

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DIOSCORO PINUILA, ET AL., DEFENDANTS, ABSALON BIGNAY,
DEFENDANT AND APPELLANT.**

G.R. No. 11374. May 30, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Defendant Absalon Bignay is appealing the decision of the Court of First Instance of Negros Occidental, finding him guilty of murder for the death of Buenaventura Dideroy, and sentencing him to reclusion perpetua, with the accessories of the law, to indemnify the heirs of the deceased in the amount of P6,000, without subsidiary imprisonment in case of insolvency, and to pay one-third of the costs.

The following facts are not disputed. Early in the morning of October 20, 1948, the Barge No. 560 of the Visayan Stevedoring Company, loaded with molasses, was anchored some distance from the mouth of the Victorias River, Victorias, Negros Occidental. Bonifacio del Cano and Buenaventura Dideroy as members of the crew of said barge, were sleeping inside its cabin, with a lighted petroleum lamp hanging from the ceiling. Dideroy was suddenly and violently attacked by men provided with stout wooden clubs, which were being used as the capstan handle bars, resulting in a fracture of his skull and other injuries to his body, which caused his death hours later. Del Cano went ashore and reported the tragic incident to the person in charge of the barge, who in turn notified the authorities, and the police and the president of the sanitary division lost no time in going to the vessel and making the corresponding investigation. On the basis of said investigation, appellant was arrested together with Dioscoro Pinuila and Conrado Daiz, who were later charged with murder.

At the trial, the Government presented its evidence and after it had rested its case, counsel for the accused filed a motion for dismissal on the ground that the jurisdiction of the Court of First Instance of Negros Occidental had not been duly established. Although the information charged that the crime was committed inside the barge and within the Municipality of Victorias, Negros Occidental, the evidence for the Government tended to show that at the time, the barge was not exactly docked at the bank of the Victorias River, but was some distance from the mouth of said river, a precaution taken by the master of the barge, so that at low tide, the barge would not be stranded. On the basis of this finding, the trial court sustained the motion for dismissal and claiming that its jurisdiction had not been duly established, it dismissed the case, but provided in its order that the three accused should not be released until the order shall have become final.

The order of dismissal was appealed by the Government to this Tribunal, over the objection of the defense which invoked the principle of double jeopardy. But this Court in a decision promulgated on March 28, 1952, found that the jurisdiction of the trial court had been proven, and that the appeal did not involve double jeopardy, and so remanded the case for further proceedings.

As already stated, the three accused continued to be under arrest. However, while the order of dismissal was pending appeal in this Court, by virtue of an order of the trial court in a petition for habeas corpus, the three

defendants were released. When criminal proceedings were resumed by the lower court, the arrest of the three accused was sought, but only appellant Bignay could be apprehended. His co-accused, Pinuila and Daiz, evaded arrest and until now are still at large. For this reason, the trial was continued only against Bignay.

The evidence shows that about three months before October 20, 1948, when Dideroy was killed, the latter and Dioscoro Pinuila were in the aforementioned Barge 560, anchored along the Pasig River in Manila, Dideroy as a plain sailor and Pinuila as master or patron. It seems that Pinuila had misused or embezzled the mess funds in his care, and the crew resented it, resulting in a violent quarrel and fight between Pinuila and Dideroy. In the course of the fight, the two men fell into the Pasig River and they continued the fight in the water. Being a bigger and stronger man, Dideroy was winning the fight, and had it not been for the intervention of his companions, Pinuila would have drowned. Pinuila not only lost the fight, but also lost his job as master of the barge, presumably because of his embezzlement of the mess funds. Because of all this, he nursed a grudge against Dideroy and he found the opportunity of getting even when he learned of the presence of Barge 560 with his enemy in it, anchored near the mouth of the Victorias River.

Pinuila enlisted the aid of appellant Bignay and one Conrado Daiz, ostensibly to help him get his equipment, including a table, from the said barge, and for this he paid each of them two pesos. There is no proof that Bignay and Daiz were informed by him or came to know before hand that they were going to attack Dideroy inside the barge. The truth is that at about 2:30 in the morning of October 20, 1948, the three took a small sailboat and boarded the barge, and the three of them, each provided with a capstan wooden handle bar, attacked Dideroy while he was sleeping. Del Cano, his companion, was rudely awakened by the noise, and seeing the assault and realizing the danger to himself, he jumped out of the cabin through its window, hid under it, but through a large hole he looked inside the cabin and witnessed the progress of the attack. By the light of the petroleum lamp, he could easily identify Pinuila and saw the faces of his two companions, noting that one of them was limping, as though he were lame. After the attack, and possibly believing that Dideroy was dead, Daiz said, "Where is the other man, companion of this man Dideroy? Let us finish him also." But Pinuila interceded, saying that Del Cano had no fault at all and deserved no punishment, and he (Pinuila) proceeded to call out to Del Cano, telling him not to be afraid because he would not be harmed. Relying on this assurance, Del Cano came out of his hiding place and approached the group. Pinuila said that they were leaving, and that he (Del Cano) should take care of everything, at the same time, giving¹ the hint or Warning that Vaey had a rifle in their boat, presumably meaning that if he informed the authorities of the identity of appellants, his life would be in danger.

In the course of the investigation by the police, Manuel Ligada, police desk sergeant of Victorias, went to the barrio within which the crime was committed, and informed the residents that he was looking for Pinuila, Daiz, and Bignay, not to arrest them for any killing, because according to him, Dideroy was alive, but rather for them to enter into negotiations with the victim of their attack who wanted an amicable settlement. The news spread in the community and the three accused fell into the trap set for them. They appeared before Sergeant Ligada, Pinuila readily admitting that they made the attack in order for him to get even with Dideroy for what he had done to him in Manila three months before. Bignay impliedly admitted participating in the attack because he told the sergeant that he had to help Pinuila in the assault because Dideroy was a big man.

During the trial, Del Cano readily identified not only Pinuila but also Bignay and Daiz as the assailants of Dideroy. There is, therefore, no room for doubt that said three men were responsible for the death of Dideroy, with Pinuila as the mastermind.

The trial court found the crime committed to be murder, qualified by evident premeditation, with the concurrence of the aggravating circumstances of nighttime and treachery, compensated by the mitigating circumstance of voluntary surrender, and imposed the penalty in its medium degree. Of course, the aggravating circumstance of

treachery absorbs that of nighttime.

We are inclined to be lenient with appellant Bignay. Of the three accused, he is clearly the least guilty. Moreover, he has been in jail since 1952 when re-arrested, because by order of this Court, the criminal proceedings were resumed. This, aside from the fact that he had also been under arrest since 1948, up to the time he and his co-accused were released after instituting habeas corpus proceedings in 1949. In other words, he has been in jail for about seven years. We are ready to believe and to find that the aggravating circumstance of evident premeditation found by the lower court to qualify the murder, does 'not apply to him. For two pesos, it is hard to believe that appellant would agree to kill Dideroy. It is more likely, even more probable, that he only agreed to accompany Pinuila to get the latter's equipment from Barge 560, and only learned and realized that their trip to the barge was for a sinister purpose, when they were already aboard the barge and shortly before the actual attack. In the absence of evident premeditation, the aggravating circumstance of alevosia should be used as the qualifying circumstance of the crime of murder, thereby leaving no aggravating circumstance. With the presence of the mitigating circumstance of voluntary surrender, Bignay is entitled to the penalty for the crime being imposed in its minimum degree, namely, reclusion temporal in its maximum degree. Applying the law on indeterminate sentence, appellant Absalon Bignay should be sentenced to not less than twelve years of prision mayor and not more than seventeen years, four months and one day of reclusion temporal.

In the course of the discussion of this case and before it was actually submitted to a vote, Chief Justice Paras raised the question of double jeopardy, and without questioning the guilt of the appellant on the basis of the evidence of record, claimed that said appellant has once been placed in jeopardy and, therefore, he should now be acquitted. It is argued that the decision of this Court on the appeal prosecuted by the Government from the order of dismissal of the trial court on the ground of lack of jurisdiction, (G.R. No. L-3217) was based on the case of *People vs. Salico*, [*]47 Off. Gaz., 1765, which held that an appeal by the Government from an order of dismissal for lack of jurisdiction, when such jurisdiction really existed, which order of dismissal was based on and prompted by a motion to dismiss filed by the accused himself, did not place him in jeopardy, and that the doctrine laid down in said case of *Salico* has recently been overruled by this same Tribunal in more than one case. The argument is valid and correct. As a matter of fact, the writer of the present opinion, together with Mr. Justice Bengzon, concurred in the dissenting opinion of the Chief Justice, holding that the doctrine laid down in the case of *Salico* was incorrect, not being in accordance with the law on double jeopardy, and therefore, it should not be applied in the determination of the former appeal by the Government (G.R. No. L-3217) from the order of dismissal, consequently, said appeal should be dismissed. And it is really a fact that the principle enunciated in the *Salico* case has already been abandoned by this Tribunal.

