

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
NORBERTO DESALISA Y DOCA, AND DOMINADOR BARTONICO Y
JAPITANA, DEFENDANTS-APPELLEES.**

G.R. No. L-15516. December 17, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

On May 15, 1958, Norberto Desalisa y Doca and Dominador Bartonico y Japitana were charged in the Municipal Court of Manila (Crim. Case No. 46383) with the crime of "Serious Physical Injuries Thru Reckless Imprudence", in an information which reads as follows:

"INFORMATION

"The undersigned accuses Norberto Desalisa y Doca and Dominador Bartonico y Japitana of serious physical injuries thru reckless imprudence, committed as follows:

"That on or about the 14th day of May, 1958, in the City of Manila, Philippines, the said accused, being then the drivers and persons in charge of Josefa Carrier Bus with plate No. TPU-5227, Philippines, and cargo truck bearing plate No. T-33718, Philippines, respectively, did then and there willfully, unlawfully, and feloniously drive, manage, and operate the same along Otis Street, in said City, in a careless, reckless, and imprudent manner, and without taking the necessary precaution to avoid accident to persons and damage to property, considering the condition of traffic at said place and time, by then and there driving their said vehicles at speeds greater than was reasonable and proper under the circumstance, causing by such carelessness, recklessness, imprudence, and lack of precautions the said vehicles so driven, managed, and operated by them to collide with, as same in fact collided with each other, and as a result of the impact, passengers of said Josefa Carrier Bus, namely, Gertrudes Adecer, Preciosa Almario, Flavio Zalameda, Candido Aguinaldo, Jr., Jose Reyes, Vicenta Aguinaldo, Conrado Agerion, Rufino Agosto, and Felicitas Sarmiento sustained physical injuries, those of said Gertrudes Adecer requiring medical attendance for a period of more than thirty (30) days, and those of the rest requiring medical attendance for a period of not less 'than one (1) but not more than nine (9) days, and which injuries incapacitated and will incapacitate all the above-named persons from engaging in their customary labor during the said periods of time.

"Contrary to law."

By reason of the subsequent death of the victim Gertrudes Adecer and ascertainment of the extent of the injuries sustained by victim Candido Aguinaldo, Jr., the above information was amended on May 27, 1958, by dropping therefrom the name of the deceased and adding thereto the clause "those (physical injuries) of Candido Aguinaldo, Jr. requiring medical attendance for a period of more than thirty (30) days". On the same date, an information for Homicide Thru Reckless Imprudence was filed in the Court of First Instance of Manila (Crim. Case No. 44176) against the same accused, for the death of Adecer.

The accused were arraigned in the Municipal Court (for physical injuries) on June 20, 1958, wherein they entered

a plea of not guilty; while arraignment in the Court of First Instance (for homicide) was held on June 23, 1958, wherein the accused also pleaded not guilty. On August 29, 1958, the case for physical injuries of all complainants, except Vicenta Aguinaldo and Candido Aguinaldo, Jr. was dismissed by the Municipal Court upon motion of the Special Prosecutor, Thereafter, the trial proceeded with the Aguinaldos taking the witness stand. At this stage, defense counsel filed a motion to quash the information, on the ground of double jeopardy, it being alleged that the filing of separate cases (one in the Municipal Court, and the other in the Court of First Instance) for offenses arising out of a single act, placed them in danger of being twice convicted and penalized for the same act.

In its order of October 3, 1958, the municipal court, granted the motion, thus:

"ORDER

"Under consideration is a motion to quash filed by the accused Norberto Desalisa, on the ground of double jeopardy.

"The case at bar changes both accused with the crime of serious physical injuries thru reckless imprudence with multiple slight physical injuries arising from the same act and embodied in one information. Both accused have pleaded not guilty and the prosecution has presented its evidence. It is at this stage of the proceedings that the motion to quash is filed.

"Considering that the accused Norberto Desalisa is charged with homicide thru reckless imprudence with the Court of First Instance of Manila arising from the same act subject of this case; that this is a clear case of a complex crime where the accused should have been charged with homicide thru reckless imprudence complexed with serious physical injuries contained in one information and filed with the Court of First Instance of Manila, and another information for multiple slight physical injuries thru reckless imprudence with the Municipal Court of Manila, in accordance with the provisions of Art. 48 of the Revised Penal Code, as amended; that with the filing of the information for homicide thru reckless imprudence with the Court of First Instance of Manila with the present separate information for serious physical injuries thru reckless imprudence with multiple slight physical injuries pending in this Court, thereby exposing said accused twice in jeopardy of being convicted and penalized in both instances, contrary to law; the court is of the opinion and so holds that the motion to quash is well-founded and the rights of the accused cannot be prejudiced by the error of the state prosecution.

