

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HON. JUDGE PEDRO C. NAVARRO, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF PASIG, RIZAL, BRANCH II, AND JAIME CATUDAY, RESPOND...

G.R. Nos. L-38453-54. March 25, 1975

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition by the State for certiorari to annul the joint decision of the Court of First Instance of Rizal, insofar as it acquits Jaime Catuday of the charge of light threat. The ground alleged is that the case for light threat was never tried in the lower court.

On March 6, 1968, respondent Catuday was charged in the Municipal Court of Makati, Rizal, with the crime of light threat allegedly committed against Henry Dioquino (Criminal Case No. 12846). Almost a year later, or on February 3, 1969, and while the light threat case was still pending, he was charged in the same court, with a different offense, frustrated theft, allegedly committed against the Commonwealth Foods, Inc. In two separate decisions rendered on September 10, 1969, the Municipal Court convicted him of the two charges. He appealed both decisions to the Court of First Instance.

In the Court of First Instance of Rizal, the Provincial Fiscal filed two separate informations, one for light threat (Criminal Case No. 20145) and the other for frustrated theft (Criminal Case No. 20146). Both cases were assigned to Branch XI of said Court of First Instance.

The theft case was first set for hearing on December 16, 1969. The threat case was originally set for hearing on December 22, 1969. On December 16, 1969, the court ordered continuation of the trial of the theft case for January 14 and 21, 1970 (Annex A, Motion for Reconsideration). On December 22, 1969, the court rescheduled the hearing of the threat case for January 26, 1970. On January 14, 1970, the court reset for January 21, 1970 the theft case hearing of that day (Annex C, Motion for Reconsideration). When January 21, 1970 came, the court re-scheduled the theft case hearing for February 11 and 24, 1970 (Annex B, Motion for Reconsideration). On January 26, 1970, the scheduled threat case hearing was rescheduled for February 11, 1970. This was the first time the two cases were scheduled for hearing on the same day, February 11, 1970.

For the theft case, it was for continuation of trial; for the threat case, it was for start of the trial. On said February 11, 1970, the court in two separate orders, directed that the threat case be rescheduled for February 24, 1970 (Annex D, Motion for Reconsideration), and that the trial of the theft case be continued also on February 24, 1970. (Annex E, Motion for Reconsideration). On February 24, 1970, counsel de oficio for both cases failed to appear. For the first time, the court issued a single order in the two cases (Annex E, Motion for Reconsideration), directing arrest of said counsel "and to show cause why she should not be punished for contempt"; and ordering that "the trial set for today is hereby re-set for March 25, 1970, at 8:30 in the morning."

On March 25, 1970, trial of the theft case continued. The threat case was not tried at all at this or any subsequent trial. In the hearings after March 25, 1970, it was always the theft case which was heard.

Sometime in December 1972, upon retirement of Judge Flores of Branch XI, respondent District Judge Pedro C. Navarro took over in the two cases. The theft case was then in the rebuttal stage. On March 20, 1973, rebuttal evidence closed, and upon order of the court, the parties filed their respective "offer and submission of exhibits", and submitted the theft case for decision. On July 20, 1973, respondent Judge rendered one decision, acquitting Catuday of both charges for lack of proof of guilt beyond reasonable doubt. The dispositive portion of this decision reads thus:

"Wherefore, for lack of proof of his guilt beyond reasonable doubt, judgment is hereby rendered declaring the accused JAIME CATUDAY not guilty in both cases and he is hereby acquitted in Criminal Case No. 20145 for Light Threat as well as in Criminal Case No. 20146 for Frustrated Theft. The bonds for his provisional liberty in both cases are ordered cancelled."

Notably, the decision also stated that "these (light threat case and frustrated theft case) were tried jointly."

On September 6, 1973, the private prosecutor, with the conformity of the provincial fiscal, filed the prosecution's motion for reconsideration of said decision insofar as Criminal Case No. 20145 for light threat is concerned. On November 10, 1973, respondent judge denied the motion, reiterating that there was joint hearing of the two criminal cases.

On December 13, 1973, the provincial fiscal filed the prosecution's second motion for reconsideration, which was, however, denied on February 27, 1974.

