495 Phil. 339

SECOND DIVISION

[G.R. NO. 129472, April 12, 2005]

MARCELO LASOY AND FELIX BANISA, PETITIONERS, VS. HON. MONINA A. ZENAROSA, PRESIDING JUDGE, RTC, BR. 76, QUEZON CITY, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

After an information has been filed and the accused had been arraigned, pleaded guilty and were convicted and after they had applied for probation, may the information be amended and the accused arraigned anew on the ground that the information was allegedly altered/tampered with?

In an Information filed by Assistant City Prosecutor Evelyn Dimaculangan-Querijero dated 03 July 1996,[1] accused Marcelo Lasoy and Felix Banisa were charged as follows:

> That on or about the 2nd day of July, 1996, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, not having been authorized by law to sell, dispense, deliver, transport or distribute any prohibited drug, did, then and there, willfully, unlawfully sell or offer for sale a total of 42.410 grams of dried marijuana fruiting tops, a prohibited drug, in violation of said law.

The case docketed as Criminal Case No. 96-66788 was assigned and raffled to Branch 103 of the Regional Trial Court (RTC) of Quezon City, presided by Judge Jaime N. Salazar, Jr.

Upon arraignment, both accused pleaded guilty and were sentenced on 16 July 1996 in this wise:[2]

> On arraignment accused MARCELO LASOY and FELIX BANISA with the assistance of [their] counsel Atty. Diosdado Savellano entered a plea of GUILTY to the crime charged against them in the information.
>
> ACCORDINGLY, the court hereby find[s] accused MARCELO LASOY and FELIX BANISA, GUILTY of Violation of Section 4, Republic Act 6425 and they are hereby sentenced to suffer a jail term of SIX (6) MONTHS and ONE (1) DAY and the period during which said accused are under detention is hereby deducted pursuant to the provisions of Republic Act 5127.
>
> The evidence in this case which is the 42.410 grams of dried marijuana

> fruiting tops is hereby ordered confiscated in favor of the government. The Property Custodian is ordered to turn over said evidences to the Dangerous Drugs Board for proper disposition.

On the same date, both accused applied for probation under Presidential Decree No. 968, as amended.[3]

On 28 August 1996, plaintiff People of the Philippines, thru Assistant City Prosecutor Ma. Aurora Escasa-Ramos, filed two separate motions, first, to admit amended Information,[4] and second, to set aside the arraignment of the accused, as well as the decision of the trial court dated 16 July 1996.[5] In plaintiff's motion to admit amended information, it alleged:

> 1. That for some unknown reason both accused herein were charged of (sic) Violation of Sec. 4, Art. II, R.P. 6425.
>
> > That on or about the 2nd day of July, 1996, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, not having been authorized by law to sell, dispense, deliver, transport or distribute any prohibited drug, did, then and there, willfully, unlawfully sell, or offer for sale a total of 42.410 **grams** of dried marijuana fruiting tops, a prohibited drug, in violation of said law.
> >
> > When in truth and in fact the said accused should be charged for transportation and delivery, with intent to sell and to gain, of Forty-Five (45) pieces of dried marijuana fruiting tops weighing 42.410 **kilos** from La Trinidad to Metro Manila.
>
> 2. That it is imperative to file an amended information in order to make it conformable to the evidence on hand.
>
> WHEREFORE, in view of the foregoing it is most respectfully prayed that the herewith attached Amended Information against both accused be admitted and subsequently set for arraignment and trial.[6] (Emphasis supplied)

Resolving the motions, the trial court, in its Order dated 03 September 1996,[7] held:

> The Motion to Admit Amended Information is hereby DENIED, as this court has already decided this case on the basis that the accused was arrested in possession of 42.410 grams of marijuana and it is too late at this stage to amend the information.

Another Order[8] of the same date issued by the trial court resolved the second motion in the following manner:

> The Motion to Set Aside the Arraignment of the Accused as well as the Decision dated July 16, 1996, filed by the Public Prosecutor is hereby GRANTED, it appearing from the published resolution of the Supreme

> Court dated October 18, 1995, in G.R. No. 119131 Inaki Gulhoran and Galo Stephen Bobares vs. Hon. FRANCISCO H. ESCANO, JR. in his capacity as Presiding Judge of Regional Trial Court, Leyte Branch 12, Ormoc City which was dismissed by this court on August 20, 1996, the jurisdiction over drug of small quantity as in the case at bar should be tried by the Metropolitan Trial Court, although under the statute of R.A. 7659 which took effect on December 31, 1993 the penalty for possession or use of prohibited or regulated drugs is from prision [correccional] to reclusion temporal which indeterminate penalty and under the rule on jurisdiction the court which has jurisdiction over a criminal case is dependent on the maximum penalty attached by the statute to the crime.

The amended Information reads:

> That on or about the 2nd day of July, 1996, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping each other, not having been authorized by law to sell, dispense, deliver, transport or distribute any prohibited drug, did, then and there, willfully unlawfully sell or offer for sale a total of 42.410 kilos of dried marijuana fruiting tops, a prohibited drug, in violation of said law.[9]

This second information was assigned to Branch 76 of the RTC of Quezon City presided by Judge Monina A. Zenarosa,[10] docketed as Criminal Case No. Q-96-67572.

Both accused filed a Motion to Quash[11] which was opposed[12] by the People in its Comment/Opposition filed before the trial court. Subsequently, while the motion to quash before the RTC was as yet unresolved, both accused filed before the Court of Appeals a Petition for *Certiorari*[13] which they later moved to withdraw "to pave the way for Branch 76 of the RTC of Quezon City to act judiciously on their motion to quash."[14] The Court of Appeals in its Resolution dated 15 November 1996[15] noted the motion and considered the petition withdrawn.

