

VALERIO TACAS, PETITIONER, VS. HONORABLE FLORENTINO C. CARIASO, PRESIDING JUDGE, CFI-ILOCOS SUR, BRANCH V, AND PEOPLE OF THE PHILIPPINES, REPRESENTED IN THIS INSTANCE BY HONORAB...

G.R. No. L-37406. August 31, 1976

Ponente: FERNANDO, Acting C.J.

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FERNANDO, Acting C.J.:

The basic issue posed in this certiorari and prohibition proceeding is whether or not constitutional provision on double jeopardy[1] bars a prosecution for the crime of assault upon a person of authority, the alleged offense having been committed by the accused on the occasion of having inflicted a bolo wound on the offended party for which he had previously been charged and convicted of less serious physical injuries. He had, moreover, fully served his sentence in jail. Respondent Judge answered this question in the negative.[2] Such a ruling is assailed as a grave abuse of discretion on the ground that after such previous conviction for the same facts, petitioner, the accused, can no longer be held accountable again for the crime of assault upon a person in authority. Reliance is placed on our previous decisions, reference being made to the earliest, *United States v. Montiel*, decided in 1907.[3] There is support for such a contention. For *People v. Bonotan*,[4] promulgated in 1955, as will subsequently be shown, is directly in point. It suffices at this stage to indicate that this Court relied on this specific provision of the Rules of Court as to when the constitutional right against being twice put in jeopardy may be invoked. Thus: "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." [5] It would appear therefore that a proper basis has been laid for the remedy of certiorari.

It suffices to refer to the above two criminal complaints filed against petitioner by the same Chief of Police, one Felipe Agdeppa, to demonstrate the applicability of the *Bonotan* ruling. The criminal complaint for less serious physical injuries dated January 2, 1973 was worded thus: "The undersigned Chief of Police, Sinait, Ilocos Sur, after having been duly sworn to in accordance with law, accuses Valerio Tacas of the crime of Less Serious Physical Injuries committed as follows: That on or about 4:30 o'clock p.m., December 15, 1972, in Bo. Zapat, Sinait, Ilocos Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent did then and there willfully and feloniously assault and attack Emitterio Ibaan with a bolo inflicting upon the latter multiple hacking wounds and stab wounds on the different parts of his body which injuries shall incapacitate the said Emitterio Ibaan from the performance of his customary labors for a period of at least 30 days and requires medical attendance for the same period of time." [6] Then came on April 17, 1973, after

having been convicted of the aforesaid offense, the other criminal complaint against him for assault upon a person in authority. This was the language used: "The undersigned Chief of Police, Sinait, Ilocos Sur, after having been duly sworn to in accordance with law, accuses Valerio Tacas of the crime of Assault Upon a Person in Authority committed as follows: That on or about 4:30 o'clock p.m., December 15, 1972, in Bo. Zapat, Sinait, Ilocos Sur, Philippines and within the preliminary jurisdiction of this Honorable Court, the above-named accused with deliberate intent, did then and there willfully, unlawfully and feloniously assault and attacked one Emitterio Ibaan, a duly elected and incumbent barrio Captain of Bo. Zapat, Sinait, Ilocos Sur by stabbing him three times with the use of a jungle bolo." [7] It was pointed out by petitioner that on the very same day that he was charged with the crime of less serious physical injuries, he pleaded guilty and was immediately sentenced to a prison term of thirty days of *arresto menor*, there being in his favor the mitigating circumstances of voluntary surrender and plea of guilty. [8] He did serve such sentence, but after his release, came on April 17, 1973, the aforesaid criminal complaint, this time for assault against a person in authority. [9] He did object on jeopardy grounds, but to no avail. Hence this petition.

As noted at the outset, *certiorari* lies. For, as pointed out by petitioner, from the commission of the act complained of, resulting in the prosecution for less serious physical injuries, there was no circumvening event or circumstance that could affect or change the nature of the act originally committed. This is a case therefore of there being a single act resulting in the complex crime of less serious physical injuries and assault upon a person in authority. The indictment, was, however, solely for less serious physical injuries. It is therefore now too late to hold him liable as well for the offense of assault against a person in authority. The objection coming from the Solicitor-General that this is not one of those cases where the offense is identical cannot be sustained in view of the well-settled interpretation embodied in the Rules of Court provision cited such constitutional requirement is satisfied if the subsequent indictment is "for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information." [10]

