

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. SERAFIN HERNANDEZ, ACCUSED AND APPELLEE.

G.R. No. L-4213. November 28, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

The prosecution has appealed from the decision of the Court of First Instance of Rizal dismissing the information against Serafin Hernandez, which is of the following tenor:

"That on or about the 23rd day of September 1949, in the municipality of Pasig, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully and feloniously attack, assault and use personal violence on the person of Amador Palor as a result of which the latter sustained physical injuries in the different parts of his body which required and will require medical attendance for the period of 25 days, and incapacitated and will incapacitate him to perform his customary labor for the same period of time, and as a consequence of said injuries the offended party lost the power to hear of his right ear."

Hernandez pleaded not guilty to the charge. Subsequently he was tried together with Apolonio Velasco, accused in another case for serious physical injuries committed on the same occasion. The joint trial was agreed on all sides, witnesses testified and the court finding that both had inflicted physical injuries, convicted Apolonio Velasco, but dismissed the information as to Hernandez holding it had no jurisdiction because the crime charged therein was triable before the justice of the peace court. Said the judge,

"The information against Serafin Hernandez charges an offense of less serious physical injuries falling under the first paragraph of Article 265 of the Revised Penal Code. However, at the trial, the prosecution intended to prove the crime as defined in article 263, of the same code. Under the circumstances of the case, therefore, this court cannot convict the accused for the higher offense proved but not charged because in no case can a conviction be sustained for a higher offense that charged in the complaint, a general rule which has its foundation in the constitutional right of the accused to be advised at the outset of the proceedings as to the precise nature of the charge against an accused and for the further reason that the crime charged in one triable by the Justice of the Peace Court in the exercise of its original jurisdiction. (Sec. 87-b, Republic Act No. 296). * * * As to accused Serafin Hernandez the court finds that the information against him must be, as the same is, hereby dismissed, for lack of jurisdiction."

In this appeal the Solicitor General contends the crime described was serious physical injuries, under article 265, paragraph 2, which for convenience is quoted:

"2. The penalty of prision correccional in its medium and maximum periods, if in consequence of the physical injuries inflicted, the person shall have lost the use of speech or the power to hear or to smell, or shall have lost an eye, a hand, a foot, an arm, or a leg or shall have lost the use of any such member, or shall have become incapacitated for the work in which he was theretofore habitually engaged."

Attention is invited by the prosecution to the last part of the information alleging that "as a consequence of said

injuries, the offended party lost the power to hear of his right ear." Loss "of the power to hear" is surely a serious physical injury. But is the loss "of the power to hear of his right ear" a loss of the power to hear? As the offended party may still hear thru his left ear, it would seem he has not lost the power to hear. However Article 263, paragraph 3, prescribes prision correccional in its minimum and medium periods if the person injured shall have lost "the use of any other part of his body." A. Palor was deprived of the use of his right ear, a part of his body, and the offense described in the information was cognizable by the court of first instance.

However a majority of the court believe that as the Court of First Instance had jurisdiction, the judgment dismissing the case is unappealable, because the appeal places the accused in a second jeopardy. (U. S. vs. Regala, 28 Phil., 57; People vs. Borja, 43 Phil., 618; People vs. Fajardo, 49 Phil, 206; Kepner vs. U. S. 195 U. S. 100).

In support of this appeal, the Salico precedent is invoked.[1] But this is not conclusive because the main point raised there was dismissal of the case with the consent or at the request of the accused, which is not the situation here.

Wherefore, this appeal is dismissed, with costs de officio. So ordered.

Paras, C. J., Padilla, Jugo, Bautista Angelo and Labrador, JJ., concur.
Reyes, J., concurs in the result.

[1] People vs. Salico, 47 Off. Gaz., 1765.

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