Note and Comment:

Double Jeopardy

When Legal Jeopardy Attaches

Enshrined in the Constitution as a fundamental right of the accused is the guarantee against double jeopardy.[1] This same guarantee became a remedial statutory right when the Legislature incorporated it in the Rules of Court as one of the grounds for a motion to quash.[2]

In the early case of *U. S. v. Ballentine*,[3] the Philippine Supreme Court was of the opinion that only after the accused had been arraigned and had pleaded to the indictment, and the court had proceeded to the investigation of the charges preferred against him in the indictment by calling a witness could it be said that the accused was placed in jeopardy.[4] In a much later decision, however, the Supreme Court laid down the following conditions under which a defendant is placed in jeopardy: The defendant must have been placed on trial (1) in a court of competent jurisdiction; (2) upon a valid complaint or information; (3) after he has been arraigned; and (4) after he has pleaded to the complaint or information.[5] The Court abandoned the view previously entertained in the *Ballentine* case that there is no jeopardy until the investigation of the charges has actually been commenced by the calling of a witness, with the observation that "there is no provision or principle of law requiring such condition for the existence of legal jeopardy" and "that under our system of criminal procedure, issue is properly joined after the accused has entered a plea of not guilty." The doctrine announced in the Ylagan case was incorporated in the present Rules of Court,[6] which in addition, requires that for legal jeopardy to terminate there must have been either a conviction or an acquittal of the accused, or a dismissal of the proceedings without his express consent, and the two offenses must be identical, or at least the offense charged necessarily includes or is necessarily included in the former complaint or information. Under the present state of the law, there-

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[1] "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." Art. III, Section 1 (20), Constitution of the Philippines.

[2] Rule 113, Sec. 2(h) and Sec. 9, Rules of Court.

[3] 4 Phil. 672.

[4] Also, U. S. v. Gemora, 8 Phil. 19; U. S. v. Montiel, 7 Phil. 272; People v. Mirasol, 43 Phil. 860.

[5] People v. Ylagan, 58 Phil. 851; also People v. Soo Po Kuat, G. R. No. L-30131 and Mendoza v. Almeda-Lopez, 64 Phil. 820.

[6] Rule 113, Sec. 9: *Former conviction or acquittal or former jeopardy.*— When a defendant shall have been convicted or acquitted, or the case against

fore, the calling of a witness is not a condition of the existence of legal jeopardy.[7]

Competent Court

The rule requires that the accused must have been convicted or acquitted by a court of competent jurisdiction.[8] If two courts have concurrent jurisdiction of the offense, the verdict or decision by the court which first took cognizance of the case will constitute a bar to another prosecution in the other.[9]

In case of incompetence or lack of jurisdiction on the part of the judge, such proceedings as may have been instituted by him are null and void, and, therefore, no valid judgment either of conviction or acquittal may be rendered. The defendant has not thereby been in danger of conviction because there was no lawful trial. The right of the government to prosecute subsists and must be recognized by the court having jurisdiction of the offense which may subsequently be called upon to try the case all over again.[10]

In this connection, courts-martial are said to have jurisdiction to try soldiers for common crimes committed in the district or territory where the said courts sit, and this jurisdiction is not affected by the existence of civil courts created by the military authorities at the same time and place.[11] In accordance with this view, one who has been tried and convicted by a court-martial under circumstances giving that tribunal jurisdiction of the defendant and of the offense has been once in jeopardy and can not be prosecuted again for the same offense in another court of the same sovereignty. This, in effect, was the doctrine enunciated by the Supreme Court in an early case [12] involving a Filipino soldier in the United States Army who had previously been tried by a court-martial for murder and convicted of homicide, and was later prosecuted in a civil court for the same offense. The Court, in acquitting the accused, ruled that he was placed in jeopardy by the military trial and can not be penalized again by a second prosecution for the same offense.[13]

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him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other fomal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant 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.

[7] People v. Ylagan, *supra*.

[8] People v. Manaba, 58 Phil. 665; U. S. v. Padilla, 4 Phil. 511; U. S. v. Rubin, 28 Phil. 631; Grafton v. U. S., 11 Phil. 776; U. S. v. Arceo, 11 Phil. 530; U. S. v. Jayme, 24 Phil. 90.

[9] 16 C. J. 240.

[10] U. S. v. Arceo, 11 Phil. 530; U. S. v. Jayme, 24 Phil, 90; Keanor v. U. S., 195 U. S. 100; U. S. v. Almazan, 20 Phil. 225.

[11] U. S. v. Tubig, 3 Phil. 244; Grafton v. U. S., 11 Phil. 776.

[12] U. S. v. Tubig, *supra*.

[13] Justice Torres in his concurring opinion observed that if the decision of the court-martial became final, a prosecution for the same offense can not be legally instituted.

