

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELANT, VS.
LIBORIO SEGOVIA, DEFENDANT-APPELLEE.***G.R. No. L-11748. May 28, 1958*

Ponente: BAUTISTA ANGELO, J.

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On February 2, 1953, an information for malicious mischief was filed against the accused by the city attorney of Legaspi, Albay, before the Municipal Court of Legaspi. He pleaded not guilty. After the prosecution has presented its evidence, he moved to quash the information on the ground that the prosecution failed to prove all the elements of the crime charged, but the motion was denied, thereafter, the accused presented his evidence, after which the court rendered a decision finding him guilty of the crime of malicious mischief as defined in Article 327 of the Revised Penal Code and sentenced him to suffer ten (10) days of *arresto menor* or pay a fine of P75.00, to indemnify the offended party in same amount, with subsidiary imprisonment in case of insolvency, and to pay the costs.

From this decision, he appealed to the court of first instance where again he was charged with the same offense. On November 10, 1956, he reiterated his motion to quash the information on the same ground that it does not allege the necessary elements to constitute the crime of malicious mischief. This time the court sustained the motion and dismissed case. The court cancelled the "bond for his provisional release. The Government appealed.

The fundamental rule in considering a motion to the ground that the averments of the information sufficient to constitute the offense charged is whether the facts alleged, if hypothetically admitted, would meet the essential elements of the offense as defined in the law. The above ground imports a hypothetical admission of the alleged in the information "but challenges their sufficiency for failure to meet the essential requisites of the as specified by substantive law." [1] However, it was held that "Prima facie, the 'facts charged' are those described in the complaint, but they may be amplified or qualified others appearing to be additional circumstances, upon admissions made by the people's representative, which admissions could anyway be submitted by him as amendments to same information. x x x Of course, it may be added that upon similar motions the court and the fiscal are not required to go beyond the averments of the information, nor is the latter to be inveigled into a premature and risky revelation of his evidence" (*People v. Navarro*, 75 Phil., 516, 518-519). Does the herein information meet this test?

The information filed in the lower court reads :

"That on or about January 13, 1953, in the District of Daraga, City of Legaspi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused moved by resentment and anger and with intent to damage another's property did then and there wilfully, unlawfully and feloniously shoot to death a female white pig spotted brown owned by Julian Stabella which act of the accused caused damage and prejudice to said Julian Marbella in the amount of P75.00 Philippine Currency." (Information, p. 31, Record; Underlining supplied)

Analyzing the information we find that, as alleged, the accused wilfully damaged the property of one Marbella when he shot to death a pig owned by the latter with the felonious intent of causing an injury because of resentment and anger. In other words, the accused caused damage to the property of another, with the intent to cause injury, due to an evil motive, and these are precisely the elements instituting the crime of malicious mischief (Article 327, Revised Penal Code; see Padilla, Revised Penal Code, Annotated, Vol. II, p. 645, 1955 ed.)

Commenting on the acts committed by the accused as charged in the information and as admitted by the solicitor General, this official said: "Certainly the deliberate act the accused Segovia in shooting to death the female white pig owned by Julian Marbella was obviously due to malicious intent on his part. As it has been established before the Municipal Court the accused shot not only once but four times this female white pig with his shotgun, Caliber .22 when he saw it among the plants. There was certainly the element of vengeance and anger with malicious intent of avenging whatever damage the pig might have done to his plants. The proper thing which the accused should have done when he saw the pig among his plants, was to drive it away, and after assessing the value of whatever damages the pig might have caused to his plants, he should have filed a civil action for damages against the owner, in accordance with the provisions of the Civil Code. But in this case he took the law in his own hands x x x." We agree with this comment. It is obvious that the trial court erred in sustaining the motion to quash.

The plea is advanced that the Government can no longer appeal from the decision of dismissal without placing the accused in double jeopardy considering that he was already convicted by the Municipal Court of Legaspi. This claim ignores the fact that he appealed from the judgment of conviction and hence it was vacated. The rule is that when an appeal has been perfected, the judgment of the justice of the peace or municipal court is vacated and the case is tried de novo in the court of first instance as if it were originally instituted therein (section 8, Rule 119). No new information need be filed in the latter court in order that it may acquire jurisdiction to try the case (Crisostomo v. Director of Prisons, 41 Phil., 368; People v. Cu Hiok, 62 Phil., 501). If the case, on appeal by the accused, is as originally instituted, and the motion was filed before arraignment or plea, it is obvious that the dismissal of the case was no bar to appeal because it does not place the accused in jeopardy under Section 9, Rule 113, of the Rules of Court, The claim is therefore without merit.

Wherefore, the order appealed from is hereby set aside, the case is reuanded to the lower court for hearing on No costs.

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

[1] Moran, Comments on the Rules of Court, Vol. 2, 1957 ed., P. 762.

DISSENTING OPINION

FELIX, J.,

I only need a few words to establish my point and I fully confident of making a perfect bull's-eye hit on ruling pronounced on jeopardy in the majority decision.