In its now assailed resolution dated 14 February 1997,[16] the trial court denied accused's motion to quash, and scheduled the arraignment of the accused under the amended information. Accused's Motion for Reconsideration,[17] duly opposed by the prosecution,[18] was denied by the trial court in its Order dated 16 April 1997.[19] Hence, the instant Petition for *Certiorari* with prayer for injunction and temporary restraining order[20] based on the following grounds:[21]

> A) WITH DUE RESPECT, THE HONORABLE RESPONDENT COURT ERRED IN HOLDING THAT THERE IS NO VALID INFORMATION AND, THEREFORE, THE ACCUSED CANNOT CLAIM THE RIGHT AGAINST DOUBLE JEOPARDY; and
>
> B) WITH DUE RESPECT, THE HONORABLE COURT ERRED IN FAILING TO RECOGNIZE THAT THE RTC, BRANCH 103, HAD JURISDICTION OVER the case, docketed as Criminal CASE NO. Q-96-66799.[22]

In this Court's resolution dated 23 July 1997,[23] respondents were required to comment on the Petition. They submitted their Comment on 18 November 1998.[24] Accused filed their Reply[25] on 02 March 2000. In compliance with the Court's resolution dated 29 March 2000,[26] accused and respondents submitted their memoranda, respectively, on 26 May 2000[27] and 26 July 2000.[28]

To invoke the defense of double jeopardy, the following requisites must be present: (1) a valid complaint or information; (2) the court has jurisdiction to try the case; (3) the accused has pleaded to the charge; and (4) he has been convicted or acquitted or the case against him dismissed or otherwise terminated without his express consent. [29]

The issues boil down to whether or not the first information is valid and whether or not the RTC, Branch 103, where the first information was filed and under which Criminal Case No. Q-96-66788 was tried, had jurisdiction to try the case.

On the issue of validity of the information, accused and respondents submitted opposing views -- accused insisting on its validity, whereas respondents asserted that the accused were arraigned under an invalid information. Alleging that there being an alteration on the first information, hence it failed to reflect the true quantity of drugs caught in possession of the accused, the prosecution insisted that the first information under which accused were arraigned is invalid.

In accord with the view of the prosecution, the trial court denied the accused's motion to quash, stating:[30]

> . . . [I]n the instant case, it must be recalled that the earlier information filed against the accused appeared to be sufficient in form. It was discovered, however, that an alteration was made as to the weight of the marijuana fruiting tops which was placed at only 42.410 grams when the correct amount should have been in kilos. This fraudulent alteration necessarily vitiated the integrity of the proceedings such that despite the plea of guilt made by the accused it would not bar a subsequent prosecution for the correct offense.
>
> > Generally speaking to entitle accused to the plea of former jeopardy, the prior proceedings must have been valid, and the lack of any fundamental requisite which would render void the judgment would also make ineffective a plea of jeopardy based on such proceedings.
> >
> > Fraudulent or collusive prosecution. A verdict of acquittal procured by accused by fraud and collusion is a nullity and does not put him in jeopardy; and consequently it is no bar to a second trial for the same offense.
> >
> > Similarly, a conviction of a criminal offense procured fraudulently or by collusion of the offender, for the purpose of protecting himself from further prosecution and adequate punishment, is no bar to a subsequent prosecution for the same offense, either on the ground that the conviction is void

> because of the fraud practiced, or that the state is not in any sense a party to it and therefore not bound by it. (22 Corpus Juris Secundum, pp. 244-245)

It is impossible to believe that the accused were not aware of the deceitful maneuvering which led to the erasure of the true weight of the marijuana fruiting tops as alleged in the information.

They cannot pretend not to know the exact amount of prohibited stuff for which they were charged before the information was tampered with.

They could not feign innocence when they participated in that charade when they pleaded guilty upon arraignment.

Consequently, their plea to the lesser offense considering the decreased weight in the now altered information which merited a much lighter penalty was irregularly obtained. Hence, they cannot be considered as put in jeopardy by the proceedings in court which was tainted with fraud.

The accused should not be allowed to make a mockery of justice or to trifle with the courts by participating in a grand deception of pleading guilty to a lesser offense knowing that they participated/acquiesced to such tampering and then tell the court that they would be placed in jeopardy for the second time.

We do not agree with the trial court.

FIRST, it cannot be denied that the request for appropriate inquest proceedings dated 03 July 1996 addressed to the City Prosecutor of Quezon City and received by Prosecutor Querijero, stated that the accused were apprehended "for conspiring, confederating and mutually helping with each other in facilitating and effecting the transportation and delivery . . . of forty-five pieces of dried marijuana leaves (already in bricks) and weighing approximately forty-five kilos."[31]

In the joint affidavit of the poseur-buyer, PO3 Ernesto Jimenez Viray, Jr., and arresting officer SPOI Inadio U. Ibay, Jr., it is stated that the accused were caught with approximately 45 kilos of dried marijuana fruiting tops.[32] For some unknown reasons, however, the Information filed against the accused reflected a much lesser quantity, *i.e.*, 42.410 grams.

The question is whether this is sufficient to consider the first Information under which the accused were arraigned invalid.

Pertinent provisions of the Rules of Court under Rule 110 are hereunder quoted:

> Section 4. *Information defined*. - An information is an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court.

In *Alvizo v. Sandiganbayan*,[33] this Court citing *People v. Marquez* affirmed:[34]

> It should be observed that section 3 of Rule 110 defines an information as nothing more than "an accusation in writing charging a person with an