The judgment of a court-martial having jurisdiction to try an officer or a soldier for a crime is entitled to the same finality and conclusiveness as to the issues involved as the judgment of a civil court in cases within its jurisdiction.[14] Whether the court, therefore, is military or civil, if it has jurisdiction of the offense charged and of the person of the accused, conviction or acquittal therein constitutes a bar to a subsequent prosecution for the same offense in the same court or in another court of the same sovereignty.

Sufficiency and Validity of the Complaint or Information

As early as the case of *Julia v. Sotto* [15] decided in 1903, the Supreme Court recognized the validity and sufficiency, both in substance and form of a complaint as an essential condition for jeopardy to attach. The indictment or information must be sufficient in both form and substance in order to sustain a conviction.[16] The defendant then becomes entitled to a verdict which shall constitute a bar to a new prosecution.[17] Where the complaint is defective in that it is not signed by the offended party or by the persons authorized under Art. 344 of the Revised Penal Code, with the result that the court, having acquired no jurisdiction over the subject matter, dismisses the case, the filing of a new complaint against the accused for the same offense will not give rise to the defense of jeopardy.[18] In a case,[19] the Court pointed out that the question of whether or not the defendant was placed in jeopardy for the second time depends on whether or not he was tried on a valid complaint in the first case, and concluded that inasmuch as the first complaint for rape was signed and sworn to by the Chief of Police and not by the offended party, it was not a valid complaint in accordance with law,[20] and, therefore, the judgment of the lower court was void for lack of jurisdiction over the subject matter, and the defendant was never in jeopardy.

Arraignment and Plea of the Accused

For a defendant to be placed in jeopardy, he must have been arraigned and must have pleaded to the information against him. Before arraignment the accused is not exposed to any peril of conviction at all on the sound principle that no person can be legally convicted without having first been informed of the charges against him and without having pleaded thereto.[21] In an unpublished decision,[22] the Supreme Court ruled that if the accused were never arraigned and no evidence was presented at the hearing, they were never placed in jeopardy, but were convicted by the Justice of the Peace court without due process of law, and the Court of First Instance did not acquire jurisdiction over the case, except to dismiss it, by reason of the appeal.

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[14] Grafton v. U. S., 11 Phil. 776.
[15] 2 Phil. 247.
[16] See Sec. 5, Rule 106, Rules of Court.
[17] U. S. v. Padilla, 4 Phil. 511.
[18] See Quilatan & Santiago v. Caruncho, 21 Phil. 399.
[19] People v. Manaba, 58 Phil. 665.
[20] Art. 344, Revised Penal Code.
[21] See Art. III, Section 1(17), Constitution of the Philippines.
[22] People v. Villamor, et al., G. R. No. L-40978, Sept. 4, 1934.

When an accused pleads not guilty to the charge against him, he thereby joins issue upon the information and it is only in this event when he is legally placed on trial.[23] The defendant is said to be in danger when the court is in a position to render judgment, whether for conviction or acquittal, and the court can render judgment only after a lawful trial which takes place after the defendant has pleaded not guilty to the information. After such plea the defendant is supposed to have waived all legal objections.

Termination of Jeopardy

To sustain the plea of double jeopardy, it is necessary that jeopardy shall have attached and terminated, that is, that the proceedings on account of which jeopardy exists have ended. The accused must prove that the case against him has been dismissed or otherwise terminated without his express consent.[24] And to terminate jeopardy it is not necessary that there be a formal final judgment of conviction or acquittal; any act of the court terminating the proceeding without the defendant's consent, not founded on some constraining necessity arising from circumstances beyond the court's control, terminates the jeopardy and a retrial violates the constitutional rights of the accused.[25]

Under the ruling in People v. Ylagan, the phrase "without the express consent of the defendant" does not mean "over his objection" or "against his will." The mere silence of the defendant or his failure to object to the dismissal of the case is not consent within the meaning of the law. In the Ylagan case, the lower court, upon motion of the private prosecutor with the fiscal's concurrence, dismissed the first case brought against the defendant under an information for serious physical injuries. The defendant's counsel said nothing of the dismissal. Eleven days later, the provincial fiscal filed another information in the Justice of the Peace for the same offense against the same defendant. The case was again brought before the Court of First Instance where the information in the Justice of the Peace was reproduced. The lower court sustained the plea of double jeopardy interposed by the accused and finally dismissed the case. The Supreme Court, in affirming this decision, subscribed to the view that the right against double jeopardy is as important as the other constitutional rights of the accused and its waiver should not and can not be predicated on mere silence.

Not all dismissals, though, constitute a bar to subsequent prosecutions of the same accused. In one case,[26] the trial court, upon demurrer filed by the defense, ordered the fiscal to amend the information. The fiscal failed, however, to make the necessary amendments, whereupon the trial court dismissed the case and absolved the defendant from the information. No plea to the charges was entered and no witnesses were called. The Supreme Court held that

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[23] People v. Ylagan, *supra*.

