

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE CITY COURT OF
SILAY, ERNESTO DE LA PAZ, PACIFICO SENECIO, JR. Y SEBUSA,
ROMEO MILLAN Y DELEJERO AND WILFREDO JOCHICO Y
MAGALONA, R...**

G.R. No. L-43790. December 09, 1976

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

This is a Petition for Review jointly filed by the City Fiscal of Silay City, Marcelino M. Paviera, and the Law Offices of Hilado, Hagad & Hilado, the latter as private prosecutors, praying that an order of the City Court of Silay dated December 19, 1975, issued by Judge Reynaldo M. Alon, dismissing Criminal Case No. 7124-C en-titled "People vs. Ernesto de la Paz, et al.," be set aside and that respondent court be directed to continue with the trial of the afore-mentioned case.[*]

In compliance with Our Resolution of July 21, 1976, the Office of the Solicitor General filed its comment on October 13, 1976, joining the Petitioner's prayer that the order of respondent court of December 19, 1975, be reversed and the case remanded for further proceedings.

The record shows that private respondents herein, Ernesto de la Paz, Pacifico Senecio, Jr. y Sebusa, Romeo Milian y Delejero and Wilfredo Jochico y Magalona, were charged with "falsification by private individuals and use of falsified document" under Par. 2, Article 172 of the Revised Penal Code, alleged to have been committed as follows:

"That sometime on January 4, 1974, at Hawaiian-Philippine Company, Silay City, Philip-pines, and within the jurisdiction of this Honorable Court, the accused Ernesto de la Paz, overseer of Hda. Malisbog belonging to Deogracias de la Paz, and the other three accused, scalers of Hawaiian-Philippine Company, with intent of gain and to cause damage by conniving, cooperating and mutually helping one another did then and there wilfully, unlawfully and feloniously alter or falsify the sugar cane weight report card or 'tarjeta', a private document showing the weight of sugarcane belonging to Deogracias de la Paz, particu-larly those loaded in cane cars Nos. 1686, 1743 and 1022 by increasing the total actual weight of 22.005 tons to 27.160 tons for said three cane cars, thereby causing damage to the central and other cane planters of about 8.68 piculs of sugar valued in the total amount of P618.19, to the damage and prejudice of Hawaiian Central and other sugarcane planters adhered thereto in the aforestated amount of P618.19.

"IN VIOLATION OF PARAGRAPH 2, ART. 172, R.P.C." (p. 14, rollo)

Evidence was presented by the prosecution showing that:

"On January 4, 1974, accused Pacifico Senecio, Jr. Romeo Millan and Wilfredo Jochico, who were then scalers on duty that day at the Hawaiian-Philippine Company, weighed cane cars Nos. 1743, 1686 and 1022 loaded with sugar canes belonging to Deogracias de la Paz. The weight of the sugar canes were reflected on the weight report cards (H.P. Co. Lab. Form No. 1) or 'tarjetas' showing that for car No. 1743-8.920 tons (Exhibit

'B-1'), for Car No. 1686- 8.970 tons (Ex-hibit 'C-1') for car No. 1022-8.875 tons or a total weight of 26.765 tons. However, they did not submit said 'tarjetas' to the laboratory section, instead, they substituted 'tarjetas' showing a heavier weight for car No. 1743 - 10.515 tons (Exhibit 'B'), car No. 1686-10.525 tons (Exhibit 'C') and car No. 1022- 10.880 tons (Exhibit 'D') with a total of 27.160 tons or an additional of 5.155 tons. These were the 'tarjetas' submitted to the laboratory section. Exhibits 'B-1', 'C-1' and 'D-1' were taken later by the prosecution witness PC SSgt. Rogelio Sevilla from the wife of Pacifico Senecio, Jr." (pp. 15-16, rollo, Order of December 19, 1975)

After the prosecution had presented its evidence and rested its case, private respondents moved to dismiss the charge against them on the ground that the evidence presented was not sufficient to establish their guilt beyond reasonable doubt. Acting on this motion, respondent court issued its order of December 19, 1975, dismissing the case with costs de oficio principally on the ground that the acts committed by the accused as narrated above do not constitute the crime of falsification as charged. Reasoning out his order, Judge Alon said:

"To be convicted under paragraph 2, Article 172, an accused should have committed one of the eight acts of falsification enumerated under Article 171, R.P.C. Is the act of substituting the 'tarjetas' with higher cane weight for the ones with lower cane weight fall under one of the acts enumerated? After going over the acts of falsification one by one and trying to correlate the act of the accused with each of them, the Court finds that the said act could not possibly be placed under any of them. *Inclusio unius est exclusio alterius*, the inclusion of one is the exclusion of the other. Following this maxim, we cannot just include the act of substitution as among those acts enumerated under Article 171. And, under the rule of statutory construction, penal laws should be liberally construed in favor of the accused. This Court, therefore, is of the opinion that the accused have not committed the act of falsification with which they are charged. Obviously, it follows that there could be no use of falsified document since there is no falsified document.

