

PEOPLE OF THE PHILIPPINES AND SPS. AMADO AND TERESA RUBITE, PETITIONERS, VS. HON. FILOMENO A. VERGARA, PRESIDING JUDGE, RTC. BR. 51, PALAWAN, AND LEONARDO SALDE, SR., LEONARDO S...

G.R. Nos. 101557-58. April 28, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Jeopardy is the peril in which an accused is placed when put on trial before a court of competent jurisdiction upon an indictment or information which is sufficient in form and substance to sustain a conviction. No person can be twice put in this peril for the same offense. The Constitution prohibits it.[1] *Nemo debet bin puniri pro uno delicto*. This is the defense raised by accused-private respondents after respondent Judge, upon motion of the Provincial Fiscal, ordered without notice and hearing the dismissal of Crim. Cases Nos. 7396 and 7397 both for frustrated murder, which thereafter were reinstated upon initiative of the Secretary of Justice and docketed anew as Crim. Cases Nos. 8572 and 8573.

It appears that on 7 April 1988, 3rd Asst. Provincial Fiscal Luis E. Estiller of Puerto Princesa City filed Crim. Cases Nos. 7396 and 7397 for frustrated murder against accused Leonardo Salde, Sr., Leonardo Salde, Jr., Floresita Salde, Gloria Salde-Panaguaiton and Jojeta Panaguaiton for allegedly conspiring together in attacking and taking turns in assaulting complainants, the spouses Teresa and Amado Rubite, by throwing stones at Amado Rubite and hacking him with a bladed weapon, hitting him on the left fronto-parietal area which would have caused his death in Crim. Case No. 8572 (G.R. No. 101557), and by striking Teresa Rubite with wood and stones and hacking her with a bolo which would have caused her death in Crim. Case No. 8573 (G.R. No. 101558).

On 3 June 1988, accused Leonardo Salde, Sr., Leonardo Salde, Jr., Floresita Salde and Gloria Salde-Panaguaiton were arraigned. They all pleaded "not guilty." On 2 August 1988, accused Jojeta Panaguaiton was also arraigned and likewise entered a plea of "not guilty."

On 19 September 1988, when the cases were initially called for trial, the Prosecuting Fiscal together with counsel for accused jointly moved for the suspension of the hearing pending the outcome of the motion filed by the accused for reinvestigation of the cases against them, which Provincial Fiscal Eustaquio Z. Gacott, Jr., later resolved in their favor.

On 12 December 1988, counsel for the offended parties gave notice to the Provincial Fiscal of their intention to appeal the latter's resolution to the Department of Justice. On 2 February 1989, pending appeal to the Department of Justice, Provincial Fiscal Gacott, Jr., moved for the dismissal of the cases on the ground that the reinvestigation disclosed that petitioner-spouses Amado and Teresa Rubite were the real aggressors and that the accused only acted in self-defense.

On 9 February 1989, acting on the motion of the Provincial Fiscal, the Regional Trial Court of Palawan, Br. 52,[2]

ordered the dismissal of Crim. Cases Nos. 7396 and 7397.

Meanwhile, on 1 March 1990, the Secretary of Justice ordered the Provincial Prosecutor to refile the Informations. Hence, on 6 April 1990, two (2) new Informations for frustrated murder against the same accused were filed by Acting Provincial Prosecutor Clarito A. Demaala, docketed as Crim. Cases Nos. 8572 and 8573.

On 13 May 1991, after pleading "not guilty" to the new Informations, the accused moved to quash on the ground of double jeopardy, which was opposed by the Office of the Provincial Prosecutor. On 10 July 1991, the trial court granted the motion and dismissed Crim. Cases Nos. 8572 and 8573. The motion to reconsider the order of 10 July 1991 filed by Acting Provincial Prosecutor Demaala was denied on 16 August 1991. Hence, this petition for certiorari filed by private petitioners Amado and Teresa Rubite, complainants in the court below.

Petitioners contend that the filing of the two (2) new Informations did not place accused-private respondents in double jeopardy since the dismissal of the previous cases was made with the latter's express consent, which can be equated with their motion for reinvestigation of the cases, dismissal of the cases being their ultimate intention in moving for reinvestigation. It is the position of petitioners that when the dismissal is with the express consent of the accused, such dismissal cannot be the basis of a claim of double jeopardy.

