

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
MELCHOR GARCIA SY, DEFENDANT-APPELLEE.***G.R. Nos. L-27537-44. October 31, 1969*

Ponente: CASTRO, J.

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The appellee Melchor Garcia Sy, together with Macario Cagalawan and Antiaco Dumagan, was indicted for malversation through falsification of public documents before the Court of First Instance of Surigao del Sur. The information, docketed as criminal case 1748, charged that on various occasions during the period from November 16, 1953 to December 6, 1954, the appellee, as municipal treasurer of Tandag, Surigao del Sur, conspiring with his co-accused, Cagalawan and Dumagan, who at the time were mayor and councilor, respectively, of the municipality, misappropriated P16,499.50 of the public funds through falsification of vouchers showing supposed deliveries of sand and gravel to the municipality.

Upon arraignment the three moved to quash the information on the ground that it charged more than one offense, but the court, presided by Judge Modesto R. Remolete, overruled their motion, whereupon they pleaded not guilty and entered trial. On September 27, 1956 the court rendered judgment finding them guilty and sentencing them to 11 years and 4 months of prison mayor to 18 years, 2 months and 21 days of reclusion temporal.

Cagalawan and Dumagan appealed to the Court of Appeals which, in its resolution of May 28, 1958, found merit in their contention that the information was duplicitous, and accordingly remanded the case to the trial court with instructions that a separate information be filed for each act of malversation. The two were subsequently tried anew on eight separate informations, but on December 23, 1959 were acquitted by the court, this time presided by Judge Teofilo Buslon.

In the meantime the appellee Garcia Sy likewise appealed. Following its earlier resolution, the Court of Appeals ordered on March 8, 1963 the remand of the case with similar instructions to the prosecuting fiscal to file separate informations. Accordingly, eight informations for malversation, docketed as criminal cases 358-365, were filed against the appellee, but, on the latter's motion, the trial court quashed the informations on the ground that the appellee was thereby placed in double jeopardy.

Hence, this appeal by the State.

In its order of August 26, 1966 granting the appellee's omnibus motion to quash, the trial court, now presided by Judge Placido Reyes-Roa, relied on the following rationale:

"In the case of *People vs. Alvarez*, 45 Philippines 478, the Supreme Court held:

"The test for determining whether or not a prosecution for one crime constitutes an obstacle to a subsequent action for another distinct crime upon the same facts is to inquire whether the facts alleged in the second information, if proven, would have been sufficient to support the former information, for which the accused may have been acquitted or convicted. The gist of the question is, whether or not the evidence support the two

actions.'

"Under Sec. 9 of Rule 117, there are four requirements which must be present for double jeopardy to exist:

"1. Former conviction

"2. Before a competent Court

"3. Valid information or com-plaint

"4. After defendant had pleaded to the charge.

"Based upon the foregoing criterion, it is apparent that the same evidence of the prosecution support the two actions."

The order appealed from should be set aside.

Had the appellee's motion to quash been granted by the Court of Appeals, undoubtedly the prosecution could forthwith have filed eight separate informations for malversation, pursuant to section 7 of Rule 117, and the appellee would not be heard to invoke the protection against double jeopardy.[1] The fact that it was the trial court that denied the appellee's motion, with the consequence that he had to plead and enter trial and was thereafter sentenced, in no wise makes this case different.[2] For by appealing he prevented the judgment of conviction from becoming final, with the result that, as the case now stands, there is no judgment of conviction at all to speak of, and therefore the appellee has not been placed in jeopardy. The error of the lower court is a fundamental one - the incorrect assumption that criminal case 1748 terminated in a final conviction and that criminal cases 358-365 are new and different prosecutions for the same offenses. Hence its invocation of the same-evidence test.

Nor is the requirement of a plea material considering that the order of the court denying the appellee's motion to quash was interlocutory. The point is that as the appellee could not immediately appeal,[3] he had, as a matter of necessity, to plead to the charge and enter trial, and thereafter raise the question on appeal in the event of conviction.

What is more, by appealing to the Court of Appeals and re-iterating therein his objection, the appellee must be deemed estopped from interposing the defense of double jeopardy.

As we said recently in *People vs. Obsania*,[4] "The application of the sister doctrines of waiver and estoppel requires two sine qua non conditions: first, the dismissal must be sought or induced by defendant personally or through his counsel; and second, such dismissal must not be on the merits and must not necessarily amount to an acquittal." We emphasized in the same case that "The doctrine of estoppel is in quintessence the same as the doctrine of waiver: the thrust of both is that a dismissal, other than on the merits, sought by the accused in a motion to dis-miss, is deemed to be with his express consent and bars him from subsequently interposing the defense of double jeopardy on appeal or in a new prosecution for the same offense." [5]

These cases before us fall within the ambit of the rule on estoppel, for the dismissal of the complaint in criminal case 1748 on the technical ground of duplicity was granted at the instance and insistence of the accused.

In its order of August 26, 1966 the court likewise made the passing observation that, with the acquittal of Cagalawan and Dumagan with whom the appellee herein allegedly conspired in defrauding the Government, it is doubtful whether the prosecution could "proceed ... with any degree of success." It is sufficient to dispose of this point to say that it is not a legal ground for quash-ing an information. At any rate, we do not here rule on, nor are we called upon to resolve, the question whether the acquittal of Cagalawan and Dumagan would result, likewise in the acquittal of the appellee, not having before us the facts in their entirety, e. g., the grounds on which the

former were acquitted following their retrial.

ACCORDINGLY, the order appealed from is annulled and set aside, and these eight cases are hereby remanded to the court a quo for further proceedings in accordance with law. No pronouncement as to cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Fernando, and Teehankee, JJ., concur.
Zaldivar and Barredo, JJ., did not take part.

[1] See Rule 117, sec. 8.

[2] Cf. *People v. Caluag*, 94 Phil. 457 (1954).

[3] In the situation here obtaining, the remedies of certiorari and prohibition are generally unavailing. See, e.g., *Mill v. People*, 101 Phil. 599 (1957); *Ricafort v. Fernan*, 101 Phil. 575 (1957).

[4] L-24447, June 29, 1968, 23 SCRA 1273-1274.

[5] *Id.*, 23 SCRA at 1260.

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