"The imputed acts of the accused in making the substitution, if true, is repugnant to the human sense of right and wrong. But, however reprehensible the act may be, it is not punishable unless there is a showing that there is a law which defines and penalizes it as a crime. Unless there be a particular provision in the Penal Code or Special Law that defines and punishes the act, even if it be socially or morally wrong, no criminal liability is incurred by its commission. (*U.S. vs. Taylor*, 28 Phil. 599)

xx xx xx xx

"Wherefore, the motion is hereby granted and the case dismissed with costs de oficio... " (pp. 17-18, rollo)

In their comment on this Petition, private respondents claim that there was no error committed by respondent court in dismissing the case against them for insufficiency of evidence and that for this Court to grant the present petition would place said respondents in double jeopardy.

On the other hand, the People asserts that the plea of double jeopardy is not tenable inasmuch as the case was dismissed upon motion of the accused, and the dismissal having been made with their consent, they waived their defense of double jeopardy, citing various cases in support thereof. (pp. 58-59, rollo, Comment of the Solicitor General)

We disagree with the position taken by the Acting Solicitor General Hugo E. Gutierrez, Jr. that the plea of double jeopardy is not available in the instant situation.

It is true that the criminal case of falsification was dismissed on motion of the accused; however, this was a motion filed after the prosecution had rested its case, calling for an appreciation of the evidence adduced and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused.

Thus, in *People vs. Acosta*, L- 23657, October 29, 1968, this Court dismissed an appeal taken by the People against an order of the Court of First Instance of 'locos Norte dismissing a criminal case upon motion of the accused after the presentation of evidence by the prosecution as such appeal if allowed would place the accused in double jeopardy. There, the accused was charged with estafa by obtaining from Pedro Miguel a ring valued at P16,500.00 and issuing a check for \$5,000.00 in payment thereof which turned out later to be counterfeit to the damage and prejudice of said Pedro Miguel in the aforementioned amount of P16,500.00. After the presentation of the evidence of the prosecution, the accused moved to dismiss the case on the ground that the evidence showed that the ring belonged to somebody else, Banang Jaramillo, and not to Pedro Miguel as alleged in the information and that the element of damage was absent. This motion was opposed by the Assistant Provincial Fiscal but notwithstanding said opposition, the trial court dismissed the case on the ground that Pedro Miguel was a mere agent of the true owner of the ring and therefore not the real offended party. The Assistant Provincial Fiscal appealed to this Court, but the Solicitor General moved for the dismissal of the appeal on the ground that it would place the accused in double jeopardy, and the Court agreed with the Solicitor General, stating that it cannot be seriously questioned that the trial court had grievously erred in his conclusion and application of the law, and in dismissing outright the case; however, the error cannot now be remedied by an appeal because it would place the accused in double jeopardy. (per Eugenio Angeles, J., 25 SCRA 823, 826)

In the earlier case of *Catilo vs. Hon. Abaya*, May 14, 1954, petitioner Catilo was charged with murder before the Court of First Instance of Batangas presided by respondent Judge. Petitioner was arraigned and after the prosecution had rested its case petitioner moved for the dismissal of the charge for insufficiency of evidence. This motion was granted by the Judge and his order was promulgated in open court to the accused. Later in the day, Judge Abaya set aside his order of dismissal *motu proprio* and scheduled the case for con-tinuation of the trial on specific dates. A motion for reconsideration was filed by the defense counsel but because respondent Judge failed to take action, the accused filed an original action for Certiorari with this Court. In granting relief to petitioner Catilo, the Court, through Justice Marcelino B. Montemayor, held:

"From whatever angle we may view the order of dismissal Annex 'A', the only conclusion possible is that it amounted to an acquittal. Whether said acquittal was due to some 'misrepresentation of facts' as stated in the order of reconsideration, which alleged misrepresentation is vigorously denied by the defendant-petitioner, or to a misapprehension of the law or of the evidence presented by the prosecution, the fact is that it was a valid order or judgment of acquittal, and there-after the respondent Judge himself advised the accused in open court that he was a free man and could not again be prosecuted for the same offense.

