

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. SOTERO PEJI BAUTISTA, ACCUSED AND APPELLEE.

*G.R. No. 45739. April 26, 1939*

Ponente: DIAZ, J.

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### DIAZ, J.:

This case is before us by virtue of an appeal interposed by the Solicitor-General to the resolution of the Court of First Instance of Cavite of September 10, 1937 dismissing said case for the following reasons: first, that the accused Sotero Peji Bautista was not given a preliminary investigation before trial; and second, that said accused had been twice put in jeopardy.

The undisputed facts bearing upon the case are the following: On July 22, 1935 the accused Sotero Peji Bautista was charged by one Ong Loo in the justice of the peace court of Kawit, Cavite, with having: violated the provisions of article 183 of the Revised Penal Code on May 30, 1935 by knowingly subscribing under oath a false affidavit couched in the following language:

"I, the undersigned herein affirmed, of lawful age, and a native of Binakayan, Kawit, Cavite, under the guidance of normal mind, in the name of the law, and in the presence of lawful authority do hereby declare the following:

"That Ong Lo, the alleged defendant to the case, is personally known to me and we had been acquainted with each other within a period of several months.

"That several times and oft during the period of our acquaintanceship I had told and informed the said defendant of the value of manuscript as specified thereto in the complaint.

"That on or about December 12, 1934, in the municipality of Kawit, Province of Cavite, after a skillful management actually taking due advantage of our acquaintanceship, defendant succeeded to acquire possession of said manuscript.

"That said defendant guaranteed himself by delivering to me wilfully, voluntarily, and under no constraint whatsoever, a pledge of security.

"That defendant promised upon his word of honor to abide by the obligation to return and produce said manuscript upon my demand as rightful owner.

"That later and again, on or about January 1, 1935, said defendant willfully, voluntarily, and unlawfully managed to dispossess me of the pledge of security through an incriminatory machination prepared and devised by the same defendant, effected and executed contrary to law by city policeman badge No. 733 and thus having deprived of the necessary instruments as a lawful means of defense in case of a controversy like this, the defendant herein named willfully, voluntarily, and feloniously refused and still refuses, and will even refuse to return and produce the manuscript upon my demand as rightful owner, and has thereafter denied, and still denies, and will even deny having received said manuscript, deceitfully, fraudulently, and unlawfully converts and misappropriates the same with intent to profit himself at my own detriment and prejudice.

"That the manuscript is my source of income and it must therefore be valued according to its earning capacity to the amount of two thousand pesos (P2,000) Philippine currency or its equivalent value in pesetas.

"That I am willing to submit this to trial for the speedy administration of justice.

(Sgd.) "Sotero Peji y Bautista

"Complainant

"Subscribed and sworn to before me this 30, day of March, 1935.

(Sgd.) "Fernando T. Viniegra

"Justice of the Peace  
Municipality of Kawit

"(Causa Criminal No. 1047, Juzgado de Paz de Kawit, Cavite)."

After the preliminary investigation required by law, the justice of the peace of Kawit remanded the case to the Court of First Instance because it did not fall under his jurisdiction and he reached the conclusion that there were reasonable grounds to believe that the crime was committed and that the accused was the one who committed it. Instead of filing an information against the accused for the purpose of charging him with the aforesaid violation of the Revised Penal Code, the provincial fiscal, without further proceedings, filed another charging him with false testimony in a criminal case under article 180 of the said Code, which is a felony entirely different from that which had been the subject of the preliminary investigation by the justice of the peace of Kawit. The information so filed by the fiscal contains the following allegations:

"That on or about September 26, 1935, in the municipality of Kawit, Province of Cavite, Philippine Islands, the said accused did then and there voluntarily, illegally and maliciously and knowingly make under oath untruthful statements and give false testimony against one by the name Ong Loo, the defendant in the criminal case for estafa No. 1044 of the justice of the peace of Kawit, Cavite, declaring falsely and knowingly that Ong Loo had borrowed from him a certain manuscript for English Idioms in the municipality of Kawit, Cavite, and that he, had had given him as security for the return to him of the Said manuscript, two books (Webster dictionary and English grammar), when in truth and in fact, as the accused knew it full well, that Ong Loo did not borrow in Kawit from him nor elsewhere the said manuscript nor he gave him the Webster dictionary and English grammar as security for the return of the supposed manuscript.

"Contrary to law."

(Criminal case No. 6999, Court of First Instance of Cavite.)

