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[G.R. No. 127444, September 13, 2000]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. TIRSO D. C. VELASCO IN HIS CAPACITY AS THE PRESIDING JUDGE, RTC-BR. 88, QUEZON CITY, AND HONORATO GALVEZ, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

This case nudges the Court to revisit the doctrine on double jeopardy, a revered constitutional safeguard against exposing the accused to the risk of answering twice for the same offense. In this case, after trial on the merits, the accused was acquitted for insufficiency of the evidence against him in the cases for murder and frustrated murder (although his co-accused was convicted), and finding in the illegal carrying of firearm that the act charged did not constitute a violation of law. But the State through this petition for certiorari would want his acquittal reversed.

We narrate a brief factual backdrop.

The idyllic morning calm in San Ildefonso, Bulacan, a small town north of Manila, was shattered by gunshots fired in rapid succession. The shooting claimed the life of young Alex Vinculado and seriously maimed his twin brother Levi who permanently lost his left vision. Their uncle, Miguel Vinculado, Jr. was also shot. A slug tunneled through his right arm, pierced the right side of his body and burrowed in his stomach where it remained until extracted by surgical procedure.

As a consequence, three (3) criminal Informations - one (1) for homicide and two (2) for frustrated homicide - were originally filed before the Regional Trial Court of Malolos, Bulacan, against Honorato Galvez, Mayor of San Ildefonso, and Godofredo Diego, a municipal employee and alleged bodyguard of the mayor. On 14 December 1993, however, the charges were withdrawn and a new set filed against the same accused upgrading the crimes to murder (Crim. Case No. 4004-M-93) and frustrated murder (Crim. Cases Nos. 4005-M-93 and 4006-M-93). Mayor Galvez was charged, in addition, with violation of PD 1866 (Crim. Case No. 4007-M-94) for unauthorized carrying of firearm outside his residence; hence, a fourth Information had to be filed.

After a series of legal maneuvers by the parties, venue of the cases was transferred to the Regional Trial Court of Quezon City, Metro Manila. There the cases were stamped with new docket numbers (Nos. Q-94-55484, Q-94-55485, Q-94-55486 and Q-94-55487, respectively), and raffled to Branch 103 presided over by Judge Jaime Salazar, Jr. In the course of the proceedings, the judge inhibited himself and the cases were re-raffled to respondent Judge Tirso D.C. Velasco of Branch 89.

On 8 October 1996 a consolidated decision on the four (4) cases was promulgated.

The trial court found the accused Godofredo Diego guilty beyond reasonable doubt of the crimes of murder and double frustrated murder. However, it acquitted Mayor Honorato Galvez of the same charges due to insufficiency of evidence. It also absolved him from the charge of illegal carrying of firearm upon its finding that the act was not a violation of law.

The acquittal of accused Honorato Galvez is now vigorously challenged by the Government before this Court in a Petition for Certiorari under Rule 65 of the Rules of Court and Sec. 1, Art. VIII, of the Constitution. It is the submission of petitioner that the exculpation of the accused Galvez from all criminal responsibility by respondent Judge Tirso Velasco constitutes grave abuse of discretion amounting to lack of jurisdiction. Allegedly, in holding in favor of Galvez, the judge deliberately and wrongfully disregarded certain facts and evidence on record which, if judiciously considered, would have led to a finding of guilt of the accused beyond reasonable doubt. Petitioner proposes that this patently gross judicial indiscretion and arbitrariness should be rectified by a re-examination of the evidence by the Court upon a determination that a review of the case will not transgress the constitutional guarantee against double jeopardy. It is urged that this is necessary because the judgment of acquittal should be nullified and substituted with a verdict of guilt.

The main hypothesis of the Government is that elevating the issue of criminal culpability of private respondent Galvez before this Tribunal despite acquittal by the trial court should not be considered violative of the constitutional right of the accused against double jeopardy, for it is now settled constitutional doctrine in the United States that the Double Jeopardy Clause permits a review of acquittals decreed by US trial magistrates where, as in this case, no retrial is required should judgment be overturned.[1] Since Philippine concepts on double jeopardy have been sourced from American constitutional principles, statutes and jurisprudence, particularly the case of *Kepner v. United States*,[2] and because similarly in this jurisdiction a retrial does not follow in the event an acquittal on appeal is reversed, double jeopardy should also be allowed to take the same directional course. Petitioner in this regard urges the Court to take a second look at *Kepner*, it being the "cornerstone of the battlement of the Double Jeopardy Clause" in the Philippines[3] and seriously examine whether the precedents it established almost a century ago are still germane and useful today in view of certain modifications wrought on the doctrine by the succeeding American cases of *United States v. Wilson*[4] and *United States v. Scott*.[5]

Two (2) threshold issues therefore, interlocked as they are, beg to be addressed. One is the propriety of certiorari as an extraordinary mode of review under Rule 65 of the Rules of Court where the result actually intended is the reversal of the acquittal of private respondent Galvez. The other is the permissibility of a review by the Court of a judgment of acquittal in light of the constitutional interdict against double jeopardy.

