

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PRIMITRVO DAYLO, DEFENDANT AND APPELLANT.

G.R. No. 33094. September 03, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, 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; }

The defendant and appellant, Primitivo Daylo, has been charged with the crime of estafa in seventeen informations, four of which were before the Court of First Instance of Leyte, being cases Nos. 8087, 8156, 8231, and 8232, and the remaining thirteen before the justice of the peace of Burawen, numbered 8090, 8091, 8089, 8143, 8135, 8136, 8187, 8188, 8189, 8190, 8191, 8192, and 8193. Upon conviction in all the thirteen cases before the justice of the peace, the defendant appealed to the Court of First Instance of Leyte. During the pendency of the appeal, the provincial fiscal, without the knowledge or consent of the defendant, filed three motions on August 26, 1929, praying that the information be dismissed in said thirteen appealed cases, in order to present in lieu thereof three informations, one of which, numbered 8087, included 8089, 8090, 8091, 8135, 8136, 8191, and 8193, which had already been tried and decided by the justice of the peace and were on appeal. The court granted the motion and when the cases came up for hearing, the defendant asked for a separate trial, through counsel, of case No. 8087, and set up the defense of double jeopardy. The trial court overruled this defense and in its judgment upon said case rendered January 28, 1930, defendant was convicted of estafa and sentenced to four years and one day of arresto mayor, plus the accessory penalties of article 61, Penal Code, and the costs.

The defendant appealed from this judgment assigning the following alleged errors as committed by the trial court in its decision, to wit:

"1. The court a quo erred in not sustaining the defense of jeopardy put up by the defendant.

"2. The court a quo erred in not acquitting the defendant of the charges filed against him."

The only question to be solved in this appeal is whether the dismissal of cases Nos. 8089, 8090, 8091, 8135, 8136, 8191 and 8193 on appeal from the justice of the peace of Burawen to the Court of First Instance of Leyte is a bar to the bringing of criminal case No. 8087 where said cases were merged into one, on the ground that the defendant is thus placed twice in jeopardy of conviction of one and the same offense.

In *United States vs. Ballentine* (4 Phil., 672), five requisites are given for jeopardy, to wit:

"Jeopardy in the Philippine Islands.—Under the laws of the Philippine Islands a defendant is not placed in legal jeopardy until he has been placed on trial under the following conditions: (1) Upon a good indictment; (2) before a competent court; (3) after the defendant has been arraigned; (4) after the defendant has plead to the

indictment; (5) after the investigation of the charges has actually commenced by calling of a witness * * *."

There can be no doubt that there were more than these five requisites in the cases numbered above which were appealed from the justice of the peace of Burawen to the Court of First Instance of Leyte; said justice had complete he has been also practically absolved from the charge of embezzling the aforesaid amount and to try him anew would be to expose him for the second time to conviction of one and the same offense, following the doctrine laid down in *United States vs. Walsh* (6 Phil., 349), which reads as follows:

"Embezzlement; Double Jeopardy.—A conviction of a public officer for embezzlement of Government property under article 390 of the Penal Code, founded on a shortage of money, bars a second prosecution of the same man for the same offense, in the same office, during the same period, founded on a shortage of stores and supplies. The second trial puts him twice in jeopardy."

For the foregoing reasons we are of opinion and so hold, that the dismissal of a criminal case of estafa, which has been appealed from the justice of the peace court to the Court of First Instance, the former being vested with jurisdiction to try and decide it, is equivalent to an acquittal of the defendant in said case, and that the filing of another information in which the case dismissed is included, exposes said defendant to a second conviction of one and the same offense, and therefore constitutes double jeopardy.

Wherefore, the judgment appealed from is reversed, and let the case be dismissed, with costs de officio. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand Johns and Romualdez, JJ., concur.

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