

ANTONIO A. LAMERA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 93475. June 05, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

At around 8:30 o'clock in the evening of 14 March 1985, along Urbano Street, Pasig, Metro Manila, an owner-type jeep, then driven by petitioner, allegedly "hit and bumped" a tricycle then driven by Ernesto Reyes resulting in damage to the tricycle and injuries to Ernesto Reyes and Paulino Gonzal.[1]

As a consequence thereof, two informations were filed against petitioner: (a) an Information for reckless imprudence resulting in damage to property with multiple physical injuries under Article 365 of the Revised Penal Code reading as follows:

"That on or about the 14th day of March, 1985, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court the above-named accused, being then the driver and person in charge of an Owner Jeep Toyota bearing Plate No. NCC-313 UV Pilipinas '85, and without due regard to traffic laws, rules and regulations and without taking the necessary care and precautions to avoid damage to property and injuries to person(sic), did, then and there willfully, unlawfully and feloniously drive, manage and opefate (sic) said Owner Jeep in a careless, reckless, negligent and imprudent manner, as a result of which said motor vehicle being then driven and operated by him, hit and bumped a tricycle SUZUKI (sic) bearing Plate No. NA-6575 MC Pilipinas '85, driven by Ernesto Reyes y Esguerra and owned by Ernesto Antonel, thereby causing damage to the Suzuki tricycle in the amount of P7,845.00; and due to the impact the driver and the passengers of a (sic) tricycle Suzuki, sustained physical injuries which required medical attendance as stated opposite their respective names to wit:

1. Ernesto Reyes - More than thirty (30) days
2. Paulino Gonzal - More than thirty (30) days
3. Patricio Quitalig - Less than nine (9) days

and incapacitated them from performing their customary labor for the same period of time."

which was filed on 10 September 1985 with the Regional Trial Court of Pasig, Metro Manila and docketed therein as Criminal Case No. 64294 and assigned to Branch 68 thereof; and (b) an Information for violation of paragraph 2 of Article 275 of the Revised Penal Code on Abandonment of one's victim reading as follows:

"That on or about the 14th day of March, 1985, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, being the driver of an owner-type jeep with Plate No. NCC-313 UV Pil. '85 which hit and bumped a motorized tricycle with Plate No. NA-6575-MC '85 driven by Ernesto Reyes and as a consequence of which Paulino Gonzal and Ernesto Reyes sustained physical injuries and lost consciousness, did then and there wilfully, unlawfully and feloniously abandoned (sic) them and failed (sic) to help or render assistance to them, without justifiable reason."

which was filed on 14 November 1985 with the Metropolitan Trial Court of Pasig (Branch 71) and was docketed as Criminal Case No. 2793.

On 29 June 1987 the Metropolitan Trial Court of Pasig rendered its decision in Criminal Case No. 2793 finding the petitioner guilty of the crime of Abandonment of one's victim as defined and penalized under paragraph 2 of Article 275 of the Revised Penal Code and sentenced him to suffer imprisonment for a period of six (6) months of arresto mayor and to pay the costs.

Petitioner appealed from said Decision to the Regional Trial Court of Pasig, Metro Manila which docketed the appeal as Criminal Case No. 70648.

In the meantime, on 27 April 1989, petitioner was arraigned in Criminal Case No. 64294 before Branch 68 of the Regional Trial Court of Pasig. He entered a plea of not guilty.[2]

Petitioner's appeal, Criminal Case No. 70648, was decided on 31 July 1989. The court affirmed with modification the decision appealed from. The modification consisted merely in the reduction of the penalty of imprisonment from six (6) to two (2) months.[3]

Still unsatisfied with the new verdict, petitioner filed with the Court of Appeals on 31 August 1989 a petition for its review, docketed as C.A.-G.R. CR No. 07351, assigning therein the following alleged errors:

"I

THE RESPONDENT HON. JUDGE (SIC) ERRED IN AFFIRMING THE FINDING OF THE METROPOLITAN TRIAL COURT OF PASIG, METRO MANILA, THAT 'THE TRICYCLE DRIVEN BY ERNESTO REYES WAS BUMPED BY THE JEEP DRIVEN BY THE PETITIONER.'

II

THE RESPONDENT HON. JUDGE ERRED IN AFFIRMING THE FINDING OF THE METROPOLITAN TRIAL COURT OF PASIG, METRO MANILA, THAT THE PETITIONER, 'LOSING PRESENCE OF MIND AS THE BLOODY SCENARIO WOULD INDUCE IN THE AVERAGE MOTORIST, HE (SIC) OPTED, PERHAPS INSTINCTIVELY TO HIDE IDENTITY, APPREHENSIVE MAY BE OVER THE ENORMITY OF HIS MISDEMEANOR AND THUS DECIDED (SIC) TO WITHHOLD ASSISTANCE TO HIS FALLEN VICTIMS.'

