

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT VS. MAKIA G. BALBOA, DEFENDANT AND APPELLEE.

G. R. No. L-3522. September 12, 1951

Ponente: JUGO, J.

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JUGO, J.:

This is an appeal from the order of the Court of First Instance of Manila dismissing the present case (No. 8865 of said court) against Maria G. Balboa, on the ground of double jeopardy.

On July 17, 1947, the City Fiscal of Manila filed an information in Criminal Case No. 3830 of the Court of First Instance of Manila, charging Francisco Martinez and the herein appellee, Maria G. Balboa, with the crime of estai'a. Said information reads as follows:

"The undersigned accuses Francisco Martinet and Maria Balboa of the crime of cstafa, committed as follows:

"That on or about April 9, 1947, in the City of Manila, Thilippines, the said accused, conspiringand confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously defraud one .Paul C. Nesbitt in the following1 manner, to wit: the said accused received tram the said Paul C. Nesbitt, thru Mrs. 0. Serrano, one (1) small diamond ring with 9 karats and one (1) big diamond ringwith .17 karats, of the total value of P11,000, for the purpose of selling the same on commission until 4:00 o'clock of the nest day, April 10, 1947, under the express obligation of turningover and delivering the proceeds thereof, if sold, or the rings themselves, if not sold, to the said Mrs. C. Serrano or Paul C. Nesbitt, but the said accused. once in possession of the said rings, far from complyingwith their aforesaid obligation, in spite of repeated demands made upon them to do so and the length of time that has elapsed, did then and there willfully, unlawfully and feloniously, with Intent to defraud, misappropHate, misapply and convert the same to their own personal use and benefit, to the damage and prejudice of the said Paul C. Nesbitt in the aforementioned sum of P11,000, Philippine currency.

"Contrary to law

" (Sgd.) JOSE B. JIMENEZ

Assistant City Fiscal"

Maria G. Balboa pleaded not guilty to said information. Later on the Fiscal orally moved that the case against Maria G. Balboa be dismissed provisionally on the ground that her co-accused Francisco Martinez had not yet been arrested and without him the charge could not be proved against Balboa beyond reasonable doubt. The court provisionally dismissed the case against Balboa on February 20, 1948.

Subsequently, Francisco Martinez was arrested and pleaded not guilty. On September 20, 1948, Martinez's

counsel moved for the definite dismissal of the case against him on the ground that he had satisfactorily explained the matter to the complainant Paul C. Nesbitt, who was no longer interested in pressing the case against Martinez. The motion contained the written consent of the complainant Nesbitt and a note signed by the Fiscal that he had no objection to it. This motion was granted by the court and the case was definitely dismissed with regard to Martinez.

On September 20, 1948, counsel for Balboa prayed that the provisional dismissal against her be made definite; this was granted by the court.

On November 10, 1948, an information was filed in the Court of First Instance of Manila in Criminal Case No. 8365 against Maria G. Balboa, charging her with estafa. Said information reads as follows:

"The undersigned accuses Maria G. Balboa of the crime of estafa, committed as follows:

"That on or about the 10th day of April, 1947, in the City of Manila, Philippines, the said accused then and there willfully, unlawfully and feloniously defraud one Francisco Martinez in the following manner, to wit: the said accused having received from the said Francisco Martinez one 9 carat solitaire diamond ring and one 17 carat solitaire diamond ring of the total value of P13,000, for the purpose of selling the same on commission, under the express obligation of turning over and delivering the proceeds of the sale thereof, or returning the said rings, if not sold, in the afternoon of the same date to the said Francisco Martinez, but the accused, once in possession of the said rings, with intent to defraud and far from complying with her aforesaid obligation, in spite of repeated demands made upon her to do so and the length of time that has elapsed, did then and there willfully, unlawfully and feloniously, misapply, misappropriate and convert the said rings or their value to her own personal use and benefit, to the damage and prejudice of said Francisco Martinez in the aforementioned sum of P13,000, Philippine currency.

"Contrary to law.

“(Sgd.) LORENZO RELOVA

Assistant City Fiscal”

Maria G. Balboa pleaded not guilty to said information on December 13, 1948. The case was set for trial but was set for trial, November 2, 1949, the attorney for Balboa orally moved that the case be quashed on the ground of double jeopardy. The court ordered the attorney to file his motion in writing and the Fiscal to answer it also in writing.

On November 9, 1949, a written petition to Quash was filed with the court and was answered by the Fiscal on November 10, 1949. The court dismissed the case on the ground of double jeopardy by an order which reads as follows:

"The accused Maria G. Balboa is charged with estafa for having allegedly misappropriated and converted two diamond rings valued at P13,000.

"The attorney for the accused moved to quash the information upon the ground that in a former case (Criminal Case No. 3830) the accused Maria G. Balboa and one Francisco Martinez were charged with estafa for misappropriation and conversion of the same two diamond rings and that case was dismissed, as to Francisco Martinez in the order of the court of September 22, 1948, and as to Maria G. Balboa in the order of October 2,

1948. The dismissal was made after the said two accused entered a plea of not; guilty.

"WHEREFORE, under the provisions of Sections 9 and 10, Rule 113, of the Rules of Court, the case is hereby dismissed, with costs de oficio.

"So ordered.

"Manila, Philippines, November 16, 1949.

