

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. ELISEA YLAGAN, DEFENDANT AND APPELLEE.

G.R. No. 38443. November 25, 1933

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Against the appellee, Elisea Ylagan, a complaint for physical injuries was filed in the justice of the peace court of Batangas, Province of Batangas. After preliminary investigation, the case was forwarded to the Court of First Instance, where the provincial fiscal filed an information charging her with serious physical injuries. Upon arraignment, the defendant pleaded not guilty to the information; whereupon the private prosecutor, with the concurrence of the deputy provincial fiscal, moved for the dismissal of the case, which motion was granted by the court. The attorney for the defendant said nothing about the dismissal of the case.

Eleven days later, the acting provincial fiscal filed another information in the same justice of the peace court, charging the same defendant with the same offense of serious physical injuries. After another preliminary investigation, the case was again forwarded to the Court of First Instance, where the information filed in the justice of the peace court was reproduced. Upon arraignment, the defendant entered a plea of double jeopardy, based on section 28 of the Code of Criminal Procedure. After a hearing, the court sustained the plea and dismissed the case. From this order of dismissal, an appeal was taken by the Government.

Section 28 of the Code of Criminal Procedure reads as follows:

"A person cannot be tried for an offense, nor for any attempt to commit the same or frustration thereof, for which he has been previously brought to trial in a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, after issue properly joined, when the case is dismissed or otherwise terminated before judgment without the consent of the accused."

It seems clear that under the foregoing provisions of law, a defendant in a criminal prosecution is in legal jeopardy when placed on trial under the following conditions: (1) In a court of competent jurisdiction; (2) upon a valid complaint or information; (3) after he has been arraigned; and (4) after he has pleaded to the complaint or information. Tested by this standard, we are of the opinion that the appellee has been once in jeopardy for the offense for which she is now prosecuted. It is true that in *United States vs. Ballentine* (4 Phil., 672; 1 Philippine Decisions 575, and in other subsequent cases, including *People vs. Belisario* (G. R. No. 33416),^[1] this court has held that there is no jeopardy until the investigation of the charges has actually been commenced by the calling of a witness; but we are now convinced that such a view should be abandoned. There is no provision or principle of law requiring such a condition for the existence of legal jeopardy. All that the law requires is that the accused has been brought to trial "in a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, after issue properly joined." Under our system of criminal procedure, issue is properly joined after the accused has entered a plea of not guilty. The mere calling of a witness would not add a particle to the danger, annoyance, and vexation suffered by the accused, after going

through the process of being arrested, subjected to a preliminary investigation, arraigned, and required to plead and stand trial.

The rule against double jeopardy protects the accused not against the peril of second punishment, but against being again tried for the same offense. This is the principle underlying both section 23 and section 28 of the Code of Criminal Procedure. Commenting on said section 23, this court, in *Julia vs. Sotto* (2 Phil, 247, 252, 253), said: "Without the safeguard this article establishes in favor of the accused, his fortune, safety, and peace of mind would be entirely at the mercy of the complaining witness, who might repeat his accusation as often as dismissed by the court and whenever he might see fit, subject to no other limitation or restriction than his own will and pleasure. The accused would never be free from the cruel and constant menace of a never-ending charge, which the malice of the complaining witness might hold indefinitely suspended" over his head, were it not that the judiciary is exclusively empowered to authorize, by an express order to that effect, the repetition of a complaint or information once dismissed in the cases in which the law requires that this be done. Such is, in our opinion, the fundamental reason of the article of the law to which we refer. Thanks to this article, the accused, after being notified of the order dismissing the complaint may, as the case may be, either rest assured that he will not be further molested, or prepare himself for the presentation of a new complaint. In either case, the order gives him full information as to what he may hope or fear, and prevents his reasonable hopes from being dissipated as the result of an equivocal and indefinite legal situation. To this much, at least, one who has been molested, possibly unjustly, by a prosecution on a criminal charge, is entitled."

Counsel for the government, however, contends that the previous case brought against the appellee was dismissed with her consent, on the theory that the phrase "without the consent of the accused", used in section 28 of the Code of Criminal Procedure, should be construed to mean "over the objection of the accused" or "against the will of the accused". We can not accept such a theory. We believe it a sound rule to lay down, that the mere silence of the defendant or his failure to object to the dismissal of the case does not constitute a consent within the meaning of section 28 of the Code of Criminal Procedure. The right not to be put in jeopardy a second time for the same offense is as important as the other constitutional rights of the accused in a criminal case. Its waiver can not, and should not, be predicated on mere silence.

The order appealed from is affirmed, with costs de oficio. So ordered.

Avanceña, C. J., Street, Vickers, and Butte , JJ., concur.

[1]Promulgated December 2, 1930, not reported.

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