1. *People v. Bonotan* [11] inescapably points to such a conclusion. The facts as summarized follow: "Appeal by the government from an order of the Court of First Instance of Davao, dismissing an information for direct assault upon a person in authority with physical injuries. On April 21, 1956, the chief of police of Kapalong, Davao, filed with the justice of the peace court of that town a criminal complaint for less serious physical injuries against herein defendants-appellees. After the defendants had pleaded not guilty, the chief of police, with the conformity of the offended party, filed a motion to dismiss on the ground that the offense charged in the complaint did not correspond to the crime actually committed. The court granted the motion upon the ground alleged. More than a month thereafter, the acting provincial fiscal of Davao filed against the same defendants an information for 'direct assault upon a person in authority with physical injuries.' Upon arraignment on the information, the defendants moved to quash the same on the ground of double jeopardy, and the court having granted the motion, the prosecution took the present appeal. The question for determination is whether the offense charged in the information filed by the fiscal necessarily includes or is necessarily included in the offense charged in the complaint of the chief of police." [12] On the above facts, this is the holding: "The charge of direct assault upon a person in authority with physical injuries contained in the fiscal's information is not included in the charge contained in the complaint of the chief of police, which is merely that of less serious physical injuries unqualified by any allegation that those injuries were inflicted upon the offended municipal councilor, admittedly a person in authority, while he was in the performance of his official duties or on the occasion thereof, a qualification essential to the offense charged in the information. The converse is no less obvious, that is, that the charge, of direct assault upon a person in authority with physical injuries as set out in the information necessarily includes the offense of less serious physical injuries charged in the complaint, specially because in both the information and the complaint, the physical injuries inflicted are alleged to have required medical assistance of a period of 14

days and incapacitated the offended party from labor for the same period of time. As proof that the offense charged in the information includes the offense charged in the complaint, conviction of the defendants of this latter offense may, without question, be had under the information if the other ingredients of the crime charged in said information are not proved. Hence, the defense of double jeopardy was well taken."^[13] The order of dismissal was thus affirmed precisely on the very same constitutional ground relied upon in this petition.

2. Nor is the Bonotan doctrine unique. As far back as *United States v. Gustilo*,^[14] a 1911 decision, this Court through Justice Moreland made clear that while the protection afforded by the jeopardy clause requires that it may be invoked when it is the same offense, it can extend as well to a felony traceable to the same criminal intent. Thus: "We are confident that the portion of the Philippine Bill embodying the principle that no person shall be twice put in jeopardy of punishment for the same offense should, in accordance with its letter and spirit, be made to cover as nearly as possible every result which flows from a single criminal act impelled by a single criminal intent. The fact should not be lost sight of that it is the injury to the public which a criminal action seeks to redress, and by such redress to prevent its repetition, and not the injury to individuals. In so far as a single criminal act, impelled by a single criminal intent, in other words, one volition, is divided into separate crimes and punished accordingly, just so far are the spirit of the Philippine Bill and the provisions of article 89 of the Penal Code violated."^[15] Then there is *People v. Elkanish*,^[16] which expressly reaffirms the *Gustilo* ruling. Justice Tuason, speaking for the Court, left no doubt as to the continuing validity of this principle: "Penal statutes, substantive and remedial or procedural, are, by the consecrated rule, construed strictly, or liberally in favor of accused. The fact that the protection against being twice put in jeopardy for the same offense is not only a legislative creation but secured by the Constitution, impresses with a command such construction as would bring the statute into harmony with the spirit of the fundamental law."^[17] After which came the above excerpt from the opinion of Justice Moreland in *Gustilo*. Relevant as well is the opinion penned by Justice Villa-Real in *People v. Tumlos*:^[18] "The theft of the thirteen cows committed by the defendant took place at the same time and in the same place; consequently, he performed but one act. The fact that eight of said cows pertained to one owner and five to another does not make him criminally liable for two distinct offenses, for the reason that in such case the act must be divided into two, which act is not susceptible of division. The intention was likewise one, namely, to take for the purpose of appropriating or selling the thirteen cows which he found grazing in the same place. As neither the intention nor the criminal act is susceptible of division, the offense arising from the concurrence of its two constituent elements cannot be divided, it being immaterial that the subject matter of the offense is singular or plural, because whether said subject matter be one or several animate or inanimate objects, it is but one. Therefore, as the five cows alleged to be stolen by Irineo Tumlos were integral parts of the thirteen cows which were the subject matter of theft, and as he had already been tried for and convicted of the theft of eight, he cannot now be convicted of the theft of the other five."^[19]

WHEREFORE, the writs prayed for are granted. The orders of July 5, 1973 and July 31, 1973 of respondent Judge are nullified and set aside, being contrary to the constitutional provision on double jeopardy. Respondent Judge is likewise ordered to desist from taking any further action in Criminal Case No. 103-K for assault upon a person in authority, except for the purpose of dismissing the same.

