

CONSUELO E. MALLARI, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 58886. December 13, 1988

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Section 22, Article IV of the 1973 Constitution, reiterated as Section 21, Article III in the 1987 Constitution, provides that "(n)o person shall be twice put in jeopardy of punishment for the same offense." This is the constitutional provision relied upon by petitioner Consuelo E. Mallari in challenging the decision dated December 10, 1979 of the Court of Appeals in CA-G.R. No. 19849-CR, entitled "People of the Philippines versus Consuelo Mallari," as well as the resolution of November 5, 1981 denying her motion for reconsideration. Petitioner attains her objective.

The antecedents are as follows:

Petitioner Consuelo E. Mallari, with three (3) others, was accused of the crime of Estafa thru Falsification of Public Document before the then Court of First Instance of Manila (Criminal Case No. 9800). As the other accused were at large, the case proceeded only with respect to Consuelo Mallari, who, upon arraignment, pleaded not guilty. Trial was conducted; after which, the court rendered judgment finding Consuelo Mallari guilty of the crime charged and sentencing her to imprisonment of one (1) year and to indemnify the offended party Remegio Tapawan in the amount of P1,500.00 and to pay the costs.

Petitioner's appeal to the Court of Appeals, docketed as CA-G.R. No. 19849-CR, resulted in the affirmance of the trial court's decision with a modification as to the penalty. In lieu of the straight penalty of one (1) year, an indeterminate sentence of four (4) months and one (1) day as minimum, to two (2) years and four (4) months, as maximum, was imposed on petitioner.[1]

In her motion for reconsideration, petitioner contended that the decision in CA-G.R. No. 19849-CR placed her twice in jeopardy of being punished for the same offense as she had previously been convicted, sentenced and probationed for the same offense in CA-G.R. No. 20817-CR entitled "People of the Philippines versus Consuelo Mallari."

Unconvinced, the appellate court denied the motion for reconsideration in the assailed resolution of November 5, 1981, to wit:

"The court will now resolve as to whether the accused might be placed twice in jeopardy, the Court sustains the position taken by the Solicitor-General that the acts of the accused in GA-C.R. No. 19849-CR are different and distinct from the acts committed in CA-G.R. No. 20817-CR. Considering that they were separate acts of deceit, they are therefore two separate crimes." [2]

Hence, the instant petition for review.

By the constitutional guarantee against double jeopardy, it is understood that "when a person is charged with an

offense and the case is terminated either by acquittal or conviction or in any other manner without the consent of the accused, the latter cannot again be charged with the same or identical offense. This principle is founded upon the law of reason, justice and conscience." [3]

To raise the defense of double jeopardy, three (3) requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first. [4]

With the prior conviction by a final judgment of petitioner for the crime of estafa thru falsification of public document in CA-G.R. No. 20817-CR, there is no question that the first and second requisites above enumerated are present in the case at bar. The problem then lies with the third requisite. Is the crime charged in CA-G.R. No. 20817-CR the same as in this case (CA-G.R. No. 19849-CR)?

We rule in the affirmative.

The Information in CA-G.R. No. 20817-CR reads:

"That on or about December 15, 1970 in the City of Manila, Philippines, the said accused CELESTINO HALLAZGO, a Notary Public for and in the City of Manila and accused CARLOS SUNGA, DOMINGO ESPINELLI and CONSUELO MALLARI, all private individuals, conspiring, and confederating together with others whose true names and whereabouts are still unknown and mutually helping one another, did then and there wilfully, unlawfully and feloniously defraud JULIA S. SACLOLO thru falsification of a public document in the following manner, to wit: the said accused having somehow obtained possession of T.C.T. No. 42694, issued by the Register of Deeds of the Province of Cavite, belonging to Leonora I. Balderas and duly registered in the latter's name and by means of false manifestations and fraudulent representations which they made to said Julia S. Saclolo to the effect that said Leonora I. Balderas was badly in need of money and that she was offering the aforesaid lot as collateral for a loan of P1,500.00 then executing, forging and falsifying a Deed of Real Estate Mortgage acknowledged before accused CELESTINO HALLAZGO, Notary Public for and in the City of Manila and entered in the latter's notarial register as Doc. No. 3719, Page No. 75, Book No. XII, Series of 1970 and therefore a public document, by then and there signing and/or causing to be signed the signature 'Leonora I. Balderas,' thereby making it appear as it did appear in said document, that said Leonora I. Balderas had participated in the execution of this Deed of Real Estate Mortgage by signing her name thereon when in truth and in fact as the said accused or any of them to sign her name thereon and by means of other deceits of similar import, induced and succeeded in inducing said Julia Saclolo to give and deliver as in fact the latter gave and delivered to said accused the said amount of P1,500.00 said accused well knowing that their manifestations were false and untrue and were made solely for the purpose of obtaining as in fact they did obtain the said amount of P1,500.00 which, one (sic) in their possession, they did then and there, wilfully, unlawfully and feloniously, misappropriate, misapply and convert to their own personal use and benefit to the damage and prejudice of said Julia S. Saclolo in said amount of P1,500.000, Philippine Currency." [5]

