

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE CITY COURT OF MANILA, BRANCH XI AND FRANCISCO GAPAY Y MALLARES, RESPONDENTS.

G.R. No. L-36342. April 27, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

This is a petition to review the order, dated November 17, 1972, of the City Court of Manila, Branch XI, dismissing the information for homicide thru reckless imprudence filed against private respondent, Francisco Gapay y Mallares, in Criminal Case No. E-505633 on the ground of double jeopardy. Respondent court held that the private respondent having been previously tried and convicted of serious physical injuries thru reckless imprudence for the resulting death of the victim would place the accused in double jeopardy.

The question presented in this case is whether a person who has been prosecuted for serious physical injuries thru reckless imprudence and convicted thereof may be prosecuted subsequently for homicide thru reckless imprudence if the offended party dies as a result of the same injuries he had suffered.

In *Melo vs. People*, 85 Phil. 766, this Court held that "where after the first prosecution a new fact supervenes for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at a time, constitutes a new and distinct offense, the accused cannot be said to be in second jeopardy if indicted for the second offense." However, the trial court held that the doctrine of *Melo vs. People* does not apply in the case at bar in view of this Court's ruling in *People vs. Buan*, 22 SCRA 1383, that Article 365 of the Penal Code punishes the negligent state of mind and not the resulting injury. The trial court concluded that once prosecuted for and convicted of negligence, the accused cannot again be prosecuted for the same negligence although for a different resulting injury.

In the case at bar, the incident occurred on October 17, 1972. The following day, October 18, an information for serious physical injuries thru reckless imprudence was filed against private respondent driver of the truck. On the same day, the victim Diolito de la Cruz died.

On October 20, 1972, private respondent was arraigned on the charge of serious physical injuries thru reckless imprudence. He pleaded guilty, was sentenced to one (1) month and one (1) day of arresto mayor, and commenced serving sentence.

On October 24, 1972, an information for homicide thru reckless imprudence was filed against private respondent.

On November 17, 1972, the City Court of Manila, upon motion of private respondent, issued an order dismissing the homicide thru reckless imprudence case on the ground of double jeopardy.

Well-settled is the rule that one who has been charged with an offense cannot be charged again with the same or identical offense though the latter be lesser or greater than the former. However, as held in the case of *Melo vs. People*, *supra*, the rule of identity does not apply when the second offense was not in existence at the time of the

first prosecution, for the reason that in such case there is no possibility for the accused, during the first prosecution, to be convicted for an offense that was then inexistent. "Thus, where the accused was charged with physical injuries and after conviction, the injured person dies, the charge for homicide against the same accused does not put him twice in jeopardy." Stated differently, where after the first prosecution a new fact supervenes for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at the time, constitutes a new and distinct offense, the accused cannot be said to be in second jeopardy if indicted for the new offense.

As stated above, the victim Diolito dela Cruz died on the day the information was filed, and the accused was arraigned two (2) days after, or on October 20, 1972. When the information for homicide thru reckless imprudence was, therefore, filed on October 24, 1972, the accused-private respondent was already in jeopardy.

In his memorandum, the Solicitor General made mention of the fact that on October 21, 1972, the City Fiscal filed an Urgent Motion asking that the "hearing and arraignment of this case be held in abeyance for there is information that the victim, Diolito dela Cruz died, and the information would have to be amended." Be that as it may, the fact remains that the victim Diolito dela Cruz died on October 18 "one (1) day after the accident and the arrest of the respondent Gapay" (p. 103, Rollo) and that on October 20, 1972, the accused was arraigned, pleaded guilty and sentenced accordingly. Thus, jeopardy had attached and no new fact supervened after the arraignment and conviction of the accused.

ACCORDINGLY, the order of dismissal of the lower court is affirmed.

SO ORDERED.

Melencio-Herrera and Plana, JJ., concur.

Teehankee, J., (Chairman), took no part.

Vasquez, J., I join the concurring opinion of Mr. Justice Gutierrez, Jr.

Gutierrez, Jr., J., see concurring opinion.

CONCURRING OPINION

GUTIERREZ, JR., J.:

I am constrained to concur because the records are inadequate to show that the arraignment, while hasty and surrounded by seemingly suspicious circumstances, was tainted by fraud, collusion, or other form of chicanery sufficient to sustain a finding that the State was denied due process (Cf. *Silvestre v. Military Commission No. 21, 82 SCRA 10*).

The incident happened on October 17, 1972. The information for serious physical injuries through reckless imprudence was filed on October 18, 1972. The victim of the accident died on the same day.

Knowing the volume of the case load in the City Court of Manila and the inevitably slow pace of work even when urgency is dictated by the nature of cases with the Fiscal or before the various salas, it is most surprising that the accused could have been arraigned on October 20, 1972 for the charge of serious physical injuries only three days after the incident, two days after the filing of the information, and two days after the death of the victim. The accused does not appear to have been a detention prisoner necessitating his immediate arraignment right after the filing of the information. The only sensible conclusion to draw from the above circumstances is that the accused was hastily made to plead guilty to serious physical injuries to foreclose a charge for homicide even before it

could be filed. In such a case, there would be a trifling with the processes of justice and a collusive effort amounting to fraud or deceit to deprive the State of its authority to prosecute an accused for the correct offense. While this conclusion is most likely, it remains speculative, however, because we have a criminal case before us. The records fail to show what were the results of an investigation, if any was conducted to ascertain why the assistant city fiscal's suspicions were not aroused when the case was hurriedly set for arraignment, contrary to the usual procedures in the Manila City Court. Either the assistant city fiscal was naively new to the job, or he was hopelessly negligent, or he connived with the accused, in which case remedial measures are called for. At any rate, I concur in the affirmance of the order of dismissal in line with the many protections that the Constitution and the laws give to the accused in criminal prosecutions.

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