

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLE VS. SEGUNDO M. ACIERTO, DEFENDANT AND APPELLANT.*G.R. Nos. L-2708 and L-3355-60. January 30, 1953*

Ponente: TUASON, J.

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This is an appeal from two separate decisions, one in a case for falsification of a private document and another in six cases for estafa. The charges for estafa are similar in all respects except as to the dates of the commission of the crimes and the amounts alleged to have been swindled. In the cases for estafa, the accused pleaded guilty and was sentenced to four months and one day of arresto mayor in each, to indemnify the United States Army in the amount of P305.08, P353, P316.44, P221.08, P233.48 and P209.60, respectively, with subsidiary imprisonment in case of insolvency but not to exceed one-third of the principal penalty, and to pay the costs. In the case for falsification, in which the defendant pleaded not guilty, he was condemned to an indeterminate penalty of from one year and eight months to four years and nine months, to indemnify the United States Army in the amount of P100.46, or subsidiary imprisonment in case of insolvency, and to pay the costs.

On this appeal, the seven cases have been consolidated in the briefs and for decision, and in all of them these questions are raised: (1) former jeopardy, (2) want of jurisdiction of the court a quo, on both of which the Solicitor General sides with the appellant, and (3) sufficiency of the evidence, besides others to be briefly mentioned in the latter part of this opinion.

For a background, it is well to state the pertinent facts.

Prior to August 23, 1947, the accused was employed by the Army of the United States as court martial reporter on a salary basis in the Judge Advocate Section, Headquarters PHILRYCOM, Camp Rizal, Quezon City. On that date, at his request, he was "dropped from the strength report of this section" and became a reporter on piece-work arrangement. As piece worker he was paid for so much work of reporting and transcribing as he performed. It was when he was working in the latter capacity, in 1948, that he was said to have made false claims and received compensation for services not rendered.

Charged with violation of the 94th Article of War, in the belief that defendant was still an employee of, or-serving with, the Army subject to its jurisdiction, on March 20, 1948, he was placed under arrest by the United States Military authorities, detained in a United States Army stockade, and brought to trial before a general court martial appointed and convened by the Commanding General on April 7 1948.

Before the court martial, the defendant, on arraignment, interposed a special plea to its jurisdiction. But he was overruled, after which, trial proceeded on a plea of not guilty. On April 8, 1948, after trial, he was found guilty of all the specifications with which he stood charged, and sentenced to be confined at hard labor for sixty months. Immediately after the sentence was promulgated, he was committed to the general prisoners branch by which, it is alleged, he was subjected to hard labor like all other military prisoners.

On June 18, 1948, however, the Commanding General as reviewing authority disapproved the above verdict and sentence in an order of the following tenors:

"In the foregoing case of Segundo M. Acierto, a person accompanying and serving with the Army of the United States without the territorial jurisdiction of the United States, the sentence is disapproved upon the sole ground that this accused was not subject to military law and without prejudice to his trial before a proper tribunal."

Consequently, on June 19, he was conducted by a United States Military officer to the City Attorney of Quezon City for prosecution under the penal laws of the Philippines and the said City Attorney, after conducting a preliminary investigation, filed the informations which initiated the several cases now on appeal.

The appellant states in his brief that in all the above seven cases he set up the plea of double jeopardy, a statement which is belied by the fact that in all the six cases for estafa he pleaded guilty. However, the plea of double jeopardy is interwoven with the plea of want of jurisdiction, in that the former is directly predicated on the proposition, now sustained by the defendant, that the court martial had jurisdiction of the offenses and his person. Because of this interrelationship between the two pleas, we may disregard, for the present, the fact that in the six cases for estafa double jeopardy, which is a matter of defense, was not invoked.

The Bases Agreement between the Republic of the Philippines and the United States over American Military bases signed on March 14, 1947, and effective upon its acceptance by the two governments, in part provides:

ARTICLE XIII

JURISDICTION

"1. The Philippines consents that the United States shall have the right to exercise jurisdiction over the following offenses:

'(a) Any offense committed by any person within any base except where the offender and offended parties are both Philippine citizens (not members of the armed forces of the United States on active duty) or the offense is against the security of the Philippines;

'(b) Any offense committed outside the bases by any member of the armed forces of the United States in which the offended party is also a member of the armed forces of the United States; and

'(c) Any offense committed outside the bases by any member of the armed forces of the United States against the security of the United States.

"2. The Philippines shall have the right to exercise jurisdiction over all other offenses committed outside the bases by any member of the armed forces of the United States.

"3. Whenever for special reasons the United States may desire not to exercise the jurisdiction reserved to it in paragraphs 1 and 6 of this Article, the officer holding the offender in custody shall so notify the fiscal (prosecuting attorney) of the city or province in which the offense has been committed within ten days after his arrest, and in such a case the Philippines shall exercise jurisdiction."

