G.R. No. 236686 — YOKOHAMA TIRE PHILIPPINES, INC., *petitioner*, ***versus*** **SANDRA REYES and JOCELYN REYES,** *respondents*.

Promulgated:

FEB 05 2020

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur. The *ponencia* was correct in denying the petition and in recognizing the right of the accused against double jeopardy.

Brief review of the facts

Petitioner Yokohama Tire Philippines, Inc. (Yokohama) filed a complaint for qualified theft against Sandra Reyes and Jocelyn Reyes (collectively, the accused-respondents), former employees of Yokohama, for allegedly taking ink cartridges from the company's stock room without the company's consent.

After preliminary investigation, the prosecutor found probable cause to indict the accused-respondents with attempted theft. Thus, an Information was filed charging the accused-respondents with attempted theft before the Municipal Trial Court of Clarkfield, Pampanga (MTC).

After trial, the MTC issued its Decision acquitting the accused-respondents of the crime.

Aggrieved by the Decision issued by the MTC, Yokohama filed a petition for *certiorari* with the Regional Trial Court (RTC), arguing that the MTC issued the Decision with grave abuse of discretion amounting to lack or excess of jurisdiction by acquitting the accused-respondents on the basis of its finding that the ink cartridges were inadmissible in evidence for having been obtained in violation of the accused-respondents' right against unreasonable searches and seizures.

The RTC, however, dismissed the petition for *certiorari.* Undaunted, Yokohama sought recourse directly to the Court, ascribing error on the part of the RTC for dismissing its petition for *certiorari.* Yokohama's main argument was that the MTC committed grave abuse of discretion in applying the exclusionary rule under Section 3(2), in relation to Section 2, Article III of the Constitution, when the said exclusionary rule applies only when the violator of the right was the State or its agents and not private parties.

The *ponencia* denies the present petition for two reasons, namely, that the petition was filed without the conformity of the Office of the Solicitor

General (OSG) and that the RTC did not err in not ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the MTC.

I fully agree with the result of the *ponencia*'s ruling. But while I ultimately agree with the result, I respectfully submit that a different framework should have been adopted by the *ponencia* in arriving at the conclusion. In ruling the way it did, the *ponencia* explained:

> As found by the RTC, there was no hint of whimsicality, nor of gross and patent abuse of discretion as would amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law on the part of the MTC. If at all, the mistake committed by the MTC is only an error of judgment and not of jurisdiction, which would have amounted to a grave abuse of discretion.
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> This Court sustains the RTC ruling that even if the subject ink cartridges are admitted as evidence, it does not necessarily follow that they are given probative weight. The admissibility of an evidence is different from its probative value. x x x
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> x x x x
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> Stated differently, even if the seized ink cartridges were admitted in evidence, the Court agrees with the OSG that the probative value of these pieces of evidence must still meet the various tests by which their reliability is to be determined. Their tendency to convince and persuade must be considered separately because admissibility of evidence is different from its probative value. As contended by the OSG, "[e]ven granting *arguendo* that the MTC indeed committed an error in ruling that there was illegal search and seizure in this case, the prosecution still has to prove that the seized cartridges were indeed the property of petitioner." However, the prosecution failed in this respect. This Court agrees with the OSG that since the employee of petitioner who allegedly discovered the theft of the subject cartridges, and who was supposedly the one who put identifying marks thereon was not presented in court, nobody could verify if the cartridges seized from respondents were the ones missing from the stockroom. Parenthetically, what is very damaging to the cause of the prosecution is its failure to present the alleged video recording which supposedly shows respondents in the act of putting ink cartridges inside a bag.
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> Thus, the Court finds neither error nor grave abuse of discretion on the part of the MTC when it ruled that the prosecution failed to prove the essential element of taking in the alleged crime of theft[.][1]

Based on the foregoing reasoning, one can be led into believing that errors in judgment may ripen into errors in jurisdiction depending on the gravity or severity of the error committed.

It is in this regard that I disagree.

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[1] *Ponencia*, pp. 6-7.

