

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. FRANCISCO DIAZ, DEFENDANT AND APPELLEE.

G.R. No. L-6518. March 30, 1954

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

On November 24, 1951, Francisco Diaz was accused in the Municipal Court of Pasay City of a violation of Section 52 of Act 3992 known as the Revised Motor Vehicles Law committed as follows:

"That on or about the 12th day of November, 1951, in Pasay City, Philippines, the above-named accused Francisco Diaz being then the driver and person in charge of Automobile bearing plate No. 12348 (should be 1560), did then and there wilfully and unlawfully drive and operate said automobile along Taft Avenue, this city, in a fast and reckless manner, without taking the necessary precautions to avoid accident to persons and damage to property, thereby causing an accident." Diaz pleaded not guilty to the charge and after the case was called for hearing twice without the prosecution appearing, the Municipal Court on motion of the defense dismissed the case "for failure of the Government to prosecute." This was on December 22, 1951.

On May 9, 1952, the Assistant City Attorney of Pasay City filed an information in the Court of First Instance of Rizal charging the same Francisco Diaz with Damage to Property thru Reckless Imprudence committed as follows:

"That on or about the 12th day of November, 1951, in Pasay City, Philippines, the above-named accused Francisco Diaz being the driver and person in charge of automobile bearing plate No. 1560, did then and there willfully, unlawfully and feloniously drive, operate and manage the same along Taft Avenue, this city, in a reckless, negligent and imprudent manner, without taking the necessary precautions to avoid accident to persons and damage to property, causing by such negligence, carelessness and imprudence the said automobile with plate No. 1560, hit, bumped and collided against an Oldsmobile car with plate No. 12348 driven by Potenciano Eria, thereby causing damage to the latter vehicle in the amount of P249.50 to the damage and prejudice of the owner Say Koc Chuan in the aforesaid sum of P249.50."

On October 10, 1952, the Rizal Court issued an order postponing the arraignment of the accused to October 27, 1952, giving counsel for the defendant until October 16th within which to file a motion to quash. On said date defendant's counsel filed his motion based on double jeopardy because of the previous charge of violation of the Revised Motor Vehicle Law (sec. 52 thereof) with the Municipal Court of Pasay City. On November 17, 1952, the Rizal Court issued an order sustaining the motion to quash and dismissing the case with costs de oficio. The Government is appealing from that order and because the appeal involves only questions of law, the same was taken directly to this Court.

Is there double jeopardy in the present case?

As regards the dismissal of the first case in the Municipal Court of Pasay City, it is true that since the defendant himself asked for said dismissal, at first blush, it may not be considered as coming under the provisions of Rule 113, section 9 of the Rules of Court which provides that there is 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." But in the case of *Gandicela vs. Hon. Lutero*, 88 Phil., 299, w held:

"If the defendant wants to exercise his constitutional right to a speedy trial, he should ask, not for the dismissal but for the trial of the case. If the prosecution asks for the postponement of the hearing and the court believes that the hearing cannot be postponed anymore without violating the right of the accused to a speedy trial, the court shall deny the postponement and proceed with the trial and require the fiscal to present the witnesses for the prosecution; and if the fiscal does not or cannot produce his evidence and consequently fails to prove the defendant's guilt beyond reasonable doubt, the Court, upon the motion of the defendant, shall dismiss the case. Such dismissal is not in reality a mere dismissal although it is generally so called, but an acquittal of the defendant because of the prosecution's failure to prove the guilt of the defendant, and it will be a bar to another prosecution for the offense even though it was ordered by the Court upon motion or with the express consent of the defendant, in exactly the same way as judgment of acquittal obtained upon the defendant's motion (*People vs. Salico*, 84 Phil., 722)."

The dismissal of the charge in the Pasay City Municipal Court is even a stronger case than the example considered in the case of *Gandicela* above referred to. Here the prosecution was not even present on the day of trial so as to be in a position to proceed with the presentation of evidence to prove the guilt of the accused. The case was set for hearing twice and the prosecution without asking for postponement or giving any explanation, just failed to appear. So the dismissal of the case, tho at the instance of defendant Diaz may, according to what we said in the *Gandicela* case, be regarded as an acquittal.

The next question to determine is the relation between the first offense of violation of the Motor Vehicles Law prosecuted before the Pasay City Municipal Court and the offense of damage to property thru reckless imprudence charged in the Rizal Court of First Instance. One of the tests of double jeopardy is whether or not the second offense charged necessarily includes or is necessarily included in the offense charged in the former complaint or information (Rule 113, section 9). Another test is whether the evidence which proves one would prove the others, that is to say, whether the facts alleged in the first charge if proven, would have been sufficient to support the second charge and vice versa; or whether one crime is an ingredient of the other.[1]

It is clear that in the present case the second charge of Damage to Property thru Reckless Imprudence includes the first charge of reckless driving; that the facts alleged in the information on damage to property thru reckless driving, if proven, would have been sufficient to support the first charge of reckless driving, and finally, that the offense of reckless driving is an ingredient of the offense of damage to property thru reckless imprudence, all for the simple reason that the basic element in both offenses is reckless driving. Thus it is evident that we have here a case of double jeopardy. And there is no explanation why when Diaz was first charged with a violation of the Motor Vehicle Law because of reckless driving, the damage to property was not included.

A defendant should not be harassed with various prosecutions based on the same act by splitting the same into various charges, all emanating from the same law violation, when the prosecution could easily and well embody them in a single information.

The order of dismissal by the Rizal Court of First Instance is affirmed, with costs de oficio.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, and Diokno, JJ., concur.

[1] 16 C. J. 264 quoted in *People vs. Martinez*, 55 Phil. 9.

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