

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. DAMASO QUEDES, DEFENDANT AND APPELLEE.

G.R. No. L-8809. December 29, 1956

Ponente: PADILLA, J.

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PADILLA, J.:

On 20 September 1951, a criminal complaint charging Damaso Quedes, Nemesio Pradas, Victoriano Pradas and five other unidentified persons with robbery in band was subscribed and sworn to by the sergeant of police of the municipality of Ligao, province of Albay, before the Justice of the Peace Court of the said municipality (criminal case No. 438). As the defendants waived their right to preliminary investigation the Justice of the Peace Court forwarded the case to the Court of First Instance. On 29 October 1951 the corresponding information charging the defendants with robbery in band was filed by the Provincial Fiscal in the Court of First Instance of Albay. The information reads, as follows:

That on or about 2:30 o'clock in the morning of September 15, 1951, in the municipality of Ligao, province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and helping one another for a common purpose and all armed with bolos, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously, take and carry away with intent of gain and against the will of the owner thereof, ten (10) sacks of copra valued at P200.00, belonging to Jesus Alsua, to his damage and prejudice in the said sum of P200.00, Philippine currency. (Criminal case No. 1070.)

Upon arraignment the defendants entered a plea of not guilty. On 10 January 1952 the Provincial Fiscal filed a motion to dismiss the information for the reason that after a thorough reinvestigation he found out that, with the exception of Damaso Quedes, the other defendants charged in the information did not take part in the commission of the crime and that an information for theft charging the real offenders including Damaso Quedes had been filed in the Justice of the Peace Court of Ligao, Albay. On 12 January 1952 the Court dismissed the case.

On 28 November 1951 the Chief of Police of Ligao, Albay filed a sworn complaint in the Justice of the Peace Court charging Silvino Mendoza, who on the day of trial had not been apprehended and is still at large, Hilario Oropesa, Glicerio Alferez and Jose Planviergen with theft of ten sacks of copra belonging to Jesus Alsua. On 20 December 1951 the complaint was amended to include Damaso Quedes as accessory after the fact," and the amendment reads, as follows:

That the said Damaso Quedes having knowledge of the commission of the crime as alleged and described above unlawfully, illegally and feloniously, subsequently took part in its execution by helping in disposing of the fruits of the crime thereby assisting the said Silvino Mendoza, Hilario Oropesa, Glicerio Alferez and Jose Planviergen to profit by the effects of the above described crime and to prevent its discovery. (Criminal Case No. 451.)

The defendant Damaso Quedes filed a motion to quash on the ground that he had been put once in jeopardy of punishment for the same offense. Motion to quash was denied. On 29 December 1951, after trial, the Justice of the Peace Court found Hilario Oropesa guilty of theft as principal; Damaso Quedes guilty of theft as accessory

after the fact and sentenced him to suffer 2 months and 1 day of arresto mayor, to indemnify the offended party in the sum of P121.20, with subsidiary imprisonment in case of insolvency, and to pay 2/5 of the costs; and dismissed the case against Jose Planviergen and Glicerio Alferez. The defendant Damaso Quedes appealed to the Court of First Instance of Albay. On 15 January 1953 the Assistant Provincial Fiscal filed an information charging Damaso Quedes with theft as accessory after the fact. The information reads:

That on or about the 15th day of September, 1951, in the municipality of Ligao, province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the said accused, having full knowledge of the commission of the crime of theft of ten sacks of copra from the hacienda of Jesus Alsua by Silvino Mendoza who is still at large, Hilario Oropeza who had been convicted in the lower court but did not appeal, Glicerio Alferez and Jose Planviergen whose case against them was dismissed, and without having participated therein either as principal or accomplice, did then and there willfully, unlawfully and feloniously take part in said crime after the commission thereof, to wit: by then and there buying from the aforementioned persons the stolen ten sacks of copra which amount to ONE HUNDRED TWENTY ONE PESOS AND TWENTY CENTAVOS (P121.20), Philippine Currency, thereby profiting himself and assisting the offenders to profit by the effects of the said crime. (Criminal case No. 1276.)