"The inherent powers of a court to modify its order or decision, under section 5, Rule 124 of the Rules of Court claimed for the respondent to set aside his order of dismissal, does not extend to an order of dismissal which amounts to a judgment of acquittal in a criminal case; and the power of a court to modify a judgment or set it aside before it has become final or an appeal has been perfected, under section 7, Rule 116 of the Rules of Court, refers to a judgment of conviction and does not and cannot include a judgment of acquittal.

"In conclusion, we hold that to continue the criminal case against the petitioner after he had already been acquitted would be putting him twice in jeopardy of punishment for the same offense." x x x (94 Phil. 1017)

The cases cited by the Acting Solicitor General are not appli-cable to the situation now before Us because the facts are different. In *Co Te Hue vs. Judge Encarnacion*, 94 Phil. 258, the case was dismissed provisionally with the express consent of the accused. The same occurred in *People vs. Togle*, 105 Phil. 126 - there was a provisional dismissal upon express request of the counsel for the accused. In *Gandicela vs. Lutero*, 88 Phil. 299, it was the accused who asked for the dismissal of the case because the private prosecutor was not in court to present the prosecution's evidence and the Municipal Court of the City of Iloilo dismissed the case without prejudice to the refile of the charge against the accused.[1] In *People vs. Romero*, 89 Phil. 672, the dismissal was made at the

instance of the accused because the prosecution was also not ready with its evidence. The case of *People vs. Belosillo*, 9 SCRA 836, is not applicable either, because the order of dismissal of the Information was made before arraignment, hence, the accused was not yet placed in jeopardy of punishment for the offense charged.

In the case of the herein respondents, however, the dismissal of the charge against them was one on the merits of the case which is to be distinguished from other dismissals at the instance of the accused. All the elements of double jeopardy are here present, to wit: (1) a valid information sufficient in form and substance to sustain a conviction of the crime charged, (2) a court of competent jurisdiction, and (3) an unconditional dismissal of the complaint after the prosecution had rested its case, amounting to the acquittal of the accused. The dismissal being one on the merits, the doctrine of waiver of the accused to a plea of double jeopardy cannot be invoked.

It is clear to Us that the dismissal of the criminal case against the private respondents was erroneous.

As correctly stated in the Comment of the Acting Solicitor General, the accused were not charged with substitution of genuine "tarjetas" with false ones. The basis for the accusation was that the accused entered false statements as to the weight of the sugar cane loaded in certain cane cars in "tarjetas" which were submitted to the laboratory section of the company. The act of making a false entry in the "tarjeta" is undoubtedly an act of falsification of a private document, the accused having made untruthful statements in a narration of facts which they were under obligation to accomplish as part of their duties - Ernesto de la Paz, as overseer of Hda. Malisbog, and the other accused as scalers of the offended party, the Hawaiian-Philippine Company, thereby causing damage to the latter.

However erroneous the order of respondent Court is, and although a miscarriage of justice resulted from said order, to para-phrase Justice Alex Reyes in *People vs. Nieto*, 103 Phil. 1133, such error cannot now be righted because of the timely plea of double jeopardy.

In *Nieto*, the background of the case is as follows: On September 21, 1956, an Information for homicide was filed with the Court of First Instance of Nueva Ecija against Gloria Nieto who, upon arraignment pleaded guilty to the charge but notwithstanding that plea, the trial judge acquitted her on the ground that although the accused was a minor "over 9 and under 15 years old" the Information failed to allege that she acted with discernment. Thereafter, the prosecution filed another Information for the same offense stating therein that the accused Gloria Nieto was "a child between 9 and 15 years" and alleging in express terms that she acted with discernment. The defense filed a motion to quash this second Information on grounds of double jeopardy, and the trial court already presided by another Judge, Hon. Felix V. Makasiar, now Justice of this Court, granted the motion. The prosecution appealed to this Court from said order. In its Decision, the Court dismissed the appeal and sustained the order of then Judge Makasiar, deploring that as a result of a mistaken view taken by the trial judge who acquitted the accused Gloria Nieto despite her plea of guilty there was a miscarriage of justice which cannot be righted and which leaves the Court no choice but to affirm the dismissal of the second Information for reasons of double jeopardy.[2]

We cannot but express Our strong disapproval of the precipitate action taken by Judge Alon in dismissing the criminal case against the private respondents at that stage of the trial. A thorough and searching study of the law, the allegations in the Information, and the evidence adduced plus a more circumspect and reflective exercise of judgment, would have prevented a failure of justice in the instant case. We exhort Judge Alon to take into serious consideration what We have stated so as to avoid another miscarriage of justice.

