SHOULD THE STATE HAVE THE RIGHT TO APPEAL ADVERSE JUDGMENTS IN CRIMINAL CASES?

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The law must have at its foundation some notion of justice, else the law becomes nothing but an expression and instrument of arbitrary power. But principle of justice are not themselves abstract, unchanging, and immutable; their meaning is determined by their concrete operation in a very human, and therefore, changing society. Thus, the law is in constant state of flux, both in form and in substance. While the law must operate to ensure stability in the social order, and should not follow the tug and pull of transitory disturbances in society, it must at the same time respond and adapt itself to substantial evolutionary as well as revolutionary changes in society. This is the only way it can continue to be a vital instrument for the maintenance of the social order. It is from this perspective that the question of the State's right to appeal in criminal cases is viewed.

I. THE DOUBLE JEOPARDY RULE: ORIGIN AND DEVELOPMENT

A. *Origin*

The rule on double jeopardy is familiar to both civil law and common law. It is a firmly established legal principle whose origin can no longer be traced.

> "The principle that no one shall be twice put in jeopardy for the same offense is an ancient and well-established law of reason, justice and conscience. It is embodied in the maxim of the civil law, *non bis in idem*, in the common law of England, and doubtless in every system of jurisprudence, and instead of having specific origin, it simply always existed."[1]

B. *Development*

1. *Under the Spanish Regime* — In this jurisdiction, the double jeopardy rule was applicable even during Spanish times with the extension

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[1] Stout v. State, 36 Okl. 744, 756, 130 P. 553 (1913) as cited in 4 MORAN, COMMENTS ON THE RULES OF COURT 241 (1970 ed.).

of the pertinent provisions of Spanish law, embodied in the *Fuero Real* (A.D. 1255) and in the *Siete Partidas* (A.D. 1263), to the Philippines.[2]

During the Spanish occupation, a different theory of double jeopardy was applied. In Spanish civil law no jeopardy terminated until after a judgment rendered by the court of last resort. Thus, under Spanish law, as therefore administered in the Philippines, only one who had been acquitted or convicted by judgment of the *Audiencia* or Supreme Court of the Philippines could not again be prosecuted for the same offense.[3] Trial was regarded as one continuous proceeding which ended only upon judgment by the Supreme Court. An appeal by the state in the case of an adverse decision in a criminal case did not thereby place the accused in double jeopardy.

2. *Under the American Regime* — With the establishment of American sovereignty in the Philippines, General Order No. 58, promulgated on April 23, 1900, later superseded by Act No. 194 of the Philippine Commission, dated August 10, 1901, served as the Code of Criminal Procedure in the Philippines. Under these decrees, both the accused and the government were given the right to appeal from adverse judgments in criminal cases. Thus, the Spanish practice of allowing appeals by the state in criminal cases was continued.

However, the passage in the United States Congress of the Philippine Bill of 1902, promulgated on July 1, 1902, extended the double jeopardy provision of the Bill of Rights of the United States Federal Constitution to the Philippines. This, according to the landmark decision of the United States Supreme Court in *Kepner v. United States*,[4] extended the American common law practice of prohibiting state appeal in criminal cases.

In the abovementioned case, the court construed the double jeopardy provision with reference to the common law from which it was taken. It then reached the following conclusion:

> "It is, then, the settled law of this court that former jeopardy includes one who has been acquitted by a verdict duly rendered, although no judgment be entered on the verdict, and it was found upon a defective indictment. The protection is not, as the court below held, against the peril of second punishment, but against being again tried for the same offense."[5]

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[2] Kepner v. United States, 195 U.S. 100, 49 L.Ed. 114 (1904); 11 Phil. 669, 689 (1904).

[3] *Ibid.*, p. 689.

[4] *Ibid.*

[5] *Ibid.*, pp. 698-699.

II. THE CURRENT DOCTRINE ON DOUBLE JEOPARDY: NATURE AND EXTENT

The Philippine Bill of 1902, promulgated on July 1, 1902, extending the double jeopardy rule as embodied in the United States Constitution to the Philippines, was adopted by the 1935 Constitution and embodied in Section 1(20), Article IV of that fundamental law.

The present Constitution merely reiterates the double jeopardy rule as found in the 1935 Constitution. Section 22, Article IV of the 1973 Philippine Constitution, provides:

> "SEC. 22 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."