[24] See Mendoza v. Almeda-Lopez, *supra*, and People v. Daylo, 54 Phil. 862; also Rule 113, Sec. 9, Rules of Court.

[25] U. S. v. Laguna, 17 Phil. 532.

[26] People v. Turla, 50 Phil. 1001.

the defendant was consequently not placed in jeopardy and made the observation that regardless of its language, the order of dismissal can only be regarded as a dismissal of the information, without prejudice, and is no bar to the filing of a new information.[27] In a later case of perjury,[28] where the lower court *motu propio*, during a hearing on a motion for continuance filed by the fiscal, erroneously dismissed the case on the ground that the facts alleged in the information did not constitute a violation of Art. 183 of the Revised Penal Code, the Supreme Court, on appeal by the prosecution, set aside the order of dismissal and remanded the case for further proceedings after holding that the proceedings have not terminated since the action of the lower court was without authority and, therefore, null and void.

Under the Rules of Court,[29] a mistake in charging the proper offense is a ground for the dismissal of the complaint or information by the court and the filing of a new one, provided the defendant is not thereby placed in double jeopardy. The situation contemplated is where the crime actually committed is not included in that charged in the complaint or information, or where the offense charged is included in that proved. In such a case, the complaint or information can not be dismissed; otherwise, the defendant would be placed in jeopardy.

When Plea of Once in Jeopardy Available

The plea of once in jeopardy can not be raised for the first time on appeal. It is a defense which must be availed of at the time of arraignment in the trial court and can not be entertained by a court of purely appellate jurisdiction.[30] Under Section I, Rule 113 of the Rules of Court, the question of double jeopardy should be raised in a motion to quash before pleading. However, according to Sec. 10 of the same rule, the court may, in its discretion, entertain a motion to quash based on former conviction or acquittal or former jeopardy at any time before judgment is entered.

Appeal and Retrial

The plea of former jeopardy both as a right and as a defense may be waived by the defendant when he appeals from the lower court's decision convicting him of the crime of which he was charged, since, by appealing he must take the burden with the benefit and stand for a new trial of the whole case.[31] There can, therefore, be no case of double jeopardy when the appeal is brought at the instance of the defense. In this jurisdiction, it is the right of the accused to appeal from an adverse judgment in all cases, but such a right does not exist in favor of the prosecution. Where the State or Government as the prosecutor is the appellant, the right against double jeopardy becomes much more meaningful. The only possible situa-

[27] See also U. S. v. Claveria, 29 Phil. 527.
[28] People v. Cabero, 61 Phil. 121.
[29] Rule 106, Sec. 13; Rule 115, Sec. 12.
[30] U. S. v. Perez, 1 Phil. 203; U. S. v. Cruz, 36 Phil. 727; U. S. v. Ondaro, 39 Phil. 70; People v. Cabero, 61 Phil. 121; Trinidad v. Siochi, G. R. No. L-47454, June 6, 1941.
[31] U. S. v. Flemister, 5 Phil. 650.

tions when the prosecution may be tempted to elevate the case on appeal are in the cases of an acquittal of the accused and a dismissal of the case. But it would seem that the State is prevented from appealing in both cases because of the protection against double jeopardy. In case of an acquittal, it is now a well-settled doctrine that the State can not appeal considering that a final judgment of acquittal in favor of an accused after a lawful trial before a competent court ends necessarily the case in which he is prosecuted and the same can not be reopened anymore. Such was the ruling in the Philippine case of Kepner v. U. S.[32] This doctrine was later reiterated by the Philippine Supreme Court in People v. Tan.[33] A defendant who has once been brought to trial in a court of competent jurisdiction can not again be put on trial for the same offense after the first trial has terminated by a judgment directing his discharge, and no appeal lies in such case on behalf of the Government, for, to permit an appeal the defendant would undoubtedly be put twice in jeopardy.[34] The truth of the statement that a judgment of acquittal puts an end to the case is strengthened by a declaration of the Supreme Court that the remedy of certiorari can not lie to annul a judgment of acquittal in a criminal case, the reopening of which for any reason is forbidden by the doctrine that a person can not be placed twice in jeopardy.[35]

In the case of a dismissal of the proceeding before final judgment, the right of the State to appeal is recognized only in those cases where a demurrer (now motion to quash) filed against the information is sustained, or where the information is dismissed for some valid reason, provided always that the accused is not thereby placed in jeopardy.[36] Therefore, if the order dismissing the information acquits the accused or sets him at liberty, no appeal can be taken from said order.[37]