IN VIEW OF THE FOREGOING , We are constrained to DISMISS this Petition of the People. Without pronouncement as to costs. Let copy of this Decision be entered in the personal file of Judge Reynaldo Alon.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Concepcion, Jr., and Martin, JJ., concur.

[*] We treated this Petition as a Special Civil Action after all parties concerned had submitted their respective pleadings comments to the Petition.

[1] See *People vs. Salico*, 84 Phil. 722 & *People vs. Obsania*, 23 SCRA 1249

[2] Because *People v. Nieto* is an unpublished decision and the facts of the case are of unusual interest, We are quoting herein portions of the Decision of the Court:

"It appears that on September 21, 1956 an information for homicide was filed in said court against Gloria Nieto, alleging:

'That on or about the 7th day of May, 1956, in the Municipality of Peñaranda, Province of Nueva Ecija, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Gloria Nieto, with the intent to kill, did then and there wilfully, criminally and feloniously push one Lolita Padilla, a child eight and one half (8-1/2) years of age, into a deep place of the Peñaranda River and as a consequence thereof Lolita Padilla got drowned and died right then and there.

'Contrary to the provisions of Article 249 of the Revised Penal Code.'

"Upon arraignment, the accused, who was assisted by counsel de oficio, entered a plea of guilty, but the trial judge nevertheless acquitted her of the crime charged on the grounds that she was a minor "over nine and under fifteen years old" and the information failed to allege that she acted with discernment.

"The prosecution thereafter filed another information for the same offense, the said information stating that the accused Gloria Nieto was "a child between 9 and 15 years old" and alleging in express terms that she acted with discernment. But the defense filed a motion to quash on the ground of double jeopardy, and the court, now presided by another judge, granted the motion. The prosecution appealed.

"We find the appeal to be without merit.

"The pivotal question is whether the accused could on her unqualified plea of guilty to the first information, be rightly held answerable for the offense therein charged. Undoubtedly, she could. For the said information avers facts constituting the said offense, with nothing therein to indicate that she, as the perpetrator thereof, was exempt from criminal liability because of her age, and her plea of guilty to the information is an unqualified admission of all its material averments. And, indeed, even under the view taken by the trial judge who acquitted her that because she was between the ages of 9 and 15 -- although that fact does not appear in the information to which she pleaded guilty -- an allegation that she acted with discernment must be required, that requirement should be deemed amply met with the allegation in the information that she, the accused Gloria Nieto, 'with the intent to kill, did then and there wilfully, criminally and feloniously push one Lolita Padilla, a child eight and one half (8-1/2) years of age, into a deep place of the Peñaranda River and as a consequence thereof Lolita Padilla got drowned and died right then and there.' x x x As the learned trial judge, Hon. Felix V. Makasiar, who quashed the second information, says in his order:

'The allegations in the information that the accused 'with intent to kill, did then and there wilfully, criminally and feloniously push one Lolita Padilla x x x into a deep place in Peñaranda River and that as a consequence thereof, Lolita Padilla got drowned and died right then and there', and her plea of guilty thereto, precludes the existence of any one of the justifying or exempting circumstances enumerated in Articles 11 and 12 of the

Revised Penal Code including Paragraph 3 of Article 12. The said allegation can only mean that the accused, who is over 9 but below 15 years of age, was not justified in killing the victim nor was she exempted from any criminal responsibility therefor. Otherwise, the term 'criminally and feloniously' would have no meaning at all. To require the addition of the ritualistic phrase 'that she acted with discernment' would be superfluous. Under a different view, substance would be sacrificed to the tyranny of form.

'x x x To insist on the necessity of including the phrase 'she acted with discernment' in the information for the purpose of conveying said idea in order to make the information sufficient, is to confess a bankruptcy in language or vocabulary and to deny that the same idea can be expressed in other terms. One need not be a dabbler in philology or semantics to be able to appreciate the import or connotation or significance of the phrase 'with intent to kill x x x wilfully, criminally and feloniously' made more emphatic by 'contrary to the provisions of Article 24 9'. The contrary view nullifies the existence or value or utility of synonyms in the communication of ideas. '"

See also *People vs. Inting*, L-41959, March 31, 1976 70 SCRA 289

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