

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. VICTORIO JABAJAB, ACCUSED AND APPELLEE.*G.R. Nos. L-9238-39. November 13, 1956*

Ponente: MONTEMAYOR, J.

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On March 19, 1952, in the Municipal Court of Ozamis City, Victorio Jabajab was charged with slight physical injuries committed against one Elmo Medina. On April 21, 1952, Jabajab was again in the same municipal court charged with serious physical injuries committed against one Regino Alcopra. After a joint trial, the Municipal Court found defendant guilty in both cases and sentenced him to *arresto menor* in the case of slight physical injuries and to one year *prision correccional* and to indemnify the aggrieved party in the sum of P100 in the serious physical injuries case. Jabajab appealed the decision to the Court of First Instance of Misamis Occidental, where the two cases were set for hearing at the City of Ozamis on September 2 for the slight physical injuries case, and September 8 for the other. Upon petition of the parties the hearing was postponed for September 22, 1952. The records show that the case for slight physical injuries was again set for hearing on June 10, 1953, but said hearing was again postponed for reasons not appearing in the record. Later, both cases were again set for hearing on August 13, 1954, but by agreement of the parties, the trial was postponed for the calendar of the court at Ozamis city. Thereafter, the court set the trial of both cases on December 9, 1954, in the capitol building at Oroquieta, Misamis Occidental. Two days before the date of the trial, that is, on December 7, 1954, the City Fiscal moved for the postponement of the hearing, alleging that he had not been duly notified of the date of the hearing on December 9; that he was not prepared for said trial, and asking that the hearing be held at Ozamis City instead of at the capitol building at Oroquieta to minimize expenses.

When the two cases were called for trial on December 9, 1954, the defendant appeared with counsel, apparently ready for trial. Because the Fiscal failed to appear, counsel for the accused moved for the dismissal of the two cases, invoking his constitutional right to speedy trial. The trial court presided by Judge Crispin Borromeo, Justice of the Peace of the capital designated to act as district Judge, granted the motion, the Judge saying that inasmuch as the defendant had not been arraigned since the information in the two cases were filed in June, 1952, he dismissed the two cases provisionally but reserving to the City Fiscal the right to "refile these two cases if he so desires in the interest of justice". The City Fiscal filed a motion for reconsideration. In the motion he reiterated his claim that he had not been duly notified of the hearing on December 9, 1954; that somebody told him of said hearing but that in the absence of such official notification, he did not feel justified to make the trip to Oroquieta to appear before the Court, but that as a measure of precaution, he filed a motion for postponement on December 7. The motion for reconsideration having been denied, the Government' is now appealing the order of denial.

It is true that a person accused has a right to a speedy trial. However, he cannot sleep on said right but must see to it that his case be tried at an early date. In the present case, there were several postponements of the hearing of his two cases, but instead of objecting to the same, the defendant agreed to said postponements, and there is nothing in the record to show that it was the Fiscal who asked for all said postponements. As the Government counsel well

observes, the defendant cannot agree to the repeated postponement of the trial of his cases and then when he finds the Government absent or unable to go to trial on any of the dates of hearing, take advantage of said absence and ask for the dismissal of his case. Moreover, the City Fiscal claims that he had not been notified of the hearing set for December 9, 1954, and this, claim was not contradicted. Furthermore we see no advantage or profit either to the defendant or to the Government in dismissing these two cases provisionally because in that case, the prosecution again would have to file the two cases in the municipal court, and have the defendant rearrested, and perhaps bail bonds filed for his provisional release, and in case of conviction in the Municipal Court, the cases would have to be elevated to the Court of First Instance for another trial, with the possibility that the hearing may again be postponed once or twice, or even more for the reason that, we understand, the trial court does not hold sessions continuously in one place throughout the year. On the other hand, to reinstate these two cases would be beneficial to both prosecution and defendants without materially impairing the rights and interests of the accused, because if he is innocent, he would sooner be cleared of these two charges.

In view of the foregoing, the order of dismissal is set aside and these two cases are hereby remanded to the trial court with instructions to have the same tried as soon as possible, with due notification to the parties of the date of trial. No costs.