The Information in CA-G.R. No. 19849-CR, on the other hand, reads:

That on or about the 15th day of December, 1970 in the City of Manila, Philippines, the accused Celestino Hallazgo, a Notary Public for and in the City of Manila, and accused Carlos Sunga, Domingo Espineli and Consuelo Mallari, all private individuals, conspiring and confederating together with others whose true names and whereabouts are still unknown and mutually helping one another, did then and there, wilfully, unlawfully and feloniously defraud Remigio G. Tapawan thru falsification of a public document, in the following manner, to wit: the accused having somehow obtained possession of Transfer Certificate of Title No. 42695 issued by the Register of Deeds of the Province of Cavite, belonging to Leonora I. Balderas and duly registered in the latter's name, and by means of false manifestations and fraudulent representations which they made to said Remigio G. Tapawan to the effect that said Leonora I. Balderas was badly in need of money and that she was offering the

aforesaid lot as collateral for a loan of P1,500.00, then executing, forging and falsifying a Deed of Real Estate Mortgage acknowledged before accused Celestino Hallazgo, Notary Public for and in the City of Manila and entered in the latter's Notarial Register as Doc. No. 3718; Page No. 75, Book No. XII, Series of 1970, and therefore a public document, by then and there signing and/or causing to be signed the signature 'Leonora I. Balderas' over the typewritten name 'LEONORA I. BALDERAS' thereby making it appear, as it did appear in said document, that said Leonora I. Balderas had participated in the execution of said Deed of Real Estate Mortgage by signing her name thereon neither had she authorized said accused or anyone of them to sign her name thereon, and by means of other deceits of similar import, induced and succeeded in inducing said Remegio B. Tapawan to give and deliver as in fact the latter gave and delivered to said accused, the amount of P1,500.00 x x x".[6]

In CA-G.R. No. 20817, the Court of Appeals made the following observations:

"x x x Testifying for the prosecution, witness Remegio Tapawan explained how Julia Saclolo became the mortgagee of the land in question by declaring that the accused Consuelo E. Mallari herein after referred to as the appellant, whom he had known since childhood came to his house in Rosario, Cavite on December 10, 1970, bringing two (2) land titles both in the name of Leonora Balderas and told him that she wanted to mortgage the titles for P1,500.00 each because she and her cousin Leonora Balderas were in great need of money to pay some taxes with the Bureau of Customs where they have some goods impounded. Not having enough money Tapawan refused. The appellant, however, returned on December 15, 1970 with two titles and pleaded anew with Remegio Tapawan and his wife for assistance because of her and Balderas great need of money. Tapawan gave in but because he had only P1,500.00 while the accused needed P3,000.00 he took her to his mother-in-law, Julia Saclolo and was able to secure the amount of P1,500.00. On the information given by Consuelo Mallari that the deed of mortgage would be prepared in the office of Atty. Celestino Hallazgo at M. H. del Pilar, Manila where the mortgagor Leonora Balderas would show up, Tapawan proceeded to the place indicated. Immediately upon Tapawan's arrival, Atty. Hallazgo phoned someone and within 20 minutes the person arrived whom Consuelo Mallari and Atty. Hallazgo introduced to Remegio Tapawan as Leonora Balderas. Thereafter, the mortgage deeds were prepared - one in favor of Julia Saclolo and the other in favor of Remegio Tapawan for P1,500.00 each. The mortgage loan of P3,000.00 was accordingly delivered to the person who posed as Leonora Balderas. Consuelo Mallari and Domingo Espinelli, assigned as witnesses to the said documents. Later, during the preliminary investigation at the Fiscal's Office, Tapawan learned that he was folled (sic) because the person who posed as Leonora Balderas was a man by the name of Carlos Sunga, who, at the time the mortgage was constituted, was dressed in a woman's attire. Neither Remegio Tapawan nor Julia Saclolo were able to recover a portion of the mortgage loan."[7]

Similarly, the findings of facts in CA-G.R. No. 19849 ran thus:

"REMEGIO TAPAWAN stated that sometime on December 10, 1970, his townmate Consuelo E. Mallari saw him at his house, when she begged him and his wife to lend her cousin Leonora Balderas some amount to pay taxes and customs duties for imported fruits impounded in the Bureau of Customs offering as a collateral two (2) Certificates of Title, two deeds of sale, and four (4) tax declarations all in the name of Leonora Balderas. Consuelo returned on December 15, and reiterated her request. Since he had only P1,500.00 at that time he convinced his mother-in-law Julia Saclolo, to shell out additional amount of P1,500.00. Consuelo and he then proceeded to the office of Atty. Celestino Hallazgo in Ermita, Manila for the preparation of the documents. This attorney called up Leonora Balderas who arrived shortly accompanied by three (3) persons one of whom is the helper of Atty. Hallazgo, Domingo Espinelli. This Leonora Balderas was introduced to him by Atty. Hallazgo and Consuelo who claimed her to be a cousin 'whom I should help.' When the two (2) deeds prepared by Atty. Hallazgo one for him and the other for Julia Saclolo were ready, they were signed by him, Mallari, Espinelli, Balderas and the attorney, after which he delivered the money to the person introduced as Leonora Balderas."[8]

A comparison of the Informations filed in the two cases under consideration as well as the findings of facts of the appellate court tells us that they refer to the same series of acts. These series of acts amount to what is known in law as a continued, continuous or continuing offense.

A continued crime is a single crime consisting of a series of acts but all arising from one criminal resolution. It is a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy. Although there are series of acts, there is only one crime committed. Hence, only one penalty shall be imposed.

The crime of estafa thru falsification of public document committed by Consuelo Mallari, although consummated through a series of acts, was "set on foot" by the single intent or impulse to defraud Remegio Tapawan of a total amount of P3,000.00. And contrary to the appellate court's observation, there was only one deceit practised by petitioner on the two (2) victims, i.e., that being in need of money, Leonora Balderas was willing to mortgage two (2) lots as security for a loan of P3,000.00. It was, in fact, by mere play of fate that the second victim, Julia Saclolo, should be dragged into the swindle by reason of Tapawan having only P1,500.00 at that time. That there were two (2) victims, however, did not accordingly convert the crime into two separate offenses, as the determinative factor is the unity or multiplicity of the criminal intent or of the transactions. For "the fact should not be lost sight of that it is the injury to the public which a criminal action seeks to redress, and by such redress to prevent its repetition, and not the injury to individuals." [9]

The singularity of the offense committed by petitioner is further demonstrated by the fact that the falsification of the two (2) public documents as a means of committing estafa were performed on the same date, in the same place, at the same time and on the same occasion. This Court has held in the case of *People v. de Leon*, [10] that the act of taking two or more roosters in the same place and on the same occasion is dictated by only one criminal design and therefore, there is only one crime of theft even if the roosters are owned by different persons.

It has also been ruled that when two informations refer to the same transaction, the second charge cannot prosper because the accused will thereby be placed in jeopardy for the second time for the same offense. [11]

Petitioner, having already been convicted of the complex crime of estafa thru falsification of public document in CA-G.R. No. 20817-CR, it stands to reason that she can no longer be held liable for the same crime in this case. The rule against double jeopardy protects the accused not against the peril of second punishment but against being tried for the same offense. [12] Without the safeguard this rule establishes in favor of the accused, his fortune, safety and peace of mind would be entirely at the mercy of the complaining witness who might repeat his accusation as often as it is dismissed by the court and whenever he might see fit, subject to no other limitation or restriction than his will and pleasure. [13] The accused would never be free from the cruel and constant menace of a never ending charge, which the malice of a complaining witness might hold indefinitely suspended over his head. [14]

NEMO BIS PUNITUR PRO EODEM DELICTO. No man is punished twice for the same fault or offense.

WHEREFORE, the instant petition is hereby GRANTED. The judgment of conviction in CA-G.R. No. 19849-CR is set aside on the ground of double jeopardy. No costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] p. 26, Rollo; Associate Justice Jorge R. Coquia, ponente; Associate Justices Nestor B. Alampay and Isidro C.

Borromeo, concurring.

[2] pp. 28 & 110-111 Rollo

[3] *Melo v. People*, 85 Phil. 766.

[4] *People v. Bocar*, 138 SCRA 166.

[5] p. 61, Rollo.

[6] pp. 2-3, Original Records.

[7] Decision in CA-G.R. No. 20817-CR, pp. 76-77, Rollo; Associate Justice Ramon G. Gaviola, Jr., ponente; Associate Justices Hugo E. Gutierrez, Jr. and Ambrosio M. Geraldez, concurring.

[8] p. 22, Rollo.

[9] *U.S. v. Gustilo*, 19 Phil. 208.

[10] 49 Phil. 437, reiterated in *People v. Jaranilla*, 55 SCRA 563.

[11] *People v. Sales*, G.R. No. L-8925, May 21, 1956.

[12] *People v. Ylagan*, 58 Phil. 851.

[13] Martin, *Freedom Constitution of the Philippines*, 1st ed., p. 316.

[14] *Julia v. Sotto*, 2 Phil. 247.

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