Currently, in this jurisdiction, the United States rule on double jeopardy is in force. This means that we adopt as a corollary to the rule that no man shall be twice put in jeopardy for the same offense, the principle that no man shall be tried more than once for the same offense. Thus, as now adjudged in this jurisdiction, the constitutional prohibition against double jeopardy extends to cases of appeal in the same case by the prosecution after jeopardy had attached. This corollary principle is now embodied in Section 2, Rule 122 of the Rules of Court, which provides:

> "SEC. 2. *Who may appeal.* — The People of the Philippines can not appeal if the defendant would be placed thereby in double jeopardy. In all other cases either party may appeal from a final judgment or ruling or from an order made after judgment affecting the substantial rights of the appellant."

The constitutional provision on double jeopardy is itself implemented by Section 9, Rule 177 of the Revised Rules of Court, in the following manner:

> "SEC. 9. *Former conviction or acquittal or former jeopardy.* — When a defendant shall have been convicted or acquitted, or the case against 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 formal 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 charge in the formal complaint or information."

The Supreme Court of the Philippines has consistently adhered to the United States doctrine on double jeopardy as embodied in *Kepner v. United States*.[6] In the first case decided by the tribunal after the 1935 Philippine Constitution took effect, *People v. Bringas*,[7] the court held that an appeal from a judgment of acquittal would be obnoxious to the principle of double jeopardy.

Similarly, in its first decision after liberation, *People v. Hernandez*,[8] the Supreme Court noted that an appeal after a judgment of dismissal places the accused in double jeopardy.

Moreover, in *People v. Ang Cho Kio*,[9] the high tribunal held that the state cannot appeal judgment in a criminal case on the ground that the penalty meted out was too light notwithstanding the public furor ensured because in view of the notorious acts of the accused, the penalty imposed by the lower court was considered too light. The court stressed:

> "No error, however, flagrant, committed by the court against the state, can be reserved by it for decision by the Supreme Court when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed."[10]

The doctrine was consistently reiterated in the decisions of the Supreme Court in *People v. Gomez*,[11] and *People v. Montemayor*.[12] Both cases traced the development of the double jeopardy rule in this jurisdiction. The former succinctly states:

> "A return to the sources of the double jeopardy rule reveals that originally it was held to prohibit only a subsequent prosecution in a new and independent cause. After the ruling of the United States Supreme Court, however, in Kepner v. United States, a case from the Philippines, the rule was extended to an appeal in the same case by the prosecution after jeopardy had attached, thereby in effect viewing such appeal as presenting a new and separate jeopardy, repugnant to the fundamental law's provision against double jeopardy. And, since then, the stand in *Kepner* has repeatedly been adopted here. For that matter, it is set forth in Section 2 of Rule 122 of the Rules of Court . . . . ."[13]

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[6] *Ibid.*

[7] 70 Phil. 528 (1940) as cited in People v. Montemayor, G.R. No. L-29599, January 30, 1969, 26 SCRA 687, 690 (1969).

[8] 94 Phil. 49 (1953).

[9] 95 Phil. 475 (1954).

[10] State v. Rook, 49 L.R.A. 186, 61 Kan. 382, 59 P. 653 (1900) as cited in People v. Ang Cho Kio, *supra*, note 9 at 480.

[11] G.R. No. L-22345, May 29, 1967, 20 SCRA 293, 296 (1967).

[12] *Supra*, note 7.

[13] *Supra*, note 11 at 296.

It is clear therefore that the doctrine prohibiting appeal in criminal cases by the state is firmly rooted in this jurisdiction. It has partaken of the nature of *stare decisis* inasmuch as long line of Philippine Supreme Court decisions has consistently applied this rule. Moreover, it has acquired the status of a constitutional principle. As was noted in one case:

> "The prosecution in the case at bar urges a reexamination of the question decided in the *Ang Cho Kio* cases and a reconsideration of the view therein expressed by this Court. To our mind, however, the reasons advanced by the Solicitor General in support of his pretence are not sufficiently weighty to warrant a reversal of said view which is a mere corollary of the practice established in the Philippines and in the United States, for so long a time as to form part and parcel, not merely of the settled jurisdiction, but, also, of the constitutional law, in both jurisdiction."[14]

III. OBJECTIONS TO THE CURRENT DOCTRINE PROHIBITING APPEAL BY THE STATE IN CRIMINAL CASES

Nevertheless, the doctrine that no appeal can be taken by the state in the case of adverse judgment in a criminal case does not produce such a degree of conviction as to acquire the character of finality if based solely on the ground of double jeopardy. This is so because there are solid reasons for the belief that double jeopardy is not a sound basis for the doctrine at least in this jurisdiction.