Padilla, Bautista Angela, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

CONCURRING

LABRADOR, J.,

I concur. In my humble opinion the decisive fact which determines whether jeopardy attached upon the issuance of the order of dismissal is the provisional nature of the dismissal and the reservation of the right of the fiscal to "refile these two cases if he so desires in the interest of Justice." Jeopardy can be invoked only if the case is finally disposed of or terminated. Dismissal under Section 9 of Rule 113 implies final dismissal, a positive termination of the case. If the dismissal contains a reservation of the right to file another action, the case cannot be said to have terminated and jeopardy does not attach. This is the reason for our ruling in *Jaca vs. Blanco*, 86 Phil., 452.

DISSENTING:

FELIX, J.,

The facts narrated in the majority opinion are accurate and indisputable. They may be offered in a nutshell, as follows:

On March 19, 1952, Victorio Jab a jab was charged in the Municipal Court of Ozamis City, Occidental Misamis, with slight physical injuries committed against one Elmo Medina. On April 21, 1952, the same defendant was again charged in said court with serious physical injuries committed against Regino Alcopra. Defendant was found guilty in both cases and sentenced accordingly. Jabajab appealed from the verdicts of conviction to the Court of First Instance of Occidental Misamis where the case for slight physical injuries was set for hearing on

September 2, 1952, and the case for serious physical injuries on September 8 of that year. Upon petition of the parties, the hearings were postponed on numerous occasions, sometimes upon their agreement.

Then the 2 cases were called for hearing on December 9, 1952, the defendant appeared with his counsel apparently ready for trial, but as the Fiscal failed to appear, counsel for defendant moved for the dismissal of the 2 cases invoking defendant's constitutional right to a speedy trial and the trial court, presided by Judge Crispin Borromeo, Justice of the Peace of the capital, designated to act as District Judge, granted the motion saying that inasmuch as the defendant had not been arraigned when the information of the 2 cases were filed in June, 1952, and dismissed the 2 cases provisionally but reserving to the City Fiscal the right "to refile them if he so desires in the interest of justice. The City Fiscal filed a motion for reconsideration of the order setting his reasons therefor, and as his motion was denied, the Government appealed from said order to this, superiority.

On these facts, it is the majority opinion, that defendant cannot agree to the repeated postponement of the trial of his cases and then, when he finds the Government absent or unable to go into trial on any of the dates of hearing take advantage of such absence and ask for the dismissal of his cases. So the majority ruled that the constitutional right of the defendant to speedy trial had not been violated in these cases; that there is no advantage or benefit either to the defendant or the Government in dismissing said two cases provisionally, because the prosecution would have to file again the 2 cases in said municipal court, the defendant would have to be rearrested, etc., etc; and finding the order of provisional dismissal of the 2 cases erroneous, set it aside and remanded the 2 cases to the lower court with instruction to have the same tried as soon as possible with due notification to the parties of the date of trial.

I cannot agree with this disposition of the appeal of the Government, for the simple reason that the defendant in said 2 cases would be placed in double jeopardy.

As stated by Chief Justice Moran in his comments on the Rules of Court:

"The principle that no one shall be twice put in jeopardy for the same offense is an ancient and well-established law of reason, justice and conscience. It is embodied in the maxim of the civil law, *non bis in idem*, in the common laws of England, and doubtless in every system of jurisprudence, and instead of having specific origin, it simply always existed (16 C. J. 233). In the Spanish law, it found expression in the *Fuero Real* (A. D. 1255) and in the *Siete Partidas* (A. D. 1263). From the Constitution of the United States, it found its way into our own Constitution and is now embodied therein as one of the fundamental rights of the citizens (Article III, section 1-[20], Philippine Constitution). As now adjudged both in the jurisprudence of the United States and in the Philippines, the protection afforded by the constitutional prohibition against double jeopardy is effective not only against the peril of a second punishment but also against a second trial for the same offense—*Kepner vs. U. S.*, 195 U. S. 100, republished in 11 Phil. 669." (See 2 Moran's Comments on the Rules of Court, p. 799-800, 1952 edition).

Jeopardy has been denned by the courts as:

"The peril in which a person is put when he is regularly charged with a crime before a tribunal properly organized and competent to try him" (*Com. vs. Fitzpatrick*, 1 L. R. A. 451).