The right of appeal by the Government in criminal actions is limited to cases in which errors have occurred before legal jeopardy has attached.[38] It is elsewhere stated here that not all dismissals constitute a bar to subsequent prosecutions. Thus, an appeal by the prosecution may be taken from an order dismissing the information or complaint before trial in the lower court.[39] It is clear, therefore, that so long as legal jeopardy has not as yet attached, when an information is dismissed or a demurrer thereto is sustained, the prosecution can appeal. Under the Rules of Court, a motion to quash the complaint or information must be filed by the defendant immediately upon being arraigned, unless the court grants him further time.[40] It is obvious that the object of a motion to quash is to make the State or the court desist from proceeding with the case on the grounds

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[32] 195 U. S. 100.
[33] G. R. No. L-2705.
[34] U. S. v. Yam Tung Way, 21 Phil. 67.
[35] Ramos v. Hodges, 63 Phil. 215.
[36] U. S. v. Perez, 1 Phil. 203; People v. Caderao, G. R. No. L-46517, Jan. 15, 1940; People v. Ponce de Leon, 56 Phil. 386.
[37] People v. Ponce de Leon, *supra*.
[38] U. S. v. Ballentine, *supra*.
[39] People v. Cabero, *supra*.
[40] Rule 113, Section 1, Rules of Court.

enumerated in the Rules of Court.[41] The law allows the defendant to move to quash upon being arraigned before the plea, that is, before trial starts and, therefore, before legal jeopardy attaches. Consequently, if the motion is sustained, the prosecution may appeal from the order, although an order sustaining a motion to quash on the ground of previous conviction, jeopardy, or acquittal constitutes a bar to another prosecution for the same offense or cause.[42]

Where there is no previous conviction, acquittal, dismissal or termination of a former case, no jeopardy attaches. The result is that the accused may be tried again for the same offense. Thus, for the purpose of retaking evidence which was destroyed by fire, or lost, the appellate court may order a new trial without thereby subjecting the defendant to a second jeopardy.[43] Also, a new trial granted upon appeal by the accused does not constitute double jeopardy.[44] In this connection, it was held that a preliminary investigation is not a trial or any part thereof, its purpose being to determine whether a crime has been committed and whether there is a ground to believe that the accused is guilty thereof. Consequently, the dismissal of the case for lack of evidence does not place the accused in jeopardy.[45]

Offenses Must Be Identical

The constitutional inhibition in the Bill of Rights against double jeopardy signifies and emphasizes the protection against a second jeopardy for the same offense.[46] The same act may violate two or more provisions of the criminal law. When they do, a prosecution under one will not bar a prosecution under another. To entitled a defendant to plead successfully double jeopardy, the offense charged in the two prosecutions must be the same in law and in fact. The question 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.[47] Thus, where the second complaint is for an offense different and distinct from the crime charged in the first complaint, the defense of former jeopardy does not lie.[48] So also, where an accused is acquitted under one information, and in another information the prosecuting officer does more than slightly vary the terminology of the allegations, and includes a basic act not complained of in the first information, the accused has not been placed twice in jeopardy for the same offense.[49]

Regarding the test to determine when two offenses are substan-

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[41] Rule 113, Sec. 2.
[42] Rule 113, Sec. 8, Rules of Court.
[43] U. S. v. Quilatan, 4 Phil. 481; U. S. v. Roque, 11 Phil. 422; U. S. v. Laguna, 17 Phil. 582.
[44] U. S. v. Trono, 11 Phil. 726; U. S. v. Sunga, 11 Phil. 601; U. S. v. Gimenez, 34 Phil. 74.
[45] U. S. v. Yu Tuico, 34 Phil. 209.
[46] U. S. v. Capurro, 7 Phil. 24; U. S. v. Ching Po, 23 Phil. 578; U. S. v. Vitog, 37 Phil. 42; Gavieres v. U. S. 41 Phil. 961; People v. Cabrera, 43 Phil. 82.
[47] U. S. v. Ching Po, *supra;* People v. Cabrera, *supra.*
[48] People v. Mirasol, 43 Phil. 860.
[49] U. S. v. Vitog, *supra.*

tially the same, there has been considered discordance in the cases.[50] Under the former procedure, the only test was whether or not the evidence which proves one offense would also prove the other.[51] To determine the question whether an offense is distinct from and not included in that charged in a former complaint or information, it was necessary to consider whether a conviction could be sustained on the first complaint on proof of the facts alleged in a second complaint.[52] This rule was applied in a case where the defendant was charged with theft but was acquitted. Thereafter, he was charged with estafa. The Court observed that the essential elements of theft and estafa are different and that the allegations of the two informations are in harmony with the crimes charged. The defendant was, therefore, placed in jeopardy in the first case for the crime of theft but not for estafa and a plea of *autrefois acquit* can not be sustained.[53] The earlier case of U. S. v. Regala [54] is contrasted with the Vitog case. In the Regala case, the information was first filed in the Court of First Instance for estafa. The court dismissed the case for lack of jurisdiction. The fiscal filed another information against the accused in the same Court of First Instance, this time for malversation of public funds. A plea of former jeopardy was entered by the accused but was overruled and the defendant was convicted. The Supreme Court on appeal reversed the lower court's decision, declaring that the accused had already been put in jeopardy. The acts alleged to have been committed constituted estafa and, as a necessary consequence, the acts may constitute malversation of public funds. The two charges before the Court of First Instance were made upon precisely the same facts. In the Vitog case, the basic facts have been changed after the acquittal of the accused of the first charge of theft. As a result he may be convicted of estafa, the acts appearing to be estafa and not those of theft.

