

CANDIDO MENDOZA Y PIMENTEL, PETITIONER, VS. NATIVIDAB ALMEDA-LOPEZ, JUDGE, BRANCH III, MUNICIPAL COURT OF THE CITY OF MANILA, RESPONDENT.*G. R. No. 45633. September 29, 1937*

Ponente: IMPERIAL, J.

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In the municipal court of the City of Manila, the petitioner was charged with having violated section 821 of the Revised Ordinances of said city, by virtue of the following allegations of the information: "That on or about the 10th day of May, 1937, In the City of Manila, Philippines, the said accused did then and there willfully and unlawfully behave in a rude and indecent manner toward one K. Severien by then and there placing himself on top of her, without her consent and to her annoyance, in violation of section 821 of said Rev. Ords." The case so instituted was docketed as No. H-74598. After having been arraigned, the petitioner pleaded "not guilty" and the case was called for trial on June 9, 1937. Before the presentation of the evidence for the prosecution, the fiscal orally applied for permission to amend the information by substituting the name of K. Severien, as the aggrieved party, by that of Aurea Almazan, who was really the offended one. The attorney for the petitioner opposed the motion and the municipal court ruled that, as the amendment sought to be introduced was substantial, it was not proper to do so in view of the opposition of the petitioner, for which reason it denied said motion. The case was again called for trial on June 29, 1937, but the fiscal, before presenting his evidence, asked for the dismissal of the case on the ground that the amendment sought to be introduced by him had been denied and because he intended to file another information setting forth the correct name of the offended party. The petitioner, through his attorney, opposed the motion and urged the trial of the case. The municipal court granted the fiscal's motion and dismissed the case, the petitioner excepting to the order of dismissal. On June 30th of said year, the fiscal filed a new information the material allegations of which are as follows: "That on or about the 10th day of May, 1937, in the City of Manila, Philippines, the said accused did then and there willfully and unlawfully behave in a rude and indecent manner toward one Aurea Almazan by then and there placing himself on top of her, without her consent and to her great annoyance, in violation of section 821 of said Rev. Ords." This second information was docketed as criminal case No. H-77249. Upon being newly arraigned, the petitioner filed a written answer invoking the defense of double jeopardy in his favor, contending that he could not again be tried for the same offense with which he had been charged in the first information which culminated in a dismissal rendered against his will. On July 3, 1937, the municipal court overruled the defense of double jeopardy and ordered an immediate trial. The attorney for the petitioner excepted to the order overruling the defense of double jeopardy and gave notice of his intention to appeal, but the municipal court did not expedite the appeal, informing the petitioner that he could perfect it after the trial and the rendition of final judgment, in case the same should be one of conviction. The municipal court ordered the first witness for the prosecution called, but before the latter could begin to testify, the fiscal announced that the petitioner was absent from the session hall, notwithstanding the fact that he had been notified of the trial, whereupon the court confiscated his bond and ordered his arrest. At this stage of the case, the petitioner instituted the present proceeding and prays that the orders overruling his defense of double jeopardy and

directing the confiscation of his bond and his arrest be set aside, and that it be declared that he can not again be tried upon the second information.

I. The petitioner contends that he was placed in double jeopardy of conviction of the same offense when he was arraigned anew, for the reason that in the second information he is charged with the same violation of ordinance alleged in the first information, which case was dismissed without his consent and at the instance of the fiscal. The municipal court, upon overruling said defense, expressed its opinion that the petitioner was not placed in jeopardy by the first trial, on the ground that the first information was invalid and insufficient in substance. Section 28 of General Orders, No. 58 provides:

"SEC. 28. 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."

According to this legal provision, in order that an accused may invoke the defense of double jeopardy, he must prove: (1) that he has been previously brought; to trial; (2) in a court of competent jurisdiction; (3) upon a valid complaint or information sufficient in form and substance; (4) for the same offense or an attempt to commit the same or frustration thereof; (5) that the case has been dismissed or terminated after he had pleaded to the information but before judgment was rendered, and (6) that the case has been dismissed or otherwise terminated without his consent (*Kepner vs. U. S.*, 195 U. S., 100; U Phil., 669; *Julia vs. Sotto*, 2 Phil., 247; *U. S. vs. Padilla*, 4 Phil., 511; *U. S. vs. Parcon*, 6 Phil., 632; *Grafton vs. U. S.*, 206 U. S., 333; 11 Phil., 776; *U. S. vs. Rubin*, 28 Phil., 631; *U. S. vs. Macalingag*, 31 Phil., 316). In view of the admitted facts, this court is of the opinion and so holds that all the conditions required by law were present in this case.