The defendant filed a motion to quash the information on the ground that he was being put twice in jeopardy of punishment for the same offense. On 12 January 1955 the Court dismissed the case against the defendant with costs de oficio. The State has appealed.

The first information charging the defendant and seven others with robbery in band alleges that "conspiring together and helping one another for a common purpose and all armed with bolos, by means of violence and intimidation, (they) did then and there willfully, unlawfully and feloniously, take and carry away with intent of gain and against the will of the owner thereof, ten (10) sacks of copra valued at P200.00 belonging to Jesus Alsua." On the other hand, the second information charging the defendant with theft as accessory after the fact recites that "having full knowledge of the commission of the crime of theft of ten sacks of copra from the hacienda of Jesus Alsua" he "did then and there willfully, unlawfully and feloniously take part in said crime after the commission thereof, to wit: by then and there buying from the aforementioned persons the stolen ten sacks of copra* * *." The first information charges the defendant with taking and carrying away unlawfully by means of violence and intimidation ten sacks of copra; whereas the second information charges the defendant with taking part in the crime after the commission thereof by then and there buying the ten sacks of copra /rom the persons who he knew had stolen the same. The evidence necessary to support a conviction for robbery in band is different from that which is required to sustain a conviction for theft as accessory after the fact. Under the first information the defendant Damaso Quedes could not have been convicted as accessory after the fact of robbery in band, because the defendants charged with having committed it did not in fact commit the crime. Evidence to show his part in the crime after the commission thereof would have no support, because the persons who committed the crime and from whom he bought the amount of copra knowingly that it was robbed or stolen were not brought to court charged with the crime. Timely objection on proper ground to the introduction of evidence tending to show that he purchased the ten sacks of copra from persons other than his co-defendants would be sustained. Hence the defendant Damaso Quedes was not placed nor could he be deemed to have been put in danger of being convicted of the crime of robbery in band either as principal or as accessory after the fact under the first information.

The order appealed from is reversed and the case remanded to the trial court for further proceedings in accord with law.

Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

DISSENTING

FELIX, J.,

Recently, I had to dissent from the majority opinion in the case of *People vs. Victorio Jabajab*, [*] on a question of jeopardy based practically on similar facts. In the case at bar, however, the defense of jeopardy is predicated on two counts.

The facts of the case, as correctly narrated in the majority decision, are as follows:

"On 20 September 1951, a criminal complaint charging Damaso Quedes, Nemesio Pradas, Victoriano Pradas and five other unidentified persons with robbery in band was subscribed and sworn to by the sergeant of police of the municipality of Ligao, province of Albay, before the justice of the Peace Court of the said municipality (criminal case No. 438). As the defendants waived their right to preliminary investigation the Justice of the Peace Court forwarded the case to the Court of First Instance. On 29 October 1951 the corresponding information charging the defendants with robbery in band was filed by the Provincial Fiscal in the Court of First Instance of Albay. The information reads, as follows:

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Upon arraignment the defendants entered a plea of not guilty. On 10 January 1952 the Provincial Fiscal filed a motion to dismiss the information for the reason that after a thorough reinvestigation he found out that, with the exception of Damaso Quedes, the other defendants charged in the information did not take part in the commission of the crime and that an information for theft charging the real offenders including Damaso Quedes had been filed in the Justice of the Peace Court of Ligao, Albay. On 12 January 1952 the Court dismissed the case.

"On 28 November 1951 the Chief of Police of Ligao, Albay filed a sworn complaint in the Justice of the Peace Court charging Silvino Mendoza, who on the day of trial had not been apprehended and is still at large, Hilario Oropesa, Glicerio Alferez and Jose Planviergen, with theft of ten sacks of copra belonging to Jesus Alsua. On 20 December 1951 the complaint was amended to include Damaso Quedes as accessory after the fact, and the amendment reads, as follows:

"That the said Damaso Quedes having knowledge of the commission of the crime as alleged and described above unlawfully, illegally and feloniously, subsequently took part in its execution by helping in disposing of the fruits of the crime thereby assisting the said Silvino Mendoza, Hilario Oropesa, Glicerio Alferez and Jose Planviergen to profit by the effects of the above described crime and to prevent its discovery. (Criminal case No. 451.)

