

**JOSEFINO C. DRACULAN, PROVINCIAL FISCAL OF ISABELA AND
PATRICIO T. DURIAN, FOURTH ASSISTANT PROVINCIAL FISCAL OF
ISABELA, PETITIONERS, VS. HON. PROCORO DONATO, JUDGE,
COURT OF F...**

G.R. No. L-44079. December 19, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

Assailed and challenged in this petition for CERTIORARI and MANDAMUS, for allegedly having been issued without jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction, are two orders issued by the Honorable respondent Judge in Criminal Case No. V-351 of the defunct Court of First Instance of Isabela-Echague, Branch V. One dated April 13, 1976[1] denying petitioners' motion to dismiss; and another one, issued on May 28, 1976[2] denying petitioners' motion for reconsideration of the aforesaid order of dismissal.

The pertinent background facts are as follows:

On June 25, 1973, the Chief of Police of San Isidro, Isabela filed with the Municipal Court of the said place, a complaint for Less Serious Physical Injuries against Florencio Miguel. The case was docketed in the said court as Criminal Case No. 63.

Tried after pleading not guilty upon arraignment, accused Miguel was convicted as charged and thereafter accordingly sentenced in a decision promulgated on November 14, 1973.

From the aforesaid decision, Miguel appealed to the then Court of First Instance of Isabela, where his appeal was docketed as Criminal Case No. V-351 and assigned to Branch V of the said court presided by the Honorable respondent Judge. The record of the said case was then transmitted and referred by the Clerk of Court to the Office of the Provincial Fiscal of Isabela.

Upon a review of the evidence made by the provincial fiscal's office, petitioners found that accused-appellant Miguel should have been charged with "Direct Assault Upon a Person in Authority" it appearing that Benjamin Antonio, the offended party, is a person in authority then engaged in the performance of his official duties when assaulted. In view thereof, petitioners' office then conducted a new preliminary investigation and upon a prima facie showing that direct assault was actually the crime committed by accused-appellant Miguel, petitioners filed with the respondent court a Motion to Dismiss the appealed Less Serious Physical Injury case. Simultaneously, a new information for Direct Assault was filed against Miguel which was docketed as Criminal Case No. V-419. Upon receipt of the records of this assault case, respondent Judge, in an order dated December 17, 1975, directed that it be returned to the Fiscal's Office on the ground that it was prematurely filed considering that at that time, the prosecution's motion to dismiss the appeal was still pending resolution.

Undaunted by such a disposition, petitioners then filed a new information which they caused to be docketed also as Criminal Case No. V-351, similar to that of the appealed less serious physical injury case, and thereafter again

moved for the dismissal of the appealed case. Petitioners' motion was denied and so with their motion for reconsideration of the order of denial.

Hence, the instant petition wherein it is prayed that the aforementioned orders of respondent Judge dated April 13, 1976 and May 28, 1976 be declared null and void; that respondent Judge be ordered to dismiss the appealed less serious physical injury case; and that a writ of preliminary injunction enjoining respondent from proceeding with the trial of the appealed less serious physical injury case be issued which should be made permanent after hearing on the merits.

The petition is devoid of merit. Consequently, its dismissal is in order.

Criminal Case No. V-351 is an appeal, not an original case. It is before the Court of First Instance (now Regional Trial Court) of Isabela pursuant to the appeal interposed by accused Florencio Miguel from the decision of the Municipal Court of San Isidro convicting him of Less Serious Physical Injuries. The Court of First Instance then took cognizance of such case in the exercise of its appellate jurisdiction. And since the appeal was subsequent to the passage of Republic Act No. 6031,[3] which took effect on August 4, 1969, the appeal must now be disposed of on the basis of the evidence presented and admitted in the municipal court. No trial de novo is necessary but the parties may merely submit and/or be required to file their respective briefs or memoranda.[4]

But since the proceeding before the San Isidro Municipal Court was not duly recorded because of the absence of a qualified stenographer, the Court of First Instance of Isebela must now conduct a trial de novo of the case on appeal.

The question therefore posed before us is - may the prosecution amend the information and/or file a new information charging an offense different from that with which accused-appellant was tried and convicted in the court below?

