

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ABRAHAM JARAMILLA, DEFENDANT AND APPELLEE.

G.R. No. L-8030. November 18, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Abraham Jaramilla was discharged before the Justice of the Peace Court of Sta. Cruz, Ilocos Sur with less serious physical injuries in an information filed by the provincial fiscal. After trial, the accused was convicted and sentenced to 10 days of arresto mayor and to pay the costs. He appealed in due time to the court of first instance.

After the papers had been forwarded to the latter court, the provincial fiscal filed a petition stating that he found sufficient reason to prosecute the case and asked that it be included in the court calendar. The case was set for hearing on September 26, 1951. On the same date, the accused asked for postponement on the ground that he had not yet secured the services of a lawyer to defend him. The postponement was granted and the case was again set for hearing on November 15, 1951. The accused again asked for postponement and again it was granted, the hearing having been set on February 24, 1953. On this date, when the case was called for hearing, neither the provincial fiscal, nor any of his assistants, appeared, whereupon the trial court issued an order dismissing the case for lack of interest on the part of the prosecution, with costs de oficio.

On the same day, counsel for the offended party filed a motion for reconsideration. The motion was denied. On March 5, 1953, the provincial fiscal in turn filed a motion for reconsideration wherein he explained his failure to appear, ratifying at the same time the motion for reconsideration filed by the private prosecutor. On March 14, 1953, the accused entered a special appearance with the only purpose of opposing said motion for reconsideration. On the same date, the trial court denied the motion for lack of merit, and from this order the provincial fiscal has appealed. The case is now before us for the reason that, as certified by the Court of Appeals, the appeal involves a question of jurisdiction.

The only ground on which the order of dismissal was predicated is the alleged "lack of interest on the part of the prosecution" in view of the failure of the provincial fiscal, or any of his assistants, to appear when the case was last set for trial at the instance of the accused. And, as we have stated, the trial court denied the motion for reconsideration filed both by the provincial fiscal and the private prosecutor. Considering that the explanations given by the provincial fiscal in his motion are reasonable, it is now contended by the Solicitor General that the lower court abused its discretion in not reopening the case to give the government an opportunity to prove the offense charged against the accused.

We find merit in this claim. The explanation offered by the provincial fiscal of his failure to appear and of his assistants on the date of the trial was that on that date he was in Manila because of an official business he had taken up with the Department of Justice; that, on the other hand, his assistant Laya had gone to Zambales, upon previous permission, to see a close relative who was seriously ill, while special counsel Valdez was sick, as evidenced by a telegram he sent to the clerk of court. It does not appear that this explanation was untrue or was

merely advanced as an excuse to justify the absence of the government prosecutors. Nor can such failure be considered as an indication of their lack of interest in prosecuting the case it appearing that they were present in the previous hearings. When we consider that the trial judge readily granted the two-motions for postponement put in by the defense it would seem to be unusually harsh to dismiss the case outright for the single failure of the prosecutors to appear at the last hearing without giving them an opportunity to explain their failure. It is for this reason that we believe that the court has been unfair to the prosecution and, therefore, such an act should be corrected to prevent miscarriage of justice.

It is however contended that the case can no longer be reopened for that would amount to placing the accused in double jeopardy. We are not of this opinion it appearing that the case was dismissed before the accused had pleaded to the information (section 9, Rule 113). It should be noted that this case originated in the justice of the peace court and was merely brought on appeal after conviction of the accused to the court of first instance. In such a case the rule provides that the judgment is vacated and "the case shall be tried in all respects anew in the court of first instance as if it were a case originally instituted in that court." (Section 8, Rule 119.) There is no need of filing a new information, as the case stands for "trial de novo" which means "a new trial in the same manner, with the same effect, and upon the same issues as the case was tried in the lower court." (*Crisostomo vs. Director of Prisons*, 41 Phil., 368.) This means that a new arraignment is necessary because the case stands "as if it were a case originally instituted in that court" (section 8, Rule 119), and as this was not done, the reopening of the case cannot place the accused in double jeopardy.

The order appealed from is hereby set aside. The case shall be remanded to the trial court for further proceedings, without pronouncement as to costs.

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

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