

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ANASTACIO FIGUEROA, DEFENDANT AND APPELLEE.*G.R. No. 47775. November 26, 1941*

Ponente: LAUREL, J.

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This is an appeal interposed by the City Fiscal from an order of the Court of First Instance of Manila declaring the herein defendant-appellee, Anastacio Figueroa, in double jeopardy and forthwith dismissing the information filed against him for homicide.

It appears that on June 11, 1940, the accused, Anastacio Figueroa, stabbed one Melchor Aguilar with a knife, causing upon the latter several wounds on a vital part of the body (the chest). Figueroa was thereupon prosecuted for the crime of frustrated homicide in the Court of First Instance of Manila, and upon plea of guilty, was on June 20, 1940, sentenced to an indeterminate penalty of from 2 years, 4 months, and 1 day of prision correccional to 6 years and 1 day of prision mayor. Several days later, however, the victim, Melchor Aguilar, succumbed to his injuries and for that reason the accused was on June 29, 1940, prosecuted anew for the crime of homicide. He pleaded not guilty to the charge and then filed a motion to quash the proceedings on the ground of former conviction or former jeopardy. The trial judge upon consideration of the facts and the merits of the case, declared the accused in double jeopardy and forthwith dismissed the information. To this judgment the City Fiscal excepted and brought the case to this Court for a definitive ruling on the legal question involved.

The only question presented for adjudication is whether an accused who had previously been convicted of frustrated homicide may subsequently be prosecuted for the consummated offense if death supervenes after conviction on the lesser charge.

We are in accord with the appellant's contention that the protection against a second jeopardy is only for the same offense, not for the same act. But the question is: When are two offenses considered the same? In the case of *People vs. Tarok*, G. R. No. 47453, promulgated by this Court on October 9, 1941 (40 Off. Gaz., 3488), we pointed out that in view of the innovation introduced by section 9, Rule 113 of our Rules, the rule now obtaining in this jurisdiction is that an offense shall be considered the same as the other not only when one is identical to the other but also when one necessarily includes or is necessarily included in the offense charged in the former complaint or information. There we said:

"... The rules of Court recently promulgated by this Court and which took effect on July 1, 1940, prescribe in section 9, Rule 113, thereof as follows:

" 'Sec. 9. Former conviction or acquittal or former jeopardy.—When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the

offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

That is to say, under the New Rules, one offense shall be fir considered the same as the other not only when one is identical to the other but also when one necessarily includes or is necessarily included in the other. This section 9, Rule 113, is in lieu of sections 26, 27 and 28 of General Orders No. 58. It will be noted that this section 9 is a composite of sections 26 and 28 of General Orders No. 58, with some modifications. It will also be noted that section 27 of General Orders No. 58 has been eliminated.

"Section 26 of General Orders No/58 was the main law on jeopardy prior to the promulgation of the Rules of Court. Section 27 merely provides for an exception to the general rule expressed in section 26 and contemplates a situation where jeopardy does not attach. Section 28 is but another defense available to the defendant similar to jeopardy.

"Under the New Rules, the pleas available to a defendant under sections 26 and 28 of General Orders No. 58 are all considered as pleas of former jeopardy or former conviction or acquittal. The important change, however, lies in the wording of the last part of the New Rules (sec. 9, Rule 113) which was taken from section 26, General Orders No. 58. The original provision of section 26, General Orders No. 58, states: 'the conviction, acquittal, or jeopardy shall be a bar to another information or indictment for the offense charged, or for an attempt to commit the same, or for a frustration thereof, or for any offense necessarily therein included of which he might have been convicted under such complaint or information.'

"To our mind, the principle embodied in the New Rules of Court is a clear expression of selection of rule amidst conflicting theories. We take the position that when we amended section 26 of General Orders No. 58 by providing that the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for any offense not only necessarily therein included but which necessarily includes the offense charged in the former complaint or information, we meant what we have, in plain language, stated. We certainly did not mean to engage in the simple play of words. . . . "

We observed in that case that "An attempted or frustrated crime is included in the consummated. Both under the General Orders No. 58 and the New Rules of Court, a person convicted of a consummated offense may not be, for the same act, prosecuted for any attempt or frustration thereof. If, after trial and conviction for an attempted or frustrated offense, there should supervene a consummated offense, we express the opinion that conviction or acquittal of the lesser offense is a bar to subsequent prosecution for the consummated offense. . . . "

The judgment of the trial court herein appealed from, is therefore affirmed, and the information for homicide filed against the defendant-appellee, Anastacio Figueroa, hereby dismissed, with costs de oficio. So ordered.

Avanceña, Pres., Abad Santos, and Horrilleno, JJ., concur.

Diaz, J., dissenting:

Upon the same ground expressed in my dissenting opinion in *People vs. Tarok*, 40 Off. Gaz., No. 17, page 3488, I dissent from the opinion of the majority that holds that there is a former jeopardy in the present case.

Moran, M., disidente:

Reproduzco aqui mi disidencia formulada y razonada en el asunto de Pueblo contra Tarok, R. G. No. 47453.

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