"The defendant Damaso Quedes filed a motion to quash on the ground that he had been put once in jeopardy of punishment for the same offense. Motion to quash was denied. On 29 December 1951, after trial, the Justice of the Peace Court found Hilario Oropesa guilty of theft as principal; Damaso Quedes guilty of theft as accessory after the fact and sentenced him to suffer 2 months and 1 day of arresto mayor, to indemnify the offended party in the sum of P121.20, with subsidiary imprisonment in case of insolvency, and to pay 2/5 of the costs; and dismissed the case against Jose Planviergen and Glicerio Alferez. The defendant Damaso Quedes appealed to the Court of First Instance of Albay. On 15 January 1953 the Assistant Provincial Fiscal filed an information charging Damaso Quedes with theft as accessory after the fact. The information reads:

"That on or about the 15th day of September, 1951, in the municipality of Ligao, province of Albay, Philippines, and within the jurisdiction of the Honorable Court, the said accused, having full knowledge of the commission of the crime of theft of ten sacks of copra from the hacienda of Jesus Alsua by Silvino Mendoza who is still at large, Hilario Oropesa who had been convicted in the lower court but did not appeal, Glicerio Alferez and Jose Planviergen whose case against them was dismissed, and without having participated therein either as principal or accomplice, did then and there willfully, unlawfully and feloniously take part in said crime after the commission thereof, to wit: by then and there buying from the aforementioned persons the stolen ten sacks of copra which amount to ONE HUNDRED TWENTY ONE PESOS AND TWENTY CENTAVOS (P121.20), Philippine Currency, thereby profiting himself and assisting the offenders to profit by the effects of the said crime. (Criminal case No. 1276).

"The defendant filed a motion to quash the information on the ground that he was being put twice in jeopardy of punishment for the same offense. On 12 January 1955 the Court dismissed the case against the defendant with costs de oficio. The State has appealed."

Acting on this matter, the majority of this Court reversed the order appealed from and remanded the case to the trial court for further proceedings in accordance with law, for the reason that in the information for robbery, Damaso Quedes was charged as principal of robbery in band, for having conspired with his named co-defendants who had not participated in the commission of said offense, while in the second information, he was charged as accessory after the theft for having bought the same sacks of copra involved in the first case from persons who had really stolen said copra on the same date, September 15, 1951, from the same owner Jesus Alsua. I cannot agree with such decision of the majority of this Court.

First count.—The Rules of Court provide the following; "SEC. 9. Former Conviction or Acquittal or Former Jeopardy.— When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case 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 charged in the former complaint or information". (Rule 113).

The crime for which Damaso Quedes was charged in the informations filed in both cases, were allegedly committed on the same day—September 15, 1951—in the municipality of Ligao, province of Albay, and referred to the taking of the same property of 10 sacks of copra belonging to the same owner—Jesus Alsua.

It goes without saying—and there can be no question about it—that the crime of robbery includes the crime of theft, either consummated, frustrated or attempted, and this is so common that it comes within the realm of judicial knowledge, that many persons who had been accused of robbery in court have been finally sentenced for theft, in any of its various degrees of development when the evidence produced at the hearing showed that the defendant was guilty of the lesser offense. The majority argues, however, that in the first information Damaso Quedes was accused as principal when he was merely an accessory after the crime, and that he had robbed said copra in conspiracy with his co-accused therein who had not committed the crime of robbery or theft of said property and, therefore, that he could not be convicted of the crime he really committed, that is, accessory after the theft. This contention is obviously untenable, because under the Revised Penal Code in order to establish one's guilt of being an accessory after a theft, it is enough that it be proven that the offender, ****having knowledge of the commission of the crime, and without having participated therein either as principal or accomplice, take part Subsequent to its commission by profiting himself or assisting the offenders (whoever they may be) to profit by the effect of the crime"** (Art. 19, No. 1, R. P. C). Under this article it is not essential that Quedes would have assisted his co-accused in the first information to profit by the effect of the crime if he had profited himself by the purchase of

said copra. And that is precisely what happened in the case at bar, because Damaso Quedes knew that said 10 sacks of copra had been stolen from Jesus Alsua and by whom (though there was error in the designation of the culprits made in the first information), and yet, and despite said knowledge he bought the same with intent to gain.

