

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. HILARIA CABERO, DEFENDANT AND APPELLEE.

*G. R. No. 40574. December 29, 1934*

Ponente: HULL, J.

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### HULL, J.:

Hilaria Cabero was charged with perjury in the Court of First Instance of Rizal. The information reads:

"The undersigned fiscal accused Hilaria Cabero of the crime of perjury, committed as follows:

"That on or about the 6th day of December, 1932, in the municipality of Caloocan, Province of Rizal, Philippine Islands, and within the jurisdiction of this court, the said accused, Hilaria Cabero, presented a written complaint to the court of the justice of the peace of the said municipality of Caloocan, Province of Rizal, Philippine Islands, duly subscribed and sworn to by her, the said accused Hilaria Cabero, before Sofronio Abrera, the justice of the peace of the said court and a competent person authorized by law to administer oaths, in which said complaint she, the said accused Hilaria Cabero, wilfully, unlawfully and feloniously testified and made the following affidavit or sworn statement:

### " 'DENUNCIA

" 'La que suscribe, despues de prestar juramento en forma legal, acusa a Teresa Santos, la acusada arriba nombrada, del delito de lesiones cometido como sigue:

" 'Que en o hacia el 4 de diciembre de 1932, en el Municipio de Caloocan, Provincia de Rizal, Islas Filipinas, y dentro de la jurisdiction de este Juzgado, la referida acusada,. sin motivo justificado y usando violencia, voluntaria, ilegal, maliciosa y criminalmente asalto, golpeo y agredio a la aqui denunciante con un instrumento duro, infiriendole en su consecuencia en diferentes partes de su cuerpo varias contusiones y lesiones que necesitaron unos 15 dias de asistencia facultativa, e impidiendole a dedicarse a sus quehaceres habituales por Igual periodo de tiempo. Hecho cometido con infraccion de la ley. Las contusiones y lesiones inferidas en la persona de la denunciante se hallan mencionadas en el certificado medico que al efecto se ha expedido.

" 'Caloocan, Rizal, hoy 5 de diciembre de 1932.

(Fdo.)

### " 'HILARIA CABERO

" 'Denunciante, Caloocan, Rizal

" 'Suscrita y jurada ante mi hoy 6 de diciembre de 1932, no habiendome exhibido cedula alguna por ser mujer.

(Fdo.)

**" 'SOFRONIO ABRERA**

" 'Juez de Paz, Caloocan, Rizal'

when in truth and in fact as the said accused Hilaria Cabero well knew, said complaint, statements and affidavit made by her as aforesaid were false and untrue, and were so made upon a material matter in a case in which an oath was required by law."

Upon arraignment the defendant entered a plea of not guilty. Several adjournments were had at the request of defendant and when the case was called for trial, the fiscal asked for a continuance showing by documents that the offended party and one of the principal witnesses was sick in hospital and a policeman, who was also an important witness, was home sick in bed. After putting to the fiscal certain questions, the court on its own motion dismissed the complaint, stating (translated):

"After this case was called for trial, the provincial fiscal asked for the postponement thereof alleging that two of his principal witnesses, being ill, were absent. The petition was opposed by the defense counsel. In order to know the value of the testimony of said two witnesses, the court asked the fiscal on what they were to testify, to which the fiscal answered that when said two witnesses went to the house of the accused, the latter admitted to them that the facts alleged in the complaint filed by her are false. The fiscal likewise stated in his answer to the court that the complaint filed by the accused in the justice of the peace court of Caloocan, wherein said accused alleged the supposedly false facts, had not been acted upon, that no trial was held, that neither the complainant nor the accused therein has testified under oath, and that this information was formulated in accordance with article 183 of the Revised Penal Code.

"The information in this case alleges that Hilaria Cabero filed and subscribed under oath a complaint before the justice of the peace of Caloocan, Rizal, charging Teresa Santos with having used violence on, assaulted, struck and attacked the complainant (the herein accused), with a blunt instrument, without any justifiable motive whatsoever, inflicting upon her, as a consequence thereof, various bruises and injuries on different parts of her body, which required about fifteen days of medical attendance and incapacitated her from engaging in her customary work during the same period, notwithstanding that said accused fully knew, and was aware that such facts or allegations are false.

"The information, as formulated, does not fall under article 183 of the Penal Code inasmuch as, according to the allegations thereof, the alleged false statements have been made in a criminal case by means of a complaint filed by the herein accused. Therefore the information should be treated in the light of article 180 of said Code. However, neither can this case prosper under the latter article on the ground that, from the statements of said fiscal and from the very information, it may be inferred that said complaint has not been acted upon nor judgment rendered thereon sentencing the therein accused to a penalty prescribed in any of the four paragraphs of the latter article, which penalty would be made the basis of the penalty to be imposed upon the accused if found guilty under article 180.

"Wherefore, the information is hereby dismissed, with costs de oficio. So ordered.

(Sgd.)

"VICENTE DE VERA

"Pasig, August 31, 1933."

From this order the Solicitor-General brings this appeal and makes the following assignment of error:

"The trial court erred in holding that the facts alleged in the information filed in the case at bar do not

constitute perjury or a violation of the provisions of article 183 of the Revised Penal Code, and in dismissing on that ground the information."

