

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. EUSTAQUIO HINAUT, ODONA TAGUBAN AND AGAPITO HINAUT ALIAS BALADOY, DEFENDANTS AND APPELLEES.

G.R. No. 11315. March 18, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

In a criminal complaint dated August 17, 1955, accused Eustaquio Hinaut, Odon Taguran and Agapito Hinaut were charge with the crime of theft before the Justice of the Peace of Lopez Jaena (Criminal Case No. 2496). After arraignment, wherein all the defendants pleaded "not guilty", the prosecution presented its evidence, both testimonial and documentary, and thereafter rested its case with reservation to introduce additional evidence, which was stated to be unavailable at the time. The defense followed, and likewise offered its evidence, but before it had entirely closed, the Provincial Fiscal submitted a motion for the provisional dismissal of the case. Accused expressed their consent thereto by placing their thumbmarks (only Agapito Hinaut signed his name) at the end of the motion, after the word "with our conformity".

In its order of December 19, 1955, the Justice of the Peace dismissed the case provisionally as prayed for. About six months later, the prosecution filed a motion to revive the case, which was granted by the Justice of the Peace court in an order dated January 8, 1956. The corresponding information was rented by the Fiscal on June 1, 1956.

The defense appealed to the Court of First Instance of Misamis Occidental, and after review of the above facts the court opined: "when a criminal case, after due arraignment and plea had been made and after the trial had almost been completed, even if the case is dismissed with an express conformity of the accused, the said accused had already been placed in double jeopardy".

Hence, this appeal by the prosecution.

The plea of double jeopardy was improperly sustained by the lower court. Section 9, Rule 113 of the Rules of Court provides:

"When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information." (*Italics supplied*).

When the accused signified their express conformity with the provisional dismissal of the case, there was neither acquittal nor dismissal that would put them twice in jeopardy of the same offense upon the refile of the case. The resolution of this Court dated May 21, 1951, in the case of Gandicela vs. Lutero, 88 Phil., 299 (wherein it was hinted that the addition of the words "without prejudice" or "provisional" to a court's order dismissing a case are

without legal effect) contemplates a dismissal on the merits amounting to acquittal or a dismissal after arraignment and plea without the express consent of the accused. This is not true in this case, for the dismissal, according to the Justice of the Peace, was premised on the need of the prosecution to have more time in securing a missing piece of evidence necessary for the conviction of the accused. It is important to note that what was sought for by the Provincial Fiscal, to which the accused expressed their agreement, was not a simple or unconditional dismissal of the case, but its provisional dismissal that prevented it from being finally disposed of. Certainly, the accused cannot now validly claim that the dismissal was, in effect, on the merits and deny its provisional character. Even assuming moreover, that there was double jeopardy, they should be considered as having waived the constitutional safeguard against the same.

This case is not to be likened to that of *People vs. Cabarles*, 102 Phil., 926; 54 Off. Gaz., [29], 7051 where the motion to quash was based on the insufficiency of the evidence after the prosecution had rested its case, and what was prayed for was not a provisional dismissal of the case, but such a dismissal as would amount to an acquittal or one on the merits.

As stated in the concurring opinion of Mr. Justice Alejo Labrador in the case of *People vs. Jabajab*, 100 Phil., 307; 53 Off. Gaz., [3], 632:

"I concur. In my humble opinion the decisive fact which determines whether jeopardy attached upon the issuance of the order of dismissal is the provisional nature of the dismissal and the reservation of the right of the fiscal to 'refile these two cases if he so desires in the interest of Justice.' Jeopardy can be invoked only if the case is finally disposed of or terminated. Dismissal under Section 9 of Rule 113 implies final dismissal, a positive termination of the case. If the dismissal contains a reservation of the right to file another action, the case can not be said to have terminated and jeopardy does not attach. This is the reason for our ruling in *Jaca vs. Blanco*, 86 Phil., 452."

What could have been done by the accused in the case at bar was the action suggested by this Court in the case of *Gandicela vs. Lutero* (see *Resolution*, supra), by invoking their constitutional right to speedy trial rather than consent to a provisional dismissal of the case that would allow a valid reinstatement thereof (*Go Te Hua vs. Encarnacion*, 50 Off. Gaz., 599).

Do the words "with our conformity" operate as a sufficient conveyance of express consent within the purview of the Rules of Court (see supra) ? We believe so, for these words imply not merely passive assent but an active manifestation on the part of the accused of their express agreement to the provisional dismissal of the case. This Court had occasion to pass upon the meaning of "express consent" in the case of *Pendatun vs. Aragon*, (93 Phil., 796; 49 Off. Gaz., [10], 4372) :

"The words 'No objection' written on the motion to dismiss directly conveyed, as undoubtedly they were intended to convey, the idea of full accordance with the proposed dismissal. It was not the same as acquiescence manifested by signs, actions, facts, inaction or silence. It was the same as saying 'I agree' although it was not as emphatic as the latter expression. Having manifested 'no objection' to the motion for the express purpose of obtaining a ruling of the court upon such motion, counsel could not have meant other than that he was in agreement with the dismissal, and there is no question that that was what the court and the prosecution understood him to mean; otherwise, trial could have been postponed instead of the case being temporarily dismissed, there being good grounds for the continuance."

Wherefore, the order appealed from is set aside and the case remanded for further proceedings. No pronouncement as to costs. So ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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