Kepner v. United States,[15] has consistently been relied upon as authority for the establishment of the current theory of double jeopardy in this country. This decision of the United States Supreme Court was, however, a controversial decision inasmuch as it was issued by a divided court. It must therefore bear close scrutiny.

Of the full complement of nine justices who participated in the making of the decision, a slim majority of five concurred in the main opinion of the court. Four other justices voiced their dissent in two separate opinions.

The conclusion reached by the majority was that the United States theory of double jeopardy should be made applicable to the Philippines. This, according to them, meant that a judgment by a competent court should bar the state, not only from a subsequent prosecution arising from the same offense in a new and independent cause, but, also, from an appeal in the same case.

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[14] People v. Pomeroy, 97 Phil. 927, 940 (1955).
[15] *Supra*, note 2.

A. *Difference in Criminal Procedure*

However, there is a substantial difference between the system of administering criminal law in the United States and Philippine criminal procedure. In the United States, there is an indictment by a grand jury and trial is conducted before judge and jury. In the Philippines, there is an indictment by the fiscal and trial by a single judge.

Such a difference, in the opinion of Justice Henry Billings Brown, would warrant that a distinction in the application of the double jeopardy principle should be made in the case of the United States and the Philippines. In his dissenting opinion in the aforementioned case of *Kepner v. United States,* Justice Brown stated:

> ". . . in applying the principle to the Philippine Islands, Congress intented to use the words in the sense in which they had theretofore been understood in those Islands. By that law, in which trial by jury was unknown, the jeopardy did not terminate, if appeal were taken to the audiencia or Supreme Court until that body had acted upon the case.
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> ". . . Sec. 9 of the Philippine Act of July 1, 1902, which provided that "the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as *heretofore provided* . . . of procedure." It seems to be impossible to suppose that Congress intended to place in the hands of a single judge the great and dangerous power of finally acquitting the most notorious criminals."[16]

The late Don Vicente Francisco, then a delegate to the 1934 Constitutional Convention and chairman of its judiciary committee, proposed that the state be allowed to appeal in criminal cases. His constitutional proposal lost by a narrow margin of 13 votes, 60 delegates voting in the affirmative and 73 in the negative. In his speech supporting his proposal, the eminent lawyer and jurisconsult, known as the Father of the Philippine Judiciary, made the following pertinent observations:

> "But I do dispute the propriety of adopting the doctrine of the United States Supreme Court by this Convention because of the fundamental reason that the system of administering law in the United States, whose source is the Bill of Rights of the U.S. Constitution, is essentially different from the system of criminal procedure followed in the Philippines. In the United States, there exists a grand jury which is a body composed of twelve to twenty-three citizens, whose duty is to investigate crimes committed in the place where the members of the grand jury are chosen and to determine if there is evidence showing his guilt. In the investigation by the grand jury, the presumption that the accused is innocent until it is proved that he is guilty is taken into account. The grand jury is part of the

[16] *Ibid.*, pp. 705-706.

> government machinery, whose function is to discover and punish crimes; it is an appendage of the trial court under whose supervision the jury is constituted. If the twelve members of the grand jury finds that there is evidence showing the guilt of the person denounced, the grand jury prepares and files the indictment. Otherwise, the accusation is dismissed. On the other hand, in the Philippines only one person, the fiscal, conducts the investigation, and if he believes that there exists probable cause that the person suspected has committed the crime, the fiscal files the corresponding charges . . .
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> "In the United States, once the indictment against the accused is filed, the trial is held before a jury composed of twelve persons taken from the place where the crime was committed and presided over by a judge. The jurors are the judges of the facts and it is the judge who determines and applies the law. To render a verdict of guilty as well as one of not guilty requires unanimity on the part of the twelve members of the jury. On the other hand, in the Philippines, the trial is conducted before a judge . . ."[17]

It would also seem apparent that at least one of the justices who concurred with the majority opinion in *Kepner v. United States,*[18] relied upon the erroneous belief that the criminal procedure of the United States was to be applied in its entirety to the Philippines as the basis for his concurrence. In his dissenting opinion in a subsequent case, Justice John Marshall Harlan, who concurred with the majority opinion in *Kepner v. United States,* said:

> "I did not so state in a separate opinion in *Kepner v. United States* (195 U.S. 100), but my concurrence in the judgment in that case was upon the ground that from the moment of the complete acquisition of the Philippine Islands by the United States, and without any act of Congress, or a proclamation of the President upon the subject, the people of those Islands became entitled, of right, to the benefit of all the fundamental guaranties of life, liberty and property to be found in that instrument. Hence, my approval of the view, announced in *Kepner's* case that the accused was entitled to the benefit of the jeopardy clause of the Constitution."[19]

Justice Harlan went further to say that the procedure embodied in the United States Federal Constitution of trial by jury upon presentation or indictment by a grand jury in criminal cases should likewise be applicable to the Philippines. In the process he made the observation, remarkably similar to that of Justice Brown in *Kepner v. United States,*[20]

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[17] 4 J.C.C. PHIL. 258 (November, 1934); republished in 39 LAWYERS J. 624 (April-May, 1974).

[18] *Supra,* note 2.

[19] Trono v. U.S., 199 U.S. 521, 50 L.Ed. 292 (1905); 11 Phil. 726, 740 (1905).

[20] *Supra,* note 2.

that the power of acquittal in criminal cases could not have been intended to be entrusted to a single judge.[21]

B. *No Double Jeopardy*

The great dissenter himself, Justice Oliver Wendell Holmes, penned the other dissenting opinion in *Kepner v. United States*. He was not, in this instance, a lone voice inasmuch as two other justices concurred with his dissent.

The first ground on which Justice Holmes and his colleagues based their oppositions to the doctrine prohibiting appeal by the state in criminal cases is the following: There is no double jeopardy in case an accused is tried again on appeal in the same case inasmuch as the jeopardy in the lower court is merely continued in the appellate court. In the words of Justice Holmes,

> ". . . It is more pertinent to observe that it seems to me that logically and rationally a man can not be said to be more than once in jeopardy in the same cause, however often he may be tried. The jeopardy is one continuing jeopardy from its beginning to the end of the cause. Everybody agrees that the principle in its origin was a rule forbidding a trial in a new and independent case where a man already had been tried once. But there is no rule that a man may not be tried twice in the same case."[22]

Delegate Vicente Francisco, in his aforementioned speech in the 1934 Constitutional Convention supporting his proposal that the state be given the right to appeal in criminal cases, argued in a similar vein:

> ". . . Any lawyer knows that a criminal prosecution commences by filing a criminal complaint or information with the court. When a decision of acquittal in a criminal case is appealed, the state does not file another complaint or information against the accused. Appeal in its technical sense is just a removal of a cause from an inferior court to one of a superior jurisdiction for the purpose of obtaining a review and final determination. Thereofre, the argument that when a decision of acquittal is appealed, the accused is being subjected to a second prosecution, and that the appealed constitutes a new case, different from that originally instituted in the lower court, has no legal foundation at all."[23]

C. *Equality of Right to Appeal*

There is another ground upon which Justice Holmes and his colleagues opposed the doctrine prohibiting appeal by the state in criminal cases.

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[21] *Supra*, note 19 at 741-742.

[22] Kepner v. United States, *op. cit., supra*, note 2 at 702-703.

[23] J.C.C. PHIL., *op. cit., supra*, note 17.

It was maintained by them that the state should be placed on equal footing with the accused. Inasmuch as the accused is given the right to appeal, the state should also be given that right, otherwise, an inequity would result. There can be no implied waiver of the constitutional right against double jeopardy. Thus, waiver by the accused cannot be used as a ground for giving him the right to appeal. As stated by Justice Holmes:

> ". . . It has been decided by this court that he may be tried a second time, even for his life, if the jury disagree (citation omitted), or notwithstanding their agreement and verdict, if the verdict is set aside on the prisoner's exceptions for error in the trial. He even may be tried on a new indictment if the judgment on the first is arrested upon motion . . .
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> "If a statute should give the right to take exceptions to the Government, I believe it would be impossible to maintain that the prisoner would be protected by the Constitution from being tried again. He no more would be put in jeopardy a second time when retried because of a mistake of law in his favor, than he could be when retried for a mistake that did him harm. It can not matter that the prisoner procures the second trial. In a capital case, . . . a man can not waive, and certainly will not be taken to waive without meaning it, fundamental constitutional rights. . . . Usually no such waiver is expressed or thought of. Moreover, it can not be imagined that the law would deny to a prisoner the correction of a fatal error, unless he should waive other rights so important as to be saved by an express clause in the Constitution of the United States."[24]

Delegate Vicente Francisco of the 1934 Constitutional Convention supported this view. He stated:

> ". . . there should be equality between individual rights and the protection of society. The revocation of a decision rendered in favor of the accused is logically and necessarily related to the remedy that is given if the judgment is one of conviction . . ."[25]

D. *Summary*

The arguments against prohibiting appeal by the state in criminal cases may thus be summarized in the following manner:

1. Considering the substantial difference between the system of administering criminal law in the United States and the system of criminal procedure in the Philippines, it could not have been intended that the United States rule on double jeopardy which prohibits appeal by the state in criminal cases should prevail in this jurisdiction. To allow a single judge to finally determine that an accused is innocent would be abhorrent to the principles of justice.

