

ELADIO C. TANGAN, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE HONORABLE RICARDO J. FRANCISCO, JUDGE OF THE REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, MAKATI...

G.R. No. 73963. November 05, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari with preliminary injunction seeking annulment of the resolution of respondent judge* dated January 9, 1986 denying petitioner's motion to quash information in Criminal Case No. 19350 for lack of merit and its resolution of March 5, 1986 likewise denying petitioner's motion for reconsideration.

Petitioner had been charged on July 1, 1985 before the Regional Trial Court of Makati, Branch 136 in an information that described the commission of the crime of murder with the use of an unlicensed firearm and docketed as Criminal Case No. 17587, as follows:

"That on or about the 1st day of December, 1984, in the Municipality of Paranaque, Metro Manila, Philippines and within the jurisdiction of this Honor-able Court, the above-named accused, with intent to kill, with treachery and with the use of an unlicensed fire-arm, did then and there willfully, un-lawfully and feloniously attack, assault, and shoot Generoso Miranda III, thereby inflicting upon him mortal gunshot wounds which directly caused his death.

Contrary to law."

Before the scheduled date of arraignment on August 8, 1985, however, a new investigation of the case was made upon request of petitioner filed with the Office of the Provincial Fiscal of Pasig, Rizal (Rollo, p. 94). Subsequently, the offense charged was changed to homicide with the use of a licensed firearm, with the information amended on August 16, 1985 (Rollo, p. 19), as follows:

"That on or about the 1st day of December, 1984 in the Municipality of Paranaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with in-tent to kill and armed with a gun, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearm (licensed) one Generoso Miran-da III, thereby hitting the latter in the abdomen and inflicting upon him mortal gun-shot wounds which directly caused his death.

Contrary to law."

On September 4, 1985 petitioner entered a plea of "not guilty" to the amended charge of homicide (Rollo, p. 96).

On September 18, 1985 a resolution was issued by the Office of the Provincial Fiscal of Rizal finding probable cause to hold petitioner for illegal possession of firearms and ammunitions used in the commission of homicide as defined and punished under Section 1 of Presidential Decree 1866 (Rollo, p. 97) and on the same date, information was filed in the same court indicting petitioner for the offense (Rollo, p. 20) docketed as Criminal

Case No. 19350, committed as follows:

"That on or about the 1st day of December, 1984 in the Municipality of Paranaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused willfully, unlawfully and feloniously had in his possession, custody and control a Smith & Wesson Cal. 38 revolver with Serial No. C 61898 (Yoke No. 7566) and five (5) live ammunition and one (1) empty shell without having procured the corresponding license or permit therefor and which the said accused used in the commission of the crime of homicide against the person of one Generoso Miranda III.

CONTRARY TO LAW."

On October 30, 1985 petitioner filed a motion to quash the information in Criminal Case No. 19350 on the grounds that: (1) the information charges more than one offense which are separately punishable under existing laws; (2) the criminal action or liability of the accused has been extinguished; and (3) the accused is in jeopardy of being convicted, or acquitted, of the offense charged (Rollo, p. 3).

On January 9, 1986 respondent judge issued the questioned resolution denying the motion to quash (Rollo, p. 22) stating:

"The Court finds no merit in the first ground invoked by the defense. In alleging that the accused: 'had in his possession, custody and control a Smith and Wesson Cal. 38 revolver with Serial No. C-61898 (Yoke No. 7566) and five (5) live ammunition and one (1) empty shell without having procured the corresponding license or permit therefore and which the said accused used in the commission of the crime of homicide against the person of one Generoso Miranda III,' the accused is not being charged with several distinct and separate offenses as defined in Section 1 of P.D. 1866. The information simply describes the mode or manner by which the crime or the violation of Section 1, PD 1866 was committed which is allowed under existing laws and jurisprudence (*Ko Bu Lim v. Court of Appeals*, 118 SCRA 573, 581-582 (1982).

The Court likewise finds no merit in the second ground invoked by the defense. The so-called inconsistent stand adopted by the prosecution is not a ground for quashing the information which is valid on its face. Moreover, the information herein has the additional allegation that the accused has no permit for the firearm in question. A person may have the license to possess firearm, but may not necessarily have the necessary permit to carry the same outside his home. The so-called inconsistency therefore, granting arguendo, that there is, goes on as far only as the matter of license is concerned, and does not cover the matter of permit.

