

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT,. VS. BENIGNO LINGAD Y VITO, DEFENDANT AND APPELLEE.

G.R. No. L-10952. May 30, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On October 30, 1954, Benigno Lingad y Vito was charged before the Municipal Court of Manila with the crime of slight physical injuries thru reckless imprudence where, after trial, he was found guilty and sentenced to pay a fine of P50, with subsidiary imprisonment in case of insolvency, and to pay the costs.

On appeal to the court of first instance, the accused filed a motion to quash, which the court granted and dismissed the case, holding that the crime of slight physical injuries when committed thru reckless imprudence is not punishable "by law. The Government appealed to this Court. The pertinent portion of the information reads:

"That on or about the 28th day of October, 1954, in the city of Manila, Philippines, the said accused being then the driver and person in charge of Pick-up with plate No. T-518 (Cavite-'54), did then and there drive, manage and operate the same along Arroceros Street, in said city, in a careless, reckless, negligent and imprudent manner, by then and there making the same run at a speed greater than was reasonable and proper and by not taking the necessary precautions to avoid accident to persons or damage to property, considering the condition of traffic in said place at the time, causing by such carelessness, recklessness, imprudence and lack of precaution the said Pick-up with plate No. T-518 (Cavite-'54), so driven, managed and operated by him to strike and bump against car No. PI-2578 (Manila) which was then at a stopped position and driven by Det. Mariano Joaquin, and as a result of the violent impact Mayor Arsenio Lacson, a passenger of the said car with plate No. PI-2573 sustained physical injuries, which have required and will require medical attendance for a period of more than 1 but less than 10 days and have prevented and will prevent the said Mayor Arsenio Lacson from engaging in his customary labor for the same period of time." (p. 4, record)

In sustaining the motion to quash, the trial court relied on the decision of the Court of Appeals in *People vs. Macario Ande y Marino*, 51 Off. Gaz., p. 5222, wherein it held that "The law does not declare as a crime and does not provide any penalty for the execution of an act - more serious as it is - committed thru reckless imprudence which, if intentional (only) amounts to a light felony." And this decision is predicated on a portion of Article 365 of the Revised Penal Code which provides that "A fine not exceeding 200 pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony."

We have no quarrel with the above citation. The same is in accordance with law. But the question is: Do the acts alleged in the information not fit into the framework of said decision, or do they not come under the above quoted portion of Article 365 of the Revised Penal Code?

The answer is obviously in the affirmative if we carefully examine the averments of the information. While the information gives the designation of the crime as "slight physical injuries through reckless imprudence", the body thereof does not specify the kind of negligence or imprudence that qualifies the crime charged, for it merely

alleges that it was committed "in a careless, reckless, negligent and imprudent manner * * * causing by such carelessness, recklessness, Imprudence and lack of precaution", the collision which resulted in the injury. Under such vague allegation of the imprudence act, one may infer that the act may have been committed either through reckless or simple negligence, depending upon the nature of the evidence that may be presented by the prosecution. And even if what was intended was to qualify the crime with reckless imprudence, still it cannot be said that the same is not punishable by law for it may still be shown during the trial that the accused committed the act only through simple negligence upon the theory that what is more or graver includes the less or lighter, in the same manner as a serious physical injury includes a slight injury, or robbery includes the crime of theft. The question, therefore, in the last analysis may boil down to a matter of evidence. In other words, the elements of the two kinds of negligence are practically the same, the only difference lies in the degree, and this can be substantiated by proper evidence.

We are, therefore, of the opinion that the trial court erred in sustaining the motion to quash .and in dismissing the case.

Wherefore, we hereby set aside the order appealed from and direct that the case be remanded to the trial court for hearing on the merits. No costs.

Bengzon, Montemayor, Reyes, A., Concepcion and Endencia, JJ., concur.

CONCURRING

J. B. L. REYES, J.,

I concur in the result because in my opinion, the allegations of the information charge reckless imprudence.

