

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF ANDT APPELLANT, VS. VICENTE MARTINEZ, DEFENDANT AND APPELLEE.

G.R. No. 32660. October 06, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

Vicente Martinez was charged with the crime of lesiones graves in the Court of First Instance of Iloilo, the information reading as follows:

"El que suscribe acusa a Vicente Martinez del delito de lesiones graves, cometido como sigue:

"Que en o hacia el 29 de marzo de 1929, en el Munici'pio de Jaro, Provincia de Iloilo, I. F., el referido acusado, voluntaria, ilegal y criminalmente agredio a Victorino Palma eon un baston de bejuco de que estaba provisto causandole una herida lacerada que imposibilito al ofendido a dedicarse a sus ocupaciones habituates y tardaron en curarse con necesidad de asistencia facultativa por mas de 30 dias. Con infracci6n de la ley."

As may be seen, the crime charged comes under paragraph 4 of article 416 of the Penal Code. The information was filed June 15, 1929, and about four weeks later, Martinez went to the office of the deputy fiscal, Demetrio C. Dimson and signified his willingness to plead guilty if the charge would be reduced to a lesser crime. In view of this offer, the deputy fiscal, without personally ascertaining the condition of the victim of the assault, amended the information by inserting the word "menos" between the words "lesiones" and "graves" in the second line of the information and further inserting "8 y menos de" between the word "de" and the figure "30" in the penultimate line of the original information. These changes reduced the crime charged to lesiones menos graves as defined in article 418 of the Penal Code.

Immediately thereafter, the accused was brought before the court and pleading guilty of the charge in the information, as amended, was sentenced to two years, four months, and a day of banishment at a distance of not less than 50 kilometers from Iloilo. It may be noted that the penalty under the original information would have been prison correctional in its minimum and medium degrees.

As soon as the accused was sentenced, he went to Manila and made that city his abode. Shortly afterwards, the offended party, Victorino Pa janés Palma, who up to that time had not fully recovered from his injuries, ascertained that the accused had been convicted of only lesiones menos graves. He thereupon brought the matter before the judge who had sentenced Martinez but was told that nothing could be done to increase the penalty imposed. Palma thereupon complained to the Bureau of Justice, and apparently at the instance of that office, the fiscal of the Province of Iloilo, instituted the present criminal action against Martinez, the information in that case reading as follows:

"El Fiscal Provincial de Iloilo acusa a Vicente Martinez del delito de lesiones graves, cometido como sigue:

"Que en o hacia el 29 de marzo de 1929, en el Municipio de Jaro, Provincia de Iloilo, Islas Filipinas, el referido acusado, sin motivo justificado, voluntaria, ilegal y criminalmente agredio a Victorino Pajanes Palma con un baston de bejuco de que estaba provisto, causandole una herida lacerada en los parpados superior e inferior del ojo izquierdo, una hemorragia interna de la retina y desprendimiento de una pequena area de la misma, de cuyas resultas quedo enfermo el ofendido e imposibilitado a dedicarse a sus ocupaciones habituales, con necesidad de asistencia facultativa por mas de 90 dias, y dejando una deformidad permanente en el ojo izquierdo, del cual ha quedado impedido el ofendido; que este ha pagado 50 pesos para' asistencia medica y la compra de medicinas.

"Hecho cometido con infracci6n de la ley y dentro de la jurisdiction de este Juzgado."

Upon arraignment, the accused pleaded not guilty and further pleaded double jeopardy. After a statement of the facts by counsel, the court, on the ground of double jeopardy, absolved the accused from the complaint and dismissed the case. From that decision the provincial fiscal appealed to this court.

The appellant maintains that the crimes lesiones menos graves and lesiones graves differ materially in their elements and their respective penalties and that, therefore, the former conviction for lesiones menos graves does not bar the prosecution of the present action though the two actions arose from the same source.

We cannot accept that view. The two forms of lesiones are delitos (felonies), and the only difference between them is the character and degrees of the penalties. Both of the offenses fall under the same title and chapter of the Penal Code, and the elements are practically the same. The penalties are in effect based on nothing else but the length of time required for the cure of the injuries. There is considerable discordance in determining the test as to when two offenses are substantially the same, but in the case of *People vs. Alvarez* (48 Phil, 472), this court said: "The test for determining whether or not a prosecution for one crime constitutes an obstacle to a subsequent action for another distinct crime upon the same facts, is to inquire whether the facts alleged in the second information, if proven, would have been sufficient to support the former information, of which the accused may have been acquitted or convicted. The gist of the question is whether or not the same evidence supports the two actions."

Quoting 16 C. J., 264, section 444, the court further said:

"The safest general rule is that the two offenses must be in substance precisely the same or of the same nature or of the same species, so that the evidence which proves the one would prove the other; or if this is not the case, then the one crime must be an ingredient of the other."

Applying the test so stated, it is clear that a trial and conviction in the present case would constitute double jeopardy; not only was the first case an ingredient of the second case but the allegations in the second information would also, if proven, have been sufficient to support the former information. It may also be noted that in the United States the rule is that "one who is convicted of a crime less in degree than the offense for which he is indicted is by implication acquitted of the greater offense and may plead the acquittal as a bar to a subsequent indictment for it," but it is also held that this rule does not apply where the court, in which the acquittal or the conviction was had, was without jurisdiction to try the accused for the greater offense (16 C. J., 271).

The cases of *Diaz vs. United States* (223 U. S., 442) and *United States vs. Ledesma and Bernad* (29 Phil, 431), cited by the fiscal, are not in point. The Diaz case involved the difference between assault and homicide; in the Ledesma case, the first conviction was for a misdemeanor tried before a justice of the peace, and the second action was for a felony beyond the jurisdiction of the justice of the peace.

The appealed judgment is affirmed without costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Johns, Romualdez and Villa-Real, JJ., concur.

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