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[24] Kepner v. United States, *op. cit., supra*, note 2 at 703-704.
[25] J.C.C. PHIL. *op. cit., supra*, note 17.

2. The constitutional prohibition against double jeopardy does not bar appeal by the state in the same case inasmuch as there is no double jeopardy but only one continuing jeopardy in such a case.

3. It is inequitable that the accused should have the right to appeal an adverse decision in a criminal case while the state is barred from such appeal. The state and the accused should be placed on the same level since there should be equality between individual rights and the protection of society.

IV. Rationale of the Prohibition Against Appeal by the State in Criminal Cases

A. *Intent of the Constitutional Prohibition Against Double Jeopardy*

While it is true that a literal construction of the constitutional prohibition against double jeopardy would lead to the logical conclusion that appeal by the state is not barred inasmuch as there is only one continuing jeopardy in the same case, still such a literal construction, which gives effect to the letter of the Constitution, must give way to an interpretation that is more in keeping with the spirit of the Constitution.

There is the rule in statutory construction that a borrowed statute must be construed in the same manner that it was construed in the jurisdiction whence it was taken. Thus, the constitutional provision on double jeopardy in this jurisdiction must be given the same meaning as its source, namely, the double jeopardy provision of the Bill of Rights of the United States Federal Constitution.

Such a construction, which prohibits appeal by the state in criminal cases, is reasonable and consistent with Philippine law. In point of fact, the courts in this jurisdiction have consistently adopted such an interpretation of the double jeopardy provision. Even considering that there is indeed a substantial difference between the criminal procedure of the United States and that of the Philippines, still it is evident that the United States theory of double jeopardy was intended to apply here.

Moreover, the literal construction of the double jeopardy provision, although more logical, must yield to the specific intent of the farmers of the 1973 Philippine Constitution and of the people adopting the said organic law. Such is obviously to continue the double jeopardy rule as found in the 1935 Constitution, which has always been understood to bar appeal by the state in criminal cases, inasmuch as the 1973 Constitution's double jeopardy provision is a verbatim copy of the provision on double jeopardy in the 1935 Constitution. The double jeopardy provision must, therefore, be understood in its technical, not logical, sense.

B. *Right of the Accused and Right of the State Differentiated*

The contention that it is inequitable that an adverse decision in a criminal case may be subject to appeal by the accused but not by the state is untenable. The nature of the right of the accused is essentially different from that of the state. It is precisely the policy of the state that the individual right of the accused should prevail over the right of the state in this respect.

In the United States decision of *Trono v. United States*,[26] the court distinguished between the right of the accused in appealing and the action of the state in appealing a criminal case. In that case originating from the Philippines, the United States Supreme Court affirmed a decision of the Philippine Supreme Court which convicted the accused of homicide on appeal by the accused from a lower court decision convicting the accused of the lesser crime of assault on a murder indictment. In justifying its decision, the court held:

> ". . . The difference is vital between an attempt by the Government to review the verdict or decision of acquittal in the Court of First Instance and the action of the accused person in himself appealing from the judgment and asking for its renewal, even though that judgment, while convicting him of the lower offense, acquits him of the higher one charged in the complaint.
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> ". . . in appealing from the judgment the accused necessarily appeals from the whole thereof, as well as that which acquits as that which condemns; that the judgment is one entire thing, and that as he brings up the whole record for review he thereby waives the benefit of the provision in question, for the purpose of attempting to gain what he thinks is a greater benefit, viz., a review and reversal by the higher court of the judgment of conviction. Although the accused was, as is said, placed in jeopardy upon the first trial, in regard not only to the offense of which he was accused, but also in regard to the lesser grades of that offense, yet by his own act and consent, by appealing to the higher court to obtain a reversal of the judgment, he has thereby procured it to be set aside, and when so set aside and reversed the judgment is held as though it had never been."[27]

It is thus apparent that the constitutional prohibition against double jeopardy being for the benefit of the accused, such constitutional right may be waived by him in order that he may appeal a judgment of conviction. The state and the accused cannot stand on the same footing in this regard.

