

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BUENAVENTURA BULING, DEFENDANT AND APPELLANT.

G.R. No. L-13315. April 27, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Leyte, Hon. Gaudencio Cloribel, presiding, finding the accused Buenaventura Buling guilty of serious physical injuries and sentencing him to imprisonment of four months of arresto mayor, as minimum, to one year of prision correccional, as maximum, and to indemnify the offended party.

The following uncontroverted facts appear in the record: On December 7, 1956, the accused was charged in the Justice of the Peace Court of Cabalian, Leyte, with the crime, of less serious physical injuries for having inflicted wounds on complaining witness Isidro Balaba, which according to the complaint would "require medical attendance for a period from 10 to 15 days and will incapacitate the said Isidro Balaba from the performance of his customary labors for the same period of time." The accused pleaded guilty to the complaint and was on December 8, 1957 found guilty of the crime charged and sentenced to 1 month and 1 day of arresto mayor and to pay damages to the offended party in the sum of P20.00, with subsidiary imprisonment in case of insolvency. On the same day he began to serve his sentence and has fully served the same.

However, Balaba's injuries did not heal within the period estimated, and so on February 20, 1957, the Provincial Fiscal filed an information against the accused before the Court of First Instance of Leyte, charging him of serious physical injuries. The information alleges that the wounds inflicted by the accused on Isidro Balaba require medical attendance and incapacitated him for a period of from 1½ months to 2½ months. After trial the accused was found guilty of serious physical injuries and sentenced in the manner indicated in the first paragraph hereof. This is the decision now sought to be set aside and reversed in this appeal.

The only question for resolution by this Court is, whether the prosecution and conviction of Balaba for less serious physical injuries is a bar to the second prosecution for serious physical injuries.

Two conflicting doctrines on double jeopardy have been enunciated by this Court, one in the cases of *People vs. Tarok*, 73 Phil., 260 and *People vs. Villasis*, 81 Phil., 881, and the other, in the cases of *Melo vs. People*, 85 Phil., 766, *People vs. Manolong*, 85 Phil., 829 and *People vs. Petilla*, 92 Phil., 395. But in *Melo vs. People*, supra, we expressly repealed our ruling in the case of *People vs. Tarok*, supra, and followed in the case of *People vs. Villasis*, supra. In the *Melo vs. People* case, we stated the ruling to be that:

"* * * Stating it in another form, the rule is that "where after the first prosecution a new fact supervenes for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at the time, constitutes a new and distinct offense" (15 Am. Jur., 66), the accused can not be said to be in second jeopardy if indicted for the new offense." (85 Phil., 769-770).

Do the facts in the case at bar justify the application of the new ruling? In other words, has a new fact supervened,

like death in the case of *Melo vs. People*, which changes the character of the offense into one which was not in existence at the time the case for less serious physical injuries was filed? We do not believe that a new fact supervened, or that a new fact has come into existence. What happened is that the first physician that examined the wounds of the offended party certified on December 10, 1956 that the injury was as follows: "wound, incised, wrist lateral, right, $\frac{3}{4}$ inch long, sutured" and that the same would take from 10 to 15 days to heal and incapacitated (the wounded man) for the same period of time from his usual work (Exh. 3). It was on the basis of this certificate that on December 8, 1956, defendant-appellant was found guilty of less serious physical injuries and sentenced to imprisonment of 1 month and 1 day of arresto mayor, etc.

But on January 18, 1957, another physician examined the offended party, taking an X-ray picture of the arm of the offended party which had been wounded. The examination discloses, according to the physician, the following injuries:

"Old stab wound 4 inches long. With infection, distal end arm, right. X-ray plate finding after one month and 12 days—Fracture old oblique, incomplete distal end, radius right, with slight calus." (Exh. "E").

and the certification is to the effect that treatment will take from 1½ months to 2½ months barring complications.

Counsel for the appellant claims that no fact had supervened in the case at bar, as a result of which, another offense had been committed. It is argued that the injury and the condition thereof was the same when the first examination was made on December 10, 1956, as when the examination was made on January 18, 1957, and that if any new fact had been disclosed in the latter examination failure of this new fact to be disclosed in the previous examination may be attributed to the incompetence on the part of the examining physician. We find much reason in this argument. What happened is no X-ray examination of the wounded hand was made during the first examination, which was merely superficial. The physician who made the first examination could not have seen the fracture at the distal end of the right arm, and this could only be apparent or visible by X-ray photography.

Under the circumstances above indicated, we are inclined to agree with the contention made on behalf of appellant that no new supervening fact has existed or occurred, which has transformed the offense from less serious physical injuries to serious physical injuries.

But the Solicitor General cites the case of *People vs. Manolong*, supra, and argues that our ruling in said case should apply to the case at bar, for the reason that in the said case the first crime with which the accused was charged was less serious physical injuries and the second one was serious physical injuries and yet we held that there was no jeopardy. We have carefully examined this case and have found that the first examination made of the offended party showed injuries which would take from 20 to 30 days to heal, whereas the subsequent examination disclosed that the wound of the offended party would require medical attendance and incapacitate him for labor for a period of 90 days, "causing deformity and the loss of the use of said member" No finding was made in the first examination that the injuries had caused deformity and the loss of the use of the right hand. As nothing was mentioned in the first medical certificate about the deformity and the loss of the use of the right hand, we presume that such fact was not apparent or could not have been discernible at the time the first examination was made. The course (not the length) of the healing of an injury may not be determined before hand; it can only be definitely known after the period of healing has ended. That is the reason why the court considered that there was a supervening fact occurring since the filing of the original information.

But such circumstances do not exist in the case at bar. If the X-ray examination discloses the existence of a fracture on January 17, 1957, that fracture must have existed when the first examination was made on December 10, 1956. There is, therefore, no new or supervening fact that could be said to have developed or arisen since the filing of the original action, which would justify the application of the ruling enunciated by us in the cases of

Melo vs. People and People vs. Manolong, supra. We attribute the new finding of fracture, which evidently lengthened the period of healing of the wound, to the very superficial and inconclusive examination made on December 10, 1956. Had an X-ray examination taken at the time, the fracture would have certainly been disclosed. The wound causing the delay in healing was already in existence at the time of the first examination, but said delay was caused by the very superficial examination then made. As we have stated, we find therefore that no supervening fact had occurred which justifies the application of the rule in the case of Melo vs. People and People vs. Manolong, for which reason we are constrained to apply the general rule of double jeopardy.

We take this opportunity to invite the attention of the prosecuting officers that before filing informations for physical injuries, thorough physical and medical examinations of the injuries should first be made to avoid instances, like the present, where by reason of the important Constitutional provision of double jeopardy, the accused can not be held to answer for the graver offense committed.

The decision appealed from is hereby reversed. The judgment of conviction is set aside and the defendant-appellant acquitted of the charge of serious physical injuries. Without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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