I have no quarrel with my colleagues as to the sufficiency of the information in the case at bar. Probably the lower Court was erroneous in dismissing the information but I consider that the act of setting aside the order appealed

from and of remanding the case to the lower court for hearing on the merits, is absolutely uncalled for and improper, for in so doing we place the defendant in double jeopardy. In the majority Decision it is stated that:

On February 2, 1953, an information for malicious mischief against the accused was filed by the City Attorney of Legaspi, Albay, before the Municipal Court of Legaspi, wherein he pleaded not guilty. After the prosecution had presented its evidence, he moved to quash the information on the ground that the prosecution failed to prove all the elements of the crime charged, but the motion was denied. Thereafter, the accused presented his evidence, after which the Court rendered a decision finding him guilty of the crime of malicious mischief as defined in Article 327 of the Revised Penal Code and sentenced him to suffer ten (10) days of arresto menor or pay a fine of P75.00, to indemnify the offended party in the same amount, with subsidiary imprisonment in case of insolvency, and to pay the costs.

From this decision he appealed to the Court of First Instance where again he was charged with the same offense. On November 10, 1956, he reiterated his motion to quash the information on the same ground that it does not allege the necessary elements to constitute the crime of malicious mischief. This time the court sustained the motion and dismissed the case. The court cancelled the bond for his provisional release. The Government appealed.

Section 9 of Rule 113 of the Rules of Court proscribes:

SEC. 9. FORMER CONVICTION OR ACQUITTAL OR FORMER JEOPARDY.-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, 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.

In the case at bar, the defendant pleaded not guilty of the offense in the Municipal Court of Legaspi where the formation was filed, and both the prosecution and the accused presented evidence which, despite the defenses interposed by the latter, caused his conviction and sentence to the penalty aforementioned. On appeal, however, and upon motion to quash, the information, rightly or wrongly, was dismissed and the defendant exonerated from criminal liability. Confronting the provisions of the aforementioned Section 9 of Rule 113 of the Rules of Court with the acts established and enumerated in the majority decision, it cannot be denied that the defendant was prosecuted and convicted of the offense charged in a Court of competent jurisdiction and that his conviction therein after he had pleaded not guilty to the charge and after evidence was submitted the case, constitutes, in the language of the Rules of Court, a bar to another prosecution for the same offense though he may have been latter acquitted thereof on appeal to the proper Court of First Instance. It is true it the defendant appealed from the decision to the lower Court; that, for procedural purposes, the decision convicting the defendant of such offense was vacated; and that the elevation of the case to the Court of First Instance for trial de novo was upon the instance and on appeal of the defendant, but all this succession of events cannot be any means obliterate nor wipe out facts that have already existed and brought to life, a metaphysical impossibility even our Creator cannot accomplish, so that once the defendant is acquitted or the case dismissed in the upper Court under the circumstances of the case at bar, he is exonerated forever and the prosecution of his case cannot subject to further proceedings.

In the case of *People vs. Doyle*, 54 Phil. 862, this Court held that:

"This dismissal of a criminal case of estafa which was appealed from a Justice of the Peace to the Court of First Instance, the former being vested with jurisdiction to try and decide, is equivalent to an acquittal of the defendant in said case, and the filing of a new information in which the case dismissed is included, exposes

said defendant to a second conviction of one and the same offense, and therefore constitutes double jeopardy".

In the case of *People vs. Fajardo*, 49 Phil. 206, the same principle was upheld:

"The Justice of the Peace having, as he had jurisdiction to entertain the complaint for estafa filed in the case, the trial court committed an error of law in holding that it had no jurisdiction to try the case on appeal; but its judgment, however, in dismissing the case and releasing the accused is unappealable for the reason that he was already placed in jeopardy, and therefore the motion for dismissal must be granted".

That We cannot disregard what has been done in the Municipal Court of Legaspi is a matter already repeatedly decided by this Court. We see for example that in the case of *People vs. Hermino*, 64 Phil.

"Appellant confessed his crime after the prosecution had presented its evidence, at least in the Municipal Court where the case originated. It cannot be stated that the appeal taken by him to the Court of First Instance again restored the case to its original stage for the very reason that the law requires a trial DE NOVO, that there had been no presentation or evidence before he confessed or admitted his crime, because a trial DE NOVO gives the impression and necessarily implies the existence of a previous trial. The confession, in order to constitute a mitigating circumstance, must not only be spontaneous but also be made prior to the presentation of the evidence for the prosecution (Art. 13, Sec. 7, Revised Penal Code)".

The same doctrine was enunciated in the case of *People vs. Bawasanta*, 64 Phil. 409, wherein it was said:

"Trial de novo 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, in accordance with the rules of practice in the appellate court (*Sandlin vs. State* - 1910 - 3 Okla. Cr. 578; *State vs. Fort* - 1909 - 164 Ala. 578; *Crisostomo vs. Director of Prisons*, 41 Phil. 368), and it does not mean that all the proceedings in the lower court had thereby been wiped out so as to preclude the ascertainment of whether the defendant voluntarily pleaded guilty in the lower court for the purpose of determining the existence of this mitigating circumstance".

See also the cases of *People vs. Sy Chay* (alias *Sy Kuan*), 44 Phil. 900 and *People vs. De la Peña*, 66 Phil. 451.

Now, if the trial de novo does not wipe out the proceedings in the inferior court and the law allows this Court, for purpose of determining the circumstances attending the in the court of origin, to go over the record thereof, in cases of trials de novo after appeal to the Court of Instance, under what principle of justice or even reason and logic are We to disregard in the case at bar the fact that the defendant has already been convicted in the inferior court? This question is unanswerable and, as stated before, constitutes a bull's-eye hit majority decision. Said in Latin, that is "quod erat demonstrandum".

WHEREFORE, I firmly and unhesitatingly maintain that remanding of this case to the lower court for trial on merits is equivalent or tantamount to placing the defendant in double jeopardy. So the present appeal of the government must be necessarily dismissed, without pronouncement to costs.

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