that were allegedly in the pier after the customs duties were paid?

A.

Yes, sir.

Q.

Did you agree to finance the payment of the customs duties for these goods for which you were to receive certain goods?

A.

Yes, sir.

Q.

When was that?

A.

I told Mrs. Cabarroguis I would be able to have the money at the end of June. That would be July 1st.

Q.

When you told the accused that you could have the money by the end of June, did she return?

A.

Yes, she did at the end of June.

Q.

What date?

A.

May be that was June 29.

Q.

When the accused returned what did you tell her?

A.

I told her then that I was coming from Cavite and that I could meet her in Pasay because my brother would be the one make the document.

COURT:

Q.

In other words to finalize the transaction?

A.

Yes, sir.

Q.

And how much did you give her?

A.

P7,800.00' "

At this juncture, respondent Judge dictated in open court the following order:

"From the testimony of the complaining witness—coming from her mouth—the Court gathers that she agreed to lend the amount of P7,800.00 to the accused, Caridad Cabarroguis, under the agreement that the said P7,800.00 would be returned in the form of goods.

"This is sufficient to, convince, the court that the crime of estafa, as described in the Penal Code, does not obtain in this case.

"WHEREFORE, let this case be, as it is hereby dismissed, against the accused, Caridad Cabarroguis, and the bail bond she filed for her, provisional release is hereby cancelled."

Forthwith, the prosecution sought a reconsideration of the action thus taken by respondent Judge, stating:

* * * And may I show the court this document where it can be shown that the herein accused did not have the goods allegedly in the pier when, she took the amount in question from the complainant, which shows that there was intention to defraud the complainant in this case."

Thereupon, respondents set aside or "withdrew" her aforementioned; order of dismissal and allowed the prosecution to continue the direct examination of said complainant, after which the latter was cross-examined by counsel of petitioner herein. When the prosecution closed its evidence, petitioner's counsel asked for another day to present her evidence, which was granted by respondent. When the hearing was resumed on March 7, 1962, petitioner moved to set aside the order of respondent withdrawing her aforementioned order, of dismissal, alleging; that otherwise petitioner would be again "in danger of being placed in jeopardy." This motion was immediately denied, whereupon the present case was instituted, upon the theory, based on *Catilo vs. Abaya*, 94 Phil., 1014; 60 Off. Gaz. 2477), and *Esguerra vs. De la Costa* (66 Phil., 134) that said verbal order of dismissal of February 28, 1962, without the consent of the accused (petitioner herein), amounted to her acquittal, and that the withdrawal of said order, followed by the continuation of the examination of the complainant and the presentation of the other evidence for the prosecution, placed the petitioner in double, jeopardy. Hence, petitioner prayed that said order withdrawing the verbal order of dismissal be set aside and that respondent be commanded to desist from further proceeding with the trial of said Criminal Case No. 5355-P.

Petitioner's pretense is untenable. The verbal order of dismissal of said case was withdrawn or set aside, as soon as it was dictated by respondent and before it could be reduced to writing and signed by her. As a matter of fact, it was never put in writing. Much less was it ever signed by respondent. For this reason, respondent contends that said order of dismissal was incomplete and did not have the effect of acquitting the accused before it was withdrawn. Indeed, pursuant to section 2 of Rule 116 of the Rules of Court "the judgment"—and the order of dismissal in question had, if completed, such effect—"must be written * * * personally and directly prepared by the judge, and signed by him * * *." The cases cited by herein petitioner involved written orders of dismissal, which were signed by the corresponding judges. Hence, said cases are not controlling in the one at bar.

Moreover, petitioner did not forthwith object, either to the motion of the prosecution for the reconsideration of the verbal order of dismissal, or to the order of respondent Judge withdrawing or setting aside the same. Neither did petitioner object to the continuation of complainant's examination by the prosecution. What is more, upon the conclusion thereof, petitioner's counsel cross-examined the complainant. As alleged in the very petition filed

herein, said continuation of the presentation of the evidence for the prosecution had already placed the petitioner twice in jeopardy of punishment for the same offense, on the assumption that the order of dismissal in question had effectively dismissed the criminal case. Petitioner's failure to object, at that time, to the taking of said evidence for the prosecution, and the cross-examination of complainant by counsel for the petitioner amounted, therefore, to a waiver of her constitutional right against double jeopardy (*People vs. Casiano*, L-15309 [February 16, 1961]; 14 Am. Jur., 958). Petitioner did not invoke such right until about a week later, or on March 7, 1962, when the hearing was resumed for the reception of the evidence for the defense. The objection then made by her came too late, in view of her aforementioned waiver.

Wherefore, the petition herein is hereby dismissed, with costs against the petitioner. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barerra, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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