II. Nobody denies that the petitioner was tried upon the first information. Neither is it doubted that the petitioner had already answered the information by pleading not guilty when the case was dismissed, said dismissal having been ordered by the municipal court without his consent after his attorney had filed his opposition to the fiscal's motion for dismissal.

III. The jurisdiction of the municipal court to take cognizance of the first information is admitted by the parties and it is unquestionable because the penalty prescribed by the Revised Ordinances for the alleged violation is a fine not exceeding P200 or imprisonment for a period not exceeding six (6) months, or both such fine and imprisonment, at the discretion of the court.

IV. The sufficiency of the first information both in form and substance cannot be denied. The allegations thereof clearly indicate that the petitioner was charged with commission of the violation defined and punished by section 821 of the Revised Ordinances of the City of Manila. It will be seen from a careful reading of the terms thereof that the fiscal has employed almost exactly the same language of section 821. The municipal court was of the opinion that the error in the name of the offended party was a substantial defect which invalidated the information, but such opinion is erroneous and untenable because according to section 7 of General Orders, No. 58, an erroneous allegation as to the name of the person injured shall be deemed immaterial and it has been so held by this court in the cases of *United States vs. Kepner* (1 Phil., 519), and *United States vs. Lahoylahoy and Madanlog* (38 Phil., 330). In fact the municipal court should have allowed the amendment applied for, although without it the fiscal could have proceeded with the trial and presented evidence tending to show that the offended party was Aurea Almazan and not K. Severien.

V. That the violations described in the two informations are identical or the same, is another incontrovertible

proposition. The fiscal himself admitted the identity of the violations alleged in the two informations when he formulated the motion to amend the first one and expressed his desire to correct the error as to the name of the offended party by substituting that of K. Severien by that of Aurea Almazan. Both informations are couched in the same terms, with the exception of the names of the offended party. Under these circumstances, it is absurd to claim that the petitioner was charged with a different violation in the second information. One of the rules established by the writers for determining the question whether or not the offense charged in a second information is distinct from that charged in the previous one, and whether or not it is embraced therein, is that we should take into account whether or not conviction could be had under the first information upon evidence of the facts alleged in the second (Bishop's Criminal Law, volume 1, page 1052; U. S. vs. Arcos, 11 Phil., 555, 561). If the evidence prepared by the fiscal in support of the second information had been presented to substantiate the first, there is no doubt that it could have brought about the conviction of the petitioner because the variance in the name of the offended party would have been immaterial, and the fiscal could have insisted in proving that the real offended party was Aurea Almazan and not K. Severien (sec. 7, General Orders, No. 58; U. S. vs. Kepner, supra; U. S. vs. Lahoylahoy and Madanlog, supra).

VI. The respondent argues that the defense of double jeopardy interposed by the petitioner is, at any rate, untenable, because he has failed to prove it. She contends that the same has not been proven because the petitioner has not presented the record of the municipal court to which the first information is attached. This court is of the opinion and so holds that the contention is unfounded because, while the doctrine is already settled in this jurisdiction that such defense must be proven, it appears, however, that it required no proof in this case on the ground that all the facts constituting said defense were admitted by the parties, and the municipal court itself had complete knowledge thereof, they having taken place almost successively within a very short period of time. At any rate, the respondent does not claim in her answer that the facts relative to the defense have not taken place, as alleged by the petitioner.

VII. Lastly, the respondent contends that the petition filed by the petitioner does not lie because he could still appeal from the judgment to be rendered, if the same were one of conviction. In answer, suffice it to state that the appeal suggested would not be an effective or adequate remedy (section 217, Code of Civil Procedure).

For the foregoing reasons, the remedy applied for is granted, the petitioner is declared in double jeopardy in criminal case No. Hr-77249 of the municipal court of the City of Manila, and the order of said municipal court confiscating the petitioner's bond and directing his arrest is set aside, without special pronouncement as to costs. So ordered.

Avancena, C. J., Abad Santos, and Laurel, JJ., concur.

DISSENTING

DIAZ, J.,

I regret to have to dissent from the majority opinion.

To decide the question whether or not double jeopardy exists, it should first be ascertained and determined whether the evidence to be presented in the second case for the purpose of establishing, with probable success, that the offense imputed therein has been committed, could have brought about the same result, that is, the conviction of the accused, if the first case instituted against him, which was discontinued by reason of 'one of the causes enumerated in section 28 of General Orders, No. 58, had been prosecuted to its final termination. Naturally, I refer to a first case where, as in the case under consideration, (a) the court in which it was instituted

was competent to take cognizance thereof; (b) the information with which it was commenced was valid; (c) the accused was duly arraigned, and (d) said accused pleaded "not guilty" thereby expediting the case for due trial and the corresponding decision (*People vs. Ylagan*, 58 Phil., 851). If the answer must be in the affirmative, then double jeopardy exists, in which case the second cause, that is, the subsequent one, cannot be proceeded with. (*People vs. Martinez*, 55 Phil., 6; *People vs. Alvarez*, 45 Phil., 472.)

