

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ALBERTO COSARE, DEFENDANT AND APPELLANT.

G.R. No. L-6544. August 25, 1954

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Bohol finding the accused guilty of the crime of qualified trespass to dwelling with the aggravating circumstance of nocturnity and sentencing him to suffer 4 months and 1 day arresto mayor, to pay a fine of P100, with subsidiary imprisonment in case of insolvency, and to pay the costs.

On July 1, 1950, one Valeria Pagas filed against the accused a complaint for "Abuse Against Chastity". The complaint was subscribed to by her as required by law. On August 3, 1950, the complaint was amended by the Acting Chief of Police charging the accused with "Qualified Trespass to Dwelling and Physical Injuries", and on September 23, 1950, the complaint was further amended by the Chief of Police charging the accused with the same offense of "Qualified Trespass to Dwelling and Physical Injuries." The Justice of the Peace of Tubigon, Bohol, with whom the above mentioned complaints were filed, conducted the preliminary investigation having in view the second amended complaint. Thereafter, the Justice of the Peace forwarded the case to the Court of First Instance for further proceedings.

On January 24, 1951, the Provincial Fiscal filed against the accused an information charging him with the offense of "Acts of Lasciviousness", which was amended on August 29, 1951, charging him with the offense of "Acts of Lasciviousness Thru Qualified Trespass to Dwelling." In the meantime, the accused filed a motion to quash the information on the ground of lack of jurisdiction, which motion was denied in an order of September 1, 1951. The accused was then arraigned and entered a plea of not guilty.

On April 3, 1952, the case was called for trial, and it was at this instance that counsel for the accused reiterated his motion to quash on the plea that the accused was given the benefit of preliminary investigation, not in connection with the complaint filed by the offended party, but with that filed by the Chief of Police of Tubigon, a matter which places the case beyond the jurisdiction of the court, and considering this plea tenable, the court, on the same date, ordered that the case be remanded to the Justice of the Peace of Tubigon in order that a new preliminary investigation may be held in connection with the original complaint filed by the offended party. This was done after the offended party had filed an amended complaint charging the accused with the offense of "Acts of Lasciviousness." The case was again forwarded to the Court of First Instance and on August 25, 1952, the Provincial Fiscal, filed against the accused an information charging him with the same crime of "Acts of Lasciviousness."

When the case was called if or trial based on the new information, the accused again filed a motion to quash, this time based on the ground of double jeopardy. The motion was denied, and after the parties had presented their evidence, the court rendered decision acquitting the accused of the charge of acts of lasciviousness but finding

him guilty of qualified trespass to dwelling and imposing upon him the penalty as stated in the early part of this decision. From this decision the accused has appealed.

The accused poses in this appeal the following issues:

(a) Can he be convicted of a crime alleged merely in the information as an aggravating circumstance after having been acquitted of the main charge described therein?; and

(b) Has he been placed in double jeopardy?

(a). It should be noted that the crime with which the accused is charged in this case appears to be designated as "Acts of Lasciviousness" in the caption of the amended complaint filed against him on April 29, 1952, and in that of the new information filed by the Provincial Fiscal on August 25, 1952, after the case had been elevated for the second time by the Justice of the Peace to the Court of First Instance. Apparently, the charge under which he stands indicted is that of "Acts of Lasciviousness", for that is the designation appearing both in the complaint as well as in the information. However, upon a cursory reading of the averment appearing in both pleading one cannot fail to note that what is charged against the accused is not only the offense of "Acts of Lasciviousness" but that of trespass to dwelling as well. This is apparent from the allegation appearing therein that the accused entered the dwelling house of Valeria Pagas against her will, and that "once inside the said dwelling house the said accused, with lewd designs and by the use of force, embraced, kissed, raised the dress and touched the breast and private part of the aforesaid Valeria Pagas against her will." There is nothing appearing therein that trespass to dwelling is merely an aggravating circumstance. Such being the case, it is evident that the accused can be found guilty, if proven, on both charges, in the absence of a timely objection against such duplicity of charge. Here the record discloses none. The objection hinted by the defense refers to a different information.

It is true that both the complaints as well as the information, in their caption, merely designate the crime charged as that of "Acts of Lasciviousness", but such designation is not controlling. It is a mere conclusion of law. The factor that characterizes the charge is the actual recital of the facts. That, it was held that, "The crime of which the defendant stands accused is that described by the facts stated in the information, and not that designated by the fiscal in the preamble thereof * * * The designation of the crime by name in the caption of the information is a conclusion of law on the part of the fiscal, * * * It is not necessary, for the protection of the substantial rights of the accused, nor the effective preparation of his defense, that he be informed of the technical name of the crime of which he stands charged. He must look to the facts alleged" (*Italics supplied*) (*U. S. vs. Lim San*, 17 Phil., 275) It is evident that the lower court did not err in finding the accused guilty of the crime of trespass to dwelling.

(b) The plea of double jeopardy cannot also be sustained it appearing that the case was not dismissed but merely remanded to the Justice of the Peace in order that he may conduct a new preliminary investigation. This is clearly apparent from the decision of the lower court. Thus, in said decision the following appears: "Inasmuch as the accused insists on his right to a preliminary investigation, the Court, on motion of Assistant Provincial Fiscal Aureliano C. Trabajo, order that the records of this case be returned to the Justice of the Peace Court of Tubigon, Bohol, with instructions that he should hold a preliminary investigation on the complaint filed and subscribed by Valeria Pagas dated July 1, 1950, which is the only valid complaint in this case." (*Italics supplied*) The rule regarding double jeopardy invoked by the accused only applies when the case against him is dismissed or is otherwise terminated without his express consent (Section 9, Rule 113). This situation does not here obtain, for the case was neither dismissed nor terminated. It was merely remanded to the Justice of the Peace for a new preliminary investigation. And even if the action of the court may be considered as dismissal, it appears that it was done with his express consent, or at least with the conformity of his counsel, (pages 1-2, *t. s. n.*) This case, therefore, does not come within the rule.

The decision appealed from is affirmed, without pronouncement as to costs.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

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