

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. PABLO PILPA, DEFENDANT-APPELLEE.

G.R. No. L-30250. September 22, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

The prosecution appealed from the order of the Court of First Instance of Leyte, dismissing the second information for frustrated murder against Pablo Pilpa on the ground that it would place him in double jeopardy since the first information for frustrated murder against him was dismissed without his consent after he had pleaded not guilty. The facts are as follows:

On April 19, 1967 the city fiscal of Tacloban City filed in the lower court against Pilpa the following information for frustrated murder (Criminal Case No. 11935):

"The undersigned City Fiscal of the City of Tacloban accuses Pablo Pilpa of the crime of Frustrated Murder, committed as follows:

"That on or about the 29th day of October 1966, in the City of Tacloban, Philippines, and within the jurisdiction of this Honorable Court, the said accused armed with a deadly weapon {bold}, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, and stab on REX MAGSAMBOL on his back, thereby inflicting upon said Rex Magsambol stab wound which ordinarily would have caused the death of said Rex Magsambol, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered to Rex Magsambol which prevented his death.

"Contrary to Article 248 in connection with Article 6 of the Revised Penal Code."

About two months later, or on June 15, Pilpa was arraigned. With the assistance of counsel, he pleaded not guilty.

At the hearing in the morning of November 20, 1967 the prosecution moved in open court for the dismissal of the case on the ground of supposed lack of jurisdiction because intent to kill was not specifically alleged in the information. The counsel for the accused manifested that he had no objection to the dismissal as may be seen from the following transcript of the proceedings on that occasion:

"Atty. Pelaez (counsel for the accused): May we get a categorical statement from the Fiscal's office that it is formally asking for the dismissal of this case?."

"Fiscal Anover: Yes, we are.

"Atty. Lastrilla (Private Prosecutor): We are.

"Atty. Pelaez (Counsel for the accused): We have no objection."

Judge Elias B. Asuncion forthwith dictated an order stating that "upon petition of the private and public

prosecution for the dismissal of this case, without objection on the part of the accused, expressed through counsel, the Court grants the motion and orders this case dismissed with costs de oficio."

Evidently, the counsel for the accused, after leaving the courtroom and arriving at his office, had second thoughts about his manifestation that he had no objection to the dismissal of the case. Cognizant of the technicalities of double jeopardy, he realized that the dismissal should have the effects of former jeopardy. To achieve that objective, he decided to nullify his manifestation that he had no objection to the dismissal.

So, in the afternoon of the same day, November 20, the accused filed a manifestation signed by him and his two lawyers, making of record his opposition to the dismissal of the case.

The fiscal and the private prosecutor were furnished with copies of that manifestation. Judge Asuncion placed on it the word "Noted."

Not satisfied with that manifestation of opposition to the dismissal of the case, the counsel for the accused on the following day, November 21, filed a motion for the reconsideration of the order of dismissal. He argued that the lower court had jurisdiction over the case.

Judge Asuncion denied that motion in his order of November 25, 1967. No appeal was interposed from that order of denial.

In the meantime, or on "November 22 (two days after the issuance of the order of dismissal), the city fiscal filed a new information for frustrated murder against Pilpa (Criminal Case No. 12183). In that second information the fiscal reproduced the wording of the first information and added the words "intent to kill" and "vital portion."

On February 15, 1968 the accused filed a motion to quash the second information on the ground of double jeopardy. The fiscal opposed the motion.

Judge Lope C. Quimbo in his order of April 5, 1968 (mentioned at the beginning of this decision) granted the motion. He reasoned out that the dismissal of the first information was without the consent of the accused because of his manifestation opposing the dismissal. He noted that the court had jurisdiction over the crime alleged in the first information and that the erroneous dismissal of a case on the ground of lack of jurisdiction does not prevent the accused from having been placed in jeopardy (*People vs. Duran, Jr.*, 107 Phil. 979, where the dismissal was without the consent of the accused).

The issue is whether the second information would place the accused twice in jeopardy of being punished for the crime of frustrated murder.

An information may be quashed on the ground "that the defendant has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged" (Sec. 2[h], Rule 117, Rules of Court). "No person shall be twice put in jeopardy of punishment for the same offense" (Sec. 22, Art. IV, Constitution).

The prohibition against double jeopardy is an ancient and well established doctrine, "a sacred principle of criminal" jurisprudence, and is a part of the universal law of reason, justice, and conscience." It is founded on the maxim *non bis in idem* (not twice for the same) or *nemo debet bis vexari pro una et eadem causa* (no one ought to be twice vexed for one and the same cause) (22 C.J.S. 616). The prohibition is implemented in the following provisions of Rule 117:

"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 has 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 charge, 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."

Under section 9 of Rule 117 the protection against double jeopardy may be invoked in cases of (a) previous acquittal (autrefois acquit), (b) conviction (autrefois convict) of the same offense, or (c) when the case against the accused has been dismissed or otherwise terminated without his express consent.

In any of these three cases, in order that there be former legal jeopardy, it is necessary in the first case that (a) there was a valid complaint or information (b) before a court of competent jurisdiction, (c) and that the accused had been arraigned and had entered his plea. When these conditions or requisites are present, the subsequent acquittal or conviction of the accused, or the dismissal or termination of the case without his express consent constitutes res judicata and is 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 included therein. (4 Moran's Comments on the Rules of Court, 1970 Ed., pp. 242-243).

In synthesis, there is former jeopardy when in the first case there was a valid complaint of information filed in a court of competent jurisdiction and, after the defendant had pleaded to the charge, he was acquitted or convicted or the case against him was terminated without his express consent (People vs. Consulta, L-41251, March 31, 1976, 70 SCRA 277; People vs. Ylagan, 58 Phil. 851, 853).

It is conceded that the first information is valid. The absence of an averment as to intent to kill was not a fatal defect because the intent to kill may be inferred from the allegation that the stab wound would have caused the death of the victim. (People vs. Padios, 97 Phil. 19, 21-22).

As already stated, after the accused Pilpa had entered his plea, the case was terminated. The question is whether the termination of the case was without his express consent and is a bar to his prosecution for frustrated murder under the second information.

We hold that the oral manifestation at the hearing made by the counsel of the accused that he had no objection to the dismissal of the case was equivalent to a declaration of conformity to its dismissal or to an express consent to its termination within the meaning of section 9 of Rule 117. He could not thereafter revoke that conformity since the court had already acted upon it by dismissing the case. He was bound by his counsel's assent to the dismissal (People vs. Romero, 89 Phil. 672; People vs. Obsania, L-24447. June 29, 1968, 23 SCRA 1249, 1269-70).

In *Pendatwn vs. Aragon*, 93 Phil. 798, 800 the prosecution filed a motion for the provisional dismissal of the complaints for physical injuries and slander against Aida F. Pendatum. At the bottom of that motion, her lawyer wrote the words: "No objection." The court granted the motion.

Later, the cases were revived. The accused contended that the revival of the cases would place her in double jeopardy. That contention was rejected because the provisional dismissal did not place the accused in jeopardy. There was no jeopardy in such dismissal because the words "No objection" conveyed the idea of full concurrence with the dismissal and was equivalent to saying "I agree."

WHEREFORE, the order of dismissal under appeal is reversed and set aside. The trial court is directed to arraign and try the accused. Costs against the accused.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr., and Santos, JJ., concur.

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