"WHEREFORE, in view of the foregoing considerations, the motion to quash is hereby granted and this case dismissed with costs de officio.

"SO ORDERED."

The prosecution appealed the case to the Court of First Instance. In the meantime, the accused were found guilty of homicide in Criminal Case No. 44176 originally tried in the Court of First Instance, from which decision they appealed to the Court of Appeals.

Before arraignment in the Court of First Instance, in connection with the physical injuries case on appeal from the Municipal Court, counsel for the defense filed a motion praying, among others, for the quashing of the information and the dismissal of the action, primarily on the ground of second jeopardy, contending

(1) That under Article 48 of the Revised Penal Code, the offense charged in Criminal Case No. 46383 of the Municipal Court should have been complexed with the homicide indictment in the Court of First Instance, and the prosecution's failure to do so, placed them in jeopardy of being twice convicted and penalized for the same act; and

(2) That the appeal of the prosecution from the order of dismissal of the Municipal Court subjects them to a second jeopardy before the Court of First Instance.

In his order of May 9, 1959, His Honor Judge Juan P. Enriquez of the Court of First Instance of Manila, expressed the view that even on the theory that the two offenses, (homicide and physical injuries) constituted a complex crime under Article 48 of the Revised Penal Code, still the failure of the accused to timely object to the splitting of offenses amounted to a waiver, and that the quashing of the information, at the instance of the accused, by the Municipal Court, did not place them in double jeopardy. However, in view of the allegedly unsettled law on double jeopardy, the court granted the accused's separate motions to quash, with direction to the prosecution to appeal the matter to this Court for final adjudication of the legal questions involved therein. Hence, the present appeal.

(1) Section 10 of Rule 113 of the Rules of Court provides:

"SEC. 10. Failure to move to quash—effect of—exception.—If the defendant does not move to quash the complaint or information before he pleads thereto he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense, or the court is without jurisdiction of the same. If, however, the defendant learns after he has pleaded or has moved to quash on some other ground that the offense with which he is now charged is an offense for which he has been pardoned, or of which he has been convicted or acquitted or been in jeopardy, the court may in its discretion entertain at any time before judgment a motion to quash on the ground of such pardon, conviction or jeopardy." (Italics supplied.)

It is evident therefrom that, as a general rule, failure of the accused to move to quash the complaint or information before pleading thereto constitutes a waiver of all the grounds for a motion to dismiss available to him[*] (which includes the defense of jeopardy). The exceptions are: (1) in case the information or complaint does not charge an offense; (2) lack of jurisdiction of the court; and (3) if after pleading, or filing a motion to quash on another ground, the accused or defendant learns that he had already been pardoned, convicted, or acquitted or in jeopardy for the offense with which he is being charged. Clearly, therefore, in order that the court may entertain a motion to quash after arraignment, it must be shown that the accused learned or acquired knowledge of the defense being claimed by him, after his pleading to the charge. In the case at bar, it cannot be said that when the accused pleaded not guilty to the charges of serious physical injuries with multiple slight physical injuries in the Municipal Court, they were not aware of the existence of the homicide case pending before the Court of First Instance. It appears on record that the information for homicide was filed in the Court of First Instance on May 27, 1958, on the same day that the information in the Municipal Court was amended, and that notice of the arraignment in the former case was received by the accused as early as May 30, 1958, or long before they actually entered their plea (on June 20, 1958) in the Municipal Court. Having thus failed to timely raise the objection, and considering that the prosecution vigorously opposed the motion to quash, the Municipal Court acted erroneously in granting the same and dismissing the case.

For the same reason given above, neither may the accused now question the correctness of the information filed in the Municipal Court charging them with the crimes of serious physical injuries and multiple slight physical injuries, both thru reckless imprudence.

(2) The second issue presented by the herein appellees is, as stated, that the appeal of the prosecution from the order of dismissal of the municipal court subjects them to a second jeopardy before the court of first instance.