Under the present Rules of Court the test is whether one offense is identical to the other or is an attempt to commit the same or a frustration thereof, or whether the one necessarily includes or is necessarily included in the other.[55] The jurisdiction of the court to try the second offense is immaterial.[56] In one case, where the accused was charged with *lesiones menos graves* in the Court of First Instance and later prosecuted for *lesiones graves* in the same court, the Supreme Court upheld the plea of former jeopardy holding that the second crime charged was an ingredient of the first case and that the allegations in the second information would, if proved, have been sufficient to support the former information.[57] ,When in a criminal prosecution the offense proved is neither included in, nor

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[50] People v. Tarok, 40 O. G. 3488.

[51] U. S. v. Ching Po, *supra;* U. S. v. Lim Tigdien, 30 Phil. 222; Gavieres v. U. S., *supra;* People v. Cabrera, *supra;* People v. Alvarez, 45 Phil. 472; People v. Martinez, 55 Phil. 6; Mendoza v. Almeda-Lopez, *supra.*

[52] U. S. v. Arceo, 11 Phil. 555.

[53] U. S. v. Vitog, *supra.*

[54] 28 Phil. 57.

[55] Sec. 9, Rule 113; see Moran's Comments on the Rules of Court, 2nd ed., Vol. II, pp. 670-671.

[56] People v. Besa, 2 O. G., 490, May 1943.

[57] People v. Martinez, 55 Phil. 6.

does it include, the offense charged and is different therefrom, the court, under Sec. 13, Rule 106 of the Rules of Court, may dismiss the original complaint or information, and order the filing of a new one charging the proper offense for this would not place the defendant in double jeopardy. In a case where the defendant was charged with abduction with consent of a virgin of fourteen years of age, and the trial court, after hearing the testimony of the girl, dismissed the case and ordered the prosecuting officer to file another information for forcible abduction, the Supreme Court held that the second information did not place the defendant twice in jeopardy because the crime charged therein is different from that charged in the first complaint.[58] But if it can be shown that the second offense necessarily includes or is necessarily included in the first offense charged in the first complaint, a plea of former jeopardy may lie.[59] In another case where the defendant was first charged with homicide but later, after some evidence was taken, an information for murder was filed instead, the Supreme Court rejected the plea of former jeopardy interposed by the defendant to the second information.[60] Again, if this case were decided under the present Rules of Court, the ruling would not be the same, considering that the offense charged in the second information, which is murder, necessarily includes the offense charged in the first information, which is homicide, and that, therefore, the accused was placed in double jeopardy by the second information.

Where the victim dies after the offender has been charged with and/or convicted of physical injuries, or an attempted or frustrated crime against persons, and said offender is again prosecuted under an information holding him criminally liable for the death of the victim, does the second prosecution place the offender twice in jeopardy for the same offense? This question has given rise to conflicting opinions of the Supreme Court. In at least two cases, the Court affirmed the doctrine announced in Diaz v. U. S.,[61] a case of Philippine origin, to the effect that conviction upon an indictment for assault and battery is not a bar to a subsequent prosecution for homicide where the person assaulted died of the injuries inflicted.[62] This ruling, however, was not adhered to in the subsequent case of People v. Tarok [63] in which the majority of the Supreme Court, speaking through Justice Laurel, held that the defendant previously convicted of serious physical injuries may not be subsequently prosecuted for parricide involving the same assault charged and proved in the first information in view of the provisions of Sec. 9, Rule 113 of the Rules of Court, serious physical injuries being necessarily included in the greater offense of parricide. The Court pointed out in support of its ruling that an attempted or frustrated crime is included in the consummated, and that if after trial and conviction for an

[58] People v. Mirasol, 43 Phil. 860.
[59] Rule 113, Sec. 9, Rules of Court.
[60] People v. De los Angeles, 47 Phil. 108.
[61] 223 U. S. 442.
[62] U. S. v. Ledesma, 29 Phil. 431; People v. Espino, SC—G. R. No. L-46123, Jan. 30, 1940.
[63] 40 O. G. 3488, October 9, 1941.