Concepcion, Jr., J., concurs.

Barredo, J., concurs in the result on the basis of the point noted also in the concurring opinion of Justice Aquino that the second information in effect charges exactly the same offense as that charged in the first information. He would have voted differently if the second information had properly charged assault which was not the offense to which petitioner was prosecuted and put in jeopardy under the first information.

Antonio, J., concurs in the separate opinion of Justice Aquino.

Aquino, J., concurs in a separate opinion.

[1] Article IV, Sec. 22 of the Constitution provides: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

[2] The other respondents are the People of the Philippines, represented by Jesus F. Guerrero, then Provincial Fiscal of Ilocos Sur.

[3] 9 Phil. 162.

[4] 105 Phil. 1349.

[5] Section 9, Rule 117 of the Rules of Court.

[6] Petition, Annex A.

[7] Ibid, Annex C.

[8] Ibid, par. III.

[9] Ibid, par. IV.

[10] Cf. Section 9, Rule 117.

[11] 105 Phil. 1349, (1949).

[12] Ibid, 1349.

[13] Ibid, 1349-1350.

[14] 19 Phil. 208. Cf. *United States v. Lim Suco*, 11 Phil. 484 (1908) and *United States v. Poh Chi*, 20 Phil. 140 (1911).

[15] Ibid, 212.

[16] 90 Phil. 53 (1951). Cf. *People v. Diaz*, 94 Phil. 714 (1954) and *People v. Silva*, 114 Phil. 53 (1962).

[17] Ibid, 57.

[18] 67 Phil. 320 (1939).

[19] Ibid, 322-323.

CONCURRING OPINION

AQUINO, J.:

I concur. The plea of double jeopardy (autrefois convict) should be sustained because the offenses charged in the first and second complaints are the same: less serious physical injuries under article 265 of the Revised Penal Code.

Valerio Tacas was charged by the chief of police in the second complaint with "assault upon a person in authority" (See art. 152 of Revised Penal Code as amended). That is the crime mentioned in the opening sentence

of the complaint. But the body of the complaint does not contain sufficient allegations to constitute the crime of direct assault or atentado contra la autoridad as defined in article 148 of the Revised Penal Code. The chief of police acted without the benefit of competent legal guidance.

It was alleged in the body of the complaint that the victim, Emitterio Ibaan, was a barrio captain (without describing him as a person in authority). But it was not alleged therein that Tacas feloniously assaulted him while he (Ibaan) was "engaged in the performance of official duties or on the occasion of such performance". That is a vital element of the offense of atentado propio under article 148 (II Cuello Calón, Derecho Penal 14th Ed., 1975, pp. 150-3).

The designation of the offense in the complaint or information is not conclusive. What are controlling are the allegations in the body thereof (U. S. vs. Lim San, 17 Phil. 273; 4 Moran's Comments on the Rules of Court, 1970 Ed., pp. 22-24). Thus in U. S. vs. Montiel, 7 Phil. 272 and 9 Phil. 162 the crime imputed to the accused was found to be direct assault with lesiones graves although one of the two informations filed against him designated the offense as frustrated murder.

Under the second complaint, Tacas can only be convicted of less serious physical injuries. He cannot be convicted of direct assault of a person in authority because the body of the second complaint does not charge such an offense. It merely charges the offense of less serious physical injuries inflicted on a barrio captain, the same offense described in the first complaint. Tacas was already convicted of that offense under the first complaint.

Since the second complaint is just a repetition of the first complaint (with the differences that the second complaint denominates the offense as "assault upon a person in authority" and describes the victim as a barrio captain), that second complaint can be quashed on the ground of prior conviction for the same offense (Sec. 9, Rule 117, Rules of Court).

While the two complaints charge one and the same offense and allege one and the same act, that is to say, the infliction by Tacas on Ibaan of lesiones menos graves, the crime actually committed was the complex offense of direct assault with lesiones menos graves resulting from a single act.

The Montiel cases, supra, and People vs. Bonotan, 105 Phil. 1349 were decided on the theory that the accused perpetuated a single act resulting in a complex offense. His conviction for one offense, forming part of the complex offense, barred his prosecution for the other offense of the complex crime or for the entire complex crime.

That ruling is justified by the rationale of the rule on double jeopardy, which is non bis in idem ("not twice for the same") or nemo debet bis vexari pro eadem causa ("no one ought to be twice tried for the same cause"). A man shall not be brought into danger of his life or liberty for one and the same offense more than once.

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