

THIRD DIVISION

G.R. Nos. 251270 and 251291-301 — PEOPLE OF THE PHILIPPINES, petitioner, versus COURT OF TAX APPEALS THIRD DIVISION, L.M. CAMUS ENGINEERING CORPORATION and LINO D. MENDOZA, respondents.

Promulgated:

September 5, 2022

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CONCURRING OPINION

CAGUIOA, J.:

I concur with the *ponencia*. The Petition for *Certiorari*¹ (Petition) must be dismissed for lack of merit. I write this opinion to highlight that the instant Petition before the Court assailing the Resolutions dated August 7, 2019² and November 29, 2019³ of the Court of Tax Appeals, Third Division (CTA) in CTA Criminal Case Nos. O-395 to O-406, which acquitted respondents L.M. Camus Engineering Corporation (L.M. Camus) and Lino D. Mendoza (Mendoza) (collectively, respondents) for insufficiency of evidence, is violative of respondents' constitutional right against double jeopardy.

Brief review of the facts

The case stemmed from twelve (12) Amended Informations filed before the CTA against respondent corporation L.M. Camus, Luis M. Camus (Camus) and respondent Mendoza in their capacity as President and Comptroller, respectively, of L.M. Camus. The Amended Informations charged respondents with violation of Sections 254 and 255 of the National Internal Revenue Code of 1997, as amended (1997 NIRC), covering Income Tax and Value-Added Tax (VAT) for taxable years 1997, 1998 and 1999.⁴

Mendoza pled “not guilty” to the crimes charged; while Camus' arraignment was deferred until further orders from the CTA as he was medically indisposed.⁵

Trial ensued. The prosecution presented its lone witness, Atty. Sixto C. Dy, Jr. (Atty. Dy). Atty. Dy's testimony was presented to prove that L.M. Camus evaded payment of income tax and VAT for taxable years 1997, 1998,

¹ *Rollo*, pp. 4-30.

² Id. at 40-78. Signed by Associate Justices Erlinda P. Uy, Ma. Belen M. Ringpis-Liban and Maria Rowena Modesto-San Pedro.

³ Id. at 34-39.

⁴ See *ponencia*, pp. 2-7.

⁵ Id. at 7-8.



and 1999, by willfully supplying incorrect information in its tax returns. Thereafter, the prosecution filed its Formal Offer of Evidence.⁶

Respondents filed a Demurrer to Evidence⁷ claiming, among others, that the prosecution failed to present proof of the alleged under-declared amounts and the supposed fraud or cheating that respondents allegedly committed. The prosecution filed its Comment insisting that the testimony of Atty. Dy established the chain of events which thus established inferences to prove respondents' guilt beyond reasonable doubt.⁸

In the first assailed Resolution dated August 7, 2019, the CTA granted the Demurrer to Evidence, thereby acquitting L.M. Camus and Mendoza. The CTA was convinced that the prosecution's evidence was insufficient to establish the essential elements of Sections 254 and 255 of the 1997 NIRC.⁹ Nevertheless, the CTA held that the accompanying civil liability is not automatically extinguished; hence, respondents were directed to present their evidence on the civil aspect of the cases.¹⁰

In the second assailed Resolution dated November 29, 2019, the CTA denied the prosecution's motion for reconsideration.¹¹

Aggrieved, the Bureau of Internal Revenue (BIR), without the conformity of the Office of the Solicitor General (OSG), filed before the Court the instant Petition assailing respondents' acquittal. The BIR ascribes grave abuse of discretion on the part of the CTA when it granted respondents' Demurrer to Evidence. The BIR justified the direct recourse to the Court by claiming that it neither has an appeal nor any other plain, speedy, or adequate remedy given the constitutional proscription against double jeopardy.¹²

The *ponencia* dismisses the Petition and remands the case to the CTA for the determination of respondents' tax liability, if any,¹³ noting that the prosecution, nonetheless, was able to present evidence on the tax liabilities of respondents.¹⁴ The *ponencia* further rules that the BIR lacks the legal personality to pursue the Petition without the conformity of the OSG. Thus, on this ground alone, the *ponencia* explains, the Petition is dismissible.¹⁵

Even assuming that the Court turns a blind eye to this procedural defect, the *ponencia* still finds the Petition unmeritorious as it finds that the CTA did

⁶ Id. at 8.

⁷ *Rollo*, pp. 118-131.

⁸ *Ponencia*, pp. 8-9.

⁹ Id. at 10-11.

¹⁰ Id. at 11.

¹¹ Id.

¹² Id.

¹³ Id. at 17.

¹⁴ Id. at 11.

¹⁵ Id. at 14-15.



not commit grave abuse of discretion in granting respondents' Demurrer to Evidence.¹⁶

The present Petition violates respondents' right against double jeopardy.

As stated at the outset, I concur with the *ponencia* in dismissing the present Petition. I agree that the BIR has no personality to file the instant Petition without the conformity of the OSG.

More importantly, I wish to emphasize that the Petition must be dismissed because it offends respondents' constitutional right against double jeopardy.

Section 21, Article III of the 1987 Constitution provides that “[n]o 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.”