attempted or frustrated offense, there should supervene a consummated offense, conviction or acquittal of the lesser offense is a bar to a subsequent prosecution for the consummated offense.[64] Chief Justice Moran strongly dissented in this Tarok case. He insisted on applying the Diaz doctrine while attacking the wisdom of the majority opinion. According to him, where the greater offense of which an accused is subsequently charged was not yet in existence at the time he was convicted of the lesser offense, double jeopardy can not be invoked, and this is a recognized exception to the rule.[65]

The doctrine in the Tarok case was reiterated in the recent case of People v. Villasis [66] where the Supreme Court by a split vote blocked a second prosecution of two brothers for serious physical injuries on the ground of double jeopardy. The accused brothers were convicted by the Justice of the Peace of slight physical injuries inflicted on the victim. After serving sentence for ten days, they were charged before the Court of First Instance with serious physical injuries when it was found that the victim's wounds took longer to heal than at first alleged. The Court of First Instance dismissed the amended information on double jeopardy and the prosecution appealed. Citing the ruling case of People v. Tarok, the majority of the Supreme Court through the late Justice Perfecto held that there was double jeopardy.[67]

Melo Case Repeals Tarok Ruling

Barely five months ago, our Supreme Court in a far-reaching decision in the case of Melo v. People, et al.,[68] expressly repealed the above doctrine enunciated in the hitherto ruling case of People v. Tarok. The Melo case afforded the Court an opportunity to construe the phrase "same offense" as used in the constitutional provision on double jeopardy, and the provisions of Sec. 9, Rule 113, Rules of Court, as to the rule of identity between two offenses which has been the subject of varied interpretations in not a few previous cases. The facts of the case may be briefly stated as follows: Petitioner was charged in the Court of First Instance with frustrated homicide. On December 29, 1949 at 8:00 o'clock in the morning, the petitioner pleaded "not guilty" to the offense charged, and at 10:15 in the evening of the same day, the victim died. On January 4, 1950, an amended information was filed charging the petitioner

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[64] See also People v. Figueroa, G. R. No. L-47775.

[65] This dissent later became the majority opinion in the very recent case of Melo v. People, et al., *infra*.

[66] G. R. No. L-1218.

[67] Chief Justice Moran concurred in this wise: "Upon the authority of People v. Besa, x x x, I agree that there is double jeopardy in this case. I do not agree, however, with the ruling in the Tarok case x x x upon the reasons stated in my dissenting opinion therein. The difference between the Tarok case and the Besa case is that in the former when the first case was tried the accused could not have been placed in jeopardy of being punished for the second offense charged which was not yet in existence whereas in the latter the second offense was already in existence when the first case was tried." In the Besa case, the two prosecutions were for less serious physical injuries and for attempted murder. The Supreme Court held that the second prosecution placed the defendant in double jeopardy.

[68] G. R. No. L-3580, March 22, 1950.

with consummated homicide. A motion to quash the amended information on the ground of double jeopardy having been denied by the trial court, the present petition for prohibition was filed. The Court, speaking through Chief Justice Moran, upheld the action of the lower court in dismissing the first information and ordering the filing of a new one as proper under Rule 106, Sec. 13, second paragraph, Rules of Court for the reason that "the proper offense was not charged in the former and the latter did not place the accused in a second jeopardy for the same or identical offense." [69] After a very elucidative exposition on the general rule of identity between two offenses in connection with the same offense theory, as set forth in the Rules of Court, Chief Justice Moran went on to discuss the situation which provides an exception to the general rule.[70] In expressly repealing the contrary ruling in the Tarok case, which, according to him, "is of doubtful wisdom to say the least," [71] the Chief Justice was of the view that "such ruling is not only contrary to the real meaning of 'double jeopardy' as intended by the Constitution

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[69] Sec. 13, second paragraph, Rule 106 is as follows: "If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may dismiss the original complaint or information and order the filing of a new one charging the proper offense, provided the defendant would not be placed thereby in double jeopardy, and may also require the witnesses to give bail for their appearance at the trial."

[70] "This rule of identity does not apply, however, when the second offense was not in existence at the time of the first prosecution, for the simple reason that in such case there is no possibility for the accused, during the first prosecution, to be convicted for an offense that was then inexistent. Thus, where the accused was charged with physical injuries and after conviction the injured person dies, the charge for homicide against the same accused does not put him twice in jeopardy. This is the ruling laid down by the Supreme Court of the United States in the Philippine case of Diaz v. U. S., 223 U. S. 442, followed by this Court and these two cases are similar to the instant case. Stating it in another form, the rule is that 'where after the first prosecution a new fact supervenes for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at the time, constitutes a new and distinct offense (15 Am. Jur. 66), the accused can not be said to be in second jeopardy if indicted for the new offense.

