

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. FAUSTINO TURLA, DEFENDANT AND APPELLEE.*G.R. No. 26388. February 14, 1927*

Ponente: OSTRAND, J.

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The defendant is accused of the offenses of damage to property and of lesiones leves through negligence and imprudence, it being alleged in the information "that on or about the 5th day of December, 1925, in the City of Manila, Philippine Islands, the said accused being the driver and person in charge of an automobile, did then and there willfully, unlawfully and recklessly, drive, manage and operate said automobile along Calle Aviles of said city in a careless, negligent and imprudent manner, by then and there making it run at a speed greater than was reasonable and proper and without taking the necessary precaution to avoid accident to person and damage to property and by his such carelessness, negligence and imprudence the said automobile so driven and managed by him struck an automobile belonging to one Jose Reyes, thereby damaging the same in the amount of P114.50, to the damage and prejudice of said Jose Reyes, in the aforementioned sum, equivalent to 572.5 pesetas; and furthermore inflicting physical injuries upon Felicula Reyes and Ernesto Reyes, the passengers of the said damaged automobile, which injuries have required and will require medical attendance for a period of from one to seven days and have prevented and will prevent said Felicula Reyes and Ernesto Reyes from engaging in their customary labor for the same period of time."

To this information the defendant demurred on the grounds (1) that it charged more than one offense and (2) that the facts alleged did not constitute a crime. The demurrer was sustained by the court below upon the first ground and the fiscal was directed to amend the information so as to charge only one offense. The fiscal failed to amend and the court thereupon issued an order dismissing the case and "absolving the defendant from the information." From this order the fiscal appealed and assigns as errors (1) that the lower court erred in sustaining the demurrer and (2) that it erred in dismissing the case and in acquitting the defendant.

In regard to the first assignment the appellant concedes that the information charges two different offenses, but maintains that the two offenses resulted from the same act; that therefore, under article 89 of the Penal Code, only one penalty can be imposed; and that under the provisions of sections 11 and 21 of General Order No. 58, two or more allied offenses for which article 89 prescribes a single penalty, may be charged in the same information. This contention would be perfectly sound if the offenses charged in the information were felonies (delitos), but cannot be sustained when, as here, the offenses are mere misdemeanors; an examination of article 89 will show that it applies only to allied felonies and has nothing to do with misdemeanors.

The second assignment of error is well taken if the order dismissing the case and absolving the defendant is to be construed as a final acquittal; it is to be noted that the dismissal of the case was made on the ground that the fiscal failed to comply with the order of the court requiring him to amend the information and that no plea to the charges was entered and no witnesses were called. The defendant was consequently not placed in jeopardy (*U. S. vs. Claveria*, 29 Phil., 527), and regardless of its language, the order of dismissal can therefore only be regarded as a

dismissal of the information, without prejudice, and is no bar to the filing of amended informations.

For the reasons stated, the aforesaid order of dismissal is affirmed, without prejudice to the filing of amended informations under paragraph 4 of article 590 of the Penal Code, each information to charge only one offense. Costs de oficio. So ordered.

Johnson, Street, Malcolm, Romualdez, and Villa-Real, JJ., concur.

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