The right against double jeopardy

The right against double jeopardy was brought into the Philippine legal system by the Decision of the Supreme Court of the United States (SCOTUS) in *Kepner v. United States*[2] (*Kepner*). In the said case, the Supreme Court of the Philippines reversed a ruling of the court of first instance acquitting the accused therein of *estafa.* When the accused therein appealed to the SCOTUS, the SCOTUS reversed the ruling of the Supreme Court of the Philippines, holding that the principles of law in the United States which were deemed by then President William McKinley as necessary for the maintenance of individual freedom — which includes the right against double jeopardy — were brought to the Philippines by Congress' act of passing the Philippine Bill of 1902. The SCOTUS explained:

> When Congress came to pass the act of July 1, 1902, it enacted, almost in the language of the President's instructions, the Bill of Rights of our Constitution. **In view of the expressed declaration of the President, followed by the action of Congress, both adopting, with little alteration, the provisions of the Bill of Rights**, there would seem to be no room for argument that, in this form, **it was intended to carry to the Philippine Islands those principles of our Government which the President declared to be established as rules of law for the maintenance of individual freedom**, at the same time expressing regret that the inhabitants of the islands had not theretofore enjoyed their benefit.[3] (Emphasis and underscoring supplied)

Kepner was the standing doctrine when the 1935 Constitution was being drafted. In the deliberations, efforts were exerted to reject *Kepner* and to change the wording of the constitutional provision such that the right against double jeopardy would be applicable only once the accused has been acquitted or convicted "by final judgment."[4] These efforts, however, were rejected.[5]

Since then, the understanding of what the right against double jeopardy entails has remained the same even with the subsequent changes in the Constitution. Jurisprudence has provided that for the said right to attach, the following requisites must be present: (1) a valid indictment, (2) a court of competent jurisdiction, (3) the arraignment of the accused, (4) a valid plea entered by him, and (5) the acquittal or conviction of the accused, or the dismissal or termination of the case against him without his express consent.[6]

To give life to the right against double jeopardy, the Court has, in numerous occasions, adhered to the finality-of-acquittal doctrine, which provides that "a judgment of acquittal, whether ordered by the trial or the

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2 195 U.S. 100 (1904).

3 Id. at 124.

4 The proposed wording was "No person shall be twice put in jeopardy of punishment for an offense upon which the final judgment has been rendered."

5 Joaquin G. Bernas, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 589 (2009 Edition).

6 *Condrada v. People*, 446 Phil. 635, 641 (2003).

appellate court, is final, unappealable, and immediately executory upon its promulgation."[7] As the Court in *People v. Court of Appeals and Francisco*[8] explained:

> As earlier mentioned the circumstances of the case at bar call for a judicial inquiry on the permissibility of appeal after a verdict of acquittal in view of the constitutional guarantee against double jeopardy
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> In our jurisdiction, the finality-of-acquittal doctrine as a safeguard against double jeopardy faithfully adheres to the principle first enunciated in *Kepner v. United States*. **In this case, verdicts of acquittal are to be regarded as absolutely final and irreviewable.** The cases of *United States v. Yam Tung Way*, *People v. Bringas*, *Gandicela v. Lutero*, *People v. Cabarles*, *People v. Bao*, to name a few, are illustrative cases. **The fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes.** As succinctly observed in *Green v. United States* "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that **the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense,** thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."[9] (Emphasis and underscoring supplied)

The finality-of-acquittal doctrine, of course, is not without exception. The finality-of-acquittal doctrine does not apply when the prosecution — the sovereign people, as represented by the State — was denied a fair opportunity to be heard. Simply put, the doctrine does not apply when the prosecution was denied its day in court — or simply, denied due process. As the Court explained in the case of *People v. Hernando*:[10]

> Notwithstanding, the error committed can no longer be rectified under the cardinal rule on double jeopardy. The judgment of acquittal in favor of an accused necessarily ends the case in which he is prosecuted and the same cannot be appealed nor reopened because of the doctrine that nobody may be put twice in jeopardy for the same offense. Respondents have been formally acquitted by respondent Court, albeit erroneously. That judgment of acquittal is a final verdict. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *antrefois acquit*. **The proceedings in the Court below were not an absolute nullity as to render the judgment of acquittal null and void. The prosecution was not without the opportunity to present its evidence or even to rebut the testimony of Leonico Talingdan, the witness on new trial. It cannot be justifiably claimed, therefore, that the prosecution was deprived of its day in Court and denied due process of law, which would have rendered the judgment of acquittal a nullity and beyond the pale of a claim of double jeopardy.** What was committed by respondent Judge was

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7 *Chiok v. People*, 774 Phil. 230, 248 (2015).
8 468 Phil. 1 (2004).
9 Id. at 12-13.
10 195 Phil. 21 (1981).

