

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
RODRIGO YORAC, DEFENDANT-APPELLEE.***G.R. No. L-29270. November 23, 1971*

Ponente: FERNANDO, J.

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The constitutional right not to be put twice in jeopardy for the same offense[1] was the basis for a motion to quash filed by the accused, now appellee, Rodrigo Yorac. He was prosecuted for frustrated murder arising allegedly from having assaulted, attacked, and hit with a piece of wood the offended party, for which he had been previously tried and sentenced for slight physical injuries, his plea being one of guilt. The later information for frustrated murder was based on a second medical certificate after the lapse of one week from the former previously given by the same physician who, apparently, was much more thorough the second time, to the effect that the victim did suffer a greater injury than was at first ascertained. The lower court, presided by the Honorable Judge Nestor B. Alampay, considering that there was no supervening fact that would negate the defense of double jeopardy, sustained the motion to quash in an order of June 21, 1968. The People appealed. As the order complained of is fully supported by the latest authoritative ruling of this Tribunal, *People v. Buling*,[2] we have to affirm.

In the brief for the People of the Philippines, it was shown that the accused Yorac was charged with slight physical injuries before the City Court of Bacolod, the offended party being a certain Lam Hock who, according to the medical certificate issued on April 10, 1968 by a Dr. Rogelio Zulueta, a resident physician of the Occidental Negros Provincial Hospital, was confined "since April 8, 1968 up to the present time for head injury." [3] Then came a plea of guilty by the accused on April 16, 1968 resulting in his being penalized to suffer ten days of arresto menor. He started serving his sentence forthwith. On April 18, 1968, the provincial fiscal filed an information, this time in the Court of First Instance of Negros Occidental, charging the same defendant with frustrated murder arising from the same act against the aforesaid victim Lam Hock upon another medical certificate dated April 17, 1968 issued by the same Dr. Zulueta. In the medical certificate of April 17, 1968, it was made to appear that the confinement of the offended party in the hospital was the result of: "1. Contusion with lacerated wound 4 inches parieto-occipital region scalp mid portion. 2. Cerebral concussion, moderately severe, secondary." [4] Moreover, it further contained a statement that the X-ray finding did not yield any "radiographic evidence of fracture." The healing period, barring complications, was declared to be from eighteen to twenty-one days. [5]

Afterwards, a motion to quash was filed by the accused on June 10, 1968 on the ground that, having been previously convicted of slight physical injuries by the City Court of Bacolod and having already served the penalty imposed on him for the very same offense, the prosecution for frustrated murder arising out of the same act committed against the same offended party, the crime of slight physical injuries necessarily being included in that of frustrated murder, he would be placed in second jeopardy if indicted for the new offense. [6] In its well-reasoned resolution of June 21, 1968 granting the motion to quash and ordering the dismissal of a criminal

case for frustrated murder against the accused, Judge Alampay relied on *People v. Buling* which, in his opinion, was squarely applicable as "nothing in the later medical certificate [indicated] that a new or supervening fact had developed or arisen since the time of the filing of the original action" against the accused. A motion for reconsideration being unavailing, an appeal was elevated to us.

As succinctly set forth in the brief of the People of the Philippines: "The sole issue in this case is whether the defendant, who had already been convicted of slight physical injuries before the City Court of Bacolod for injuries inflicted upon Lam Hock, and had served sentence therefor, may be prosecuted anew for frustrated murder for the same act committed against the same person." [7] The position taken by appellant is in the affirmative but, as indicated at the outset, the controlling force of *People v. Buling* would preclude us from reversing the resolution of Judge Alampay.

1. The Constitution, to repeat, is quite explicit: "No person shall be twice put in jeopardy of punishment for the same offense." [8] As Justice Laurel made clear in an address as delegate before the Constitutional Convention, such a provision finds its origin "from the days when sanguinary punishments were frequently resorted to by despots." [9] A defendant in a criminal case should therefore, according to him, be adjudged either guilty or not guilty and thereafter left alone in peace, in the latter case the State being precluded from taking an appeal. [10] It is in that sense that the right against being twice put in jeopardy is considered as possessing many features in common with the rule of finality in civil cases. For the accused is given assurance that the matter is closed, enabling him to plan his future accordingly, protecting him from continued distress, not to mention saving both him and the state from the expenses incident to redundant litigation. There is likewise the observation that this constitutional guarantee helps to equalize the adversary capabilities of two grossly mismatched litigants, a poor and impecunious defendant hardly in a position to keep on shouldering the costs of a suit.

Then, as a member of the Supreme Court, Justice Laurel had the first opportunity to give meaning to what, under the Constitution, should be considered "the same offense." In the case of *People v. Tarok*, decided in 1941, [11] the then comparatively new Rules of Court in its Section 9 of Rule 113 speaks of a bar to another prosecution for the offense charged after a defendant shall have been convicted or acquitted or the case against him dismissed or otherwise terminated without his express consent, "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." [12]

In the *Tarok* case, the conviction for parricide of the accused was sought to be set aside, as previously he had been indicted for the crime of serious physical injuries, to which he had pleaded guilty. He was sentenced and was actually incarcerated by virtue of such penalty imposed. The offended party was his wife whom he hacked with a bolo, his ire being aroused by certain remarks made by her. While he was thus serving sentence, the victim died, resulting in the new prosecution for parricide of which he was convicted. On appeal to this Court, it was decided, over the dissents of the then Justice Moran and Justice Diaz that the offense of serious physical injuries of which he was found guilty being included in parricide, his previous conviction was a bar to such subsequent prosecution for the more serious crime. The lower court judgment of conviction was thus reversed. According to Justice Laurel, who spoke for the Court: "To our mind, the principle embodied in the New Rules of Court is a clear expression of selection of rule amidst conflicting theories. We take the position that when we amended section 26 of General Orders No. 58 by providing that the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for any offense not only necessarily therein included but which necessarily includes the offense charged in the former complaint or information, we meant what we have, in plain language, stated. We certainly did not mean to engage in the simple play of words." [13]

