

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. MIGUEL JAMISOLA, ACCUSED-APPELLEE, THE MUNICIPALITY OF PAGADIAN, REPRESENTED BY BENJAMIN F. ARAO AND PONCIANO L. DUEÑAS, IN THEIR O...

G.R. No. L-27332. November 28, 1969

Ponente: DIZON, J.

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DIZON, J.:

In the Municipal Court of Pagadian, Zamboanga del Sur, Miguel Jamisola was charged with having feloniously obstructed a municipal alley by constructing thereon several concrete posts, in violation of Section 1 of Municipal Ordinance No. 1, series of 1962, of said municipality. After trial upon a plea of not guilty, said defendant was convicted as charged and sentenced to pay a fine of P50.00, with subsidiary imprisonment in case of insolvency, and imprisonment for twenty (20) days, with costs of suit. He was furthermore ordered to remove the concrete posts he had planted within the alley referred to in the case.

From the above decision the defendant appealed to the Court of First Instance of Zamboanga del Sur where, after re-investigating the case, the Provincial Fiscal filed a motion for its dismissal upon the ground that, according to the evidence in his possession, the defendant had not closed the alley mentioned in the complaint below, and that the question to be determined was precisely the location of the alley alleged to have been obstructed. The Court granted the motion and dismissed the case. The motion for reconsideration filed by the municipality of Pagadian, through the Municipal Mayor and the Chief of Police, having been denied, said municipality took the present appeal, claiming that the lower court erred in denying the motion for reconsideration aforesaid and in reiterating its order of dismissal.

We find no merit in the present appeal.

The rule in this jurisdiction is that upon appeal by the defendant from a judgment of conviction by the municipal court, the appealed decision is vacated and the appealed case "shall be tried in all respects anew in the court of first instance as if it had been originally instituted in that court". (Rule 123, Section 7, Rules of Court). In the appellate court the case may proceed upon the complaint filed below or upon an information filed with said court by the Provincial Fiscal charging exactly the same offense, the appellate proceedings calling thereafter for the arraignment of the defendant.

On the other hand, under Rule 110 of the Rules of Court, the Fiscal has "the direction and control" of the prosecution (Section 4). In the exercise of this authority the Fiscal may re-investigate the case and subsequently move for its dismissal should the re-investigation show either that the defendant is innocent or that his guilt may not be established beyond reasonable doubt. This is what the Provincial Fiscal of Zamboanga del Sur did in the present case.

Upon the foregoing, We find that the Provincial Fiscal mentioned heretofore and the lower court acted in

accordance with law and decided cases (People vs. Jaramilla, G. R. L-8030, November 8, 1955; People vs. Malayao, G. R. L-12103, February 28, 1961), it being clear, furthermore, that the dismissal complained of does not deprive the municipality of Pagadian of the right to seek relief against defendant Jamisola in an appropriate civil action.

WHEREFORE, the order appealed from is affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

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