The first question that presents itself for review is whether or not an appeal will lie in this jurisdiction from the order complained of. Section 44 of the Code of Criminal Procedure as amended by Act No. 2886 reads:

"SEC. 44. Either party may appeal from a final judgment or from an order made after judgment affecting the substantial rights of the appellant. The people of the Philippine Islands may also appeal from a judgment for the defendant rendered on a demurrer to an information or complaint and from an order dismissing a complaint or information."

Standing alone, the language of the last clause of section 44 clearly authorizes an appeal such as here presented. Appellee, however, contends that the statute must be read in connection with the constitutional provision against double jeopardy, and that while an appeal would lie against an order solicited by the defendant on motion or by demurrer, it does not lie where the action is taken by the court.

The exact question has never arisen, so far as we know, in English or American jurisprudence. While the trial court has ample powers and the writer of this opinion is firmly of the opinion that such powers should be courageously exercised by the trial court, our Code of Criminal Procedure contemplates a legal trial according to the regular rules. It does not consider the possibility that the caprice of the judge would take the place of orderly procedure.

In the instant case the court had before it a well-founded motion for continuance. After an informal discussion the court did not pass on the matter before it but attempted to dismiss the complaint sua sponte on its own ideas as to the sufficiency of the complaint. The Code of Criminal Procedure can be searched in vain for a single sentence that would indicate such a power in the trial magistrate.

While the court had jurisdiction of the person and of the subject matter and was authorized to pass upon any question that arose in connection with the case, it cannot be said that the question of the dismissal of the complaint on motion ever arose. Even the accused could not present such a motion at that time without consent of court and withdrawing her plea.

The cases of *Kepner vs. United States* (1 Phil., 397, 519, 727; 195 U. S., 100[1]), and *People vs. Webb* (38 Cal., 467), relied upon by appellee in her brief, are entirely different cases from the instant one. In the *Webb* case there was a verdict by a jury. In the *Kepner* case there was an acquittal after trial by the Court of First Instance. Erroneous rulings during trial are not subject to review by the state. Where the statute authorizes a review of erroneous rulings prior to trial, the statute has always been upheld. In the *Kepner* case, the majority opinion seemed to give weight to the idea that section 44 of General Orders, No. 58 had been revoked by subsequent legislation. It is to be noted that Act No. 2886 was passed some time after the *Kepner* decision.

The proceedings were not terminated, as the fiscal took prompt exception to the unauthorized action of the court and the Solicitor-General brought this appeal in the manner and within the time authorized by statute.

We are therefore constrained to hold that an appeal in such an exceptional case as this, will lie.

The second question is whether the court was correct in holding that the indictment is not good under either article 180 or article 183 of the Revised Penal Code. There is no contention that it is good under article 180. The pertinent portions of article 183 read:

"ART. 183. False testimony in other cases and perjury in solemn affirmation.—The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding

articles, shall testify under bath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires. \* \* \* "

The indictment in the complaint closely follows article 183 and alleges every fact required by that article. An affidavit was made upon material matters before a competent person authorized to administer an oath required by law. It is further clearly alleged that the accused well knew that the affidavit in question made by her was false and untrue upon the material matters recited. It would seem that the court had the opinion that an affidavit to a criminal complaint has an entirely different status from an affidavit for other purposes. In the case of *People vs. Rivera* ([1933], 59 Phil, 236), we held that a false affidavit was not a violation of article 363 of the Revised Penal Code but did not hold that it would not violate article 183 of the Revised Penal Code. The indictment in the present case is more complete than in the *Rivera* case in that it has an express allegation of guilty knowledge. The holding of the trial court that the complaint did not properly charge an offense was therefore erroneous.

The third question presented is whether or not under our ruling in the case of *People vs. Ylagan* ([1933], 58 Phil., 851), that jeopardy having attached and the trial court having attempted to dispose of the case, are further proceedings lawful? This question is virtually covered by what we have said above on the first point. For the purposes of the present appeal, it might be sufficient to say that under section 24 of the Code of Criminal Procedure the plea of jeopardy is an affirmative plea that must be raised in the trial court.

Although not within the express language, there are many known exceptions to the jeopardy rule that have from time to time been declared by the court. Had the occasion arisen, it is just as reasonable to suppose that an exception to the rule would have been declared from an unlawful action of the court as it would for the existence of an exception in case of the insanity of the judge. The accused is no more harmed in the one case than in the other. Even if following the *Ylagan* case we should ultimately hold that the accused was placed in jeopardy by her plea we must hold that the proceedings have not been terminated, as the action of the trial court was without authority and therefore null and void.

The order appealed from is therefore set aside and declared of no value and the case is remanded to the court of origin for an orderly determination of the case in the manner provided by law. Costs against appellee. So ordered.

Street, Malcolm, Villa-Real, Abad Santos, Imperial, Butte, Goddard, and Diaz, JJ., concur.

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[1]11 Phil., 669.

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## CONCURRING

**VICKERS, J.,**

I concur in the result. I wish to point out, however, that in holding the complaint in this case valid the court in effect reverses its decision in the cases of the *People vs. Rivera* ([1933], 59 Phil., 136), from which I dissented. There is no substantial difference between the complaint in the present case and the complaint in that case. It was of course immaterial that *Rivera* was charged with having violated article 363 instead of article 183 of the Revised Penal Code.

Order set aside and case remanded for further proceedings.

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