Camp Rizal where the crimes in question were committed was, it is conceded, a military base or installation in 1948. Since paragraphs (b) and (c) of section 1 refer to offenses "committed outside the bases" by members of the armed forces, and since the accused was not, it is also conceded, a member of the armed forces, these paragraphs may be eliminated from our inquiry into the jurisdiction of the court martial.

Paragraph (a) is the provision in virtue of which the appellant disputes the authority of the civil court to take

jurisdiction of his offenses. He contends that he was an employee of the Army of the United States, and was properly and legally tried by a duly constituted military court.

This is the exact reverse of the position defendant took at the military trial. As stated, he there attacked the court martial's jurisdiction with the same vigor that he now says the court martial did have jurisdiction; and thanks to his objections, so we incline to believe, the Commanding General, upon consultation with, and the recommendation of, the Judge Advocate General in Washington, disapproved the court martial proceedings.

The question that meets us at the threshold is: Was the defendant an employee of the United States Army within the meaning of the United States Military law? Defense counsel at the court martial, a United States Military officer, and Lt. Colonel Seymour W. Wurfel, Staff Judge Advocate General of the Philippines Ryukus Command who appeared as amicus curiae in the Court of First Instance and submitted a memorandum for the prosecution, were one in holding that he was not. Both counsel thus described the nature of the defendants work and his relation with the United States Army.

Defendant worked as he pleased and was not amenable to daily control and disciplines of the Army. Upon the change of his status he ceased to be an integral part of the Army with the corresponding loss of the rights and privileges he previously enjoyed and which accrue to regular United States Army could request him to record court martial proceedings, in which event he was paid under Army regulations for so much work accomplished, he could not in his status as piece worker be compelled to do so. He could act as reporter but was not under any obligation to the United States Army to do so. He was not required to present himself for work nor could he be marked absent for failure to appear regularly in his office. He was remunerated for so much of his work of reporting and transcribing as he volunteered to make. He was privileged to remain in his home except for the purpose of bringing his finished report to the office. Then he was at liberty to depart once more. After his discharge as regular employee he was in fact paid for records of trial prepared by him from a fund entirely different from that set aside to pay regular employees' salaries. His position was comparable to that of any vendor who sells commodity to the Army as distinguished from employees who draw regular pay from the organization. The last time he reported court martial proceedings was on December 13, 1947. Since that date he had not in any way performed any work for the Army, nor had he been called upon to act in any case or to report in any section of the Headquarters of the Philippine Ryukus Command for any purpose. Upon the circumstances set forth, he could not be considered as serving with the Army.

Colonel Wurfel cited Winthrop's Military Law and Precedents, 2nd ed., Vols. 1 and 2, page 100, which says:

"The Article to be strictly construed. This article, in creating an exceptional jurisdiction over civilians, is to be strictly construed and confined to the classes specified. A civil offender who is not certainly within its terms cannot be subjected under it to a military trial in time of war with any more legality than he could be subjected to such a trial in time of peace. As held by the Judge Advocate General, the mere fact of employment by the Government within the theatre of war does not bring the person within the application of the article. In several cases of public employees brought to trial by court martial during the late war the convictions were disapproved on the ground that it did not appear that at the time of their offenses they were 'serving with the army' in the sense of this Article. (Referring to Article of War 2, paragraph 2[d.])"

Construction of the United States Military Law by the Judge Advocate General of the United States Army is entitled to great respect, to say the very least. When such construction is a disclaimer of jurisdiction under the Bases Agreement, the Philippine Government certainly is not the party to dispute it; the fewer the rights asserted by the United States the more is enhanced the dignity of the Philippines and its interest promoted.

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 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.

From another angle, it seems immaterial whether or not the court martial had jurisdiction of the accused and his crimes under the terms of the Bases Agreement. Granting that it had, the Court of First Instance of Quezon City nevertheless properly and legally took cognizance of the cases and denied the defendant's motion to quash.

By the Agreement, it should be noted, the Philippine Government merely consents that the United States exercise jurisdiction in certain cases. The consent was given purely as a matter of comity, courtesy, or expediency. The Philippine Government has not abdicated its sovereignty over the bases as part of the Philippine territory or divested itself completely of jurisdiction over offenses committed therein. Under the terms of the treaty, the United States Government has prior or preferential but not exclusive jurisdiction of such offenses. The Philippine Government retains not only jurisdictional rights not granted, but also all such ceded rights as the United States Military authorities for reasons of their own decline to make use of. The first proposition is implied from the fact of Philippine sovereignty over the bases; the second from the express provisions of the treaty. The treaty expressly stipulates that offenses included therein may be tried by the proper Philippine courts if for any special reason the United States waives its jurisdiction over them.