The accused on arraignment pleaded "not guilty." After trial has commenced with the fiscal presenting his first witness, the accused objected that he had not been given a preliminary investigation and that the crime with which he was then charged was entirely different from that which had been imputed to him in the justice of the peace court. The judge then presiding over the Court of First Instance of Cavite, the Honorable Emilio Pena, having found the objection of the accused to be well taken, ordered the transfer of the case to the justice of the peace court of the capital of the province to the end that the necessary preliminary investigation be there made. This done, the justice of the peace returned the case to the Court of First Instance with the report that he did not find reasonable grounds to believe that the accused had committed the crime of false testimony in a criminal case which had been imputed to him. In view thereof, on May 16, 1936, the said Court of First Instance then presided by the Honorable Leopoldo Rovira, ordered the filing away of the case, reserving, however, to the provincial fiscal the right to file a new information whenever should he deem proper with the aid of the same preliminary investigation which the justice of the peace of the capital of said province had already conducted. Five days after,

or on March 21, 1936, the provincial fiscal filed a new information in a separate case (criminal case No. 7167 of the Court of First Instance of Cavite) charging the same accused Sotero Peji Bautista with false testimony in a criminal case, and asked the Judge Pastor M. Endencia, then acting in the place of Judge Rovira, personally to conduct the necessary preliminary investigation on the ground that the justice of the peace of the provincial capital had previously expressed the opinion that there were no reasonable grounds to believe that the accused was guilty. This was done, and when formal trial was about to be held before another judge (the Honorable Marcelo T. Boncan), the accused raised the two questions which, resolved favorably to him through the appealed order, led to the final dismissal of the case.

- It is not true, as has been shown by the Solicitor-General, that the accused has not been given a preliminary investigation, for this was conducted precisely by the judge himself, Honorable Pastor M. Endencia, on May 20, 1936 as evidenced by his order of said date, which says:

"It appearing from the preliminary investigation made in this case that there are reasonable grounds to believe that the accused has committed the crime of false testimony and that he is liable therefor, the arrest of the accused Sotero Peji Bautista is ordered after which a day shall be set for the corresponding trial."

- Neither is it true that said accused had been twice put in jeopardy or in danger of being tried for the same crime of false testimony in a criminal case. All that took place was a preliminary investigation in the first case, namely, that endorsed to the justice of the peace of the capital of the province so that said investigation might be conducted. And this proceeding had to be taken because the accused asked for it, invoking his right to a preliminary investigation before the submission of the charge against him. He had then undoubtedly a right to said investigation because when the fiscal first charged him with false testimony in a criminal case, case No. 6999, said fiscal disregarded the aforementioned procedure and formality, it not being possible to declare that the same were observed just because he had them in case No. 1047 of the justice of the peace court of Kawit for the reason that in the latter case a crime distinct from that imputed to him afterwards was involved. The Revised Penal Code divides false testimony into three forms: first, false testimony in a criminal case (arts. 180 and 181); second, false testimony in a civil case (art. 182); and third, false testimony in other cases. The requisites for each of these three forms are different, and the penalties for each one of them and for each of their variations are also different. From the foregoing it is obvious that it is not the same thing to charge one with false testimony in a criminal case and to charge him with false testimony in a civil case, and with the same crime in other cases.

Therefore, if there had been nothing more than a preliminary investigation, clearly it could not be said that the accused had ever been in jeopardy. This is because a preliminary investigation is not a trial or any part thereof and does not have for its object that of determining definitely the guilt of the accused by proofs, counterproofs, and the other formalities prescribed by law. (U. S. vs. Yu Tuico, 34 Phil., 209.)

The justice of the peace of the capital of the Province of Cavite, by reason of the penalty prescribed by law for the crime with which the accused was then charged, was not competent to take cognizance of case No. 6999 in which he did nothing more than to conduct, by delegation of the judge of the Court of First Instance, a preliminary investigation prayed for by the accused himself. In this connection it must be noted that the penalties prescribed for false testimony against an accused in criminal cases are not, nor may they be lower than *arresto mayor* or a fine not exceeding one thousand pesos, and that the penalties which justices of the peace of capitals of provinces may impose by virtue of their original jurisdiction are *arresto* which cannot exceed six months or a fine which cannot exceed two hundred pesos or both penalties at the same time. (Section 2, Act No. 2131.)

One cannot be considered to have been in jeopardy unless the prior judgment, whether one of acquittal or conviction in the proper case, has been rendered by a court having jurisdiction to try the same by reason of the crime with which he was charged and the penalty prescribed therefor. (Grafton vs. V. S., 206 U. S., 333; 11 Phil,

776; U. S. vs. Kubin, 28 Phil, 631.)

In cases of lack of authority or jurisdiction on the part of the judge, the proceedings taken by him are null and the trial of the accused under said circumstances has not placed him in danger of conviction because there has been no really valid trial. Therefore, the right of the government to prosecute the crime subsists and must be attended to by the competent judge called upon to take cognizance of the same, and the defense of jeopardy does not lie against it. (U. S. vs. Arceo, 11 Phil., 530; Kepner vs. U. S., 195 U. S.f 100; 11 Phil., 669; U. S., vs. Jayme, 24 Phil, 90; U. S. vs. Ledesma and Bemad, 29 Phil., 431.)

For the reasons set forth, it is evident that the final dismissal of the case ordered by the lower court under the circumstances above-mentioned was clearly erroneous. The order appealed from, not being in accordance with law, must be reversed.

Wherefore, the aforesaid order is reversed and it is ordered that the case be returned to the lower court so that the trial may proceed for the purpose of receiving the evidence which the prosecution and the defense may present, and judgment may be rendered according to law, with costs de oficio. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, Concepcion, and Moran, JJ., concur.

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