For the purpose of determining the existence of jeopardy, the fact that the evidence necessary to support a conviction for robbery in band might be different from that required to sustain a conviction as accessory after the theft is entirely immaterial IF the higher offense for which Quedes was charged with included the offense actually committed by him. The Court of First Instance of Albay having acquired jurisdiction over said case of robbery, it could have rendered judgment therein not only for robbery but for whatever other lesser offense included in the charge of robbery, such as accessory after the theft if the evidence produced at the hearing before the Justice of the Peace of Ligao, would have been presented in the case of robbery. Consequently, when the Fiscal of Albay moved for the dismissal of said robbery case and when the Judge of First Instance of said province granted said motion, despite the manifestation of the former, that after a re-investigation of the case it was found out that the accused, except Damaso Quedes, were not guilty of the crime charged therein, they placed said Damaso Quedes in jeopardy and barred him from being prosecuted anew for the same offense or for any other included in the same (Section 9, Rule 113 of the Rules of Court). In virtue of these reasons I maintain that the error committed by the Provincial Fiscal in moving for the dismissal of the robbery case against all the accused including Damaso Quedes, and by the lower court in granting that motion can not redound to the damage and prejudice of this defendant, for it would be in open disregard of his constitutional rights.

Second count.—But this is not all. The record shows that the Justice of the Peace of Ligao had jurisdiction to entertain the second case where defendant Damaso Quedes was charged with being an accessory, to the crime of theft, and pass judgment thereon. As a matter of fact said Court, after proper proceedings, found Damaso Quedes guilty of said offense and sentenced him to suffer 2 months and 1 day of arresto mayor, to indemnify the offended party in the sum of ₱121.20, with subsidiary imprisonment in case of insolvency, and to pay 2/5 of the costs. Quedes appealed from this verdict to the Court of First Instance of Albay where the case was dismissed. The question of jeopardy based on the facts on which this second count is predicated is not touched or considered at all in the decision of the majority. In my dissenting opinion in the case of *People vs. Jabajab*, supra, I have already stated, *mutatis mutandis*, the following:

Under section 28 of the Code of Criminal Procedure (now section 9, Rule 113 of the Rules of Court), a defendant is in legal jeopardy when placed on trial under the following conditions: (1) in a court of competent jurisdiction; (2) upon a valid complaint or information; (3) after he has been arraigned; and (4) after he has pleaded to the information. This overrules the case of *United States vs. Ballentine* (5 Phil. 672) which required the investigation of the charges by the calling of a witness in order that a legal jeopardy may attach. The mere calling of a witness would not add a particle to the danger, annoyance and vexation suffered by the accused, after going through the process of being arrested, subjected to a preliminary investigation, arraigned, and required to plead and stand trial.

"Without the consent of the accused" used in section 28 of the Code of Criminal Procedure does not mean "over the objection of the accused" or "against the will of the accused." The sound rule is, that the mere silence of the defendant or his failure to object to the dismissal of the case does not constitute a consent within the meaning of said section. The right not to be put in jeopardy a second time for the same offense is as important as the other constitutional rights of the accused in a criminal case. Its waiver cannot, and should not, be predicated on mere silence. (*People vs. Ylagan*, 58 Phil. 851).

That is the reason why in the case of *People vs. Daylo*, 54 Phil. 862, this Court held that:

"This dismissal of a criminal case of estafa, which has been appealed from a Justice of the Peace to the Court of First Instance, the former being vested with jurisdiction to try and decide, is equivalent to an acquittal of the

defendant in said case, and the filing: of a new information, in which the case dismissed is included, exposes said defendant to a second conviction of one and the same offense, and therefore constitutes double jeopardy."

