

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORENZO GLORIA, ACCUSED-APPELLANT.

G.R. No. L-39229. December 29, 1977

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

The lone issue posed in this appeal is one on double jeopardy.

Accused-appellant submits that having been convicted by the Court of First Instance of Nueva Ecija, Branch IV (Guimba) in Crimi-nal Cases Nos. 92-G, 93-G & 94-G of theft of large cattle belonging to Donato Corpuz committed on April 18, 1971, in Sto. Domingo, Nueva Ecija, he can no longer be charged, tried, and sentenced by Branch VI (Cabanatuan) of the same Court of First Instance for the same offense of theft of large cattle belonging to Donato Corpuz committed in Sto. Domingo, Nueva Ecija on April 18, 1971, and that the judgment imposed upon him in the latter case [Criminal Case No. SD-3 (72)] by Judge Florencio Villamor should be set aside.

The following are not in dispute:

Appellant Lorenzo Gloria was accused with two others before the Court of First Instance of Nueva Ecija, Guimba Branch, of Theft of large cattle in three separate cases under an Information which alleged that in March, 1971, in Guimba, Nueva Ecija, the accused stole certain carabaos belonging to Jacinto Sebastian, Simeon Makasiki, and Florentino Salcedo, respectively.

After trial, the Presiding Judge, Hon. Placido Ramos, found a variance between the allegations in the Informations and the proof submitted in that the alleged theft was committed on April 18, 1971, in Sto. Domingo, Nueva Ecija, and that the stolen carabaos belonged to Donato Corpuz. The Judge accordingly convicted appellant of "Theft of large cattle belonging to Donato Corpuz committed on April 18, 1971 in Sto. Domingo, Nueva Ecija," and sentenced him to an indeterminate penalty of FIVE (5) YEARS, FIVE (5) MONTHS and TEN (10) DAYS of prision correccional, as minimum, to TEN (10) YEARS, EIGHT (8) MONTHS of prision mayor as maximum. In the dispositive portion of the decision it was expressly stated that the judgment operated as a bar to Lorenzo Gloria's prosecution in a criminal case for theft of large cattle then pending preliminary investigation before the municipal court of Sto. Domingo, Nueva Ecija.

The foregoing decision of Judge Ramos was appealed to the Court of Appeals under CA-G.R. Nos. 13626-13628-CR, with appellant raising the principal issue that the trial Court erred in convicting him of a crime not charged in the respective Informations filed against him. The appeal was certified to this Court by the Court of Appeals as it in-volved purely a question of law and it was docketed here under G.R. L-37176-78.

In the meantime however another case of theft of large cattle was filed against appellant Lorenzo Gloria before Branch VI (Cabanatuan City) in which he was accused of having stolen certain carabaos on April 18, 1971 belonging to Donato Corpuz in Sto. Domingo, Nueva Ecija. [Criminal Case No. SD-3 (72)] Lorenzo Gloria pleaded double jeopardy invoking the judgment of conviction rendered by the Guimba Court for the same offense.

The plea was discarded by Judge Florencio Villamor who reasoned out that the subject matter of the second Information was entirely distinct and different from the first complaint filed before the Guimba Branch, and that the decision of the Guimba Court was not yet final as the same was pending appeal before the Court of Appeals. Judge Villamor convicted and sentenced Lorenzo Gloria for theft of large cattle. This decision of Judge Villamor was appealed to the Court of Appeals under CA-G.R. 14345 which was also certified to Us by reason of the issues involved. It is this appeal which is now the subject of this Decision.

During the pendency of the above-mentioned cases, Lorenzo Gloria withdrew his appeal in G.R. L-37176-78. In Our Resolution of July 8, 1977, the withdrawal of appeal was approved.

The question which confronts Us is whether or not the decision handed down by Judge Villamor in Criminal Case No. SD-3 (72) places the appellant Lorenzo Gloria in jeopardy of a second conviction for the same offense of theft of large cattle.