The recent untimely demise of respondent Galvez at the hands of alleged assassins (not discounting too the earlier dismissal of respondent judge from the service) may arguably have rendered these matters moot and academic, thus calling for a dismissal of the petition on this basis alone. The Court however is not insensitive to nor oblivious of the paramount nature and object of the pleas forcefully presented by the Government considering especially the alleged new directions in American

jurisprudence taken by the doctrine of double jeopardy. We are thus impelled to respond to the issues advanced by petitioner for these bear unquestionably far-reaching contextual significance and implications in Philippine juristic philosophy and experience, demanding no less, explicit and definitive rulings.

For it may be argued from a historico-analytical perspective that perhaps none of the constitutionally ensconced rights of men has followed a more circuitous and tortuous route in the vast sea of jurisprudence than the right of a person not to be tried or prosecuted a second time for the same offense.[6] This prohibition does not consist merely of one rule but several, each rule applying to a different situation, each rule marooned in a sea of exceptions.[7] It must have been this unique transpiration that prompted even the redoubtable Mr. Justice Rehnquist of the U.S. Supreme Court to remark in *Albernaz v. United States*[8] that "the decisional law (in the area of double jeopardy) is a veritable Sargasso Sea which could not fail to challenge the most intrepid judicial navigator." It is therefore necessary that, in forming a correct perspective and full understanding of the doctrine on double jeopardy and the rules so far established relative to the effect thereon of appeals of judgments of acquittal, a compendious review of its historical growth and development be undertaken. This approach is particularly helpful in properly situating and analyzing landmark interpretive applications of the doctrine in light of the varying legal and factual milieu under which it evolved.

Jeopardy, itself "a fine poetic word,"[9] derives from the Latin "*jocus*" meaning joke, jest or game,[10] and also from the French term "*jeu perdre*" which denotes a game that one might lose. Similarly, the Middle English word "*iuparti*" or "*jupartie*" means an uncertain game.[11] The genesis of the concept itself however rests deep in the ancient Grecian view of tragedy and suffering and in the old Roman legal concepts of punishment. Greek law bound prosecutor and judge to the original verdict as can be seen in the remark of Demosthenes in 355 B. C. that "the laws forbid the same man to be tried twice on the same issue."[12] The Justinian Digest[13] providing that "(a) governor should not permit the same person to be again accused of crime of which he has been acquitted,"[14] suggests certain philosophical underpinnings believed to have been influenced by works of the great Greek tragedians of the 5th century B.C. reflecting man's "tragic vision" or the tragic view of life. For the ancient Greeks believed that man was continuously pitted against a superior force that dictated his own destiny. But this prevailing view was not to be taken in the sense of man passing from one misfortune to another without relief, as this idea was repugnant to Greek sensibilities. Rather, it expressed a universal concept of catharsis or vindication that meant misfortune resolving itself into a final triumph, and persecution, into freedom and liberation. To suffer twice for the same misfortune was anathema to ancient thought.

The 18th century B. C. Babylonian king and lawgiver Hammurabi recognized that humans could err in prosecuting and rendering judgment, thus limits were needed on prosecutors and judges. A gruesome but effective way of preventing a second trial by the same prosecutor after an acquittal can be found in the first law of the Hammurabic Code: "If a man has accused a man and has charged him with manslaughter and then has not proved [it against him], his accuser shall be put to death."[15]

The repugnance to double trials strongly expressed by the Catholic Church is consistent with the interpretation by St. Jerome in 391 A. D. of the promise by God to his people through the prophet Nahum that "(a)ffliction shall not rise up the second time"[16] and "(t)hough I have afflicted thee, I will afflict thee no more."[17] Taken to mean that God does not punish twice for the same act, the maxim insinuated itself into canon law as early as 847 A. D., succintly phrased as "(n)ot even God judges twice for the same act."[18]

The most famous *cause célèbre* on double jeopardy in the Middle Ages was the dispute between the English King Henry II and his good friend, Thomas á Becket, Archbishop of Canterbury. Henry wished to continue the observance of certain customs initiated by his predecessors called "*avitae consuetudines,*" one of the known purposes of which was that clerics convicted of crimes before Church courts be delivered to lay tribunals for punishment. He asserted in the Constitutions of Clarendon that the clergy were also subject to the king's punishment. This was met with stinging criticism and stiff opposition by the Archbishop who believed that allowing this practice would expose the clergy to double jeopardy. The issue between the two erstwhile friends was never resolved and remained open-ended, for Thomas was later on mercilessly murdered in his cathedral, allegedly at the instance of his king.[19]

