

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT VS. CORNELIO FERRER, DEFENDANT AND APPELLEE.

G.R. No. L-9072. October 23, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The Government is appealing from an order of the Court of First Instance of Negros Occidental, dismissing the case against the defendant Cornelio Ferrer for acts of lasciviousness, on a motion to quash filed by him,

Cornelio Ferrer was charged with acts of lasciviousness in the Justice of the Peace Court of Asia, Negros Occidental on the basis of a written complaint, later amended filed by the offended party, Perla Engcoy. After the corresponding preliminary investigation, the Justice of the Peace Court finding "probable cause that the offense charged has been committed and that the defendant is probably guilty" elevated the case to the Court of First Instance of Negros Occidental, where the case was tried on February 15, 1955. After the prosecution had rested its case, the hearing was adjourned to March 1, 1955. In the meantime, on February 24 of the same year, the accused filed a motion to quash on the ground that the jurisdiction of the trial court to try the case had not been established for the reason that the evidence for the prosecution merely tended to prove that the acts of lasciviousness were committed in the house of the offended party, without showing where that house is situated. The prosecution filed a written opposition to the motion to quash, and the defense filed a reply to said opposition, after which the trial court by order of March 23, 1955, granted the motion to quash and dismissed the case with costs de officio.

We Have examined the record of the case, particularly, the testimony of the offended party and that of the Chief of Police and we are fully convinced that the prosecution had established the jurisdiction of the trial court, that is to say, that the offense charged was committed in the town of Asia, Province of Negros Occidental. In the first place, the complaint and amended complaint both under oath, filed by the offended party in the Justice of the Peace Court allege that the acts of lasciviousness were committed against her in her house in the poblacion of the Municipality of Asia, Province of Negros Occidental. In the second place, testifying as a witness at the trial, she gave as her residence the town of Asia, Negros Occidental. Then she testified that the acts of lasciviousness were committed on her person in her house, (pp. 6, 7, 11, t.s.n.) As the Solicitor General says, in the absence of proof that she had more than one house, it is presumed that the crime was committed in her house in Asia, Negros Occidental, within the jurisdiction of the trial court. Then we have the testimony of Celestino Regala,, Chief of Police of Asia, wherein he declared that he received, the complaint filed by Perla Engcoy against Cornelio Ferrer; that he made the corresponding investigation, specially since the accused was one of his policemen, charged with having committed acts of lasciviousness against the offended party, Perla, in her own house, and he asserted that the distance of said house from the Municipal building of Asia is around 200 yards, (pp. 72-83, t.s. n.) With all this evidence, we cannot understand how the trial court could say that the prosecution had not established its jurisdiction to try the case.

Unfortunately, however, we believe that the Government however meritorious its case cannot appeal the order of dismissal without violating the right of the defendant not to be placed in double jeopardy. The accused herein has

not filed a brief on appeal raising this question of double jeopardy. Nevertheless, Rule 118, Section 2 the Rule of Court provides: "The People of the Philippines can not appeal if the defendant would be placed thereby in double jeopardy," and we have to give force and effect to said rule. Here, the defendant had already been arraigned and he entered his plea, and the trial had begun, and the prosecution had rested its case. We hold that the appeal of the Government from the order of dismissal would place the accused in double jeopardy.

We find the present case to be one of miscarriage of justice because the accused was practically acquitted without considering the merits of the case, all due, unfortunately, to the error of the trial court. However, this Tribunal finds itself helpless to correct the error and must respect and enforce the right of the accused granted by law and guaranteed by the Constitution.

Without anticipating or advancing any opinion as to the innocence or guilt of the accused, since he is a municipal policeman, it is suggested that he be subjected to an administrative investigation. Let copies of this decision be furnished the Office of the President and the Municipal Council of Asia, Negros Occidental.

In view of the foregoing, the appeal filed on behalf of the Government is hereby dismissed with costs de oficio.

Paras, C. J., Padilla, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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