DISSENTING

FELIX, J.,

As stated in the majority Decision:

"On October 30, 1954, Benigno Lingad y Vito was charged before the Municipal Court of Manila with the crime of slight physical injuries through reckless imprudence where, after trial, he was found guilty and sentenced to pay a fine of P50, with subsidiary imprisonment in case of insolvency, and to pay the costs.

On appeal to the court of first instance, the accused filed a motion to quash, which the court granted and dismissed the ease, holding that the crime of slight physical injuries when committed through reckless imprudence is not punishable by law. The Government appealed to this Court".

The question for determination by the Court, as posed in the majority Decision, is: "Do the acts alleged in the information not fit into the framework of said decision, or do they not come under the above-quoted portion of

Article 365 of the Revised Penal Code" which provides that "a fine not exceeding 200 pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted light felony"? The majority of this Court, after examining the corresponding part of the information, held that "while the information gives the designation of the crime as 'slight physical injuries through reckless imprudence', the body thereof does not specify the kind of negligence or imprudence that qualifies the crime charged, for it merely alleges that it was committed 'in a careless, reckless, negligent and imprudent manner * * * causing, by such carelessness, recklessness, negligence, imprudence and lack of precaution' the collision which resulted in the injury". So that from "such vague allegation of the imprudent act, one may infer that the act may have been committed with reckless or simple negligence, depending upon the nature of the evidence that may be presented by the prosecution". And premised upon this conclusion, the majority of this Court set aside the order appealed from and directed that the case be remanded to the trial court for hearing on the merit.

I dissent, from (1) Both the assertion that the body of the information does not specify the kind of negligence or imprudence that qualifies the crime charged, as well as the implied acceptance of the views expressed in the decision of the Court of Appeals in *People vs. Macario Ande y Marino*, 51 Off. Gaz., 5222; and (2) From the order of remand of the case to the trial court for hearing" on the merits, because by this proceeding, the defendant will be placed in double jeopardy.

I. The information is copied in full in the majority Decision, and for convenience I also copy it hereunder. It reads as follows:

"That on or about the 28th day of October, 1954, in the City of Manila, Philippines, the said accused being then the driver and person in charge of Pick-up with Plate No. T-518 (Cavite-'54), did then and there drive, manage and operate the same along Arroceros Street, in said city, in a careless, reckless, negligence and imprudent manner, by then and there making the same run at a speed greater than was reasonable and proper and by not taking the necessary precautions to avoid accident to persons or damage to property, considering the condition of traffic in said place at the time, causing by such carelessness, recklessness, imprudence and lack of precaution the said Pick-up with plate No. T-518 (Cavite-'54), so driven, managed and operated by him to strike and bump against car No. PI-2578 (Manila) which was then at a stopped position and driven by Det. Mariano Joaquin, and as a result of the violent impact Mayor Arsenio Lacson, a passenger of the said car with plate No. PI-2573 sustained physical injuries, which have required and will require medical attendance for a period of more than 1 but less than 10 days and have prevented and will prevent the said Mayor Arsenio Lacson from engaging in his customary labor for the same period of time".

With said Information in sight I dare to maintain that the assertion of the majority that it does not specify the designation of the kind of negligence or imprudence that qualifies the crime charged, is not correct because it is precisely the portion of the information which is specifically indicated and quoted in the decision to prove their point that "would show the contrary view if the "complete" text of that portion would be given instead of substituting the omission by "* * *". As may be seen from the first portion underscored of the above quoted information, the Fiscal specified the kind of reckless or negligence of the defendant by describing what such negligence consisted of, which is the same way, manner or pattern that all fiscals throughout the Philippines have to state and define reckless imprudence, and this being the case the majority of this Court should have rejected the principle involved in the case of *People vs. Macario Ande*, supra, which was the ratio decidendi for the exoneration of the defendant in said case, as otherwise they would have to uphold the order of the lower court dismissing the information in the case at bar.

