

ADOLFO O. RAMOS, PETITIONER, VS. MARIANO BUYSON LAMPA, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, AND C. N. HODGES, RESPONDENTS.

G. R. No. 45151. July 24, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

This petition for certiorari was instituted on April 20, 1936, to annul the judgment rendered on March 26, of the same year, by the respondent judge in criminal case No. 11213 of the Court of First Instance of Iloilo. It was a usury case wherein the judgment sought to be annulled acquitted the accused, the herein respondent C. N. Hodges.

According to the petitioner, the judgment is already final as he did not appeal therefrom; but contends, however, that it should be annulled and the trial continued as usual to enable him to adduce "documentary and oral evidence, rebuttal or corroborative, to justify (establish) the commission of the crime." The ground of his petition is that the respondent judge exceeded his powers and was without jurisdiction in dismissing the case and absolving C. N. Hodges, after the latter's petition to dismiss was denied by the former Judge Geronimo Paredes, and in holding that the crime has prescribed, whereas, according to the petitioner, the very facts set out in his judgment show otherwise.

Among other defenses, the respondent C. N. Hodges alleged: (1) That Marcelo Buenaflor, and not the petitioner, was the offended party in criminal case No. 11213 of the Court of First Instance of Iloilo; (2) that the respondent judge had jurisdiction to act as he did; and (3) that the writ of certiorari prayed for is not the proper remedy.

The questioned judgment was couched in the following language:

"This case is pending to receive the evidence of the accused, as the prosecution has rested its case and the motion to dismiss filed by counsel for the accused has been denied by the then judge of this court, Hon. Geronimo Paredes.

"When this case was called today for the continuance of the trial, counsel for the accused renewed his motion to dismiss, alleging, among other grounds, that the action for usury has already prescribed because the corresponding complaint was filed on May 2, 1935, that is, after the four years fixed by law, inasmuch as the last payment was made on April 24, 1931. The fiscal opposed the petition alleging that, while the last payment was really made on April 24, 1931, the truth, however, is that the herein accused then charged usurious interest up to April 29, 1933.

"However, after both parties had adduced their respective arguments for and against the petition, said fiscal, with a zeal that is worthy of mention, abided by the petition and conceded that the action has actually prescribed.

"In view of the fiscal's conformity, and a simple order of dismissal not being in order herein because the prosecution has already rested its case, the accused is acquitted from the information and the bond filed for his

temporary liberty cancelled, with the costs de oficio. So ordered."

The information filed in the case wherein the judgment just quoted was rendered, expressly alleged that the usurious loan had been made to Marcelo Buenafior. The petitioner is not mentioned therein. (Exhibit A.) Under the law, no action can be prosecuted unless in the name of the real party in interest, certiorari cases not excepted. (Sec. 114, Act No. 190; *Abendan vs. Llorente*, 10 Phil., 216; *Gordillo and Martinez vs. Del Rosario*, 39 Phil., 829.)

In 1921, the crime of usury was penalized by a fine of not less than P50 and not more than P200, or by imprisonment not exceeding six months, or both, under Act No. 2992 which was amended by Act No. 3998 on December 5, 1932. The amendment consisted principally in raising the penalty to a fine of not more than P500 or to imprisonment not exceeding one year, or both. By Act No. 3326, approved on December 4, 1926, and subsequently amended by Act No. 3763 (November 26, 1930), the prescriptive period of crimes penalized by special acts, as the usury law, is four years. Said law provides:

"Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: * * * (6) after four years for those punished by imprisonment for more than one month, but less than two years; * * *."

In view of the penalty, assuming that C. N. Hodges actually committed the crime with which he was charged when Act No. 3998 was already in force, the respondent judge undoubtedly had jurisdiction to try the case and to render the judgment of acquittal in question. This is the more so because when he took cognizance of said case, he did so in substitution of Judge Geronimo Paredes who had ceased to be such, and the motion to reconsider the order denying C. N. Hodges' motion to dismiss was presented to him personally. The reference in his judgment to the fiscal's allegation to the effect that "the fiscal objects to the petition alleging that, while the last payment was really made on April 24, 1931, the truth, however, is that the herein accused then charged usurious interest up to April 29, 1933," does not imply any pronouncement or finding of fact by the respondent judge that C. N. Hodges was in fact charging usurious interest up to April 29, 1933.

But even granting that the respondent judge erred in holding that the crime had prescribed, when in fact it had not, certiorari is not the proper remedy. This remedy has not been established to correct errors of fact or of law, but only excesses of power or jurisdiction committed by inferior courts, boards or officers clothed by law with judicial functions. (Sec. 217, Act No. 190; *Springer vs. Odlin*, 3 Phil., 344; *Gala vs. Cui and Rodriguez*, 25 Phil., 522; *Government of the Philippine Islands vs. Judge of First Instance of Hoilo and Bantillo*, 34 Phil., 157; *Mercader vs. Wislizenus*, 34 Phil., 846; *Oria vs. Campbell and Gutierrez Hermanos*, 84 Phil., 850; *De la Cruz vs. Moir*, 36 Phil., 213; *Marquez and Jurado vs. Revilla*, 43 Phil., 274; *Santos vs. Court of First Instance of Cavite*, 49 Phil., 398.)

What the respondent judge did, while he was acting as such in substitution of Judge Geronimo Paredes, has been done in the legitimate exercise of a power within his jurisdiction. A judge who substitutes for or succeeds another may reconsider the acts of the latter, if he deems it proper, in the same way that he may reconsider his own decrees, orders, or resolutions. (*Vera Moguer vs. Juan Carballo*, 5 Phil., 195; *Nunez vs. Low*, 19 Phil., 244; *Frank & Co. vs. Clemente*, 44 Phil., 30). And if in so acting he commits any error, he is not thereby deprived of his jurisdiction or power to continue hearing the case. (*Perlas vs. Concepcion*, 34 Phil., 559; *Government of the Philippine Islands vs. Judge of First Instance of Iloilo and Bantillo*, supra.)

There is another reason for holding that in the case at hand the remedy of certiorari does not lie. The judgment acquitting the respondent C. N. Hodges, necessarily concluded the case charging him with usury in such a way that it can no longer be reopened for any reason because it is forbidden by the doctrine that a person cannot be

placed twice in jeopardy. (U. S. vs. Parcon, 6 Phil., 632; Eepner vs. U. S., 195 U. S., 100; 49 Law. ed., 114; 11 Phil., 669; U. S. vs. Yam Tung Way, 21 Phil., 67; U. S. vs. Regala, 28 Phil., 57; U. S. vs. Kilayko, 32 Phil., 619.) That would be the necessary consequence if the petitioner's prayer in his petition is granted.

Wherefore, it being manifest that the remedy invoked does not lie, it is hereby denied, with costs to the petitioner. It is so ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Recto, and Laurel, JJ., concur.

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