It is the view of Judge Enriquez of the Court of First Instance of Manila, before whom the appeal was heard, that the filing of the information for serious physical injuries through reckless imprudence, separate and independent of another information for homicide through reckless imprudence resulting from one single act did not place the

accused, in both cases, in danger of double jeopardy because the accused did not object to the splitting of the offense which otherwise would have constituted a complex crime under Article 48 of the Revised Penal Code. Therefore, the trial court added, the dismissal upon petition of the accused of such information for serious physical injuries through reckless imprudence by the municipal court, on the erroneous assumption of the existence of double jeopardy, is a dismissal with the express consent of the accused. It follows that the appeal by the prosecution from such order of dismissal did not likewise constitute a second jeopardy to the accused. Nevertheless, Judge Enriquez dismissed the case and advised the prosecution to take an appeal to this Court, to enable us to clarify the alleged uncertainty of the doctrine of double jeopardy brought about by the various pronouncements made in cases subsequent to that of *People v. Salico*.^[1]

There is some point in the observation of the trial Judge that, unfortunately, certain loose statements made in some of our decided cases tend to lead to some confusion on the subject of double jeopardy. It is, therefore, well that we re-examine these pertinent cases in an effort to crystallize the doctrine on this point of law.

There are two cardinal principles that must first be remembered: first, the first sentence of Rule 118, Section 2 of the Rules of Court (now Rule 122, Amended Rules) which reads, "The People of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy," does not import to be an absolute prohibition for the prosecution to appeal.^[2] For, it may be pointed out, this provision prohibiting the appeal by the prosecution, is actually a negative statement conditioned on defendants being thereby placed in double jeopardy. In fine, it is only another way of saying that the prosecution can appeal except when the defendant would, by such appeal, be placed in double jeopardy. This is further supported by the succeeding sentence of the same provision, thus:

"in all other cases, either party (which includes the prosecution) may appeal from a final judgment or ruling or from an order made after judgment affecting the substantial rights of the appellant."

Secondly, it is now the established rule that the immunity of an accused to a second jeopardy of conviction for the same offense is a personal privilege which the accused may waive.^[3]

Putting these doctrines together, we may state that the prosecution can appeal from a dismissal-order of the lower court if such appeal will not place the accused in second jeopardy, or if there is waiver by the accused of the defense of double jeopardy. The corollary questions that necessarily come up are: When does an appeal constitute a second jeopardy? When is there waiver by the accused of the defense of double jeopardy?

The seeming uncertainty of the rule on this legal point started with the ruling in the *Salico* case, *supra*. In that case, after the accused had entered a plea of not guilty to the charge of homicide and after the prosecution had rested but before he could have presented his evidence, the accused filed a motion to dismiss on the ground that "the fiscal failed to prove that the offense was committed within the territorial jurisdiction of the court." The Court of First Instance of Negros Occidental granted the motion, and the prosecution appealed. Here, the issue of double jeopardy was raised by the accused-appellee.

Overruling the contention of appellee, this Court held that there is no double jeopardy in the appeal, because: (1) the dismissal of the case by the court below was upon the motion of the accused; (2) the appeal by the prosecution would not place him in second jeopardy; and (3) assuming *arguendo* that the accused had thus been placed in danger of second conviction for the same offense, defendant's failure to set up that defense constituted a waiver of the right. It was declared that by the action of the accused in causing the dismissal of the case, he had waived the right to set up the defense of double jeopardy because he thereby prevented the Court from proceeding to the trial on the merits and rendering a judgment of conviction against him. It was held that the appeal could not have also exposed him in danger of a second conviction, because the issue raised for the determination of the appellate court is not the guilt or innocence of the defendant, but the legal question of whether the offense was committed within

the territorial jurisdiction of the trial court. The dismissal of the case was, consequently, held erroneous and the same was remanded to the lower court for further proceedings.

The Salico case, therefore, laid down the doctrines that, an appeal by the prosecution is not absolutely prohibited; that a motion to dismiss by the defendant amounts to a waiver of his right to invoke the doctrine of double jeopardy in case of an appeal by the prosecution from the dismissal-order; and that an appeal (or properly a second case) will not constitute a second jeopardy if the appeal is not concerned with the merits of the case, i.e., with the guilt or innocence of the accused. Furthermore, it was ruled that the failure of the accused to raise the defense against the appeal constitutes waiver by the accused of his right to invoke the doctrine of double jeopardy.

