6 Phil. 632

[G.R. No. 2783. November 06, 1906]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ATANASIO PARCON, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

This is an appeal by the defendant, Atanasio Parcon, who alleges to have been twice placed in jeopardy, from the judgment rendered in this case on the 3d day of November, 1904, whereby he was sentenced to ten days' imprisonment, to public reprimand, and to pay the costs, and in case of insolvency to suffer the corresponding subsidiary imprisonment.

The aforesaid judgment was rendered by the court below in a criminal case instituted upon a. complaint filed by the provincial fiscal on the 14th of May, 1904, against the appellant herein, who was charged with the crime of *lesiones menos graves* which, according to the complaint, required thirty days to heal (record, p. 15).

The court below found upon that complaint that the injuries inflicted by the defendant upon the offended party, Norberto Binola, were *leves*, and that this constituted a misdemeanor under paragraph 1 of article 588 of the Penal Code notwithstanding the crime charged in the complaint by the fiscal.

The defendant was notified of this judgment, and his counsel before taking his appeal to this court, presented a motion for a new trial, and as material evidence to his defense, filed at the same time a copy of the proceedings had in the justice's court of Pototan, upon a complaint filed by Binola against him for *lesiones*. But the Court of First Instance overruled the said motion for a new trial and allowed the appeal taken by the defendant from its judgment.

From the evidence of record it appears that on the 10th of September, 1903, a complaint

signed by Binola was filed in the justice's court of Iloilo and that an information was presented on the same day to the justice of the peace of Pototan by the provincial fiscal of Iloilo, charging the defendant, Parcon, both in the complaint and in the information, with the assault of the said Norberto Binola, which assault was qualified in the complaint as a crime and as a misdemeanor in the information.

Beferring to the allegations of the complaint, it appears that some time in October, 1902, the said Binola, while bound, was taken by two policemen along the road of one of the barrios of Pototan and was beaten by the defendant with a cane, causing various contusions upon his body, which disabled him for about thirty days.

A preliminary investigation was held by the provincial fiscal, and as a result thereof an information was filed by him on the 14th of May charging the defendant, Parcon, with the crime of *lesiones*, which, according to the said information, took thirty days to cure, and as a result of which the offended party was disabled during the said period of thirty days.

Proceedings having been instituted upon the said information filed by the provincial fiscal, the court below, after hearing the evidence introduced at the trial, rendered a judgment on the 3d of November, above referred to, and from which the defendant appealed. From the transcript offered in evidence by the defense in the Court of First Instance, in addition to the aforesaid complaint filed by the provincial fiscal on the 10th of September, 1903, in the justice's court of Pototan, charging the defendant, Parcon, with the said crime of *lesiones*, for which he was prosecuted in this case, which said complaint was filed by direction of the judge of the Court of First Instance in view of the statements made by the said Binola, in case No. 183 of that court against the said defendant for the crime of theft or robbery, it also appears that the justice's court of Pototan, after hearing the testimony of the defendant, who pleaded "not guilty," and the statement made by Binola, who, under oath, asserted that the injuries received by him were cured within six days without medical assistance, made an order on the 15th of October, 1903, dismissing the case and acquitting the defendant with the costs *de oficio.*

So that in regard to the injuries inflicted upon Norberto Binola by Atanasio Parcon, the former presented a complaint in the justice's court of Iloilo on the 10th of September, 1903, and the provincial fiscal of Iloilo filed an information in the justice's court of Pototan on the same day.

In view of the result of a preliminary investigation the provincial fiscal of Iloilo filed an

information on the 14th of May, 1904, wherein he qualified the crime as *lesiones menos graves*, and upon the said information the present case was instituted. The court below, however, entered judgment convicting the defendant of the misdemeanor and sentenced him to ten days' imprisonment and to pay the costs, from which said judgment he appealed.

The justice of the peace of Pototan, at the same time and upon the information filed by the fiscal, fixed a day for the hearing of the case then pending in his court against the defendant, Parcon, and in view of the fact that the injured party failed to appear on any of the days when the trial was set, all efforts to locate him having failed, dismissed the case and acquitted the defendant on the 15th of October, 1903. A certified copy of the order then made by the said justice of the peace was offered in evidence at the commencement of the trial of this case and after the information had been filed on the 14th of May, 1904.

Counsel for the defendant in this court asked that the judgment be reversed and the defendant acquitted, alleging that the court below erred in overruling defendant's motion to dismiss the complaint on the ground that he had been twice placed in jeopardy and in directing the prosecution of the case for a crime for which the defendant had once been placed in jeopardy. It is further alleged that the court erred in overruling the motion for a new trial.

The defendant having been tried for a misdemeanor in the justice's court of Pototan on account of the injuries inflicted upon Norberto Binola, and the said justice of the peace, who ivas competent to take cognizance of and determine the case, having acquitted the defendant in a final judgment, he could not again be tried for the same offense under an information charging him with a crime, in the Court of First Instance, which had no jurisdiction whatever to try the defendant for the misdemeanor of which he had already been acquitted by the justice of the peace of the town where the said misdemeanor was committed.

For this reason all the proceedings had in the present case against the defendant, Atanasio Parcon, were null and void. He was acquitted by the justice of the peace of Pototan upon a complaint charging him with a misdemeanor, and he can not be again prosecuted for a crime which has never existed nor even for the same misdemeanor of which he had already been acquitted.

