

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. FELIX RUBIN, DEFENDANT AND APPELLEE.*G.R. No. 8797. December 14, 1914*

Ponente: ARAULLO, J.

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On November 9, 1913, an information was filed by the provincial fiscal of Occidental Negros, in the Court of First Instance of the said province, charging Felix Rubin with the crime of lesiones, in violation of article 418 of the Penal Code, for assault and battery against the Chinaman Yap Sayco, alias Sinqui, and the infliction upon him of wounds which prevented him from engaging in his usual occupation and required medical attendance for a period of eight days. Upon arraignment, the defendant demurred on the grounds that a complaint had previously been filed against him in the justice of the peace court of Kabankalan of the said province, for the same criminal offense; that he had been tried and sentenced by the said justice of the peace court; that, as no appeal was taken from the said judgment, either by the injured party or by the Government, the same had become final; and that, therefore, the Court of First Instance could not, pursuant to the provisions of section 26 of General Orders No. 58, try him again for the same offense. Upon these grounds he prayed that the new complaint filed against him be dismissed.

After hearing the provincial fiscal, who asked that the demurrer be overruled because the facts therein alleged might serve as a defense but not as grounds for a demurrer, and because, though such allegations might be true, they did not constitute jeopardy, the Court of First Instance, by order of December 10, 1912, and upon the grounds that the accused had been placed in jeopardy and that the judgment of the justice of the peace court had become *res adjudicata*, sustained the demurrer, dismissed the case with costs *de officio*, and ordered the cancellation of the bail bond given by the accused.

The said order having been appealed from by the provincial fiscal, the case was brought before this court for a decision upon the appeal, by virtue of mandamus proceedings instituted by the Attorney-General against the trial judge.

In the first place, the fact that an accused person has been placed in jeopardy is not one of the instances in which section 21 of General Orders No. 58 authorizes the presentation of a demurrer, or, rather, the fact cannot be set up as a ground for a demurrer to the complaint or information, because it is not included among the instances specified in said section.

Once in jeopardy is an answer, or, rather, according to section 24 of that General Order, it is a plea that may be set up by the accused with or without the plea of not guilty, and, pursuant to the same section, may be made in a case where the accused has presented one or more of the demurrers specified in the said section 21, and such demurrers have been overruled by the court and the accused is consequently required to plead. The plea of jeopardy must not be confused with the demurrer: the latter must be based upon facts or allegations which appear in the complaint or information itself and its presentation raises a question of law; while the former is established

on facts which constitute a ground of defense for the accused and which must be proven.

Therefore, the plea of jeopardy made by the accused in this case in the guise of a demurrer to the complaint filed against him was erroneously and improperly sustained by the lower court.

In the second place, the record shows in fact that on September 23, 1912, a complaint was filed in the justice of the peace court of Kabankalan by the Chinaman Yap Sayco, alias Sinqui, against the defendant herein, Felix Rubin, by virtue whereof he was sentenced by the said justice of the peace court of Kabankalan, on the 30th of the same month, to pay a fine of 15 pesetas as guilty of a misdemeanor against the person, in accordance with the provisions of article 589 of the Penal Code; but in that complaint the said Felix Rubin was charged with the crime of lesiones menos graves, defined and punished, so the complaint says, by article 418 of the Penal Code, for having maltreated the complainant and inflicted upon him injuries which prevented him from engaging in his habitual labors for at least eight days and made medical attendance necessary for the same period.

In order that a defendant may legally be placed in jeopardy, one of the necessary and indispensable conditions is that he should have been tried before a competent court.

As article 418 of the Penal Code provides for and punishes the crime of lesiones menos graves by the penalty of arresto mayor, or by destierro and a fine of from 325 to 3,250 pesetas, it is evident that the justice of the peace court of Kabankalan lacked jurisdiction to hear the complaint filed therein by the Chinaman Yap Sayco against Felix Rubin and to try him under that complaint, because justice of the peace courts only have jurisdiction in criminal cases to try parties charged with misdemeanors and infractions of municipal ordinances, arising within the municipality, in which the penalty provided by law does not exceed six months' imprisonment or a fine of P200 (section 4 of Act No. 2041), and although the penalty of arresto mayor does not exceed six months' imprisonment, said article 418 of the Penal Code also provides, as a penalty that may be imposed for the crime of lesiones menos graves, instead of that of arresto mayor, the penalty of destierro and a fine not exceeding 8,250 pesetas, that is, P650, neither of which penalties can be imposed by justices of the peace, pursuant to section 4 of Act No. 2041 and section 2 of Act No. 2131.

As the defendant was not tried by a court of competent jurisdiction, when he was arraigned before the justice of the peace court of Kabankalan upon the complaint therein filed against him by the Chinaman Yap Sayco; on September 23, 1913, he has not legally been placed in jeopardy in the present case.

We therefore set aside the order appealed from and the dismissal of the case therein made, together with all the other mandates therein contained, to the end that the case be proceeded with in accordance with the law.

Arellano, C. J., Torres, Johnson, Carson, and Moreland, JJ., concur.

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