Petitioners' answer to this query is in the affirmative, relying on Section 13 of Rule 110 of the Rules of Court,[5] which provides:

"Section 13. Amendment. — The information or complaint may be amended, in substance or form, without leave of court, at any time before the defendant pleads; and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the defendant.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may dismiss the original complaint or information and order the filing of a new one charging the proper offense, provided the defendant would not be placed thereby in double jeopardy, and may also require the witnesses to give bail for their appearance at the trial."

The above section contains two parts: one authorizes the amendment of an information or complaint, in substance or form, without leave of court, at any time before the defendant pleads, and thereafter, only as to matters of form. The other provides that, if it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may dismiss the original complaint or information and order the filing of a new one charging the proper offense, provided the defendant would not be placed in double jeopardy.

The amendment[6] or the filing of a new case where there had been a mistake in charging the proper offense after the dismissal of an existing one,[7] spoken of and therein provided for apply, only to an original case where no judgment has as yet been rendered. Much less does the said section apply to an appealed case such as the instant proceeding.[8]

The reason is obvious and that is because the right to amend or to file a new complaint or information charging

the proper offense after the dismissal of the original complaint or information, is subject to the rule on double jeopardy, which petitioners in the instant case miserably missed.

In the case at bar, the original charge was that of less serious physical injuries. Whether the new charge for direct assault with less serious physical injuries is by way of amendment or through a new information is immaterial since in both instances accused's former conviction would be a bar to a subsequent prosecution for the second offense. This was the dictum laid down in the case of *People vs. Bonotan*[9] and which doctrine was reiterated in the recent case of *Tacas vs. Cariaso*.[10] Thus:

"The charge of direct assault upon a person in authority with physical injuries contained in the fiscal's information is not included in the charge contained in the complaint of the chief of police, which is merely that of less serious physical injuries unqualified by any allegation that those injuries were inflicted upon the offended municipal councilor, admittedly a person in authority, while he was in the performance of his official duties or on the occasion thereof, a qualification essential to the offense charged in the information. The converse is no less obvious, that is, that the charge, of direct assault upon a person in authority with physical injuries as set out in the information necessarily includes the offense of less serious physical injuries charged on the complaint, specially because in both the information and the complaint, the physical injuries inflicted are alleged to have required medical assistance of a period of 14 days and incapacitated the offended party from labor for the same period of time. As proof that the offense charged in the information includes the offense charged in the complaint, conviction of the defendants of this latter offense may, without question, be had under the information if the other ingredients of the crime charged in said information are not proved. Hence, the defense of double jeopardy was well taken. The order of dismissal was thus affirmed precisely on the very same constitutional ground relied upon in this petition."[11]

We find the said pronouncement "on all fours" to the instant case. Petitioners' submittal not being in accord therewith may not be sustained.

But the more serious repercussion of which the petitioners appeared unmindful of, is the fact that with the withdrawal of the appeal, the old judgment of conviction is revived and the accused loses his right to a review of the evidence on appeal by way of questioning the validity of his conviction. What is sought to be dismissed is not the main case,[12] but merely the appeal which was docketed as Criminal Case No. V-351.

WHEREFORE, finding the instant petition to be without merit, the same is DISMISSED. The appropriate Regional Trial Court of Isabela to which Criminal Case No. V-351 was reassigned is, therefore, hereby directed to proceed immediately with the trial of the said case until its final termination.

No pronouncement as to costs.

SO ORDERED.

Concepcion, Jr., (Chairman), Abad Santos, Escolin, and Alampay, JJ., concur.

[1] Annex "A" of the Petition.

[2] Annex "B" of the Petition.

[3] An Act converting the Municipal and City Courts into Courts of Record.

[4] *Luzano vs. Romero*, 41 SCRA 247.

[5] 1964 Rules of Court.

[6] Under the first paragraph.

[7] Under the second paragraph.

[8] People vs. Villasis, et al., 46 O.G., Supplement No. 1, p. 868; L-1218, Sept. 15, 1948.

[9] 105 Phil. 1349.

[10] L-37406, August 31, 1976, 72 SCRA 527.

[11] Ibid, pages 531-532.

[12] Criminal Case No. 63.

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