> a reversible error but which did not render the proceedings an absolute nullity.[11] (Emphasis and underscoring supplied)

The foremost example of this denial of due process was the case of *Galman v. Sandiganbayan*[12] (*Galman*) where, despite the acquittal of the several accused in the assassination of former Senator Benigno Aquino, Jr., the Court declared that double jeopardy could not be invoked because the whole trial was a sham. The Court found that the trial "was but a mock trial where the authoritarian president ordered respondents Sandiganbayan and Tanodbayan to rig the trial and closely monitored the entire proceedings to assure the predetermined final outcome of acquittal and total absolution as innocent of all the respondents-accused."[13]

Due to the influence that the Executive exerted over the independence of the court trying the *Galman* case, the Court ruled that the Decision therein was issued in violation of the prosecution's due process. For instance, the Court found that in the trial in the Sandiganbayan, there were, among others, (1) suppression of evidence, (2) harassment of witnesses, (3) deviation from the regular raffle procedure in the assignment of the case, (4) close monitoring and supervision of the Executive and its officials over the case, and (5) secret meetings held between and among the President, the Presiding Justice of the Sandiganbayan, and the Tanodbayan. From the foregoing, the Court saw the trial a sham.

From these observations, the Court ruled in *Galman* that the right against double jeopardy, absolute as it may appear, may be invoked only when there was a valid judgment terminating the first jeopardy. The Court explained that no right attaches from a void judgment, and hence the right against double jeopardy may not be invoked when the decision that "terminated" the first jeopardy was invalid and issued without jurisdiction.[14]

The facts of *Galman* constitute the very narrow exception to the application of the right against double jeopardy. The unique facts surrounding *Galman* — and other similar scenarios where the denial of due process on the part of the prosecution was so gross and palpable — is the limited area where an acquittal may be revisited through a petition for *certiorari*. As reiterated by the Court in the case of *People v. Velasco*[15] (*Velasco*), "the doctrine that 'double jeopardy may not be invoked after trial' may apply only when the Court *finds that the 'criminal trial was a sham' because the prosecution representing the sovereign people in the criminal case was denied due process*."[16]

Verily, this means that not every error in the trial or evaluation of the evidence by the court in question that led to the acquittal of the accused would

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[11] Id. at 32.
[12] 228 Phil. 42 (1986).
[13] Id. at 83.
[14] Id. at 90.
[15] 394 Phil. 517 (2000).
[16] Id. at 555.

be reviewable by *certiorari.* Borrowing the words of the Court in *Republic v. Ang Cho Kio*,[17] "[n]o error, **however flagrant**, committed by the court against the state, can be reserved by it for decision by the [S]upreme [C]ourt when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed."[18]

As applied in this case, it is thus immaterial whether the MTC was correct or that there was indeed insufficient evidence to convict the accused-respondents. Whether the MTC was correct in its ruling on the merits, the fact remains that the accused-respondents' right against double jeopardy already attached upon their acquittal, and such right demands that the case be terminated immediately, with any form of re-litigation barred.

In other words, the *ponencia* need not have done a re-evaluation of the evidence before the MTC. Again, whether the MTC committed any error in its appreciation of the evidence, no matter how flagrant or grave, was already immaterial. No amount of error of judgment will ripen into an error of jurisdiction such that the acquittal would be reviewable by an appellate court through a petition for *certiorari.* It is only in cases where the State was denied its day in court — like in *Galman* — that a decision acquitting the accused, or an order terminating the case without the accused's consent, may be revisited.

To end, it is well to emphasize the purpose for this insistence on having a very narrow exception to the finality-of-acquittal doctrine. To borrow the words of the Court in *Velasco*:

> The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in **unequal contest** with the State x x x" Thus, Green expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that **the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty.**"
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> It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. **The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability.** With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

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[17] 95 Phil. 475 (1954).
[18] Id. at 480.

Related to his right of repose is the defendant's interest in his right to have his trial completed by a particular tribunal. This interest encompasses his right to have his guilt or innocence determined in a single proceeding by the initial jury empanelled to try him, for society's awareness of the heavy personal strain which the criminal trial represents for the individual defendant is manifested in the willingness **to limit Government to a single criminal proceeding to vindicate its very vital interest in enforcement of criminal laws. The ultimate goal is prevention of government oppression**; the goal finds its voice in the finality of the initial proceeding. As observed in *Lockhart v. Nelson,* **"(t)he fundamental tenet animating the Double Jeopardy Clause is that the State should not be able to oppress individuals through the abuse of the criminal process." Because the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair.**[19] (Emphasis and underscoring supplied)

Based on these premises, I vote to **DENY** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

[19] *People v. Velasco,* supra note 15 at 555-557.