However, the writer of the present opinion cannot in conscience and under the law agree to, much less recommend that the new doctrine overruling that enunciated in the *Salico* case should and could be applied to the present case. The decision of this Court on that appeal by the Government from the order of dismissal, holding that said appeal ? did not place the appellants, including Absalon Bignay, in double jeopardy, signed and 'concurred in by six Justices as against three dissenters headed by the Chief Justice, promulgated way back in the year 1952, has long become final and conclusive and has become the laiv of the case. It may be erroneous, judged by the law on double jeopardy as recently interpreted by this same Tribunal. Even so, it may not be disturbed and modified. Our recent interpretation of the law may be applied to new cases, but certainly not to an old one finally and conclusively determined. As already stated, tbVmajority opinion in that appeal is now the law of the case.

"Law of the case has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, ivhether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court." (21 C. J. S.

330) (*Italics supplied.*)

"It may be stated as a rule of general application that, where the evidence on a second or succeeding appeal is substantially the same as that on the first or preceding appeal, all matters, questions, points, or issues adjudicated on the prior appeal are the law of the case on all subsequent appeals and will not be considered or re-adjudicated therein." (5 C. J. S. 1267) (*Italics supplied.*)

"In accordance with the general rule stated in Section 1821, where, after a definite determination, the court has remanded the cause for further action below, it will refuse to examine question other than those arising subsequently to such determination and remand, or other than the propriety of the compliance with its mandate; and if the court below has proceeded in substantial conformity to the directions of the appellate court, its action will not be questioned on a second appeal. * * *

"As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that decision is right or wrong, the remedy of the party deeming himself aggrieved being to seek a rehearing." (5 C. J. S. 1276-77). (*Italics supplied.*)

"Questions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion." 5 C. J. S. 1286-87). (*Italics supplied.*)

The reason behind this well settled principle of law of the case is wholesome and salutary.

"The reason for the rule of the finality of the appellate decision is sometimes alleged, without direct reference to either stare decisis or res judicata, to be found in the want of power in an appellate court to modify its own judgment otherwise than on a rehearing, and in that the issuance of a mandate for a retrial takes the case out of its jurisdiction. Again the rule has been said to be founded on the policy of ending litigation, and to be necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal. If a different rule were admitted, it is said, every change in the personnel of the bench would produce confusion." (5 C. J. S. 1274).

Furthermore, in his appeal brief, appellant's counsel does not raise this question of double jeopardy, confining himself as he does, to the discussion of the evidence in the record, contending that the guilt of the appellant has not been proven beyond reasonable doubt. One aspect of this case as regards double jeopardy is that said defense may be waived, and that failure to urge it in the appeal may be regarded as a waiver of said defense of double jeopardy.

"While the rule is not inflexible, and its application lies within the discretion of the court, except in cases where the error assigned is fundamental, or is so plain that it reveals itself by a casual inspection of the record, or unless the point is expressly reserved by the report of the lower court for the appellate court's consideration, questions assigned as error are generally considered to be waived by implication where they are not urged or brought forward on appeal. * * *

"Subject to the exceptions stated in the preceding section, questions assigned as error by an appellant are generally deemed to have been abandoned or waived where they are not urged or discussed on appeal." (5 C. J. 1218-19).

In truth, counsel for the appellant may not be blamed for failing or declining to raise said question of double jeopardy, knowing as he did that it had already been formally and conclusively determined and adversely decided by this Tribunal in a decision long final and conclusive.

In view of the foregoing, and with the modifications above-stated, the decision of the trial court is hereby affirmed. With costs.

Appellant will be credited with any preventive imprisonment already served.

Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

[*]84 Phil., 722

CONCURRING

REYES, A., J.,

I concur in the result.

It is beyond doubt that the appellant in this case is guilty. The only question is whether he can still be convicted despite the dismissal of the case when it was first tried in the lower court. That question was already answered by this Court when, as a result of the Government's appeal from the order of dismissal, the said order was revoked and the case remanded below for further proceedings. This Court then ruled that the appeal did not violate the prohibition against double jeopardy. That ruling having long become final, it should be the law of the case, specially because, as the majority opinion points out, counsel for appellant does not now raise the question of double jeopardy and failure to urge it in this instance may be regarded as a waiver of that defense. The Chief Justice observes that the application of "the law of the case" rule is subject to judicial discretion. But even then, that discretion should be exercised wisely and its objective should be to help justice and not to thwart it, that is to say, to punish a proven guilt and not to let the wrongdoer go scotfree.