The third ground is likewise without merit, not because there has been no conviction or acquittal yet in the two cases pending before this court, as the prosecution contends, but because the offense charged in the two informations, albeit, based on the same act or incident, are entirely different offenses. One is for homicide penalized under the Revised Penal Code, the other is for violation of Section 1 of PD 1866 which is a special law. For double jeopardy to come into play, the subsequent indictment must be for the same offense. Except in the case (then) of an act being punished by a law and an ordinance in which event a conviction or acquittal under either constitutes a bar to another prosecution, there must be a showing of the crimes charged being identical. It is not enough that the complaint or information is based on the same act. x x x' (*People v. Mencias*, 46 SCRA 88, 95-96 (1972).

IN VIEW OF THE FOREGOING CONSIDERATIONS, the motion to quash is hereby denied."

On January 24, 1986 petitioners moved for the reconsideration of the resolution of January 9, 1986 but the same was again denied by respondent judge in an order dated March 5, 1986, which reads:

"Upon evaluation of the grounds of the motion for reconsideration filed by the accused as well as the opposition thereto, the Court finds no cogent reason to disturb its resolution dated January 9, 1986, and therefore, denies the same."

Hence, this petition filed with this Court on March 26, 1986 (Rollo, p. 2).

On April 23, 1986 the Court resolved to require the respondents to comment thereon and to issue a temporary restraining order to enjoin respondent Judge, his agents, re-presentatives, and/or any person or persons, acting upon his order or in his place or stead from further proceeding with Criminal Case No. 19350 (Rollo, pp. 26-26-A).

On June 4, 1986 private respondent (complainant in the lower court) represented by Quisumbing & Associates and Qui-sumbing Law Office filed his comment on the petition, praying that the petition be dismissed (Rollo, p. 37). The Office of the Solicitor General, on the other hand, filed its comment on June 11, 1986, praying that the petition be granted. In the resolution of June 18, 1986 the Court gave due course to the petition and required the parties to file simultaneous memoranda.

On July 16, 1986 Atty. Alfonso M. Cruz, in collaboration with the law firm of N.V. Quisumbing and Associates filed a supplemental comment for private respondent (Rollo, p. 65), which was noted by the Court in its resolution dated August 17, 1986 (Rollo, p. 87).

On August 4, 1986 the Office of the Solicitor General filed a manifestation and motion for leave to adopt its comment as part of memorandum, for the People of the Philippines (Rollo, p. 74). The memorandum for the petitioner was filed on August 4, 1986 (Rollo, p. 78) while the memorandum for private respondent was filed on August 19, 1986 (Rollo, p. 93).

Petitioner claims that the information in Criminal Case No. 19350 should be quashed on the following grounds:

1. The information charges more than one offense which are separately punishable under different laws;
2. The criminal action or liability of herein petitioner has been extinguished; and,
3. Herein petitioner is in jeopardy of being tried, convicted and/or punished twice for the same offense.

The pivotal issue is whether or not the filing of the information in Criminal Case No. 19350 for Illegal Possession of Firearm and Ammunition used in the commission of Homicide defined and punished under Section 1 of Presidential Decree No. 1866, arising out of the same incident which is the subject matter of the previous amended information in Criminal Case No. 17587, namely the shooting to death of Generoso Miranda III, subjects petitioner to jeopardy in violation of the constitutional mandate against putting a person twice in jeopardy of punishment for the same offense.

The answer is in the negative.

To raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have been 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 (*People v. Bocar*, 138 SCRA 166 [1985]).

Legal jeopardy attaches only: (a) upon a valid indictment; (b) before a competent court; (c) after arraignment; (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused. (*People v. Bocar*, *supra*; *Buscayno v. Military Commission* Nos. 1, 2, 6 and 25, 109 SCRA 273 [1981]).

There is no double jeopardy in the filing of the information for homicide in Criminal Case No. 17587 and in the filing of the information for illegal possession of firearms and ammunition used in the commission of homicide in Criminal Case No. 19350 for the simple reason that the first jeopardy had not yet attached. It is well-settled that the mere filing of two informations or complaints charging the same offense does not yet afford the accused in

those cases the occasion to complain that he is being placed in jeopardy twice for the same offense, for the simple reason that the primary basis of the defense of double jeopardy is that the accused has already been convicted or acquitted in the first case or that the same has been terminated without his express consent. It is the conviction or jeopardy of being convicted or the acquittal of the accused or termination of the case that bars further prosecution of the same offense or 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. (*Bulaong v. People*, 17 SCRA 746 [1966]; *Silvestre v. Military Commission* No. 21, 82 SCRA 10 [1978]; *Buscayno v. Military Commission* Nos. 1, 2, 6 and 25, *supra*; *People v. Milflores*, 115 SCRA 570 [1982]). (Rule 117, Sec. 2(h), Rules of Court)

The case of *Lazaro v. People* (112 SCRA 430 [1982]) cited by the Solicitor General, in his comment on the petition, is not applicable to the case at bar primarily because the petitioner in the cited case was already convicted in the Military Court of illegal possession of unlicensed firearm used in committing parricide and the penalty of death had already been imposed upon her, when the parricide case was set for trial in the Circuit Criminal Court. Hence, it is obvious that in said case, legal jeopardy had already attached.