2. Such a ruling was however re-examined and set aside in *Melo v. People*, [14] where it was held that an accused

who pleaded guilty to the offense of frustrated homicide, the offended party thereafter dying in the evening of the same day, could not rely on a plea of double jeopardy if, as a result thereof, the information was amended to charge him with homicide.[15] As was clarified in the opinion of this Court through the then Chief Justice Moran, one of the dissenters in the Tarok case: "This rule of identity does not apply, however, when the second offense was not in existence at the time of the first prosecution, for the simple 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." [16] Stated differently, if after the first prosecution "a new fact super-venes" on which defendant may be held liable, resulting in altering the character of the crime and giving rise to a new and distinct offense, "the accused cannot be said to be in second jeopardy if indicted for the new offense." [17] It is noteworthy, however, that in the Melo ruling, there was a reiteration of what was so emphatically asserted by Justice Laurel in the Tarok case in these words: "As the Government cannot begin with the highest, and then go down step by step, bringing the man into jeopardy for every dereliction included therein, neither can it begin with the lowest and ascend to the highest with precisely the same result." [18]

3. There is then the indispensable requirement of the existence of "a new fact [which] supervenes for which the defendant is responsible" changing the character of the crime imputed to him and together with the facts existing previously constituting a new and distinct offense. The conclusion reached in *People v. Buling*, [19] the latest case in point, relied upon by Judge Alampay in the resolution now on appeal, was thus predictable. As set forth in the opinion of Justice Labrador in that case, there was a medical certification that the wounds for which the accused Buenaventura Buling was first prosecuted for less serious physical injuries would require medical attendance from a period of from ten days to fifteen days. He pleaded guilty and was, on December 8, 1956, sentenced by the Justice of the Peace of Cabalian, Leyte, to one month and one day of arresto mayor. He started serving his sentence on the same day. On January 18, 1957, however, another physician examined the offended party and with the use of an X-ray apparatus, certified that he did suffer a fracture requiring a treatment of from one and one-half months to two and one-half months, barring complications. As a result, on February 20, 1957, an information was filed against the same accused, this time before the Court of First Instance of Leyte, charging him with serious physical injuries. He stood trial and was found guilty of such an offense and sentenced to imprisonment of four months of arresto mayor as minimum to one year of prision correccional as maximum. On appeal to this Court, his invocation of the defense of double jeopardy struck a responsive chord, and he was acquitted.

4. The opinion of Justice Labrador explained with clarity why the constitutional right against being put twice in jeopardy was a bar to the second prosecution. Thus: "If the X-ray examination discloses the existence of a fracture on January 17, 1957, that fracture must have existed when the first examination was made on December 10, 1956. There is, therefore, no new or super-vening fact that could be said to have developed or arisen since the filing of the original action, which would justify the application of the ruling enunciated by us in the cases of *Melo vs. People* and *People vs. Manolong*, * * *. We attribute the new finding of fracture, which evidently lengthened the period of healing of the wound, to the very superficial and inconclusive examination made on December 10, 1956. Had an X-ray examination [been] taken at the time, the fracture would have certainly been disclosed. The wound causing the delay in healing was already in existence at the time of the first examination, but said delay was caused by the very superficial examination then made. As we have stated, we find therefore that no supervening fact had occurred which justifies the application of the rule in the case of *Melo vs. People* and *People vs. Manolong*, for which reason we are constrained to apply the general rule of double jeopardy." [20] It is quite apparent, in the light of the foregoing, why the lower court, submitting to the compulsion of the Buling decision,

had to sustain the motion to quash and to dismiss the information against appellee Yorac. No error could therefore be rightfully imputed to it.

WHEREFORE, the resolution of June 21, 1968 of Judge Nestor B. Alampay granting the motion to quash, ordering the dismissal of the case and the immediate release of the appellee Rodrigo Yorac, is affirmed. Without costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Teehankee, Villamor, and Makasiar, JJ., concur. Barredo, J., no part.

[1] According to the Constitution: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." Article III, Section 1, paragraph 18.

[2] 107 Phil. 712 (1960).

[3] Brief for the Appellant People of the Philippines, p. 2.

[4] Ibid, p. 3

[5] Ibid.

[6] Ibid, pp. 3 and 4.

[7] Ibid, p. 5.

[8] Article III, Section 1, paragraph 20.

[9] III S. Laurel, ed., Proceedings of the Philippine Constitutional Convention, p. 667 (1966).

[10] Ibid, pp. 667-668.

[11] 73 Phil. 260.

[12] This is now Section 9 of Rule 117, the original wording being retained thus: "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 had 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 charged, 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."

[13] People v. Tarok, 73 Phil. 260, 265-266 (1941). The Tarok case was cited with approval in People v. Villasis, 81 Phil. 881 (1948).

[14] 85 Phil. 766 (1950).

[15] The Melo doctrine was followed in People v. Manolong, 85 Phil. 829 (1950) and People v. Petilla, 92 Phil. 395 (1952).

[16] 85 Phil. 766, 769.

[17] Ibid, pp. 769-770.

[18] Ibid, p. 769.

[19] 107 Phil. 712 (1960).

[20] Ibid, pp. 717-718.

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