It was in England though, a century ago, that double jeopardy was formally institutionalized "as a maxim of common law"[20] based on the universal principles of reason, justice and conscience, about which the Roman Cicero commented: "Nor is it one thing at Rome and another at Athens, one now and another in the future, but among all nations, it is the same."[21] But even as early as the 15th century, the English courts already began to use the term "jeopardy" in connection with the doctrine against multiple trials.[22] Thereafter, the principle appeared in the writings of Hale (17th c.), Lord Coke (17th c.) and Blackstone (18th c.).[23] Lord Coke for instance described the protection afforded by the rule as a function of three (3) related common law pleas: *autrefois acquit, autrefois convict* and pardon.[24] In *Vaux's Case*,[25] it was accepted as established that "the life of a man shall not be twice put in jeopardy for one and the same offense, and that is the reason and cause that autrefois acquitted or convicted of the same offense is a good plea x x x x" Blackstone likewise observed that the plea of *autrefois acquit* or a formal acquittal is grounded on the universal maxim of the common law of England that " (n)o man is to be brought into jeopardy of his life more than once for the same offense. And hence, it is allowed as a consequence that when a man is once fairly found not guilty upon any indictment, or other prosecution before any court having competent jurisdiction of the offense, he may plead such acquittal in bar of any subsequent accusation for the same crime."[26]

The English dogma on double jeopardy, recognized as an "indispensable requirement of a civilized criminal procedure," became an integral part of the legal system of the English colonies in America. The Massachusetts Body of Liberties of 1641, an early compilation of principles drawn from the statutes and common law of England, grandly proclaimed that *"(n)o man shall be twise sentenced by Civill Justice for one and the same crime, offence or Trespasse*" and that "*(e)verie Action betweene partie and partie, and proceedings against delinquents in Criminall causes shall be briefly and destinctly entered on the Rolles of every Court by the Recorder*

thereof."[27] Ineluctably, this pronouncement became the springboard for the proposal of the First Congress of the United States that double jeopardy be included in the Bill of Rights. It acknowledged that the tradition against placing an individual twice in danger of a second prosecution for the same offense followed ancient precedents in English law and legislation derived from colonial experiences and necessities. Providing abundant grist for impassioned debate in the US Congress, the proposal was subsequently ratified as part of the Fifth Amendment to the Constitution.

In 1817 the Supreme Court of Tennessee dismissed an appeal by the State after an acquittal from perjury, declaring that: "A writ of error, or appeal in the nature of a writ of error, will not lie for the State in such a case. It is a rule of common law that no one shall be brought twice into jeopardy for one and the same offense. Were it not for this salutary rule, one obnoxious to the government might be harassed and run down by repeated attempts to carry on a prosecution against him. Because of this rule, a new trial cannot be granted in a criminal case where the defendant is acquitted. A writ of error will lie for the defendant, but not against him."[28] Verily, these concepts were founded upon that great fundamental rule of common law, "*Nemo debet bis vexari pro una et eadem causa,*" in substance expressed in the Constitution of the United States as: "*Nor shall any person be subject for the same offense, to be twice put into jeopardy of life or limb.*" It is in the spirit of this benign rule of the common law, embodied in the Federal Constitution - a spirit of liberty and justice, tempered with mercy - that, in several states of the Union, in criminal cases, a writ of error has been denied to the State.[29]

The relationship between the prohibition against second jeopardy and the power to order a new trial following conviction or dismissal stirred a no small amount of controversy in *United States v. Gibert.*[30] There, Mr. Justice Story, on circuit, declared that "the court had no power to grant a new trial when the first trial had been duly had on a valid indictment before a court of competent jurisdiction." The opinion formulated was that the prohibition against double jeopardy applied *equally* whether the defendant had been acquitted or convicted.

But it must be noted that even in those times, the power to grant a new trial in the most serious cases was already being exercised by many American courts, the practice having been observed from an early date, in spite of provisions of law against double jeopardy.[31] For this reason, the rule in *Gibert* was stoutly resisted. [32] As if to taunt *Gibert*, the 1839 case of *United States v. Keen*[33] declared that the constitutional provision did not prohibit a new trial on defendant's motion after a conviction. In *Hopt v. Utah,*[34] the defendant was retried three (3) times following reversals of his convictions.

Then in 1896 the U.S. Supreme Court in *United States v. Ball*[35] affirmed that the double jeopardy rule did not prevent a second trial when, on appeal, a conviction had been set aside. It declared that a defendant who procured on appeal a reversal of a judgment against him could be tried anew upon the same indictment or upon another indictment for the same offense of which he had been convicted. This principle of *autrefois convict* was expanded nine (9) years later in *Trono v. United States*[36] where the Court affirmed the judgment of the Supreme Court of the Philippines by holding that "since the plaintiffs in error had appealed their