

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOAQUIN QUIMSING, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-19860. December 23, 1964

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

On 19 February 1958, Joaquin Quimsing, Vicente Reyes, Leonardo Rios, Ramon Teruel, Ernesto Caballero, Eduardo Militar, Federico Obamos, Isidro Ealediong, Jose Gorrocita, and Panfilo Maloto were charged for illegal cockfighting before the municipal court of the City of Iloilo in its Criminal Case No. 18926. The proceedings were, however, suspended pending the decision of a case involving the prejudicial question as to the validity of city ordinances allowing cockfighting on a Thursday, on which day the accused were apprehended. The Supreme Court, in *Quimsing vs. Lachica*, L-14683, 30 May 1961, declared the ordinances invalid, and, thereafter, the proceedings were resumed. Arraigned on 16 August 1961, some of the accused entered a plea of not guilty; the others remained at large.

On 27 September 1961, the municipal court ordered the "provisional dismissal" of the case, hereinafter referred to as the first dismissal, because the prosecution at 8:30 o'clock that morning was not ready for trial; thereupon, the public prosecutor moved for a reconsideration, stating that he would be ready at 9:30. The court reconsidered its order. The defense counsel objected on the ground of double jeopardy, but the court overruled the objection. At 9:30 o'clock, the prosecution was ready for trial, but the court preferred to hear another criminal case Against a detention prisoner and postponed the trial of the case against the above-named accused, upon agreement of the Parties, to another date.

On 8 March 1962, because the prosecution was again not ready while the defendants were ready for trial, the court again dismissed the case *motu proprio* in open court; this dismissal is hereinafter referred to as the second dismissal. The fiscal again moved for reconsideration. The motion was denied, but after some argument, the court asked the accused whether they consent to a provisional dismissal of the case, to which question their counsel answered, "I think they agree". Thereupon, the court announced the case as "provisionally dismissed with the consent of the accused".

The following day, 9 March 1962, the fiscal refiled the same charges against the accused in the same court. This time, the indictment was docketed as Criminal Case No. 28421.

On a motion to quash on the ground of double jeopardy, the court, over the objection of the fiscal, dismissed the case as against seven of the accused, namely, Joaquin Quimsing, Vicente Reyes, Jose Gorriceta, Ramon Teruel, Leonardo Rios, Ernesto Caballero and Eduardo Militar. The fiscal appealed the order of dismissal to the Court of First Instance of Iloilo. The said court of first instance, in its order of 19 May 1962, sustained the municipal court and forthwith remanded the case to it for trial on the merits of these accused who were not subject of the appeal. The fiscal's motion for reconsideration was denied in a resolution on 2 June 1962.

The present case before the Supreme Court is an appeal by the People from the aforesaid order and resolution.

The assignment and counter-assignment of errors put in issue the nature and effect of each of the dismissals hereinbefore recounted, or, more precisely, whether or not jeopardy had attached in any of the said dismissals and barred or not a further prosecution of the accused.

Assuming that the dismissal in open court of Criminal Case No. 18926 at 8:30 o'clock in the morning of 27 September 1961 was, and had the effect of, a final and definite dismissal of the case, notwithstanding the qualification made by the trial court that the dismissal was "provisional" (*Grandicela vs. Lutero*, L-4069, Res. of May 21, 1951) and that the accused could correctly raise the defense of double jeopardy against the reconsideration of the dismissal, still the accused did not pursue their defense of double jeopardy; instead, they agreed to have the trial postponed, and at the hearing of 8 March 1962 they appeared and, through counsel, manifested that they were ready for the trial. Their agreement to the postponement, their appearance during, and their manifestation of readiness to enter trial, instead of taking steps to enjoin or prohibit further proceedings in the case, show that the accused abandoned or waived their defense of double jeopardy in that instance.

When the second case was again dismissed, the accused, instead of insisting on their defense of double jeopardy and enjoining further proceedings, agreed once more to a provisional dismissal, through their counsel, thereby again abandoning or waiving another second jeopardy. This time the dismissal, being with the express consent of the accused, was indeed provisional.

Consequently, when the Fiscal re filed the case the accused were in estoppel to plead the jeopardy that they had already waived twice, since the refile was evidently done on the strength of their express assent to the provisional dismissal of the first charge. Therefore, the municipal court and the court of first instance both erred in sustaining the motion to quash on the ground of second jeopardy.

Nor can it be urged that the appeal by the prosecution from the orders of dismissal now before us constituted or placed the accused in jeopardy anew, since it does not affirmatively appear that the motion to quash was filed after a plea by the accused appellee (*People vs. Kho*, 97 Phil., 825). Before a plea, no jeopardy attaches (*People vs. Pascual*, 102 Phil., 503).

The accused aver that from an order of the municipal court sustaining their motion to quash the prosecution can not appeal for the reason that section 6 of the old Rule 119 only speaks of appeals by the accused. This section (which is reproduced in section 5, Rule 123, of the Revised Rules) recites as follows:

"SEC. 5. Appeal from judgment of the justice of the peace or municipal court.-The convicted party may appeal either orally or in writing from any final judgment of the justice of the peace or municipal court in a criminal cause to the Court of First Instance within fifteen (15) days from the promulgation of the judgment. The period of appeal shall be interrupted from the date a motion for reconsideration or new trial is filed until notice of the order overruling the motion shall have been served upon the defendant or his attorney."

The contention is not tenable. The section is not intended, to determine the parties that may appeal; it merely prescribes the form (oral or written) and period in which the accused may do so. Whether in the municipal courts or in courts of first instance, the principle is that the prosecution may appeal provided the accused is not thereby placed in a second jeopardy. As already pointed out, this is the very case, since the accused, for aught shown by the record, have not as yet entered a plea to the second (refiled) information.

Plausibly enough, the accused urge that they acted without mens rea, since they engaged in cockfighting in the assumption that the ordinance permitting it on Thursdays was valid, as it was presumed to be before this Court ruled said ordinance to be unconstitutional. This question, however, is foreign to the issues posited by the state's appeal; and we think it should be threshed out when the refiled case is tried on its merits. It would be premature, find against orderly procedure, to pass upon it now, for the state has not presented its side of the question.

Premises considered, the orders of the court below sustaining the motion to quash interposed by the accused appellees are hereby set aside; and the case is ordered remanded to the court of origin for further proceedings not contrary to this opinion. No costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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