"This is the sense in which the term is used in the United States Constitution: 'No person * * * shall be subject for the same offense, to be twice put in jeopardy of life or limb' (U. S. Const., Art. V, Amend., and in the statutes or constitutions of most if not all of the States).

"As commonly used, it must be distinguished from former acquittal and former conviction. Obviously, it includes the rules covered by those 2 terms, but there may be a former jeopardy without a previous acquittal or conviction, and this was intended by the court in *Com. vs. Fitzpatrick*, supra where it was said: 'The plea of former jeopardy stands on narrower, more technical and less substantial grounds. It alleges only that there

might have been a conviction or acquittal if the judge trying the case had not made a mistake of law, which prevented a verdict. It might be said that former jeopardy is the genus. See 10 Va. L. Reg. 410 and note (I Bouvier's Law Dictionary, p. 1690).

Rule 113. The Rules of Court provides the following:

"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 charge, 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."

In the case of *People vs. Ilagan*, 58 Phil. 851, this Court held that:

Under section 28 of the Code of Criminal Procedure (now section 9, Rule 113 of the Rules of Court), a defendant is in legal jeopardy when placed on trial under the following conditions: (1) In a court of competent jurisdiction; (2) upon a valid complaint or information; (3) after he has been arraigned; and (4) after he has pleaded to the information. This overrules the case of *United States vs. Ballentine* (4 Phil., 672) which required the investigation of the charges by the calling of a witness in order that a legal jeopardy may attach. The mere calling of a witness would not add a particle to the danger, annoyance and vexation suffered by the accused, after going through the process of being arrested, subjected to a preliminary investigation, arraigned, and required to plead and stand trial.

'Without the consent of the accused' used in section 28 of the Code of Criminal Procedure does not mean 'over the objection of the accused' or against the will of the accused'. The sound rule is, that the mere silence of the defendant or his failure to object to the dismissal of the case does not constitute a consent within the meaning of said section. The right not to be put in jeopardy a second time for the same offense is as important as the other constitutional rights of the accused in a criminal case. Its waiver cannot, and should not, be predicated on more silence."

That is the reason why in the case of *People vs. Daylo*, 54 Phil. 862, this Court held that:

"This dismissal of a criminal case of estafa, which has been appealed from a Justice of the Peace to the Court of First Instance, the former being vested with jurisdiction to try and decide, is equivalent to an acquittal of the defendant in said case, and the filing of a new information in which the case dismissed is included, exposes said defendant to a second conviction of one and same offense, and therefore constitutes double jeopardy".

In the case of *People vs. Fajardo*, 49 Phil. 206, the same principle was upheld:

"The justice of the peace having, as he had, jurisdiction to entertain the complaint for estafa filed in the case, the trial court committed an error of law in holding that it had no jurisdiction to try the case on appeal; but its judgment, however, in dismissing the case and releasing the accused is unappealable for the reason that he was already in jeopardy, and therefore the motion for dismissal must be granted.

The cases at bar fall squarely by all fours within the scope outlined in our jurisprudence defining double jeopardy. We see that the defendant was (1) prosecuted in a court of competent jurisdiction; (2) upon a valid complaint or information; (3) after he had been arraigned and after he had pleaded to the information. Not only that, he has been convicted, in the Municipal Court of Ozamis City.. It is true that he has appealed from the decisions of the inferior court to the Court of First Instance and that in virtue of his appeal the decisions of the Court a quo were vacated, but this effect provided for in the law cannot produce at the same time and by the same stroke the wiping out of the vivid facts of defendant's prosecution in a court of competent jurisdiction, upon valid complaints and of

his arraignment and conviction therefor. The only effect of defendant's appeal in said two cases was merely to make the proceedings in the court ad quem a continuation and extension of the proceedings in the court a quo. But when for whatever reason rightly or wrongly, the cases on appeal are dismissed, either before or after defendant's arraignment in the appellate court, such dismissal becomes final and unappealable by the State, because it is up to that moment that the defendant has been placed in jeopardy, and no other charges could be later preferred against him, for the same offense, for it would be tantamount and equivalent to placing the defendant in double jeopardy.

