

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. AMADA REYES DE HERNANDEZ, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-7390. April 30, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The present appeal was interposed by the City Attorney of Quezon City from the order of the Court of First Instance dated December 8, 1953, dismissing the case against Amada Reyes de Hernandez, Ricardo and Teofilo Reyes, and Solano Hernandez.

It appears from the record that on April 24, 1953, an information for qualified theft was filed in the Court of First Instance of Quezon City (Case No. Q-972), couched in the following terms:

"The undersigned City Attorney of Quezon City accuses Anselmo Reyes y Barican as principal, and accused Amada Reyes de Hernandez, Solano Hernandez, Ricardo Reyes, Teofilo Reyes and others who are still unidentified as accessories after the fact of the crime of qualified theft, committed as follows:

"That on or about the 19th of April, 1953, in Quezon City, Philippines, the accused Anselmo Reyes Y Barican, who at the time was then the trusted driver of Mr. and Mrs. Lucas Paredes and has been especially assigned to take charge and drive a Cadillac car for the Governor of Abra wherein the jewelries belonging to Mr. and Mrs. Paredes were being kept and while said car was under the care and custody of Anselmo Reyes y Barican, said accused, without the consent of the owner thereof, did, then and there, willfully, unlawfully, and feloniously, with intent of gain and with grave abuse of confidence, open the baggage compartment of said Cadillac car and take, steal, and carry away the following jewelries belonging to Mr. and Mrs. Lucas Paredes:

'(List of Jewelries)

"That the accused Amada Reyes de Hernandez, Solano Hernandez, Ricardo Reyes and Teofilo Reyes, having knowledge of the commission of the above described crime of qualified theft, and without having participated therein either as principals or as accomplices took part in said offense subsequent to its commission by then and there, willfully, unlawfully, and feloniously concealing the aforementioned pieces of jewelry after receiving same from the principal accused Anselmo Reyes y Barican, in order to conceal the crime, to the damage and prejudice of the said owners thereof in the aforementioned sum of P227,190, Philippine currency." (Appellant's Brief, pp. 2-3).

The principal accused, Anselmo Reyes, pleaded guilty to simple theft, and was sentenced accordingly. Those charged as accessories after the fact (now appellees herein) pleaded not guilty, and later filed a motion to quash (Rec., p. 58) on the ground that being brothers and sisters of the accused, they were exempt of criminal responsibility for the acts charged against them in the information, invoking Art. 20 of the Revised Penal Code and submitting evidence of the relationship. Thereupon, the prosecution moved (Rec. p. 77) to be allowed to clarify the information by adding thereto an allegation that the accused Ricardo, Teofilo, and Amada Reyes, and

the latter's husband Solano Hernandez, profited from the effects of the crime committed by the principal accused. In view of this move, counsel for the accused moved to withdraw their motion to quash, and objected to the proposed amendment of the information, on the ground that it was a material change not allowable after plea without consent of the accused (Rec, pp. 79, 86). , On June 15, 1953, the Court issued an order denying the motion to amend the information, because it would substantially affect the fundamental rights of the accused, who were exempt from criminal responsibility under the original information, in view of their relationship with the principal accused (Rec, p. 102), but without acting on* the motion for the withdrawal of the motion to quash. Then the prosecution. moved to dismiss the case against the alleged accessories, with reservation of the right to file another information; and the court ordered the dismissal on August 26, 1953 (Rec. p. 155), without ruling on the reservation made by the prosecution because any such ruling would be, in its opinion, premature.

A new information was then filed (Crim. Case No. Q-1064) in the same Court, virtually reproducing the previous one in case Q-972, except for the allegation that—

"Amada Reyes de Hernandez, Solano Hernandez, Ricardo Reyes and Teofilo Reyes received the following pieces of jewelry and with intent of gain willfully unlawfully and feloniously kept them for the purpose of profiting themselves and assisting Anselmo Reyes to profit by the effects of the crime above mentioned to the damage and prejudice of the above-mentioned owner in the sum of P162,180 Philippine currency. * * *".

The accused moved to quash the second information on the ground that it would place them twice in jeopardy for the same offense; and the motion was granted by the Court below. Thereupon, the prosecution appealed to this Court.

The Solicitor General argues that there could be no second jeopardy for the accused because (1) they could not be convicted under the first information, in view of their relationship with the accused; and (2) that the second information requires evidence (of intent of gain) that could not be admitted under the first information, since it charged merely intent to conceal the crime.

We are of the opinion that the plea of double jeopardy was erroneously sustained. In the first place, the accused-appellees herein filed a motion to quash on the ground that they incurred no criminal liability under the facts alleged in the information in the preceding case, No. Q-972, and the trial Court, instead of allowing the withdrawal of the motion to quash, virtually sustained the same when it denied the fiscal's motion to amend, thereby forcing the latter to dismiss the case; hence, it can not be held that the former case was terminated without the express consent of the accused. Secondly, the defendants themselves showed that the information in case No. Q-972 was insufficient to charge them with any criminal offense, in view of their relationship with the principal accused; and it is well established doctrine that for jeopardy to attach, there must be an information sufficient in form and substance to sustain a conviction (Rule 113, sec. 9). Lastly, the herein accused having successfully contended that the information in case No. Q-972 was insufficient to sustain a conviction, they can not turn around now and claim that such information was after all, sufficient and did place them in danger or jeopardy of being convicted thereunder. If, as they formerly contended, no conviction could be had in the previous case, they are in estoppel to contend now that the information in the second case (Q-1064) places them in jeopardy for the second time. Their case comes within the spirit of the rule laid down in *People vs. Acierto*, (92 Phil., 534):

"Irrespective of the correctness of the views of the Military authorities, the defendant was estopped from demurring to the Philippine court's jurisdiction and pleading double jeopardy on the strength of his trial by the court martial. A party will not be allowed to make a mockery of justice by taking inconsistent positions which, if allowed, would result in brazen deception. It is trifling with the courts, contrary to the elementary principles of the right dealing and good faith, for an accused to tell one court that it lacks authority to try him and, after he has succeeded in his effort, to tell the court to which he has been turned over that the first has committed

error in yielding to his plea." (*Italics supplied*).

The order of dismissal appealed from is reversed and set aside, and the case ordered remanded to the Court of origin with instructions to proceed with the case. Costs against accused-appellees.

Pablo, Acting C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Concepcion, JJ., concur.

Judgment reversed.

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