I wish, however, to qualify my opinion in this case. Although I am of the belief that the information charges the defendant Benigno Lingad y Vito with the crime of slight physical injuries through reckless imprudence and

although Article 365 of the Revised Penal Code does not really provide any penalty for light offenses through reckless imprudence, yet the application of the aforementioned principle in the case of *People vs. Ande*, supra, would lead Us to the inescapable absurdity of liberating a defendant guilty of slight physical injuries through reckless imprudence, a person whom We would be ready to convict and punish if his criminal liability were of less importance or perversity, that is, if the criminal act were committed through simple negligence. It is my humble though considered opinion that in such a situation, the defendant in the case at bar, if found guilty of the crime charged in the information, should be sentenced to the penalty fixed by law for slight physical injuries through simple imprudence, an offense less serious but included in the crime charged. By doing this We would simply adjust, or better still, construe and apply the law to conform to certain peculiar situations that Life sometimes submits to Our consideration. I, therefore, believe that the lower court has really committed an error in dismissing the information.

II. However, the order of the Court to that effect is unappealable because the exoneration of a defendant by the Court of First Instance after his trial and conviction in the inferior Court, places the defendant in double jeopardy.

Sec. 9 of Rule 113 of the Rules of Court prescribes:

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.

L-11748, (May 28, 1958) which is so far as the principle of jeopardy is concerned, is on all fours similar to the case at bar, I had occasion to say the following:

"Confronting the provisions of the aforequoted 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 in the case, constitutes, in the language of the Rules of Court, a bar to another prosecution for the same offense even though he may have been later acquitted thereof on appeal to the proper Court of First Instance. It is true that 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 very defendant, but all this succession of events cannot by any means obliterate nor wipe out facts that have already existed and brought to life, a metaphysical impossibility that 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 be 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. 403:

'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 is, that there had been no presentation of 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. Port*, 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 Pena*, 66 Phil., 451.

Now, if the trial de novo does not wipe out the proceeding in the inferior court and the law allows this Court, for the purpose of determining the circumstances attending the case in the court of origin, to go over the record thereof, even in cases of trials de novo after appeal to the Court of First Instance, under what principles of justice or even reason and logic are we to disregard in the ease at bar the undeniable 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 on the majority decision. Said in Latin, that is 'quod erat demonstrandum' ".

At the deliberations of this case, the writer of the majority Decision contended that I cannot raise and this Court cannot pass upon the question of jeopardy because the defense has not put it on issue and shall be considered as waived. In answer to this allegation I can -say, in the first place, that the defendant relied in the lower court on his claim that there was no penalty provided by law for the offense he was charged, and although that contention might be erroneous, yet the lower court found it sufficient to dismiss the case, so the defendant saw no need of raising the question of jeopardy anymore, even if he knew of that defense. In the second place, it is not to be forgotten that defendant is the appellee herein and his only duty in this instance is to refute the questions raised by the prosecution which did not touch upon this matter. Anyway, I cannot by any means agree with the theory that the defense of jeopardy can be waived and shall not be considered by this Court in this case. Section 8, Rule 113 of the Rules of Court provides that:

"An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in Section 2, subsections (f) and (h) of the rule",

and the latter subsection refers to cases in which the defendant moves to quash the complaint or information on the ground that he "has been previously convicted or in jeopardy of being convicted of the offense charged". And although Section 10 of the same Rule 113 also states that "if the defendant does not move to quash the complaint or information before he pleads thereto he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense or the court has no

jurisdiction over the same", yet this very same section also allows, the defendant, under certain circumstances, to raise the defense of jeopardy even after pleading. But even if the Rules of Court on said alleged waiver are to be strictly construed, yet I would say that they cannot prevail over the express provisions of our Constitution. As it is known, the Bill of Rights prescribes in its Section 1-(20) that "no person shall be twice put in jeopardy of punishment for the same offense" and this mandate, undoubtedly directed to the Court of Justice, is not limited by any act or omission of the defendant, nor depends upon whether or not he invokes such defense.

Wherefore, I firmly and unhesitatingly maintain that the remanding of this case to the lower court for trial on the 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 as to costs.

Paras, C.J., concurs. Order set aside.

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