Petitioners further submit that the dismissal of the previous cases is null and void as the motion to dismiss filed by the Provincial Prosecutor which led to the dismissal of the cases did not contain a notice of hearing; hence, it was then a "mere scrap of paper" which the lower court should not even have entertained.

Finally, petitioners maintain that where the prosecution has been deprived of a fair opportunity to prosecute and prove its case, its right to due process is violated.

In this regard, the Solicitor General, interestingly, concurs with petitioners. Instead of filing a Comment as We required him to do, he filed a Manifestation, citing *Gumabon v. Dir. of the Bureau of Prisons*,^[3] and submitting that "[c]onsidering that the Order of respondent judge dated February 9, 1989 favorably granting the Motion to Dismiss without notice and hearing constituted a violation of basic constitutional rights, the respondent court was consequently ousted of its jurisdiction when its Order violated the right of the prosecution to due process."^[4] In effect, the first jeopardy never terminated as the respondent trial court was not competent to issue the 9 February 1989 Order.

While the Solicitor General concedes that "[w]hat should have been done by the new Provincial Prosecutor was to refile the Informations in Crim. Cases Nos. 7396 and 7397 and not to file new Informations which were docketed as Crim. Cases Nos. 8572 and 8573,"^[5] he nevertheless avers that the filing of the new Informations amounted merely to a continuation of the first jeopardy and did not expose the private respondents to a second jeopardy. *People v. Bocar*^[6] laid down the requisites of a valid defense of double jeopardy: (a) a first jeopardy must have attached prior to the second; (b) the first jeopardy must have been validly terminated; and, (c) the second jeopardy must be for the same offense as that in the first. Consequently, there being no valid termination of the first jeopardy, the defense of double jeopardy must fail.

Private respondents on the other hand, invoking the now repealed Sec. 9, Rule 117, of the Rules of Court,^[7] asseverate that the "rules provide and speak of EXPRESS CONSENT" which cannot be equated with intention. Hence, while they may have intended to have their cases dismissed upon moving for reinvestigation, they never gave their express consent to the dismissal of the cases. In fact, they never sought the dismissal of the charges against them.

Furthermore, private respondents, in response to the allegation that the orders of respondent judge dismissing the first two cases were null and void, argue that if indeed the dismissal orders were null and void, petitioners should

not have waited for the filing of the new Informations and their subsequent quashal. They should have immediately challenged the dismissal order. After sleeping on their rights, they cannot belatedly say that they were denied due process.

The cases at bar raise two (2) fundamental issues: (a) whether private respondents gave their express consent to the dismissal of the original Informations; and, (b) whether the first jeopardy was invalidly terminated.

We answer both in the negative. Then, double jeopardy lies.

The right against double jeopardy prohibits any subsequent prosecution of any person for a crime of which he has previously been acquitted or convicted. The objective is to set the effects of the first prosecution forever at rest, assuring the accused that he shall not thereafter be subjected to the peril and anxiety of a second charge against him for the same offense.[8] This Court, as early as ninety (90) years back, in *Julia v. Sotto*,[9] said –

"Without the safeguard this article 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 dismissed by the court and whenever he might see fit, subject to no other limitation or restriction than his own will and pleasure. The accused would never be free from the cruel and constant menace of a never-ending charge, which the malice of the complaining witness might hold indefinitely suspended over his head x x x x"

Que v. Cosico[10] enumerates the requisites which must concur for double jeopardy to attach: (a) a valid complaint or information; (b) a court of competent jurisdiction; (c) the accused has pleaded to the charge; and, (d) the accused has been convicted or acquitted or the case dismissed or terminated without the express consent of the accused.[11]

The concurrence of all these circumstances constitutes a bar to a second prosecution for the same offense, an attempt to commit the said offense, a frustration of the said offense, or any offense which necessarily includes or is necessarily included in the first offense charged.[12]

In the cases before Us, it is undisputed that valid Informations for frustrated murder, i.e., *Crim. Cases Nos. 7396 and 7397* were filed against private respondents before the Regional Trial Court of Palawan, a court of competent jurisdiction. It is likewise admitted that private respondents, after being properly arraigned, entered a plea of not guilty. The only question then remaining is whether the cases against them were dismissed with their express consent.