In the case of *People v. Bangalao, et al.*,^[4] however, the appeal of the prosecution was dismissed by this Court. The accused in that case, after pleading not guilty to the charge, filed a motion to dismiss, for lack of jurisdiction.^[5] Although it was held that the court actually had jurisdiction over the case and the dismissal of the case was erroneous, this Court said:

"x x x we find the claim of the defendants-appellees that the appeal can not prosper because it puts them in double jeopardy, must be sustained. Under Section 2, Rule 118 of the Rules of Court, the People of the Philippines can not appeal if the accused or defendant is placed thereby in double jeopardy. As the court below had jurisdiction to try the case upon the filing of the complaint by the mother of the offended party, the defendants-appellees would be placed in double jeopardy if the appeal is allowed."

The pronouncement seems to erase the qualifications made in the Salico case for the application of the principle of double jeopardy to appeals by the prosecution.

In the case of *People v. Reyes*,^[6] the information was quashed by the lower court, upon motion of the accused, before trial could be had, because it failed to allege the element of use of violence although the offense charged was coercion under Article 287 of the Revised Penal Code. On appeal by the prosecution, the order of the lower court was reversed, its jurisdiction was upheld and the case was remanded to it for further proceedings, this Court saying:

"The contention of defendants-appellees that the present appeal would place them in double jeopardy is unfounded. 'Where the complaint or information is in truth valid and sufficient, but the case is dismissed upon petition of the accused on the ground that the complaint or information is invalid and insufficient, such dismissal will not bar another prosecution for the same offense and the defendant is estopped from alleging in the second prosecution that the former dismissal was wrong because the complaint or information was valid.' (Moran, Comments on the Rules of Court, 1952 ed., Vol. II, p. 802)."

In other words, the right of the prosecution to appeal was again upheld, the theory of the Court, which was also adopted (7) in the earlier case of *People v. Acierto*,^[7] being that of estoppel. A party that secures the dismissal of the information in the lower court by assailing the jurisdiction of that court, cannot, in the appeal, change his theory by asserting the jurisdiction of the lower court in order to support his allegation that the appeal would place him in double Jeopardy. There apparently was a "reversion" to the doctrine in the Salico case.

However, in the same year, the Supreme Court again declared against the appeal of the prosecution from a dismissal order of the lower court. In the case of *People v. Ferrer*,^[8] the question raised by the prosecution was the correctness of the dismissal of the case by the lower court at defendant's instance, on the ground that the territorial jurisdiction of the court had not been established.^[9] The Supreme Court declared that the information was sufficient and the dismissal of the case was, therefore, erroneous. Nevertheless, it said:

"Unfortunately, however, we believe that the Government however meritorious its case cannot appeal the order of dismissal without violating the right of the defendant not to be placed in double jeopardy. The accused

herein has not filed a brief or appeal raising this question of double jeopardy. Nevertheless, Rule 118, Section 2 of the Rules of Court provides: "The People of the Philippines can not appeal if the defendant would be placed thereby in double jeopardy, and we have to give force and effect to said rule. Here, the defendant had already been arraigned and he had entered his plea, and the trial had begun, and the prosecution had rested its case. We hold that the appeal of the Government from the order of dismissal would place the accused in double jeopardy."

This case, far from being an abandonment of the Salico case, furnishes instead, an application of the rulings therein established. The dismissal here was on the merits as it was predicated on the supposed failure of the fiscal to prove the location of the house where the offense was committed. It was therefore a dismissal on the supposed insufficiency of evidence and hence a dismissal on the merits amounting to an acquittal.

In the case of *People v. Robles, et al.*,^[10] this Court denied the appeal by the prosecution from the order of the lower court, sustaining defendant's plea that the amended information filed therein constituted double jeopardy. In that case, a first information for violation of Article 199, paragraphs (b) and (c), of the Revised Penal Code was previously dismissed, upon motion of the fiscal, due to non-appearance of prosecution witnesses. Two years later, a new information for the same offense was filed. The accused were arraigned and entered not guilty-pleas. But due to the absence of prosecution witnesses, the trial was postponed several times. When the fiscal asked for another postponement of the scheduled hearing, the defendants opposed, on the ground that such further postponement would violate their right to speedy trial. Sustained by the lower court, the case was dismissed on that ground. Three years thereafter, the fiscal filed another information for the same offense. The defendant moved to quash the information on the ground that it would place him in second jeopardy, as a result of which, the case was dismissed. In affirming the appealed order, this Court declared that the second dismissal of the case against defendants was not merely provisional, but an acquittal on the merits, because it was brought about by the failure of the prosecution to go to trial, thus resulting in the violation of defendant's right to speedy trial. However, the following statements were also made:

"in reaching the above conclusion, we have not overlooked our ruling in the case of *People vs. Salico*, 44 Off. Gaz., No. 4, 1765-1776, reiterated in *People vs. Romero*, G.R. Nos. L4517-20", to the effect that a dismissal upon defendant's motion will not be a bar to another prosecution for the same offense as said dismissal was not without the express consent of the defendant, which ruling the prosecution now invokes in support of this appeal; but said ruling is not now controlling, having been modified or abandoned in subsequent cases wherein we sustained the theory of double jeopardy despite the fact that the dismissal was secured upon motion of the accused. (*People v. Bangalao*, L-5610, Feb. 17, 1954; *People v. Diaz*, L-6518, March 30, 1954; *People v. Abafio*, L-7862, May 17, 1955; and *People v. Ferrer*, L-9072, Oct. 23, 1956.)"

And, in the case of *People v. Labatete*,^[11] wherein the appeal by the prosecution from the order of dismissal of the case by the lower court was denied,^[12] the Supreme Court explained the "abandonment" of the Salico-doctrine as follows:

"it will be noted that there are three cases where jeopardy would lie, according to the above provision (Sec. 9, Rule 113), 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. x x x.

"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."

According to this "explanation", the Salico-doctrine was "abandoned" because the dismissal of the case therein by the lower court was not merely provisional, but actually an acquittal, caused by the failure of the fiscal to prove that the crime was committed within the territorial jurisdiction of the court. The ruling in the case of Salico, that the act of the defendant in moving for the dismissal of the case constitutes a waiver of the right to avail of the defense of double jeopardy, insofar as it applies to dismissals which do not amount to acquittal or dismissal of the case on the merits, cannot be considered to have been abandoned by the subsequent decisions on the matter. This becomes more evident when the Court, in the case of *People v. Casiano*, supra, stated that Section 2 of Rule 118 of the Rules of Court is not a limitation on the jurisdiction of the Supreme Court to entertain appeals by the Government in criminal case or to "right of the latter to appeal in such cases."

From the above rulings and pronouncements of the Court, the rule on double jeopardy may perhaps be re-stated thus:

As a general rule, the dismissal or termination of a case, by the proper court, after arraignment and plea of the defendant to a valid information, 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, in the former complaint or information (Sec. 9, Rule 113). However, an appeal by the prosecution from the order of dismissal (of the criminal case) by the trial court will not constitute double jeopardy if (1) the dismissal is made upon motion, or with the express consent, of the defendant, and (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; and (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant.

In the present case, considering that there was waiver of the defense of double jeopardy by the failure of the accused to object to the filing of the 2 cases in the court of first instance and in the municipal court; that the dismissal was not based on consideration of the merits of the case; and the question raised in the appeal was

purely legal, the appeal by the prosecution from the order of dismissal in the municipal court to the Court of First Instance did not place them in second jeopardy.

Neither does the present appeal from the order of dismissal of the Court of First Instance constitute a second jeopardy, because the motion to quash was filed by the accused themselves before arraignment and before they entered their plea to the information.

Upon these considerations, the order of dismissal appealed from is hereby set aside. The case is remanded to the court of origin (the Municipal Court of Manila) for further proceedings. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[*]Section 2, Rule 116.

[1] 84 Phil. 722.

[2] People v. Casiano, G.R. No. L-15309, Feb. 16, 1961.

[3] People v. Casiano, supra.

[4] 94 Phil. 354.

[5] It was alleged in the motion to dismiss that in the complaint filed by the mother of the offended party, the allegation was that the crime (of rape) was committed through the use of force and intimidation, whereas in the information filed by the fiscal, no such allegation appeared and instead, it was stated therein that the offended party was a minor and demented girl.

[6] 98 Phil. 646.

[7] G. R. Nos. L-2078, L-3355-60, Jan. 30, 1953.

[8] G. R. No. L-9072, Oct. 23, 1956.

[9] According to defendant, the information, while alleging that the offense was committed in the house of the offended party, failed to prove where that house was located.

[10] G. R. No. L-12761, June 29, 1959.

[11] G. R. No. L-2917, April 27, 1960.

[12] The order of dismissal of the amended information, by the lower court, was based on the finding that the amendment was substantial, constituting the charging of acts other than those originally contained in the first information, and, therefore, the amendment would prevent the accused from availing of the right to the defense of double jeopardy.

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