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[26] *Supra*, note 19.

[27] Trono v. U.S., *op. cit., supra*, note 19 at 735 & 737.

C. *Presumption of Innocence*

Likewise, it must be said that the mere fact that a single judge is allowed to finally determine the innocence of the accused is simply not inconsistent with the principles of justice.

Perfect justice is an ideal which can merely be approximated but never fully achieved in human society. This is due to the fact that the concept of justice is limited by the experience of human society. In its attempt to achieve justice, society formulates a scale of values conforming to the community experience and aspirations and establishes a legal machinery to enforce and administer substantial justice in accordance with that hierarchy of values.

In this jurisdiction, there are rules of criminal procedure, which form part of the legal machinery to enforce and administer justice, established not only for the punishment of the guilty but also for the protection of the innocent. The protection of the innocent evidently ranks higher on the social scale of values than the punishment of the guilty. Thus, the Bill of Rights of the 1973 Constitution of the Philippines provides, among others, the accused with the right to be presumed innocent.

Section 19, Article IV of the 1973 Philippine Constitution, states: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved."

To implement this constitutional right of the accused, the Rules of Court provides, among others, that guilt must be proved beyond reasonable doubt to convict the accused, otherwise, acquittal would result. Thus, Section 2, Rule 133 of the Revised Rules of Court, provides:

> "SEC. 2. *Proof beyond reasonable doubt.* — In a criminal case, the defendant is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."

It is apparent that the belief of the trial judge, who is a trained legal officer, that there is reasonable ground to believe that the accused is not guilty should be sufficient in law to finally acquit the accused inasmuch as there would always be, assuming that the judge was unprejudiced, a reasonable doubt as to the guilt of the accused.

Of course those in favor of giving the state the right to appeal in criminal cases would argue that it is precisely the danger that a prejudiced

judge may arbitrarily acquit the accused. However, while it is true that there is the disputable presumption of regularity in the performance of official duty, once this presumption is overthrown by competent evidence, showing clearly and convincingly that the judge acted capriciously or arbitrarily in acquitting the accused, there is the available remedy of certiorari, which is not inconsistent with the double jeopardy principle prohibiting appeal by the state in criminal cases. Thus, in one case, the Supreme Court held:

> "The present case, however is not an *appeal* by the prosecution assserting a dismissal to be *erroneous;* it is a petition for certiorari, assailing the order of dismissal as *invalid* and a nullity for having been made with grave abuse of discretion tantamount to lack, or excess, of jurisdiction. It stands to reason that if petitioner's submission is sustained, there would in effect be no order of dismissal to speak of, since it would be legally non-existent. And thus, there would be no dismissal or termination of the case as a basis for the plea of double jeopardy."[28]

Therefore, the procedure which permits a single judge to finally determine that an accused is innocent is, not only in keeping with, but also necessary for the proper implementation of the constitutional presumption of innocence and its corollary requirement, as found in the Rules of Court, of proof beyond reasonable doubt in case of conviction. Such a procedure is clearly consistent with the principles of justice recognized in this jurisdiction.

V. CONCLUSION

From the foregoing discussion, it must be concluded that nothing less than a constitutional amendment would suffice to permit appeal by the state in criminal cases inasmuch as the double jeopardy principle prohibiting such appeal by the state has acquired the status of a constitutional principle.

Moreover, one is led to the conclusion that even without the existing rule on double jeopardy, the proposal that the state should be given the right to appeal adverse judgments in criminal cases would still encounter serious difficulty. To implement such proposal, there would be need for the passage of a statute to that effect inasmuch as the right to appeal is not a natural right nor a part of due process but merely a statutory privilege that may be exercised only in the manner and in accordance with the provisions of the law.[29]

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[28] People v. Gomez, *op. cit., supra,* note 11 at 296-297.

[29] Bello v. Fernando, G.R. No. L-16970, January 30, 1962, 4 SCRA 135 (1962); Ker & Co., Ltd. v. Court of Tax Appeals, G.R. No. L-12396, January 31, 1962, 4 SCRA 160 (1962).

But the constitutional presumption of innocence and its corollary rule in the Rules of Court requiring proof beyond reasonable doubt for conviction in criminal cases would militate strongly against allowing such appeal. For that matter, permitting such appeal would result in a drastic change in the concept of guilt and innocence in Philippine criminal law and radically revamp the concept of justice in this jurisdiction.