DISSENTING

PARAS, C. J.,

The appellant was charged in the Court of First Instance of Negros Occidental with the crime of murder. In the course of the trial, after the defense had raised the point of jurisdiction, the court dismissed the case. Upon appeal by the Government, this Court, following the doctrine in *People vs. Salico*, [*]47 Off. Gaz., 1765, resolved to remand the case for further proceedings. The Court of First Instance of Negros Occidental thereafter convicted the appellant who has now appealed to this Court.

In the meantime, in at least three instances (*People vs. Bangalao*, 94 Phil., 354; 50 Off. Gaz., [10], 4760; *People vs. Ferrer*, 100 Phil., 124, 55 Off. Gaz., [4], 620, and *People vs. Cabarles*, 102 Phil., 926, 54 Off. Gaz., [20], 7051) by implication if not expressly, we already revoked the doctrine enunciated in *People vs. Salico* by unanimous vote. The decision of the majority upholding appellant's conviction is premised on the proposition that, although

the rule in *People vs. Salico* has been abandoned, the resolution of this Court remanding the case at bar for further proceeding's was issued while the rule in *People vs. Salico* was in force or, in other words, the law of the case.

Without discussing the judgment of conviction on the merits, I am of the firm opinion that the position of the majority is patently untenable, and that the appellant should be acquitted on the ground of double jeopardy. In the first place, the "law of the case" rule is subject to exceptions we need not enumerate. It would suffice to refer to the following authorities :

"The rule is qualified, however, in a number of jurisdiction which held that, although the court will not review or reconsider questions decided on a formal appeal except in most unusual circumstances or in a very clear case of error, the court is not precluded from doing¹ so, and the formal decision may be reconsidered and reversed under exceptional circumstances and when cogent reasons therefor exist." (5 C. J. S., pp. 1277-78; *Italics supplied.*)

"Whether the appellate court will again consider questions decided as former appeal is within its discretion! controlled by the circumstances of the case." (*Community Natural Gas Co. vs. Northern Utilities Co.* 13 S. W. [2d]; *Houston Oil Co. vs. Davis*, 181 S. W. 851.)

"The appellate court should not hesitate to correct its erroneous ruling on a former appeal in the same case construing¹ a statute involving public policy." (*McGovern vs. Kraus*, 227 N. W, 300.)

"The courts are not in accord as to the conclusiveness of a decision on a prior appeal in the same case where the principle enunciated therein conflicts with rulings in other cases- In some jurisdictions it is held that the decision continues to be law of that case as between the parties and those claiming under them although subsequently it is overruled in another case or there is a change in the rule of law in that jurisdiction, but there is other authority that the decision will not be followed on a subsequent appeal if it has been overruled by another case in the meantime, at least if no property or contract rights have been acquired under the former decision." (5 C. J. S., pp. 1277-78.)

In the second place, although our resolution remanding this case for further proceedings had become final, the appellant has not as yet been finally convicted and, as a matter of fact, this Court is still called upon to decide his present appeal from all angles. We still have the judicial discretion, nay duty, to rehear and resolve any question decided under an erroneous prior doctrine; and to the credit of this Court, it has abandoned erroneous earlier decisions.

In the third place, this being a criminal case, the subsequent ruling in the cases of *People vs. Bangalao*, *People vs. Ferrer* and *People vs. Cabarles*, should be applied retroactively in favor of the appellant.

It is immaterial whether the appellant has not raised the issue of double jeopardy in his brief, because in criminal cases, regardless of the assignment of error, we have ample power to consider and correct palpable errors.

[*]84 Phil., 722

CONCURRING

FELIX, J.,

I concur in the dissenting opinion of the Chief Justice and make mine his reasons in support of his contention. I wish, however, to add another reason which, I know, may be more realistic than juridical.

There is no dispute among the members of the Court that the decision We rendered in this case when it was first brought up to Us, was erroneous because by that time, the defendant had already been placed in double jeopardy. Nonetheless, this Tribunal ruled that the lower Court had jurisdiction over the case and remanded the same to the lower Court for further proceedings. Needless to say that when this case was elevated to Us for the second time and despite our previous ruling aforementioned, the defendant had not ceased to be in double jeopardy, and it is my considered opinion that We cannot sanction or approve our said ruling under the theory that it was then the law of the case. Once Aristotle said that he was "amicus Plato sed ruagis arnica veritas", and in paraphrasing this statement that history passed on to Us and sanctioned with its approval, I may say that although I am prone to follow the principle of stare decisis and maintain the law of the case, as already stated, yet I am always more determined to uphold the truth and recognize an error that this Court may have previously committed.

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