The carrying out of the provisions of the Bases Agreement is the concern of the contracting parties alone. Whether, therefore, a given case which by the treaty comes within the United States jurisdiction should be transferred to the Philippine authorities is to a matter about which the accused has nothing to do or say. In other words, the rights granted to the United States by the treaty insure solely to that country and can not be raised by the offender. (*Funk vs. State*, 208 S. W., 509.) By the same token, noncompliance with any of the conditions imposed on the United States can not benefit the offender.

This brings up the last ground for; the contention that the Court of First Instance of Quezon City was without jurisdiction of the cases at bar. The Bases Agreement provides in Article XIII, paragraph 3, that in case the United States renounce the jurisdiction reserved to it in paragraphs 1 and 6 of this Article, the officer holding the offender in custody shall so notify the fiscal of the city or province in which the offense has been committed within 10 days after his arrest. The Solicitor General invites attention to the fact that "appellant was arrested by the United States Army on March 20, 1948, and confined until June 18, 1948, pending final decision of this case," and, like the appellant, he believes that "this delay of three months does not obviously comply with the requirement of the foregoing section, which is explicit on its terms and provides for no exception." In their opinion this delay was fatal.

The appellant and the Solicitor General labor, we believe, under a misapprehension as to the purpose and meaning of the treaty provision just cited. This provision is not, and can not on principle or authority be a limitation upon the rights of the Philippine Government. If anything, it is an emphatic recognition and reaffirmation of Philippine sovereignty over the bases and of the truth that all jurisdictional rights granted to the United States and not exercised by the latter are reserved by the Philippines for itself.

The ten-day requirement is of directory character relating to procedure, inserted merely for the convenience of the Philippine Government. It can not and does not pretend to diminish or impair the fundamental rights of jurisdiction reserved by the treaty for this Government. It is an obligation imposed on the United States precisely with a view to enabling the Philippine Government the better to exercise its residual authority. The offender has

no interest in this clause of the treaty beyond the right to demand that whoever is to try him should proceed with reasonable dispatch. To say that failure on the part of the United States to turn the offender over to the Philippine authorities within ten days works as a forfeiture of the Philippine Government's jurisdiction is a paradox. By the appellant's and the Solicitor General's theory, this Government would be penalized by the fault of the other signatory to the treaty over whose action it has no control. In effect, the idea is not much unlike divesting a lender of the ownership to his property by reason of the borrower's neglect to return it within the time promised. What is more serious, offenses not purely military in character perpetrated in military or naval reservations would be left unpunished where the military or naval authorities in appropriate cases fail or refuse to act.

Partly for the reasons already shown, the plea of double jeopardy is without any merit. If the court martial had no jurisdiction, jeopardy could not have attached. This proposition is too well established and too well known to need citation of authorities.

Even if it be granted that the court martial did have jurisdiction, the military trial in the instant cases has not placed the appellant in jeopardy such as would bar his prosecution for violation of the Philippine penal laws or for that matter, a second trial under the Articles of War. Although under Rev. Stat. sec 1342, art. 2, it has been held that a former trial may be pleaded when there has been a trial for the offense, whether or not there has been a sentence has been disapproved (Dig. JAG [1912] p. 167), the rule is and should be. otherwise when the disapproval was made in response to the defendant's plea based on lack of jurisdiction. (Ex parte Castello, 8. F. 2nd., 283, 286.) In such case the former trial may not be pleaded in bar in the second trial.

On. the question of the sufficiency of the evidence in the case for falsification of a private document, (which was the only case tried, in the six cases for estafa the defendant having entered the plea of guilty), the court below found that on March 11, 1948, the defendant submitted a voucher in which he falsely made it appear that he was entitled to collect \$100.46 from the United States Army for services allegedly rendered, forging in said document the signature of Captain Eaton J. Bowers, and that by these fraudulent pretenses he succeeded in being paid the amount itemized.

As the lower court said, the defendant did not introduce any evidence to disprove the above findings, confining himself to raising questions of law.

Other legal theories are urged in the appellant's brief but they were not raised in the court below and, moreover, are obviously unmeritorious. It suffices to say that on the facts charged and found by the court in case No. 1701 and established by the proof, the defendant was properly prosecuted for falsification of a private document, even assuming, without deciding, that they also constitute violation of other laws.

The judgment appealed from will be affirmed with the modification that the maximum duration of the appellant's imprisonment shall not be more than threefold the length of the time corresponding to the most severe of the penalties, and that from the sentence as thus reduced there shall be deducted one-half of the preventive imprisonment undergone by the accused.

The appellant will pay the costs of both instances.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, and Labrador, JJ., concur.

[1] Final judgment entered February 19, 1953.

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