

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
PEDRO MARAPAO, DEFENDANT AND APPELLEE.***G.R. No. L-2600. March 30, 1950*

Ponente: REYES, J.

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body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

This is an appeal by the Government from an order of the Court of First Instance of Cebu dismissing the present case on the ground of double jeopardy.

The record elevated to this Court is rather incomplete, but both the prosecution and the defense appear to be in agreement on the essential facts, which may be summarized as follows:

On April 26, 1946, a complaint was filed in the justice of the peace court of Sibonga, Cebu, charging the appellee with slight physical injuries. Upon arraignment, the appellee pleaded not guilty and went to trial. After the prosecution had closed its evidence, a continuance was had, and when trial was resumed on June 1, 1946, the court, upon motion of the defense, ordered the case dismissed for failure of the prosecution to appear. A few moments thereafter, the fiscal appeared and protested against the order of dismissal, whereupon the court reconsidered its order and directed the defense to present its evidence on June 7, 1946. But before that date came, the defense moved that the last order be set aside on the ground that the reinstatement of the case after it had already been dismissed put the accused twice in jeopardy. Acceding to this motion, the court finally ordered the case dismissed on June 12, 1946.

With the evidence for the prosecution already in, it was error to dismiss the case for mere failure of the fiscal to be in court at the time set for the resumption of trial. What the court should have done, if it did not want to have the trial postponed, was to proceed with the reception of defendant's evidence. But the validity of the order of dismissal is not now in issue, for no appeal has been taken therefrom. The fiscal chose to take a different course of action by filing an information in the Court of First Instance of Cebu, charging the appellee with the crime of assault upon a person in authority, based upon the same facts alleged in the former information for slight physical injuries but with the further allegation that the appellee, in inflicting said injuries, was "moved by resentment by reason of the facts that Eduardo Caballes (the complaining witness) performed faithfully his duties as chairman of the board of election inspectors in precinct No. 7 of this municipality during election day." This last information having been dismissed by the court on the ground of double jeopardy, the Government has brought the case here on appeal from the order of dismissal.

Section 9 of Rule 113, Rules of Court, reads as follows:

"Sec. 9. Former conviction or acquittal or former jeopardy.—When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."

The Solicitor General admits that the present information for assault upon a person in authority necessarily embraces the crime of slight physical injuries for which the appellee was indicted in the justice of the peace court, so that the filing of said information would put the appellee in double jeopardy provided the other essential elements of this defense were present, among them those referring to (1) previous conviction or acquittal and (2) dismissal of the case or its termination in some other manner without defendant's express consent.

In the present case, it appears that the appellee was neither convicted nor acquitted of the previous charge against him for slight physical injuries, for that case was dismissed upon his own request before trial could be finished. Having himself asked for such dismissal, before a judgment for conviction or acquittal could have been rendered, the appellee is not entitled to invoke the defense of double jeopardy under the rule above copied.

In view of the foregoing, the order appealed from is hereby revoked and the case remanded to the lower court for further proceedings. The appellee shall pay costs.

Moran, C.J., Ozaeta, Pablo, Padilla, Tuason, and Montemayor, JJ., concur.

BENGZON, J.:

I reserve my vote.

REYES, J.:

I hereby certify that Mr. Justice Montemayor and Mr. Justice Torres voted in favor of this decision but were not able to sign it before they left Manila for the court sessions in Baguio.

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