

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ELIAS RODRIGUEZ, DEFENDANT AND APPELLEE.*G.R. No. L-13981. April 25, 1960*

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On October 30, 1956, Elias Rodriguez was charged with illegal possession of firearm and ammunition before the Justice of the Peace Court of Calamba, Laguna. The accused filed a motion to quash on the ground that the crime with which he is charged is already alleged as a component element or ingredient of the crime of rebellion with which he was charged in Criminal Case No. 16990 of the Court of First Instance of Manila. Upon denial of his motion to quash, the justice of the peace court proceeded with the preliminary investigation wherein the accused tried to prove that the firearm and ammunition in question did not belong to him for they were merely left with him by another person who had disappeared, his failure to report the same to the authorities being merely due to his work. He disclaimed animus possidendi. The justice of the peace court, having found probable cause in the commission of the crime, ordered the transmittal of the record to the Court of First Instance of Laguna for trial on the merits.

When the case was called for arraignment, the accused again filed a motion to quash alleging the defense of double jeopardy arising from the fact that an essential ingredient of a crime with which he was already charged is made the basis of a separate complaint in the present case. To the motion to quash, the fiscal filed an opposition alleging that the plea of double jeopardy does not lie because there is no identity of offenses between the crime charged in the present case and the one allegedly charged in the other case, and that the question raised in the motion to quash is only a matter of defense which the accused may present during the trial of the case on the merits.

Acting on the motion to quash and the opposition filed thereto, the court issued an order on May 21, 1958 holding that the crime of illegal possession of firearm and ammunition with which the accused is charged in the present case cannot, be prosecuted separately from that of rebellion with which the accused is already charged in the Court of First Instance of Manila which necessarily includes the illegal possession of the firearm and ammunition the accused must have used in connection, with his alleged rebellious activities. The court granted the motion, to quash and dismissed, the case with costs de oficio. The government interposed the present appeal.

In holding that in pressing the present charge it would place the accused in double jeopardy considering that the firearm and ammunition involved therein are already absorbed in the complex crime of rebellion with which the accused. is charged, together with other fourteen persons, in criminal Case No. 16990 in the Court of First Instance of Manila, the trial court made the following comment:

"In Criminal Case No. 16990 of the Court of First Instance of Manila, Elias Rodriguez was one of the fifteen persons accused of the 'complex crime of rebellion with murder, arson, and kidnapping'. The information, which was filed on October 24, 1953, alleged that the fifteen accused, in conspiracy with many others, have taken up arms and risen publicly against the Government of the Republic of the Philippines for the purpose of

overthrowing it and as a necessary means and in furtherance thereof, said accused committed acts of murder, arson, kidnappings to create and spread terrorism in order to facilitate the accomplishment of the aforesaid purpose. Insofar as Elias Rodriguez was concerned, part of the evidence presented against him to prove the commission of the offense of rebellion was the possession of a firearm and ammunitions "which were seized from his residence on August 6, 1951 and for which a separate information was filed before, the Justice of the Peace Court of Calamba by the Provincial Fiscal of this province. The period of the alleged illegal possession of firearm and ammunition in the case is embraced and necessarily included in the information filed in Criminal Case No. 16990 of the Court of First Instance of Manila.

With the above finding, the Solicitor General disagrees and advances the following comment:

"* * * the information under which appellee is charged with rebellion cannot be said to have, with the requisite certainty as prescribed by the rules on criminal procedure (Sec. 8, Rule 106, Rules of Court), pointed to the act of having in his possession, custody and control the particular firearm mentioned in the information in the case at bar, so as to make out a complete identity of the offense charged herein with that charged in Criminal Case No. 16990 of the Court of First Instance of Manila, or an essential element thereof constituting by itself another offense (See copy, of information, pp. 105-107, record). If it would be legally permissible or practical to establish such identity by means of proof to be introduced in the trial of the rebellion case the same proof would be necessary in the case at bar, because solely on the basis of the allegations of the two informations, the identity of the two offenses as required to justify or warrant a plea of double jeopardy is far from being evident or established."

An examination of the record, however, discloses that the crime with which the accused is charged in the present case which is that of illegal possession of firearm and ammunition is already absorbed as a necessary element or ingredient in the crime of rebellion with which the same accused is charged with other persons in a separate case and wherein he pleaded guilty and was convicted. Thus, the record (Shows that on August 6, 1951; the house of the accused in Calamba, Laguna, was raided by a combined force of military and police agents, and among the articles they found therein, which they confiscated was one (1) Colt Pistol (Auto) Cal. .45 SN- 413307. This gun, with the confiscated articles, which we assume to be ammunition, was introduced by the prosecution as evidence in the case of rebellion. On October 24, 1951, the crime for rebellion was filed which became Criminal Case No. 16990 of the Court of First Instance of Manila. On the other hand, the record also shows that the information in the present case was filed on October 80, 1956, which involves the charge of illegal possession of "one (1) Colt Pistol, Cal .45 Serial No. 413307", and some ammunitions. Considering that, as held by this Court, "any or all of the acts described in Art. 135, when committed as a means to or in furtherance of, the subversive ends described in Art. 134, become absorbed in the crime of rebellion, and can not be regarded or penalized as distinct crimes in themselves * * * and can not be considered as giving, rise to a separate crime that, under Art. 48 of the code, would constitute a complex one with that of rebellion" (People vs. Geronimo, 100 Phil., 90; 53 Off. Gaz., 68), the conclusion is inescapable that the crime with which the accused is charged in the present case is already absorbed in the rebellion case and so to press it further now would be to place him in double jeopardy.

While it is true that in the crime of rebellion there is no allegation that the firearm in question is one of those used in carrying on the rebellion and that the same was borne by the accused without a license, the same would not make the present charge different from the one included in the crime of rebellion, for it appears from the record that one of the firearms used in furtherance thereof is the same pistol with which the accused is now charged. In fact, that pistol was presented in the rebellion case as evidence. Nor is the fact that there is no allegation in the rebellion case that the carrying of the firearm by the accused was without license of any consequence, for it can be safely assumed that it was so not only because the accused was a dissident but because the firearm was confiscated from his possession.

The claim of the prosecution that the trial court erred in not holding that the ground on which the motion to quash is based is a matter of defense which the appellee should establish at the trial of the case on the merits is also of no avail, it appearing that the fact concerning the inclusion of the same firearm in the crime of rebellion as well as its presentation as evidence therein has been brought out by the defense in his petition to quash and that fact was not disputed by the prosecution.

Finally, we find no importance in the claim that in the preliminary investigation conducted by the Justice of the Peace Court of Calamba, after his motion to quash has been denied, the accused attempted to exculpate himself by trying to prove that the firearm did not belong to him but to another person who merely left it with him to be delivered to the authorities, because that attempt is not incompatible nor can defeat his defense of double jeopardy.

Wherefore, the order appealed from is affirmed, with costs de oficio.

Paras, C. J., Bengzon, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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