In the case of *People vs. Fajardo*, 49 Phil. 206, the same principle was upheld:

"The justice of the peace having, as he had jurisdiction to entertain the complaint for estafa filed in the case, the trial court committed an error of law in holding that it had no jurisdiction to try the case on appeal; but its judgment, however, in dismissing the case and releasing the accused is unappealable for the reason that he was already in jeopardy, and therefore the motion for dismissal must be granted."

The case at bar falls squarely by all fours within the scope outlined in our jurisprudence defining double jeopardy. With respect to this second count, we see that the defendant was (1) prosecuted in a court of competent jurisdiction; (2) upon a valid complaint or information; (3) after he had been arraigned and after he had pleaded to the information. Not only that, he has been convicted in the Justice of the Peace Court of Ligao. It is true that he has appealed from the decisions of the Inferior Court to the Court of First Instance and that in virtue of his appeal the decision of the Court a quo was vacated, but this effect provided for in the law cannot produce at the same time and by the same stroke the wiping out of the vivid facts of defendant's prosecution in a court of competent jurisdiction, upon a valid complaint and of his arraignment and conviction therefor. The only effect of defendant's appeal in said case was merely to make the proceedings in the court a quo a continuation and extension of the proceedings in the court a quo. But when for whatever reason, rightly or wrongly, the case on appeal is dismissed, either before or after defendant's arraignment in the appellate court, such dismissal becomes final and unappealable by the State, because it is up to that moment that the defendant has been placed in jeopardy, and no other charges, could be later preferred against him, for the same offense, for it would be tantamount and equivalent to placing the defendant in double jeopardy.

In the case of *People vs. Martinez*, 55 Phil. 6 this Court held that:

"The test for determining whether or not prosecution for one crime constitutes an obstacle to a subsequent action for another distinct crime upon the same facts, is to inquire whether the facts alleged in the subsequent information, if proven, would have acquitted or convicted. The test of the question is whether or not the same evidence supports the 2 actions. If it does, the trial and conviction in the former action would constitute double jeopardy in the latter case."

We see, therefore, that the case at bar was finished after the conditions required in the case of *People vs. Ylagan* supra, had been fully complied with, for the defendant; did not consent to the dismissal of his case. What he did, through counsel, was to demand, as a matter of right, that the case be dismissed on the ground that by the dismissal of the charge in the robbery case; he had been placed already in double jeopardy. And it is to be noted that unlike in the case of *Jabajab*, the dismissal of the case at bar was definite and without giving the Fiscal any right to institute the case anew.

Recently in the case of *People vs. Jesus Bangalao et al*, [1] G. R. No. L-5610, promulgated on February 17, 1954, this Court abandoned the doctrine laid down in the case of *People vs. Oscar Salico*, [2] G. R. No. L-1567 promulgated on October 13, 1949, with Chief Justice Paras and associate Justices Bengzon and Montemayor dissenting. In said case of Bangalao this Court, through Mr. Justice Labrador, dismissed a similar appeal on the part of the Government stating the following:

"We are therefore, constrained to hold that His Honor committed an error in holding that the court had no jurisdiction, simply because it charges the accused with having committed the crime on a demented girl, instead of through the use of force and intimidation. However, 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."

* * * * *

As contended by the majority of this court, the trial Judge might have erred in dismissing the case against Damaso Quedes, but his error does not wipe out the fact that the defendant has already been placed once in jeopardy, and such being the case, We cannot, much against our wish, deprive the defendant of his constitutional right of not being placed twice in jeopardy for the same offense.

Wherefore, and on the strength of the foregoing considerations, I am of the opinion and so hold that the present appeal of the Government must be dismissed without costs.

Paras, C. J., concurs.

[*] Supra, p. 307

[1] 94 Phil., 364.

[2] 84 Phil., 722.

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