"(Sgd.) RAFAEL AMPARO

Judge"

The Solicitor General did not attach to his brief as an appendix the order of the court appealed from, in accordance with section 7, Rule 120.

In his appeal the Solicitor General makes the following assignment of errors:

"I

"The lower court erred In finding that defendant-appellee had been previously placed in jeopardy of punishment for the same offense charged in the instant case.

"II

"The lower court erred in not findingthat the appellee had waived her right not to be in jeopardy of being convicted twice for the sarae offense.

"III

"The lower court erred in dismissing¹ the case against appellee."

The question may be reduced to the issue whether the offense charged in the first information, which had been definitely dismissed with regard to the two defendants, is the same as that charged in the second,'in such a way that conviction or acquittal of the first charge amounts to jeopardy with regard to the second.

The similarities and differences between the two informations may be tabulated as follows:

Case No. 3830

Case No. 8865

Nature of information Estafa Estafa

Defendants Francisco Martinezand Maria G. Balboa Maria G. Balboa

Offended party..... Paul C. Nesbitt Francisco Martinez

Date of commission of crime April 9, 1947 April 10, 1947

.

Things misappropriated and their value.. One small diamond ring, 9 karats, and 1 big

One solitaire diamond ring, 9 karats, and 1

diamond ring, 17 karats, with a total value of

solitaire diamond ring, 17 karats, all valued

P11,000

at P13,000

How committed For the purpose of selling said rings on For the purpose of selling said rings on

commission until 4:00 p.m., of April 10,

commission and turning over the proceeds,

1947, and delivering the proceeds if sold,

if sold, and the rings, if not sold, in the after-

and the rings, if not sold, to Mrs. C. Serrano

noon of same date (April 10, 1947) to Fran-

or Paul C. Nesbitt, but has not returned

Francisco Martinez, but has not returned the rings

the rings nor delivered the proceeds.

nor delivered the proceeds.

The difference in the date of the commission of the crime may be disregarded as immaterial. The descriptions of the two rings, although a little different in the words, used, refer to the same objects.

The important material differences are in the defendants who, in the first information, were Francisco Martinez and Maria G. Balboa, whereas in the second it is only Maria G. Balboa; in the offended parties, Paul C. Nesbitt being the offended party in the first information and Francisco Martinez in the second; and in the manner of the commission of the offense, for in the first information, the value of the rings or the rings themselves should have been delivered to Mrs. C. Serrano or Paul C. Nesbitt, whereas, in the second information, the delivery of the money or the rings should have, been made to Francisco Martinez.

To commit estafa against Paul C. Nesbitt is not the same as to commit estafa against Francisco Martinez, for they are different persons. A person may be acquitted of the charge of committing estafa against Nesbitt but may be convicted of committing it against Martinez, or vice versa. An estafa committed against Nesbitt is different from an estafa committed against Martinez. John may be accused of hitting Peter, but if he proves that he did not hit Peter he will be acquitted. Nevertheless, this acquittal cannot be a bar to a charge against him for hitting Paul. Hitting Peter is not the same as hitting Paul.

In the case of *United States vs. Lahoylahoy* (38 Phil., 330) it was held:

"3. Id.; Id.; Variance between allegation and, proof as to ownership of property robbed.—The information in a prosecution for robbery with quadruple homicide charged that the accused criminally and by force appropriated certain articles of value, the property of one Roman Estriba, and on occasion thereof killed the said Roman Estriba and three others. The proof showed that the money which was the subject of the robbery was taken from one Juana who was robbed and killed separately from the other three victims. Held: That the conviction for the robbery could not be sustained because of the variance between the allegation and proof as to ownership of the property robbed. But the accused were sentenced by the Supreme Court for the four separate homicides. (*U. S. vs. Balaba*, 37 Phil. Rep., 260)." (Syllabus)

In another part of the decision, the Court had the following to say:

"It should be borne in mind that the plea of former conviction or acquittal, or former jeopardy, is supposed to be proved by the pleadings and judgment in the former case, supplemented only by proofs showing¹ the identity of the party, or parties. Courts are not accustomed to determine the plea of former jeopardy by examining¹ the proof to discover just what facts may have been developed in the former case. (*Henry vn. State*, 33 Ala., 389; *Grisham vs. State*, 19 Tex. Cr. App., 504). In fact it is not always practicable or even possible to produce for inspection upon the trial of this issue the evidence which was adduced in court at the trial of the former case. (p. 336)

The appellant contends that the motion to quash on the ground of double jeopardy was presented too late under the provisions of section 10, Rule 113, for the reason that Maria G. Balboa had been aware of such alleged ground long before she pleaded in the second case, in view of the result reached by us in regard to the other point, it is not necessary to pass upon this question.

It results that the definite dismissal in Criminal Case No. 3830 does not constitute jeopardy against the defendant in the latter case, No. 8365.

In view of the foregoing the order of the Court of First Instance of Manila, dated November 16, 1949, dismissing Criminal Case No. 8365 of said court is hereby reversed and the case ordered remanded to said court for further proceedings, without pronouncement as to costs. It is so ordered.

Feria, Pablo, Itengzon, Padilla., Tuason, and Reyes, JJ., concur.

Order reversed and the case remanded to the Court of First Instance for further proceedings.

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