

VICTORIANO ADA, PETITIONER, VS. HONODABLE JUDGE MARCIANO T. VIROLA, IN HIS CAPACITY AS PRESIDING JUDGE OF BR. 39 OF THE REGIONAL TRIAL COURT OF CALAPAN, ORIENTAL MINDORO AND CAL...*G.R. Nos. 82346-47. April 17, 1989*

Ponente: FERNAN, C.J.

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This is a petition for certiorari, prohibition and mandamus seeking: (a) to annul and set aside all actions and proceedings in Criminal Cases Nos. C-2434 and C-2435 For Estafa, entitled "People of the Philippines v. Victoriano Ada" of the Regional Trial Court of Oriental Mindoro, Br. XXXIX (39), Calapan, which denied in its Order dated September 2, 1987 petitioner's motion to dismiss said cases on the ground of double jeopardy; (b) to prohibit respondent Court and private respondent from further proceeding with aforesaid cases; and (c) to order and direct respondent Court to immediately dismiss them. In the meantime, petitioner prays for a restraining order and/or a writ of preliminary injunction.

Petitioner was initially charged in Criminal Case Nos. 2056 and 2057 of the Regional Trial Court of Oriental Mindoro, Branch XXXIX in Calapan, for violations of Batas Pambansa Blg. 22 consisting in the issuance of three (3) checks which subsequently bounced. After the prosecution had rested its case and before the presentation of evidence by the defense, petitioner was again charged before the same Regional Trial Court for Estafa as penalized under par. 2(d), Article 315 of the Revised Penal Code in Criminal Cases Nos. C-2434 and C-2435 based on the same act of issuing three (3) bouncing checks. Petitioner vehemently objected thereto, but his objections notwithstanding, respondent Judge proceeded with petitioner's arraignment and after the latter's plea of not guilty, allowed the prosecution to present its evidence in support of said new cases which consisted mainly in the adoption of the same evidence presented in the first two (2) cases.

After the prosecution had rested its case, petitioner filed a motion to dismiss the latter cases, invoking as ground therefor the constitutional guarantee against being placed twice in jeopardy of punishment for the same act as provided under Section 21, Article III of the New Constitution. In an Order dated September 2, 1987, the lower court denied petitioner's motion to dismiss Criminal Cases Nos. C-2434 and C-2435 on the ground that under the first sentence of Section 21 of Article III of the New Constitution one may be put in jeopardy of punishment for the same act, provided that he is charged with different offenses, or the offense charged in one case is not included in, or does not include the crime charged in the other case.[1] Petitioner's subsequent motion for reconsideration of the aforesaid order was likewise denied. Hence, this petition.

Petitioner maintains that his prosecution, first under Section 1 of Batas Pambansa Blg. 22 and again, under Article 315, par. 2(d) of the Revised Penal Code, based on the same act of issuing three (3) bouncing checks, violates his constitutional right against double jeopardy.

Article III (21) of the New Constitution reads: "No person shall be twice put in jeopardy of punishment for the

same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.”

Under the above provision, the constitutional guarantee may not only be invoked against the peril of a second punishment or a second trial for the same offense, but also against being prosecuted twice for the same act where that act is punishable by a law and an ordinance. Petitioner seeks recourse under the second situation. We find the same unavailing.

It is a settled rule that to raise the defense of double jeopardy, three 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, or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or a frustration thereof.[2]

These requisites do not exist in the case at bar.

The prohibition is against a second jeopardy for the same offense. The plea of double jeopardy applies where the offenses in the two informations are the same in law and in fact. It is not necessarily decisive that the two offenses may have material facts in common, or that they are similar, where they are not in fact the same. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense.[3] A single act may offend against two (or more) entirely distinct and unrelated provisions of law, and if one provision of law requires proof of an additional fact or element while the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other.[4] In other words, where two different laws (or articles of the same Code) define 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.[5]

A scrutiny of the two laws involved shows that the two offenses punished therein are different and distinct from each other. In the crime of Estafa by postdating or issuing bad check/s under the Revised Penal Code, deceit and damage are two essential elements of the offense and have to be established with satisfactory proof to warrant conviction[6] with the further requisite that deceit in causing the defraudation must be prior to or simultaneous with the commission of the fraud. For violation of the Bouncing Checks Law under B.P. 22, on the other hand, these elements are not necessary, the essential element being knowledge on the part of the maker or drawer of the check of the insufficiency of his funds. The gravamen of the offense is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment and not the non-payment of an obligation.[7]

Distinction between the two offenses is further found in their nature. Whereas the offense under article 315, par. 2(d) of the Revised Penal Code is a *malum in se* requiring proof of criminal intent on the part of the offender as an essential ingredient focusing mainly on the damage caused to the property rights of the victim, the crime under B.P. 22 makes the mere act of issuing a worthless check *malum prohibitum* wherein criminal intent need not be proved because it is presumed and considered violation thereof as one committed against public interest.

With these distinctions clarified, We hold that there is no identity of offenses here involved for which legal jeopardy in one case may be invoked in the other considering that the offenses charged in the informations for Estafa and for violation of B.P. 22 are perfectly distinct in point of law however nearly they may be connected in point of fact. The evidence required to prove one offense is not the same evidence required to prove the other. The defense of double jeopardy cannot therefore prosper.

IN VIEW OF THE FOREGOING, the Court Resolved to DENY the instant petition.

SO ORDERED.

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

[1] Rollo, pp. 17-18

[2] *People v. City Court of Manila*, Branch VI, 154 SCRA 175, 180

[3] *People v. Cabrera*, 43 Phil. 97

[4] *People v. Bacolod*, 89 Phil. 622; *U.S. v. Capurro*, 7 Phil. 24; *People v. City Court of Manila*, *supra*

[5] *People v. City Court of Manila*, Br. VI, *supra*, citing *People v. Alvarez*, 45 Phil. 472

[6] *People v. Grospe*, 157 SCRA 154

[7] *People v. Grospe*, *ibid*, citing *Lozano v. Martinez*, 146 SCRA 323; *Dingle v. Intermediate Appellate Court*, 148 SCRA 595

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