On March 25, 1974, the provincial fiscal, together with the private prosecutor, filed with this Court a petition for certiorari, praying that respondent Judge's decision be annulled for lack of due process insofar as Criminal Case No. 20145 is concerned, and that record of this case be remanded to the court of origin for trial. On April 17, 1974, the Court (Second Division) issued a resolution to the effect that "considering the allegations contained, the issues raised and the arguments adduced in the petition for certiorari, the Court Resolved to DISMISS the petition for lack of merit."

On June 6, 1974, Provincial Fiscal Castillo filed his motion for reconsideration of said Resolution, which motion was co-signed by the Private Prosecutors praying that this Court reconsider and set aside said resolution, and that their petition for certiorari be given due course.

While we fault the petitioner for having presented an unconvincing original petition which induced this Court to dismiss the same in a minute resolution "for lack of merit," We now have to commend Rizal Provincial Fiscal Castillo for his well-prepared and well-documented motion for reconsideration which has persuaded Us to grant the same, notwithstanding the vigorous opposition of respondents, in view of the facts and the reasons that now follow, which are also the facts and the reasons for our granting the petition for certiorari.

Petitioner claims that the threat case was never tried in the lower court so the charge therein should not have been dismissed on the ground of lack of proof beyond reasonable doubt. Respondents, on the other hand, claim that there was joint trial of the threat case and the theft case, and since the prosecution failed to present evidence respecting the alleged threat, the case was properly dismissed on the stated ground.

Thus the question of denial of due process to the State hinges on whether or not there was really a joint trial of both the threat and the theft cases.

We have specific rules on joint trial in criminal cases. There is the rule that "when two or more defendants are

jointly charged with any offense, they shall be tried, jointly, unless the court in its discretion upon motion of the fiscal or any defendant orders separate trial." (Sec. 8, Rule 119, Revised Rules of Court). As long as the condition therein is fulfilled, that is, two or more defendants are jointly charged with any offense, joint trial is automatic, without need of a court order. The rule is inapplicable here because there is only one defendant in the two cases.

Then there is the rule that "charges for offenses founded on the same facts, or which form or are part of a series of offenses of the same or similar character may, in the discretion of the court, be tried jointly." (Sec. 15, Rule 119, Revised Rules of Court). In contrast, this second rule clearly requires a court order for a joint trial, since the court has discretion whether or not to order the same.

Respondents here have not pointed to any court order for joint trial, as indeed there is none. The order of February 24, 1970 (Annex E, Motion for Reconsideration), does not qualify as such, even though it is the first court order which covers the two cases. Insofar as hearings are concerned, all this court orders says is that "the trial set for today is hereby re-set for March 25, 1970." Note that the term "trial" is singular, and the court did not specify which trial it intended to reschedule. All we can infer from this order is that the court intended to have a common date of hearing for the two cases, as was true of the two hearings set for February 11, 1970 and the two hearings scheduled for February 24, 1970, obviously a concession to defense counsel who have previously asked that hearings of the two cases be scheduled on the same day, so she would come to court on only the same day for the two cases.

Furthermore, joint trial is not called for in the two criminal cases. It is true that the accused in the two cases is only one person, but there are two different complainants: Henry Dioquino, in the threat charge, and Commonwealth Foods, Inc., in the theft case. The threat was supposed to have been made on March 5, 1968; the theft was allegedly committed on January 31, 1969, almost a year thereafter. Also, the charges are different. They do not even belong to the same class of crimes. Light threat is a crime against personal liberty and security; frustrated theft is a crime against property. So, We cannot say the charges are for offenses founded on the same facts or form or are part of a series of offenses of the same or similar character. Consequently, the court had no power to try them jointly.

