

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
MANDALUYONG BUS COMPANY, COMPLAINANT-APPELLANT, VS.
SOLOMON LIZARDO Y ALEJANDRE, ACCUSED.**

G.R. No. L-22471. December 11, 1967

Ponente: DIZON, J.

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DIZON, J.:

The record discloses that Solomon Lizarido was charged with slight physical injuries thru reckless imprudence be-fore the Municipal Court of Manila, Traffic Branch (Crimi-nal Case No. E-059289) by reason of the injuries sustained by the driver of a car owned by the Mandaluyong Bus Company when said car was hit by another driven by Lizarido. After trial upon a plea of not guilty, the court, on February 13, 1961 acquitted him on the ground that his guilt had not been established beyond reasonable doubt.

It appears further that on May 16, 1960, Lizarido was also charged in the Court of First Instance of Manila (Cri-minal Case No. 52452) with the offense of damage to property thru reckless imprudence, arising out of the same accident for which he had been charged in the physical injuries case. Upon arraignment he pleaded not guilty, but after due trial, the court, on August 30, 1962, found him guilty as charged and sentenced him to pay a fine of P1,000.00, to indemnify the Mandaluyong Bus Co. in the same amount, with subsidiary imprisonment not to exceed six months, in case of insolvency, and to pay the costs.

On December 3, 1962, claiming that the decision in Criminal Case No. 52452 for damage to property had never been promulgated, an Assistant Fiscal of Manila filed a motion for the dismissal of the case on the ground that pursuant to an office memorandum dated September 26, 1962 of the City Fiscal of Manila based upon the ruling laid down in *People vs. Pascual Silva*, G. R. No. L-15974, cases of slight, less serious, serious physical injuries, damage to property and homicide thru reckless imprudence arising out of one and the same incident should be filed and pro-secuted under one information.

On December 4 of the same year, the court issued an order granting the motion and setting aside its decision of August 30, 1962.

On January 3, 1963 the Mandaluyong Bus Co., moved for a reconsideration of said order on the ground (1) that the ruling in *People vs. Silva* was not applicable to the present case, especially to its civil aspect; and on the further ground (2) that the court had lost jurisdiction to alter, modify, or set aside its decision of August 30, 1962 which had become final and executory fifteen days after its promulgation on September 24, 1964 (the date - according to movants - of its presumed promulgation), no appeal having been taken therefrom by the accused. This motion having been denied, the Mandaluyong Bus Co. took the present appeal from the aforesaid order of December 4, 1962.

The fate of the present appeal depends entirely upon whether or not the decision of the trial court of August 30, 1962 had been promulgated in accordance with law. If it was, it is obvious that said court no longer had juris-diction to set it aside and dismiss the case, and, as a consequence, its order of December 4, 1962 would be

an absolute nullity. But if said decision had not yet been duly promulgated on December 4, 1962, the inevitable conclusion would be that the case was still under the control of the trial court and the latter had lawful authority to set aside its former decision and render another.

Aside from appellant's assertion that the decision aforesaid was duly promulgated on September 24, 1962, the record discloses no indubitable proof of such fact. From the circumstance that said decision was set for promulgation first on September 11 and, for one reason or another not disclosed by the record, reset for September 24, 1962, appellant draws the conclusion that the promulgation must have taken place, because it must be presumed that official duty in connection with the matter had been regularly performed. We are not convinced by this argument. In the first place, the fact that the promulgation of the decision was postponed from September 11, 1962 to September 24 of the same year may be presumed to have been due to the non-appearance of the accused, which is, generally, the reason for the postponement of the promulgation of decisions in criminal cases. In the second place, the prosecuting attorney, in filing the motion for dismissal, must be presumed to have acted under his oath of office and after due investigation of the true condition of the record. And lastly, the trial court, in entertaining the motion for dismissal and in granting it, must likewise be presumed to have acted regularly and after consulting the record of the case to determine whether it still had jurisdiction to set aside the decision of August 30, 1962. All these circumstances force Us to conclude that, in truth and in fact, the decision dated August 30, 1962 had not yet been duly promulgated when the trial court issued its order of December 4 of the same year setting said decision aside.

Coming now to appellant's contention that the lower court erred in applying to the present case our ruling in *People vs. Silva supra*, We find that the same is without merit. In said case We held that a defendant should not be harassed with various prosecutions based on the same act by splitting the same into various charges.

In the present it is not denied that Felizardo was charged with slight physical injuries in connection with the accident in which the automobile driven by him hit another car driven by an employee of herein appellant, but he was acquitted. Subsequently, he was charged with damage to property through reckless imprudence arising out of the same accident. This situation is precisely what our ruling in the *Silva* case was intended to prevent and prohibit. It cannot be said, therefore, that the trial court erred in dismissing the latter charge.

IN VIEW OF ALL THE FOREGOING the order appealed from is affirmed, with costs.

Concepcion, C.J., Reyes, JBL, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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