"This is the meaning of 'double jeopardy' as intended by our Constitution for it was the one prevailing in the jurisdiction at the time the Constitution was promulgated and no other meaning could have been intended by our Rules of Court.

"Accordingly, an offense may be said to necessarily include or to be necessarily included in another offense, for the purpose of determining the existence of double jeopardy, when both offenses were in existence during the pendency of the first prosecution, for otherwise, if the second offense was then inexistent, no jeopardy could attach therefor during the first prosecution, and consequently a subsequent charge for the same can not constitute second jeopardy. By the very nature of things there can be no double jeopardy under such circumstance, and our Rules of Court can not be construed to recognize the existence of a condition where such condition in reality does not exist. General terms of a statute or regulation should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that exceptions have been intended to their language which would avoid results of this character. (In re Allen, 2 Phil. 641)"

[71] See Moran's Comments on the Rules of Court, Vol. II, 2nd Ed., p. 694, footnote 81c.

and by the Rules of Court but is also obnoxious to the administration of justice." [72]

Here lies the soundness of the Melo doctrine. It is an established rule that an accused is criminally responsible for acts committed by him in violation of the law and *for all the natural and logical consequences resulting therefrom.*[73] So also, it is the constant doctrine in this jurisdiction that the accused who has inflicted physical injuries is held responsible for all the consequences of his act, *even if they were unintended.*[74] Indeed, if there is anybody, as there should be, to be held responsible for the resulting death of the victim, it is the offender.[75] But, said offender is not criminally liable for the consequences of an erroneous or improper medical treatment.[76]

However, a careful analysis of the Melo case will lead one to discover that although the Supreme Court in express terms overruled the Tarok case, the ruling in the latter case was not really completely repealed. It is submitted that the Melo case only partly revoked the Tarok case in the sense that if the graver offense was not in existence at the time the accused was prosecuted for the lesser offense, there would be no double jeopardy if the accused is later prosecuted for the graver offense. It must be noted that the case of People v. Cox, cited in the Tarok case, is also cited in the Melo case.[77] It may

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[72] The decision says: "If, in obedience to the mandate of the law, the prosecuting officer files an information within six hours after the accused is arrested, and the accused claiming his constitutional right to a speedy trial is immediately arraigned, and later on a new fact supervenes which, together with the facts existing at the time, constitutes a more serious offense, under the Tarok ruling, no way is open by which the accused may be penalized in proportion to the enormity of his guilt. Furthermore, such a ruling may open the way to suspicions of charges of collusion between the prosecuting officers and the accused, to the grave detriment of public interest and confidence in the administration of justice, which can not happen under the Diaz ruling."

[73] U. S. v. Sornito, 4 Phil. 357; U. S. v. Navarro, 7 Phil. 713; U. S. v. Monasterial, 14 Phil. 391; U. S. v. Zamora, 32 Phil. 218; U. S. v. Almonte, 56 Phil. 54, cited in People v. Dumol, et al., 43 O. G., No. 11, 4682.

[74] U. S. v. Capadocia, 4 Phil. 365; U. S. v. Monasterial, 14 Phil. 391; U. S. v. Gonzales, 4 Phil. 487; cited in People v. Red, 43 O. G., No. 12, p. 5072.

[75] "x x x A person is liable for all justiciable acts contrary to law and for all the consequences thereof, having inflicted physical injuries, from which or from whose direct or immediate consequences death results either incidentally or accidentally, the offender must answer for the ultimate result of his act, that is, for the death resulting from the injury inflicted." Viada, Vol. 5, p. 81, 5th ed., Spanish Supreme Court Decision of April 2, 1903, Gazette of May 23rd. (Quoted in Guevara's Commentaries on the Revised Penal Code, 2nd Ed., pp. 12-13.)

[76] "x x x This principle, however, is not applicable where it clearly appears that the injury would not have caused death, in the ordinary course of events but would have healed in so many days, and where it is shown beyond all doubt that the death is due to the malicious or careless acts of the injured person or a third person, because it is a wise and equitable principle universally recognized and constantly applied, that one is only accountable for his own acts and their natural and logical consequences, and not for those which bear no relation to the initial cause and are due to the carelessness, fault, or lack of skill of another, whether it be the injured man himself or a third person x x x." Viada, *idem.*

[77] "As the Government can not begin with the highest, and then go down step by step, bringing the man into jeopardy for every dereliction included therein, neither can it begin with the lowest and ascend to the highest with pre-

be said, therefore, that what the Supreme Court wanted to emphasize, is that the Melo case is the exception to the general rule laid down in Sec. 9, Rule 113 of the Rules of Court; so that if the graver and lesser offenses were both existent during the first prosecution for the lesser offense, it is believed that the Tarok ruling still controls.