In the same case of *People vs. Martinez*, 56 Phil. 6, this Court held that:

"The test for determining whether or not prosecution for one crime constitutes an obstacle to a subsequent action for another distinct crime upon the same facts, is to require whether the facts alleged in the subsequent information, if proven, would have acquitted or convicted. The test of the question is whether or not the same evidence supports the 2 actions. If it does, the trial and conviction in the former action would constitute double jeopardy in the latter case."

We see, therefore, that the cases at bar were finished after the conditions required in the case of *People vs. Ilagan*, supra, had been fully complied with, for the defendant did not consent to the provisional dismissal of his cases. What he did, through counsel, was to demand, as a matter of right, that the two cases be dismissed on the ground that the contained and numerous postponements of the hearings of these cases infringed his constitutional right to speedy trial, and never expressed his consent to a provisional dismissal thereof.

Recently in the case of *People vs. Jesus Bangalao et. al*, (94 Phil., 354), this Court abandoned the doctrine laid down in the case of *People vs. Oscar Salico* (84 Phil., 722), with Chief Justice Paras and Associate Justices Bengzon and Montemayor dissenting. In said case of Bangalao this Court, through Mr. Justice Labrador, dismissed a similar appeal on the part of the Government stating the following:

"We are, therefore, constrained to hold that His Honor committed an error in holding that the court had, no jurisdiction to try the crime charged in the information, simply because it charges the accused with having committed the crime on a demented girl, instead of through the use of force and intimidation. However, we find the" claim of the defendants-appellees that the appeal can not prosper because it puts them in double jeopardy, must be sustained. Under section 2, Rule 118 of the Rules of Court, the People of the Philippines can not appeal if the accused or defendant is placed thereby in double jeopardy. As the court below had jurisdiction to try the case upon the filing of the complaint by the mother of the offended party, the defendants-appellees would be placed in double jeopardy if the appeal is allowed."

Anent the concurring opinion of Mr. Justice Labrador (who penned the unanimous decision in the Bangalao case just quoted abandoning the doctrine laid down in the Salico case, supra, wherein, I repeat, Mr. Justice Monte-mayor and Chief Justice Paras dissented), he now qualifies his former opinion by holding that:

"The decisive fact which determined whether jeopardy attached upon the issuance of the order of dismissal, is the provisional nature of the dismissal and the reservation of the right of the fiscal to 'refile these two cases if he so desires in the interest of Justice. Jeopardy can be invoked only if the case is finally disposed of or terminated. Dismissal under section 9 of the Rule 113 implies final dismissal, a positive termination of the case. Of the dismissal contains a reservation of the right to file another action, the case can not be said to have terminated and jeopardy does not attach."

Mr. Justice Labrador drew inspiration and support from the decision of this Court in the case of *Romeo Jaca vs. Hon. Manuel Blanco*, 86 Phil., 452; 42 Off. Gaz., 12th. supp., 108. The most I can say of the concurring opinion is that it imbibes the lofty ideal of preventing any wrongdoer from escaping punishment by mere technicalities, which is highly commendable; but I dare say that that is not the law. In the first place, when a criminal case is dismissed, provisionally or otherwise, That Case is finished, terminated; so much so that if the Government

desires to continue with the prosecution of the same charges against the alleged culprit, the Fiscal must institute another case and start it anew in the court of origin.

