

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. LADISLAO BACOLOD, DEFENDANT AND APPELLEE.

G. R. No. L-2578. July 31, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

This appeal calls for practical application of the principles governing the defense of double jeopardy.

In the Court of First Instance of Cebu, on September 10, 1948, Ladislao Bacolod pleaded guilty to an information charging him with the crime of serious physical injuries thru reckless imprudence committed on February 21, 1948 in Santa Fe, same province. Thereafter he was arraigned in another case for having caused a public disturbance on the same date, the second information alleging

"That on or about the 21st day of February, 1948, in the municipality of Santa Fe, province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, and on the occasion of a dance held in the municipal tennis court in connection with the town fiesta, did then and there wilfully, criminally and feloniously cause a serious disturbance in a public place by firing a sub-machine gun which wounded one Consorcia Pasinio, thereby causing panic among the numerous people present in the said dance who ran and scampered in all directions."

His counsel de oficio moved to quash this second information, invoking double jeopardy by reason of the first information which for convenience is quoted:

"That on or about the 21st day of February, 1948, in the municipality of Santa Fe, province of Cebu, Philippines, and within the jurisdiction of this Court, the above-named accused, then a member of the PC patrol, by reckless imprudence and without taking due care and precautions to avoid damage and injury to the life and property of other persons, did then and there fire a shoot of a sub-machine gun thereby hitting Consorcia Pasinio at the back of the right side of her body, which physical injury required or will require medical attendance for more than 30 days but less than 90, and incapacitated or will incapacitate her from performing her customary labor for the same period of time."

The motion to quash was granted, and the People appealed in due time.

Did the lower court err?

It will be observed that both informations have one common element: defendant's having fired a sub-machine gun. The first, however, charged him with physical injuries inflicted on Consorcia Pasinio thru reckless imprudence. On the other hand the second information accuses him of having deliberately fired the machine gun to cause a disturbance in the festivity or gathering, thereby producing panic among the people present therein. The two informations do not describe the same offense. One is a crime against persons; but the other is an offense against public peace and order.[1]

The first is punished under article 263 of the Revised Penal Code and the latter under article 153 referring to

individuals disturbing public gatherings or peaceful meetings. The proof establishing the first would not establish the second, it being necessary to show, besides the willful discharge of firearm, that there was a dance in the tennis court in connection with the town fiesta, and that the people in attendance became panicky and terrified. The offenses are not the same although they arose from the same act of Ladislao Bacolod. Consequently conviction for the first does not bar trial for the second.[2]

A majority of the American courts have held that the offense of unlawful assembly and riot is distinct from the offense of assault and battery.[3]

The protection against double jeopardy is only for the same offense. A single act may be an offense against two different provisions of law and if one provision requires proof of an additional fact which the other does not, an acquittal or conviction under one does not bar prosecution under the other.[4]

It is true that section 9 of Rule 113 prohibits prosecution for any offense which necessarily includes or is necessarily included in the offense charged in the former information. But it may not be held that the second offense in this case necessarily included the first, because physical injuries is not necessarily included in a public disturbance in the way that physical injuries is included in a charge of murder. Neither may it be maintained that every crime of physical injuries necessarily produces such public disorder as is contemplated by section 153 of the Revised Penal Code. Note especially that the first information did not describe the festal celebration in which the injuries were inflicted.

It has been suggested that the new Rules of Court modified the above principles, and the precedent of *People vs. Tarok*, 40 Off. Gaz., 3488 is invoked. Enough to state that this last decision and its doctrinal innovation has been expressly repudiated in *Melo vs. People*, 47 Off. Gaz., 4631, with which our present views substantially conform.

From the foregoing observations it follows that the court a quo made a mistake in dismissing the second information. Therefore, the appealed resolution is reversed and the record is remanded for further proceedings. So ordered.

Paras, C. J., Feria, Pablo, Padilla, Montemayor, Tuason, Reyes and Jugo, JJ., concur.

[1] *People vs. Cabrera*, 43 Phil., 82.

[2] *People vs. Cabrera*, 43 Phil., 82.

[3] *People vs. Cabrera*, supra, at p. 99.

[4] *U.S. vs. Capurro*, 7 Phil., 24.

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