In no case can the defense of double jeopardy prosper when there is no positive and clear evidence to the effect that the offense charged in the information filed in one case, which has been dismissed or otherwise terminated without the consent of the accused, is the same as the one charged in the subsequent case. (*U. S. vs. Claveria*, 29 Phil., 527.)

I am of the opinion that the requisites of double jeopardy, as this defense has been interpreted and understood in the cases above-cited, are not present in the case of the defense now adduced by the petitioner before this court, which defense, in my judgment, is certainly not and cannot be double jeopardy. It is not double jeopardy because the evidence that could be presented against him in the last case (case No. H-77249) in support of the charge imputed against him therein, would not be competent or admissible to prove the charge imputed against him in the first, that is, the case that was dismissed over his opposition (case No. H-74598), for the simple reason that the person claimed to be the offended party in this last mentioned case is K. Severien, a man, and not Aurea Almazan, a woman.

The error committed in the allegation of the name of the offended party in the first information (case No. H-74598), was not merely one of form, which could have very well been corrected even without the consent of the petitioner, but a substantial error, because, had the trial been proceeded with and had it been proven therein that the offended party was not K. Severien but Aurea Almazan, in no way could a judgment of conviction have been obtained against him, as it could not have been possible not to take into account the circumstance alleged in the information that the act imputed therein was "to her (K. Severien's) annoyance," and not "to the annoyance of Aurea Almazan." Furthermore, it could not have been possible to prove that the offended party was Aurea Almazan, because the petitioner would have opposed—and rightly so—every attempt to do so, by alleging as his ground that the evidence must necessarily agree with the allegation. This is reasonably deduced from his own attitude in opposing, as he did, the fiscal's petition to amend the information.

Section 821 of the Revised Ordinances of the City of Manila, by virtue of which both the first and the second information in question were filed against the petitioner, reads as follows:

"No person shall be drunk or intoxicated, or behave in a drunken, boisterous, rude, or indecent manner, in any public place, or place open to public view; or be drunk or intoxicated, or behave in a drunken, boisterous, rude, or indecent manner in any place or premises, to the annoyance of another person."

For the purposes of said provision of the municipal ordinance, I do not think it is the same that the act prohibited therein be committed to the vexation, molestation or "annoyance," according to the English text, of A or of B, two different persons, as are K. Severien and Aurea Almazan in the case under consideration, since, according to the record, the latter is a servant of the former.

I do not ignore the doctrine laid down in the *Kepner* case where it is stated that where the complaint sufficiently identifies the act complained of, a defect in naming the party prejudiced is a mere defect of form and is not vital. Neither do I ignore the requisites prescribed, by law in order that an information may be considered sufficient (sec. 6, No. 5, and sec. 7, of General Orders, No. 58). However, I ask: Has not this court held in the case of *United States vs. Lahoylahoy and Madanlog* (38 Phil., 330), in interpreting said provisions of law, that the data omitted in the information (name of the real party aggrieved by the robbery) is substantial, because without it the accused

would not be sufficiently informed of the offense imputed to him, thereby not giving to the information the import it is desired to be given to it by law, which is that it should serve as a means of informing the accused of the true offense with which he stands charged, in order to enable him to defend himself, and not as a means of concealing it? Furthermore, if, as everybody knows, jeopardy means the risk one incurs of being convicted of an offense, inasmuch as the petitioner never incurred such risk by reason of the first case filed against him, because, without the amendment proposed by the fiscal, in no way could he have been found guilty of the violation of municipal ordinance with which he was charged, why should said defense now be sustained in his favor in the second case against him? For all these considerations, and following the same ruling laid down in the cases of *Reynolds vs. State* (124 S. W., 931); *U. S. vs. Aurandt* (27 L. R. A., 1181; 107 Pac, 1064); and in 16 *Corpus Juris*, 243, Wherein it was stated that:

"A plea of former jeopardy cannot be sustained where the indictment in the former case did not contain the recitals necessary to charge the offense, * * *.

"Where in a prosecution for assault, accused had previously been acquitted because of a variance in the name of the person assaulted, such! acquittal did not constitute jeopardy, preventing a subsequent conviction for the same offense.

"* * * There as, however, no former jeopardy where the testimony necessary to sustain the latter charge would not be admissible to sustain the former."

I arrive at the conclusion that the remedy of certiorari applied for by the petitioner should be denied him. In this sense do I cast my vote.

VILIA-REAL AND CONCEPCION, JJ.:

We concur in the foregoing dissenting opinion of Justice Diaz.

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