

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. VICTORIO BESA, DEFENDANT AND APPELLEE.*G.R. No. 48421. December 14, 1942*

Ponente: MORAN, J.

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- CRIMINAL LAW AND PROCEDURE; JEOPARDY WHERE SECOND OFFENSE NECESSARILY INCLUDES THE FIRST; SECTION 9, RULE 113, RULES OF COURT.—The defendant in the case at bar was convicted, after he had pleaded guilty, upon a valid complaint for less serious physical injuries of which the justice of the peace court had competent jurisdiction. As the offense of attempted murder for which he is again sought to be prosecuted necessarily includes that of less serious physical injuries of which he has been convicted, the second prosecution is clearly barred.

- 2. ID.; ID.; ID.; SECTION 26 OF THE OLD CODE OF CRIMINAL PROCEDURE HAS NOT BEEN UNCONSTITUTIONALLY MODIFIED.—There has been no unconstitutional modification of section 26 of the old Code of Criminal Procedure by section 9 of Rule 113 of the Rules of Court. True, that while the strict wording of section 26 of the Code of Criminal Procedure appears to authorize a plea of double jeopardy only when the second offense is necessarily included in the first offense, the established jurisprudence laid down in construction thereof has not been canalized within the literal limits of this statutory rule but has, however, extended to cases where the second offense necessarily includes the first. And the statutory rule, not alone by itself, but as construed by the courts at the time of the adoption of the Constitution, should be deemed to be the principle intended to be embodied therein, in the absence of clear intention to the contrary. The established jurisprudence referred to is hereafter set out.

- ID.; ID.; ID.; ID.—In *Grafton vs. United States* ([1906], 206 U. S., 333), it was held that a person acquitted of the crime of homicide cannot be subsequently tried for the crime of murder. "The identity of the offense is determined not by their grade but by their nature. One crime may be a constituent part of the other. The criterion is, does the result of the first prosecution negative the facts charged in the second? It is apparent that it does. The acquittal of the defendant charged with manslaughter pronounces him guiltless of the facts necessary to constitute murder and admits the plea of jeopardy."

- ID.; ID.; ID.; ID.—In *Commonwealth vs. Roby* (12 Pick., 503), it was held that "an acquittal on an indictment for murder will be a good bar to an indictment for manslaughter, and, e converso, an acquittal on an indictment for manslaughter will be a bar to prosecution for murder; for in the first instance, had the defendant been guilty, not of murder but of manslaughter, he would have been found guilty of the latter offense upon that indictment; and in the second instance, since the defendant is not guilty of manslaughter, he cannot be guilty of manslaughter under the circumstances of aggravation which enlarge it into murder."

- ID.; ID.; ID.; ID.—In *United States vs. Lim Suco* ([1908], 11 Phil., 484), this Court quoted with approval an authority (*People vs. Dofoor*, 100 Cal., 150, 154) to the effect that a person tried and convicted of an assault

cannot be subsequently tried for the greater crime of mayhem "since that offense could not be proved without proving the assault for which he had already been convicted." And, in support of its ruling, this Court relied upon the well-known principle that "as the Government cannot begin with the highest, and then go down step by step, bringing the man into jeopardy for every dereliction included therein, neither can it begin with the lowest and ascend to the highest with precisely the same result." (People vs. Cox, 107 Mich., 435, 438.)

- ID.; ID.; ID.; ID.—In People vs. Martinez (55 Phil., 6), this Court again ruled that a person tried for and convicted of the crime of lesiones menos graves cannot later be tried for the crime of lesiones graves, the reason being that "not only was the first case an ingredient of the second case, but the allegations in the second information would also, if proven, have been sufficient to support the former information." And this Court quoted with approval the doctrine that "one who is convicted of a crime less in degree than the offense for which he is indicted, is by implication acquitted of the greater offense and may plead the acquittal as a bar to a subsequent indictment for it." (16 C. J., 271.) This doctrine is supported by a great weight of authorities. (See 15 A. J., pp. 60, 61; 32 C. J. S., 425, and cases cited therein.)

- ID.; ID.; ID.; ID.; ABANDONMENT OF RULE IN UNITED STATES VS. LEDESMA (29 PHIL., 431) .—The rule laid down in United States vs. Ledesma, supra, to the effect that where the court in which the conviction of a lesser offense was had, was without jurisdiction to try the accused for the greater offense, the plea of former conviction cannot be entertained, is of doubtful wisdom and "there is authority to the contrary." (22 C. J. S., 425.) Either under section 26 of the Code of Criminal Procedure or under section 9, Rule 113, of the Rules of Court, whether or not the court had jurisdiction to try the greater offense is completely immaterial. The only test to determine the identity of the two offenses was, under the former procedure, whether or not "the evidence which proves the one would also prove the other" (U. S. vs. Arcos, 11 Phil., 555, 561; People vs. Alvarez, 45 Phil., 472; People vs. Martinez, 55 Phil., 6, 9), or, under the new Rules of Court, whether the second offense "necessarily includes or is necessarily included in the offense charged in the former complaint or information." If the facts of a particular case satisfy the requirements of this test, there is double jeopardy regardless of whether the court trying the first charge has no jurisdiction to try the second offense.

- ID.; ID.; ID.; ID.; ID.—The effect of prosecuting first the lesser offense where a larger offense has been committed and could be prosecuted, would be to split the larger offense into its lesser parts, thus bringing the man into jeopardy for each of such parts. This is unthinkable under a civilized system of criminal justice. The state in electing to prosecute the first one waives, in legal effect, all the others. This rule, of course, does not apply when the first conviction or acquittal was procured through fraud, connivance or collusion of the defendant (15 A. J., pp. 60, 61.)

APPEAL from an order of the Court of First Instance of Batangas. De la Rosa, J.

Decision penned by Associate Justice Manuel V. Moran.

First Assistant Solicitor-General Reyes and Solicitor Kapunan, jr. for appellant.

Flavio G. Cannel for appellee.

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