Going to the matter of the captions in the pleadings, subpoenas, court orders, transcript of stenographic notes, etc., it has been argued that since most of the captions include both Criminal Case No. 20145 (light threat) and Criminal Case No. 20146 (frustrated theft), there was joint trial of the cases, and the court properly treated the hearing as joint and acted accordingly with respect to the two cases. It has been held, however, that a mistake in the caption of an indictment in designating the correct name of the offense is not a fatal defect, for it is the sufficiency of the averments of the charging part that is the gist of the accusation.[1] It is almost the universal rule that the caption of a pleading is not controlling but what is embodied therein.[2] More, the office of a caption is to declare the purpose of the acts, and if the matter mentioned in the caption is not contained in the body of the act, it is merely surplusage, and does not affect the matters set forth in the act itself.[3] Captions are purely formal, and may be amended.

Despite the captions of some of the portions of the transcript of stenographic notes, an examination thereof reveals that the light threat case was never tried at all.

The following portions of the transcript of stenographic notes expose clearly that what was singularly tried was the theft case:

On Pages 8-13 of the transcript of stenographic notes of the proceedings taken on January 27, 1971, the defense counsel asked the accused:

"ATTY. BELISARIO:

Q. Were you able to bargain with the administration after the union won in the certification election?

"ATTY. FUNK:

A. Immaterial, Your Honor.

"COURT:

Sustained.

"COURT:

Q. What is the materiality of that question? What is the connection of that question to this case (of frustrated theft) in which the accused is charged? What is the connection of that question to the case of theft? (Underscoring Supplied).

"ATTY. BELISARIO:

Q. What important event happened after the certification election in connection with the activities that has something to do with your crime of theft later on? (Page 10).

A. After the certification election wherein our union won, we made some bargaining with the company. (page 11)

"When counsel was becoming persistent, the Court said:

"COURT:

I have already ruled. You may appeal if you want to, when the time comes. That is why we have the Court of Appeals and the Supreme Court."

On Pages 16-18 of the transcript, March 10, 1971, when accused was asked by his counsel where he was living or residing on January 31, 1969 when he was arrested for frustrated theft of coffee items, Atty. Funk again objected to it as being immaterial, and he was sustained by the Court. Said the Court:

"COURT:

It has nothing to do with this case of theft. That may be good if you file a civil suit, maybe, but in this crime of theft, that is immaterial." (Underlining Mine)

On Page 17 of the transcript, March 10, 1971:

"ATTY. BELISARIO:

Q. Is there a prescribed uniform in the COEI, Mr. Catuday?

A. Yes, sir.

"COURT:

Attorney, this has nothing to do with this crime of theft. As to the good purpose of the accused, that is immaterial." (Underlining Supplied)

On page 23 of the transcript, June 17, 1970, where Edward Funk, witness for the prosecution, under direct examination by Atty. Funk:

"ATTY. FUNK:

A. I am showing to you a copy of this decision (in grave coercion cases filed by the coffee firm against certain of its workers who joined the 1968 strike against it), will you go over the same and tell us whether that is the decision in the cases aforementioned?

"ATTY. BELISARIO:

Objection, your Honor, I think the crime of Grave Coercion is immaterial because we are trying the case of theft. x x x."

In connection with this objection of the defense counsel, the respondent Judge did not make any remark to correct the counsel to the effect that he was conducting, as he has claimed, a joint trial of the two cases, instead of the theft case alone.

More, on Page 4 of the transcript, March 28, 1972, the following has been relevantly cited by the prosecution, where defense counsel was questioning defense witness Alfredo Osias in connection with the subject incident of

frustrated theft being ascribed to Catuday:

"FISCAL. ALCOBA:

Q. May I interrupt the counsel? May we know if this witness is a common witness with respect to the light threat and frustrated theft?

"ATTY. GERONIMO: (Defense counsel who replaced Atty. Belisario)

A. The other case is not being tried as yet."

Evidently, the State had been deprived of due process, which act was an abuse of discretion on the part of the herein respondent Judge, tantamount to excess or lack of jurisdiction, rendering the judgment of acquittal of the accused, Jaime Catuday, in Criminal Case No. 20145 for light threat, NULL AND VOID AB INITIO.