Express consent has been defined as that which is directly given either viva voce or in writing. It is a positive, direct, unequivocal consent requiring no inference or implication to supply its meaning.[13] This is hardly what private respondents gave. What they did was merely to move for reinvestigation of the case before the prosecutor. To equate this with express consent of the accused to the dismissal of the case in the lower court is to strain the meaning of "express consent" too far. Simply, there was no express consent of the accused when the prosecutor moved for the dismissal of the original Informations.

The Solicitor General then claims that there can be no valid defense of double jeopardy since one of the requisites for its valid defense, i.e., that there be a valid termination of the first jeopardy, is unavailing. He further argues that the motion to dismiss filed by the public prosecutor should not have been entertained, much less granted, since there was no notice of hearing, nor was it actually set for hearing.

We do not agree.

While it may be true that, as a general rule, all motions should contain a notice of hearing under Rule 15 of the Rules of Court, these cases present an unusual situation where the motion to dismiss filed negates the necessity of

a hearing. Here, it was the public prosecutor himself who after instituting Crim. Cases Nos. 7396 and 7397 filed a motion to dismiss on the ground that after a reinvestigation it was found that –

“x x x the evidence in these cases clearly tilts in favor of both accused. The spouses Amado and Teresa Rubite were the aggressors and the accused Salde, Sr. and his co-accused merely defended themselves from the attack of the Rubites. Consequently, it would be unfair, arbitrary and unjustified to prosecute the accused in the above-entitled case.”[14]

Besides, who should invoke "lack of notice" but the party deprived of due notice or due process. And when the Provincial Prosecutor moved to dismiss on the ground that the complaining witnesses were instead the aggressors and the accused simply acted in self-defense, would the accused have opposed the motion as to require that he be first notified before the cases against him be dismissed?

Section 5 of Rule 110 of the New Rules of Criminal Procedure expressly provides that "[a]ll criminal actions either commenced by complaint or by information shall be under the direction and control of the fiscal." It must be remembered that as public prosecutor he is the –

"representative not of the ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.”[15]

Hence, the fiscal or public prosecutor always assumes and retains full direction and control of the prosecution.[16] The institution of a criminal action depends upon his sound discretion. He has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court;[17] whether a prima facie case exists to sustain the filing of an Information;[18] whether to include in the charge those who appear to be responsible for the crime;[19] whether to present such evidence which he may consider necessary;[20] whether to call such witnesses he may consider material;[21] whether to move for dismissal of the case for insufficiency of evidence.[22] As in the case at bar, he may move for the dismissal of the case if he believes that there is no cause of action to sustain its prosecution, which was what in fact he did after being convinced that it would be "unfair, arbitrary and unjustified to prosecute the accused" who were really the victims, as the reinvestigation showed.

Since it was the prosecuting officer who instituted the cases, and who thereafter moved for their dismissal, a hearing on his motion to dismiss was not necessary at all. It is axiomatic that a hearing is necessary only in cases of contentious motions. The motion filed in this case has ceased to be contentious. Definitely, it would be to his best interest if the accused did not oppose the motion. The private complainants, on the other hand, are precluded from questioning the discretion of the fiscal in moving for the dismissal of the criminal action. Hence, a hearing on the motion to dismiss would be useless and futile.

On the other hand, the order of the court granting the motion to dismiss, notwithstanding the absence of a notice and hearing on the motion, cannot be challenged in this petition for certiorari which assails the dismissal of the two (2) cases on the ground of double jeopardy. Petitioners can no longer question the dismissal of the previous cases as the order has already become final there being no appeal therefrom.

It has been repeatedly held that once an Information is filed with the court, it acquires jurisdiction over the case, and the consequent discretion to dismiss it. While the prosecutor retains full control over the prosecution, he loses jurisdiction over the entire proceedings. Hence, what petitioners should have done was to appeal the dismissal of the cases on the ground that the said motion failed to include a notice of hearing, and should not have waited for the dismissal of the subsequent cases on the ground of double jeopardy, and thereafter question the first dismissal,

which by then had already become final, erroneous though it may be.