For the same reason, the cases of *People v. Francisco Diaz* (94 Phil. 714 [1950]) and *Yap v. Lutero* (105 Phil. 1307 [1959]), cited by the petitioner are not applicable, for in both, all the requisites for the defense of double jeopardy are present.

In *People v. Diaz* a second information charging Diaz with damage to property thru reckless imprudence was filed in the Court of First Instance of Rizal after the first case accusing Diaz of violation of Section 52 of Act 3992 known as the Revised Motor Vehicle Law was dismissed by the Municipal Court of Pasay City for failure of the government to prosecute.

While in the *Yap* case, the petitioner was charged in the Municipal Court of Iloilo City, with reckless driving in violation of a city ordinance and later, charged again in the same court, with serious physical injuries through reckless imprudence. Petitioner moved to quash the latter information on the ground of double jeopardy which was denied by respondent Judge. Meanwhile, he was acquitted in the first case. The issue in the case was whether or not under the second information petitioner could, if he failed to plead double jeopardy, be convicted of the same act charged in the first case in which he had already been acquitted. In ruling in the affirmative, the Court held that under certain conditions, one offense may include the other, and accordingly, once placed in jeopardy for one, the plea of double jeopardy may be in order as regards the other, as in the *Diaz* case.

As for the other grounds for a motion to quash raised by the petitioner, there is no basis for the claim that the information in Criminal Case No. 19350 charging petitioner with alleged possession of firearms and ammunitions used in the commission of homicide as defined and punished under Section 1 of P.D. 1866 charges more than one offense. In the same *Lazaro* case (*supra*) involving almost identical circumstances to the case at bar except as to the attachment of jeopardy in the former, the Court in ruling that there is only one offense charged, held that parricide is an essential ingredient of qualified illegal possession of firearm which is punishable by death. Similarly, in the instant case the offense of illegal possession of firearms is qualified by its being used to commit homicide and subjects petitioner if found guilty thereof to death penalty which under the new Constitution has been reduced to reclusion perpetua. Thus, the allegation in the information that the unlicensed firearm was used in the commission of the crime of homicide against the person of one Generoso Miranda III does not charge petitioner in the same information with the separate offense of homicide, but simply describes the mode or manner by which the violation of Section 1 of P.D. 1866 was committed.

Neither is there a basis for petitioner's claim that his criminal liability for the offense charged in the information

in Criminal Case No. 19350 has been extinguished.

Article 89 of the Revised Penal Code enumerates the causes that totally extinguish criminal liability as follows: (1) the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment; (2) service of the sentence; (3) amnesty, which completely extinguishes the penalty and all its effects; (4) absolute pardon; (5) prescription of the crime; (6) prescription of the penalty; (7) the marriage of the offended woman, as provided in Article 344 of the Code.

In the case at bar, it is evident that criminal liability in the homicide case has not been extinguished under any of the above-mentioned causes. That petitioner entered a plea of not guilty to the offense charged in Criminal Case No. 17587 which alleged that he committed homicide with the use of a licensed firearm is immaterial as such circumstance does not operate to extinguish his criminal liability for the offense charged in Criminal Case No. 19350.

It appears from the records that Criminal Case No. 19350 was filed in the same branch of the same court (Rollo, p. 3). Hence, to protect the right of the accused to speedy justice while at the same time affording the State the opportunity to prosecute and convict, a joint hearing of the two cases could be conducted so that the accused can be tried as if under one information.

PREMISES CONSIDERED, (a) the petition is hereby DISMISSED, for lack of merit; (b) the restraining order issued by the Court on April 23, 1986 is permanently lifted; and (c) Criminal Cases Nos. 17850 and 19350 are consolidated and a joint hearing thereon is ordered conducted.

This decision shall be immediately executory.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

* Hon. Ricardo J. Francisco, Judge of the Regional Trial Court, National Capital Judicial Region, Makati, Metro Manila, Branch CXXXVI.

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