Nemo debet bis puniri pro uno delicto. An accused shall not be twice put in jeopardy of punishment for the same offense. This is one of the basic rights guaranteed in the Philippine Constitution,[1] which finds its roots in centuries - old struggle of man for freedom against "the constant menace of a never-ending charge" which results in harrassment to one's peace of mind and continuous threat to one's physical liberty.[2]

There is legal jeopardy when for the same offense presently charged in a criminal case the following conditions are present: previous acquittal, conviction, dismissal or termination without express consent of an accused under a valid complaint or information, before a court of competent jurisdiction, and after arraignment and entry of plea to the charge.[3]

The parties now concede that the first conviction was based on a valid complaint and rendered by a court of competent jurisdiction. Whatever ground there was for challenging that first conviction was waived by the accused-appellant when he withdrew his appeal thereby rendering the decision of Judge Ramos final and executory.

What is in issue is whether or not the first conviction is for an offense identical to that charged in the second case filed with the Court of First Instance in Cabanatuan City for which appellant has also been sentenced.

The Solicitor General representing the People submits that the respective Informations in the two cases show that they allege or charge different offenses. We hold, however, that the two convictions cover one and the same offense.

If We will be guided solely by the wordings in the Information filed before the Guimba Court, it would indeed appear that appellant was accused of theft of large cattle belonging to Jacinto Sebastian, Simeon Makasiki and Florentino Salcedo; however, the reality is that the evi-dence adduced in that first case proved that two carabaos, "one male and one female", were stolen by appellant on April 18, 1971, from Donato Corpuz in Sto. Domingo, Nueva Ecija. The accusation was therefore deemed amended by the evidence adduced by the People for which reason Judge Ramos convicted appellant herein of theft of large cattle belonging to Donato Corpuz committed on April 18, 1971, in Sto. Domingo, Nueva Ecija, the Judge stating at the same time that said conviction barred the other criminal case under preliminary investigation at the time before the Municipal Judge of Sto. Domingo.

In the Information filed in Criminal Case No. SD-3 (72) before the Court of First Instance in Cabanatuan City, Lorenzo Gloria was accused of theft of two carabaos, "one male and one female", belonging to Donato Corpuz committed on April 18, 1971, in Sto. Domingo, Nueva Ecija. The evidence submitted before the Guimba Court was the same evidence offered before the Court in Cabanatuan City resulting in appel-lant's conviction by the latter for theft of large cattle as charged in the Information. What is significant and decisive of the issue before Us

is that there is nothing in the record to show that the carabaos subject of the second charge were different from the carabaos object of the first conviction nor that they were taken on distinct occasions to warrant a conclusion that two separate acts or offenses of theft were consummated and being prosecuted.

Undoubtedly, there is here identity of offenses because (1) the essential elements of theft of large cattle in the first case constituted the same essential elements of the offense charged in the second and (2) the evidence supporting conviction upon the first indictment was the same evidence which warranted conviction upon the second, viz: that two carabaos - "one male and one female" - belonging to Donato Corpuz were stolen from the latter's house in Sto. Domingo, Nueva Ecija, on April 18, 1971, by the herein appellant. Hence, all the necessary conditions for a plea of double jeopardy are present and appellant comes within the Constitutional protection against being prosecuted and convicted for the second time for the same offense.

IN VIEW OF THE ABOVE, We hereby set aside the decision rendered against and the sentence imposed on the herein appellant, Lorenzo Gloria, by the Court of First Instance in Cabanatuan City in Criminal Case No. SD-3 (72). No costs.

So Ordered.

Teehankee, (Chairman), Makasiar, Martin, and Fernandez, JJ., concur.
Guerrero, J., no part.

[1] Art. III, Sec. 1 (20), 1935 Constitution; Art. IV, Sec. 22, 1973 Constitution

[2] see *Julia vs. Sotto*, 1903, 2 Phil. 247, 252

[3] Rule 117, Sec. 9; *Moran on Rules of Court*, 1970 Ed. Vol. 4, pp. 242-243

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