III

THE RESPONDENT HON. JUDGE ERRED IN DECLARING THAT, 'AS THE PRESIDING JUDGE OF THE METROPOLITAN TRIAL COURT HAD THE OPPORTUNITY TO OBSERVE THE DEMEANOR OF THE WITNESSES, IT IS DIFFICULT TO DISMISS THE FINDINGS OF FACT OF SAID COURT GIVING CREDENCE TO PROSECUTION'S WITNESSES' FOR NOT BEING (SIC) SUPPORTED BY SUBSTANTIAL EVIDENCE AND CLEARLY THE LAW AND JURISPRUDENCE.

IV

THE RESPONDENT HON. JUDGE (SIC) ERRED IN AFFIRMING THE JUDGMENT OF THE METROPOLITAN TRIAL COURT OF PASIG, METRO MANILA, FINDING THE PETITIONER GUILTY OF THE CRIME OF ABANDONMENT UNDER ART. 275, PAR. 2, OF THE REVISED PENAL CODE AND SENTENCING HIM TO SUFFER THE PENALTY OF TWO (2) MONTHS AND ONE (1) DAY OF ARRESTO MAYOR AND TO PAY THE COSTS.

V

THE RESPONDENT HON. JUDGE ERRED IN NOT DECLARING NULL AND VOID ALL THE PROCEEDINGS IN THE METROPOLITAN TRIAL COURT OF PASIG AND ALL THE PROCEEDINGS BEFORE IT.”[4]

The Court of Appeals found no merit in the petition and dismissed it in its Decision promulgated on 9 November 1989.[5] Pertinently, it ruled:

"We cannot sustain the contention of the petitioner that par. 2 of Art. 275 of the Revised Penal Code does not apply to him since the evidence allegedly shows that it was Ernesto Reyes, the tricycle driver, who negligently caused the accident. Petitioner misses the import of the provision. The provision punishes the failure to help or render assistance to another whom the offender accidentally wounded or injured. Accidental means that which happens by chance or fortuitously, without intention and design and which is unexpected, unusual and unforeseen (Moreno, Phil. Law Dictionary, 1972 ed., p. 7 citing *De La Cruz v. Capital Insurance & Surety Co.*, 17 SCRA 559). Consequently, it is enough to show that petitioner accidentally injured the passengers of the tricycle and failed to help or render them assistance. There is no need to prove that petitioner was negligent and that it was his negligence that caused the injury. If the factor of criminal negligence is involved, Article 365 of the Revised Penal Code will come into play. The last paragraph of Art. 365 provides that 'the penalty next higher in degree to those provided for in this article shall be imposed upon the offender who fails to lend on the spot to the injured party such help as may be in his hands to give.' Petitioner was charged under par. 2 of Art. 275 not under Art. 365 of the Revised Penal Code."

His motion to reconsider the above decision wherein he strongly urged for reconsideration because:

x x x

"... We find it hard to visualize that the accused may be penalized twice for an 'accident' and another for 'recklessness', both of which arose from the same act. We submit that there could not be a valid charge under Article 275, when, as in the case at bar, there is already a pending charge for reckless imprudence under Article 365 of the Revised Penal Code. It is our view that the charge under Article 275 presupposes that there is no other charge for reckless imprudence."

having been denied in the Resolution of 17 May 1990,[6] petitioner filed the instant petition.[7]

Before Us he raises this sole issue:

"Could there be a valid charge for alleged abandonment under Article 275, par. 2 of the Revised Penal Code which provides as basis for prosecution, '2. Anyone who shall fail to help another whom he has accidentally wounded or injured' when, he was previously charged with 'reckless imprudence resulting in damage to property with multiple physical injuries' under Article 265 (sic) of the Revised Penal Code?"[8]

He maintains the negative view and supports it with the argument that "[f]or the same act, that is, the vehicular collision, one could not be indicted in two separate informations at the same time based on 'accident' and 'recklessness', for there is a world of difference between 'reckless imprudence' and 'accidentally'." As expanded by him:

"x x x since petitioner is facing a criminal charge for reckless imprudence pending before Branch 68 of the Regional Trial Court of Pasig, Metro Manila x x x which offense carries heavier penalties under Article 365 of the Revised Penal Code, he could no longer be charged under Article 275, par. 2, for abandonment x x x for having allegedly failed 'to help or render assistance to another whom he has accidentally wounded or injured'."[9]

In Our resolution of 1 August 1990 We required respondents to comment on the petition.

In its Comment filed on 10 September 1990, respondent People of the Philippines, through the Office of the Solicitor General, putting the issue squarely, thus:

"x x x whether or not prosecution for negligence under Article 365 of the Revised Penal Code is a bar to prosecution for abandonment under Article 275 of the same Code."

answers it in the negative because said Articles penalize different and distinct offenses. The rule on double jeopardy, which petitioner has, in effect, invoked, does not, therefore, apply pursuant to existing jurisprudence. Hence, the petition should be dismissed for lack of merit.

In Our resolution of 13 March 1991 We gave due course to the petition and required the parties to submit simultaneously their respective memoranda. Petitioner submitted his on 22 April 1991[10] while the People moved that its Comment be considered as its memorandum.

