

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. MAXIMO MANOLONG, DEFENDANT AND APPELLEE.*G.R. No. L-2288. March 30, 1950*

Ponente: REYES, J.

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On February 4, 1948, the accused was charged in the Justice of the Peace Court of Tanjay, Oriental Negros, with the crime of less serious physical injuries for having inflicted on the right arm of Fortunato Sanoy injuries which, according to the complaint, would take "from 20 to 30 days to heal." Pleading guilty to the complaint, the accused was on that same day convicted of the crime charged and sentenced to 2 months and 1 day of *arresto mayor*, and two days later he began to serve his sentence. It would seem, however, that Sanoy's injuries did not heal within the period formerly estimated, and so, on March 12, 1948, the provincial fiscal filed an information in the same court charging the accused with serious physical injuries. Again the accused pleaded guilty whereupon he was bound over to the Court of First Instance. There the provincial fiscal, on May 5, 1948, filed the corresponding information for the said crime, alleging that the wounds inflicted by the accused on the right hand of Fortunato Sanoy required medical attendance and incapacitated him for labor for a period of more than 90 days, causing deformity and the loss of the use of said member. The accused moved to have this last information quashed on the ground that it put him twice in jeopardy, and as the motion was granted, the fiscal appealed to this Court.

The Constitution enjoins that "no person shall be twice put in jeopardy or punished for the same offense." (Art. III, Section 1 [20].) In an attempt to implement this constitutional mandate, the Rules of Court (Rule 113, Section 9) make conviction or acquittal of the accused a bar to his subsequent prosecution, not only for the same offense, but also "for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information." In the present case there is no question that the offense of serious physical injuries charged in the last information necessarily includes the lesser offense charged in the first complaint and of which the accused was convicted in the justice of the peace court, and there should likewise be no question that, were we to follow the doctrine laid down by this Court in *People vs. Tarok*, 40 Off. Gaz. 3488), and reiterated in *People vs. Villasis*, (46 Off. Gaz. [Supp. to No. 1], p. 268[1]) we would have no alternative but to dismiss the present appeal. However, this Court in its recent decision in the case of *Conrado Melo vs. People, et al.*, (85 Phil., 974), has already repealed the doctrine laid down in the *Tarok* case as contrary to the real meaning of double jeopardy as intended by the Constitution and the Rules of Court and "obnoxious to the administration of justice," and has reverted to the rule 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." That rule applies to the present case where, after the first prosecution for a lesser crime, new facts have supervened which, together with those already in existence at the time of the first prosecution, have made the offense graver and the penalty first imposed legally inadequate.

Wherefore, following the ruling laid down in the said case of *Melo vs. People et al*, *supra*, the order appealed from

is hereby revoked and the respondent court ordered to proceed with the trial of the case under the new information, but with the understanding that, in case of conviction for the second offense, the accused be credited with the penalty already suffered by him under the first conviction. Without costs.

Moran, C.J., Ozaeta, Pablo, Padilla, and Tuason, JJ., concur.

[1] 81 Phil., 881.

BENGZON, J.:

I concur and dissent upon the grounds stated in *Melo vs. People*, G.R. No. L-3580.

REYES, J.:

I hereby certify that Mr. Justice Montemayor, who is now in Baguio, voted in favor of this decision.

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