In the second place, section 9 of Rule 113 of the Rules of Court aforequoted, prescribes that "When a defendant shall have been convicted or acquitted, or the case against him dismissed or Otherwise Terminated (after all the other requisites therein enumerated for the attachment of jeopardy are fulfilled), the dismissal of the case shall be a bar to another prosecution (not only) for the offense charge, (but) 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." This provision does not make, with regard to dismissals, any distinction nor points to any limitation of the term, as for example, whether it should be "definite" or "provisional" and the legal maxim is to the effect that when the law does not distinguish, no one should do so. On the contrary, by the very wording of the section it cannot limit its scope to definite dismissal alone, because it goes on saying: or otherwise terminated, and it cannot be denied that the two cases at bar were unquestionably terminated after all the other requisites for jeopardy had already been fully complied. The very appeal interposed by the Solicitor General in these cases, supplies Us with grounds for the assumption that said high representative of the prosecution shares with the undersigned in the theory that said order of dismissal of the lower court put the accused in double jeopardy. As Mr. Justice Labrador remind us, said order of dismissal reserved the right of the Fiscal to "refile these two cases if he so desires in the interest of Justice". And it would have been easier, inexpensive and more speedy action to file the information anew than to undertake the prosecution of this lengthy, less expedient and more expensive and cumbersome procedure of appeal to the Highest Tribunal of the land. In civil cases the usual and adroit tactics employed by practising attorneys in said situation, are to submit to the order of the court and to refile the complaint. This was not done by the Solicitor General. Why? Undoubtedly because he knew the effect of such order and did not spare any effort, no matter how extreme it would be, to save the prosecution from complete failure due not to his fault, but to the erroneous order of the Court. That is why the Solicitor General preferred to challenge before us that mis judgment of the trial Judge.

During the deliberation previous to the voting of these cases, another member of this Court siding with the majority raised the question of "waiver" of the defense of jeopardy and asked me why did I argue that point for the defendant when the latter does not build up such defense in his favor. In answer to this question, I may state that on this matter there is a great confusion of concepts, I contend that there can be no such waiver of said constitutional right, nor that "it is recognized or sanctioned in our jurisprudence. What this Court has held is that "the doctrine of jeopardy requires that this defense, being an exception, must be opportunely interposed and proved by the accused in order to have the benefit thereof" (Trinidad vs. Siochi 72 Phil. 241). " I myself maintained in the recent case of People vs. Mangampo, (99 Phil., 967) without any dissent on the part of my colleagues, that "defendant's claim of double jeopardy must be supported by the evidence and that the record must show the information and sentence on which it is based". And this is so because the plea of jeopardy is an affirmative plea that must be raised in the trial court (People vs. Cabero, 61 Phil., 121). But this does not mean that if the record shows that the defendant has been placed in double jeopardy, or if that fact is admitted by the prosecution, defendant's silence or failure to raise the question would amount to a waiver of said right that would prevent the Court from passing judgment thereon. It is to be noted in this connection that jeopardy, unlike the defense of prescription which also requires pleading and proving, is a matter of public policy, a sacred right guaranteed by our constitution, and Article III, section 1, paragraph (20) thereof prescribes that:

"(20) No person shall be twice put in jeopardy of punishment for the same offense."

Moreover, the alleged "waiver of the right not to be put in jeopardy a second time for the same offense cannot be predicated on the mere silence of the accused when the prior prosecution was dismissed" (People vs. Ylagan, 58

Phil. 581). Besides, the two cases at bar were provisionally dismissed and. it was not for the defendant to object to that dismissal. The time will come for him to plead that defense if he is prosecuted for a second time for the same offense he is charged therein.

As a closing remark may I be permitted to state that in the case of Ylagan, *supra*, a learned jurist, the late Chief Justice Jose Abad Santos, has clearly and masterly enunciated the principles for the attachment of jeopardy. If without any modification of the law We were oftenly to change or qualify the scope of each of the requisites prescribed for that defense, We would only sow confusion and chaos in our jurisprudence to the detriment of the Bar and lower Courts which are to be guided by Our decisions. We shall not forget, as I had already occasion to quote from my Notes on Jurisprudence, that the value of a decision does not precisely depend on the authority of the Court that promulgates the same, but on the reasons adduced in support of the doctrines laid down, which must have that lively and suasive effect necessary to constitute and be cited as legal precedent.

I feel no sympathy for the defendant in these cases and I regret that by a mere technicality of the law, he has to be freed from charges of which he may be guilty, but the law and legal principles on the matter must be upheld and obeyed, for I think that in the last analysis, it is by that way that the ends of justice would be better subserved.

On the strength of the foregoing reasons, I maintain that although the trial court committed error in dismissing provisionally the 2 cases under consideration, yet the order of His Honor on the matter is not appealable by the State, for it would place the defendant herein in double jeopardy. Hence, the instant appeal of the Government must be dismissed without costs.

Paras, C. J., concurs.

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