We agree with the Solicitor General that the petitioner is actually invoking his right against double jeopardy. He, however, failed to directly and categorically state it in his petition or deliberately obscured it behind a suggestion of possible resultant absurdity of the two informations. The reason seems obvious. He forgot to raise squarely that issue in the three courts below. In any case, to do so would have been a futile exercise. When he was arraigned, tried, and convicted in the Metropolitan Trial Court of Pasig in Criminal Case No. 2793, he was not yet arraigned in Criminal Case No. 64294 before the Regional Trial Court. As stated above, the judgment of conviction in the former was rendered on 29 June 1987, while his arraignment in the latter took place only on 27 April 1989. Among the conditions for double jeopardy to attach is that the accused must have been arraigned in the previous case.[11] In *People vs. Bocar*, supra., We ruled:

"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."

Moreover, he is charged for two separate offenses under the Revised Penal Code. In *People vs. Doriquez*,[12] We held:

"It is a cardinal rule that the protection against double jeopardy may be invoked only for the same offense or identical offenses. A simple act may offend against two (or more) entirely distinct and unrelated provisions of law, and if one provision requires proof of an additional fact or element which the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other. Phrased otherwise, where two different laws (or articles of the same code) defines two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other." [13]

In *People vs. Bacolod*, supra., from the act of firing a shot from a sub-machine gun which caused public panic among the people present and physical injuries to one, informations for physical injuries through reckless imprudence and for serious public disturbance were filed. Accused pleaded guilty and was convicted in the first and he sought to dismiss the second on the ground of double jeopardy. We ruled:

"The protection against double jeopardy is only for the same offense. A simple act may be an offense against two different provisions of law and if one provision requires proof of an additional fact which the other does not, an acquittal or conviction under one does not bar prosecution under the other."

Since the informations were for separate offenses - the first against a person and the second against public peace and order - one cannot be pleaded as a bar to the other under the rule on double jeopardy.

The two informations filed against petitioner are clearly for separate offenses. The first, Criminal Case No. 64294,

for reckless imprudence (Article 365), falls under the sole chapter (Criminal Negligence) of Title Fourteen (Quasi Offenses) of Book Two of the Revised Penal Code. The second, Criminal Case No. 2793, for Abandonment of one's victim (par. 2, Art. 275), falls under Chapter Two (Crimes Against Security) of Title Nine (Crimes Against Personal Liberty and Security) of Book Two of the same Code.

Quasi offenses under Article 365 are committed by means of culpa. Crimes against Security are committed by means of dolo.[14]

Moreover, in Article 365, failure to lend help to one's victim is neither an offense by itself nor an element of the offense therein penalized. Its presence merely increases the penalty by one degree. The last paragraph of the Article specifically provides:

"The penalty next higher in degree to those provided for in this article shall be imposed upon the offender who fails to lend on the spot to the injured parties such help as may be in hand to give."

Such being the case, it must be specifically alleged in the information. The information against petitioner in this case does not so allege.

Upon the other hand, failure to help or render assistance to another whom one has accidentally wounded or injured is an offense under paragraph 2 of Article 275 of the same code which reads:

"The penalty of arresto mayor shall be imposed upon:

x x x

2. Anyone who shall fail to help or render assistance to another whom he has accidentally wounded or injured."

The foregoing distinctions satisfy the guidelines We made in *People vs. Relova, et al.*, [15] wherein We held:

"It is perhaps important to note that the rule limiting the constitutional protection against double jeopardy to a subsequent prosecution for the same offense is not to be understood with absolute literalness. The identity of offenses that must be shown need not be absolute identity: the first and second offenses may be regarded as the 'same offense' where the second offense necessarily includes the first offense or is necessarily included in such first offense or where the second offense is an attempt to commit the first or a frustration thereof. Thus, for the constitutional plea of double jeopardy to be available, not all the technical elements constituting the first offense need be present in the technical definition of the second offense. The law here seeks to prevent harassment of an accused person by multiple prosecutions for offenses which though different from one another are nonetheless each constituted by a common set or overlapping sets of technical elements."

Undoubtedly then, no constitutional, statutory or procedural obstacle barred the filing of the two informations against petitioner.

WHEREFORE, for lack of merit, the Petition is DENIED without pronouncements as to costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Rollo, 5.

[2] Rollo, 6.

[3] Id., 6-9.

[4] Rollo, 18-19.

[5] Rollo, 14-21.

[6] Rollo, 23.

[7] Id., 5-12.

[8] Id., 9-10.

[9] Id., 11.

[10] Rollo, 58-61.

[11] People vs. Ilagan, 58 Phil. 851; People vs. Consulta, 70 SCRA 277; Andres vs. Cacdac, 113 SCRA 216; People vs. Bocar, et al., 132 SCRA 166; Gaspar vs. Sandiganbayan, 144 SCRA 415.

[12] 24 SCRA 163, 171.

[13] Citing People vs. Bacolod, 89 Phil. 621; People vs. Capurro, 7 Phil. 24; People vs. Alvarez, 45 Phil. 472.

[14] Article 3, Revised Penal Code.

[15] 148 SCRA 292, 310.

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