Offenses Against Different Sovereignties

We have seen that the constitutional protection against double jeopardy is only for the same offense. Indeed, the same act may constitute an offense both against the State and a political subdivision thereof, or municipal corporation. Such principle is impliedly accepted in the Constitution by the limitation provided in Art. III, Section 1 (20).[78] Before the adoption of the Constitution, the rule was that laid down by the Supreme Court in several cases, thus: Where an act is punished by a general law and also by a municipal ordinance, the accused can be prosecuted under both the general law and the municipal ordinance on the ground that there are two offenses, one against the State and another against the municipality;[79] and the mere fact that a person is thus prosecuted twice by different governmental entities does not justify the plea of former jeopardy, or *autrefois acquit* or *autrefois convict*.[80] One authority may, however, refrain from punishing a person who has already been punished by the other.[81]

With the adoption of the Constitution, the above doctrine died a natural death. The second part of clause 20 of the Bill of Rights [82] was intended clearly and expressly by the framers of the Constitution to do away with such doctrine on the theory that in such a case the State and the municipality have concurrent jurisdiction over the same act.[83] The result is that if the one takes cognizance of the case it does so to the exclusion of the other, and the verdict or decision handed down by the former is a bar to another prosecution in the other.[84]

In the case of People v. Garcia,[85] decided in 1936, after the adoption of the Constitution, accused was prosecuted and convicted for breach of the peace under a municipal ordinance in the Justice of the Peace court. Subsequently, he was charged with less serious physical injuries under the Revised Penal Code in the Court of First Instance. Former jeopardy was pleaded by the accused, invoking

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cisely the same result." People v. Cox, 107 Mich. 435, quoted with approval in U. S. v. Lim Suco, 11 Phil. 484; see also U. S. v. Ledesma, 29 Phil. 431 and People v. Martinez, 55 Phil. 6, 10.

[78] People v. Chong Hong, 65 Phil. 625.

[79] U. S. v. Chan Tienco, 25 Phil. 89; U. S. v. Joson, 26 Phil. 1; U. S. v. Pacis, 31 Phil. 524.

[80] U. S. v. Chan-Cun-Chay, 5 Phil. 385; U. S. v. Flemister, 5 Phil. 650; affirmed in 207 U. S. 372; U. S. v. Garcia Gavieres, 10 Phil. 694, affirmed in 220 U. S. 338.

[81] U. S. v. Chan-Cun-Chay, *supra*.

[82] Art. III, Section 1 (20), second clause: "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."

[83] See Aruego, *The Framing of the Constitution*, pp. 187-188.

[84] 16 C. J. 240.

[85] 63 Phil. 296.

the second clause of subsection 20, Section 1, Art. III of the Constitution. The Supreme Court held that the constitutional provision relied upon was not applicable to the instant case,[86] in that when the accused was convicted of violation of a municipal ordinance, he was convicted of an act distinct from the act penalized under the general law. A contrary ruling, according to the Court, would permit the accused to plead guilty to the violation of a municipal ordinance and thereby avoiding subsequent prosecution under a general law, thus easily frustrating the ends of justice, a result which was not intended by the framers of the Constitution.

Conclusion

The general rule, therefore, is that the protection against double jeopardy is for the same offense. The Constitution in its Bill of Rights, clause 20, second part, affords an exception. Where two different jurisdictions over the same act are involved, a prosecution under either is enough; and where such is the case, there can be no double jeopardy of the same offense, but of the *same act*. The combined laws of reason and logic demand that a criminal act punished under two different sovereignties should be prosecuted but once. Although said act may constitute two or more offenses, yet it remains as one and the same act. It would seem, therefore, that the same offense theory applies only when there is one jurisdiction involved, that is to say, there must be a double jeopardy of the *same offense* in the *same jurisdiction*. But, again, the two offenses must be both existent during the pendency of the first prosecution; otherwise, no double jeopardy will result. The latter case is an exception to the general rule laid down in Sec. 9, Rule 113, Rules of Court.

In fine, it must be noted that the Rules of Court does not mention the word "act" in the language used in incorporating the principle of double jeopardy, whereas the corresponding provision in the Constitution uses both the words "offense" and "act." In the light of our interpretation of both provisions, it may be concluded that the Constitutional protection against double jeopardy is broader in scope. There can, therefore, be no conflict between said provisions with regards the ultimate object sought to be attained by the guarantee and safeguard against double jeopardy.

BARTOLOME C. FERNANDEZ, JR.

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[86] The decision says: "Although the prosecution, trial and conviction of the accused for *lesiones menos graves* took place before the Constitution went into effect, we would extend to him the favorable provision of the Constitution were this provision applicable to him (People v. Linsangan [1933], XXXIV O. G. P. 1078)." Such a pronouncement generates the view that the constitutional provision in question may be applied to a case where the second prosecution, trial and conviction of the accused took place before the effectivity of the Constitution. See Fernando's Outlines in Constitutional Law, p. 328.