

AGATON BULAONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-19344. July 27, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On May 31, 1956 Agaton Bulaong and others were charged before the Court of First Instance of Laguna with the crime of rebellion. Trial did not proceed with respect to Agaton Bulaong until 1958 for he was then at large.

Meanwhile Congress enacted the Anti-Subversion Act (Republic Act 1700) which took effect on June 20, 1957.

On September 12, 1958 Agaton Bulaong was arrested.

On October 1, 1958 the information for rebellion filed with the Court of First Instance of Laguna was amended to read as follows:

"The accused above named, * * * did then, and there wilfully, unlawfully and feloniously join the Communist Party of the Philippines (CCP) and the 'Hukbung Mapagpalaya ng Bayan' (HMB), otherwise known as the Hukbalahaps (HUKS), the latter being the military arms of the former, whose aims and purposes are to remove people and territory of the Republic of the Philippines and to overthrow it eventually by the use of force and arms, as in fact said accused together with other officers and members of said organization have risen publicly and taken up arms, making armed raids, ambushes and attacks upon the Philippine Constabulary, Armed Forces of the Philippines, Police Forces and other military detachments of the government, said accused AGATON BULAONG alias Ka Era being then an organizer and leader."

On the same date another information was filed before the Court of First Instance of Manila charging Agaton Bulaong of the crime of subversion defined in Section 4 of the Anti-Subversion Act. We quote the information hereunder:

"That in or about the month of July, 1957, and for the time subsequent thereto in the City of Manila, Philippines, and the place which he had chosen as the nerve center of all his activities in the different parts of the Philippines the said accused, knowingly and by overt acts, did then and there willfully and unlawfully become an officer and/or a ranking leader of the Communist Party of the Philippines (CCP and its Military Arm, the Hukbung Mapagpalaya ng Bayan (HMB), formerly known as Hukbalahaps, which organizations have aimed to overthrow the Government of the Republic of the Philippines by means of force and which organizations have been outlawed and declared illegal and continued and remained an officer and/or a ranking leader of said organizations until his arrest in or about September, 1958, without having renounced his membership therein, as in fact that the said accused together with other officers, members and affiliates of said outlawed and illegal organizations have taken arms against the Government of the Philippine Republic, by making and conducting raids, ambushes and armed attacks against and upon the Philippine Constabulary, Armed Forces of the Philippines and local police forces."

The case for subversion is still pending in the Court of First Instance of Manila; while the case for rebellion has

already been decided by the Court of First Instance of Laguna adversely against the accused.[1] Accused Bulaong appealed to the Court of Appeals which in turn affirmed the decision of the Court of First Instance of Laguna. At bar is his appeal from said judgment of the Court of Appeals.

The issue is whether or not accused Bulaong can interpose the defense of double jeopardy in this case in view of the filing against him of the information for subversion in the Court of First Instance of Manila which allegedly involves the same facts obtaining in this case.

Accused contends that rebellion as defined in Article 134 of the Revised Penal Code is a lesser cognate offense to that defined in Section 4 of Republic Act 1700. And he further contends that since the facts alleged in the informations for rebellion and subversion are the same he can not be legally prosecuted for both offenses without being placed twice in jeopardy of being punished for the same acts.

Accused's contention has no merit.[2] Under Section 9, Rule 113[3] of the Rules of Court, the defense of double jeopardy is available to the accused only where he was either convicted or acquitted or the case against him was dismissed or otherwise terminated without his consent,[4] Such is not the situation in this case. For accused has not been convicted or acquitted in the case filed in the Court of First Instance against him for subversion. Neither was the said case dismissed or terminated without his consent, for as stated, it is still pending in said court. Needless to say, it is the conviction, acquittal of the accused or dismissal or termination of the case that bars further prosecution for the same offense or 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.

Wherefore, the judgment appealed from is affirmed. No costs. So ordered.

Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Concepcion, C. J. and Barrera J., concur in the result. Judgment affirmed.

[1] Sentenced to 10 years of prision mayor plus fine of P12,000 and costs.

[2] Appellant should direct his plea to the CFI of Manila, for his final conviction in the case at bar would preclude his further prosecution there, assuming that the charge herein is indeed for a lesser cognate offense to that alleged in the pending case therein.

[3] Now Section 9, Rule 117.

[4] *People vs. Dagatan*, 90 Phil. 294, 296; *People vs. Cosare*, 95 Phil. 656, 661.

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