

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. TI YEK JUAT (ALIAS KIM SENG), DEFENDANT AND APPELLEE.

G.R. No. 45855. May 10, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the People of the Philippines from an order of the Court of First Instance of Manila which dismissed the information filed by the fiscal's office against the defendant Ti Yek Juat (alias Kim Seng) in criminal case No. 54296 for the crime of theft, thereby sustaining the defense of double jeopardy set up by said defendant.

The facts upon which the court a quo relied in upholding the defense of double jeopardy and dismissing the information are stated in its order referred to, as follows:

"The defendant in this case was charged in criminal case No. 45201 of this same court. In both cases the facts alleged in the informations are the same. In the first case, or that bearing No. 45201, the bond of the defendant was confiscated because he failed to appear on February 13, 1933 for the arraignment. After the forfeiture of the bond, the case was temporarily dismissed on August 27, 1934, because the defendant until then had not been arrested and his whereabouts were unknown. On May 5, 1937 the information in this case was filed. Notwithstanding this fact, on motion of the city fiscal dated April 29, 1937, the first case, No. 45201, was revived on May 7, 1937, or two days after the filing of the information in this case.

"After the first case was revived, the defendant was arraigned on June 14, 1937 and pleaded not guilty, and on the same day, upon motion of the fiscal and by reason of the fact that this case had already been commenced, the first case was dismissed. "On June 16, 1937 or two days after the dismissal of the first case, the defendant was arraigned in this case and pleaded not guilty and alleged the defense of double jeopardy."

The only question to be decided in this appeal is one of law, namely, whether or not the defendant was put in jeopardy for the first time upon pleading not guilty to the crime with which he was charged in the information filed by the fiscal on January 31, 1933 in criminal case No. 45201 which was revived and afterwards dismissed on motion of the fiscal himself, and whether he was placed in second jeopardy upon being charged anew with the same crime under an information dated May 5, 1937, filed in criminal case No. 54296.

In the case of *People vs. Ylagan* (58 Phil., 851), this court laid down the doctrine that the defendant in a criminal case 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 information.

This same doctrine has been reiterated in the case of *Mendoza vs. Almeda Lopez* (38 Off. Gaz., 485).

In the light of the doctrine just mentioned, when the defendant-appellee herein was arraigned on June 14, 1937 upon an information dated January 31, 1933 in criminal case No. 45201, and pleaded not guilty to the crime of theft with which he was charged therein, the defendant was once placed in jeopardy, and when two days after said

first information was dismissed on motion of the fiscal, or on June 16, 1937, he was again arraigned upon an information dated May 5, 1937 filed in criminal case No. 54296 for the same crime of theft with which he was charged in the first information, he was placed in second jeopardy, which violated his constitutional right not to be twice put in jeopardy for the same offense. (Section 1, No. 20, Article III, Constitution of the Philippines.)

Wherefore, finding no error in the order appealed from, the same is affirmed with costs de oficio. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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