It is quite clear in the record of this case, especially in the transcript of stenographic notes and in practically all the pleadings filed by the parties, that there was absolutely no trial or hearing of Criminal Case No. 20145 for light threat. For instance, in the aforementioned identical pleadings "Offer and Submission of Exhibits" filed by the parties at the final phase of the hearings, all the exhibits listed pertain to only one case, Criminal Case No. 20146 for frustrated theft, which, in truth and in fact, was the only case actually tried to the finish, the light threat case not even having reached first base as it was never called to trial nor the first witness therein ever been called to the stand. Same is true of the defense's "Motion for Cancellation of Hearing" and "Objection to Evidence," which both relate exclusively to the offense of theft.

The State is entitled to due process in criminal cases, that is, it must be given the opportunity to present its evidence in support of the charge. The Court has always accorded this right to the prosecution, and where the right had been denied, had promptly annulled the offending court action. We have heretofore held that a purely capricious dismissal of an information deprives the State of fair opportunity to prosecute and convict; it denies the prosecution its day in court. For this reason, it is a dismissal (in reality an acquittal) without due process, and, therefore, null and void. Such dismissal is invalid for lack of a fundamental prerequisite, that is, due process, and, consequently, will not constitute a proper basis for the claim of double jeopardy.[4] We have likewise held that a trial court may not arbitrarily deny a timely and well-founded motion of the prosecution for reconsideration of an order of dismissal or acquittal and that such arbitrary refusal to reopen the case will be set aside to give the State its day in court and an opportunity to prove the offense charged against the accused and to prevent miscarriage of justice, especially when no substantial right of the accused would be prejudiced thereby.[5]

The imperative requirement of the due process guarantee or mandate would be ignored if on the above considerations it is not given controlling force entitling the State to the remedy being sought.

"Jurisdiction" is the right to hear and determine, not to determine without hearing [Windsor v. McVeigh, 93 U.S. 274, 23 L. ed. 914 (23A Words and Phrases, p. 121)]. A judgment is void for lack of due process, which is equivalent to excess or lack of jurisdiction (Trimica, Inc. v. Polaris Marketing Corp., et al., L-29887, October 28, 1974.

In the present case, the respondent Judge, in rendering his judgment of acquittal of private respondent JAIME CATUDAY in Criminal Case No. 20145 for Light Threat which was never tried in the respondent Judge's court

nor in Branch XI of the CFI of Rizal, acted with abuse of discretion tantamount to excess or lack of jurisdiction. Indeed, this is so grave and patent to justify the issuance of a writ of CERTIORARI (*Lagman v. Dela Cruz*, 40 SCRA 101). And, in fine, this Court has, in these words, defined "grave abuse of discretion" as: "Such capricious and arbitrary exercise of judgment, as is equivalent, in the eyes of the law to lack of jurisdiction." (*Palma and Ignacio v. O. & S., Inc.*, 17 SCRA 98). For such want of jurisdiction, said JUDGMENT is NULL AND VOID AB INITIO. It is one rendered by a court which had no power so to do; it is as though there had been no judgment or process; it is coram non judice (*People v. Liscomg*, 60 NY 559, 568, 569, Am. Rep. 211; 44 Words and Phrases 592).

IN VIEW OF ALL THE FOREGOING, this Court reconsiders and sets aside its resolution of April 17, 1974 dismissing petitioner's petition for certiorari for lack of merit; and We hereby sustain petitioner's petition for a writ of certiorari and declare null and void the decision of the respondent Court of First Instance of Rizal, Branch II, dated July 20, 1973, insofar as it acquitted the private respondent Jaime Catuday, as accused, in Crim. Case No. 20145 for light threat and orders its reinstatement in the Court of First Instance of Rizal for the corresponding trial. No costs.

Fernando, (Chairman), Barredo, Antonio, and Aquino, JJ., concur.

[1] *State v. Emmons*, 106 P 452; 6 Words and Phrases 233.

[2] *Galutera v. Macalino*, CA-G.R. No. 52 (L-274), Jan. 25, 1947.

[3] *Fletcher v. Bordelon* Tex Civ App., 56 S.W. 2d 313, 320.

[4] *People v. Gomez*, 20 SCRA 298; *People v. Surtida*, L-24420, January 26, 1972.

[5] *People v. Hon. Catolico*, L-31260, February 29, 1972.

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