

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
PROTACIO MANLAPAS, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-17993. August 24, 1962*

Ponente: BAUTISTA ANGELO, J.

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On February 1, 1956, Bernardino Albueria, husband of Proserfina Buelo, subscribed to a complaint charging Protacio Mandapas and Heracleo Inopia with the crime of attempted rape with robbery before the Justice of the Peace Court of Baleno, Masbate. Having pleaded not guilty to the charge and waived their right to the preliminary investigation, on motion of the accused, the court forwarded the record of the case to the court of first instance. On May 9, 1956, on motion of the fiscal praying that the case be returned to the court of origin for further proceedings on the ground that the complaint was not signed by the offended woman but by her husband, the record was returned as prayed for.

Conformably to the order of the court of first instance, a new complaint for attempted rape with robbery was subscribed by the offended woman, after which the record was again forwarded to the court of first instance, where, on June 29, 1956, the fiscal filed the corresponding information. It appears that the accused waived their right to be informed of the nature of the information at the same time entering a plea of not guilty to the charge. It also appears that defense counsel raised the question of the court's jurisdiction and asked for a five-day period to present a motion to quash, but before this could be done, the court, on July 16, 1956, upon finding that no preliminary investigation was conducted by the justice of the peace on the amended complaint, *motu proprio* dismissed the case "without prejudice to the refiling of the same in the proper court."

On July 17, 1957, another complaint subscribed by the same offended party charging the two accused with the same offense was filed before the Justice of the Peace Court of Baleno, Masbate. And having waived their right to the second stage of the preliminary investigation, the justice of the peace court transmitted the case to the court of first instance where, on November 29, 1957, the fiscal filed the corresponding information. On July 7, 1958, counsel for the accused filed a motion to quash on the ground of double jeopardy. This was opposed by the fiscal and, acting on both the motion and the opposition, the court *a quo* granted the motion and dismissed the information on the ground of double jeopardy. Hence this appeal.

It appears that after the complaint herein was amended by having it subscribed by the proper offended party, without conducting the requisite preliminary investigation, the justice of the peace court forwarded the record to the court of first instance where the fiscal filed the corresponding information as required by law, and that, upon finding that no such investigation has been made on the amended complaint, the court *a quo*, *motu proprio*, dismissed the case "without prejudice to the refiling of the same in the proper court." But after the case was refiled, on motion of defense counsel, the court *a quo* dismissed the information on the ground of double jeopardy. The government now comes before us complaining that the court *a quo* committed a miscarriage of justice in quashing the information on the aforesaid ground.

There is merit in the appeal. The thing that strikes our attention right from the start is the unwarranted attitude of the court a quo in dismissing the case motu proprio based on the wrong premise that the amended complaint was given due course by the justice of the peace court without first conducting the requisite preliminary investigation, albeit "without prejudice to the refile of the same in the proper court." And then, after the case was refiled as suggested, the same court, without hesitation, granted the motion of defense counsel to quash on the ground of double jeopardy. This stand is not only erroneous but unwarranted. Erroneous because the court had no justification whatever in dismissing the case on the simple ground that it was given due course without the inferior court first conducting the requisite preliminary investigation, since this right, being waivable, does not argue against the validity of the proceeding, the most that could have been done being to remand the case in order that such investigation may be conducted. And it is unwarranted because after expressly providing that the dismissal was without prejudice to the refile of the same in the proper court, the court a quo adopted an inconsistent attitude when it dismissed the new information on the ground of double jeopardy. It is action such as this that gives rise to a miscarriage of justice. The court a quo should be admonished to be more careful in the performance of its official duties so that mistakes such as this may be avoided in the future.

The question that now confronts us is: Having the case been dismissed by the court a quo after the accused had pleaded not guilty, does the dismissal have the effect of barring further prosecution of the accused on the ground of double jeopardy?

Of course, there being a valid information before a competent court, and after the accused had pleaded not guilty, the dismissal of the original information may have the effect of barring further prosecution for the same offense, in the light of Section 9, Rule 113, of our Rules of Court. But here the dismissal was qualified; it was made without prejudice to the refile of the case in the proper court. This, in our opinion, takes this case out of the purview of the rule regarding double jeopardy.

Thus, in *Jaca vs. Blanco*, 86 Phil., 452; 47 Off. Gaz. Sup. 12, p. 108, we held that the dismissal contemplated in the abovementioned section of the rule is a definite or unconditional dismissal which terminates the case, and not a dismissal without prejudice as in the present case. "In the absence of any statutory provision to the contrary, we find no reason why the court may not, in the interest of justice, dismiss a criminal case provisionally, i.e., without prejudice to reinstating it before the order becomes final or to the subsequent filing of a new information for the offense." And this ruling was reiterated in the recent case of *People vs. Jabayab*, G.R. Nos. L-9238-39, 100 Phil., 307[1]

The court a quo therefore, erred in dismissing the case on the ground of double jeopardy.

Wherefore, the order appealed from is hereby set aside. The case is remanded to the court a quo for further proceedings. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] "I concur. In my humble opinion the decisive fact which determines whether jeopardy attached upon the issuance of the order of dismissal is the provisional nature of the dismissal and the reservation of the right of the fiscal to 'refile these two cases if he so desires in the interest of Justice.' Jeopardy can be invoked only if the case is finally disposed of or terminated. Dismissal under Section 9 of Rule 113 implies final dismissal, a positive termination of the case. If the dismissal contains a reservation of the right to file another action, the case can not be said to have terminated and jeopardy does not attach. This is the reason for our ruling in *Jaca vs. Blanco*, 86 Phil., 452." (Concurring opinion of Justice Labrador)

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