To implement this, Section 7, Rule 117 of the Rules of Criminal Procedure, as amended provides:

SEC. 7. Former conviction or acquittal; double jeopardy.— When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Dissecting the foregoing rule, jurisprudence explains that for the right against double jeopardy to attach, the following 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 as that in the first.¹⁷ In turn, the first jeopardy attaches only (1) upon a valid indictment; (2) before a competent court; (3) after arraignment; (4) when a valid plea has been entered; and (5) when the defendant was convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused.¹⁸

All the foregoing requisites of double jeopardy are present in this case.

¹⁶ Id. at 15-16.

¹⁷ *People v. Judge Declaro*, 252 Phil. 139, 143 (1989).

¹⁸ *People v. Hon. Nitafan*, 362 Phil. 58, 74 (1999).



Respondents were indicted on the basis of twelve (12) criminal Informations for violation of Sections 254 and 255 of the 1997 NIRC filed before the CTA, which had jurisdiction over the cases. Mendoza was arraigned and pleaded not guilty to the charges. During trial, the prosecution was able to present all its documentary and testimonial evidence and formally offered the same to the CTA. Subsequently, asserting that the prosecution's evidence was insufficient, respondents filed a demurrer to evidence. The CTA granted respondents' demurrer to evidence and dismissed the case for insufficiency of evidence.

In *Sanvicente v. People*,¹⁹ the Court explained that the grant or denial of a demurrer to evidence is left to the sound discretion of the court. In resolving the accused's demurrer to evidence, the court is tasked with ascertaining whether there is competent or sufficient evidence to support a conviction. Significantly, once the court grants the demurrer, such order amounts to acquittal and any further prosecution of the accused would violate the constitutional proscription on double jeopardy.²⁰

Clearly, there was a valid termination of the first jeopardy in this case, and the present Petition filed before the Court, assailing respondents' acquittal, is a constitutionally offensive second jeopardy as it pertains to the same offense as the first jeopardy.

Moreover, the existence of double jeopardy in this case calls for the application of the "finality-of-acquittal" rule, which, as the name implies, makes a judgment of acquittal unappealable and immediately executory upon its promulgation.²¹

In *People v. Hon. Velasco*,²² the Court explained the rationale behind the "finality-of-acquittal" doctrines as follows:

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a **jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State.** x x x" Thus Green expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is **that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty.**"

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct

¹⁹ 441 Phil. 139 (2002).

²⁰ Id. at 146.

²¹ *People v. Hon. Sandiganbayan (Fourth Division)*, G.R. No. 228281, June 14, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67639>>.

²² 394 Phil. 517 (2000).



consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is “part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction.” The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for “repose,” a desire to know the exact extent of one’s liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury’s leniency, will not be found guilty in a subsequent proceeding.²³ (Emphasis and underscoring supplied)

However, the “finality-of-acquittal” doctrine is not without exception. As I have explained in my *ponencia* in *Raya v. People*,²⁴ “[t]he finality-of-acquittal doctrine does not apply when the prosecution — the sovereign people, as represented by the State — was denied a fair opportunity to be heard. Simply put, the doctrine does not apply when the prosecution was denied its day in court — or simply, denied due process.”²⁵

The reason for this is because when the prosecution is deprived of due process, it could thus be said that the judgment of acquittal is void, which thereby means that the first jeopardy had not been validly terminated. As the second element for the right to attach is not yet present, then there could be no violation of the right against double jeopardy when an appellate court “reverses” a judgment of acquittal which resulted from a denial of the prosecution’s right to due process. This explains why it is said that only through this ***narrow and limited exception*** would the remedy of *certiorari* be allowed without offending the constitutional right against double jeopardy.

Moreover, not every error in the trial or evaluation of the evidence by the court in question that led to the acquittal of the accused would be reviewable by *certiorari*. The writ of *certiorari*, being a remedy narrow in scope and inflexible in character, cannot be issued to correct every error committed by a lower court,²⁶ especially in cases where the accused is acquitted. As the Court has emphasized in *Republic v. Ang Cho Kio*,²⁷ “[n]o error, however, flagrant, committed by the court against the state, can be reserved by it for decision by the [S]upreme [C]ourt when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed.”²⁸

As applied to this case, it is immaterial whether the CTA erred in its appreciation of the prosecution’s evidence. The fact remains that respondents’

²³ Id. at 555-556.

²⁴ G.R. No. 237798, May 5, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67716>>.

²⁵ Id.

²⁶ *Sps. Delos Santos v. Metropolitan Bank and Trust Company*, 698 Phil. 1, 14 (2012).

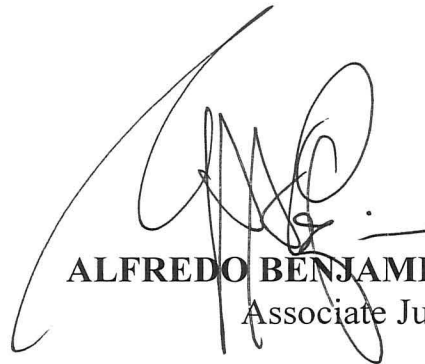
²⁷ 95 Phil. 475 (1954).

²⁸ Id. at 480.



right against double jeopardy already attached when the CTA granted their demurrer to evidence and ordered their acquittal. Absent any proof or indication that the State was denied its day in court, which is clearly not obtaining in this case, the assailed Resolutions acquitting respondents cannot be revisited without putting them twice in jeopardy.

In light of the foregoing, I vote to **DISMISS** the instant Petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice