

CONRADO MELO, PETITIONER AND APPELLANT, VS. THE PEOPLE OF THE PHILIPPINES AND THE COURT OF FIRST INSTANCE OF RIZAL, RESPONDENTS AND APPELLEES.

G.R. No. L-3580. March 22, 1950

Ponente: MORAN, J.

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MORAN, J.:

Petitioner Conrado Melo was charged in the Court of First Instance of Rizal, on December 27, 1949, with frustrated homicide, for having allegedly inflicted upon Benjamin Obillo, with a kitchen knife and with intent to kill, several serious wounds on different parts of the body, requiring medical attendance for a period of more than 30 days, and incapacitating him from performing his habitual labor for the same period of time. On December 29, 1949, at eight o'clock in the morning, the accused pleaded not guilty to the offense charged, and at 10:15 in the evening of the same day Benjamin Obillo died from his wounds. Evidence of death was available to the prosecution only on January 3, 1950, and on the following day, January 4, 1950, an amended information was filed charging the accused with consummated homicide. The accused filed a motion to quash the amended information alleging double jeopardy, motion that was denied by the respondent court; hence, the instant petition for prohibition to enjoin the respondent court from further entertaining the amended information.

Brushing aside technicalities of procedure and going into the substance of the issues raised, it may readily be stated that the amended information was rightly allowed to stand. Rule 106, sec.13, 2d paragraph, is as follows:

"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."

Under this provision, it was proper for the Court to dismiss the first information and order the filing of a new one for the reason that the proper offense was not charged in the former and the latter did not place the accused in a second jeopardy for the same or identical offense.

"No person shall be twice put in jeopardy of punishment for the same offense," according to Art. III, section 1 (20) of our Constitution. The rule of "double jeopardy" had a settled meaning in this jurisdiction at the time our Constitution was promulgated. It meant that when a person is charged with an offense and the case is terminated either by acquittal or conviction or in any other manner without the consent of the accused, the latter cannot again be charged with the same or identical offense. This principle is founded upon the law of reason, justice and conscience. It is embodied in the maxim of the civil law *non bis in idem*, in the common law of England, and undoubtedly in every system of jurisprudence, and instead of having specific origin It simply always existed. It found expression in the Spanish law and in the Constitution of the United States and is now embodied in our own Constitution as one of the fundamental rights of the citizens.

It must be noticed that the protection of the Constitutional inhibition is against a second jeopardy for the same

offense, the only exception being, as stated in the same Constitution, that "if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." The phrase same offense, under the general rule, has always been construed to mean not only that the second offense charged is exactly the same as the one alleged in the first information, but also that the two offenses are identical. There is identity between the two offenses when the evidence to support a conviction for one offense would be sufficient to warrant a conviction for the other. This so-called "same-evidence test" which was found to be vague and deficient, was restated by the Rules of Court in a clearer and more accurate form. Under said Rules there is identity between two offenses not only when the second offense is exactly the same as the first, but also when the second offense is an attempt to commit the first or a frustration thereof, or when it necessarily includes or is necessarily included in the offense charged in the first information. (Rule 113, sec. 9; U.S. vs. Lim Suco, 11 Phil. 484; U.S. vs. Ledesma, 29 Phil. 431; People vs. Martinez, 55 Phil. 6). In this connection, an offense may be said to necessarily include another when some of the essential ingredients of the former as alleged in the information constitute the latter. And vice-versa, an offense may be said to be necessarily included in another when all the ingredients of the former constitute a part of the elements constituting the latter. (Rule 116, sec. 5). In other words, one who has been charged with an offense cannot be again charged with the same or identical offense though the latter be lesser or greater than the former. "As the Government cannot begin with the highest, and then go down step by step, bringing the man into jeopardy for every dereliction included therein, neither can it begin with the lowest and ascend to the highest with precisely the same result." (People vs. Cox, 107 Mich. 435, quoted with approval in U.S. vs. Lim Suco, 11 Phil. 484; see also U.S. vs. Ledesma, 29 Phil. 431 and People vs. Martinez, 55 Phil. 6, 10).

This rule of identity does not apply, however, when the second offense was not in existence at the time of the first prosecution, for the simple reason that in such case there is no possibility for the accused, during the first prosecution, to be convicted for an offense that was then inexistent. Thus, where the accused was charged with physical injuries and after conviction the injured person dies, the charge for homicide against the same accused does not put him twice in jeopardy. This is the ruling laid down by the Supreme Court of the United States in the Philippine case of Diaz vs. U.S., 223 U.S. 442, followed by this Court in People vs. Espino, G.R. No. L-4-6123, 69 Phil., 471, and these two cases are similar to the instant case. Stating it in another form, the rule is that "where after the first prosecution a new fact supervenes for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at the time, constitutes a new and distinct offense" (15 Am. Jur. 66), the accused cannot be said to be in second jeopardy if indicted for the new offense.

This is the meaning of "double jeopardy" as intended by our Constitution for it was the one prevailing in the jurisdiction at the time the Constitution was promulgated, and no other meaning could have been intended by our Rules of Court.

Accordingly, an offense may be said to necessarily include or to be necessarily included in another offense, for the purpose of determining the existence of double jeopardy, when both offenses were in existence during the pendency of the first prosecution, for otherwise, if the second offense was then inexistent, no Jeopardy could attach therefor during the first prosecution, and consequently a subsequent charge for the same cannot constitute second jeopardy. By the very nature of things there can be no double jeopardy under such circumstance, and our Rules of Court cannot be construed to recognize the existence of a condition where such condition in reality does not exist. General terms of a statute or regulation should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that exceptions have been intended to their language which would avoid results of this character. (In re Allen 2 Phil. 641).

When the Rules of Court were drafted, there was absolutely no intention of abandoning the ruling laid down in the

Diaz ease, and the proof of this is that although the said Rules were approved on December 1939, yet on January 30, 1940, this Court decided the Espino case reiterating therein the Diaz doctrine. Had that doctrine been abandoned deliberately by the Rules of Court as being unwise, unjust or obnoxious, logically it would have likewise been repudiated in the Espino case by reason of consistency and as a matter of justice to the accused, who should in consequence have been acquitted instead of being sentenced to a heavy penalty upon the basis of a doctrine that had already been found to be throng. There was absolutely no reason to preclude this Court from repealing the doctrine in the Espino case, for as a mere doctrine it could be repealed at any time in the decision of any case where it is invoked. The fact that it was not so abandoned but reiterated, is a clear proof that the mind of the Court, even after the approval of the Rules, was not against but in favor of said doctrine.

For these reasons we expressly repeal the ruling laid down in *People vs. Tarok*, 73 Phil., 260, as followed in *People vs. Villasis*, 46 Off. Gaz. (Supp. to No. 1), p. 268. Such ruling is not only contrary to the real meaning of "double jeopardy" as intended by the Constitution and by the Rules of Court but is also obnoxious to the administration of justice. If, in obedience to the mandate of the law, the prosecuting officer files an information within six hours after the accused is arrested, and the accused claiming his constitutional right to a speedy trial is immediately arraigned, and later on a new fact supervenes which, together with the facts existing at the time, constitutes a more serious offense, under the Tarok ruling, no way is open by which the accused may be penalized in proportion to the enormity of his guilt. Furthermore, such a ruling may open the way to suspicions or charges of collusion between the prosecuting officers and the accused, to the grave detriment of public interest and confidence in the administration of justice, which cannot happen under the Diaz ruling.

Before closing, it is well to observe that when a person who has already suffered his penalty for an offense, is charged with a new and greater offense under the Diaz doctrine herein reiterated, said penalty may be credited to him in case of conviction for the second offense.

For all the foregoing, the petition is denied, and the respondent Court may proceed to the trial of the criminal case under the amended information. Without costs.

Ozaeta, Pablo, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

BENGZON, J., concurring and dissenting:

I agree that *People vs. Tarok* and *People vs. Villasis* should be overruled. But I submit that the effect of such overruling should be prospective, in the sense that it should not affect the herein petitioner who has relied thereon in presenting his case. (*Moncado vs. Tribunal del Pueblo*, 45 Off. Gaz., p. 2850.)

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