The order of the court granting the motion to dismiss despite absence of a notice of hearing, or proof of service thereof, is merely an irregularity in the proceedings. It cannot deprive a competent court of jurisdiction over the case. The court still retains its authority to pass on the merits of the motion. The remedy of the aggrieved party in such cases is either to have the order set aside or the irregularity otherwise cured by the court which dismissed the complaint,[23] or to appeal from the dismissal order, and not certiorari.

It must be stressed that after a court has obtained jurisdiction over the case, the failure to give notice of a subsequent step in the proceedings does not deprive the court of jurisdiction. If substantial injury results from failure of notice and complaint is duly made thereof, the act of the court may be held to be erroneous and will be corrected in the proper proceeding, but it is not an act without or in excess of jurisdiction and is not void.[24] There is a great difference in the results which follow the failure to give the notice, which is necessary to confer on the court jurisdiction over the person and the subject matter of the action, and that which follows a failure to give notice of a step taken after the court has obtained such jurisdiction and is proceeding with the action.[25]

Hence, the conditions for a valid defense of double jeopardy, i.e., (a) a first jeopardy must have attached prior to the second; (b) the first jeopardy must have been validly terminated; and, (c) the second jeopardy must be for the same offense as that of the first,[26] all being present in these cases, the defense of double jeopardy must prevail.

WHEREFORE, finding no abuse of discretion, much less grave, committed by public respondent, and for lack of merit, the instant petition is DISMISSED.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

[1] Sec. 21, Art. III, 1987 Constitution.

[2] Judge Filomeno A. Vergara, presiding.

[3] No. L-30026, 30 January 1971, 37 SCRA 420.

[4] Rollo, p. 86.

[5] Id., pp. 86-87.

[6] No. L-27935, 16 August 1985, 138 SCRA 166.

[7] Rules 110 to 127 of the Rules of Court have been superseded by the Revised Rules on Criminal Procedure which was promulgated by the Supreme Court on 22 November 1984 and took effect on 1 January 1985.

[8] Cruz, Isagani A., Constitutional Law, 1987 Ed., pp. 314-315.

[9] 2 Phil. 247, 252-253 (1903).

[10] G.R. No. 81861, 8 September 1989, 177 SCRA 410.

[11] *People v. Ylagan*, 58 Phil. 851 (1933), which the Solicitor General cites, does not give the fourth requisite which *Que v. Cosico*, supra, prescribes. In its stead, *People v. Ylagan* requires that a defendant should have pleaded to the complaint or information, its third requisite being that accused was already arraigned.

[12] Regalado, Florenz D., Remedial Law Compendium, Vol. II. 5th Rev. Ed., 1988, pp. 322-323.

[13] 15A C.J.S. 576.

[14] Par. 3, Motion to Dismiss; Annex "F", Petition; Rollo, p. 27.

[15] Suarez v. Platon, 69 Phil. 556, 564-565 (1940), quoting Mr. Justice Sutherland of the U.S. Supreme Court.

[16] Caes v. Intermediate Appellate Court, G.R. Nos. 74989-90, 6 November 1989, 179 SCRA 54.

[17] Paderanga v. Drilon, G.R. No. 96080, 19 April 1991, 196 SCRA 86, citing Crespo v. Nogul, et al., G.R. No. 53373, 30 June 1987, 151 SCRA 462.

[18] Zulueta v. Nicolas, 102 Phil. 944 (1958).

[19] Reyes v. Camilon, No. L-46198, 20 December 1990, 192 SCRA 445.

[20] People v. Carpio, 68 Phil. 490 (1939).

[21] People v. Fernandez, G.R. No. 80481, 27 June 1990, 186 SCRA 830; People v. Andiza, G.R. Nos. 71986-87, 19 August 1988, 164 SCRA 642.

[22] Asst. Prov'l Fiscal of Bataan v. Dollete, 103 Phil. 914 (1958).

[23] See Jaranillo v. Jacinto, 43 Phil. 588 (1922).

[24] So Chu v. Nepomuceno, 29 Phil. 208 (1915).

[25] Ibid.

[26] See Note 6.

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