All ancient as well as modern legislation recognize the principle of *res adjudicata*. The independence of the courts requires that their decisions and judgments be respected, and

that when once they become final they can not be questioned, even by the court rendering same. Consequently if a person has been tried once by a court or judge, even if the court in deciding the case abuses its power, Jie can not be again tried for the same offense, and in case he is so tried a second time he can set up the defense of *res adjudicata.*

This defense in a criminal action when based upon a final judgment rendered by a competent judge or court can be successfully urged in accordance with the well-known principle of law *non bis in idem.*

Section 26 of General Orders, No. 58, provides:

> "When a defendant shall have been convicted or acquitted or once placed in jeopardy upon an information or complaint, the conviction, acquittal, or jeopardy shall be a bar to another information or indictment for the offense charged, or for an attempt to commit the same, or for a frustration thereof, or for any offense necessarily therein included of which he might have been convicted under such complaint or information."

As has already been said, there was offered in evidence, after the filing of the information and before the taking of the evidence, a certified copy of the judgment of acquittal, rendered by the justice of the peace of Pototan in the case against the defendant herein, Atanasio Parcon, for a misdemeanor. The judgment of the justice of the peace was a final judgment, and constituted a bar to another prosecution for the same offense, and although the court below waited until all the evidence had been taken for the purpose of ascertaining whether the defendant was guilty of a crime or of a misdemeanor, it appears from the findings of that court that the act committed by the defendant constituted a misdemeanor. Consequently the court below had no power to try him again and sentence him under article 588 of the Penal Code to ten days' imprisonment, public reprimand, and costs.

For the reasons hereinbefore set out all the proceedings had in this case are hereby declared null and void and the judgment of the court below is set aside with the costs de oficio.

After the expiration of ten days from the date of final judgment the case will be remanded to the court below for execution. So ordered.

Arellano, C. J., Mapa, Willard, and *Tracey, JJ.,* concur.

DISSENTING

CARSON, J., with whom concurs **JOHNSON, J.:**

I dissent.

I am of the opinion that the record sustains the findings of the trial court and that the proceedings had in the court of the justice of the peace of Pototan were a nullity and that the alleged trial in that court was void and of no effect.

It appears that the fiscal of Iloilo wrote a letter to the justice of the peace of Pototan, stating that it was alleged that one Atanasio Parcon had assaulted one Norberto Pinola while Pinola was a prisoner in the hands of two policemen, and directing the justice of the peace to make an investigation and take such action as the facts required.

On receipt of this letter the justice of the peace sent for Parcon and, after reading the letter to him, asked him if , he was guilty of the offense mentioned tnerein. Parcon replied that he was not guilty and that he had never assaulted Pinola. Thereupon the justice of the peace called Pinola and took from him a sworn statement in writing, formally charging the defendant Parcon with the assault The. justice of the peace then issued an order in which he expressly stated that "it appearing that the offense charged had been committed, and that it was a misdemeanor the accused will be set at liberty without bond, and jthis investigation will now be converted into a criminal trial," and set a date for the hearing a few days later. The complaining witness never put in his appearance again and the trial was postponed from time to time and the complaint was finally dismissed and the accused acquitted. The accused was not present at any of the postponed hearings; he was not arraigned and did not plead and no evidence was taken either for the prosecution or the defense.

Such a proceeding can not be dignified by the name of a trial and the accused never was put in jeopardy thereby. Had he been convicted and sentenced in the courts by such a mock trial, he would have been entitled to his discharge on a writ of *habeas corpus*, and his acquittal can serve him nothing as a bar to a prosecution and conviction for the offense charged. A trial in its very nature involves an issue or issues to be determined by the court, and since the accused, neither by himself nor by counsel, entered his plea, no issue was submitted for trial and there was nothing before the justice of the peace upon which to base a finding of innocence or of guilt, (U. S. *vs*. Riley, Fed. Cases, No. 16164 (5 Blatch., 204); Disney *vs*. Commonwealth, 5 S. W. Rep., 160 (Ky. 1887); Perano *vs*. State, 20 Tex. App., 139;

1 Bishop Crim. Law, sec. 1027.)

The majority of the court are of the opinion that the letter of the fiscal was in effect an information, and that the reading of that letter to the accused and his protestation of innocence must be taken as equivalent to arraignment and plea, and that the sworn statement of Pinola must be taken as testimony at the trial of the case, all of the proceedings had before the magistrate being taken to be a part of one continuous trial.

I do not think, however, that the letter of the fiscal will bear the construction put upon it by the majority. It does not specifically charge that the accused committed a specific offense and is no more than what it purports to be, a request for an investigation and such further proceedings as the facts developed might justify. But even though the letter, under the most liberal construction, could have been treated as an information, it is evident from the record that the justice of the peace did not so regard it, and that prior to the issuing of the order setting the case for trial, he was merely investigating the matters therein set out and did not consider that.he was engaged in the trial of the accused. I can not imagine how an accused person can be regarded as on trial for the commission of an offense when neither the judge who sits in the case, the fiscal who is said to make the charge, the witnesses, or the accused are aware that a trial is in progress.

The judgment and sentence of the trial court should be affirmed.

Date created: May 05, 2014